

# **PROJECT AGREEMENT**

## **WOODSTOCK GENERAL HOSPITAL**

**CONFIDENTIAL**

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## SCHEDULES

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Schedule 7	-	Project Co Information
Schedule 8	-	[Intentionally Deleted]
Schedule 9	-	Key Individuals
Schedule 10	-	Review Procedure
Schedule 11	-	Construction Quality Plan
Schedule 12	-	Service Quality Plan Outline
Schedule 13	-	Project Co Proposal Extracts
Schedule 14	-	Outline Commissioning Program
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- Schedule 30 - Insurance Trust Agreement
- Schedule 31 - Benchmarking and Market Testing Procedure
- Schedule 32 - Financial Model Extracts
- Schedule 33 - Existing Design
- Schedule 34 - Risk Assessment Guidelines
- Schedule 35 - Trust Account Agreement
- Schedule 36 - Works Report Requirements

**THIS PROJECT AGREEMENT** is made as of the 26<sup>th</sup> day of September, 2008

**BETWEEN:**

**WOODSTOCK GENERAL HOSPITAL TRUST**, a corporation incorporated under the *Corporations Act* (Ontario)

("WGH")

**AND:**

**INTEGRATED TEAM SOLUTIONS WGH PARTNERSHIP**, a general partnership of LED (ITS) WGH Inc. and LED (ITS) WGH Limited Partnership, existing under the laws of Manitoba

("Project Co")

**WHEREAS:**

- A. WGH, with the assistance of Infrastructure Ontario, wishes to procure a new hospital in Woodstock, Ontario.
- B. WGH will provide the Hospital Services at the Facility and Project Co will provide the Project Operations, which include the limited design, construction, financing and maintenance of the Facility (the "**Project**").
- C. WGH and Project Co wish to enter into this project agreement (the "**Project Agreement**"), which sets out the terms and conditions upon which Project Co shall perform the Project Operations.
- D. The overriding priorities of WGH in entering into and implementing this Project Agreement are the health and safety of the patients of the Facility and their healthcare needs, and the provision of first-rate healthcare services and Project Co recognizes and understands that the health and safety of the patients of the Facility is, at all times, paramount.
- E. The Project will proceed as an alternative financing and procurement project under MEI's *ReNew Ontario* infrastructure investment plan, and complies with the principles set out in MEI's *Building a Better Tomorrow: An Infrastructure Planning, Financing and Procurement Framework for Ontario's Public Sector* (the "**IPFP Framework**").
- F. The IPFP Framework establishes 5 fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
  - 1. The public interest is paramount.
  - 2. Value for money must be demonstrable.

3. Appropriate public control/ownership must be preserved.
  4. Accountability must be maintained.
  5. All processes must be fair, transparent and efficient.
- G. The IPFP Framework states that, consistent with the principle of appropriate public ownership/control, public ownership of assets will be preserved in the hospital sector.
- H. MOHLTC is responsible for the development, coordination, maintenance and funding of health services, including a balanced and integrated system of hospitals, nursing homes, laboratories, ambulances, other health facilities and providers to meet the health needs of the people of Ontario.
- I. There are a number of statutes which govern the operation and administration of hospitals in Ontario. Under the *Public Hospitals Act* (Ontario), certain actions of hospitals can only be undertaken with the approval of the Minister of Health and Long-Term Care. Subsection 4(3) of the *Public Hospitals Act* (Ontario) states that no additional building or facilities shall be added to a hospital until the plans therefor have been approved by the Minister. Under subsection 4(2) of the *Public Hospitals Act* (Ontario), no institution, building or other premises or place shall be operated or used for the purposes of a hospital unless the Minister has approved the operation and or use of the premises or place for that purpose.
- J. The Minister of Health and Long-Term Care has powers to protect the public interest regarding matters relevant to the quality of the management and administration of a hospital, the proper management of the health care system in general, the availability of financial resources for the management and delivery of health care services, the accessibility of services in the community where the hospital is located and the quality of care and treatment of patients.
- K. Project Co recognizes and understands that WGH is a public hospital under the *Public Hospitals Act* (Ontario) and is, therefore, subject to a highly regulated legal and operational environment.
- L. With a view to ensuring that both Parties are able to properly and effectively discharge their respective duties, functions and responsibilities under Applicable Law, it is the intent that WGH and Project Co work collaboratively, responsibly and cooperatively throughout the Project Term.

**NOW THEREFORE** in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions and Interpretation**

- (a) This Project Agreement shall be interpreted in accordance with Schedule 1 - Definitions and Interpretation.
- (b) This Project Agreement is comprised of this executed agreement and the following documents, all of which are hereby incorporated by reference into and form part of this Project Agreement:

<b>Schedule No.</b>	<b>Description</b>
Schedule 1	Definitions and Interpretation
Schedule 2	Completion Documents
Schedule 3	Custody Agreement
Schedule 4	Lenders' Direct Agreement
Schedule 5	Direct Agreements
Schedule 6	Independent Certifier Agreement
Schedule 7	Project Co Information
Schedule 8	[Intentionally Deleted]
Schedule 9	Key Individuals
Schedule 10	Review Procedure
Schedule 11	Construction Quality Plan
Schedule 12	Service Quality Plan Outline
Schedule 13	Project Co Proposal Extracts
Schedule 14	Outline Commissioning Program
Schedule 15	Output Specifications
Schedule 16	Title Encumbrances
Schedule 17	Employee Transition

<b>Schedule No.</b>	<b>Description</b>
Schedule 18	Communications Protocol
Schedule 19	Heritage Guidelines and Protocols
Schedule 20	Payment Mechanism
Schedule 21	Equipment List
Schedule 22	Variation Procedure
Schedule 23	Compensation on Termination
Schedule 24	Expiry Transition Procedure
Schedule 25	Insurance and Performance Security Requirements
Schedule 26	Record Provisions
Schedule 27	Dispute Resolution Procedure
Schedule 28	Refinancing
Schedule 29	Standby Letter of Credit
Schedule 30	Insurance Trust Agreement
Schedule 31	Benchmarking and Market Testing Procedure
Schedule 32	Financial Model Extracts
Schedule 33	Existing Design
Schedule 34	Risk Assessment Guidelines
Schedule 35	Trust Account Agreement
Schedule 36	Works Report Requirements

- (c) The documents comprising this Project Agreement are complementary and what is called for by any one of them shall be interpreted as if called for by all, except in the event of ambiguities, conflicts or inconsistencies, in which case Section 1.2 shall apply.
- (d) Except for those parts of Project Co's proposal which are incorporated by reference into this Project Agreement by the Project Co Proposal Extracts, on Financial Close the



Request for Proposals and Project Co's proposal shall be superseded entirely by this Project Agreement and rendered null and void, and shall not be relied upon or used by Project Co, WGH or anyone else (including anyone pursuant to Schedule 27 - Dispute Resolution Procedure or any arbitral body or any court) in any way to interpret or qualify the scope of the Project Operations, any obligations or liabilities of Project Co, or anything else contained in this Project Agreement.

- (e) Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of WGH, no consent, approval or satisfaction of WGH or the WGH Representative shall be unreasonably withheld or delayed.
- (f) Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of Project Co, no consent, approval or satisfaction of Project Co or the Project Co Representative shall be unreasonably withheld or delayed.

## 1.2 Conflict of Terms

- (a) In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Project Agreement, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:
  - (i) the provisions of amendments in writing to this Project Agreement signed by the Parties and Variation Confirmations shall govern and take precedence only over those specific provisions of this Project Agreement expressly amended thereby;
  - (ii) any provision establishing a higher standard of safety, reliability, durability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service;
  - (iii) the body of this Project Agreement;
  - (iv) Schedule 1 Definitions and Interpretation;
  - (v) Schedule 27 Dispute Resolution Procedure;
  - (vi) Schedule 20 Payment Mechanism;
  - (vii) Schedule 21 Equipment List;
  - (viii) Schedule 15 Output Specifications;
  - (ix) Schedule 31 Benchmarking and Market Testing Procedure;
  - (x) Schedule 25 Insurance and Performance Security Requirements;
  - (xi) Schedule 22 Variation Procedure;

- (xii) Schedule 10 Review Procedure;
  - (xiii) Schedule 14 Outline Commissioning Program;
  - (xiv) Schedule 11 Construction Quality Plan;
  - (xv) Schedule 28 Refinancing;
  - (xvi) Schedule 23 Compensation on Termination;
  - (xvii) Schedule 26 Record Provisions;
  - (xviii) Schedule 24 Expiry Transition Procedure;
  - (xix) Schedule 33 Existing Design;
  - (xx) the other Schedules in the order in which they are listed in Section 1.1(b) (other than Schedule 13 – Project Co Proposal Extracts); and
  - (xxi) Schedule 13 Project Co Proposal Extracts;
- (b) 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 Project Operations, the provision that applies to the specific part of the Project Operations shall govern for that specific part of the Project Operations.
- (c) If any ambiguity, conflict or inconsistency is not readily resolved by the foregoing provisions of this Section 1.2, then Project Co or WGH, upon discovery of same, shall immediately give notice to the WGH Representative. The WGH Representative shall, within 10 Business Days after such notice, make a determination of which provision governs and give notice of such determination, in writing, to Project Co.
- (d) WGH and Project Co shall comply with the determination of the WGH Representative pursuant to this Section 1.2 unless WGH or Project Co disputes the decision of the WGH Representative in which event such Dispute may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.
- (e) In the event of ambiguities, conflicts or inconsistencies between or among any provisions of (i) the outline Construction Quality Plan attached as part of Schedule 11 – Construction Quality Plan, the outline Service Quality Plan attached as part of Schedule 12 – Service Quality Plan, and the Quality Plans as agreed between the Parties; and (ii) the Technical Requirements, the provisions of the Existing Design and the Output Specifications shall govern and take precedence, except to the extent that Section 1.2(a)(ii) of the Project Agreement applies.
- (f) In the event of ambiguities, conflicts or inconsistencies between or among the provisions of (i) Outline Commissioning Program and the Final Commissioning Program; and (ii)

the Existing Design, the provisions of the Existing Design shall govern and take precedence, except to the extent that Section 1.2(a)(ii) of the Project Agreement applies. In addition, in the event of ambiguities, conflicts or inconsistencies between or among the Outline Commissioning Program (excluding the items contained in Appendix "A" thereto from Project Co's RFP Submission) and the provisions contained in Appendix "A" of Schedule 14 – Outline Commissioning Program, the provisions of the Outline Commissioning Program (excluding the contents of Appendix "A" thereto) shall govern and take precedence.

### **1.3 Conflict of Documents**

- (a) In the event of any ambiguity, conflict or inconsistency between the provisions of this Project Agreement and the Lenders' Direct Agreement, the provisions of the Lenders' Direct Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.

## **2. COMMERCIAL CLOSE AND FINANCIAL CLOSE**

### **2.1 Effective Date**

- (a) The provisions of Sections 1 to 11, 13, 15 to 24, 28, 29, 34, 36 to 38 and 50 to 61, and Schedules 1 to 3, 9 to 11, 13, 16 to 19, 21, 22, 25 to 27, 29 and 33 will come into effect on the date of this Project Agreement. All other provisions of this Project Agreement will come into effect only on Financial Close. The provisions of this Project Agreement will terminate on the Termination Date.

### **2.2 Standby Letter of Credit**

- (a) On the date of this Project Agreement, Project Co shall deliver, or cause to be delivered, to WGH an irrevocable standby letter of credit (the "**Standby Letter of Credit**") in the amount of \$[REDACTED] substantially in the form of Schedule 29 - Standby Letter of Credit.
- (b) Unless the Standby Letter of Credit is drawn by WGH in accordance with the provisions of this Project Agreement, WGH shall release and deliver the Standby Letter of Credit to Project Co on Financial Close.
- (c) Project Co shall ensure that the Standby Letter of Credit (and any replacement therefor) is renewed prior to its expiry date if, as at such date, Financial Close will not, or may reasonably be expected not to, have occurred.

### 2.3 Financial Close

- (a) No later than 30 days prior to the Financial Close Target Date, Project Co will deliver to WGH drafts of all documents referred to in Section 1 of Schedule 2 - Completion Documents.
- (b) On or before the Financial Close Target Date:
  - (i) Project Co shall deliver to WGH the documents referred to in Section 1 of Schedule 2 - Completion Documents; and
  - (ii) WGH shall deliver to Project Co the documents referred to in Section 2 of Schedule 2 - Completion Documents.
- (c) If Project Co fails to deliver to WGH any of the documents referred to in Section 1 of Schedule 2 - Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by WGH of its obligations under Section 2.3(b)(ii)) and WGH does not waive such requirement, WGH will be entitled to draw on the Standby Letter of Credit, in full or in part, and will terminate this Project Agreement in its entirety by written notice having immediate effect. The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that WGH will suffer as a result of the happening of the specified event and would be difficult or impossible to quantify upon the happening of the specified event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by WGH as a result of Project Co not achieving Financial Close. The Parties agree that such liquidated damages shall be payable whether or not WGH incurs or mitigates its damages, and that WGH shall not have any obligation to mitigate any such damages.
- (d) If WGH fails to deliver to Project Co any of the documents referred to in Section 2 of Schedule 2 - Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by Project Co of its obligations under Section 2.3(b)(i)) and Project Co does not waive such requirement, Project Co will be entitled to the return of the Standby Letter of Credit and to terminate this Project Agreement in its entirety by written notice having immediate effect.

### 2.4 Disruption in Financial Markets

- (a) If Financial Close cannot be achieved by the Financial Close Target Date by reason solely of a Severe Market Disruption, the Financial Close Target Date will be extended until the date falling 10 Business Days (or such other period as the Parties agree, acting reasonably) after the date on which such Severe Market Disruption ceases.

### **3. SCOPE OF AGREEMENT**

#### **3.1 Scope of Agreement**

- (a) Project Co shall undertake the Project and perform the Project Operations in accordance with and subject to the provisions of this Project Agreement.
- (b) Project Co shall exercise its rights and perform its obligations at its own cost and risk without recourse to WGH, except as otherwise provided in this Project Agreement. Project Co shall not have recourse to MEI, Infrastructure Ontario, MOHLTC or the Province with respect to the subject matter of this Project Agreement.

### **4. BUSINESS OPPORTUNITIES**

#### **4.1 Business Opportunities**

- (a) Project Co acknowledges that WGH reserves the right to all commercial and other opportunities (including, for greater certainty, all retail operations) in the Facility and at the Site ("**Business Opportunities**").
- (b) To encourage the development of Business Opportunities, Project Co may, from time to time, propose Business Opportunities for WGH's consideration. All such proposals shall describe the Business Opportunity in full with the expected financial and other advantages to both Parties. WGH may accept any such proposal in its sole discretion and subject to such terms and conditions as WGH may require.
- (c) Notwithstanding that Project Co has proposed a Business Opportunity to WGH for its consideration, Project Co acknowledges that WGH reserves the right to proceed with such Business Opportunity or any similar Business Opportunity with Project Co or with any third party, and may initiate a separate procurement process for the development of any Business Opportunity.
- (d) In determining whether to accept any proposal in respect of a Business Opportunity, WGH shall consult with and take into account the views of MOHLTC, and shall, if so required by MOHLTC, submit the relevant proposal to MOHLTC for consideration.

### **5. REPRESENTATIONS AND WARRANTIES**

#### **5.1 Project Co Representations and Warranties**

- (a) Project Co represents and warrants to WGH that as of the date of this Project Agreement:
  - (i) Project Co is a general partnership between LED Inc. and LED LP formed and validly existing under the laws of the Province of Manitoba and has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder;

- (ii) LED Inc. is a corporation incorporated and validly existing under the laws of Manitoba, is in good standing with the Companies Office of Manitoba with respect to the filing of annual reports, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder in its capacity as a partner of Project Co;
- (iii) LED LP is a limited partnership between LED GP Inc., as general partner and EllisDon (ITS) WGH Inc. and LPF Infrastructure Fund, as limited partners, and is formed and validly existing under the laws of the Province of Manitoba, and has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder in its capacity as a partner of Project Co;
- (iv) LED GP Inc. is a corporation incorporated and validly existing under the laws of Manitoba, is in good standing with the Companies Office of Manitoba with respect to the filing of annual reports, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted and to enter into this Project Agreement and to perform its obligations hereunder in its capacity as general partner of LED LP;
- (v) Project Co and the Project Co Parties, collectively, have extensive experience and are knowledgeable in the construction and maintenance of hospital facilities and have the required ability, experience, skill and capacity to review the Existing Design and to perform the Project Operations in a timely and professional manner as set out in this Project Agreement;
- (vi) Each of Project Co, LED Inc. and LED GP Inc. (as general partner of LED LP) has the requisite power, authority and capacity to execute and deliver and perform this Project Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed by Project Co;
- (vii) no steps or proceedings have been taken or are pending to supersede or amend (1) the constating or formation documents of Project Co or LED LP; or (2) the articles or by-laws of LED Inc. or LED GP Inc., in each case in a manner that would impair or limit Project Co's ability to perform its obligations under this Project Agreement;
- (viii) this Project Agreement has been duly authorized, executed, and delivered by Project Co, LED Inc., LED LP (through its general partner LED GP Inc.) and LED GP Inc., and constitutes a legal, valid, and binding obligation of each of Project Co, LED Inc., LED LP and LED GP Inc. enforceable against each of them in accordance with its terms, subject only to:

- (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
  - (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (ix) the execution, delivery, and performance by Project Co, LED Inc., LED LP and LED GP Inc. of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
- (A) its constating, formation or organizational documents;
  - (B) any Applicable Law; or
  - (C) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (x) no Project Co Event of Default has occurred and is continuing;
- (xi) all of the information regarding Project Co, LED Inc., LED LP and LED GP Inc. set out in Schedule 7 - Project Co Information is true and correct in all material respects;
- (xii) there are no actions, suits, proceedings, or investigations pending or threatened against Project Co, LED Inc., LED LP or LED GP Inc. or, to Project Co's knowledge, any Project Co Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of any of Project Co, LED Inc., LED LP or LED GP Inc. or in any impairment of Project Co's ability to perform its obligations under this Project Agreement, and Project Co has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment;
- (xiii) Project Co has carefully reviewed the whole of this Project Agreement including all of the Technical Requirements, and all other documents made available to Project Co by or on behalf of WGH, and, to Project Co's knowledge, nothing contained herein or therein inhibits or prevents Project Co from completing the Works or performing the Project Operations in accordance with this Project Agreement in a good and safe manner so as to achieve and satisfy the requirements of this Project Agreement;

- (xiv) each of Project Co, LED Inc., LED LP and LED GP Inc. are able to meet its obligations as they generally become due;
- (xv) Project Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada);
- (xvi) the Scheduled Substantial Completion Date is a realistic date and is achievable by Project Co performing the Works in accordance with this Project Agreement;
- (xvii) each of Project Co, LED Inc., LED LP and LED GP Inc. is not a Non-resident and has no obligation to file income tax returns in any jurisdiction outside of Canada; and
- (xviii) Project Co has obtained all necessary Project Co Permits, Licenses and Approvals required to commence the Works.

## 5.2 WGH Representations and Warranties

- (a) WGH represents and warrants to Project Co that as of the date of this Project Agreement:
  - (i) WGH is a non-share capital corporation incorporated and validly existing under the *Corporations Act* (Ontario), is in good standing with the Ministry of Government Services of Ontario with respect to the filing of annual reports, and has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder;
  - (ii) WGH has the requisite power, authority and capacity to execute and deliver and perform this Project Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;
  - (iii) WGH has obtained the WGH Permits, Licenses and Approvals;
  - (iv) no steps or proceedings have been taken or are pending to supersede or amend its constating documents, letters patent or by-laws in a manner that would impair or limit its ability to perform its obligations under this Project Agreement;
  - (v) this Project Agreement has been duly authorized, executed, and delivered by WGH and constitutes a legal, valid, and binding obligation of WGH, enforceable against WGH in accordance with its terms, subject only to:
    - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and



- (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (vi) the execution, delivery, and performance by WGH of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
  - (A) its constating or organizational documents;
  - (B) any Applicable Law; or
  - (C) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vii) no WGH Event of Default has occurred and is continuing;
- (viii) there are no actions, suits, proceedings, or investigations pending or threatened against WGH or, to WGH's knowledge, any WGH Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of WGH or in any impairment of its ability to perform its obligations under this Project Agreement, and WGH has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment;
- (ix) WGH is able to meet its obligations as they generally become due;
- (x) WGH has rights of use and access to, on and over the Site and the Facility that are sufficient to enable WGH to grant to Project Co the licence rights contemplated in Section 14.1;
- (xi) WGH is the registered owner of a fee simple title to the Site, subject only to the Title Encumbrances; and
- (xii) the contemplated uses of the Facility are permitted by the existing official plan, zoning and other land use restrictions.

## **6. BACKGROUND INFORMATION**

### **6.1 No Liability**

- (a) Except as expressly provided in Sections 6.4, 16.2, 16.3 and 16.4 WGH shall not be liable to Project Co for, and Project Co shall not seek to recover from WGH or any WGH Party, any damages, losses, costs, liabilities or expenses which may arise (whether in

contract, tort or otherwise) from the adoption, use or application of the Background Information by, or on behalf of, Project Co or any Project Co Party.

## 6.2 No Warranty

- (a) Except as expressly provided in Sections 6.4, 16.2, 16.3 and 16.4:
- (i) WGH gives no warranty or undertaking of whatever nature in respect of the Background Information and, specifically (but without limitation), WGH does not warrant that the Background Information represents all of the information in its possession or power (either during the conduct of the procurement process for the Project or at the time of execution and delivery of this Project Agreement) relevant or material to or in connection with the Project or the obligations of Project Co under this Project Agreement or under any of the Project Documents; and
  - (ii) WGH shall not be liable to Project Co in respect of any failure, whether before, on or after the execution and delivery of this Project Agreement:
    - (A) to disclose or make available to Project Co any information, documents or data;
    - (B) to review or update the Background Information; or
    - (C) to inform Project Co of any inaccuracy, error, omission, defect or inadequacy in the Background Information.

## 6.3 No Claims

- (a) Project Co acknowledges and confirms that:
- (i) it has conducted its own analysis and review of the Background Information and has, before the execution and delivery of this Project Agreement, satisfied itself as to the accuracy, completeness and fitness for purpose of any such Background Information upon which it places reliance;
  - (ii) it has conducted its own analysis and review of the Existing Design and, subject to Section 18.4(c), has provided an adequate contingency (the "**Project Co Design Contingency**") in respect of any errors, omissions, conflicts, interferences or gaps in the Existing Design that were discovered or may be discovered after the date of this Project Agreement and for which it is responsible pursuant to Sections 18.4(a) and 18.4(b); and
  - (iii) except as expressly provided in Sections 6.4, 16.2, 16.3, 16.4 and 18.6, it shall not be entitled to and shall not, and shall ensure that no Project Co Party shall, make any claim against WGH or any WGH Party (whether in contract, tort or

otherwise), including, without limitation, any claim in damages, for extensions of time or for additional payments under this Project Agreement on the grounds:

- (A) of any misunderstanding or misapprehension in respect of the Background Information; or
- (B) that the Background Information was incorrect or insufficient,

nor shall Project Co be relieved from any of its obligations under this Project Agreement on any such ground.

#### **6.4 Technical Reports**

- (a) WGH agrees that, if at the date of this Project Agreement, except as disclosed in any Background Information or as otherwise disclosed by WGH or any WGH Party or known by Project Co or any Project Co Party, any of the information in the Technical Reports is, to the actual knowledge of WGH, incorrect or there is relevant information in the possession or control of WGH that would make any of the information in the Technical Reports incorrect, then, to the extent that such incorrect information materially adversely interferes with Project Co's ability to perform the Project Operations or materially adversely affects Project Co's cost of performing the Project Operations, such incorrect information shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation.
- (b) For purposes of Section 6.4(a), "to the actual knowledge of WGH" means to the actual knowledge of the president and chief executive officer of WGH or the senior project director appointed by WGH in respect of the Project.

### **7. PROJECT DOCUMENTS**

#### **7.1 Project Documents**

- (a) Project Co shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which it is a party, and shall ensure that each Project Co Party shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which such Project Co Party is a party, so as to ensure that other parties to such Project Documents shall not be entitled to terminate same. In the event that Project Co receives a notice of default under any of the Project Documents, it shall promptly, and, in any event, no later than 2 Business Days after receipt thereof, deliver a copy of such notice of default to WGH.

#### **7.2 Ancillary Documents**

- (a) Project Co shall not:
  - (i) terminate or agree to the termination of all or part of any Ancillary Document, except pursuant to Sections 31.3, 44.5, 58.3 and 59.2 or otherwise to prevent or

- cure a Project Co Event of Default (provided that commercially reasonable alternative measures would not prevent or cure such Project Co Event of Default);
- (ii) make or agree to any amendment, restatement or other modification of any Ancillary Document that materially adversely affects Project Co's ability to perform its obligations under this Project Agreement or that has the effect of increasing any liability of WGH, whether actual or potential;
  - (iii) breach its obligations (or waive or allow to lapse any rights it may have) or permit others to breach their obligations (or waive or allow to lapse any rights they may have) under any Ancillary Document, that materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or that have the effect of increasing any liability of WGH, whether actual or potential; or
  - (iv) enter into, or permit the entry into by any other person of, any agreement replacing all or part of any Ancillary Document, except in the circumstances referenced in Section 7.2(a)(i),

without the prior written consent of WGH, not to be unreasonably withheld or delayed, provided that, where consent is requested pursuant to Section 7.2(a)(i) or 7.2(a)(iv), such consent shall not be withheld, and shall be provided within a reasonable time, where the relevant matter referred to in Section 7.2(a)(i) or 7.2(a)(iv) will not materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or have the effect of increasing any liability of WGH, whether actual or potential. In the event of termination or agreement to the termination of all or part of any Ancillary Document as described in Section 7.2(a)(i) or any agreement replacing all or part of any Ancillary Document as described in Section 7.2(a)(iv), Project Co shall, to the extent applicable, comply with all provisions herein applicable to changes in Subcontractors, including Section 58.3.

### **7.3 Changes to Lending Agreements and Refinancing**

- (a) Subject to the terms of the Lenders' Direct Agreement, Project Co shall not terminate, amend or otherwise modify the Lending Agreements, or waive or exercise any of its rights under the Lending Agreements, if, at the time such action is contemplated and effected, it would materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or the Project Documents or have the effect of increasing any liability of WGH, whether actual or potential, unless:
  - (i) such action is a Permitted Borrowing; or
  - (ii) such action is a Refinancing effected in accordance with the provisions of Schedule 28 - Refinancing.

#### 7.4 Compliance with Lending Agreements

- (a) Project Co shall keep the Lending Agreements in good standing to the extent necessary to perform its obligations under this Project Agreement and the Project Documents, and shall ensure that none of the terms and conditions of the Lending Agreements shall prevent Project Co from performing its obligations under this Project Agreement or the Project Documents.

### 8. WGH RESPONSIBILITIES

#### 8.1 General

- (a) WGH shall, at its own cost and risk:
  - (i) perform all of its obligations under, and observe all provisions of, this Project Agreement in compliance with Applicable Law;
  - (ii) obtain, maintain, and, as applicable, renew the WGH Permits, Licenses and Approvals which may be required for the performance of the Project Operations;
  - (iii) comply with all Permits, Licences and Approvals in accordance with their terms;
  - (iv) cooperate with Project Co in the fulfillment of the purposes and intent of this Project Agreement, provided, however, that WGH shall not be under any obligation to perform any of Project Co's obligations under this Project Agreement;
  - (v) perform or cause to be performed the Hospital FM Services in accordance with Good Industry Practice and the performance standards to be established by the Facilities Management Committee pursuant to this Project Agreement; and
  - (vi) perform all of its obligations under, and observe all provisions of, the WGH Development Accountability Agreement.
- (b) During the Operational Term, WGH shall use or permit the use of the Facility for the predominant purpose of the Hospital Services, or any other healthcare related purpose, and for ancillary uses compatible with the foregoing.
- (c) WGH shall, and shall cause all WGH Parties to, take reasonable steps to minimize undue interference with the provision of the Project Operations by Project Co or any Project Co Party.
- (d) Nothing in this Project Agreement shall in any way fetter the right, authority and discretion of WGH in fulfilling its statutory or other functions under Applicable Law, and Project Co understands and agrees that nothing in this Project Agreement shall preclude WGH's board of directors from performing, discharging or exercising its duties, responsibilities and powers under Applicable Law. Project Co further agrees that it shall

comply, and shall cause all relevant Project Co Parties to comply, with all written directions issued by or on behalf of WGH's board of directors from time to time.

## **9. PROJECT CO RESPONSIBILITIES**

### **9.1 Other Business**

- (a) Project Co shall not engage in any activities which are not specifically related to, required by and conducted for the purpose of the Project without the prior written consent of WGH, in its sole discretion.

### **9.2 General**

- (a) Project Co shall, at its own cost and risk:
- (i) perform all Project Operations:
    - (A) in compliance with Applicable Law;
    - (B) in compliance with all Permits, Licences and Approvals and so as to preserve the existence and continued effectiveness of any such Permits, Licences and Approvals;
    - (C) in accordance with the Technical Requirements;
    - (D) in accordance with Good Industry Practice;
    - (E) in a manner consistent with the Quality Plans and the Project Co Proposal Extracts;
    - (F) in a timely and professional manner;
    - (G) with due regard to the health and safety of persons and property;
    - (H) subject to the other provisions of this Project Agreement, in a manner which will not impair the ability of WGH and the WGH Parties to comply with Applicable Law;
    - (I) subject to the other provisions of this Project Agreement, in a manner which will not impair the performance of the Hospital Services; and
    - (J) in accordance with all other terms of this Project Agreement; and
  - (ii) cooperate with WGH in the fulfillment of the purposes and intent of this Project Agreement, provided however that Project Co shall not be under any obligation to perform any of WGH's obligations under this Project Agreement.

### 9.3 Project Co Parties

- (a) Project Co shall not be relieved of any liability or obligation under this Project Agreement by the appointment of any Project Co Party, and Project Co shall cause each Project Co Party, to the extent such Project Co Party performs or is specified hereunder to perform the Project Operations, to comply with the obligations of Project Co hereunder in the same manner and to the same extent as Project Co.

### 9.4 Permits, Licences and Approvals

- (a) Project Co shall, at its own cost and risk:
  - (i) obtain, maintain, and, as applicable, renew all Project Co Permits, Licences and Approvals which may be required for the performance of the Project Operations; and
  - (ii) comply with all Permits, Licences and Approvals in accordance with their terms.
- (b) Where Project Co Permits, Licences and Approvals have requirements that may impose any conditions, liabilities or obligations on WGH or any WGH Party, Project Co shall not obtain such Project Co Permits, Licences and Approvals without the prior written consent of WGH, not to be unreasonably withheld or delayed, provided that WGH shall not be responsible for obtaining or for the failure of Project Co to obtain any Project Co Permit, Licence or Approval. WGH shall comply, or shall require compliance, with any conditions, liabilities or obligations as are imposed on WGH or any WGH Party by the requirements of any Project Co Permit, Licence or Approval obtained with WGH's consent.
- (c) WGH shall provide Project Co with such information and administrative assistance as Project Co may reasonably require in relation to the Project Co Permits, Licences and Approvals.

### 9.5 Safety During the Works Phase

- (a) From Financial Close until the Final Completion Date, Project Co shall:
  - (i) comply with the Safety Plan;
  - (ii) keep the Site, the Works and the Facility in a safe and orderly state, as appropriate in accordance with Good Industry Practice, to avoid danger to persons on the Site, in the Facility and in the immediate vicinity of the Site;
  - (iii) take such measures as are reasonable in accordance with Good Industry Practice to prevent access to the Site and the Facility of any persons or creatures not entitled to be there;

- (iv) comply with all Applicable Law relating to health and safety, including without limitation the *Occupational Health and Safety Act* (Ontario) and all regulations thereto;
- (v) perform, or cause a Project Co Party to perform, all of the obligations of the "constructor", and indemnify WGH against any and all of the liabilities of the "constructor", under the *Occupational Health and Safety Act* (Ontario) and all regulations thereto; and
- (vi) provide WGH with a certificate of good standing from the Ontario Workplace Safety and Insurance Board or any successor thereto once every 90 days.

## **10. REPRESENTATIVES**

### **10.1 The WGH Representative**

- (a) The WGH Representative shall exercise the functions and powers identified in this Project Agreement as functions or powers to be performed by the WGH Representative and such other functions and powers of WGH under this Project Agreement as WGH may notify Project Co from time to time.
- (b) WGH may, from time to time by written notice to Project Co, change the WGH Representative. Such change shall have effect on the later of the date of delivery of such notice and the date specified in such notice.
- (c) During any period when no WGH Representative has been appointed, or when the WGH Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the WGH Representative's functions under this Project Agreement, WGH shall perform or may, by written notice to Project Co, promptly appoint an alternative WGH Representative to perform the functions which would otherwise be performed by the WGH Representative. Upon receipt of such written notice, Project Co and the Project Co Representative shall be entitled to treat any act of such alternative WGH Representative which is permitted by this Project Agreement as being authorized by WGH, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.
- (d) The WGH Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement or to authorize a Variation.
- (e) Subject to the limitations set out in Sections 10.1(a) and 10.1(d), unless otherwise notified in writing, Project Co and the Project Co Representative shall be entitled to treat any act of the WGH Representative which is authorized by this Project Agreement as being authorized by WGH, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.



## 10.2 The Project Co Representative

- (a) Subject to the limitations set out in Section 10.2(d), the Project Co Representative shall have full authority to act on behalf of Project Co for all purposes of this Project Agreement.
- (b) Project Co may change the Project Co Representative with the prior written consent of WGH, not to be unreasonably withheld or delayed.
- (c) During any period when the Project Co Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the Project Co Representative's functions under this Project Agreement, Project Co shall perform or may, by written notice to WGH, promptly appoint an alternative Project Co Representative to perform the functions which would otherwise be performed by the Project Co Representative, provided that, Project Co must seek WGH's consent in accordance with Section 10.2(b) if such alternative Project Co Representative is in place for more than 180 days. Upon receipt of such written notice, WGH and the WGH Representative shall be entitled to treat any act of such alternative Project Co Representative which is permitted by this Project Agreement as being authorized by Project Co, and WGH and the WGH Representative shall not be required to determine whether authority has in fact been given.
- (d) The Project Co Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement.
- (e) Subject to the limitations set out in Section 10.2(d), unless otherwise notified in writing, WGH and the WGH Representative shall be entitled to treat any act of the Project Co Representative which is authorized by this Project Agreement as being authorized by Project Co, and WGH and the WGH Representative shall not be required to determine whether authority has in fact been given.

## 10.3 Communications to Representatives

- (a) At the time that a Party appoints or changes the appointment of the WGH Representative or the Project Co Representative, as applicable, that Party shall also provide the other Party with contact information for delivery of communications to such representative. Communications to such representative shall not constitute notices to the Party appointing such representative.

## 10.4 Key Individuals

- (a) The individuals who are critical to the performance of the Works are identified in Schedule 9 - Key Individuals. Project Co shall use commercially reasonable efforts to ensure that such persons remain involved in the Works in the capacity set out in Schedule 9 - Key Individuals and, in particular, will not, for the duration of the Works, require or request any such person to be involved in any other project on behalf of Project Co or any

Project Co Party if, in the reasonable opinion of WGH, such involvement would have a material adverse effect on the Works.

- (b) The individuals who are critical to the performance of the Project Co Services are identified in Schedule 9 - Key Individuals. Project Co shall use commercially reasonable efforts to ensure that such persons remain involved in the Project Co Services in the capacity set out in Schedule 9 - Key Individuals and, in particular, will not, for the duration of the Project Co Services, require or request any such person to be involved in any other project on behalf of Project Co or any Project Co Party if, in the reasonable opinion of WGH, such involvement would have a material adverse effect on the Project Co Services.
- (c) If Project Co considers it necessary to replace any individual identified in Schedule 9 - Key Individuals, Project Co shall provide WGH with relevant information on the proposed replacement and shall consult with WGH before finalizing the appointment of such replacement. Project Co shall not replace any of the individuals identified in Schedule 9 - Key Individuals without the prior written consent of WGH, which consent shall not be withheld or delayed where the proposed replacement is suitably qualified and experienced.
- (d) If WGH determines, acting reasonably, that it is in the best interests of WGH that any individual identified in Schedule 9 - Key Individuals be replaced, WGH shall notify Project Co (including a detailed explanation of the reasons for such determination), and, within 30 days of receipt by Project Co of such notice, Project Co shall provide WGH with relevant information on the proposed replacement and shall consult with WGH before finalizing the appointment of such replacement. Project Co shall not replace any of the individuals identified in Schedule 9 - Key Individuals without the prior written consent of WGH, which consent shall not be withheld or delayed where the proposed replacement is suitably qualified and experienced.

## **11. WORKS COMMITTEE**

### **11.1 Establishment**

- (a) The Parties shall, within 30 days following Financial Close, establish a committee (the "**Works Committee**") consisting of:
  - (i) 1 representative appointed by Infrastructure Ontario from time to time;
  - (ii) the following 3 representatives appointed by WGH:
    - (A) the WGH Representative; and
    - (B) 2 other representatives appointed by WGH from time to time.

- (iii) the following 3 representatives appointed by Project Co:
  - (A) the Project Co Representative;
  - (B) 1 representative of the Construction Contractor; and
  - (C) such other representative appointed by Project Co from time to time.
- (b) The Independent Certifier and the Architect of Record shall be entitled, but not required to attend meetings as non-voting members of the Works Committee. Members of the Works Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and provide briefings to the Works Committee.
- (c) The WGH Representative shall be the chairperson of the Works Committee.

### **11.2 Function and Role**

- (a) The Works Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Works. The Works Committee shall interface with the Facilities Management Committee as and when required, and shall form the Equipment Steering Committee to receive and review all matters related to the Equipment.
- (b) The Works Committee shall be responsible for receiving and reviewing all matters related to the Works, including:
  - (i) any design, construction and commissioning issues, including Project Co M&E Design Issues;
  - (ii) the identification and resolution of Project Co Design Issues and WGH Design Issues pursuant to Section 18.5;
  - (iii) the Works Schedule;
  - (iv) any issues arising from reports or documents provided by Project Co or the Independent Certifier;
  - (v) any quality assurance and safety issues;
  - (vi) the Works Reports;
  - (vii) the recommendations of the Equipment Steering Committee;
  - (viii) the recommendations of the Transition Subcommittee;

- (ix) any special matters referred to the Works Committee by WGH, Infrastructure Ontario or Project Co;
  - (x) any community and media relations issues in accordance with Schedule 18 - Communications Protocol; and
  - (xi) any other issues pertaining to the Works.
- (c) Subject to Section 11.2(d), any unanimous decision of the Works Committee shall be final and binding on the Parties. If the Works Committee is unable to reach a unanimous decision, either Party may, subject to Section 19, refer the matter for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.
- (d) The Works Committee shall not have authority to make decisions with respect to or approve:
- (i) any amendment to or waiver of any provision of this Project Agreement;
  - (ii) any change to a major milestone date set out in the Works Schedule, the Scheduled Substantial Completion Date or the Scheduled Final Completion Date;
  - (iii) any Variation (other than a Variation contemplated by Section 18.5(e) of the Project Agreement);
  - (iv) any change that may materially adversely affect Project Co's ability to achieve Substantial Completion by the Scheduled Substantial Completion Date or Final Completion by the Scheduled Final Completion Date; or
  - (v) any matter with respect to which WGH has a right of consent pursuant to this Project Agreement.

### **11.3 Term of Works Committee**

- (a) Unless otherwise agreed, the Works Committee shall operate only until the date that is 30 months following the Substantial Completion Date.

### **11.4 Replacement of Committee Members**

- (a) Infrastructure Ontario and WGH shall be entitled to replace any of their respective representatives on the Works Committee by written notice to Project Co. WGH will use commercially reasonable efforts to deliver prior written notice of any such replacement to Project Co. Project Co may replace any of its representatives on the Works Committee with the prior written consent of WGH, not to be unreasonably withheld or delayed.

### 11.5 Procedures and Practices

- (a) The members of the Works Committee may:
  - (i) adopt such procedures and practices for the conduct of the activities of the Works Committee as they consider appropriate from time to time;
  - (ii) invite to any meeting of the Works Committee such other persons as the members of the Works Committee may agree;
  - (iii) exclude from any meeting of the Works Committee such persons as the members of the Works Committee may agree; and
  - (iv) receive and review reports from any person or organization agreed to by the members of the Works Committee.
- (b) Once established, the Works Committee shall meet at least once each month from Financial Close until the Final Completion Date, unless otherwise agreed by the members of the Works Committee or the Parties.
- (c) Either the Project Co Representative or the WGH Representative may convene a special meeting of the Works Committee at any time. Special meetings of the Works Committee may be convened on not less than 5 Business Days notice to all members of the Works Committee identifying the agenda items to be discussed at the special meeting, provided that, in an Emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- (d) Unless otherwise agreed by the members of the Works Committee, the Works Committee shall meet at the Site, the Facility or another location in Woodstock, Ontario. Meetings of the Works Committee may be held by means of such telephonic, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting, provided that each member of the Works Committee must attend in person at least once each calendar quarter.
- (e) 2 representatives of WGH (one of whom shall be the WGH Representative), 2 representatives of Project Co (one of whom shall be the Project Co Representative) and the representative of Infrastructure Ontario (or a delegate thereof) shall constitute a quorum at any meeting of the Works Committee. A quorum of members may exercise all the powers of the Works Committee. The members shall not transact business at a meeting of the Works Committee unless a quorum is present.
- (f) Minutes of all meetings, recommendations and decisions of the Works Committee, including those made by telephone or other form of communication, shall be recorded and maintained by WGH. WGH shall circulate copies of such minutes within 5 Business Days of the holding of the meeting or the making of the recommendation or decision.

Unless Project Co notifies WGH within 5 Business Days of receipt of the minutes that Project Co disagrees with the contents of the minutes, Project Co, WGH and Infrastructure Ontario shall be deemed to have approved such minutes. WGH shall maintain a complete set of all minutes of the meetings of the Works Committee and shall make such minutes available for inspection by Project Co during regular business hours.

## **12. FACILITIES MANAGEMENT COMMITTEE**

### **12.1 Establishment**

- (a) The Parties shall, not less than 18 months prior to the Scheduled Substantial Completion Date, establish a committee (the "**Facilities Management Committee**") consisting of:
  - (i) for the period from the establishment of the Facilities Management Committee until the Final Completion Date, 1 representative appointed by Infrastructure Ontario from time to time;
  - (ii) 2 senior representatives of WGH, one of whom shall be the WGH Representative, appointed by WGH from time to time; and
  - (iii) 2 senior representatives of Project Co, one of whom shall be the Project Co Representative, appointed by Project Co from time to time.
- (b) Members of the Facilities Management Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and provide briefings to the Facilities Management Committee.
- (c) The WGH Representative shall be the chairperson of the Facilities Management Committee.

### **12.2 Function and Role**

- (a) The Facilities Management Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Project Operations, both prior to and during the Operational Term. The Facilities Management Committee shall interface with the Works Committee as and when required, and shall form the Utilities Management Subcommittee to receive and review all matters related to the Utilities Management Services.
- (b) The Facilities Management Committee shall be responsible for receiving and reviewing all matters related to the Project Operations (excluding the Works), both prior to and during the Operational Term, including:
  - (i) the transition from the Existing Facilities to the Facility;
  - (ii) any joint review of the Project Co Services and the Output Specifications;

- (iii) the recommendations of the Utilities Management Subcommittee;
  - (iv) any changes to Service Quality Plans;
  - (v) any performance issues;
  - (vi) the development and modification of performance standards for the Hospital FM Services, which performance standards shall be based on the Project Co Proposal Extracts and Good Industry Practice;
  - (vii) any interface issues between the Project Co Services and the Hospital FM Services;
  - (viii) any special matter referred to the Facilities Management Committee by WGH, Infrastructure Ontario (prior to Final Completion) or Project Co;
  - (ix) any community and media relations issues in accordance with Schedule 18 - Communications Protocol; and
  - (x) any other issues pertaining to the Project Operations (excluding the Works).
- (c) Subject to Section 12.2(d), any unanimous decision of the Facilities Management Committee shall be final and binding on the Parties. If the Facilities Management Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.
- (d) The Facilities Management Committee shall not have authority to make decisions with respect to or approve:
- (i) any amendment to or waiver of any provision of this Project Agreement;
  - (ii) any Variation;
  - (iii) any change that may materially adversely affect Project Co's ability to perform the Project Co Services or WGH's ability to perform the Hospital Services; or
  - (iv) any matter with respect to which WGH has a right of consent pursuant to this Project Agreement.

### **12.3 Replacement of Committee Members**

- (a) Infrastructure Ontario and WGH shall be entitled to replace any of their respective representatives on the Facilities Management Committee by written notice to Project Co. WGH will use commercially reasonable efforts to deliver prior written notice of any such replacement to Project Co. Project Co may replace any of its representatives on the Facilities Management Committee with the prior written consent of WGH, not to be unreasonably withheld or delayed.

## 12.4 Procedures and Practices

- (a) The members of the Facilities Management Committee may:
  - (i) adopt such procedures and practices for the conduct of the activities of the Facilities Management Committee as they consider appropriate from time to time;
  - (ii) invite to any meeting of the Facilities Management Committee such other persons as the members of the Facilities Management Committee may agree;
  - (iii) exclude from any meeting of the Facilities Management Committee such persons as the members of the Facilities Management Committee may agree; and
  - (iv) receive and review reports from any person or organization agreed to by the members of the Facilities Management Committee.
- (b) Once established, the Facilities Management Committee shall meet at least once each month during the Operational Term, unless otherwise agreed by the members of the Works Committee or the Parties.
- (c) Either the Project Co Representative or the WGH Representative may convene a special meeting of the Facilities Management Committee at any time. Special meetings of the Facilities Management Committee may be convened on not less than 5 Business Days notice to all members of the Facilities Management Committee identifying the agenda items to be discussed at the special meeting, provided that, in an Emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- (d) Unless otherwise agreed by the members of the Facilities Management Committee, the Facilities Management Committee shall meet at the Facility or another location in Woodstock, Ontario. Meetings of the Facilities Management Committee may be held by means of such telephonic, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting, provided that each member of the Facilities Management Committee must attend in person at least once each calendar quarter.
- (e) Prior to the Final Completion Date, one representative of WGH, one representative of Project Co and the representative of Infrastructure Ontario (or a delegate thereof) shall constitute a quorum at any meeting of the Facilities Management Committee. On and after the Final Completion Date, one representative of WGH and one representative of Project Co shall constitute a quorum at any meeting of the Facilities Management Committee. A quorum of members may exercise all the powers of the Facilities Management Committee. The members shall not transact business at a meeting of the Facilities Management Committee unless a quorum is present.
- (f) Minutes of all meetings, recommendations and decisions of the Facilities Management Committee, including those made by telephone or other form of communication, shall be



recorded and maintained by WGH. WGH shall circulate copies of such minutes within 5 Business Days of the holding of the meeting or the making of the recommendation or decision. Unless Project Co notifies WGH within 5 Business Days of receipt of the minutes that Project Co disagrees with the contents of the minutes, Project Co, WGH and Infrastructure Ontario shall be deemed to have approved such minutes. WGH shall maintain a complete set of all minutes of the meetings of the Facilities Management Committee and shall make such minutes available for inspection by Project Co during regular business hours.

### 13. QUALITY ASSURANCE

#### 13.1 Quality Plans and Systems

- (a) Project Co shall cause all of the Project Operations to be the subject of quality management systems and to be implemented in accordance with the following:
- (i) a Construction Quality Plan; and
  - (ii) a Service Quality Plan for each Project Co Service;
- (collectively, the "**Quality Plans**").
- (b) All Quality Plans shall be consistent with the requirements of the Technical Requirements, the Final Commissioning Program and the Canadian Council on Health Service Accreditation (such reference being applicable only to the Service Quality Plans), or any equivalent standard which is generally recognized as having replaced it, but Project Co shall not require accreditation with such standard.
- (c) The Construction Quality Plan shall, at a minimum, comply with the requirements of the outline of the Construction Quality Plan attached as part of Schedule 11 – Construction Quality Plan. Project Co shall submit each component of its proposed Construction Quality Plan to WGH within 60 days following Financial Close.
- (d) The Service Quality Plan for each Project Co Service shall, at a minimum, comply with the requirements of the outline of the Service Quality Plan attached as Schedule 12 – Service Quality Plan Outline. Project Co shall submit its proposed Service Quality Plan for each Project Co Service to WGH not less than 90 days prior to the Substantial Completion Date.
- (e) All Quality Plans shall be subject to review by WGH pursuant to Schedule 10 - Review Procedure, and Project Co shall not be entitled to implement or cause the implementation of any Quality Plan unless and until Project Co is entitled to proceed with such implementation pursuant to Schedule 10 - Review Procedure. When a Quality Plan is agreed by the Parties, it shall replace its corresponding outline Quality Plan. When the Service Quality Plan is updated pursuant to the requirements set forth in Section 2.13 of Schedule 15 – Output Specifications, it shall replace the previous Service Quality Plan developed by the Parties.

- (f) Project Co shall implement the Quality Plans, shall perform and cause to be performed the Project Operations in compliance with the Quality Plans, including by causing:
- (i) the Construction Contractor to implement the Construction Quality Plan; and
  - (ii) the Service Provider to implement the Service Quality Plans.
- (g) Where any aspect of the Project Operations is performed by more than one Project Co Party, then this Section 13, in so far as relevant or appropriate to the activities to be performed by such Project Co Party, shall apply in respect of each of them and references in this Section 13 to such Project Co Party, including the Construction Contractor or the Service Provider, shall be construed accordingly.

### **13.2 Changes to Quality Plans**

- (a) Project Co shall submit to WGH, in accordance with Schedule 10 - Review Procedure, any changes to any of the Quality Plans required to comply with Section 13.1, and shall amend such Quality Plans as required pursuant to Schedule 10 - Review Procedure.

### **13.3 Quality Manuals and Procedures**

- (a) If any Quality Plan refers to, relies on or incorporates any quality manual or procedure, then such quality manual or procedure or the relevant parts of it shall be submitted to WGH at the time that the relevant Quality Plan, or part thereof or change thereto, is submitted in accordance with Schedule 10 - Review Procedure, and the contents of such quality manual or procedure shall be taken into account in the consideration of the relevant Quality Plan, or part thereof or change thereto, in accordance with Schedule 10 - Review Procedure.

### **13.4 Quality Monitoring**

- (a) Without limiting WGH's other rights pursuant to this Project Agreement, including Sections 30 and 36, WGH may, from time to time, directly or indirectly, perform periodic monitoring, spot checks and auditing of Project Co's compliance with the Quality Plans and its quality management systems, including all relevant Quality Plans and any quality manuals and procedures. Project Co shall ensure that WGH also has the right to perform periodic monitoring, spot checks and auditing of both the Construction Contractor's and the Service Provider's quality management systems.
- (b) Project Co shall cooperate, and shall cause the Construction Contractor and the Service Provider to cooperate, with WGH in monitoring compliance with the Quality Plans and quality management systems and shall provide WGH with all information and documentation reasonably required in connection with WGH's rights under this Section 13.4.

## 14. LICENCE

### 14.1 Licence to Site

- (a) Effective from the date of Financial Close until the Termination Date and subject to this Section 14, WGH hereby grants, and shall continuously until the Termination Date grant, to Project Co and all Project Co Parties such non-exclusive licence rights of use and access to, on and over the Site and Facility as are required by Project Co and sufficient to allow Project Co to perform the Project Operations.
- (b) In consideration for the licence granted pursuant to Section 14.1(a), Project Co shall provide the Works subject to and in accordance with this Project Agreement.
- (c) Without derogating from any of WGH's rights hereunder, in particular, its rights of access to the Site prior to the Substantial Completion Date for purposes of the Hospital Commissioning, WGH acknowledges that, in respect of the Project Operations, Project Co and the Project Co Parties require, and WGH shall provide, subject to the terms and conditions of the Project Agreement (including, for certainty, Schedule 15 – Output Specifications) access to the Site without material interference by WGH or any WGH Party from the date of Financial Close until the Termination Date.
- (d) None of the rights granted pursuant to this Section 14.1 shall extend beyond the boundaries of the Site, or to any lands other than the Site, other than easements and similar interests of WGH which benefit the Site, obtained after the date of this Project Agreement, to the extent the same are necessary for the Project Operations.
- (e) The licence provided in this Section 14.1 shall automatically terminate as of the Termination Date.

### 14.2 Non-exclusive Licence/Development of Site

- (a) Project Co acknowledges and agrees that the rights granted to Project Co and the Project Co Parties hereunder shall be non-exclusive and that WGH and any person authorized by WGH may occupy and possess the Site and Facility, including for the purposes of the Hospital Services, development of portions of the Site (including, without limitation, for development of office buildings, co-generation facilities, retail outlets and additional parking) and expansions of and additions to the Facility. In exercising such rights Project Co shall not, and shall require that the Project Co Parties shall not,
  - (i) compromise patient care and safety, or
  - (ii) except as permitted under this Project Agreement, disrupt the performance of the Hospital Services, provided that in no event shall patient care and safety be compromised.
- (b) Without limiting Section 14.2(a), Project Co acknowledges that WGH may from time to time use or develop (including by way of subdivision), or permit the use or development

of, portions of the Site (including, without limitation, for development of office buildings, co-generation facilities, retail outlets and additional parking) and may expand the Facility, and in connection therewith, WGH may mortgage, charge, or otherwise encumber all or any portion of the Site and any buildings thereon. Project Co acknowledges that any such use, development or expansion of portions of the Site by WGH may be performed by any contractor or any other third party engaged by WGH, in its sole and absolute discretion. To the extent that such use, development or expansion materially adversely interferes with Project Co's ability to perform the Project Operations, such use, development or expansion shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation.

- (c) Project Co, in exercising its rights of access under Section 14, will do so in a manner which does not materially interfere with access to the Site by any contractor or any other person engaged by WGH to develop portions of the Site or to expand or create additions to the Facility, and Project Co and the Project Co Parties shall work cooperatively together with each such contractor or contractors to develop an access protocol to prevent material adverse interference with the access of either of them.

#### **14.3 Limited Access Areas**

- (a) For purposes related to the provision of Clinical Services or to patient safety, effective upon Substantial Completion of the Facility, WGH may limit or restrict Project Co's access to designated portions of the Site or the Facility unless a person seeking access obtains the prior written consent of WGH, which consent may be subject to such reasonable conditions as are imposed by WGH.

#### **14.4 Naming and Signage**

- (a) Project Co acknowledges that WGH reserves and retains (i) all rights to designate the name for the Facility and any part of the Facility; (ii) all rights to signage in relation to the Site and the Facility; and (iii) all rights, Trade-Marks, naming or branding regarding the Facility or any part of the Facility. It is agreed, however, that, with the prior written consent of WGH, not to be unreasonably withheld or delayed and which may take into consideration any applicable governmental guidelines, Project Co and the Project Co Parties may, for the period prior to Substantial Completion, erect and maintain signage (which may include such parties' logos and trade names) identifying their respective roles in connection with the development and construction of the Project.

#### **14.5 No Interest in Land**

- (a) Project Co agrees that, in accordance with the principles of the IPFP Framework, it acquires no estate, right, title or ownership interest in the Site or the Facility or any other interest in land pursuant to this Project Agreement or otherwise.

## 14.6 Non-Disturbance Agreement

- (a) If WGH mortgages, charges or otherwise encumbers the Site, WGH shall notify Project Co and, at the request of Project Co, provide Project Co with an agreement, in form satisfactory to Project Co, acting reasonably, executed by the mortgagee of the Site permitting Project Co and the Lenders' Agent to access and use the Site under the licence granted pursuant to this Section 14 and the Lenders' Direct Agreement, respectively, free from interference from the mortgagee or any person claiming by or through the mortgagee. This Section 14.6 shall not apply in respect of any portion of the Site used or developed pursuant to Section 14.2(b) if neither the licence granted pursuant to this Section 14 nor the Project Operations pertain to such portion of the Site.

## 15. TITLE ENCUMBRANCES

### 15.1 Title Encumbrances

- (a) Project Co shall perform all obligations under the Title Encumbrances for or on behalf of WGH, other than:
- (i) obligations under any Title Encumbrance which Project Co is not legally capable of performing for or on behalf of WGH;
  - (ii) obligations under any Title Encumbrance added after the date of this Project Agreement unless the Parties agree that such obligations are obligations of Project Co;
  - (iii) obligations under any Title Encumbrance which the City of Woodstock may formally relieve or waive with respect to any Development Approval; and
  - (iv) WGH's obligations under Section 17.2.
- (b) All Project Operations performed by or on behalf of Project Co, whether before, during or after the completion of the Works, shall be performed in a manner which does not breach the Title Encumbrances.
- (c) Subject to Encumbrances that Project Co shall remove pursuant to Section 15.2, no act or omission by Project Co or any Project Co Party shall give rise to a right for any person to obtain title to or any interest in the Site or any part of it, except in accordance with the terms of this Project Agreement.

### 15.2 No Site Encumbrances

- (a) Project Co shall not create, incur, permit or suffer to exist any Encumbrance to be filed, issued or registered against the Site or any part thereof or any interest therein due to an act or omission of Project Co or any Project Co Party.

- (b) In the event that the Site or any part thereof or any interest therein becomes subject to any Encumbrance which has not been consented to in writing by WGH due to an act or omission of Project Co or any Project Co Party, Project Co shall immediately take all steps necessary to remove, vacate or discharge such Encumbrance. If such Encumbrance is not removed, vacated or discharged within 10 Business Days of the filing, issuance or registration of such Encumbrance then, without prejudice to any other rights or remedies it may have, WGH will be at liberty to take whatever steps it deems necessary and appropriate to remove, vacate or discharge the Encumbrance, including payment of any amount owing or claimed thereunder, and seek immediate recovery from Project Co of the amount of any such payment and any associated costs, including legal costs, all of which shall be payable on demand.
- (c) The Parties acknowledge that the foregoing provisions of this Section 15.2 shall apply to claims for lien made against the Site pursuant to the *Construction Lien Act* (Ontario) and shall also apply to claims made against WGH or the holdback under the *Construction Lien Act* (Ontario) as though such a claim were an Encumbrance against the Site as referred to therein.
- (d) Project Co shall withhold from each of its Subcontractors the holdbacks required under the *Construction Lien Act* (Ontario) and shall deal with such holdbacks in accordance with the *Construction Lien Act* (Ontario).
- (e) Project Co shall follow the requirements of the *Construction Lien Act* (Ontario) and Good Industry Practice for posting and advertising certificates of completion when issued.

## 16. SITE CONDITION

### 16.1 Acceptance of Site Condition

- (a) Subject to Sections 6.4, 16.2, 16.3 and 16.4, Project Co acknowledges and agrees that it has inspected all matters relating to the Site, including the Background Information, prior to executing this Project Agreement and agrees to accept the Site and the Site Conditions on an "as is, where is" basis. Without limiting the generality of the foregoing, but subject to Sections 6.4, 16.2, 16.3 and 16.4, Project Co shall not be entitled to make any claim of any nature whatsoever against WGH or any WGH Party on any grounds relating to the Site, including the fact that incorrect or insufficient information on any matter relating to the Site was given to it by any person, whether or not WGH or a WGH Party.
- (b) Subject to Sections 6.4, 16.2, 16.3 and 16.4, Project Co acknowledges and agrees that it has and shall be deemed to have:
  - (i) performed all necessary Site due diligence and investigation and inspected and examined the Site and its surroundings and any existing works on, over or under the Site;

- (ii) satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the level and quantity of groundwater, the form and nature of the Site, the loadbearing and other relevant properties of the Site, the risk of injury or damage to property affecting the Site, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the work and materials necessary for the execution and delivery of the Works;
  - (iii) satisfied itself as to the presence of any Contamination on, in or under the Site, or migrating to or from the Site;
  - (iv) satisfied itself as to the adequacy of the rights of access to, from and through the Site and any accommodation it may require for the purposes of fulfilling its obligations under this Project Agreement;
  - (v) satisfied itself as to the possibility of interference by persons of any description whatsoever with access to or use of, or rights in respect of, the Site; and
  - (vi) satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties.
- (c) Project Co further acknowledges and agrees that, other than as referred to or contained in this Project Agreement, no representations or warranties have been made, nor documentation delivered to Project Co or any Project Co Party, which would indicate that Project Co would be unable to perform the Project Operations in a lawful manner.

## 16.2 Contamination

- (a) WGH shall be responsible for Contamination on, in or under, or migrating to or from, the Site, except for any such Contamination:
- (i) that was disclosed in, or could have been reasonably anticipated from, the Environmental Reports or the Geotechnical Reports;
  - (ii) that could have been reasonably discovered or anticipated on the basis of reasonable, normal course and industry standard investigations, inspections or other due diligence of the Site, including as referred to in Section 16.1; or
  - (iii) that is caused by Project Co or any Project Co Party.
- (b) Upon the discovery of any Contamination for which WGH is responsible pursuant to Section 16.2(a), Project Co shall immediately inform the WGH Representative and shall comply with all Applicable Law in respect thereof at WGH's cost pursuant to Section 16.2(d).
- (c) In the event that WGH wishes Project Co to perform actions which are in addition to any required pursuant to Section 16.2(b), then WGH shall issue an instruction to Project Co

specifying what action WGH requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at WGH's cost pursuant to Section 16.2(d).

- (d) If Sections 16.2(b) and 16.2(c) require Project Co to perform any alteration, addition, demolition, extension or variation in the Project Operations as a result of Contamination for which WGH is responsible pursuant to Section 16.2(a) and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation:
  - (i) in the Works shall, subject to and in accordance with Section 39, be treated as a Delay Event and, subject to and in accordance with Section 40, be treated as a Compensation Event; and
  - (ii) in the Project Co Services shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation.

### **16.3 Items of Geological, Historical or Archaeological Interest or Value**

- (a) As between the Parties, all fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which may be found on or at the Site are or shall be the sole and absolute property of WGH.
- (b) Upon the discovery of any item referred to in Section 16.3(a) during the course of the Works, Project Co shall:
  - (i) immediately inform the WGH Representative of such discovery;
  - (ii) take all steps not to disturb the item and, if necessary, cease any Works in so far as performing such Works would endanger the item or prevent or impede its excavation;
  - (iii) take all necessary steps to preserve and ensure the preservation of the item in the same position and condition in which it was found; and
  - (iv) comply, and ensure compliance by all Project Co Parties, with Applicable Law and all requirements of Governmental Authorities with respect to such discovery, including Schedule 19 - Heritage Guidelines and Protocols.
- (c) In the event that WGH wishes Project Co to perform actions which are in addition to any required pursuant to Section 16.3(b), then WGH shall issue an instruction to Project Co specifying what action WGH requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions.
- (d) If Sections 16.3(b) and 16.3(c) require Project Co to perform any alteration, addition, demolition, extension or variation in the Works as a result of such discovery and which would not otherwise be required under this Project Agreement, then any such alteration,



addition, demolition, extension or variation in the Works shall, subject to and in accordance with Section 39, be treated as a Delay Event and, subject to and in accordance with Section 40, be treated as a Compensation Event.

#### **16.4 Concealed or Unknown Conditions**

(a)

- (i) If Project Co encounters Site Conditions which are geotechnical issues with respect to the Site which adversely impact Project Co's ability to complete the Works, Project Co shall promptly notify WGH and the Architect of Record.
- (ii) The Architect of Record shall promptly investigate such Site Conditions and shall then report to WGH and Project Co with a finding as to whether such Site Conditions were or were not described in or were or were not readily discoverable or reasonably inferable from the Geotechnical Reports or would or would not have been readily discoverable or reasonably inferable from Project Co's due diligence, investigation, inspection and examination of the Site in accordance with Section 16.1.
- (iii) Regardless of the Architect of Record's finding under Section 16.4(a)(ii), the Architect of Record shall, in consultation with the Works Committee, provide the resolution to such Site Condition and Project Co shall thereafter carry out the work required to effect such resolution.

- (b) If such Site Conditions were not described in or were not readily discoverable or reasonably inferable from the Geotechnical Reports, or would not have been readily discoverable or reasonably inferable from Project Co's due diligence, investigation, inspection and examination of the Site in accordance with Section 16.1, and such Site Conditions require Project Co to perform any alteration, addition, demolition, extension or variation in the Works as a result of such Site Conditions and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation in the Works shall, subject to and in accordance with Section 39, be treated as a Delay Event and, subject to and in accordance with Section 40, be treated as a Compensation Event.

### **17. CITY OF WOODSTOCK, COUNTY OF OXFORD AND UTILITY COMPANY FEES**

#### **17.1 City of Woodstock and Utility Company Fees**

- (a) Project Co shall pay to the City of Woodstock, the County of Oxford and any applicable Utility Company, when due, all fees and costs (and applicable Taxes thereon) chargeable by the City of Woodstock, the County of Oxford or the applicable Utility Company in respect of the Works, including:
- (i) any development charges relating to the Works, the Facility or the Site;

- (ii) any engineering administration and inspection fees required in respect of works or services required to be performed under any applicable agreement;
  - (iii) any security deposits required under any applicable agreement; and
  - (iv) any other amounts payable under any applicable agreement.
- (b) The Parties agree that any refund, partial rebate or credit granted by the City of Woodstock, the County of Oxford or any applicable Utility Company relating to the fees and costs referred to in Section 17.1(a) shall be for the benefit of WGH to the extent such fees and costs were paid by WGH and shall be for the benefit of Project Co to the extent such fees and costs were paid by Project Co.

## 17.2 Development Approvals

- (a) Without limiting Project Co's obligations under Sections 9.4 and 15.1, Project Co shall, at its own cost and risk:
- (i) apply for, obtain, maintain and, as applicable, renew all Development Approvals (other than the WGH Permits, Licences and Approvals); and
  - (ii) comply with all Development Approvals in accordance with their terms (including, for greater certainty, the WGH Permits, Licences and Approvals),
- which, in each case, may be required for the development of the Site and the Facility.
- (b) Where Development Approvals have requirements that may impose any conditions, liabilities or obligations on WGH or any WGH Party, Project Co shall not obtain such Development Approvals without the prior written consent of WGH, not to be unreasonably withheld or delayed, provided that WGH shall not be responsible for obtaining or for the failure of Project Co to obtain any Development Approval (other than the WGH Permits, Licenses and Approvals). WGH shall comply, or shall require compliance, with any conditions, liabilities or obligations as are imposed on WGH or any WGH Party by the requirements of any Development Approval obtained with WGH's consent.
- (c) WGH shall provide Project Co with such information and administrative assistance as Project Co may reasonably require in relation to the Development Approvals.
- (d) Project Co acknowledges that WGH has obtained the WGH Permits, Licenses and Approvals prior to the date of this Project Agreement, and Project Co agrees to assume all of WGH's obligations thereunder from and after the date of this Project Agreement.

## **18. DESIGN AND CONSTRUCTION OBLIGATIONS**

### **18.1 Overall Responsibility**

- (a) Project Co shall perform and complete the Works:
  - (i) so as to satisfy the Technical Requirements;
  - (ii) in accordance with the Works Schedule; and
  - (iii) in accordance with the other terms and conditions of this Project Agreement.
- (b) Project Co shall, for the purposes of performing its obligations under this Project Agreement, be required to make use of and be entitled to rely on the Existing Design.
- (c) Without prejudice to Sections 18.1(a) and 18.1(b), but subject to the provisions of Section 27, Schedule 20 – Payment Mechanism and Schedule 24 – Expiry Transition Procedure, if, at any time during the Project Term, any of the Works carried out by or on behalf of Project Co do not fully satisfy the Technical Requirements and/or any other term or condition of this Project Agreement (other than the Project Co Proposal Extracts), Project Co shall, at its own cost and expense, rectify the Works, the Facility and any part thereof so that:
  - (i) the Works, the Facility and all parts thereof shall, at all times, comply with and satisfy in full the Technical Requirements and the other terms and conditions of this Project Agreement (other than the Project Co Proposal Extracts); and
  - (ii) the Works, the Facility and all parts thereof will, at all times, meet the structural, mechanical, electrical and other performance standards set out in the Technical Requirements.

### **18.2 Complete and Operational Facility**

- (a) Project Co shall construct and commission the Facility so as to provide WGH with a Facility that is complete and operational in accordance with the Project Agreement, Technical Requirements and the Project Co Proposal Extracts, and that will allow Project Co to perform the Project Co Services, all in accordance with and subject to the terms of this Project Agreement.

### **18.3 General Construction Obligations**

- (a) Project Co is responsible for all construction means, methods and techniques used to undertake the Works and must provide everything (including labour, plant, equipment and materials) necessary for the construction and commissioning of the Facility, and other performance of the Works.

- (b) Project Co shall in a timely and professional manner and in accordance with the requirements of this Project Agreement:
- (i) construct the Works in accordance with the Existing Design, diligently, expeditiously and in a thorough and workman-like manner;
  - (ii) ensure that no works other than the Works under this Project Agreement are constructed on the Site by Project Co or any person for whom Project Co is responsible at law;
  - (iii) protect the Works from all of the elements, casualty and damage and in accordance with and subject to the Technical Requirements;
  - (iv) in respect of plant, equipment and materials incorporated in the Works, use plant, equipment and materials that:
    - (A) are of a kind that are consistent with the Technical Requirements;
    - (B) are new, of good quality and are used, handled, stored and installed in accordance with Applicable Law and Good Industry Practice with respect to health and safety so as not to be hazardous or dangerous; and
    - (C) where they differ from the Technical Requirements, have been substituted with WGH's prior written consent.
- (c) Without limiting Project Co's obligations pursuant to Section 9.5 or Project Co's indemnity pursuant to Section 55.1, Project Co shall, at all times throughout the progress of the Works, be responsible for maintaining and securing the Site to prevent access onto the Site and the Facility of any persons not entitled to be there, and the licence granted to Project Co pursuant to Section 14.1 shall include rights for Project Co to do so.
- (d) Project Co shall, at regular intervals during the progress of the Works, prepare and provide to the Architect of Record detailed drawings in form and format satisfactory to the Architect of Record to facilitate the preparation of As Built Drawings.

#### **18.4 Design and Lifecycle Responsibility**

- (a) Project Co shall, as between itself and WGH, be responsible for, and shall rectify at its own expense, applying all or part of the Project Co Design Contingency and such additional funds as may be necessary, all of the following:
- (i) design issues arising under, with respect to or in connection with the Existing Design (and in particular, drawings and specifications) requiring clarification, information and/or further instruction in order to complete the Works and which are readily discoverable, reasonably inferable as forming part of the Works or contrary to Good Industry Practice;

- (ii) design coordination issues caused by inconsistencies, exclusions, conflicts, interferences or gaps contained within the Existing Design, and particularly, the plans, drawings and specifications; and
- (iii) design completion issues where the intent can be reasonably inferred in the Existing Design but not fully detailed or specified,

(collectively, the "**Project Co Construction Design Issues**") through the Project Term. The terms "readily discoverable", "reasonably inferable" and "reasonably inferred" shall be interpreted by taking into consideration Project Co's and the Project Co Parties' experience, investigation and examination.

- (b) In addition to the Project Co Construction Design Issues and subject to Section 19, Project Co shall be responsible for:

- (i) any issues with respect to the functionality, durability, maintainability and lifecycle cost of the mechanical and electrical systems specified in the Existing Design, including whether such systems will be adequate to meet the Output Specifications on a consistent basis for the duration of the Operational Term and the Expiry Transition Requirements on the Expiry Date (the "**Project Co M&E Design Issues**"); and
- (ii) the operation and periodic replacement of all elements of the Facility, whether part of the mechanical and electrical systems or otherwise, including finishes, seals, structural components, hardware and building fabric, as required to achieve the Output Specifications for the duration of the Operational Term and the Expiry Transition Requirements on the Expiry Date,

(collectively, the "**Project Co Operating Design Issues**").

- (c) WGH shall, as between itself and Project Co, assume full responsibility and liability for the use of the Existing Design by Project Co, in all respects other than in respect of the Project Co Construction Design Issues and the Project Co Operating Design Issues (collectively, the "**Project Co Design Issues**"), including, without limitation:

- (i) the Clinical Functionality of the Existing Design;
- (ii) the adequacy of the structural and architectural elements of the Existing Design; and
- (iii) the core efficacy and functionality of the Existing Design to:
  - (A) generally meet the requirements of the Building Code in effect at the time the Building Permit was issued; and

- (B) conform to the functional programming needs of the WGH,  
  
(collectively, the "**WGH Design Issues**").
- (d) Any issue may be found to be partially a Project Co Design Issue and partially a WGH Design Issue as interpreted by the Architect of Record, in such proportion as may be established by the Architect of Record. If WGH or Project Co does not agree on the proportion of any issue that is a Project Co Design Issue or a WGH Design Issue, the issue may be referred to the Works Committee for resolution.
- (e) The Risk Assessment Guidelines attached as Schedule 34 – Risk Assessment Guidelines provide examples of the type of issues which may be encountered and the findings the Architect of Record would make regarding the categorization of each as a Project Co Design Issue or a WGH Design Issue. Project Co and WGH acknowledge that these guidelines are provided for information purposes only and are not complete or exhaustive.

#### **18.5 Procedure for Addressing Design Issues Other than Project Co M&E Design Issues**

- (a) Without limiting Project Co's ability to pursue claims against WGH and the Design Consultants for indemnity with respect to issues pertaining to design or engineering in accordance with Section 18.6, Project Co shall bear responsibility and liability with respect to charges, extras or costs attributable to or associated with Project Co Design Issues. Project Co shall carry the Project Co Design Contingency as acknowledged in Section 6.3(a)(ii) and, subject to Section 19, shall use the Project Co Design Contingency to fund all changes, extras or costs attributable to or associated with Project Co Design Issues.
- (b) When Project Co identifies a design issue, a design completion issue or a design coordination issue which falls within the matters referred to in Section 18.4(a), Project Co shall promptly notify the Architect of Record and WGH, in writing under a request for information, of such Project Co Design Issue and propose a resolution to the Project Co Design Issue. Upon receipt of Project Co's notification and proposed resolution, the Architect of Record shall proceed to review the proposed resolution and:
  - (i) confirm that such resolution is acceptable and issue a Supplemental Instruction;
  - (ii) reject the proposed resolution, request that additional information be provided or request an alternative resolution be proposed by Project Co; or
  - (iii) reject the proposed resolution and issue a Supplemental Instruction for an acceptable resolution.
- (c) When the Architect of Record identifies a Project Co Design Issue or if the Architect of Record makes a finding that a matter is a Project Co Design Issue, the Architect of Record shall promptly notify Project Co, in writing as a Supplemental Instruction, of

such Project Co Design Issue or finding. Upon receipt of the Architect of Record's notification, Project Co shall proceed to review the Project Co Design Issue and propose a resolution to the Architect of Record. Upon receipt of Project Co's proposed resolution, the Architect of Record shall proceed to review the proposed resolution and:

- (i) confirm that such resolution is acceptable and issue a Supplemental Instruction;
  - (ii) reject the proposed resolution, request that additional information be provided or request an alternative resolution be proposed by Project Co; or
  - (iii) reject the proposed resolution and issue a Supplemental Instruction for an acceptable resolution.
- (d) The resolution of a Project Co Design Issue will be considered acceptable if such resolution meets the requirements of the first sentence of Section 18.5(e). As soon as the Architect of Record has confirmed to Project Co an acceptable resolution to the Project Co Design Issue, which confirmation shall be in writing or in the form of a Supplemental Instruction, Project Co shall proceed to implement such acceptable resolution. The cost, if any, of implementing the acceptable resolution to the Project Co Design Issue shall form part of the Project Co Design Contingency and shall be funded by Project Co. The cost of remediation of the Project Co Design Issue will not be evaluated by the Architect of Record. WGH will instruct the Architect of Record to provide a response to Project Co in accordance with Section 18.7(d). WGH will bear the cost of the Architect of Record's professional design and engineering services in connection with the review, approval and incorporation into the Existing Design of the resolution to a Project Co Design Issue.
- (e) An acceptable resolution to a Project Co Design Issue shall be a resolution that is in all respects consistent with the design intent and quality standards of the Existing Design, as interpreted by the Architect of Record, which will not interfere with the efficient operations of WGH or increase the cost or time required to provide any Project Co Service and which will not increase the life cycle costs, as interpreted by the Architect of Record. If Project Co and the Architect of Record and WGH are unable to establish an acceptable resolution to a Project Co Design Issue, Project Co may refer the Project Co Design Issue to the Works Committee. If the Works Committee concludes that the resolution of a Project Co Design Issue proposed by the Architect of Record is of a higher quality, not consistent with the design intent and quality standards of the Existing Design or will increase the cost or time required to provide any Project Co Service, Project Co will, subject to and in accordance with Schedule 22 - Variation Procedure, be entitled to a Variation. If the Architect of Record confirms that the resolution of a Project Co Design Issue proposed by Project Co is acceptable, no Variation will be allowed.
- (f) If WGH, Project Co and the Architect of Record are unable to agree upon whether or not a matter should properly be characterized as a Project Co Design Issue or on what constitutes an acceptable resolution to a Project Co Design Issue, such issues will be referred to the Works Committee.

- (g) Unless the Works Committee concludes that the resolution to a Project Co Design Issue requires a Variation as contemplated in Section 18.5(e), Project Co is solely responsible for all costs to remedy a Project Co Design Issue and Project Co will not be entitled to a Variation in respect of any and all Project Co Design Issues, subject to the responsibility of WGH at WGH's cost for the provision of professional design services as specifically provided in Section 18.5(d). Project Co acknowledges and agrees that, except as specifically provided in Section 18.6, Project Co shall have no recourse against WGH in respect the Project Co Design Contingency or any costs directly or indirectly arising out of the remediation of a Project Co Design Issue.
- (h) If Project Co identifies an issue that it believes will constitute a WGH Design Issue, Project Co shall give notice to the WGH Representative and the Architect of Record in writing. If WGH is in agreement with Project Co on the characterization of the issue as a WGH Design Issue, WGH shall, subject to and in accordance with Schedule 22 - Variation Procedure, issue a Variation Enquiry in respect thereof. If WGH does not agree that the issue is a WGH Design Issue, the characterization of the matter shall be referred to the Works Committee for resolution. If the Architect of Record or the WGH Representative identifies a WGH Design Issue, or if the Works Committee concludes that an issue should be identified as a WGH Design Issue, Project Co and WGH shall promptly notify the other Party, in writing, of such WGH Design Issue, and WGH shall, subject to and in accordance with Schedule 22 - Variation Procedure, issue a Variation Enquiry in respect thereof.
- (i) Project Co shall provide the Architect of Record with all information and documentation reasonably required by the Architect of Record to evaluate Project Co's proposed resolution to all Project Co Design Issues and WGH Design Issues.
- (j) On a weekly basis, Project Co shall provide to WGH and the Architect of Record detailed updates, in form and substance satisfactory to WGH, on the status of all Project Co Design Issues and WGH Design Issues.
- (k) The Architect of Record will be required to issue final documentation to confirm the acceptable resolution of each Project Co Design Issue and WGH Design Issue, and such documentation will become part of the Existing Design.
- (l) This Section 18.5 shall not apply to any Project Co M&E Design Issues identified by Project Co in accordance with Section 19.2(a).

## 18.6 Remedies for Design Issues

- (a) WGH shall be liable to Project Co for any losses, costs or damages suffered by Project Co as a result of any Project Co Design Issue subject to the following:
- (i) Project Co shall give notice to WGH that Project Co has a claim in respect of a Project Co Design Issue as soon as the facts supporting such claim (a "**Project Co Design Issue Claim**") become known to Project Co;



- (ii) Project Co shall indemnify WGH from all costs associated with the defence of the claim by Project Co against WGH and all costs associated with any defence of any counterclaim which may be issued by a Design Consultant, including all fees and disbursements of legal counsel, consultants and advisors on a full indemnity basis, which, without limitation, includes the actual expenses incurred by WGH and without reduction by way of costs award or assessment or exercise of discretion by the courts;
  - (iii) subject to Project Co providing WGH with complete and adequate indemnification for all costs incurred by WGH as a result of the pursuit of a claim or the defence of a resulting counterclaim, WGH shall, at the request of Project Co, assign to Project Co any claim which WGH may have against a Design Consultant in connection with any Project Co Design Issue and permit Project Co and Project Co's counsel, in consultation with WGH, to advance any claim against a Design Consultant. WGH, in its sole discretion, may refuse to assign to Project Co any claim which WGH has against a Design Consultant if WGH determines that instituting such claim will lead to a counterclaim or event injurious to WGH for which Project Co cannot or will not completely indemnify and hold WGH harmless. In respect of any assignment, it is agreed that WGH shall have no duty of care, fiduciary duty or responsibility to Project Co;
  - (iv) WGH shall be entitled, with its own counsel, to defend any counterclaim issued by a Design Consultant in connection with any claim advanced pursuant to Section 18.6(a)(iii), but in no event will WGH or its counsel have any duty of care, fiduciary duty or responsibility to Project Co with respect to the action commenced by Project Co pursuant to 18.6(a)(iii);
  - (v) the aggregate amount of any claim, including defence costs, cannot exceed the amount of the available indemnity under any errors and omissions insurance coverage available to the Design Consultants;
  - (vi) the liability of WGH shall be limited to the amount of any indemnity available to WGH from the Design Consultants from their insurers or from WGH's insurers, less any costs incurred by WGH and not yet paid by Project Co pursuant to Project Co's indemnity in Section 18.6(a)(ii); and
  - (vii) Project Co shall not be entitled to make any claim for any delay that is the result of any delay in the funding of any cost properly allocable to the Project Co Design Contingency.
- (b) The foregoing Section 18.6(a) shall not limit Project Co from making direct claims against any Design Consultant for any losses, costs or damages suffered by Project Co as a result of the errors, omissions, negligence or other tortious actions of the Design Consultant in respect of the design or engineering services provided by the Design Consultants to WGH, provided that the aggregate liability of any of the Design Consultants shall in all cases be limited to the amount of the errors and omissions

insurance coverage available to such Design Consultant. Project Co shall not be entitled to make any claim for any delay that is the result of any delay in the funding of any cost properly allocable to the Project Co Design Contingency. Project Co shall not seek to recover from any of the Design Consultants or from any other person that might seek indemnity or contribution from the Design Consultant any amount in excess of the amount of the available indemnity under any errors and omissions insurance coverage available to such Design Consultant and responsive to such claim. Project Co acknowledges that each Design Consultant is a third party beneficiary under this Section 18.6(b) and that each Design Consultant shall be entitled to plead this Section 18.6(b) in its defence to any action brought by Project Co.

- (c) Project Co may make direct claims against WGH for any losses, costs or damages suffered by Project Co as a result of any WGH Design Issue to the extent only that Project Co has not obtained a Variation in respect thereof, subject only to the limitations contained in this Project Agreement.

### **18.7 Architect of Record**

- (a) The Architect of Record will have the authority described in this Project Agreement until the end of the M&E Systems Verification Period.
- (b) The Architect of Record will not be responsible for, and will not have control, charge, or supervision of, construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs required in connection with the Works in accordance with the applicable construction safety legislation, other regulations, or general construction practice. The Architect of Record will not be responsible for Project Co's failure to carry out the Works in accordance with this Project Agreement. The Architect of Record will not have control over, charge of, or be responsible for the acts or omissions of Project Co or its Subcontractors or Suppliers, or any other persons performing portions of the Works.
- (c) The Architect of Record will be, in the first instance, the interpreter of the requirements of the Existing Design and shall make findings as to the performance thereunder by Project Co. Interpretations and findings of the Architect of Record shall be consistent with the intent of the Existing Design. WGH shall instruct the Architect of Record not to show partiality to either WGH or Project Co when making such interpretations and findings.
- (d) When a Request for Information is submitted by Project Co, WGH shall instruct the Architect of Record to provide a response to Project Co as agreed between Project Co and the Architect of Record from time to time. In the absence of an agreement, WGH shall require the Architect of Record to respond within a reasonable period of time in the circumstances. Project Co shall work with the Architect of Record to plan a schedule for the responses to requests for information. Project Co shall advise the Architect of Record of the level of urgency of each request for information when submitted.

- (e) The Architect of Record will have authority to inspect and reject work which, in the Architect of Record's opinion, does not conform to the requirements of the Existing Design or whenever the Architect of Record considers it necessary or advisable. Any entitlement to additional compensation or an extension of time in respect thereof shall be governed by Section 20.3. Neither the authority of the Architect of Record to act nor any decision either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Architect of Record to Project Co or any Project Co Party.
- (f) If work is designated for tests, inspections, or approvals in the Existing Design, or by the Architect of Record's instructions, or Applicable Law, Project Co shall give the Architect of Record reasonable notice of when the work will be ready for review and inspection. Project Co shall arrange for and shall give the Architect of Record reasonable notice of the date and time of inspections by other Governmental Authorities.
- (g) Without limiting the responsibility of the Design Consultants with respect to the Existing Design and Project Co's right to rely upon the Existing Design as against the Design Consultants, Project Co shall, as and to the extent required by Applicable Law, cause all design and engineering activities (other than the Existing Design but including any modifications thereto) to be performed or reviewed by licensed professional architects and engineers registered to practice in the Province of Ontario and with the designations required to perform such activities. Such architects and engineers shall certify, and, if required by Applicable Law, sign and seal, all design, drawings and technical reports confirming that they comply with the applicable standards, specifications and codes specified in the Technical Requirements, with all prevailing design standards and design practices for such work in the Province of Ontario, and as otherwise required by Applicable Law. All design and engineering that is incorporated into the Works (including any modifications to the Existing Design) must be signed and sealed by the Architect of Record.
- (h) Project Co acknowledges that the aggregate liability of the Architect of Record in all claims arising under or in respect of this Project Agreement shall be limited to the amount of the errors and omissions insurance coverage available to the Architect of Record. Project Co shall not seek to recover from the Architect of Record or from any other person that might seek indemnity or contribution from the Architect of Record any amount in excess of the amount of the available indemnity under any errors and omissions insurance coverage available to the Architect of Record and responsive to such claim. Project Co acknowledges that Project Co has been provided with a copy of the contract between the Architect of Record and the WGH (the "**Architect's Contract**") pursuant to which the Architect of Record has been retained. The duties, obligations and the aggregate liability of the Architect of Record in any claim under the Architect's Contract is further limited by the terms of the Architect's Contract. Project Co acknowledges that the Architect of Record is a third party beneficiary under this Section 18.7(h) and that the Architect of Record shall be entitled to plead this Section 18.7(h) in its defence to any action brought by Project Co.

## **18.8 Substitutions**

- (a) Whenever equipment, components, materials, supplies, tools, and other items are specified or otherwise described in this Project Agreement (including the Technical Requirements, Project Co Proposal Extracts, the Quality Plans or through Schedule 10 – Review Procedure) by using the name or catalogue or model number of a particular manufacturer, fabricator, vendor or distributor, or any other material name or description, the naming or identification of the item is intended to establish the type and the minimum function and quality required, and equipment, components, materials, supplies, tools, and other items of other manufacturers, fabricators, vendors or distributors shall not be substituted without the prior written consent of WGH, in its sole discretion.

## **18.9 Change in Standards**

- (a) Where this Project Agreement requires Project Co to comply with a technical standard in respect of the design and construction of the Facility, and that standard has changed between the date of this Project Agreement and the date that such compliance is required, then Project Co shall give notice to WGH of such change. If, after such notice, WGH requires compliance with the changed standard (rather than the standard applicable as of the date of this Project Agreement), then, to the extent such change impacts the Works and would not have otherwise been taken into account by compliance with Good Industry Practice, such changed standard shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation. If WGH does not require compliance with the changed standard, then Project Co shall continue to comply with the standard applicable as of the date of this Project Agreement, without a Variation therefor. This Section 18.9 shall not apply where a change in a technical standard is also a Change in Law.

## **18.10 Submittals**

- (a) Any and all items, documents and anything else required or specified by this Project Agreement in respect of the Works to be submitted to, reviewed or otherwise processed by WGH prior to Substantial Completion or after Substantial Completion in respect of the completion of Minor Deficiencies, including any and all subsequent revisions, amendments and changes thereto, shall be subject to review by WGH pursuant to Schedule 10 - Review Procedure.

## **18.11 Cash Allowance**

Project Co shall carry and make use of a cash allowance in accordance with and as more particularly described in the Existing Design.

## **19. M&E SYSTEMS VERIFICATION PERIOD**

### **19.1 Verification of Output Specifications**

During the Project Co Commissioning, Project Co, in cooperation with the WGH Commissioning Agent, shall cause the Project Co Commissioning Coordinator to conduct

Commissioning Tests to verify that the mechanical and electrical systems satisfy the Output Specifications and, where Commissioning Tests indicate that any Output Specification cannot be obtained or maintained, Project Co shall propose to the Works Committee a Variation or change or changes in the Output Specifications to reflect the actual performance of the mechanical and electrical systems.

## 19.2 M&E Systems Verification Period

- (a) From the date of this Project Agreement until the end of the M&E Systems Verification Period, Project Co shall be entitled to give notice to WGH that it has identified a Project Co M&E Design Issue and to present evidence (which shall include the results of any Commissioning Tests, performance testing, simulations or other testing conducted by Project Co to substantiate its claim) to the Works Committee that:
- (i) an Availability Failure or Service Failure has occurred as a direct result of a Project Co M&E Design Issue; or
  - (ii) an Availability Failure or Service Failure will occur as a direct result of a Project Co M&E Design Issue.

For greater certainty, any performance testing, simulations or other testing conducted by Project Co in accordance with this Section 19.2(a) will be conducted at Project Co's own cost and expense.

- (b) Subject to Sections 19.2(c) and 19.2(d), from the time Project Co gives notice to WGH of a Project Co M&E Design Issue pursuant to Section 19.2(a), any Deductions and Failure Points that would have otherwise been applied in respect of Availability Failures or Service Failures attributable to the Project Co M&E Design Issue shall be held in abeyance until, and shall be applied against the Monthly Service Payment on, the earlier of:
- (i) if the Works Committee determines that an Availability Failure or Service Failure will not occur as a direct result of a Project Co M&E Design Issue or that no issue in respect of the Existing Design has arisen, the date of such determination; and
  - (ii) if the Works Committee is unable to determine that an Availability Failure or Service Failure will not occur as a direct result of a Project Co M&E Design Issue or that no issue in respect of the Existing Design has arisen and Project Co or WGH seeks a determination pursuant to Section 19.2(e), the date such dispute is determined pursuant to Section 19.2(e).

Where an Availability Failure or Service Failure attributable to a Project Co M&E Design Issue has been identified by Project Co during the M&E Systems Verification Period in accordance with Section 19.2(a), the Deductions that would apply to such event shall be deemed to have occurred in the month in which such Deductions are released from abeyance pursuant to this Section 19.2(b) and the Failure Points that would apply to

such event shall be deemed to have occurred at the time Project Co gave notice that it had identified a Project Co M&E Design Issue.

(c) If, in response to a Project Co M&E Design Issue, WGH:

- (i) decides to vary the Output Specification; or
- (ii) issues a Variation Enquiry to remedy a deficiency,

WGH will, on the date on which WGH reaches a decision to vary the Output Specifications or the Variation is completed, as applicable, cancel any Deductions held in abeyance in respect of the Project Co M&E Design Issue, reimburse Project Co for any Deductions that have been applied against the Monthly Service Payments in respect of any Availability Failure or Service Failure and cancel any Failure Points held in abeyance or applied in respect of any Availability Failure or Service Failure.

(d) If the Works Committee agrees or a determination is made pursuant to Section 19.2(e) that an Availability Failure or Service Failure has occurred or will occur as a direct result of a Project Co M&E Design Issue:

- (i) WGH will cancel any Deductions held in abeyance in respect of the Project Co M&E Design Issue, reimburse Project Co for any Deductions that have been applied against the Monthly Service Payments in respect of such Availability Failure or Service Failure and cancel any Failure Points held in abeyance or applied in respect of such Availability Failure or Service Failure;
- (ii) if requested by WGH, within a reasonable period of time (as agreed by the Parties, acting reasonably) following the determination of the Works Committee, Project Co shall propose a resolution to the Project Co M&E Design Issue;
- (iii) within a reasonable period of time following receipt of Project Co's proposed resolution, the Architect of Record shall:
  - (A) confirm that such resolution is acceptable;
  - (B) reject the proposed resolution, request that additional information be provided or request an alternative resolution be proposed by Project Co; or
  - (C) reject the proposed resolution and issue a Supplemental Instruction for an acceptable resolution, and Project Co will revise and resubmit its proposal, as necessary; and
- (iv) WGH shall, subject to and in accordance with Schedule 22 - Variation Procedure, issue a Variation Enquiry to, in its sole discretion, either:

- (A) authorize Project Co to perform any alteration, addition, demolition, extension or variation in the Project Operations required to implement the resolution accepted by the Architect of Record, in order to ensure that the Output Specifications can be met after completion of such alteration, addition, demolition, extension or variation; or
  - (B) revise the Output Specifications for the particular output to the level proposed pursuant to Section 19.1 that reflects the actual performance of the electrical and mechanical systems, in order to ensure that the Existing Design is able to satisfy the Output Specifications, as revised.
- (e) If the Works Committee is unable to determine that an Availability Failure or Service Failure will not occur as a direct result of a Project Co M&E Design Issue or that no Existing Design issue has arisen, the matter may be referred by Project Co or WGH to an Expert appointed in accordance with Schedule 27 - Dispute Resolution Procedure. Project Co shall present to the Expert the results of the performance testing, simulations or other testing conducted by Project Co in accordance with Section 19.1 and such other evidence as Project Co may require and WGH shall present the reports of the Architect of Record and the WGH Commissioning Agent. The Parties agree that the Expert's determination shall be final and binding on both Parties and shall not be subject to appeal, arbitration, litigation or any other dispute resolution process. Both Parties expressly waive all rights of appeal in connection with the Expert's determination.
- (f) Prior to the end of the M&E Systems Verification Period, WGH and Project Co shall cause the WGH Commissioning Agent, in cooperation with the Project Co Commissioning Coordinator, to conduct Commissioning Tests to verify that the mechanical and electrical systems satisfy the Output Specifications. If the Output Specifications are not being met by the mechanical and electrical systems, WGH may either issue a Variation Enquiry to obtain the necessary remedial work or amend the Output Specifications to match the actual outputs achieved. If the issue or matter preventing the mechanical and electrical systems from achieving an Output Specification has previously been the subject of a Variation, Project Co shall remedy such issue or matter at its own expense.
- (g) Subject to the resolution of any Disputes in accordance with Section 19.2(e), from and after the end of the M&E Systems Verification Period, Project Co acknowledges and agrees that it shall bear full responsibility and liability for any Project Co M&E Design Issues, and shall not be entitled to a Variation or any other form of compensation in respect thereof, subject only to Project Co's right to make a claim against the Design Consultants pursuant to Section 18.6.
- (h) From and after the end of the M&E Systems Verification Period, subject to the resolution of any outstanding Project Co M&E Design Issues identified by Project Co in accordance with Section 19.2(a), Project Co acknowledges and agrees that it shall have no further right to assert that an Availability Failure or Service Failure has occurred or will occur as a direct result of a Project Co M&E Design Issue and any Deductions and Failure Points

held in abeyance pursuant to Section 19.2(b) that have not been cancelled pursuant to Section 19.2(c) or Section 19.2(d) shall be applied.

## **20. WGH ACCESS AND MONITORING**

### **20.1 WGH Access During the Works Phase**

- (a) Subject to Section 20.1(b) but without limiting any of WGH's rights in respect of the Site, Project Co acknowledges and agrees that WGH and the WGH Parties shall, prior to Substantial Completion, have unrestricted access to the Site, the Facility and any workshop where materials, plant or equipment are being manufactured, prepared or stored at all reasonable times during normal working hours.
- (b) In exercising their access rights under Section 20.1(a), WGH and the WGH Parties shall:
  - (i) provide reasonable prior notice appropriate to the circumstances (other than for any offices or other facilities provided at the Site for WGH's own use);
  - (ii) comply with all relevant safety procedures and any reasonable directions with regard to site safety that may be issued by or on behalf of the Project Co Representative from time to time; and
  - (iii) if required by Project Co, be accompanied by a representative of Project Co or a Project Co Party.

### **20.2 Increased Monitoring**

- (a) If, at any stage, WGH is of the opinion, acting reasonably, that there are defects in the Works or that Project Co has failed to comply, in any material respect, with the requirements of this Project Agreement (including the Technical Requirements, the Project Co Proposal Extracts and the Quality Plans), WGH may, without prejudice to any other right or remedy available to it, by notice to Project Co, increase the level of monitoring of Project Co from that set out in this Project Agreement to such level as WGH considers reasonable taking into account the nature of the relevant defect or failure until such time as Project Co shall have demonstrated, to WGH's satisfaction, that it is capable of performing and will perform, in all material respects, its obligations related to the Works under this Project Agreement. Project Co will compensate WGH for any reasonable costs incurred as a result of such increased monitoring.

### **20.3 Right to Open Up**

- (a) WGH and the Architect of Record shall have the right, at any time prior to the Final Completion Date, to request Project Co to open up and inspect (or allow WGH or the Architect of Record, as applicable, to inspect) any part or parts of the Works, or to require testing of any part or parts of the Works, where WGH or the Architect of Record, as applicable, reasonably believes that such part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement



(including the Technical Requirements, the Project Co Proposal Extracts and the Quality Plans) relevant to such part or parts of the Works, and Project Co shall comply with such request. When WGH makes such a request, WGH shall include reasonably detailed reasons with such request.

- (b) If the inspection shows that the relevant part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Technical Requirements, the Project Co Proposal Extracts and the Quality Plans) relevant to such part or parts of the Works, Project Co shall rectify all such defects and non-compliance diligently and at no cost to WGH and Project Co shall not be entitled to any additional compensation or extension of time in relation thereto.
- (c) If the inspection shows that the relevant part or parts of the Works is or are not defective and that Project Co has complied with the requirements of this Project Agreement (including the Technical Requirements, the Project Co Proposal Extracts and the Quality Plans) relevant to such part or parts of the Works, the exercise by WGH or the Architect of Record, as applicable, of its rights pursuant to this Section 20.3 shall, subject to and in accordance with Section 39, be treated as a Delay Event and, subject to and in accordance with Section 40, be treated as a Compensation Event.

#### **20.4 No Relief from Obligations**

- (a) The Parties acknowledge that the exercise by WGH or the WGH Representative or the Architect of Record of the rights under this Section 20 shall in no way affect the obligations of Project Co under this Project Agreement except as set out in this Section 20.

### **21. WORKS SCHEDULE AND WORKS REPORT**

#### **21.1 Completion of Works**

- (a) Project Co shall complete the Works in accordance with this Project Agreement and achieve:
  - (i) Substantial Completion by the Scheduled Substantial Completion Date; and
  - (ii) Final Completion by the Scheduled Final Completion Date.

#### **21.2 The Works Schedule**

- (a) Within 45 days after the date of Financial Close, Project Co shall prepare and submit to WGH and the Independent Certifier a detailed, computerized draft schedule using a critical path method network that supports the completion of the Works in accordance with Section 21.1, which shall be based on software compatible to the software utilized by the Architect of Record.

- (b) WGH shall provide Project Co with comments on the draft schedule in accordance with Schedule 10 - Review Procedure, and Project Co shall revise the draft schedule to the extent required by Schedule 10 - Review Procedure within 30 days of receipt of any comments from WGH.
- (c) When agreed by the Parties, the draft schedule shall become the Works Schedule.
- (d) The Works Schedule shall be prepared in accordance with Good Industry Practice for a large complex project and shall be in sufficient detail so as to enable the WGH Representative and the Architect of Record and, if applicable, the Independent Certifier, to monitor the progress of the Works, including all commissioning activities, and the likely future progress of the Works. Given the size and complexity of the Project, the Works Schedule shall include no fewer than 1,000 activities.
- (e) Without limiting the generality of Section 21.2(d), the Works Schedule shall, at a minimum, include:
  - (i) major milestone events;
  - (ii) the dates that key decisions must be made by WGH to support the progress of the Works;
  - (iii) a detailed and editable procurement, delivery, installation, training and commissioning schedule for all Equipment, including Equipment to be procured or transferred by WGH and Equipment related to the IT system and wireless backbone and including Equipment to be procured and transferred by WGH in accordance with the Equipment Procurement and Installation Sub-Plan, provided that the Works Schedule shall provide that all Equipment marked as "O/O" (Owner Supplied/Owner Installed) on Schedule 21 – Equipment List, may be moved and installed at the Facility either before or after Substantial Completion on dates agreed by WGH, in its sole discretion and provided that all O/V Equipment and O/C Equipment shall be decommissioned, transferred, installed and commissioned (as applicable) in accordance with the timelines determined in accordance with Section 22;
  - (iv) all design related activities;
  - (v) all construction activities, including subcontract work and cash allowance work, both on and off the Site;
  - (vi) all procurement activities undertaken by the Construction Contractor with respect to materials and equipment, including timelines for shop drawings, manufacturing periods and dates of delivery to the Site;
  - (vii) all Project Co Commissioning and Hospital Commissioning activities;
  - (viii) a detailed plan for the Transition;

- (ix) the manpower requirements for each activity, including subcontract work;
- (x) a manpower histogram, both overall and by trade;
- (xi) a cumulative "S"-curve showing planned percent completion for each month from the commencement of the Works until the Scheduled Final Completion Date;
- (xii) projected Construction Contract cash flows; and
- (xiii) the dates for each Works Submittal.

### 21.3 Failure to Maintain Schedule

- (a) Without limiting any other provision of this Project Agreement but subject to Section 39, if, at any time:
  - (i) the actual progress of the Works has significantly fallen behind the Works Schedule; or
  - (ii) WGH is of the opinion that:
    - (A) the actual progress of the Works has significantly fallen behind the Works Schedule; or
    - (B) Project Co will not achieve Substantial Completion by the Longstop Date,

Project Co shall be required:

  - (iii) within 5 Business Days of receipt of notice from WGH, to produce and deliver to each of the WGH Representative and the Independent Certifier:
    - (A) a report identifying the reasons for the delay; and
    - (B) a plan showing the steps that are to be taken by Project Co to eliminate or reduce the delay to:
      - (i) achieve Substantial Completion by the Scheduled Substantial Completion Date; or
      - (ii) if Substantial Completion will not be achieved by the Scheduled Substantial Completion Date, achieve Substantial Completion by the Longstop Date; and
  - (iv) to bring the progress of the Works back on schedule in accordance with the plan delivered under Section 21.3(a)(iii)(B) and approved by the WGH Representative.
- (b) Project Co shall notify the WGH Representative if, at any time, the actual progress of the Works is significantly ahead of the Works Schedule.

#### 21.4 Notification of Early Substantial Completion

- (a) Unless Project Co obtains the prior written consent of WGH, in its sole discretion, Project Co shall not be entitled to the Substantial Completion Certificate prior to, and the Substantial Completion Date and Payment Commencement Date shall not be earlier than, the Scheduled Substantial Completion Date.
- (b) If Project Co advises WGH that it expects to be able to achieve Substantial Completion prior to the Scheduled Substantial Completion Date, the WGH Representative shall be entitled to require Project Co to produce and submit to the WGH Representative a revised Works Schedule showing the manner and the periods in which the Works shall be performed and what the revised date for Substantial Completion would be so as to enable WGH to consider at its sole discretion:
  - (i) whether to agree to an earlier Scheduled Substantial Completion Date; and
  - (ii) what modifications, if any, shall be required to this Project Agreement in order to accommodate such earlier Scheduled Substantial Completion Date.

#### 21.5 Works Report

- (a) Project Co shall continuously monitor the progress of the Works in relation to the Works Schedule and, within 15 Business Days following the end of each calendar month from Financial Close until the Final Completion Date, Project Co shall provide to the WGH Representative, the Architect of Record and the Independent Certifier a works report (each, a "**Works Report**"), which will include:
  - (i) an executive summary describing the general status of the Works and progress made over the relevant month;
  - (ii) an updated Works Schedule, in both summary and detailed formats;
  - (iii) a narrative description of any Disputes related to the Works, including any action that has taken place over the relevant month to resolve such Disputes;
  - (iv) in accordance with Section 23.3, a LEED progress report; and
  - (v) an update on those matters set out in Schedule 36 – Works Report Requirements,all in form and substance satisfactory to WGH, acting reasonably. For greater certainty, the continuity of the critical path method network must be maintained for all updates and revisions to the Works Schedule.
- (b) Project Co shall use, and shall ensure that the Construction Contractor uses, the project management software system specified by WGH.

## 22. EQUIPMENT

### 22.1 Equipment Steering Committee

- (a) The Parties shall, within 30 days after the date of this Project Agreement, establish an equipment subcommittee of the Works Committee (the "**Equipment Steering Committee**") consisting of 3 representatives of each Party.
- (b) The Equipment Steering Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Equipment.
- (c) The primary role of the Equipment Steering Committee shall be to oversee and coordinate the procurement, installation and commissioning of all O/V Equipment and O/C Equipment in a timely and efficient manner and in accordance with the Works Schedule and the Equipment Procurement and Installation Sub-Plan. Project Co and the Equipment Steering Committee will work co-operatively with any equipment consultant retained by WGH.
- (d) The Equipment Steering Committee shall be responsible for receiving and reviewing all matters related to the O/V Equipment and O/C Equipment and shall make recommendations to the Works Committee, which the Works Committee may accept or reject in their sole discretion.
- (e) The members of the Equipment Steering Committee may adopt such procedures and practices for the conduct of the activities of the Equipment Steering Committee as they consider appropriate from time to time.

### 22.2 Project Co Equipment Responsibilities

#### 22.2.1 Owner Supplied/Contractor Installed Equipment

##### (a) Owner Supplied/Contractor Installed – New Equipment

- (A) Project Co shall be responsible for the following in respect of Equipment listed together as "O/C" (Owner Supplied/Contractor Installed), "New", "Replace" or "Future New", "H" under the heading "Procure/Move" and "P" under the heading "Maintain" in Schedule 21 – Equipment List (the "**O/C Category 1 New Equipment**"):
  - (i) the receipt and inspection at the new Facility of all O/C Category 1 New Equipment;
  - (ii) the installation at the new Facility of all O/C Category 1 New Equipment in accordance with manufacturer's instructions;
  - (iii) the ongoing maintenance, repair and replacement of all O/C Category 1 New Equipment in accordance with the requirements set forth in Schedule

15 – Output Specifications, the Lifecycle Replacement Schedule and Schedule 24 – Expiry Transition Procedure; and

- (iv) providing WGH with a timeline for delivery by WGH of O/C Category 1 New Equipment to the new Facility, which timeline shall be agreed to by WGH in its sole discretion, provided that all such Category 1 New Equipment shall be installed at the new Facility prior to Substantial Completion.

(B) Project Co shall be responsible for the following in respect of Equipment listed together as "O/C" (Owner Supplied/Contractor Installed), "New", "Replace" or "Future New", "P" under the heading "Procure/Move" and "H" under the heading "Maintain" in Schedule 21 – Equipment List (the "**O/C Category 2 New Equipment**"):

- (i) procuring, on behalf of WGH, the purchase of all O/C Category 2 New Equipment in accordance with Section 22.3;
- (ii) the receipt and inspection at the new Facility of all O/C Category 2 New Equipment;
- (iii) the installation at the new Facility of all O/C Category 2 New Equipment in accordance with manufacturer's instructions; and
- (iv) the commissioning at the new Facility of all O/C Category 2 New Equipment in accordance with manufacturer's instructions and in accordance with the Final Commissioning Program.

(b) **Owner Supplied/Contractor Installed – Existing Equipment**

(A) Project Co shall be responsible for the following in respect of Equipment listed together as "O/C" (Owner Supplied/Contractor Installed), "Exist", "P" under the heading "Procure/Move" and "H" under the heading "Maintain" in Schedule 21 – Equipment List (the "**O/C Category 1 Existing Equipment**"):

- (i) the inspection at the Existing Facilities of all O/C Category 1 Existing Equipment and the receipt and inspection at new Facility of all such O/C Category 1 Existing Equipment;
- (ii) the decommissioning, deinstallation, disconnection and dismantling at the Existing Facilities of all O/C Category 1 Existing Equipment;
- (iii) the transfer of all O/C Category 1 Existing Equipment from the Existing Facilities to the new Facility in accordance with the Works Schedule and the Final Commissioning Program and advising WGH regarding any construction issues, timelines and related matters in respect of the transfer;

- (iv) the installation at the new Facility of all O/C Category 1 Existing Equipment in accordance with manufacturer's instructions;
  - (v) the commissioning at the new Facility of all O/C Category 1 Existing Equipment in accordance with manufacturer's instructions and in accordance with the Final Commissioning Program; and
  - (vi) coordinating and performing the transport, disconnection and reconnection of mechanical and electrical services to and installing or reinstalling, as applicable, at the new Facility and in accordance with manufacturer's instructions, all O/C Category 1 Existing Equipment.
- (B) Project Co shall be responsible for the following in respect of Equipment listed together as "O/C" (Owner Supplied/Contractor Installed), "Exist", "P" under the heading "Procure/Move" and "P" under the heading "Maintain" in Schedule 21 – Equipment List (the "**O/C Category 2 Existing Equipment**"):
- (i) the inspection at the Existing Facilities of all O/C Category 2 Existing Equipment and the receipt and inspection at the new Facility of all such O/C Category 2 Existing Equipment;
  - (ii) the decommissioning , deinstallation, disconnection and dismantling at the Existing Facilities of all O/C Category 2 Existing Equipment;
  - (iii) the transfer of all O/C Category 2 Existing Equipment from the Existing Facilities to the new Facility in accordance with the Works Schedule and the Final Commissioning Program and advising WGH regarding any construction issues, timelines and related matters in respect of the transfer. Any contract entered into by Project Co for the move of O/C Category 2 Existing Equipment shall be subject to the prior approval of WGH;
  - (iv) the installation at the new Facility of all O/C Category 2 Existing Equipment in accordance with manufacturer's instructions;
  - (v) the commissioning at the new Facility of all O/C Category 2 Existing Equipment in accordance with manufacturer's instructions and in accordance with the Final Commissioning Program;
  - (vi) coordinating and performing the transport, disconnection and reconnection of mechanical and electrical services to and installation or reinstallation, as applicable, at the new Facility and in accordance with manufacturer's instructions, all O/C Category 2 Existing Equipment; and
  - (vii) the ongoing maintenance, repair and replacement of all O/C Category 2 Existing Equipment in accordance with the requirements set forth in Schedule 15 – Output Specifications, the Lifecycle Replacement Schedule and Schedule 24 – Expiry Transition Procedure.

**22.2.2 Owner Supplied/Vendor Installed Equipment****(a) Owner Supplied/Vendor Installed – New Equipment**

- (A) Project Co shall be responsible for the following in respect of Equipment listed together as "O/V" (Owner Supplied/Vendor Installed), "New", "Replace" or "Future New", "P" under the heading "Procure/Move" and "P" under the heading "Maintain" in Schedule 21 – Equipment List (the "**O/V Category 1 New Equipment**"):
- (i) procuring, on behalf of WGH, the purchase of all O/V Category 1 New Equipment in accordance with Section 22.3;
  - (ii) the installation at the new Facility of all O/V Category 1 New Equipment in accordance with manufacturer's instructions;
  - (iii) the commissioning at the new Facility of all O/V Category 1 New Equipment in accordance with manufacturer's instructions and the Final Commissioning Program; and
  - (iv) the ongoing maintenance, repair and replacement of all O/V Category 1 New Equipment in accordance with the requirements set forth in Schedule 15 – Output Specifications, the Lifecycle Replacement Schedule and Schedule 24 - Expiry Transition Procedure.
- (B) Project Co shall be responsible for the following in respect of Equipment listed together as "O/V" (Owner Supplied/Vendor Installed), "New", "Replacement" or "Future New", "P" under the heading "Procure/Move" and "H" under the heading "Maintain" in Schedule 21 – Equipment List (the "**O/V Category 2 New Equipment**"):
- (i) procuring, on behalf of WGH, the purchase of all O/V Category 2 New Equipment in accordance with Section 22.3;
  - (ii) providing each equipment vendor/supplier of the O/V Category 2 New Equipment with all necessary assistance to facilitate final connections of O/V Category 2 New Equipment at the new Facility in order to enable each such vendor/supplier to commission such O/V Category 2 New Equipment in accordance with manufacturer's instructions and the Final Commissioning Program;
  - (iii) procuring, on behalf of WGH, and in accordance with Section 22.3, all contracts with the applicable equipment vendor/supplier of the O/V Category 2 New Equipment for the following services to be provided by each vendor/supplier of O/V Category 2 New Equipment: (A) the installation at the new Facility (in accordance with manufacturer's instructions) of all O/V Category 2 New Equipment; (B) the



commissioning of all O/V Category 2 New Equipment at the new Facility in accordance with manufacturer's instructions and the Final Commissioning Program; and (C) the training of WGH staff and Project Co staff in the proper operation and maintenance of all O/V Category 2 New Equipment at the new Facility; and

- (iv) managing and coordinating all services provided by third party vendors/contractors retained by WGH as more particularly described in Section 22.2.2(a)(B)(iii) above.

(b) **Owner Supplied/Vendor Installed – Existing Equipment**

(A) Project Co shall be responsible for the following in respect of Equipment listed together as "O/V" (Owner Supplied/Vendor Installed), "Exist", "P" under the heading "Procure/Move" and "H" under the heading "Maintain" in Schedule 21 – Equipment List (the "**O/V Category 1 Existing Equipment**"):

- (i) providing each third party vendor/contractor retained by WGH to commission the O/V Category 1 Existing Equipment with all necessary assistance to facilitate final connections of O/V Category 1 Existing Equipment at the new Facility in order to enable each such vendor/contractor to commission such O/V Category 1 Existing Equipment in accordance with manufacturer's instructions and the Final Commissioning Program;
- (ii) procuring, on behalf of WGH and in accordance with Section 22.3, all contracts with third party contractors/vendors for the following services to be provided in respect of all O/V Category 1 Existing Equipment: (A) the inspection at the Existing Facilities of all O/V Category 1 Existing Equipment and the receipt and inspection at the new Facility of all such O/V Category 1 Existing Equipment; (B) the decommissioning, deinstallation, dismantling and disconnection at the Existing Facilities of all O/V Category 1 Existing Equipment; (C) the transfer of all O/V Category 1 Existing Equipment from the Existing Facilities to the new Facility; (D) the installation at the new Facility (in accordance with manufacturer's instructions) of all O/V Category 1 Existing Equipment; (E) the commissioning at the new Facility of all O/V Category 1 Existing Equipment in accordance with manufacturer's instructions and the Final Commissioning Program; and (F) the disconnection and reconnection of mechanical and electrical services to all O/V Category 1 Existing Equipment and the reconnection and reinstallation of such O/V Category 1 Existing Equipment at the new Facility in accordance with manufacturer's instructions; and

- (iii) managing and coordinating all services provided by third party vendors/contractors retained by WGH as more particularly described in Section 22.2.2(b)(A)(ii) above.
- (B) Project Co shall be responsible for the following in respect of Equipment listed together as "O/V" (Owner Supplied/Vendor Installed), "Exist", "P" under the heading "Procure/Move" and "P" under the heading "Maintain" in Schedule 21 – Equipment List (the "**O/V Category 2 Existing Equipment**"):
- (i) providing each third party vendor/contractor retained by Project Co to commission the O/V Category 2 Existing Equipment with all necessary assistance to facilitate final connections of O/V Category 2 Existing Equipment at the new Facility in order to enable each vendor/contractor to commission such O/V Category 2 Existing Equipment in accordance with manufacturer's instructions and the Final Commissioning Program;
  - (ii) arranging, coordinating, managing and entering into all contracts for each of the following services to be provided by the vendor(s) of the O/V Category 2 Existing Equipment: (A) the inspection at the Existing Facilities of all O/V Category 2 Existing Equipment and the receipt at the new Facility of all such O/V Category 2 Existing Equipment; (B) the decommissioning, deinstalling, dismantling and disconnection at the Existing Facilities of all O/V Category 2 Existing Equipment; (C) the transfer of all O/V Category 2 Existing Equipment from the Existing Facilities to the new Facility; (D) the installation at the new Facility of all O/V Category 2 Existing Equipment; (E) the commissioning at the new Facility of the O/V Category 2 Existing Equipment in accordance with manufacturer's instructions and the Final Commissioning Program; and (F) the disconnection and reconnection of mechanical and electrical services to all O/V Category 2 Existing Equipment and the reconnection and reinstallation of such O/V Category 2 Existing Equipment at the new Facility in accordance with manufacturer's instructions. Project Co and not WGH, shall be liable as "purchaser" to the third party vendors/contractors under every contract related to the foregoing services, and Project Co shall make all payments related thereto in accordance with the relevant invoice/contract terms. Project Co shall ensure performance by each vendor of such vendor's obligations under each such contract, and if a vendor fails to perform the services set forth in this Section 22.2.2(b)(B)(ii), Project Co shall perform or cause to be performed each such obligation; and
  - (iii) the ongoing maintenance, repair and replacement of all O/V Category 2 Existing Equipment in accordance with the requirements set forth in Schedule 15 - Output Specifications, the Lifecycle Replacement Schedule and Schedule 24 - Expiry Transition Procedure.

### 22.2.3 General Equipment Responsibilities

- (a) WGH will be responsible for determining the make, model, vendor, quantities and any terms and conditions of financing of the O/C Category 2 New Equipment, O/V Category 1 New Equipment and the O/V Category 2 New Equipment based upon tenders, quotations or proposals obtained by Project Co in accordance with this Section 22.
- (b) WGH will enter into all purchase orders or contracts with respect to (i) the purchase of all O/C Category 1 New Equipment, O/C Category 2 New Equipment, O/V Category 1 New Equipment and O/V Category 2 New Equipment; (ii) the decommissioning, dismantling, disconnecting and deinstallation at the Existing Facilities, the move, receipt and inspection, and installation and commissioning at the new Facility of O/V Category 1 Existing Equipment by the applicable third party contractors entering into service contracts with WGH to provide such services; and (iii) the maintenance contracts with equipment vendors/suppliers and/or third party contractors, as applicable in respect of the maintenance and repair of O/C Category 2 New Equipment, O/C Category 1 Existing Equipment, O/V Category 2 New Equipment and O/V Category 1 Existing Equipment. For greater certainty, WGH and not Project Co, shall be liable as "purchaser" to the vendor under each such purchase order or contract for Equipment described in the immediately preceding sentence, and shall make all payments related thereto in accordance with the relevant invoice/contract terms. Project Co shall enter into all other purchase orders or contracts (as applicable) in respect of its obligations under this Article 22, and Project Co, and not WGH, shall be liable as "purchaser" under each such purchase order or contract in respect of the foregoing, and shall make all payments related thereto in accordance with the relevant invoice/contract terms.
- (c) Project Co shall, in accordance with the Existing Design, provide mechanical and electrical rough-ins for and mechanical and electrical services to all Equipment at the Facility. Any modifications required to the Existing Design in respect of Equipment installation will be paid for utilizing the associated cash allowance as more particularly described in the requirements set forth in the Technical Requirements.
- (d) Project Co shall be responsible for handling and storing all O/V Equipment and O/C Equipment at the new Facility both prior to and after Substantial Completion. If Substantial Completion does not occur on or before the Scheduled Substantial Completion Date as a result of a delay in the performance of any of its obligations by Project Co, Project Co shall be responsible for the storage of all Equipment delivered to the Facility on and after the Scheduled Substantial Completion Date until Substantial Completion is achieved. Project Co shall be responsible for identifying changes to the agreed upon delivery timelines and notifying WGH regarding same, and shall be responsible for all storage, unloading or re-delivery costs if WGH is unable to modify its supplier agreements in respect of delivery dates of Equipment.
- (e) Project Co shall be responsible for coordinating and finalizing the plan and schedule for (a) the decommissioning, dismantling and disconnection at the Existing Facilities of all Existing Equipment (other than Equipment marked as "O/O" (Owner Supplied/Owner

Installed) on Schedule 21 – Equipment List) and for the transfer and delivery of such Equipment to the new Facility, and (b) the procurement, inspection, receipt and possession, installation and commissioning of all O/V Equipment and all O/C Equipment, as applicable, at the new Facility. Project Co shall (i) coordinate with WGH and all suppliers and vendors of O/V Equipment and O/C Equipment the transfer of and delivery dates of all O/V Equipment and O/C Equipment to the new Facility, and (ii) coordinate with WGH and all suppliers, vendors and third party contractors providing services in respect of O/V Equipment and O/C Equipment, the dates of decommissioning, dismantling and disconnection at the Existing Facilities, the transfer and delivery from the Existing Facilities to the new Facility, and the inspection, receipt, possession, installation and commissioning, as applicable, at the new Facility of all O/V Equipment and O/C Equipment, in each case, in accordance with the Works Schedule, the Equipment Procurement and Installation Sub-Plan and the Final Commissioning Program. Project Co shall provide periodic reports thereon to the Equipment Steering Committee. For certainty, the requirements of Project Co in this Section 22.2.3(e) are coordinating, planning and scheduling responsibilities only.

### **22.3 Project Co Procurement Responsibilities**

- (a) Project Co will act as purchasing and procurement manager and will provide the following services:
- (i) in consultation with the Equipment Steering Committee establish procurement processes that are fair, open and competitive, all in accordance with any applicable Hospital Policy and good purchasing and procurement practices;
  - (ii) comply with such procurement processes;
  - (iii) in consultation with the Equipment Steering Committee, prepare the Equipment RFP which shall be in form and substance satisfactory to WGH and be provided in accordance with this Section 22;
  - (iv) manage the procurement of all O/C Category 2 New Equipment, O/V Category 1 New Equipment and O/V Category 2 New Equipment and manage the procurement of equipment services contracts for all O/V Category 2 New Equipment (in respect of the services described in Section 22.2.2(a)(B)(iii)) and O/V Category 1 Existing Equipment (in respect of the services described in Section 22.2.2(b)(A)(ii)), in each case as required in this Section 22, and including, in each case, (a) providing advice to WGH in respect of the evaluation of tenders, quotations or proposals from Equipment vendors/service providers in respect of each such category of Equipment, (b) assisting WGH with the selection of tenders, quotations or proposals from Equipment vendors and other contractors of services in respect of each such category of Equipment and the entering into by WGH of purchase orders and such other legal documentation as is necessary for WGH to purchase the Equipment and/or to enter into contracts with vendors/contractors for services in respect of such Equipment (as described in this

- Section 22), and (c) providing such documentation as WGH requires, acting reasonably, to discharge its obligations under this Section 22;
- (v) supervise delivery of all O/C Category 2 New Equipment, O/V Category 1 New Equipment and O/V Category 2 New Equipment in accordance with this Section 22 and provide periodic reports thereon to the Equipment Steering Committee;
  - (vi) act as a single point of contact in accordance with the Equipment RFP for all vendors of O/C Category 2 New Equipment, O/V Category 1 New Equipment and O/V Category 2 New Equipment and for all vendors/contractors of services in respect of the procurement by Project Co of equipment services contracts for WGH (as required pursuant to Section 22.2.2) in respect of O/V Category 2 New Equipment and O/V Category 1 Existing Equipment;
  - (vii) in consultation with WGH, finalize the list of O/C Category 2 New Equipment, O/V Category 1 New Equipment and O/V Category 2 New Equipment based on the latest information available to WGH; and
  - (viii) such other duties and responsibilities as set out in this Section 22.
- (b) Based on the tenders, quotations and proposals received from Equipment vendors, suppliers and/or contractors, Project Co shall make recommendations to WGH for the procurement of each item of O/C Category 2 New Equipment, O/V Category 1 New Equipment and O/V Category 2 New Equipment and for the procurement of equipment service contracts for each item of O/V Category 2 New Equipment (in respect of the services described in Section 22.2.2(a)(B)(iii)) and O/V Category 1 Existing Equipment (in respect of the services described in Section 22.2.2(b)(A)(ii)). Each such recommendation shall include the following information:
- (i) item description, item number, and quantities;
  - (ii) the manufacturer, model number, vendor, specifications and options for the item;
  - (iii) in respect of procurement of new Equipment only, an analysis of the effect of the items on the overall design of the Facility and the relevant areas within the Facility, as well as the ability to install and commission such Equipment at the Facility in accordance with the Existing Design;
  - (iv) in respect of procurement of new Equipment only, details of the warranties, vendor installation, service agreements, training, supplies, spare parts and start-up consumables included with the items by the relevant manufacturer or vendor;
  - (v) details of training for all applicable WGH staff and Project Co staff;
  - (vi) Equipment acceptance testing procedures (including, without limitation, the results and guidelines for acceptance) proposed by the relevant Equipment vendor and/or contractor for Equipment services;

- (vii) in respect of procurement of new Equipment only, the dates and times when the items shall be delivered to the Site;
  - (viii) in respect of procurement of contracts for equipment services, the dates and times when the services will be provided;
  - (ix) all costs, with a breakdown of applicable GST and RST and net of all direct or indirect discounts, rebates, refunds, chargebacks, credits, price adjustments or any other allowances obtained across all categories of Equipment required to be procured by Project Co that effectively reduce the net selling price of such Equipment;
  - (x) the total amounts and timing of cash flows required to implement the recommendation and the full details of the calculation of such amounts;
  - (xi) whether the procurement is a purchase, a lease, part of a managed equipment program, based on usage pricing or any other arrangement, and the terms and timing of payments thereof;
  - (xii) any Taxes applicable to the items;
  - (xiii) a copy of each quote or proposal and all other relevant information in respect of the items and in respect of each Equipment service contract and such other documentation as WGH may reasonably require, all of which shall be provided on a fully transparent and open basis to WGH; and
  - (xiv) if no tenders, quotations and proposals are available or have been received by Project Co, an alternate recommended course of action for procurement by Project Co, including possible substitutes for such items.
- (c) In response to any recommendation made by Project Co in accordance with Section 22.3(b), WGH may do any of the following with respect of some or all of the items:
- (i) instruct Project Co to proceed with the procurement of any or all of the O/C Category 2 New Equipment, O/V Category 1 New Equipment and/or O/V Category 2 New Equipment, using purchase orders and/or contracts acceptable to WGH, in its sole discretion;
  - (ii) instruct Project Co to proceed with the procurement of the contracts for equipment services in respect of any or all of the O/V Category 2 New Equipment and/or O/V Category 1 Existing Equipment, using purchase orders and/or contracts acceptable to WGH, in its sole discretion;
  - (iii) withdraw the requirement for Project Co to proceed with the procurement of any or all of O/C Category 2 New Equipment, O/V Category 1 New Equipment and/or O/V Category 2 New Equipment;

- (iv) withdraw the requirement for Project Co to proceed with the procurement of equipment services contracts for any or all of the O/V Category 2 New Equipment and O/V Category 1 Existing Equipment;
  - (v) increase or decrease the quantities of any item, require the procurement of other items in substitution for such items or otherwise change the items to be procured or the terms on which such items are to be procured;
  - (vi) increase or decrease the quantities of any item subject to the equipment services contracts, require applicable services to be provided for other items in substitution of such items or otherwise change the items which are subject to the equipment services contract or the terms on which such contracts are to be provided;
  - (vii) reject any vendor/supplier of O/C Category 2 New Equipment, O/V Category 1 New Equipment and/or O/V Category 2 New Equipment or any item; or
  - (viii) reject any contractor of equipment services for O/V Category 2 New Equipment and/or O/V Category 1 Existing Equipment or any item.
- (d) Project Co shall provide to WGH, as soon as reasonably practicable following a request therefor, such additional information as WGH may require in respect of any recommendation made by Project Co in accordance with Section 22.3(b).

#### **22.4 Inter-face Layout and Final Hook-Up**

- (a) WGH will provide general equipment requirements suitable for tender to Project Co for inclusion in the Equipment RFP. The Equipment RFP will include the inter-face layout of any necessary mechanical, electrical, structural or spatial requirements for the Equipment as set out in the Existing Design for review and acceptance by the Equipment vendor. If a selected Equipment vendor, Project Co or any of the Design Consultants indicate that any modifications are required to such elements of the Existing Design to accommodate the vendor's Equipment then the Design Consultants will issue an instruction on how the modifications are to be addressed which will be either as a cash allowance disbursement in accordance with the cash allowance provisions set forth in the Technical Requirements or through a Variation in accordance with Schedule 22 – Variation Procedure.

#### **22.5 Maintenance of Equipment**

- (a) The Dialysis RO Water system specified in the Existing Design and the Technical Requirements will be maintained by WGH staff for patient safety and departmental operation requirements. As more particularly described in the Existing Design, Project Co shall be responsible for the maintenance of services entering to and from all Dialysis RO Water system equipment identified in the Existing Design and the Technical Requirements.

**22.6 Substitutions of Equipment by Project Co**

- (a) Project Co shall not make any substitutions of any O/V Equipment or O/C Equipment without the prior written consent of WGH, which consent may be withheld by WGH in its sole discretion. Project Co shall provide WGH with sufficient information to allow WGH to determine whether the proposed substitute is at least equivalent to the item it is to replace and the impact of such substitution on the Works Schedule. This Section 22.6 shall not limit any other restrictions on substitutions of O/V Equipment and/or O/C Equipment under this Project Agreement.

**22.7 Standards for Equipment**

- (a) Without limiting the generality of Section 22.3, Project Co shall ensure that all purchase orders or other legal documentation for the purchase of Equipment to be procured by Project Co pursuant to Section 22.3 shall require that such Equipment be:
- (i) new and undamaged;
  - (ii) in compliance with all Applicable Law and in compliance with all standards applicable to such Equipment (including, without limitation, Canadian Standards Association standards and Technical Standards and Safety Authority Standards); and
  - (iii) delivered and installed in accordance with the Works Schedule and the Equipment Procurement and Installation Sub-Plan, as more particularly dealt with in Sections 22.7(d) and 22.10.

In addition, the purchase orders or other legal documentation for the purchase of such Equipment and the procurement of equipment services contracts shall also contain provisions requiring the vendors, contractors and/or service providers of such Equipment to comply with the Occupational Health and Safety or requirements of Project Co, as identified by Project Co to each such vendor, contractor, and/or service provider prior to the preparation by Project Co of the purchase orders or other legal documentation in respect of such Equipment.

- (b) Without limiting the generality of Section 22.3, Project Co shall ensure that all equipment services contracts that Project Co procures for WGH in accordance with Section 22.3 shall provide that such services shall be delivered in accordance with the Works Schedule and the Equipment Procurement and Installation Sub-Plan, as more particularly dealt with in Sections 22.7(d) and 22.10.
- (c) Project Co shall, as soon as practicable after receiving a request from the WGH Representative, supply to the WGH Representative evidence to demonstrate its compliance with this Section 22.7(a) and with Section 22.7(b).
- (d) The Works Schedule, the Final Commissioning Program and the Equipment Procurement and Installation Sub-Plan shall reflect the following: (i) all O/C Category 1 New



Equipment and all O/V Category 1 New Equipment shall be installed, commissioned and functional at the new Facility prior to the Substantial Completion Date on the dates agreed in accordance with the consultation process set forth in Section 22.10(a); (ii) all O/C Category 2 New Equipment shall be installed, commissioned and functional at the new Facility after the Substantial Completion Date but prior to full occupancy of the new Facility by WGH on the dates agreed to by WGH in the Equipment Procurement and Installation Sub-Plan; (iii) all O/C Category 1 Existing Equipment, O/C Category 2 Existing Equipment, O/V Category 1 Existing Equipment and O/V Category 2 Existing Equipment shall be decommissioned at the Existing Facilities and transferred, installed, commissioned and functional at the new Facility after the Substantial Completion Date but prior to full occupancy of the new Facility by WGH on the dates agreed to by WGH in the Equipment Procurement and Installation Sub-Plan; and (iv) all O/V Category 2 New Pre-Substantial Completion Equipment shall be installed, commissioned and functional at the new Facility prior to the Substantial Completion Date, and all other O/V Category 2 New Equipment shall be installed, commissioned and functional at the new Facility after the Substantial Completion Date and prior to full occupancy of the new Facility by WGH, in each case, on the dates agreed to by WGH in the Equipment Procurement and Installation Sub-Plan, in each case in accordance with the requirements set forth in the Final Commissioning Program. For certainty, the Works Schedule shall incorporate the timing of decommissioning, installation, commissioning of all O/V Equipment and O/C Equipment as determined in accordance with this Section 22.7(d) and as determined in accordance with Section 22.10(a).

- (e) WGH may, notwithstanding the provisions of the Works Schedule, the Equipment Procurement and Installation Sub-Plan and the Final Commissioning Program permit any or all O/C Category 1 New Equipment, O/V Category 1 New Equipment and O/V Category 2 New Pre-Substantial Completion Equipment to be installed and commissioned at the new Facility after Substantial Completion on the dates determined by the Equipment Steering Committee. Any delay in the installation and commissioning of such Equipment which has been requested by WGH shall, subject to and in accordance with Schedule 22 – Variations Procedure, entitle Project Co to a Variation to the extent such delay materially adversely affects the Works Schedule resulting in increased Direct Costs to Project Co.

## **22.8 Minimizing Disruptions**

- (a) Project Co shall perform all repair and maintenance of the Schedule 21 Maintenance and Replacement Equipment so as to minimize, to the greatest extent reasonably possible, any disruption of the Project Operations or the performance of the Hospital Services or any additional costs to WGH. Project Co acknowledges and agrees that such activities may require work outside of normal working hours in order to accommodate the efficient operation of the Facility.

**22.9 Training**

- (a) For and in respect of each item of Equipment procured by Project Co and operated by WGH which requires applicable WGH staff to be trained in its proper operation and/or maintenance, Project Co shall, in accordance with the Equipment RFP, ensure that the purchase orders (or other legal documentation for the purchase of such Equipment) require that the vendors of such Equipment shall provide or, at vendor's cost, arrange for adequate, appropriate and timely training in the item's proper operation and maintenance for all applicable WGH staff and Project Co staff.
- (b) WGH is responsible for making staff available for training purposes in accordance with the schedule incorporated in the Final Commissioning Program and the Works Schedule. Project Co shall be responsible to coordinate such training and for ensuring the schedule addresses the time periods required for such training all as set out in the Technical Requirements and the Final Commissioning Program but Project Co shall not be responsible for any delay resulting from the failure of WGH to have staff available for training in accordance with such schedule nor for the unavailability of training personnel to be supplied by the respective Equipment vendors in accordance with Section 22.9(a).

**22.10 Scheduling of Equipment Procurement, Installation and Commissioning**

- (a) Project Co shall, in consultation with WGH and subject to the dates for decommissioning, transfer, installation and commissioning at the new Facility of O/C Category 1 Existing Equipment, O/C Category 2 Existing Equipment, O/V Category 1 Existing Equipment and O/V Category 2 Existing Equipment as determined by WGH and Project Co in the Equipment Procurement and Installation Sub-Plan, prepare a schedule for the procurement or transfer, the receipt and inspection, the installation and commissioning, and the decommissioning, deinstallation and dismantling (as applicable) of all O/C Equipment and O/V Equipment and shall incorporate the timing of same into the Works Schedule, the Final Commissioning Program and the Equipment Procurement and Installation Sub-Plan. Such schedule shall include the dates by which WGH must make a final determination of the quantity, make, model and vendor of O/C Category 2 New Equipment, O/V Category 1 New Equipment, and O/V Category 2 New Equipment. Subject to WGH's ability to defer the installation and commissioning O/V Category 1 New Equipment and O/V Category 2 New Pre-Substantial Completion Equipment until after Substantial Completion through the Equipment Steering Committee in accordance with Section 22.7(e), such dates shall not be amended without the prior consent of Project Co and WGH. Provided that WGH shall have received such documentation as WGH requires, acting reasonably, to discharge its obligations under this Section 22 no later than 30 days prior to the relevant date set out in the Works Schedule, if any delay by WGH in making a determination of the quantity, make, model and vendor of O/C Category 2 New Equipment, O/V Category 1 New Equipment and O/V Category 2 New Equipment materially adversely affects the Works Schedule and results in increased Direct Costs to Project Co, Project Co shall, be entitled to relief in any manner elected by WGH pursuant to Section 22.12(a).

- (b) The Equipment RFP (or the legal documentation for the purchase of O/C Category 2 New Equipment, O/V Category 1 New Equipment and O/V Category 2 New Equipment or for the provision of equipment services in respect of O/V Category 2 New Equipment and O/V Category 1 Existing Equipment, in each case, in accordance with this Section 22) shall include (i) in respect of O/C Category 2 New Equipment, O/V Category 1 New Equipment and O/V Category 2 New Equipment, a milestone schedule for the submission of shop drawings by the Equipment vendor to Project Co; (ii) a review period of such shop drawings by Project Co, WGH and the Design Consultants, and finalization of such shop drawings by a specified date; and (iii) the date by which the Equipment vendor or contractor of Equipment services requires access to the Facility to carry out its installation and the date for commencement of commissioning and completion of commissioning of the applicable Equipment. In addition to the requirements set forth in Section 22.7, the Equipment RFP and all purchase orders (or other legal documentation for the purchase of such Equipment) shall provide that (a) the Equipment is delivered to the location designated by Project Co; and (b) the Equipment vendor or contractor of Equipment services is liable to WGH for all direct costs incurred by WGH as a result of any delay in achieving the targeted date for completion of commissioning of such Equipment (which shall include the Direct Costs of Project Co) unless the delay resulted from the failure of Project Co or WGH to perform its obligations under the Project Agreement respecting the Works.

#### 22.11 Equipment Procurement and Relocation Fee

- (a) Whether or not Substantial Completion has been achieved, until such time as (i) all O/C Category 2 New Equipment and all O/V Category 2 New Equipment has been procured by Project Co, received and inspected at the new Facility, and installed and commissioned at the new Facility in accordance with the requirements set forth in this Section 22 (whether performed by Project Co directly or a third party vendor/supplier or contractor retained by Project Co or WGH); and (ii) all O/C Category 1 Existing Equipment, all O/C Category 2 Existing Equipment, and all O/V Category 1 Existing Equipment has been decommissioned, dismantled and disconnected at the Existing Facilities, inspected at the Existing Facilities, transferred and received at the new Facility, and installed and commissioned at the new Facility in accordance with the requirements set forth in this Section 22 (whether performed by Project Co directly or a third party contractor or vendor/supplier retained by Project Co or WGH) (items (i) and (ii) are collectively referred to herein as the "**Equipment Procurement and Relocation Services**"), WGH is not required to pay, and Project Co shall not be entitled to receive the Equipment Procurement and Relocation Fee. For greater certainty, the Equipment Procurement and Relocation Services are not covered by the Monthly Service Payment in accordance with Section 33.1, will not be covered by the Payment Mechanism set out in Section 33 of this Project Agreement and will be paid for by WGH as a separate lump sum payment in accordance with Section 33.16(b) of this Project Agreement.

## 22.12 Variations in the Event of Delay

- (a) In the event of any delay in the performance of any of its obligations by WGH under this Section 22 or any delay in the performance of any obligations by an Equipment vendor or manufacturer providing installation services under any purchase order or contract with WGH and to the extent any such delay did not result from the failure of Project Co to perform any of its obligations under this Project Agreement, including, for certainty, the purchasing and procurement services set out in this Section 22, then WGH may elect to proceed in one of the following manners:
- (i) Project Co will, subject to and in accordance with Schedule 22 – Variation Procedure be entitled to a Variation for the Direct Costs which result from such delay;
  - (ii) WGH may request Project Co to maintain the Scheduled Substantial Completion Date and will compensate Project Co for the acceleration of the Works to achieve Substantial Completion on the scheduled Substantial Completion Date and Project Co will be entitled to a Variation for the Direct Costs of such acceleration; or
  - (iii) WGH may elect to except the installation and commissioning of a particular item of equipment out of Substantial Completion provided that to the extent any such delay in the installation and commissioning of such item of equipment results in increased Direct Costs, Project Co will, subject to and in accordance with Schedule 22 – Variation Procedure, be entitled to a Variation.
- (b) In the event of any delay in the performance of any of its obligations by Project Co under this Section 22 or any delay in the performance of any obligation of an Equipment vendor, manufacturer or contractor providing services under any purchase order or contract with Project Co in respect of O/V Equipment and/or O/C Equipment, and to the extent any such delay did not result from the failure of WGH to perform any of its obligations under this Section 22 then WGH shall be entitled to, and Project Co shall reimburse WGH for all Direct Losses incurred by WGH as a result of such delay by Project Co.

## 23. LEADERSHIP IN ENERGY & ENVIRONMENTAL DESIGN

### 23.1 LEED Design Obligations

- (a) WGH represents and warrants that the Project has been registered with the CaGBC, and that the Facility has been designed to achieve the following 7 prerequisites under the LEED Rating System:
- (i) EAp1 – Fundamental Commissioning;
  - (ii) EAp2 – Minimum Energy Performance;
  - (iii) EAp3 – CFC Reduction in HVAC & R Equipment;

- (iv) MRp1 – Storage & Collection of Recyclables;
  - (v) EQp1 – Minimum IAQ Performance;
  - (vi) EQp2 – Environmental Tobacco Smoke (ETS) Control; and
  - (vii) SSp1 – Erosion & Sedimentation Control.
- (b) WGH represents and warrants that the Facility has been designed to achieve each of the following credits under the LEED Rating System:
- (i) Credit SS 1 – Site Selection;
  - (ii) Credit SS 4.2 – Alternative Transportation, Bicycle Storage & Changing Rooms;
  - (iii) Credit SS 4.4 – Alternative Transportation, Parking Capacity;
  - (iv) Credit SS 5.1 – Reduced Site Disturbance, Protect or Restore Open Space;
  - (v) Credit SS 5.2 – Reduced Site Disturbance, Development Footprint;
  - (vi) Credit SS 7.2 – Heat Island Effect, Roof;
  - (vii) Credit SS 8 – Light Pollution Reduction;
  - (viii) Credit WE 1.1 – Water Efficient Landscaping, Reduce by 50%;
  - (ix) Credit WE 1.2 – Water Efficient Landscaping, No Potable Use for Irrigation;
  - (x) Credit EA 1.1 – Optimize Energy Performance, Reduced Cost by 20%;
  - (xi) Credit EA 4 – Ozone Protection;
  - (xii) Credit EA 5 – Measurement and Verification;
  - (xiii) Credit MR 4.1 – Recycled Content – 7.5%;
  - (xiv) Credit EQ 1 – Carbon Monoxide Monitoring;
  - (xv) Credit EQ 4.1 – Low Emitting Adhesives and Sealants;
  - (xvi) Credit EQ 4.2 – Low Emitting Paints and Coatings;
  - (xvii) Credit EQ 4.4 – Low Emitting Carpet;
  - (xviii) Credit EQ 4.4 – Low Emitting Composite Wood & Laminate Adhesives;
  - (xix) Credit EQ 5 – Indoor Chemical & Pollutant Source Control;

- (xx) Credit EQ 7.1 – Thermal Comfort;
  - (xxi) Credit EQ 7.2 – Thermal Comfort, Monitoring;
  - (xxii) Credit ID 2 – LEED Accredited Professional; and
  - (xxiii) Credit EA 3 – Best Practice Commissioning.
- (c) Project Co shall perform the Works so as to achieve the remaining prerequisites and credits required to achieve LEED Certification and, except as set out in Section 23.2, may, in its sole discretion, determine which credits to pursue.
- (d) Project Co shall appoint or otherwise employ a LEED Accredited Professional for purposes of obtaining LEED Certification.

### **23.2 Mandatory LEED Construction Prerequisites and Credits**

- (a) Project Co shall, at a minimum, achieve, or contribute to the achievement of, the following 2 prerequisites under the LEED Rating System:
- (i) SSp1 – Erosion & Sedimentation Control; and
  - (ii) EAp1 – Fundamental Commissioning.
- (b) Project Co shall, at a minimum, achieve, or contribute to the achievement of, the following 10 credits under the LEED Rating System:
- (i) Credit EA 3 – Best Practice Commissioning;
  - (ii) Credit EA 5 – Measurement & Verification;
  - (iii) Credit MR 2.1 – Credit Waste Diversion – 50%;
  - (iv) Credit MR 2.2 – Construction Waste Diversion – 75%;
  - (v) Credit EQ 3.1 – Construction IAQ During Construction;
  - (vi) Credit EQ 3.2 – Construction IAQ Before Occupancy;
  - (vii) Credit EQ 4.1 – Low-Emitting Materials: Adhesive & Sealants;
  - (viii) Credit EQ 4.2 – Low-Emitting Materials: Paints and Coating;
  - (ix) Credit EQ 4.4 – Low Emitting Composite Wood & Laminate Adhesives; and
  - (x) Credit EQ 7.1 – Thermal Comfort.

- (c) Project Co shall, subject to and in accordance with Schedule 22 - Variation Procedure, be entitled to a Variation if, in respect of the credits described in Section 23.1(b), the Existing Design does not specify materials which meet the requirements for achievement of any such credit and Project Co cannot achieve the required number of substitute credits as described in Section 23.2(d) and has notified WGH of same.
- (d) In addition to the requirements set forth in this Section 23.2, Project Co shall, at the time of application for LEED Certification, use commercially reasonable efforts, which for greater certainty shall not, subject to the issuance of a Variation, include material changes to the Existing Design that would cause Project Co to incur increased costs associated with the Works, to obtain a sufficient number of the following credits under the LEED Rating System in order to achieve LEED Certification:
- (i) Credit SS 6.1 - Stormwater Rate and Quantity;
  - (ii) Credit EA 1.2 - Optimize Energy Performance, Reduced Cost by 30%;
  - (iii) Credit MR 4.2 - Recycled Content 15%;
  - (iv) Credit MR 5.1 - Regional Materials 10%;
  - (v) Credit MR 5.2 - Regional Materials 20%;
  - (vi) Credit MR 6 - Rapidly Renewable Materials;
  - (vii) Credit MR 8 - Durable Building;
  - (viii) Credit EQ 7.1 - Thermal Comfort – Compliance;
  - (ix) Credit ID 1.1 - Green Building Education (Signage & Community Outreach);
  - (x) Credit ID 1.2 - Infection Prevention & Control to CSA standards;
  - (xi) Credit ID 1.3 - Scent-Free policy (Signage & Community Outreach);
  - (xii) Credit ID 1.4 - Low-emitting materials - Systems furniture & seating;
  - (xiii) Credit ID 1.5 - Connection to Natural World - Outdoor Places of Respite; and
  - (xiv) Credit ID 1.6 - Connection to Natural World - Exterior Access for Patients.

### **23.3 LEED Progress Reports and Documentation**

- (a) As part of each Works Report, Project Co shall submit a progress report comparing actual construction and procurement activities with LEED Certification requirements.
- (b) Project Co shall provide to WGH all information, documentation and materials as may be reasonably required to achieve all LEED credits listed in Section 23.1 and any LEED

credits Project Co determines, in its sole discretion, pursuant to Section 23.2, to pursue in order to obtain LEED Certification for the Facility.

- (c) In respect of the credits set out in Section 23.1(b), WGH shall, upon request from Project Co, prepare and deliver such information, documentation and materials as may be reasonably required by Project Co relative to such credits.

#### **23.4 LEED Certification**

- (a) Project Co shall apply to the CaGBC to obtain LEED Certification for the Facility as soon as possible, and, in any event, within 24 months after the Substantial Completion Date.
- (b) If, after the date of this Project Agreement, there is a change in the requirements for achievement of LEED Certification under the LEED Rating System, and Project Co is required by the CaGBC to comply with such change, then Project Co shall notify WGH of such change and such change shall, subject to and in accordance with Section 22 - Variation Procedure, result in a Variation.
- (c) In the event that LEED Certification is not obtained within 24 months after the Substantial Completion Date (other than as a direct result of a breach by WGH of the representations and warranties in Section 23.1 or any act or omission of WGH or any WGH Party), Project Co shall pay to WGH liquidated damages in the amount of \$[REDACTED]. The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that WGH will suffer as a result of the happening of the specified event and would be difficult or impossible to quantify upon the happening of the specified event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by WGH as a result of the Facility not achieving LEED Certification and, for greater certainty, a failure by Project Co to obtain any of the mandatory prerequisites or credits set out in Section 23.2 or to achieve LEED Certification shall not result in a Project Co Event of Default. The Parties agree that such liquidated damages shall be payable whether or not WGH incurs or mitigates its damages, and that WGH shall not have any obligation to mitigate any such damages.

#### **23.5 Greenhouse Gas Credits**

- (a) Any greenhouse gas credits which may be guaranteed as a result of the Project shall be owned by WGH and Project Co shall have no entitlement to any of such credits whatsoever.

### **24. INDEPENDENT CERTIFIER**

#### **24.1 Appointment**

- (a) On or prior to Financial Close, the Parties shall appoint a suitably qualified and experienced consultant to act as the Independent Certifier for the purposes of this Project



Agreement and shall enter into an agreement with the Independent Certifier substantially in the form of Schedule 6 - Independent Certifier Agreement.

- (b) Neither Party shall, without the prior written consent of the other Party, enter into any agreement with the Independent Certifier in connection with the Project other than the Independent Certifier Agreement, and Project Co shall ensure that no Project Co Party enters into any separate agreement with the Independent Certifier in connection with the Project.

#### **24.2 Role of Independent Certifier**

- (a) The general role, obligations and functions of the Independent Certifier are described in Schedule 6 - Independent Certifier Agreement.

#### **24.3 Changes to Terms of Appointment**

- (a) Neither WGH nor Project Co shall without the other's prior written approval (not to be unreasonably withheld or delayed):
  - (i) waive, settle, compromise or otherwise prejudice any rights or claims which the other may from time to time have against the Independent Certifier; or
  - (ii) vary the terms of the Independent Certifier Agreement or the service performed or to be performed by the Independent Certifier.
- (b) The Parties shall perform their respective obligations arising under or in connection with the Independent Certifier Agreement.

#### **24.4 Right to Change Appointment**

- (a) The Parties acknowledge that, subject to the restrictions set forth in Section 24.1(b), the Independent Certifier may provide certain services and reports to Project Co, the Lenders and the Project Co Parties in addition to performing the functions of the Independent Certifier under this Project Agreement. The Parties may agree to terminate the Independent Certifier Agreement upon 30 days notice to the Independent Certifier. If such notice is given, then, pursuant to Section 24.7, a new Independent Certifier will be appointed. The Parties agree that, notwithstanding the 30 days' notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed.

#### **24.5 Cooperation**

- (a) The Parties agree to cooperate with each other generally in relation to all matters within the scope of or in connection with the Independent Certifier Agreement. All instructions and representations issued or made by either of the Parties to the Independent Certifier shall be simultaneously copied to the other and both Parties shall be entitled to attend all inspections performed by or meetings involving the Independent Certifier.

## 24.6 Payment of Independent Certifier

- (a) Project Co and WGH shall share equally the responsibility for the payment of all fees and costs of the Independent Certifier.

## 24.7 Replacement

- (a) In the event of the Independent Certifier's engagement being terminated otherwise than for full performance, the Parties shall liaise and cooperate with each other in order to appoint a replacement consultant to act as the Independent Certifier as soon as reasonably practicable. The identity of any such replacement shall be as agreed by the Parties and the terms of his/her appointment shall, unless otherwise agreed, be as set out in the Independent Certifier Agreement.
- (b) In the event the Parties fail to agree upon the identity of a replacement Independent Certifier within 5 Business Days of the original Independent Certifier's appointment being terminated, then a replacement Independent Certifier shall be chosen as follows:
  - (i) each Party shall, within 5 Business Days thereafter, select 3 suitably qualified and experienced replacements that would be acceptable to that Party, and shall provide notice thereof to the other Party, with a ranking of preference for replacements;
  - (ii) if the Parties have both selected a common replacement, then such common replacement shall be the Independent Certifier, and if there is more than one common replacement, then the common replacement with the highest overall ranking (calculated by adding together the ordinal rank assigned by both Parties) shall be selected, and in the event of a tie, the lowest-cost of such tied replacements shall be selected; and
  - (iii) if the Parties have not selected a common replacement, then the determination of the new replacement may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

## 25. COMMISSIONING AND COMPLETION

### 25.1 Commissioning Activities

- (a) Project Co shall perform all Project Co Commissioning, and shall facilitate the performance of all Hospital Commissioning, pursuant to the Final Commissioning Program.

### 25.2 Substantial Completion Commissioning

The commissioning required to achieve Substantial Completion shall have occurred once the Independent Certifier has determined that the following criteria are met:

- (a) Building Systems shall have been installed and commissioned in accordance with the Technical Requirements and all training of the Service Provider's employees on same has been completed;
- (b) all Project Co Commissioning requirements as set out in the Final Commissioning Program and as set out by the Architect of Record in the Technical Specifications are satisfied;
- (c) all Hospital Systems shall have been installed in accordance with the Technical Requirements and personnel training on same has been completed or a satisfactory timetable for training has been established with WGH;
- (d) the Facility is "finish-clean" as set out in the Final Commissioning Program;
- (e) all O/C Category 1 New Equipment, O/V Category 1 New Equipment and O/V Category 2 New Pre-Substantial Completion Equipment shall have been installed, commissioned, and functional at the Facility in accordance with the Final Commissioning Program, unless such requirement has been waived in writing by WGH (in its sole discretion); and
- (f) Project Co has delivered to WGH all necessary Building Systems operation and maintenance manuals, both hard and electronic copies.

### **25.3 Final Commissioning Program**

- (a) Project Co shall prepare a draft of the Final Commissioning Program and shall provide a copy thereof to the Independent Certifier, the WGH Commissioning Agent, the Architect of Record and the WGH Representative not less than 365 days prior to the Scheduled Substantial Completion Date.
- (b) The Final Commissioning Program shall:
  - (i) describe the requirements, and the timing and sequence of such requirements, necessary in order that the Project Co Commissioning shall be completed to achieve:
    - (A) Substantial Completion on or before the Scheduled Substantial Completion Date; and
    - (B) Final Completion on or before the Scheduled Final Completion Date;
  - (ii) include all of the requirements in Section 25.2;
  - (iii) provide that the Building Systems, the Hospital Systems and the Equipment (other than the WGH Equipment) shall be functional and all relevant employees shall have been trained and capable of operating the Facility;

- (iv) provide that the Facility has been cleared to a "finish-clean" condition that for greater certainty means the Facility has been cleared of all debris, construction dust, packaging materials and refuse and has a thorough wipe-down leaving the Facility in a condition that it may then be further cleaned by WGH housekeeping staff in the normal course to a "hospital clean" condition and for operating theatres and other particular areas at the Facility to a "sterile clean" condition ready for normal use by WGH on the following day;
  - (v) subject to Section 25.2(f), provide that the Transition shall not be a condition of Substantial Completion;
  - (vi) describe the requirements, and the timing and sequence of such requirements, of the Hospital Commissioning activities;
  - (vii) comply with all requirements of the Outline Commissioning Program and the Existing Design and include all details, including for all appendices, required to be completed in the Outline Commissioning Program and the Existing Design;
  - (viii) be consistent with the Outline Commissioning Program and the Existing Design and impose no greater or more onerous obligations on WGH than those set out in the Outline Commissioning Program and the Existing Design, unless otherwise agreed to by WGH;
  - (ix) include the names of the individuals or companies proposed to perform all Project Co Commissioning;
  - (x) include a schedule of each of the Project Co Commissioning Tests and the Hospital Commissioning Tests proposed to be performed and the timeframe for completion, with start and end dates;
  - (xi) include a schedule of meetings to be held between the Parties to coordinate the performance of the Project Co Commissioning and the Hospital Commissioning;
  - (xii) provide for the re-verification of systems following the Hospital Commissioning;
  - (xiii) list the approvals required from any Governmental Authority, manufacturer or other person that are necessary to meet the requirements of the Final Commissioning Program or Applicable Law; and
  - (xiv) provide that all Equipment (other than the WGH Equipment) shall have been procured, installed and commissioned in accordance with Section 22 and the Technical Requirements,
- (c) WGH shall provide Project Co with comments on the draft Final Commissioning Program in accordance with Schedule 10 - Review Procedure, and Project Co shall revise the draft Final Commissioning Program to the extent required by Schedule 10 - Review Procedure within 30 days of receipt of any comments from WGH.

- (d) When agreed by the Parties, the Final Commissioning Program shall replace the Outline Commissioning Program.

#### **25.4 Commencement of Project Co Commissioning**

- (a) Project Co shall give 30 days written notice to the Independent Certifier, the WGH Commissioning Agent and the WGH Representative of the proposed commencement of the Project Co Commissioning.
- (b) Project Co shall give at least 5 Business Days' notice to, and shall invite, the Independent Certifier, the WGH Commissioning Agent and the WGH Representative to witness, and to comment on, each aspect of the Project Co Commissioning. Project Co shall, together with such notice, provide all information that the Independent Certifier, the WGH Commissioning Agent and the WGH Representative may reasonably require in relation thereto, including:
- (i) tests proposed;
  - (ii) test methodology; and
  - (iii) expected test results.

#### **25.5 Substantial Completion Certificate**

- (a) Project Co shall give the Independent Certifier and the WGH Representative at least 10 Business Days' notice prior to the date upon which Project Co anticipates all requirements for Substantial Completion shall be satisfied.
- (b) Project Co shall give the Independent Certifier and the WGH Representative notice (the "**Substantial Completion Notice**") upon the satisfaction of all requirements for Substantial Completion, which Substantial Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for Substantial Completion, together with Project Co's opinion as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied.
- (c) WGH shall, within 10 Business Days after receipt of the Substantial Completion Notice, provide the Independent Certifier and Project Co with WGH's opinion as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Substantial Completion Certificate should not be issued.
- (d) Within 5 Business Days after Project Co's receipt of WGH's opinion pursuant to Section 25.5(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Substantial Completion Certificate have been satisfied, having regard for the opinions of both Project Co and WGH, and to issue to WGH and to Project Co either:

- (i) the Substantial Completion Certificate, setting out in such certificate the Substantial Completion Date; or
  - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Substantial Completion Certificate.
- (e) Where the Independent Certifier has issued a report in accordance with Section 25.5(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 - Dispute Resolution Procedure, Project Co shall, within 5 Business Days after receipt of such report, provide the Independent Certifier and the WGH Representative with:
- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
  - (ii) the schedule for completion of all such rectification actions; and
  - (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions and Project Co Commissioning in a timely manner. Upon completion thereof, Project Co may give a further Substantial Completion Notice and Sections 25.5(c) to (e), inclusive, shall be repeated until the Substantial Completion Certificate has been issued.

- (f) The Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Payment Commencement Date, and a Dispute in relation to the Payment Commencement Date shall not be subject to resolution pursuant to the Dispute Resolution Procedure, provided, however, that any other Dispute in relation to the Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate may be referred for resolution pursuant to the Dispute Resolution Procedure.

## **25.6 Operation and Maintenance Manuals**

- (a) In addition to any other requirements set forth in Schedule 15 – Output Specifications, Project Co shall prepare and deliver to WGH all necessary operation and maintenance manuals for the Facility and for all O/C Category 2 New Equipment, O/V Category 1 New Equipment and O/V Category 2 New Equipment and for all other equipment (excluding, for certainty, the Existing Equipment and the Equipment marked as "O/O" (Owner Supplied/Owner Installed) on Schedule 21 – Equipment List) identified in the Technical Requirements and the Final Commissioning Program, 30 days prior to the Substantial Completion Date in both paper and electronic format acceptable to WGH, acting reasonably. From and after such date and throughout the remainder of the Project Term, Project Co shall prepare and keep current, and at all reasonable times make

available to WGH, such operation and maintenance manuals and all other such manuals prepared from time to time for the Facility and all Equipment, in each case, in both paper and electronic format acceptable to WGH, acting reasonably.

### 25.7 Hospital Commissioning

- (a) The Parties acknowledge that the Hospital Commissioning shall be performed both before and after the Substantial Completion Date. Prior to Substantial Completion, Project Co shall give WGH full access to the Site, the Facility and all relevant parts thereof at such times as may be set out in the Final Commissioning Program to enable WGH to undertake the Hospital Commissioning in accordance with the Final Commissioning Program. WGH shall comply, and shall ensure that all WGH Parties comply, with the directions, procedures and safety guidelines established by Project Co for the Site and shall use commercially reasonable efforts to minimize disruption to the Project Operations in performing the Hospital Commissioning.
- (b) WGH acknowledges that, during the Hospital Commissioning Period, Project Co and its Subcontractors will be active in the Facility in both the rectification of Minor Deficiencies and the completion of Project Co Commissioning, and WGH shall take commercially reasonable steps to allow such activities to proceed in accordance with the Final Commissioning Program.
- (c) Project Co acknowledges that, prior to and during the Hospital Commissioning Period, Project Co and its Subcontractors shall cooperate with WGH and all WGH Parties and use commercially reasonable efforts to ensure that all requirements, and the timing and sequence of such requirements of the Hospital Commissioning activities are able to be completed in the time frame for completion set out in the Final Commissioning Program.

### 25.8 Countdown Notice

- (a) Project Co shall deliver a notice (the "**Countdown Notice**") to WGH, the Architect of Record and the Independent Certifier specifying the date (which, for greater certainty, will be on or before the Scheduled Substantial Completion Date) on which Project Co anticipates that Substantial Completion will be achieved (the "**Anticipated Substantial Completion Date**").
- (b) The Countdown Notice shall be delivered not less than 180 days prior to the Anticipated Substantial Completion Date. If Project Co fails to deliver the Countdown Notice not less than 180 days prior to the Scheduled Substantial Completion Date, the Anticipated Substantial Completion Date shall be deemed to be the same date as the Scheduled Substantial Completion Date.
- (c) Project Co acknowledges and agrees that WGH requires a minimum of 180 days notice prior to the Anticipated Substantial Completion Date to prepare for the Hospital Commissioning.

- (d) In accordance with Section 21.4(a), the Anticipated Substantial Completion Date shall not be earlier than the Scheduled Substantial Completion Date without the prior written consent of WGH, in its sole discretion.

### **25.9 Minor Deficiencies**

- (a) In the event that Minor Deficiencies exist when Project Co applies for the Substantial Completion Certificate, the Independent Certifier, in consultation with Project Co and WGH, shall, within 15 Business Days of Project Co's application, prepare a list of all Minor Deficiencies (the "**Minor Deficiencies List**") identified at that time and an estimate of the cost and the time for rectifying such Minor Deficiencies.
- (b) The Minor Deficiencies List will contain the schedule for the completion and rectification of the Minor Deficiencies. In determining the relevant time for rectifying Minor Deficiencies, Project Co shall schedule the completion and rectification of Minor Deficiencies so as to minimize, to the greatest extent reasonably possible, any impairment of WGH's use and enjoyment of the Facility or disruption of the Project Operations or the performance of the Hospital Services.
- (c) The Independent Certifier must prepare the Minor Deficiencies List before the Substantial Completion Certificate is issued, but shall not withhold the Substantial Completion Certificate by reason solely that there are Minor Deficiencies.
- (d) WGH may, in its sole discretion, waive any requirement for Substantial Completion, including with respect to Equipment, and the failure to meet any such requirement shall constitute a Minor Deficiency.

### **25.10 Rectification of Minor Deficiencies**

- (a) Project Co shall, in consultation with the WGH Representative and so as to minimize, to the greatest extent reasonably possible, any disruption of the Project Operations or the performance of the Hospital Services, complete and rectify all Minor Deficiencies within 45 days of the issuance of the Minor Deficiencies List or such other period as the Independent Certifier may specify in the Minor Deficiencies List.
- (b) Project Co acknowledges and agrees that the completion and rectification of Minor Deficiencies may require work outside of normal working hours in order to accommodate the efficient operation of the Facility.

### **25.11 Failure to Rectify Minor Deficiencies**

- (a) If, within 30 days after the time specified in the Minor Deficiencies List, Project Co has failed to complete and rectify the Minor Deficiencies specified in the Minor Deficiencies List:
- (i) WGH may withhold from the next payment or payments otherwise due to Project Co a holdback amount that is 200% of the amount estimated by the Independent



Certifier for WGH to complete and rectify the Minor Deficiencies (to the extent then outstanding), which holdback shall be held in an interest bearing account; and

- (ii) WGH may engage others to perform the work necessary to complete and rectify the Minor Deficiencies, at the risk and cost of Project Co, and WGH may deduct such cost from the holdback amount and interest earned thereon.
- (b) Upon completion and rectification of each Minor Deficiency, WGH shall release to Project Co the amount of the holdback related to such Minor Deficiency. Upon completion and rectification of all Minor Deficiencies, WGH shall release to Project Co the then remaining amount of the holdback, together with all interest accrued thereon. If the cost of such completion and rectification exceeds the amount of such holdback and interest, then Project Co shall reimburse WGH for all such excess cost.

#### **25.12 Final Completion Certificate**

- (a) Project Co shall give the Independent Certifier and the WGH Representative at least 10 Business Days' notice prior to the date upon which Project Co anticipates all requirements for Final Completion shall be satisfied.
- (b) Project Co shall give the Independent Certifier and the WGH Representative notice (the "**Final Completion Notice**") upon the satisfaction of all requirements for Final Completion, which Final Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for Final Completion, including the completion and rectification of all Minor Deficiencies, together with Project Co's opinion as to whether the conditions for issuance of the Final Completion Certificate have been satisfied.
- (c) WGH shall, within 5 Business Days after receipt of the Final Completion Notice, provide the Independent Certifier and Project Co with WGH's opinion as to whether the conditions for issuance of the Final Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Final Completion Certificate should not be issued.
- (d) Within 5 Business Days after Project Co's receipt of WGH's opinion pursuant to Section 25.12(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Final Completion Certificate have been satisfied, having regard for the opinions of both Project Co and WGH, and to issue to WGH and to Project Co either:
  - (i) the Final Completion Certificate, setting out in such certificate the Final Completion Date; or
  - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Final Completion Certificate.

- (e) Where the Independent Certifier has issued a report in accordance with Section 25.12(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 - Dispute Resolution Procedure, Project Co shall, within 5 Business Days after receipt of such report, provide the Independent Certifier and the WGH Representative with:
- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
  - (ii) the schedule for completion of all such rectification actions; and
  - (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions and Project Co Commissioning in a timely manner. Upon completion thereof, Project Co may give a further Final Completion Notice and Sections 25.12(c) to (e), inclusive, shall be repeated until the Final Completion Certificate has been issued.

- (f) Any Dispute in relation to the Independent Certifier's decision to issue or not to issue the Final Completion Certificate may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

### 25.13 Effect of Certificates/Use

- (a) The issue of the Substantial Completion Certificate and the Final Completion Certificate, any taking over or use by WGH of any part of the Facility under the terms of this Project Agreement, and any commencement of any Hospital Services shall, in no way:
- (i) limit the obligations of Project Co under this Project Agreement including in respect of any defects, deficiencies or items of outstanding work existing or discovered prior to or after the date of any of such certificates or the date of the Minor Deficiencies List; or
  - (ii) be construed as an approval by WGH of the Works or the way in which they have been carried out.

### 25.14 Transition

- (a) Subject to Section 25.14(b), Project Co shall, in cooperation with the Transition Subcommittee, plan, coordinate and manage the physical transition from the Existing Facilities to the Facility (the "**Transition**").
- (b) WGH shall be responsible for transporting patients, and any Existing Equipment connected to patients, from the Existing Facilities to the Facility.

- (c) Project Co shall retain an experienced and reputable transition advisor, whose appointment shall be approved by WGH, acting reasonably, with experience planning and executing no fewer than 5 hospital relocation assignments of similar size, scope and complexity (the "**Transition Advisor**").

### **25.15 Transition Subcommittee**

- (a) The Parties shall, within 180 days following Financial Close, establish a transition subcommittee of the Works Committee (the "**Transition Subcommittee**") consisting of 3 representatives of each Party. The Transition Advisor shall be entitled to, but not required to, attend meetings of the Transition Subcommittee. Members of the Transition Subcommittee may invite, on prior notice to all members, such other advisors and consultants as they require from time to time to attend meetings and provide briefings to the Transition Subcommittee.
- (b) The Transition Subcommittee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Transition, including issues related to the transfer and installation of all Existing Equipment.
- (c) The primary role of the Transition Subcommittee shall be to oversee and coordinate the Transition in a timely and efficient manner and in accordance with the Works Schedule and the Final Commissioning Program.
- (d) The Transition Subcommittee shall be responsible for receiving and reviewing all matters related to the Transition and shall make recommendations to the Works Committee, which the Works Committee may accept or reject in its sole discretion.
- (e) The members of the Transition Subcommittee may adopt such procedures and practices for the conduct of the activities of the Transition Subcommittee as they consider appropriate from time to time.
- (f) Unless otherwise agreed, the Transition Subcommittee shall operate only until the completion of Transition by WGH from the Existing Facilities to the Facility.

## **26. PROJECT CO SERVICE OBLIGATIONS**

### **26.1 Overall Responsibility**

- (a) Project Co shall, following the Substantial Completion Date, perform the Project Co Services:
  - (i) so as to satisfy the Output Specifications; and
  - (ii) in accordance with the other terms of this Project Agreement.

**26.2 Commencement of Services**

- (a) Project Co shall commence the Project Co Services on the day immediately after the Substantial Completion Date and shall provide the Project Co Services until the end of the Operational Term.

**26.3 Coordination and No Disruption to WGH**

- (a) Project Co shall perform the Project Co Services so as to coordinate with the operations of WGH and the WGH Parties on the Site and in the Facility and shall use commercially reasonable efforts not to adversely interfere with the operations of WGH and any WGH Party, including the performance of the Hospital Services.

**26.4 No Closure of Facility**

- (a) During the Operational Term Project Co shall not close all or any portion of the Facility in any circumstances other than as directed or approved by WGH, acting reasonably.

**26.5 Equipment for Project Co Services**

- (a) Project Co will procure, deliver, install, commission, maintain, repair, decommission, upgrade and replace any equipment required by Project Co to provide the Project Co Services.

**27. MAINTENANCE****27.1 Maintenance Plans**

- (a) No later than 90 days prior to the Substantial Completion Date, Project Co shall submit to the WGH Representative for review pursuant to Schedule 10 - Review Procedure, the Preventive Maintenance Plan for the first Contract Year and the Five Year Capital Plan for the first 5 Contract Years, and shall update such plans as provided for in the Output Specifications annually thereafter and shall submit such updates to WGH Representative for review pursuant to Schedule 10 – Review Procedure.
- (b) Project Co shall perform the Maintenance Work as identified in the Preventive Maintenance Plan, and, without limiting Project Co's other obligations in respect of the performance of the Project Operations, shall undertake all Maintenance Work:
  - (i) in accordance with the Output Specifications;
  - (ii) at the times scheduled for such Maintenance Work;
  - (iii) in accordance with Good Industry Practice;
  - (iv) in a manner that allows the Facility to remain operational at all times; and

- (v) otherwise in accordance with the Preventive Maintenance Plan.

## 27.2 Revisions to Preventive Maintenance Plan

- (a) Project Co is required to make revisions to the Preventive Maintenance Plan in accordance with Schedule 15 – Output Specifications. In addition, no later than 30 days prior to the commencement of any quarter, Project Co may submit to the WGH Representative a revision to the applicable Preventive Maintenance Plan for the Contract Year in which the relevant quarter falls showing the effect of the proposed changes. If Project Co is entitled to proceed with such changes pursuant to Schedule 10 - Review Procedure, then the Preventive Maintenance Plan as so amended shall become the Preventive Maintenance Plan in respect of that quarter.
- (b) Without limiting the comments that may be made pursuant to Schedule 10 - Review Procedure in relation to the submission of any Preventive Maintenance Plan, WGH, acting reasonably, may comment "**Reviewed as Noted**" or "**Rejected**" on any revision to any Preventive Maintenance Plan pursuant to this Section 27.2 on the grounds that:
  - (i) performing the Preventive Maintenance in the period or at the times suggested would (on the balance of probabilities) materially interfere with the performance of the Hospital Services and such material interference could be avoided or mitigated by Project Co rescheduling the Preventative Maintenance;
  - (ii) performing the Preventive Maintenance in the period or at the times suggested would (on the balance of probabilities) materially adversely affect the safety of patients, volunteers or other users of the Facility and such material adverse effect could be avoided or mitigated by Project Co rescheduling the Preventative Maintenance; or
  - (iii) the period for performing the Preventive Maintenance would (on the balance of probabilities) exceed the period reasonably required for the relevant work.

## 27.3 WGH Change in Timing

- (a) Notwithstanding the establishment of or entitlement to proceed with any Preventive Maintenance Plan, the WGH Representative may, at any time and from time to time, require Project Co to accelerate or defer any Preventive Maintenance by giving written notice to Project Co not less than 15 Business Days prior to the scheduled date for performing such Preventative Maintenance, which notice shall set out the time and periods at or during which WGH requires the Preventive Maintenance to be performed.
- (b) Within 5 Business Days after receipt by Project Co of a notice referred to in Section 27.3(a), Project Co shall notify WGH of the amount of any additional reasonable costs which it estimates it shall incur as a direct consequence of such acceleration or deferral (the "**Estimated Increased Maintenance Costs**"). WGH shall, within 5 Business Days after receipt by WGH of notification of the amount of the Estimated Increased

Maintenance Costs, at its option, either confirm or withdraw its request to accelerate or defer the Preventative Maintenance. If WGH does not respond within 5 Business Days, the request shall be deemed to have been withdrawn. WGH shall reimburse Project Co for any reasonable costs actually incurred by Project Co as a consequence of such acceleration or deferral up to, but not exceeding, the amount of the Estimated Increased Maintenance Costs.

#### **27.4 Corrective Maintenance Work**

- (a) If, in circumstances other than an Emergency (but including circumstances arising as a result of an Emergency that has occurred but is no longer continuing), the need arises for Maintenance Work (excluding any work of a *de minimis* nature in respect of which this Section 27.4 does not apply) that is not scheduled to be carried out as part of the Preventive Maintenance ("**Corrective Maintenance Work**"), Project Co shall promptly notify the WGH Representative of the proposed commencement date, the proposed hours of work and estimated duration of the Corrective Maintenance Work.
- (b) Project Co shall be entitled to perform the Corrective Maintenance Work at the time set out in its notice unless WGH, acting reasonably and for purposes related to the provision of Clinical Services or to patient safety, requires Project Co to defer or accelerate such Corrective Maintenance Work. For greater certainty, Project Co shall not be entitled to recover from WGH any costs or losses incurred by Project Co as a consequence of any deferral or acceleration of Corrective Maintenance Work, and nothing in this Section 27.4 shall prevent WGH from making any adjustments to the Monthly Service Payments in accordance with Schedule 20 - Payment Mechanism.
- (c) Project Co shall perform the Corrective Maintenance Work set forth in this Section 27.4 and as set forth in Section 27.5 in accordance with the protocols set forth in Schedule 15 – Output Specifications.

#### **27.5 Emergency Maintenance Work**

- (a) If, in order to rectify an Emergency, the need arises for Corrective Maintenance Work, Project Co may perform such Corrective Maintenance Work, provided that Project Co shall notify the WGH Representative as soon as possible (and in any event within 2 Business Days of the occurrence of the Emergency) of the reasons for and extent of the Corrective Maintenance Work.
- (b) Project Co shall use commercially reasonable efforts to minimize the duration of such Corrective Maintenance Work and its impact upon the performance of the Hospital Services. Project Co acknowledges and agrees that Corrective Maintenance Work may require work outside of normal working hours in order to accommodate the efficient operation of the Facility.
- (c) Nothing in this Section 27.5 shall prevent WGH from making any adjustments to the Monthly Service Payments in accordance with Schedule 20 - Payment Mechanism.

**27.6 Other Maintenance Work**

- (a) The Maintenance Work specified in the Preventive Maintenance Plan shall not limit Project Co's obligations to perform Maintenance Work.

**27.7 Computerized Maintenance Management System**

- (a) Prior to issuance of the Substantial Completion Certificate, Project Co shall create and commission the Computerized Maintenance Management System and, throughout the Operational Term, shall maintain same as provided in the Output Specifications.

**27.8 Performance Audits**

- (a) If WGH reasonably believes that Project Co is in breach of its obligations with respect to Maintenance Work, including:
  - (i) under this Section 27;
  - (ii) under the Output Specifications; or
  - (iii) in respect of any defects, deficiencies or items of outstanding work that should have been completed as part of the Works,

then WGH may cause to be performed, by an arm's length consultant appointed by WGH, a performance audit, inspection and survey of the Facility and the Schedule 21 Maintenance and Replacement Equipment to assess whether the Facility has been and is being maintained by Project Co in accordance with Project Co's obligations (the "**Performance Audit**").

- (b) WGH shall notify Project Co in writing at least 5 Business Days prior to the date that WGH wishes to cause a Performance Audit to be undertaken. WGH shall, acting in good faith, consider any reasonable request by Project Co for the Performance Audit to be performed on an alternative date if such request is made by Project Co in writing at least 3 Business Days prior to the date originally requested by WGH, on the basis that performing the Performance Audit on the date originally requested by WGH would materially prejudice Project Co's ability to provide the Project Co Services.
- (c) When causing any Performance Audit to be undertaken, WGH shall use commercially reasonable efforts to minimize any disruption caused to the provision of the Project Co Services. The cost of a Performance Audit, except where Section 27.8(d) applies, shall be borne by WGH. Project Co shall provide WGH, at no additional cost or charge, with any reasonable assistance required by WGH from time to time during the Performance Audit.
- (d) If a Performance Audit shows that Project Co has not performed or is not performing its obligations in any material respect, Project Co shall provide WGH with a plan for

rectification or Maintenance Work required to be performed in order for Project Co to perform its obligations, and WGH shall:

- (i) provide Project Co with a written notice of non-compliance;
  - (ii) after receipt from Project Co of a plan for rectification or Maintenance Work, provide Project Co with instructions regarding rectification or Maintenance Work required to be performed by Project Co in order for Project Co to perform its obligations;
  - (iii) specify a reasonable period of time within which Project Co must perform such rectification or Maintenance Work; and
  - (iv) be entitled to exercise all rights pursuant to Section 31.
- (e) If a Performance Audit shows that Project Co has not performed or is not performing its obligations in any material respect, Project Co shall:
- (i) perform any rectification or Maintenance Work required by WGH within a reasonable period of time specified by WGH, and be responsible for any costs incurred in performing such rectification or Maintenance Work; and
  - (ii) pay or reimburse WGH for the costs of the Performance Audit and any administrative costs incurred by WGH in relation to the Performance Audit.
- (f) Nothing in this Section 27.8 shall limit or restrict WGH's rights hereunder to perform any other performance audits, inspections and surveys at its own cost and expense.
- (g) WGH's right to cause a Performance Audit to be undertaken may not be exercised more than once every 180 days unless any Performance Audit performed in the preceding 12 month period shows that Project Co has not performed or is not performing its obligations in any material respect.

## **28. HUMAN RESOURCES**

### **28.1 Project Co Covenants with respect to Affected Hospital Employees**

- (a) No later than 90 days prior to the Transfer Date, WGH shall provide Project Co with a list of the Affected Non-Unionized Employees and the Affected Unionized Employees which Project Co is required to offer employment pursuant to this Article 28 and Schedule 17 – Employee Transition.
- (b) In respect of the Affected Non-Unionized Employees and Unionized Employees identified by WGH to Project Co pursuant to Section 28.1(a), Project Co agrees:
  - (i) to offer to employ, or to cause a Project Co Party to offer to employ, the Affected Non-Union Employees identified by WGH pursuant to Section 28.1(a) on terms



and conditions substantially similar to or better than those applicable to such Affected Non-Union Employees immediately prior to the Transfer Date;

- (ii) to offer to employ, or to cause a Project Co Party to offer to employ, the Affected Unionized Employees identified by WGH pursuant to Section 28.1(a) from and after the Transfer Date;
- (iii) in doing so, to stand, or to cause the relevant Project Co Party to stand, with respect to work usually performed by the Affected Unionized Employees, in the place of the employer for the purposes of the Collective Agreement, and to enter into and execute, or to cause the relevant Project Co Party to enter into and execute, a separate collective agreement with the bargaining agent of the Affected Unionized Employees to be effective from and after the Transfer Date, which agreement shall contain the terms and conditions applicable to the maintenance classifications of the Collective Agreement then in effect; and
- (iv) for greater certainty, and without limiting the generality of Project Co's obligations under this Project Agreement, that Project Co shall ensure that it and the relevant Project Co Party complies with this Section 28 and Schedule 17 - Employee Transition, and, notwithstanding that employees may be transferred under this Project Agreement to a Project Co Party, if such Project Co Party acts otherwise than in accordance with, or acts in a manner inconsistent with, the provisions of this Section 28 and Schedule 17 - Employee Transition, Project Co will be in breach of this Project Agreement.

## **28.2 Project Co Covenants with respect to Terms and Conditions of Employment**

- (a) Subject to Sections 28.2(b) and 28.2(c), Project Co shall recognize, or shall ensure that the relevant Project Co Party recognizes, the service that all Transferred Employees have accrued on or before the Transfer Date for the purposes of determining:
  - (i) with respect to the Transferred Non-Union Employees, such employees' entitlements under the terms and conditions of their employment and for the purposes of determining such employees' statutory and common law entitlements; and
  - (ii) with respect to the Transferred Unionized Employees, seniority and all other entitlements under the terms of the Collective Agreement and any other statutory entitlements, and shall comply with its obligations thereunder.
- (b) Project Co shall either:
  - (i) confirm that it or the relevant Project Co Party is currently a participating employer under the Pension Plan; or

- (ii) take, or cause the relevant Project Co Party to take, all steps necessary to ensure that it or the relevant Project Co Party receives confirmation that it is a participating employer under the Pension Plan on or before the Transfer Date.
- (c) If Project Co is unable to become a participating employer under the Pension Plan, Project Co shall either:
  - (i) effective as of the Transfer Date, establish, or cause the relevant Project Co Party to establish, a new registered pension plan to provide pension benefits to the Transferred Employees, in respect of service on and after the Transfer Date, in compliance with such Transferred Employee's terms and conditions of employment or the Collective Agreement, as applicable, in effect as of the Transfer Date; or
  - (ii) effective as of the Transfer Date, designate, or cause the relevant Project Co Party to designate, an existing registered pension plan to provide pension benefits to the Transferred Employees, in respect of service on and after the Transfer Date, in compliance with such Transferred Employee's terms and conditions of employment or the Collective Agreement, as applicable, in effect as of the Transfer Date.
- (d) With respect to Sections 28.2(c)(i) and (ii), where service is a relevant criterion, Project Co agrees to recognize, or to cause the relevant Project Co Party to recognize, the service of each Transferred Employee that was accrued to the Transfer Date for the purpose of determining eligibility for membership in, vesting in and eligibility for entitlement to benefits under Project Co's or such Project Co Party's pension plan, provided, however, that Project Co or such Project Co Party will not be required to assume liability for any amounts not transferred from the Pension Plan in respect of any Transferred Employee. With respect to Sections 28.2(c)(i) and (ii), Project Co shall ensure, or shall cause the relevant Project Co Party to ensure, that each Transferred Employee who did not participate in the Pension Plan immediately prior to the Transfer Date shall be eligible to participate in Project Co's, or the relevant Project Co Party's, pension plan in accordance with the terms thereof on or after the Transfer Date.
- (e) Project Co agrees that, effective as of the Transfer Date, it shall establish, or cause the relevant Project Co Party to establish, new benefit plans or shall designate, or cause the relevant Project Co Party to designate, any existing benefit plans to provide benefits to the Transferred Employees in compliance with the Collective Agreement in effect as of the Transfer Date. Where service is a relevant criterion, Project Co agrees to recognize, or to cause the relevant Project Co Party to recognize, the service of each Transferred Employee that was accrued to the Transfer Date for the purpose of determining eligibility for membership in and entitlement to benefits under Project Co's or such Project Co Party's benefit plans. Project Co shall waive, or cause the relevant Project Co Party to waive, any pre-existing medical condition or other restriction that would prevent immediate and full participation of any Transferred Employee in the benefit plans of Project Co or the relevant Project Co Party, except where a pre-existing medical

condition or restriction prevented any such Transferred Employee from fully participating in any benefit plan immediately prior to the Transfer Date, in which case such Transferred Employee's participation in the benefit plans of Project Co or the relevant Project Co Party will be subject to the valid terms of such benefit plans. Project Co shall ensure, or shall cause the relevant Project Co Party to ensure, that each Transferred Employee who did not participate in WGH's benefit plans immediately prior to the Transfer Date may register, if eligible, to participate in Project Co's, or the relevant Project Co Party's, benefit plans in accordance with the terms thereof on or after the Transfer Date. For purposes of this Section 28.2(e), any reference to a Transferred Employee shall include such Transferred Employee and his or her dependents under the relevant benefit plans.

- (f) Subject to Schedule 17 - Employee Transition, each Transferred Employee shall cease to participate in and accrue benefits under WGH's pension and benefit plans and shall commence participation in the pension and benefit plans of Project Co or the relevant Project Co Party on the Transfer Date.

### **28.3 Transfer of Employees**

- (a) The mechanics of the transfer of the Affected Hospital Employees identified by WGH pursuant to Section 28.1(a) shall be governed by Schedule 17 - Employee Transition. The transfer of the Affected Hospital Employees who have accepted employment or continued employment from Project Co, or a Project Co Party, as the case may be, as more particularly described in Schedule 17 – Employee Transition, shall occur on the Transfer Date.
- (b) Project Co shall be solely responsible for recruiting replacement personnel required in respect of any vacancy that occurs as a result of a Transferred Unionized Employee transferring back to WGH for any reason.

### **28.4 Admittance of Personnel**

- (a) WGH shall have the right to refuse admittance to, or order the removal from the Site and/or the Facility of any person employed by (or acting on behalf of) Project Co, or any Project Co Party, whose presence, in the reasonable opinion of WGH, is likely to have an adverse effect on the performance of the Hospital Services or who, in the reasonable opinion of WGH, is not a fit and proper person to be at the Site and/or the Facility for any reason, including a failure to comply with any hospital policy or any immediate obligation of WGH to ensure the safety and well-being of persons at the Site and/or the Facility.

### **28.5 Confirmation of Action**

- (a) Any action taken under Section 28.4 shall promptly be confirmed by WGH to Project Co and, for greater certainty, shall not relieve Project Co of any of its obligations under this Project Agreement.

**28.6 Notification of Personnel**

- (a) If and when so requested by WGH, Project Co shall, within 3 Business Days of such request, provide a list of the names of all persons it expects may require admission, in connection with this Project Agreement, to any premises occupied by WGH, specifying the capacities in which those persons are concerned with this Project Agreement and, subject to Applicable Law or the terms of the Collective Agreement, giving such other particulars as WGH may reasonably require.

**28.7 Finality as to Admission**

- (a) Any decision of WGH made pursuant to Section 28.4 shall be final and conclusive.

**28.8 Adherence to Hospital Policies**

- (a) Project Co shall ensure that it and all Project Co Parties comply at all times with Hospital HR Policy and any regulations, policies or directions set by any Governmental Authority.

**28.9 Change in Hospital HR Policy**

- (a) WGH shall notify Project Co of any proposed change in Hospital HR Policy as soon as practicable. Notwithstanding anything else in this Project Agreement, any change in Hospital HR Policy shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation if, and only if, such change constitutes or necessitates a change in the Output Specifications or increases the Direct Costs to Project Co of providing the Project Co Services.
- (b) Project Co may, within 90 days of becoming aware of same, notify WGH, in writing, that a change in Hospital HR Policy either constitutes or necessitates a change in the Output Specifications or increases the Direct Costs to Project Co of providing the Project Co Services. Within 15 Business Days of receipt of such notice, WGH shall respond to Project Co indicating whether or not it agrees that such a change has occurred and either constitutes or necessitates a change in the Output Specifications or increases the Direct Costs to Project Co of providing the Project Co Services. If it does agree, WGH shall initiate the procedure set out in Schedule 22 - Variation Procedure as soon as reasonably practicable. If it does not agree, WGH shall not issue a Variation Enquiry and the matter may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.
- (c) For greater certainty, where an immediate change to Hospital HR Policy is required in the interest of patient or public safety, such change shall be effective notwithstanding that the procedure in Schedule 22 - Variation Procedure, if applicable in the circumstances, is not yet complete.

**28.10 Waiver of Policies**

- (a) WGH may, in its sole discretion, notify Project Co that Project Co shall not be obliged, for any period of time specified by WGH in such notice, to comply with any change to any Hospital HR Policy and that Project Co should continue to comply, and cause all Project Co Parties to comply, with the relevant Hospital HR Policy prior to any change, in which case, to the extent that such change to Hospital HR Policy would otherwise (in accordance with the provisions of Section 28.9) result in a Variation, such change shall not take effect as a Variation in accordance with Schedule 22 - Variation Procedure.

**28.11 Staff Competency**

- (a) Project Co shall ensure that:
- (i) there shall at all times be a sufficient number of employees (including all relevant grades of supervisory staff) engaged in the provision of the Project Co Services with the requisite level of skill and experience to perform the Project Co Services in accordance with this Project Agreement. For greater certainty, this obligation shall include ensuring that there are sufficient employees to cover periods of holiday, sickness, other absence, and anticipated and actual peaks in demand for each of the Project Co Services;
  - (ii) all employees receive such training and supervision as is necessary to ensure the proper performance of this Project Agreement and compliance with all health and safety rules, procedures and requirements and Authority Requirements and Hospital HR Policy; and
  - (iii) it creates and maintains, and causes all Project Co Parties to create and maintain, a process which allows it to assess, monitor and correct, on an ongoing basis, the competency of employees to ensure the proper performance of this Project Agreement.

**28.12 Convictions**

- (a) Project Co (to the extent permitted by Applicable Law and the terms of the Collective Agreement) shall, and shall cause each Project Co Party to, ensure that all potential employees (including, for greater certainty, permanent, temporary, full-time and part-time employees but excluding the Transferred Employees) and persons who may otherwise perform any of the Project Co Services:
- (i) are questioned concerning their Relevant Convictions; and
  - (ii) are required to complete and deliver to Project Co a criminal records search form.

**28.13 Effect of Convictions**

- (a) Project Co (to the extent permitted by Applicable Law and the terms of the Collective Agreement) shall, and shall cause each Project Co Party to, ensure that no person who discloses any Relevant Convictions, or who is found to have any Relevant Convictions following the completion of a criminal records search, in either case of which Project Co or a Project Co Party is aware or ought to be aware, is allowed access to the Site and/or the Facility to perform any of the Project Co Services, without the prior written consent of WGH, in its sole discretion.

**28.14 Notification of Convictions**

- (a) To the extent permitted by Applicable Law and the terms of the Collective Agreement, Project Co shall ensure that WGH is kept advised at all times of any person employed or engaged by Project Co or any Project Co Party in the provision of any of the Project Co Services who, subsequent to the commencement of such employment or engagement, receives a Relevant Conviction of which Project Co or a Project Co Party becomes aware or whose previous Relevant Convictions become known to Project Co or a Project Co Party. Project Co shall use commercially reasonable efforts to obtain, or to cause all Project Co Parties to obtain, all consents as may be required by Applicable Law, the term of the Collective Agreement or otherwise authorizing the disclosure of such information to WGH as contemplated in this Section 28.

**28.15 Disciplinary Action**

- (a) WGH, acting reasonably, may notify Project Co of any Project Co or Project Co Party employee who engages in misconduct or is incompetent or negligent in the performance of duties or whose presence or conduct on the Site or at work is otherwise considered by WGH to be undesirable or to constitute a threat to the health and/or safety of any of the users of the Site and/or the Facility. Upon investigation, Project Co may institute, or cause the relevant Project Co Party to institute, disciplinary proceedings, which shall be in accordance with the requirements of Applicable Law and the Collective Agreement, and shall advise WGH in writing of the outcome of any disciplinary action taken in respect of such person.

**28.16 Human Resources Policies**

- (a) Project Co shall ensure that there are set up and maintained by it and by all Project Co Parties, human resources policies and procedures covering all relevant matters (including, for example, health and safety). Project Co shall ensure that the terms and the implementation of such policies and procedures comply with Applicable Law, Authority Requirements, the Collective Agreement, Hospital HR Policy and Good Industry Practice and that they are published in written form and that copies of them (and any revisions and amendments to them) are available to WGH on a timely basis.

**28.17 Management Organizations**

- (a) Project Co shall provide, and shall ensure that all Project Co Parties provide, to WGH, as required to keep such information current, the names of the management teams responsible for the provision of the Project Co Services.

**28.18 Health Screening**

- (a) Project Co shall ensure (to the extent permitted by Applicable Law and the terms of the Collective Agreement) that all employees (including, for greater certainty, permanent, temporary, full-time and part-time employees but excluding the Transferred Employees) and persons who may otherwise perform any of the Project Co Services undergo pre-employment health screening in accordance with Hospital HR Policy (including a medical examination, if necessary by a qualified occupational health professional) to establish, in each case, that the relevant person does not pose, at that time, any danger to their health or the health of other persons.
- (b) Project Co shall also ensure (to the extent permitted by Applicable Law and the terms of the Collective Agreement) that all employees (including, for greater certainty, permanent, temporary, full-time and part-time employees) and persons who may otherwise perform any of the Project Co Services shall undergo such medical screening, examination or treatment and provide confirmation of such testing to WGH during the currency of this Project Agreement, when reasonably requested to do so by WGH, as required to ensure that WGH is able to comply with Applicable Law and in respect of the health and well-being of any WGH Party, patients, volunteers and visitors to the Facility. Project Co shall take reasonable precautions to ensure that all permanent, temporary, full-time and part-time employees any other persons that may perform any of the Project Co Services are, at all times, in such medical condition that they do not pose a risk, threat or danger to the health and/or well being of any WGH Party, patients, volunteers and visitors to the Facility.

**28.19 Retention of Screening Records**

- (a) Project Co agrees that (to the extent permitted by Applicable Law and the terms of the Collective Agreement) it shall hold, and shall ensure that the relevant Project Co Party holds, records of all screenings, examinations or treatments referred to in this Section 28 in strict confidence and shall produce, and shall ensure that the relevant Project Co Party produces, such records (subject to requirements under Applicable Law or the terms of the Collective Agreement) for inspection by WGH upon request by the WGH Representative, provided that no such inspection shall take place unless the relevant employee or person has given his written consent to such inspection (to the extent such consent is required by Applicable Law or the terms of the Collective Agreement).

**28.20 Report on Screening**

- (a) Project Co shall (to the extent permitted by Applicable Law and the terms of the Collective Agreement) inform WGH, or ensure that WGH is informed, upon reasonable request by the WGH Representative, of the outcome of each and every medical screening examination or treatment referred to in Section 28.18 with reference to the purpose of the screening, examination or treatment concerned and shall provide WGH, or ensure that WGH is provided, with all such other information referred to in Section 28.18, subject to requirements of Applicable Law and the terms of the Collective Agreement.

**28.21 Health Risks**

- (a) The WGH Representative may (acting reasonably) refuse admittance to, or order the removal from, the Facility of any person employed or engaged in the provision of any Project Co Service for whom a report as referred to in Section 28.20 has not been received or whose presence poses or is reasonably believed to pose a risk to the health and/or well-being of any WGH Party, patients, volunteers or visitors to the Facility, and such action, which shall forthwith be confirmed in writing by WGH, shall not relieve Project Co of any of its obligations under this Project Agreement. In complying with any such directive, Project Co shall not be required to breach Applicable Law.

**28.22 Orientation Procedure**

- (a) Project Co shall not cause, authorize or permit any person engaged or employed by Project Co or any Project Co Party in the delivery of the Project Co Services to commence the performance of their obligations until they have completed the orientation procedure in accordance with Hospital HR Policy.

**28.23 Labour Disruption**

- (a) Project Co shall accept, and shall ensure that each Project Co Party accepts, that the *Hospital Labour Disputes Arbitration Act* (Ontario) applies to the Project Co Services, and, if necessary, shall seek a declaration from the Ontario Labour Relations Board confirming the application of the *Hospital Labour Disputes Arbitration Act* (Ontario) to the Project Co Services so that strikes, lockouts, and labour disruptions do not interfere with the provision of the Project Co Services or the Hospital Services.
- (b) In the event that the Ontario Labour Relations Board does not issue a declaration confirming that *Hospital Labour Disputes Arbitration Act* (Ontario) is applicable, then Project Co shall take, and shall ensure that each Project Co Party takes, commercially reasonable steps available within the purview of applicable labour legislation in the Province of Ontario to ensure that strikes, lockouts, and labour disruptions, to the maximum degree possible and permissible, do not interfere with the provision of the Project Co Services or the Hospital Services.



**28.24 Material Changes to Terms and Conditions of Employment**

- (a) WGH represents that, prior to the Transfer Date, it will notify Project Co of any relevant material changes or pending changes to terms and conditions of employment of the Affected Non-Union Employees identified by WGH pursuant to Section 28.1(a) and, subject to the terms of the Collective Agreement, it will notify Project Co of any relevant material changes or pending changes to the terms and conditions of employment of the Affected Unionized Employees identified by WGH pursuant to Section 28.1(a).

**29. STOCKS, CONSUMABLES, MATERIALS AND EQUIPMENT****29.1 Standards**

- (a) Project Co shall cause the goods, equipment, consumables and materials used or supplied by it or any Subcontractor in connection with the Project Co Services to be:
- (i) of good quality, fit for their intended purpose and maintained in a safe, serviceable and clean condition in accordance with the Technical Requirements and Good Industry Practice;
  - (ii) of the type specified in the Output Specifications, if applicable; and
  - (iii) in compliance with all Applicable Law,

and shall, as soon as practicable after receiving a request from the WGH Representative, supply to the WGH Representative evidence to demonstrate its compliance with this Section 29.1(a).

- (b) Project Co shall cause sufficient stocks of goods, consumables, equipment and materials to be held in compliance with its obligations under this Project Agreement.

**29.2 Hazardous Substances and Materials**

- (a) Except to the extent required pursuant to the Technical Requirements, Project Co shall not bring, install, keep, maintain or use in or on the Facility, or cause, authorize or permit any person to bring, install, keep, maintain or use, any substances, materials, equipment or apparatus, which is likely to cause or in fact causes:
- (i) material damage to the Facility;
  - (ii) dust, noise or vibration or any other nuisance to the owners or occupiers of any property adjoining or near to the Facility;
  - (iii) the generation, accumulation or migration of any Hazardous Substance in an unlawful manner whether within or outside the Facility; or

- (iv) an adverse effect on the health or well-being of any WGH Party, patients, volunteers or visitors to the Facility,

and shall use commercially reasonable efforts to ensure, by directions to staff and otherwise, that all materials, equipment or apparatus in or on the Facility is operated and stored so as to minimize noise and vibration likely to cause annoyance or disturbance and the unlawful generation or migration of any Hazardous Substance.

- (b) Except for articles or things commonly used or generated in hospitals, Project Co shall not bring, install, keep, maintain or use, or cause, authorize or permit any person to bring, install, keep, maintain or use in or on the Facility any Hazardous Substance or hazardous equipment without the prior written consent of WGH and unless Project Co has complied with all Applicable Law.
- (c) Where applicable, Project Co shall comply with any applicable WGH policies and all Applicable Law regarding WHMIS and the transportation of Hazardous Substances, including:
  - (i) maintaining a library of MSDS on the Site and making MSDS labels available to all workers and WGH, and making and posting workplace labels where applicable, for all materials designated hazardous by Applicable Law relating to WHMIS; and
  - (ii) ensuring that Hazardous Substances shipped by Project Co or any Project Co Party are shipped in accordance with Applicable Law governing the transportation of Hazardous Substances,
- (d) WGH shall make available to Project Co, on request by Project Co, a list of Hazardous Substances prepared by WGH as required by Applicable Law regarding WHMIS and the transportation of Hazardous Substances.
- (e) Project Co shall:
  - (i) ensure that all Hazardous Substances and hazardous materials and equipment used or stored on the Site by Project Co or any Project Co Party are kept in accordance with all Applicable Law, Good Industry Practice, properly and securely labeled and stored, under appropriate supervision and used only by appropriately trained and competent staff; and
  - (ii) prevent the unlawful generation, accumulation, discharge, emission and migration of any Hazardous Substance, whether at or from the Facility or into any conducting media or device serving the Facility, including to:
    - (A) prevent any claims relating to Contamination arising or any circumstances likely to result in any claims relating to Contamination arising; and

- (B) prevent any adverse effect on the health or well-being of any person, including any WGH Party, patients, volunteers or visitors to the Facility,

in so far as such Hazardous Substance is, or should be, under the control of Project Co or any Project Co Party pursuant to this Project Agreement.

- (f) This Section 29.2 applies from and after Substantial Completion, and shall not extend to Hazardous Substances or hazardous equipment, materials or apparatus that are produced, brought, installed, kept, maintained or used in relation to the Hospital Services, except to the extent that such Hazardous Substances or hazardous equipment, materials or apparatus are, or should be, the responsibility of Project Co or under the control of Project Co under this Project Agreement.
- (g) For greater certainty, in the event of a claim relating to Contamination caused by the unlawful generation, accumulation, discharge, emission and migration of any Hazardous Substance, each Party shall bear a proportion of liability based on that Party's degree of fault as agreed by the Parties or determined in accordance with Schedule 27 - Dispute Resolution Procedure.

### **29.3 Change in Hospital Hazardous Materials Policies**

- (a) WGH shall notify Project Co of any proposed change in any applicable WGH policies regarding WHMIS and the transportation of Hazardous Substances as soon as practicable. Notwithstanding anything else in this Project Agreement, any change in such policies (other than a change arising as a result of a Change in Law, which, if applicable, shall be addressed in accordance with Article 37) shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation if and to the extent such change constitutes or necessitates a change in the Output Specifications or increases the Direct Costs to Project Co of providing the Project Co Services.
- (b) Project Co may, within 90 days of becoming aware of same, notify WGH, in writing, that a change in any applicable WGH policies regarding WHMIS and the transportation of Hazardous Substances (other than a change arising as a result of a Change in Law, which, if applicable, shall be addressed in accordance with Article 37) either constitutes or necessitates a change in the Output Specifications or increases the Direct Costs to Project Co of providing the Project Co Services. Within 15 Business Days of receipt of such notice, WGH shall respond to Project Co indicating whether or not it agrees that such a change has occurred and either constitutes or necessitates a change in the Output Specifications or increases the Direct Costs to Project Co of providing the Project Co Services. If it does agree, WGH shall initiate the procedure set out in Schedule 22 - Variation Procedure as soon as reasonably practicable. If it does not agree, WGH shall not issue a Variation Enquiry and the matter may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.
- (c) For greater certainty, where an immediate change to any applicable WGH policies regarding WHMIS and the transportation of Hazardous Substances is required in the

interest of patient or public safety, such change shall be effective notwithstanding that the procedure in Schedule 22 - Variation Procedure, if applicable in the circumstances, is not yet complete.

### **30. MONITORING**

#### **30.1 Monitoring of Performance**

- (a) Project Co shall monitor the performance of the Project Co Services in the manner and at the frequencies set out in the Output Specifications, the Performance Monitoring Program and the Payment Mechanism, and shall compile and at all times maintain records which are accurate and complete of such monitoring and performance. In addition to Project Co's obligations, as set out in the Output Specifications, the Performance Monitoring Program and the Payment Mechanism, Project Co shall, as reasonably requested by WGH, provide the WGH Representative with relevant particulars of any aspects of Project Co's performance which fail to meet the requirements of this Project Agreement.
- (b) WGH may, at any and all reasonable times, observe, inspect, monitor, audit and take any steps reasonably necessary to satisfy itself as to the adequacy of the monitoring, including performing sample checks.

#### **30.2 Failure Points**

- (a) In each Payment Period, Project Co shall measure the performance of the Project Co Services, and based on the performance of the Project Co Services in the applicable Payment Period, Failure Points may be awarded in respect of a Project Co Service in accordance with the Payment Mechanism.

#### **30.3 Warning Notices**

- (a) Without prejudice to WGH's rights under Section 44 and any other rights under this Project Agreement, if Project Co has:
  - (i) in respect of Plant Services, accrued more than 6,163 Failure Points in any Payment Period;
  - (ii) in respect of Security and Parking Management Services, accrued more than 115 Failure Points in any Payment Period; or
  - (iii) in respect of Grounds Maintenance Services, accrued more than 39 Failure Points in any Payment Period,

then WGH may give written notice (a "**Warning Notice**") to Project Co setting out the matter or matters giving rise to such notice and stating that it is a "**Warning Notice**".

### 30.4 Monitoring Notices

- (a) Without prejudice to WGH's rights under Section 44 and to any other rights under this Project Agreement if Project Co accrues more than:
- (i) 18,489 Failure Points in respect of Plant Services;
  - (ii) 344 Failure Points in respect of Security and Parking Management Services; or
  - (iii) 118 Failure Points in respect of Grounds Maintenance Services,
- in any rolling 3 Payment Periods, WGH may, by notice (a "**Monitoring Notice**") to Project Co require Project Co to increase the level of Project Co's monitoring of its own performance of its obligations under this Project Agreement in respect of the relevant Project Co Service until such time as Project Co shall have demonstrated to the reasonable satisfaction of WGH that it is performing, and is capable of continuing to perform, its obligations under this Project Agreement in respect of the relevant Project Co Service.
- (b) WGH may give a Warning Notice pursuant to Section 30.3 despite the issuance of a Monitoring Notice in respect of the same matter where a further breach occurs or the original breach has not been remedied within a reasonable period, and whether or not the previous Monitoring Notice remains in effect.
- (c) If a Monitoring Notice is given, then:
- (i) such Monitoring Notice shall specify in reasonable detail the additional measures to be taken by Project Co in monitoring its own performance;
  - (ii) if Project Co, acting reasonably, objects to any of the specified measures on the grounds that they are excessive or that WGH was not entitled to give the Monitoring Notice, Project Co shall, within 3 Business Days of the receipt of the Monitoring Notice, notify WGH in writing of the matters objected to and any changes necessary in order to prevent prejudice to Project Co's performance of its obligations under this Project Agreement;
  - (iii) if Project Co gives WGH a notice under Section 30.4(c)(ii), the measures to be taken by Project Co shall be agreed between the Parties or, in the absence of agreement within 10 Business Days of WGH's receipt of such notice, may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure;
  - (iv) if Project Co fails to increase Project Co's monitoring as provided herein, WGH may perform such monitoring save where Project Co, acting in good faith, is pursuing a Dispute pursuant to Section 30.4(c)(iii);

- (v) if it is determined in accordance with Schedule 27 - Dispute Resolution Procedure that WGH was entitled to give the applicable Monitoring Notice, Project Co shall bear its own costs and reimburse WGH for any reasonable costs and expenses incurred by or on behalf of WGH in relation to the giving of such Monitoring Notice; and
  - (vi) if it is determined in accordance with Schedule 27 - Dispute Resolution Procedure that WGH was not entitled to give the applicable Monitoring Notice, WGH shall bear its own costs and reimburse Project Co for any reasonable costs and expenses incurred by or on behalf of Project Co in relation to the giving of such Monitoring Notice.
- (d) In respect of any Monitoring Notice, if Project Co shall have demonstrated to the reasonable satisfaction of WGH that Project Co has performed its obligations under this Project Agreement for a period of 90 consecutive days and during such period has not received a Warning Notice or Monitoring Notice in respect of the same or similar Project Co Service, Project Co may apply for the withdrawal of such Monitoring Notice. If WGH is satisfied, acting reasonably, that Project Co has satisfied the aforesaid requirements, it shall, within 10 Business Days of receipt of such application, withdraw such Monitoring Notice and cease to perform or require the performance of the increased monitoring implemented in respect of such Monitoring Notice.
- (e) If it is determined in accordance with Schedule 27 - Dispute Resolution Procedure that WGH was not entitled to give any Monitoring Notice, WGH shall promptly withdraw such Monitoring Notice and cease to perform or require the performance of the increased monitoring implemented in respect of such Monitoring Notice.

### **31. WGH'S REMEDIAL RIGHTS**

#### **31.1 Exercise of Remedial Rights**

- (a) WGH may exercise all rights set out in this Section 31 at any time and from time to time if:
- (i) WGH, acting reasonably, considers that a breach by Project Co of any obligation under this Project Agreement, or any act or omission on the part of Project Co or any Project Co Party:
    - (A) does or can reasonably be expected to create a serious threat to the health or safety of any user of any part of or the whole of the Facility, including employees, patients, volunteers and visitors to the Facility and members of the public;
    - (B) does or can reasonably be expected to result in a materially adverse interruption in the provision of one or more of the Project Co Services;

- (C) does or can reasonably be expected to materially prejudice WGH's ability to provide the Hospital Services; or
- (D) may potentially compromise WGH's reputation or integrity or the nature of the Province's health care system, so as to affect public confidence in that system,

provided that:

- (E) in respect of a breach by Project Co of any obligation under this Project Agreement, or any act or omission on the part of Project Co or any Project Co Party, which can reasonably be expected to cause any of the consequences set out in Sections 31.1(a)(i)(A), 31.1(a)(i)(B) or 31.1(a)(i)(C), WGH shall not exercise its rights under this Section 31 unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of notice from WGH or, if such breach, act or omission cannot reasonably be cured within such 5 Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter, provided that Project Co shall not be entitled to a cure period if any of the consequences set out in Sections 31.1(a)(i)(A), 31.1(a)(i)(B) or 31.1(a)(i)(C) actually occur; and
  - (F) in respect of Section 31.1(a)(i)(D), WGH shall not exercise its rights under this Section 31 unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of notice from WGH or, if such breach, act or omission cannot reasonably be cured within such 5 Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter;
- (ii) Project Co has:
    - (A) in respect of the Plant Services, accrued more than 15,408 Failure Points in any Payment Period;
    - (B) in respect of the Security and Parking Management Services, accrued more than 287 Failure Points in any Payment Period; or
    - (C) in respect of the Grounds Maintenance Services, accrued more than 98 Failure Points in any Payment Period;
  - (iii) while a Monitoring Notice is in effect that is not being disputed by Project Co, acting in good faith, Project Co receives a Warning Notice in respect of the same or similar Project Co Service;

- (iv) if, pursuant to Section 27.8, a Performance Audit that is not being disputed by Project Co, acting in good faith, shows that Project Co has not performed or is not performing its obligations and Project Co has failed to perform the rectification or Maintenance Work as provided pursuant to Section 27.8(e)(i);
- (v) a labour dispute materially affects or can reasonably be expected to materially affect the Project Operations or the Hospital Services;
- (vi) WGH has received a notice under the Service Provider's Direct Agreement that entitles WGH to exercise step-in rights thereunder; or
- (vii) Project Co has failed to comply with any written direction issued by or on behalf of WGH's board of directors.

### **31.2 Emergency**

- (a) Notwithstanding that Project Co is not in breach of its obligations under this Project Agreement, WGH may exercise all of the rights set out in this Section 31 at any time and from time to time during the Operational Term if WGH, acting reasonably, considers the circumstances to constitute an Emergency.

### **31.3 Rectification**

- (a) Without prejudice to WGH's rights under Section 44 and any other rights under this Project Agreement, in any of the circumstances set out in Sections 31.1 or 31.2, WGH may, by written notice, require Project Co to take such steps as WGH, acting reasonably, considers necessary or expedient to mitigate, rectify or protect against such circumstance, including, if applicable, the termination and replacement of Subcontractors, and Project Co shall use commercially reasonable efforts to comply with WGH's requirements as soon as reasonably practicable.
- (b) If WGH gives notice to Project Co pursuant to Section 31.3(a) and either:
  - (i) Project Co does not either confirm, within 5 Business Days of such notice or such shorter period as is appropriate in the case of an Emergency or in the event WGH is entitled to exercise step-in rights under the Service Provider's Direct Agreement, that it is willing to take the steps required in such notice or present an alternative plan to WGH to mitigate, rectify and protect against such circumstances that WGH may accept or reject acting reasonably; or
  - (ii) Project Co fails to take the steps required in such notice or accepted alternative plan within such time as set out in such notice or accepted alternative plan or within such longer time as WGH, acting reasonably, shall think fit,

then WGH may take such steps as it considers to be appropriate, acting reasonably, including, if applicable, exercising step-in rights under the Service Provider's Direct Agreement and requiring the termination and replacement of Subcontractors, either itself



or by engaging others (including a third party) to take any such steps, and may perform or obtain the performance of the relevant Project Co Services to the standards required by this Project Agreement, and the provisions of Section 41, including Section 41.1(a)(v) and Section 41.2, shall apply.

- (c) Notwithstanding the foregoing provisions of this Section 31.3, in the event of an Emergency, the notice under Section 31.3(a) shall be given as promptly as possible having regard to the nature of the Emergency and WGH may, prior to Project Co's confirmation under Section 31.3(b)(i), take such steps as are appropriate having regard to the nature of the Emergency.
- (d) Where WGH considers it to be necessary to do so, the steps which WGH may take pursuant to this Section 31.3 subsequent to the provision of the notice under Section 31.3(a) unless the notice is given at a later time as provided in Section 31.3(c), may, at WGH's option, include the partial or total suspension of Project Co's right and obligation to deliver any part of the Project Co Services having regard to the circumstances in question (without any extension of the Project Term or suspension of any other Project Co Services), and the provisions of Section 41, including Section 41.1(a)(v) and Section 41.2, shall apply, but such suspension shall be only for so long as, as applicable:
  - (i) the circumstances referred to in Section 31.1 or 31.2 subsist; or
  - (ii) in respect of any such circumstances relating to Project Co's performance of the Project Co Services, until such time as Project Co shall have demonstrated to the reasonable satisfaction of WGH that, notwithstanding such circumstances, Project Co has taken such steps, including, if applicable, the termination and replacement of Subcontractors, as are required pursuant to this Section 31.3 and as are necessary to be capable of performing its obligations in respect of the relevant Project Co Services to the required standard in accordance with this Project Agreement, and thereafter Project Co shall perform its obligations as aforesaid.

#### **31.4 Costs and Expenses**

- (a) Subject to WGH's obligations pursuant to Sections 31.5 and 31.6:
  - (i) Project Co shall bear all costs and expenses incurred by Project Co in relation to the exercise of WGH's rights pursuant to this Section 31; and
  - (ii) Project Co shall reimburse WGH for all reasonable costs and expenses incurred by WGH in relation to the exercise of WGH's rights pursuant to this Section 31.

### 31.5 Reimbursement Events

- (a) In this Section 31.5, a "**Reimbursement Event**" means:
- (i) an act or omission of Project Co or any Project Co Party or a breach of any obligation under this Project Agreement, but only to the extent such act, omission or breach is caused by WGH or a WGH Party;
  - (ii) a labour dispute involving employees of WGH or any WGH Party that materially affects or can reasonably be expected to materially affect the Project Operations or the Hospital Services; or
  - (iii) an Emergency.
- (b) If WGH either takes steps itself or requires Project Co to take steps in accordance with this Section 31 as a result of a Reimbursement Event:
- (i) WGH shall reimburse Project Co for the reasonable costs and expenses incurred by Project Co in relation to the exercise of WGH's rights pursuant to this Section 31 that would not otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement; and
  - (ii) subject to Section 31.5(c), WGH shall bear all costs and expenses incurred by WGH in relation to the exercise of WGH's rights pursuant to this Section 31.
- (c) If, in exercising its rights pursuant to this Section 31, WGH performs any part of the Project Co Services either itself or by engaging others, WGH shall be entitled to deduct from any Monthly Service Payment the reasonable cost of performing such Project Co Services.

### 31.6 Reimbursement if Improper Exercise of Rights

- (a) If WGH exercises its rights pursuant to this Section 31, but WGH was not entitled to do so, WGH shall reimburse Project Co for the reasonable costs and expenses directly incurred by Project Co over and above those that would otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement and that are directly and reasonably incurred by Project Co in complying with those written requirements of WGH issued as a result of WGH having exercised such rights.
- (b) Project Co acknowledges and agrees that Project Co has no right to require a determination of whether or not WGH is entitled to exercise its rights pursuant to this Section 31 before taking any such action that WGH may require and Project Co shall comply with all of WGH's requirements. Only concurrently with or after complying with WGH's requirements shall Project Co be entitled to refer any Dispute for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

**31.7 Insured Exposure**

- (a) The reimbursement to Project Co pursuant to Section 31.5 and 31.6 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

**32. BENCHMARKING AND MARKET TESTING****32.1 Benchmarking and Market Testing**

- (a) The provisions of Schedule 31 - Benchmarking and Market Testing Procedure shall apply to the benchmarking and market testing of the Market Tested Services.
- (b) Project Co shall ensure that all of its Subcontracts are consistent with Project Co's obligations in relation to the Benchmarking Exercise and Market Testing, and, without limiting the generality of the foregoing, Project Co shall not enter into any Subcontract that does not provide for termination of such Subcontract on the applicable Effective Date and appropriate transition arrangements to any replacement Subcontractor, without any compensation whatsoever to the applicable Subcontractor.

**33. PAYMENT****33.1 Monthly Service Payments**

- (a) Subject to and in accordance with this Project Agreement, including this Section 33 and Schedule 20 - Payment Mechanism, WGH shall pay to Project Co the all-inclusive Monthly Service Payments for the performance of all of the Project Operations.

**33.2 Payment Adjustments**

- (a) Project Co acknowledges and agrees that:
  - (i) the amount of any Monthly Service Payment may be adjusted pursuant to Schedule 20 - Payment Mechanism; and
  - (ii) such adjustments are integral to the provisions of this Project Agreement.
- (b) If, for any reason, any adjustment (including a Deduction) made pursuant to Schedule 20 - Payment Mechanism is invalid and unenforceable, and the Province enacts an Applicable Law that is a Change in Law to recover or to cause such adjustment to be enforceable, such Change in Law (only to the extent that it permits WGH to recover or to cause such adjustment to be enforceable) shall be deemed to not be a Relevant Change in

Law and Project Co shall not be entitled to any compensation hereunder for such Change in Law.

### **33.3 Payment Commencement**

- (a) Subject to and in accordance with this Project Agreement, WGH shall pay Project Co the Monthly Service Payments calculated as being due to Project Co in respect of each Payment Period following the Payment Commencement Date in accordance with Schedule 20 - Payment Mechanism.
- (b) Project Co shall not be entitled to any Monthly Service Payments for any period prior to the Payment Commencement Date.

### **33.4 Adjustments to Payment Periods**

- (a) The Annual Service Payment payable in respect of each of the first Contract Year and the last Contract Year shall be adjusted in accordance with Schedule 20 - Payment Mechanism.

### **33.5 Invoicing and Payment Arrangements**

- (a) Within 5 Business Days following the end of each Payment Period, Project Co shall issue to WGH an invoice for the amount of the Monthly Service Payment owing by WGH to Project Co for such Payment Period, with such adjustments as provided in the Payment Adjustment Report issued in the previous Payment Period.
- (b) Project Co shall comply with all requirements of Schedule 20 - Payment Mechanism in respect of invoices and shall include with each invoice such supporting documentation as WGH may reasonably require in connection with payments hereunder.
- (c) Each invoice shall be in a form agreed by the Parties, acting reasonably, and shall include as a minimum:
  - (i) the Monthly Service Payment payable in respect of the applicable Payment Period;
  - (ii) any adjustments set out in the Payment Adjustment Report issued in the previous Payment Period that have been approved by WGH;
  - (iii) any other adjustments to reflect overpayments and underpayments, as agreed between the Parties or determined in accordance with Schedule 27 - Dispute Resolution Procedure;
  - (iv) any amount owing to WGH under this Project Agreement;
  - (v) any amount owing to Project Co under this Project Agreement; and

- (vi) the net amount owing by WGH to Project Co, or by Project Co to WGH, as applicable.
- (d) GST shall be shown separately on all invoices from Project Co, together with Project Co's GST registration number.
- (e) Any property or services provided to or sold to WGH, payment for which is subject to RST, shall be shown as separate line items and Project Co shall indicate whether the RST has been paid or is payable.
- (f) Each monthly invoice delivered during the period from the Substantial Completion Date until 45 days following the Final Completion Date shall include up-to-date copies of the parcel registers for the Site.
- (g) Upon agreement of the Parties, the form of invoice may be changed from time to time.
- (h) The WGH Representative shall review each invoice submitted in accordance with this Section 33.5, and, within 5 Business Days of receiving such invoice, WGH shall pay the amount stated in such invoice. Any such payment shall be subject to adjustment pursuant to Section 33.5(l).
- (i) WGH shall not be obligated to make any payment to Project Co unless all conditions precedent applicable to such payment under this Project Agreement have been satisfied by Project Co. Further, WGH shall not be obligated to pay an invoice delivered by Project Co after the second Payment Period following the Payment Commencement Date until Project Co has delivered the Payment Adjustment Report referred to in Section 33.5(j) for the previous Payment Period. In the event that Project Co delivers any Payment Adjustment Report later than the stipulated date in Section 33.5(j), WGH's obligation to pay the invoice issued by Project Co for the immediately following Payment Period shall be extended by the number of days by which Project Co was late in delivering the applicable Payment Adjustment Report to WGH.
- (j) Within 5 Business Days following the end of each Payment Period, Project Co shall also submit to WGH:
  - (i) a Performance Monitoring Report in respect of the Payment Period just ended; and
  - (ii) a report (a "**Payment Adjustment Report**") setting out any adjustments required between the actual Monthly Service Payment determined by Project Co to be owing by WGH to Project Co in respect of the Payment Period just ended and the amount that was paid by WGH during such Payment Period, including details of:
    - (A) all Deductions in relation to Availability Failures;
    - (B) all Deductions in relation to Quality Failures;

- (C) all Deductions in relation to Service Failures; and
  - (D) any Gainshare Adjustment or Painshare Adjustment.
- (k) Project Co shall include with each Payment Adjustment Report such supporting documentation as is reasonably required to substantiate and confirm the adjustments set out in each Payment Adjustment Report.
- (l) Within 10 Business Days of receipt by WGH of the Payment Adjustment Report, the WGH Representative shall:
- (i) determine and advise Project Co that the Payment Adjustment Report is approved by WGH, in which case the adjustments set out therein will be reflected by Project Co in the invoice next issued by Project Co; or
  - (ii) if WGH disputes Project Co's entitlement to any part of the amounts set out therein, notify Project Co in writing of that part of the amounts (insofar as at the time of such notice WGH is reasonably able to quantify it) which WGH disputes and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. In such event, WGH shall withhold payment of any disputed amount pending agreement or determination of Project Co's entitlement to the disputed amount in accordance with Section 33.8.

### **33.6 Electronic Invoicing**

- (a) Project Co shall cooperate with the reasonable requirements of WGH's finance department, and shall submit its invoices and all other documentation relating to this Project Agreement in a form and with the structure and content as is reasonably required to be compatible with WGH's information systems.

### **33.7 Final Payment Periods**

- (a) At the beginning of each of the final 3 Payment Periods immediately prior to the Expiry Date, WGH shall estimate, acting reasonably, the adjustments to the Monthly Service Payment for each such Payment Period. WGH may withhold the amounts that it has reasonably estimated for such adjustments from amounts paid to Project Co during each of the final 3 Payment Periods.
- (b) Within 10 Business Days of receipt by WGH of the applicable Payment Adjustment Report for each of the final 3 Payment Periods, the WGH Representative shall either:
- (i) determine and advise Project Co that the Payment Adjustment Report is approved by WGH, and perform a reconciliation between the amount payable based on such Payment Adjustment Report and the amount WGH previously paid in respect of the applicable Payment Period. Based on such reconciliation, either WGH or Project Co shall pay to the other Party the amount properly owing in accordance with such reconciliation; or

- (ii) if WGH disputes Project Co's entitlement to any part of the amounts set out therein, notify Project Co in writing of that part of the amounts (insofar as at the time of such notice WGH is reasonably able to quantify it) which WGH disputes and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. In such event, the WGH Representative shall perform a reconciliation between the undisputed amount payable based on such Payment Adjustment Report and the amount WGH previously paid in respect of the applicable Payment Period. Based on such reconciliation, either WGH or Project Co shall pay to the other Party the amount properly owing in accordance with such reconciliation, provided that WGH shall withhold payment of any disputed amount pending agreement or determination of Project Co's entitlement to the disputed amount in accordance with Section 33.8.

### 33.8 Disputes

- (a) If WGH, acting in good faith, disputes all or any part of a Payment Adjustment Report and/or the Monthly Service Payments payable thereunder, it shall notify Project Co in writing of that part of the amounts (insofar as at the time of such notice WGH is reasonably able to quantify it) which WGH disputes and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. The Parties shall use commercially reasonable efforts to resolve the Dispute in question within 10 Business Days of the aforesaid notice of the Dispute. If they fail to so resolve the Dispute within such period, the Dispute may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure. Following resolution of the Dispute, any amount which has been paid by WGH that is determined not to have been payable shall be paid forthwith by Project Co to WGH, together with interest on such amount calculated in accordance with Section 33.11 on the basis that the due date was the date of the overpayment by WGH and any amount which has been withheld by WGH that is determined to have been payable shall be paid forthwith by WGH to Project Co, together with interest on such amount calculated in accordance with Section 33.11 on the basis that the due date was the date upon which such amount became payable to Project Co.

### 33.9 Payments

- (a) Unless specific timeframes are stipulated for payment of any amounts owing or payable by one Party to the other Party under this Project Agreement, such amounts shall be due within 30 days of receipt or deemed receipt of an invoice therefor.
- (b) Project Co shall maintain all holdbacks required pursuant to the *Construction Lien Act* (Ontario) and shall only release holdbacks on being satisfied that no claims for lien can be claimed in respect of the Subcontracts for which holdbacks are to be released.

**33.10 Manner of Payment**

- (a) All payments under this Project Agreement shall be made in Canadian dollars and shall be electronically transferred, quoting the invoice number or description against which payment is made, in immediately available funds on the due date to a single bank account located in Canada as may be designated by the recipient from time to time by written notice to the other Party.
- (b) If the due date is not a Business Day, then the electronic transfer shall be made on the Business Day immediately succeeding such day.

**33.11 Interest on Overdue Payments**

- (a) Each Party shall be entitled, without prejudice to any other right or remedy, to receive interest on any payment not duly made by the other Party pursuant to the terms of this Project Agreement on the due date calculated from day to day at a rate per annum equal to the Default Interest Rate from the day after the date on which payment was due up to and including the date of payment.

**33.12 Set-Off**

- (a) The Parties agree that their rights of set-off at law or in equity are limited to the right of:
  - (i) WGH to set off against any amounts otherwise due to Project Co pursuant to the terms of this Project Agreement, any amounts (including, without limitation, any amounts payable in accordance with Section 55) which are due to WGH by Project Co pursuant to the terms of this Project Agreement; and
  - (ii) Project Co to set off against any amounts otherwise due to WGH pursuant to the terms of this Project Agreement, any amounts (including, without limitation, any amounts payable in accordance with Section 55) which are due to Project Co by WGH pursuant to the terms of this Project Agreement.

**33.13 Effect of Payment**

- (a) No payment hereunder shall be construed as an acceptance or approval of incomplete, defective or improper performance by Project Co of any of its obligations under this Project Agreement, nor shall it operate to relieve Project Co from the performance of any of its obligations under this Project Agreement which have not been performed.

**33.14 Audit of Performance Monitoring Program and Payment**

- (a) Without limiting WGH's rights and Project Co's obligations pursuant to Section 36.2, at any time and from time to time until 180 days after the Termination Date, WGH may give notice to Project Co requiring an audit of any matter relating to performance of the Project Operations and payments by or to WGH within the 7 year period prior to the date of such notice, including any Payment Adjustment Reports, and any other records,



reports, information, documents or data relating to performance and payments to verify their accuracy, correctness and completeness.

- (b) WGH shall appoint an auditor to perform and complete such audit at WGH's cost and expense and pursuant to terms of reference determined by WGH.
- (c) Within a reasonable time following receipt of a notice referred to in Section 33.14(a), Project Co shall make available to WGH's auditor, any Payment Adjustment Reports, and any other records, reports, information, documents or data relating to performance and payments.
- (d) WGH shall notify Project Co of the results of the audit, and if WGH's auditor discovers any inaccuracy, incorrectness or incompleteness, then, subject to Project Co's right to dispute the same in accordance with Schedule 27 - Dispute Resolution Procedure:
  - (i) Project Co shall:
    - (A) remedy any such inaccuracy, incorrectness or incompleteness and issue a revision to the applicable Payment Adjustment Report or other record, report, information, document or data; and
    - (B) where the inaccuracy, incompleteness or incorrectness has resulted in any material overpayment by WGH, reimburse WGH for all costs relating to the auditor and audit to a maximum amount that is the lesser of:
      - (i) the actual costs relating to the auditor and audit; or
      - (ii) an amount equal to the amount of any overpayment;
  - (ii) where the inaccuracy, incompleteness or incorrectness has resulted in any overpayment, whether or not material, by WGH, Project Co shall reimburse WGH for the amount of such overpayment, together with interest thereon at the Default Interest Rate from the date of such overpayment; and
  - (iii) where the inaccuracy, incompleteness or incorrectness has resulted in any underpayment, whether or not material, by WGH, WGH shall pay Project Co the amount of such underpayment, together with interest thereon at the Default Interest Rate from the date of such underpayment.

### **33.15 No Other Entitlement**

- (a) Project Co shall not be entitled to any payments, compensation, rights, remedies, benefits or entitlements under or in connection with this Project Agreement, except as specifically and expressly set out in this Project Agreement.

**33.16 Lump Sum Payments**

- (a) On the Payment Commencement Date, WGH shall pay Project Co the Substantial Completion Payment.
- (b) On the later of the Payment Commencement Date and the date on which all Equipment Procurement and Relocation Services are complete in accordance with Section 22, WGH shall pay to Project Co the Equipment Procurement and Relocation Fee.
- (c) On the later of the Payment Commencement Date and the date on which Project Co has completed the Transition, WGH shall pay Project Co the Transition Services Fee.

**34. TAXES****34.1 Taxes**

- (a) The Monthly Service Payments and all other payments hereunder, including any compensation on termination, include all applicable Taxes, except only GST.
- (b) WGH shall pay, when due and payable, all property taxes or payments in lieu of property taxes that are assessed in respect of ownership or use of the Site or Facility.
- (c) Within 3 weeks of the end of the month in which Substantial Completion occurs, WGH shall pay to Project Co all GST payable in accordance with paragraph 168(3)(c) of the *Excise Tax Act* (Canada) in respect of the construction of the Facility for remittance to the Canada Revenue Agency, which amount will be set out in an invoice issued by Project Co to WGH upon the occurrence of Substantial Completion.

**34.2 Changes in Scope of GST and RST**

- (a) If, as a result of a Change in Law, the provision of any goods or services by Project Co in connection with the performance of the Project Operations that was not subject to GST or RST as at the date of this Project Agreement becomes subject to GST or RST, WGH will pay to Project Co the amount of such GST and/or RST as may be exigible from time to time thereafter in connection with the provision of such goods or services by Project Co.

**34.3 Changes in Rate of RST**

- (a) If, as a result of a Change in Law, the rate of RST chargeable to WGH as at the date of this Project Agreement in respect of or relating to the supply of any goods or services by Project Co in connection with the performance of the Project Operations is increased, WGH will pay to Project Co, for each Payment Period thereafter, an amount on account of or in respect of such RST, calculated at a rate which is equal to the difference between the rate in effect at the time of payment of the RST and the rate in effect immediately prior to the Change in Law.

- (b) If, as a result of a Change in Law, the rate of RST chargeable to WGH as at the date of this Project Agreement in respect of or relating to the supply of any goods or services by Project Co in connection with the performance of the Project Operations is decreased, Project Co will pay to WGH, for each Payment Period thereafter, an amount on account of or in respect of such RST, calculated at a rate which is equal to the difference between the rate in effect immediately prior to the Change in Law and the rate in effect at the time of payment of the RST.

#### 34.4 Changes in Recoverability of Tax Credits

- (a) WGH will pay to Project Co from time to time, as the same is incurred by Project Co, amounts equal to any Irrecoverable Tax to the extent such Irrecoverable Tax results from a Change in Law. Project Co will pay to WGH from time to time, as the same is incurred by Project Co, amounts equal to any Recoverable Tax to the extent such Recoverable Tax results from a Change in Law.
- (b) For the purposes of this Section 34.4, the term "**Irrecoverable Tax**" means GST or RST incurred by Project Co in respect of the supply of any good or service to WGH which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works or otherwise performing the Project Operations 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 RST (as the case may be).
- (c) For the purposes of this Section 34.4, the term "**Recoverable Tax**" means GST or RST incurred by Project Co in respect of the supply of any good or service to WGH which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works or otherwise performing the Project Operations 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 RST (as the case may be).

#### 34.5 Information and Assistance Provided by Project Co

- (a) Project Co shall, at WGH's request and cost, assist WGH in applying for and obtaining all remissions and credits of GST to which WGH is entitled. In addition, where Project Co has acquired tangible personal property (as defined in the *Retail Sales Tax Act* (Ontario)) for WGH, Project Co shall, if requested by WGH, provide invoices and such other documentation as WGH may require to claim rebates in respect of RST relating to such tangible personal property.
- (b) WGH may apply for a global or general exemption, waiver, remission, or refund of some or all Taxes which may otherwise be applicable in relation to this Project Agreement. Project Co shall, at WGH's cost, assist WGH in making any applications for such global or general exemption, waiver, remission or refund and shall provide WGH with such documentation as WGH may reasonably require to support such application and, in any event, shall provide such consent as WGH may require. Any exemption, waiver, remission, refund or other recovery of Taxes obtained by WGH through such application

shall accrue to the sole benefit of WGH. In respect of RST, where WGH has provided to Project Co valid certification for RST exemption, Project Co shall not collect such RST and, if such RST is included in the payments hereunder (including the Monthly Service Payments), Project Co shall reduce such payments accordingly. If it is subsequently determined that such RST is applicable, then WGH shall pay such RST or reimburse Project Co therefor.

- (c) Project Co will provide WGH with any information reasonably requested by WGH from time to time in relation to the GST and/or RST chargeable in accordance with this Project Agreement and payable by WGH to Project Co from time to time.

#### **34.6 Residency – *Income Tax Act (Canada)***

- (a) Project Co shall not undertake any action or transaction that, if undertaken, would cause or result in Project Co becoming a Non-Resident without WGH's prior written consent, which consent may be withheld in WGH's sole discretion.

#### **34.7 Taxes - General**

- (a) Project Co shall not, without the prior written consent of WGH (which consent may be withheld in its sole discretion), undertake any action or transaction that, if undertaken, would cause, WGH or any WGH Party to have (or result in WGH or any WGH Party having) any obligation to deduct, withhold or remit any Taxes that are required by Applicable Law to be deducted, withheld or remitted from any amounts paid or credited to Project Co or any Project Co Party under this Project Agreement or under any other Project Document.

#### **34.8 Taxes – Indemnity**

- (a) If (i) Project Co becomes a Non-Resident, or (ii) WGH or a WGH Party is or becomes required by Applicable Law to deduct and withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by WGH or a WGH Party under the Project Agreement or under any of the Project Documents, then WGH or any WGH Party shall be entitled to make any applicable deductions or withholdings from any amount paid or credited or to be paid or credited to Project Co or a Project Co Party on or after the date on which (A) Project Co or the Project Co Party becomes a Non-Resident and at all times while it remains a Non-Resident; and (B) WGH or the WGH Party is required by Applicable Law to deduct or withhold amounts in respect of any such amounts, in each case, in respect of all Taxes that are required by Applicable Law to be deducted or withheld from amounts paid or credited to a Non-resident or otherwise as required by Applicable Law; and all amounts paid or credited by WGH or any WGH Party under this Project Agreement or under any other Project Document to Project Co or a Project Co Party shall be paid or credited net of such deductions or withholdings.

- (b) If (i) Project Co becomes a Non-Resident, or (ii) WGH or a WGH Party is or becomes required by Applicable Law to deduct and withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by WGH or a WGH Party under the Project Agreement or under any of the Project Documents, Project Co shall, in each case, indemnify and hold harmless WGH and the WGH Parties for (A) the full amount of all Taxes ("**Indemnifiable Taxes**") that arise, are imposed on or are required to be paid by WGH or any WGH Party in respect of any amounts paid or credited by WGH or a WGH Party to Project Co or any Project Co Party under this Project Agreement or under any other Project Document as a result of either of the foregoing items less any amount withheld or deducted by WGH or a WGH Party (as applicable) in respect of such Taxes, and (B) any liability payable or incurred in connection with Indemnifiable Taxes (including penalties, interest and reasonable expenses associated with Tax compliance, reporting and contesting such liability for Indemnifiable Taxes, including reasonable professional expenses payable or incurred in connection therewith) arising from or with respect to Indemnifiable Taxes, whether or not they were correctly or legally asserted ("**Associated Liabilities**"). Payment under this indemnification shall be made within 30 days from the date WGH makes written demand for it. A certificate containing reasonable detail as to the amount of Indemnifiable Taxes and Associated Liabilities submitted to Project Co by WGH shall be conclusive evidence, absent manifest error, of the amount due from Project Co to WGH. WGH shall be entitled to exercise its rights of set-off under Section 33.12 against any amounts owing under this indemnification.

## **35. FINANCIAL MODEL**

### **35.1 Appointment of Custodian**

- (a) On or prior to Financial Close, the Parties shall appoint a suitably qualified and experienced person to act as the Custodian for purposes of this Project Agreement and shall enter into an agreement with the Custodian substantially in the form of Schedule 3 – Custody Agreement.

### **35.2 Delivery and Use of Financial Model**

- (a) In accordance with Schedule 2 - Completion Documents, Project Co shall deliver copies of the Financial Model (1 printed copy and 2 copies on CD-Rom and/or DVD-Rom) to WGH and the Custodian to be held in custody on terms to be agreed by the Parties.
- (b) Following the approval by WGH of any amendment to the Financial Model, Project Co shall promptly deliver copies of the revised Financial Model, in the same form as the original Financial Model (or such other form as may be agreed by the Parties from time to time), to WGH and the Custodian.
- (c) The Parties shall instruct the Custodian to keep both a hard copy and an electronic copy of all versions of the Financial Model.

- (d) Project Co hereby grants to WGH an irrevocable, royalty free perpetual, non-exclusive and transferable licence, including the right to grant sub-licences, to use the Financial Model or any revised Financial Model for any purpose in connection with this Project Agreement, whether during or after the Project Term.
- (e) For greater certainty, Project Co acknowledges and agrees that WGH shall not be liable to Project Co for, and Project Co shall not seek to recover from WGH or any WGH Party, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) as a result of any errors in the Financial Model.

## **36. RECORDS, INFORMATION AND AUDIT**

### **36.1 Records Provisions**

- (a) Project Co shall comply with Schedule 26 - Record Provisions.

### **36.2 Information and General Audit Rights**

- (a) Project Co shall provide to WGH all information, reports, documents, records and the like, including as referred to in Schedule 26 - Record Provisions, in the possession of, or available to, Project Co as WGH may reasonably require from time to time for any purpose in connection with this Project Agreement, other than Sensitive Information. Project Co shall use commercially reasonable efforts to ensure that, for such purpose, all such information, reports, documents, records and the like in the possession of, or available to, the Construction Contractor and the Service Provider shall be available to Project Co and Project Co shall include relevant terms in all Subcontracts to this effect.
- (b) Project Co shall also provide to WGH, and shall require all of its Subcontractors, including the Construction Contractor and the Service Provider, to provide to WGH (at WGH's reasonable cost), all information, reports, documents, records and the like required to be provided pursuant to Section 36.2(a) which subsequently come into the possession of, or become available to, Project Co or the Subcontractors, as WGH may reasonably require from time to time to enable WGH to provide reports, notices, returns and the like pursuant to any Applicable Law, including information and documentation pertaining to the physical condition of the Facility, health and safety, fire safety, emergency preparedness, environmental matters, employees and human resources related matters and patient care, other than Sensitive Information.
- (c) Project Co shall promptly after receipt provide WGH with a copy of any material notice, order, direction, requirement or other similar communication received by it or by any Project Co Party from any Governmental Authority in relation to any of the Project Operations, the Hospital Services or the Facility, and Project Co shall include relevant terms in all Subcontracts to this effect.
- (d) Project Co shall promptly notify WGH of any actions, suits, proceedings, or investigations commenced, pending or threatened against Project Co or, to Project Co's

knowledge, any Project Co Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement.

- (e) All information, reports, documents and records in the possession of, or available to, Project Co, including as referred to in Schedule 26 - Record Provisions, which are required to be provided to or available to WGH hereunder, shall be subject and open to inspection and audit by WGH at any time and from time to time, which inspection and audit shall take place during normal business hours and at Project Co's normal places of business unless WGH and Project Co otherwise agree. WGH shall also have the right to monitor and audit the performance of any and all parts of the Works or Project Co Services wherever located, and Project Co shall cooperate with, and shall require its Subcontractors to cooperate with, and provide access to the representatives of WGH monitoring and auditing such parts of the Works or Project Co Services, including providing them with access and copies (at WGH's reasonable cost) of all relevant information, reports, documents and records pertaining to the performance of such parts of the Works or Project Co Services. Except as otherwise provided herein, all of WGH's costs for the inspections, audits and monitoring shall be borne by WGH.
- (f) In conducting an audit of Project Co under Section 36.2(e) or as otherwise provided under this Project Agreement, WGH shall have all rights necessary or incidental to conducting an audit, including the right to have access to and inspect and take copies (at WGH's reasonable cost) of all books and records of Project Co required to be provided to or available to WGH hereunder, upon reasonable notice and at reasonable times. Project Co shall fully cooperate with WGH and its auditors in the conduct of any audits, including by making available all such records and accounts (other than Sensitive Information) in existence at that time as they may require to perform a full and detailed audit, and Project Co further agrees to promptly review and settle with WGH all matters arising from such audits, including the refunding of monies to WGH where applicable. At the reasonable request of WGH's auditors, Project Co shall provide such information, reports, documents and records as WGH's auditors may reasonably require, other than Sensitive Information.
- (g) WGH's rights pursuant to this Section 36.2 shall be in addition to, and shall not limit, any other audit, information, inspection or similar rights under this Project Agreement.
- (h) WGH's rights pursuant to this Section 36.2 shall not limit or restrict any Governmental Authority's right of review, audit, information or inspection under Applicable Law.

**37. CHANGES IN LAW****37.1 Performance after Change in Law**

- (a) Following any and all Changes in Law, Project Co shall perform the Project Operations in accordance with the terms of this Project Agreement, including in compliance with Applicable Law.

**37.2 Works Change in Law**

- (a) On the occurrence of a Works Change in Law:
- (i) either Party may give notice to the other of the need for a Variation as a result of such Works Change in Law;
  - (ii) the Parties shall meet within 10 Business Days of such notice to consult with respect to the effect of the Works Change in Law and to reach an agreement on whether a Variation is required as a result of such Works Change in Law, and, if the Parties have not, within 10 Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Works Change in Law has occurred or the effect of any Works Change in Law for resolution in accordance with Schedule 27 - Dispute Resolution Procedure; and
  - (iii) WGH shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 - Variation Procedure shall apply except that:
    - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Works Change in Law;
    - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences and Approvals required in respect of the Variation;
    - (C) WGH shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
    - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Works Change in Law as soon as reasonably practicable; and
    - (E) Project Co shall not be entitled to any payment or other compensation or relief from performance of its obligations under this Project Agreement in respect of any Works Change in Law or associated Variation other than as established pursuant to Schedule 22 - Variation Procedure.



**37.3 Relevant Change in Law**

- (a) On the occurrence of a Relevant Change in Law, either Party shall be entitled to seek compensation for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Project Operations so as to put such Party in no better and no worse position than it would have been in had the Relevant Change in Law not occurred. Any such compensation shall be calculated in accordance with this Section 37.3.
- (b) On the occurrence of a Relevant Change in Law:
- (i) either Party may give notice to the other of the need for a Variation as a result of such Relevant Change in Law;
  - (ii) the Parties shall meet within 10 Business Days of such notice to consult with respect to the effect of the Relevant Change in Law and to reach an agreement on whether a Variation is required as a result of such Relevant Change in Law, and, if the Parties have not, within 10 Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Relevant Change in Law has occurred or the effect of any Relevant Change in Law for resolution in accordance with Schedule 27 - Dispute Resolution Procedure; and
  - (iii) WGH shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 - Variation Procedure shall apply except that:
    - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Relevant Change in Law;
    - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences and Approvals required in respect of the Variation;
    - (C) WGH shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
    - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Relevant Change in Law as soon as reasonably practicable;
    - (E) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement:
      - (i) use commercially reasonable efforts to mitigate the adverse effects of any Relevant Change in Law and take commercially reasonable steps to minimize any increase in costs arising from such Relevant Change in Law; and

- (ii) use commercially reasonable efforts to take advantage of any positive or beneficial effects of any Relevant Change of Law and take commercially reasonable steps to maximize any reduction in costs arising from such Relevant Change in Law; and
- (F) any entitlement to compensation payable shall be in accordance with this Section 37.3, and any calculation of compensation shall take into consideration, *inter alia*:
  - (i) any failure by a Party to comply with Section 37.3(b)(iii)(E);
  - (ii) the extent to which a Party has been, or shall be, compensated in respect of such Change in Law as a result of any indexation or adjustment of the Monthly Service Payments under this Project Agreement;
  - (iii) any increase or decrease in its costs resulting from such Relevant Change in Law; and
  - (iv) any amount which Project Co recovers under any insurance policy (or would recover if it complied with its obligations to insure under this Project Agreement or the terms of any policy of insurance required under this Project Agreement) which amount, for greater certainty, shall not include the amount of any excess or deductibles or any amount above the maximum insured amount applicable to any such insurance policy.
- (c) Project Co shall not be entitled to any payment or compensation or, except as provided in Section 39 or otherwise in this Project Agreement, relief in respect of any Relevant Change in Law, or the consequences thereof, other than in accordance with this Section 37.3, and Section 40 shall be construed accordingly.
- (d) In relation to a Relevant Change in Law that results in a net increase or decrease in costs incurred by Project Co in delivery of the Project Operations, taking into consideration, *inter alia*, Section 37.3(b)(iii)(E), if the cost impact of such Relevant Change in Law in a given Contract Year (in aggregate with all other such Relevant Changes in Law that have a cost impact in the same Contract Year) amounts to less than \$10,000 (index linked) in that Contract Year, neither WGH nor Project Co shall be entitled to any payment or compensation pursuant to this Section 37.3 or otherwise in respect of the cost impact of that Relevant Change in Law in that Contract Year, or, except as provided in Section 39 or otherwise in this Project Agreement, any other relief in respect of such Relevant Change in Law in that Contract Year.

## 38. VARIATIONS

### 38.1 Variation Procedure

- (a) Except as otherwise expressly provided in this Project Agreement, Schedule 22 - Variation Procedure shall apply in respect of Variations and Small Works.
- (b) For greater certainty, Project Co shall, subject to and in accordance with Schedule 22 - Variation Procedure, be entitled to a Variation if a written direction issued by or on behalf of WGH's board of directors to Project Co or any Project Co Party results in a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Project Operations, including in relation to the whole or any part of the Works or the Project Co Services.
- (c) Without limiting Project Co's obligations pursuant to Section 9.3 and Schedule 22 - Variation Procedure, Project Co shall include in each Subcontract, and shall cause each Project Co Party to comply with, the Variation Procedure, to the extent that the Variation Procedure requires Project Co to minimize the cost and impact of Variations, including Variations as to scope of Project Co Services.

### 38.2 Innovation and Value Engineering

- (a) Project Co acknowledges that WGH at all times desires to reduce the Monthly Service Payments and the overall cost to WGH of the Facility and the Project Co Services, and Project Co agrees to cooperate, explore and work with WGH in investigating and considering innovation and value engineering and other cost saving measures.
- (b) If an innovation and value engineering proposal is at any time and from time to time originated and initiated solely by Project Co, Project Co may make a proposal (the "**Innovation Proposal**") by notice to WGH.
- (c) The Parties agree that the subject of an Innovation Proposal shall not include:
  - (i) any Variation Enquiry initiated by WGH;
  - (ii) any Variation resulting from a Change in Law; or
  - (iii) any change to the Clinical Services.
- (d) The Innovation Proposal must:
  - (i) set out sufficient detail to enable WGH to evaluate the Innovation Proposal in full;
  - (ii) specify Project Co's reasons and justification for proposing the Innovation Proposal;

- (iii) request WGH to consult with Project Co with a view to deciding whether to agree to the Innovation Proposal and, if so, what consequential changes WGH requires as a result;
  - (iv) indicate any implications of the Innovation Proposal, including a difference between the existing and the proposed requirements of this Project Agreement, and the comparative advantages of each to Project Co and WGH;
  - (v) indicate, in particular, whether an increase or decrease to the Monthly Service Payments is proposed, and, if so, give a detailed cost estimate of such proposed change;
  - (vi) indicate if there are any dates by which a decision by WGH must be made;
  - (vii) indicate the capital cost of the Innovation Proposal, including the cost of financing; and
  - (viii) include such other information and documentation as may be reasonably requested by WGH to fully evaluate and consider the Innovation Proposal.
- (e) WGH shall, acting in good faith, evaluate the Innovation Proposal, taking into account all relevant issues, including whether:
- (i) a change in the Monthly Service Payments will occur;
  - (ii) the Innovation Proposal affects the quality of the Works, the Facility or the Project Co Services, or the likelihood of successful completion of the Works or delivery of the Project Co Services;
  - (iii) the Innovation Proposal will benefit or interfere with the efficient operation of the Facility or the performance of the Hospital Services;
  - (iv) the Innovation Proposal will interfere with the relationship between WGH and third parties;
  - (v) the financial strength of Project Co is sufficient to deliver the changed Works or perform the changed Project Co Services, as applicable;
  - (vi) the residual value of the Facility is affected;
  - (vii) the Innovation Proposal materially affects the risks or costs to which WGH is exposed; or
  - (viii) any other matter WGH considers relevant.
- (f) WGH may request clarification or additional information regarding the Innovation Proposal, and may request modifications to the Innovation Proposal.

- (g) WGH may, in its sole discretion, accept or reject any Innovation Proposal.
- (h) If WGH accepts the Innovation Proposal, with or without modification, the relevant Innovation Proposal shall be documented and evidenced by a written Variation Confirmation, together with any other documents necessary to amend this Project Agreement or any relevant Project Documents to give effect to the Innovation Proposal.
- (i) Unless WGH specifically agrees to an increase in the Monthly Service Payments in accepting an Innovation Proposal pursuant to Section 38.2(h), there shall be no increase in the Monthly Service Payments as a result of an Innovation Proposal.
- (j) If, after taking into account the agreed implementation and reasonably allocated development costs incurred by Project Co in connection with the Innovation Proposal and any other uses of the Innovation Proposal by Project Co, the Innovation Proposal causes or will cause the costs of Project Co and/or of a Subcontractor to decrease, the net savings in the costs of Project Co and/or the Subcontractor will be shared equally by Project Co and WGH, and WGH's share of the net savings shall, if the Parties agree, be reflected in either a lump sum payment or in a reduction of the Monthly Service Payments.
- (k) If an Innovation Proposal causes or will cause the costs of WGH to decrease, the net savings in the costs of WGH will be shared as follows:
  - (i) equally by Project Co and WGH for the first 5 years following the implementation of the Innovation Proposal; and
  - (ii) thereafter, WGH shall be entitled to the full benefit of the net savings in costs (if applicable),

and Project Co's share of the net savings shall, at WGH's sole option, be reflected in either a lump sum payment or in an increase in the Monthly Service Payments.

## 39. DELAY EVENTS

### 39.1 Definition

- (a) For the purposes of this Project Agreement, "**Delay Event**" means any of the following events or circumstances only to the extent, in each case, that it causes a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date:
  - (i) the implementation of a Variation to the extent Project Co has identified such delay in its Estimate and such delay has been documented in the Variation Confirmation;
  - (ii) any breach by WGH of any of WGH's obligations under this Project Agreement (including any delay by WGH in giving access to the Site pursuant to Section 14.1 or any obstruction of the rights afforded to Project Co under

Section 14.1 or any delay by WGH in carrying out its obligations set forth in Schedule 10 – Review Procedure), except to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party;

- (iii) an opening up of the Works pursuant to Section 20.3 where such Works are not subsequently found to be defective or not in compliance with the requirements of this Project Agreement (including the Technical Requirements, the Project Co Proposal Extracts and the Quality Plans), unless such opening up of the Works was reasonable in the light of other defects or non-compliance previously discovered by WGH or the Architect of Record, as applicable, in respect of the same or a similar component of the Works or subset of the Works;
- (iv) a requirement pursuant to Sections 16.2(b) or 16.2(c) for Project Co to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, upon the discovery of Contamination, which alteration, addition, demolition, extension or variation in the Works, or suspension or delay in the performance of the Works, would not otherwise be required under this Project Agreement;
- (v) a requirement pursuant to Sections 16.3(b) or 16.3(c) for Project Co to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, upon the discovery of any fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which alteration, addition, demolition, extension or variation in the Works, or suspension or delay in the performance of the Works, would not otherwise be required under this Project Agreement;
- (vi) a requirement pursuant to Section 16.4(b) for Project Co to perform any alteration, addition, demolition, extension or variation in the Works as the result of Site Conditions not described in or not readily discoverable or reasonably inferable from the Geotechnical Reports, or readily discoverable or reasonably inferable from Project Co's due diligence, investigation and examination of the Site in accordance with Section 16.1;
- (vii) the execution of works on the Site not forming part of this Project Agreement by WGH, any WGH Party or any other person permitted to execute such works by WGH or any WGH Party;
- (viii) a requirement pursuant to Section 11.1 of Schedule 27 - Dispute Resolution Procedure for Project Co to proceed in accordance with the direction of WGH during the pendency of a Dispute, which Dispute is subsequently determined in Project Co's favour;
- (ix) an event of Force Majeure;

- (x) a Relief Event; or
- (xi) a Relevant Change in Law.

### **39.2 Consequences of a Delay Event**

- (a) Project Co shall provide written notice to the WGH Representative and the Independent Certifier within 5 Business Days of becoming aware of the occurrence of Delay Event. Project Co shall, within 10 Business Days after such notification, provide further written details to the WGH Representative and the Independent Certifier which shall include:
  - (i) a statement of which Delay Event the claim is based upon;
  - (ii) details of the circumstances from which the Delay Event arises;
  - (iii) details of the contemporary records which Project Co shall maintain to substantiate its claim for extra time;
  - (iv) details of the consequences (whether direct or indirect, financial or non-financial) which such Delay Event may have upon the Scheduled Substantial Completion Date; and
  - (v) details of any measures which Project Co proposes to adopt to mitigate the consequences of such Delay Event.
- (b) As soon as possible but in any event within 3 Business Days of Project Co receiving, or becoming aware of, any supplemental information which may further substantiate or support Project Co's claim, Project Co shall submit further particulars based on such information to the WGH Representative and the Independent Certifier.
- (c) The WGH Representative shall, after receipt of written details under Section 39.2(a), or of further particulars under Section 39.2(b), be entitled by written notice to require Project Co to provide such further supporting particulars as the WGH Representative may reasonably consider necessary. Project Co shall afford the WGH Representative and the Independent Certifier reasonable facilities for investigating the validity of Project Co's claim, including, without limitation, on-site inspection.
- (d) Subject to the provisions of this Section 39, the WGH Representative shall allow Project Co an extension of time equal to the delay caused by the Delay Event and shall fix a revised Scheduled Substantial Completion Date as soon as reasonably practicable and in any event within 10 Business Days of the later of:
  - (i) the date of receipt by the WGH Representative of Project Co's notice given in accordance with Section 39.2(a) and the date of receipt of any further particulars (if such are required under Section 39.2(c)), whichever is later; and

- (ii) the date of receipt by the WGH Representative of any supplemental information supplied by Project Co in accordance with Section 39.2(b) and the date of receipt of any further particulars (if such are required under Section 39.2(c)), whichever is later.
- (e) For the avoidance of doubt, there shall be no extension to the Project Term as a result of any delay caused by a Delay Event.
- (f) If:
  - (i) the WGH Representative declines to fix a revised Scheduled Substantial Completion Date;
  - (ii) Project Co considers that a different Scheduled Substantial Completion Date should be fixed; or
  - (iii) there is a dispute as to whether a Delay Event has occurred,then Project Co shall be entitled to refer the matter for determination by the Independent Certifier. The decision of the Independent Certifier may be disputed by either Party and referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

### **39.3 Mitigation**

- (a) If Project Co is (or claims to be) affected by a Delay Event, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps:
  - (i) to eliminate or mitigate the consequences of such event upon the performance of its obligations under this Project Agreement;
  - (ii) to continue to perform its obligations under this Project Agreement to the extent possible notwithstanding the Delay Event; and
  - (iii) to resume performance of its obligations under this Project Agreement affected by the Delay Event as soon as practicable.
- (b) To the extent that Project Co does not comply with its obligations under this Section 39.3, such failure shall be taken into account in determining Project Co's entitlement to an extension of time pursuant to this Section 39.

## **40. COMPENSATION EVENTS**

### **40.1 Definition**

- (a) For the purposes of this Project Agreement, "**Compensation Event**" means any event referred to in Sections 39.1(a)(ii), 39.1(a)(iii), 39.1(a)(iv), 39.1(a)(v), 39.1(a)(vi),



39.1(a)(vii) and 39.1(a)(viii) as a direct result of which Project Co has incurred loss or expense, whether or not any of these events has also caused a delay.

#### **40.2 Consequences of a Compensation Event**

- (a) If a Compensation Event occurs, Project Co's sole right to compensation shall be as set out in this Section 40. For greater certainty, except as aforesaid, no other Delay Event shall entitle Project Co to receive any compensation, except as otherwise provided in:
- (i) Schedule 22 - Variation Procedure, in the case of a Delay Event referred to in Section 39.1(a)(i);
  - (ii) Section 43, in the case of a Delay Event referred to in Section 39.1(a)(ix);
  - (iii) Section 42, in the case of a Delay Event referred to in Section 39.1(a)(x); and
  - (iv) Section 37, in the case of a Delay Event referred to in Section 39.1(a)(xi).
- (b) Subject to Sections 40.3 and 40.4, if it is agreed, or determined in accordance with Schedule 27 - Dispute Resolution Procedure, that there has been a Compensation Event, Project Co shall be entitled to such compensation as would place Project Co in no better and no worse position than it would have been in had the relevant Compensation Event not occurred. For greater certainty, in respect of a Compensation Event that is also a Delay Event, such compensation will include amounts which, but for the Delay Event, would have been paid by WGH to Project Co. Project Co shall promptly provide the WGH Representative with any information the WGH Representative may require in order to determine the amount of such compensation.
- (c) If WGH is required to compensate Project Co pursuant to this Section 40.2, then WGH may either pay such compensation as a lump sum payment or payments at times and in a manner to be agreed with Project Co, acting reasonably, or, alternatively, WGH may request Project Co to agree to an adjustment to the Monthly Service Payments. If Project Co agrees to an adjustment to the Monthly Service Payments, then the provisions of Schedule 22 - Variation Procedure shall apply.

#### **40.3 Mitigation**

- (a) If Project Co is (or claims to be) affected by a Compensation Event, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps to minimize the amount of compensation due in accordance with this Section 40 in relation to any Compensation Event.
- (b) To the extent that Project Co does not comply with its obligations under this Section 40.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 40.

#### 40.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 40 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

### 41. EXCUSING CAUSES

#### 41.1 Definition

- (a) For the purposes of this Project Agreement, "**Excusing Cause**" means any of the following events or circumstances if it occurs after the Substantial Completion Date and to the extent, in each case, that it interferes adversely with, or causes a failure of, the performance of the Project Co Services or, with respect to Section 41.1(a)(xi), specified Performance Indicators:
- (i) the implementation of a Variation to the extent Project Co has identified any impact on the Project Co Services in its Estimate and such impact has been documented in the Variation Confirmation;
  - (ii) any breach by WGH of any of WGH's obligations under this Project Agreement (including any obstruction of the rights afforded to Project Co under Section 14.1), except to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party;
  - (iii) any deliberate or negligent act or omission of WGH or any WGH Party or any failure by WGH or any WGH Party (having regard to the interactive nature of the activities of WGH and Project Co) to take commercially reasonable steps to perform its activities in a manner which minimizes undue interference with Project Co's performance of the Project Co Services, except to the extent:
    - (A) any such act, omission or failure is caused, or contributed to, by Project Co or any Project Co Party;
    - (B) WGH or the WGH Party is acting in accordance with a recommendation or instruction of Project Co or any Project Co Party;
    - (C) any such act, omission or failure was contemplated in Schedule 15 - Output Specifications or was otherwise provided for in this Project Agreement; or

- (D) the consequences of any such act, omission or failure would have been prevented by the proper performance of Project Co's obligations under this Project Agreement;
- (iv) the outbreak or the effects of any outbreak of Medical Contamination, except to the extent that such Medical Contamination, or the effects of such Medical Contamination, are caused, or contributed to, by Project Co or any Project Co Party, including any failure by Project Co or any Project Party to comply with procedures or instructions relating to control of infection or to take commercially reasonable steps to mitigate the effects of such Medical Contamination, provided that neither Project Co nor any Project Co Party shall be deemed to have caused, or contributed to, an outbreak of Medical Contamination if such Medical Contamination was caused, or contributed to, by an employee of Project Co or any Project Co Party who was unaware of his or her condition;
- (v) the implementation of any action taken by WGH, or any suspension of Project Co's obligation to deliver all or any part of the Project Co Services, or the compliance by Project Co with instructions given by WGH, in each case in the circumstances referred to in Section 31;
- (vi) the performance of any Small Works in accordance with the terms of this Project Agreement during the period of time agreed between WGH and Project Co;
- (vii) any official or unofficial strike, lockout, work to rule or other labour-related action involving employees of WGH or any WGH Party;
- (viii) any breach by WGH of its obligation to perform the Hospital FM Services in accordance with this Project Agreement to the extent that such breach has a material adverse effect on Project Co's ability to perform the Project Co Services;
- (ix) the performance of any Preventive Maintenance in accordance with the Preventive Maintenance Plan and any acceleration of Preventive Maintenance pursuant to Section 27.3, provided that:
  - (A) improperly performed Preventive Maintenance and the effects thereof shall not constitute an Excusing Cause; and
  - (B) where the Preventive Maintenance continues beyond the period set out in the Preventive Maintenance Plan or beyond the period required for its accelerated performance pursuant to Section 27.3 (except where the continuation was due to an Excusing Cause other than as set out in this Section 41.1(a)(ix)), Failure Points may accrue from the time the Preventive Maintenance was due to have been completed in accordance with the Preventive Maintenance Plan or Section 27.3, as applicable;

- (x) the occurrence of any Contamination for which WGH is responsible pursuant to Section 16.2; or
- (xi) the occurrence of outdoor air conditions that fall outside the range to which the Facility was designed, as set out in Appendix 4.1 of Part 3 of Schedule 15 – Output Specifications to the extent such occurrence causes a failure to achieve the Performance Indicators set out in Appendix 4.1 of Part 3 of Schedule 15 – Output Specifications.

#### **41.2 Consequences of an Excusing Cause**

- (a) Provided that the effect of an Excusing Cause is claimed by Project Co, in writing, within 10 Business Days of the date on which Project Co or any Project Co Party became aware of the occurrence of such Excusing Cause, then (subject to Sections 41.3 and 41.4):
  - (i) any failure by Project Co to perform, and any poor performance of, any affected Project Co Services shall not constitute a breach of this Project Agreement by Project Co, no Failure Points shall accrue in respect of such failure and Project Co shall be relieved of its obligations to perform such Project Co Services for the duration and to the extent prevented by such Excusing Cause;
  - (ii) any interference shall be taken into account in measuring the performance of any affected Project Co Services in accordance with the Performance Monitoring Program, which shall be operated as though the relevant Project Co Services had been performed free from such adverse interference;
  - (iii) any interference shall be taken into account in operating the Payment Mechanism, which shall be operated as though any Availability Failure, Quality Failure or Service Failure resulting from such interference had not occurred, so that Project Co shall be entitled to payment under this Project Agreement as if there had been no such interference with the Project Co Services, provided however that Project Co shall not be entitled to any additional compensation, except as may be provided hereunder for compensation on termination of this Project Agreement, if this Project Agreement is terminated as provided herein;
  - (iv) this Section 41.2 shall not limit WGH's entitlement to reimbursement pursuant to Section 31.4;
  - (v) WGH shall reimburse Project Co for all incremental Direct Costs (including all applicable Taxes and all legal or professional services, legal costs being on a substantial indemnity basis) incurred by Project Co as a result of any Excusing Cause referred to in Section 41.1(a)(ii), 41.1(a)(iii), 41.1(a)(vii), 41.1(a)(viii) or 41.1(a)(x), including costs arising from any steps taken to cure or mitigate against such events, together with any applicable margin for overhead and profit on such Direct Costs as set out in Schedule 22 - Variation Procedure; and

- (vi) the Monthly Service Payments payable by WGH shall be reduced by any savings in Direct Costs arising from Project Co being relieved of its obligations to perform the Project Co Services as otherwise provided herein, together with any applicable margin for overhead and profit on such Direct Costs as set out in Schedule 22 - Variation Procedure.

### 41.3 Mitigation

- (a) If Project Co is (or claims to be) affected by an Excusing Cause, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps:
  - (i) to eliminate or mitigate the consequences of such event upon the performance of its obligations under this Project Agreement;
  - (ii) to continue to perform its obligations under this Project Agreement to the extent possible notwithstanding the Excusing Cause; and
  - (iii) to resume performance of its obligations under this Project Agreement affected by the Excusing Cause as soon as practicable.
- (b) To the extent that Project Co does not comply with its obligations under this Section 41.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 41.

### 41.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 41 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

## 42. RELIEF EVENTS

### 42.1 Definition

- (a) For the purposes of this Project Agreement, "**Relief Event**" means any of the following events or circumstances to the extent, in each case, that it causes any failure by a Party to perform any of its obligations under this Project Agreement:
  - (i) fire, explosion, lightning, storm, tempest, hurricane, tornado, flood, bursting or overflowing of water tanks, apparatus or pipes, ionizing radiation (to the extent it does not constitute Force Majeure), earthquake, riot or civil commotion;

- (ii) failure by any Utility Company, local authority or other like body to perform works or provide services;
- (iii) accidental loss or damage to the Works and/or the Facility or any roads servicing the Site;
- (iv) without prejudice to any obligation of Project Co to provide stand-by power facilities in accordance with this Project Agreement, failure or shortage of power, fuel or transport;
- (v) blockade or embargo falling short of Force Majeure;
- (vi) any official or unofficial strike, lockout, work to rule or other labour-related action generally affecting the hospital, construction, building maintenance or facilities management industry (or a significant sector of that industry) in the Province of Ontario; or
- (vii) any civil disobedience or protest action, including any action taken by any person or persons protesting or demonstrating against the carrying out of any part of the Project Operations or the construction and/or operation of hospitals in general,

provided, in each case, that such event does not arise (directly or indirectly) as a result of any act or omission of the Party claiming relief and/or (i) in the case of Project Co claiming relief, as a result of any act or omission of any Project Co Party and (ii) in the case of WGH claiming relief, as a result of any act or omission of any WGH Party.

#### **42.2 Consequences of a Relief Event**

- (a) Subject to Section 42.3
  - (i) no right of termination, other than either Party's right to terminate this Project Agreement pursuant to Section 46.1, shall arise under this Project Agreement by reason of any failure by a Party to perform any of its obligations under this Project Agreement; and
  - (ii) as soon as the events or circumstances constituting a Relief Event have ceased, any Failure Points accrued in respect of any failure by Project Co to perform any of its obligations under this Project Agreement shall be cancelled and any related Warning Notices and Monitoring Notices shall be withdrawn,

but only to the extent that such failure to perform is caused by the occurrence of a Relief Event (it being acknowledged and agreed by the Parties that all other rights and obligations of the Parties under this Project Agreement remain unaffected by the occurrence of a Relief Event). For greater certainty, WGH shall be entitled to make Deductions in accordance with Schedule 20 - Payment Mechanism notwithstanding the cancellation of Failure Points pursuant to Section 42.2(a)(ii).

- (b) In respect of a Relief Event that is also a Delay Event pursuant to Section 39.1(a)(x),
  - (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 39; and
  - (ii) In respect of a Relief Event referred to in Section 42.1(a)(v), 42.1(a)(vi) or 42.1(a)(vii), on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the WGH Default Termination Sum, Non-Default Termination Sum or Prohibited Acts Termination Sum (and as a part thereof) in accordance with Schedule 23 – Compensation on Termination, WGH shall pay to Project Co an amount equal to the Senior Debt Service Amount paid by Project Co or any Project Co Party to the Senior Lenders up to and including such date, together with interest thereon at the rate payable on the Senior Debt Amount, which, but for the Delay Event, would have been paid by WGH to Project Co.
- (c) If a Relief Event occurs prior to the Substantial Completion Date, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 42.2(b)(ii) and 48.
- (d) During a Relief Event which occurs on or after the Substantial Completion Date, the provisions of Schedule 20 - Payment Mechanism will continue to be in full force and effect.
- (e) Subject to Section 48, Project Co's sole right to payment or otherwise in relation to the occurrence of a Relief Event shall be as provided in this Section 42.

### **42.3 Mitigation and Process**

- (a) Where a Party is (or claims to be) affected by a Relief Event, such Party shall take commercially reasonable steps to mitigate the consequences of the Relief Event upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by the Relief Event as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform.
- (b) To the extent that the Party claiming relief does not comply with its obligations under Section 42.3(a), such failure shall preclude such Party's entitlement to relief pursuant to this Section 42.
- (c) The Party claiming relief shall give written notice to the other Party within 5 Business Days of such Party becoming aware of the relevant Relief Event. Such initial notice shall give sufficient details to identify the particular event claimed to be a Relief Event.
- (d) A subsequent written notice shall be given by the Party claiming relief to the other Party within a further 5 Business Days of the initial notice, which notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including, without limitation, the effect of the Relief Event on the ability of the Party to perform, the action being taken in accordance with Section 42.3(a), the date of

the occurrence of the Relief Event, and an estimate of the period of time required to overcome the Relief Event and/or its effects.

- (e) The Party claiming relief shall notify the other as soon as the consequences of the Relief Event have ceased and of when performance of its affected obligations can be resumed.
- (f) If, following the issue of any notice referred to in Section 42.3(d), the Party claiming relief receives or becomes aware of any further information relating to the Relief Event and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

#### **42.4 Insured Exposure**

- (a) The compensation payable to Project Co pursuant to this Section 42 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

### **43. FORCE MAJEURE**

#### **43.1 Definition**

- (a) For the purposes of this Project Agreement, "**Force Majeure**" means any of the following events or circumstances which directly causes either Party to be unable to perform all or a material part of its obligations under this Project Agreement:
  - (i) war, civil war, armed conflict, terrorism, acts of foreign enemies or hostilities;
  - (ii) nuclear or radioactive contamination of the Works, the Facility and/or the Site, unless Project Co or any Project Co Party is the source or cause of the contamination;
  - (iii) chemical or biological contamination of the Works, the Facility and/or the Site from any event referred to in Section 43.1(a)(i);
  - (iv) pressure waves caused by devices traveling at supersonic speeds; or
  - (v) the discovery of any fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which, as a result of Applicable Law, requires the Works to be abandoned.



### 43.2 Consequences of Force Majeure

- (a) Subject to Section 43.3, the Party claiming relief shall be relieved from liability under this Project Agreement to the extent that, by reason of the Force Majeure, it is not able to perform its obligations under this Project Agreement.
- (b) In respect of an event of Force Majeure that is also a Delay Event pursuant to Section 39.1(a)(ix):
  - (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 39; and
  - (ii) on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the WGH Default Termination Sum, Non-Default Termination Sum or Prohibited Acts Termination Sum (and as a part thereof) in accordance with Schedule 23 - Compensation on Termination, WGH shall pay to Project Co an amount equal to the Senior Debt Service Amount and the Junior Debt Service Amount paid by Project Co or any Project Co Party to the Lenders up to and including such date, together with interest thereon at the rate or rates payable on the principal amount of debt funded under the applicable Lending Agreements, which, but for the Delay Event, would have been paid by WGH to Project Co.
- (c) If an event of Force Majeure occurs prior to the Substantial Completion Date, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 43.2(b)(ii) and 48.
- (d) During an event of Force Majeure which occurs on or after the Substantial Completion Date, the provisions of Schedule 20 - Payment Mechanism will be suspended, and WGH shall pay to Project Co, for each Payment Period, the Senior Debt Service Amount, the Junior Debt Service Amount and an amount which reflects the cost to Project Co of the Project Co Services provided to WGH, provided that, during such Payment Period, the amount paid to Project Co pursuant to this Section 43.2(d) shall never be more than the Maximum Service Payment.
- (e) Subject to Section 48, Project Co's sole right to payment or otherwise in relation to the occurrence of an event of Force Majeure shall be as provided in this Section 43.

### 43.3 Mitigation and Process

- (a) Where a Party is (or claims to be) affected by an event of Force Majeure, such Party shall take commercially reasonable steps to mitigate the consequences of such event of Force Majeure upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by the event of Force Majeure as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform.

- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 43.3, such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Section 43.
- (c) The Party claiming relief shall give written notice to the other Party within 5 Business Days of such Party becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.
- (d) A subsequent written notice shall be given by the Party claiming relief to the other Party within a further 5 Business Days of the initial notice, which notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including, without limitation, the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Section 43.3(a), the date of the occurrence of the event of Force Majeure, and an estimate of the period of time required to overcome the event of Force Majeure and its effects.
- (e) The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and of when performance of its affected obligations can be resumed.
- (f) If, following the issue of any notice referred to in Section 43.3(d), the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

#### **43.4 Insured Exposure**

- (a) The compensation payable to Project Co pursuant to this Section 43 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

#### **43.5 Modifications**

- (a) The Parties shall use commercially reasonable efforts to agree to any modifications to this Project Agreement which may be equitable having regard to the nature of an event or events of Force Majeure. Schedule 27 - Dispute Resolution Procedure shall not apply to a failure of WGH and Project Co to reach agreement pursuant to this Section 43.5.

#### 44. PROJECT CO DEFAULT

##### 44.1 Project Co Events of Default

- (a) For the purposes of this Project Agreement, "**Project Co Event of Default**" means any one or more of the following events or circumstances:
- (i) the occurrence of any of the following events other than as a consequence of a breach by WGH of its payment obligations hereunder:
    - (A) Project Co admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors, or a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or any other like person is appointed by or on behalf of or at the instance of a creditor of Project Co with respect to Project Co or any of the property, assets or undertaking of Project Co, or any creditor of Project Co takes control, or takes steps to take control, of Project Co or any of Project Co's assets, or any proceedings are instituted against Project Co that result in Project Co being declared or ordered bankrupt or in administration, liquidation, winding-up, reorganization, compromise, arrangement, adjustment, protection, relief or composition of it or with respect to it or its debts or obligations, or any such proceedings are instituted by Project Co seeking any such result, or any such proceedings are instituted by a person other than Project Co, WGH, a WGH Party or a person related to any of them seeking such result and such proceedings have or will have a material adverse effect on the performance of the Hospital Services (where such proceedings have not been withdrawn, stayed, discharged, or are otherwise of no further effect, within 90 days of being instituted), under any Applicable Law (including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada)) relating to bankruptcy, insolvency or reorganization of or relief with respect to debtors or debtors' obligations or assets or other similar matters, or seeking the appointment of a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or like person for it or with respect to any of its assets, or any resolutions are passed or other corporate actions of Project Co are taken to authorize any of the actions set forth in this Section 44.1(a)(i)(A);
    - (B) Project Co ceases performing a substantial portion of its business, or a substantial portion of such business is suspended or is not being performed, whether voluntarily or involuntarily, that has or will have a material adverse effect on Project Co's ability to perform its obligations under this Project Agreement;

- (C) if any execution, sequestration, extent or other process of any court becomes enforceable against Project Co or if a distress or analogous process is levied against any property of Project Co that materially adversely affects Project Co's ability to perform its obligations hereunder; or
  - (D) Project Co shall suffer any event, or any event or set of circumstances occurs or comes about, analogous to the foregoing events or sets of circumstances set out this Section 44.1(a)(i) in any jurisdiction in which it is incorporated or resident and such event or set of circumstances would, if set out in Section 44.1(a)(i)(A), (B) or (C), constitute a Project Co Event of Default;
- (ii) Project Co failing to achieve Substantial Completion within 365 days after the Scheduled Substantial Completion Date (the "**Longstop Date**");
  - (iii) Project Co either:
    - (A) failing to deliver a rectification plan under Section 21.3(a)(iii)(B);
    - (B) delivering a rectification plan under Section 21.3(a)(iii)(B) which indicates that Project Co will not achieve Substantial Completion by the Longstop Date; or
    - (C) delivering a rectification plan under Section 21.3(a)(iii)(B) that is not acceptable to the Independent Certifier, acting reasonably, as to the matters set out in Section 21.3(a)(iii)(B)(ii);
  - (iv) Project Co making any representation or warranty herein that is false or misleading when made, and that has or will have at any time a material adverse effect on the performance of Project Operations or the Hospital Services, or that may compromise WGH's reputation or integrity or the nature of the Province's health care system, so as to affect public confidence in that system, and, in the case of a false or misleading representation or warranty that is capable of being remedied, such breach is not remedied within 10 Business Days of receipt of notice of the same from WGH;
  - (v) Project Co committing a breach of Sections 51 or 52 or a breach of its obligations under this Project Agreement (other than a breach that is otherwise referred to in Sections 44.1(a)(i) to (iv) inclusive or 44.1(a)(vi) to (xviii) inclusive) which has or will have a material adverse effect on the performance of the Hospital Services, other than where such breach is a consequence of a breach by WGH of its obligations under this Project Agreement, and upon becoming aware of such breach Project Co failing to remedy such breach in accordance with all of the following:

- (A) Project Co shall:
  - (i) immediately commence and thereafter diligently continue to remedy the breach and to mitigate any adverse effects on WGH and the performance of the Hospital Services;
  - (ii) put forward, within 5 Business Days of receipt of notice of such breach from WGH, a reasonable plan and schedule for diligently remedying the breach and mitigating its effect, which plan and schedule shall specify in reasonable detail the manner in which, and the latest date by which, such breach is proposed to be remedied, which latest date shall in any event be within 60 days of notice of such breach, or if such breach is not capable of being rectified in such period then such longer period as is reasonable in the circumstances; and
  - (iii) thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; and
- (B) upon Project Co failing to comply with any of the provisions of Section 44.1(a)(v)(A):
  - (i) Project Co shall continue to diligently remedy the breach and to mitigate any adverse effects on WGH and the performance of the Hospital Services;
  - (ii) Project Co shall, within 3 Business Days after notice from WGH, submit a plan and schedule, which WGH shall have no obligation to accept, for remedying the breach and mitigating its effect within such period, if any, acceptable to WGH, in its sole discretion, and thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; and

for greater certainty, Project Co failing to comply with any of the provisions of this Section 44.1(a)(v)(B), or WGH, in its sole discretion, not accepting the plan and schedule submitted by Project Co pursuant to that Section, shall constitute a Project Co Event of Default;

- (vi) Project Co wholly abandoning the Works for a period which exceeds 3 Business Days from receipt by Project Co of a written request to return to the Site, other than as a consequence of a breach by WGH of its obligations under this Project Agreement;

- (vii) Project Co ceasing to provide any Project Co Service in accordance with this Project Agreement which are necessary for the performance of the Hospital Services, other than as a consequence of a breach by WGH of its obligations under this Project Agreement;
- (viii) Project Co failing to comply with Sections 58.1 or 58.3;
- (ix) the occurrence of any Change in Ownership or Change in Control which is prohibited by Section 58.4;
- (x) Project Co being awarded a total of:
  - (A) 33,692 or more Failure Points in any rolling 3 Payment Periods;
  - (B) 50,538 or more Failure Points in any rolling 6 Payment Periods; or
  - (C) 75,806 or more Failure Points in any rolling 12 Payment Periods;
- (xi) Project Co failing to remove an Encumbrance that arose due to an act or omission of Project Co or any Project Co Party (other than a Title Encumbrance and any Encumbrances derived through WGH) within 45 days of the earlier of:
  - (A) the registration of such Encumbrance against title to the Site or any part thereof; and
  - (B) the date on which Project Co or any Project Co Party knew, or ought to have known, about the existence of the Encumbrance;
- (xii) Project Co failing to pay any sum or sums due to WGH under this Project Agreement, which sum or sums are not being disputed by Project Co in accordance with Schedule 27 - Dispute Resolution Procedure and which sum or sums, either singly or in aggregate, exceed(s) \$250,000 (index linked), and such failure continues for 30 days from receipt by Project Co of a notice of non-payment from WGH;
- (xiii) Project Co failing to comply with Section 59;
- (xiv) Project Co failing to comply with Section 7.3 or Schedule 28 - Refinancing;
- (xv) Project Co failing to obtain any bond, security or insurance required to be obtained by or on behalf of Project Co pursuant to this Project Agreement or any such bond, security or insurance being vitiated or otherwise ceasing to be in full force and effect or in material compliance with the requirements set out in this Project Agreement, other than as a consequence of a breach by WGH of its obligations under this Project Agreement, and:

- (A) in respect of insurance, such breach by Project Co is not remedied within 10 Business Days of the occurrence of the breach; and
  - (B) in respect of a bond or security, such breach by Project Co is not remedied within 5 Business Days of Project Co becoming aware of such breach;
- (xvi) Project Co failing to comply with any determination, order or award made against Project Co in accordance with Schedule 27 - Dispute Resolution Procedure;
- (xvii) at any time after the Substantial Completion Date, Project Co committing a breach of its obligations under this Project Agreement (other than as a consequence of a breach by WGH of its obligations under this Project Agreement) which results in a criminal conviction or a conviction under the *Occupational Health and Safety Act* (Ontario) against Project Co or any Project Co Party or WGH (an "**H&S Conviction**") provided however that:
- (A) an H&S Conviction of Project Co, a Project Co Party or WGH shall not constitute a Project Co Event of Default if, within 90 days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the Project Operations of each relevant Project Co Party (which in the case of an individual director, officer or employee shall be deemed to include the Project Co Party of which that person is a director, officer or employee) is terminated in accordance with Section 58.3 or Project Co takes such other disciplinary action against each such Project Co Party as is acceptable to WGH, in its sole discretion; and
  - (B) in determining whether to exercise any right of termination for a Project Co Event of Default pursuant to this Section 44.1(a)(xvii), WGH shall:
    - (i) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing the act leading to the H&S Conviction; and
    - (ii) give all due consideration, where appropriate, to action other than termination of this Project Agreement; or
- (xviii) Project Co failing to comply with Sections 28.1, 28.2, 28.3, 28.8, 28.11 or 28.23.

#### 44.2 Notification of Occurrence

- (a) Project Co shall, promptly upon Project Co becoming aware of the occurrence, notify WGH 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, giving of notice, determination of any condition, or otherwise, to constitute or give rise to a Project Co Event of Default.

### 44.3 Right to Termination

- (a) On the occurrence of a Project Co Event of Default, or at any time after WGH becomes aware of a Project Co Event of Default, and, if the occurrence of a Project Co Event of Default is disputed by Project Co in good faith, then following confirmation in accordance with Schedule 27 - Dispute Resolution Procedure that a Project Co Event of Default has occurred, WGH may, subject to Section 44.4, terminate this Project Agreement in its entirety by written notice having immediate effect, such notice to be given to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such notice.

### 44.4 Remedy Provisions

- (a) In the case of a Project Co Event of Default referred to in Sections 44.1(a)(i)(B), 44.1(a)(i)(C), 44.1(a)(i)(D) (where the Project Co Event of Default referred to in Section 44.1(a)(i)(D) is analogous to a Project Co Event of Default referred to in Section 44.1(a)(i)(B) or 44.1(a)(i)(C)), 44.1(a)(iii), 44.1(a)(iv), 44.1(a)(vi), 44.1(a)(vii), 44.1(a)(viii), 44.1(a)(ix) (where the Project Co Event of Default referred to in Section 44.1(a)(ix) is capable of being remedied), 44.1(a)(xii), 44.1(a)(xiv), 44.1(a)(xv) (where the Project Co Event of Default referred to in Section 44.1(a)(xv) is not in respect of insurance), 44.1(a)(xvi), 44.1(a)(xvii) or 44.1(a)(xviii), WGH shall, prior to being entitled to terminate this Project Agreement, give notice of default to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such notice, and Project Co shall:
  - (i) within 5 Business Days of such notice of default, put forward a reasonable plan and schedule for diligently remedying the Project Co Event of Default, which schedule shall specify in reasonable detail the manner in, and the latest date by which, such Project Co Event of Default is proposed to be remedied, which latest date shall, in any event, be within 30 days of the notice of default, or if such breach is not capable of being remedied in such period then such longer period as is acceptable to WGH, acting reasonably; and
  - (ii) thereafter, perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder.
- (b) Where Project Co puts forward a plan and schedule in accordance with Section 44.4(a)(i) that has a date for the Event of Default to be remedied that is beyond 30 days from the notice of default, WGH shall have 5 Business Days from receipt of the same within which to notify Project Co that WGH does not accept such longer period in the plan and schedule and that the 30 day limit will apply, failing which WGH shall be deemed to have accepted the longer period in the plan and schedule.
- (c) If a Project Co Event of Default, of which a notice of default was given under Section 44.4(a), occurs and:



- (i) Project Co fails to immediately commence and thereafter diligently continue to remedy the Project Co Event of Default and to mitigate any adverse effects on WGH and the performance of the Hospital Services; or
- (ii) Project Co fails to put forward a plan and schedule pursuant to Section 44.4(a)(i); or
- (iii) such Project Co Event of Default is not remedied within 30 days of such notice of default or such longer period as is established pursuant to the plan and schedule established pursuant to Sections 44.4(a) and (b); or
- (iv) where Project Co puts forward a plan and schedule pursuant to Section 44.4(a)(i) and Project Co fails to perform its obligations thereunder necessary to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations,

then WGH may terminate this Project Agreement in its entirety by written notice with immediate effect, such notice to be given to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such notice.

- (d) Notwithstanding that WGH may give the notice referred to in Section 44.4(a), and without prejudice to the other rights of WGH in this Section 44.4, at any time during which a Project Co Event of Default is continuing, WGH may, at Project Co's risk and expense, take such steps as WGH considers appropriate, either itself or by engaging others (including a third party) to take such steps, to perform or obtain the performance of Project Co's obligations under this Project Agreement or to remedy such Project Co Event of Default.
- (e) Upon the occurrence of a Project Co Event of Default that Project Co has remedied pursuant to this Section 44.4, such occurrence of a Project Co Event of Default shall thereafter cease to be a Project Co Event of Default and WGH shall not be entitled to terminate this Project Agreement for that occurrence of a Project Co Event of Default.

#### **44.5 Replacement of Non-Performing Service Provider**

- (a) WGH may, acting reasonably, require Project Co to terminate the Service Contract and ensure that a replacement Service Provider is appointed in accordance with Section 58.3 to provide the Project Co Services within 60 days:
  - (i) as an alternative to termination of this Project Agreement pursuant to Sections 44.3 or 44.4, in any circumstance in which WGH could exercise such right of termination, if the Project Co Event of Default was caused, or contributed to, by the Service Provider or otherwise relates to the Project Co Services; or
  - (ii) if Project Co has:

- (A) in relation to Security and Parking Management Services, accrued more than 1,837 Failure Points in any rolling 6 Payment Periods; or
- (B) in relation to Grounds Maintenance Services, accrued more than 629 Failure Points in any rolling 6 Payment Periods,

provided that this Section 44.5 shall not give rise to partial termination of either the obligation to provide the Project Operations or this Project Agreement.

- (b) If WGH exercises its rights under this Section 44.5, Project Co shall, within 5 Business Days, put forward a proposal for the interim management or provision of the Project Co Services until such time as a replacement Service Provider can be engaged by Project Co. If Project Co fails to do so, or if its proposal is not reasonably likely to give adequate provision of the Project Co Services and the Parties cannot agree within a further 3 Business Days to a plan for the interim management or provision of the Project Co Services, then, without prejudice to the other rights of WGH in this Section 44.5, WGH itself may perform, or engage others (including a third party) to perform, the Project Co Services and Section 30.4 shall apply, *mutatis mutandis*, to the Project Co Services. Any Dispute in respect of the interim management or provision of the Project Co Services may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.
- (c) If Project Co fails to terminate, or secure the termination of, the Service Contract and to secure a replacement Service Provider in accordance with this Section 44.5, WGH shall be entitled to exercise its termination rights in accordance with Sections 44.3 and 44.4, as applicable.
- (d) Where a replacement Service Provider is appointed in accordance with Section 44.5, 50% of the Failure Points accrued by Project Co prior to such replacement shall be cancelled.

#### **44.6 WGH's Costs**

- (a) Project Co shall reimburse WGH for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a substantial indemnity basis) properly incurred by WGH in exercising its rights under this Section 44, including any relevant increased administrative expenses. WGH shall take commercially reasonable steps to mitigate such costs.

#### **44.7 No other Rights to Terminate**

- (a) WGH shall have no right or entitlement to terminate this Project Agreement, or to accept any repudiation of this Project Agreement, and shall not purport to exercise any such right or entitlement except as set forth in Sections 44 and 46.

## 45. WGH DEFAULT

### 45.1 WGH Events of Default

- (a) For the purposes of this Project Agreement, "**WGH Event of Default**" means any one or more of the following events or circumstances:
- (i) WGH failing to pay any sum or sums due to Project Co under this Project Agreement, which sum or sums are not being disputed by WGH in accordance with Schedule 27 - Dispute Resolution Procedure and which sum or sums, either singly or in aggregate, exceed(s) \$250,000 (index linked), and:
    - (A) in respect of the Substantial Completion Payment, such failure continues for 10 Business Days;
    - (B) subject to Section 45.1(a)(i)(C), in respect of any Monthly Service Payment, such failure continues for 30 days;
    - (C) in respect of any 3 Monthly Service Payments in any rolling 9 month period, such failure continues for 15 Business Days in respect of each such Monthly Service Payment; or
    - (D) in respect of any other payment due and payable by WGH to Project Co under this Project Agreement, such failure continues for 90 days,in any such case, from receipt by WGH of a notice of non-payment from or on behalf of Project Co;
  - (ii) WGH committing a material breach of its obligations under Section 14 (other than as a consequence of a breach by Project Co of its obligations under this Project Agreement), which breach materially adversely affects the ability of Project Co to perform its obligations under this Project Agreement for a continuous period of not less than 60 days; or
  - (iii) an act of any Governmental Authority which renders it impossible for Project Co to perform all or substantially all of its obligations under this Project Agreement for a continuous period of not less than 60 days.

### 45.2 Project Co's Options

- (a) On the occurrence of an WGH Event of Default and while the same is continuing, Project Co may give notice to WGH of the occurrence of such WGH Event of Default, which notice will specify the details thereof, and, at Project Co's option and without prejudice to its other rights and remedies under this Project Agreement, may:
- (i) suspend performance of the Works and the Project Co Services until such time as WGH has remedied such WGH Event of Default; or

- (ii) if such WGH Event of Default has not been remedied within 30 days of receipt by WGH of notice of the occurrence of such WGH Event of Default, terminate this Project Agreement in its entirety by notice in writing having immediate effect.

### **45.3 Project Co's Costs**

- (a) WGH shall reimburse Project Co for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a substantial indemnity basis) properly incurred by Project Co in exercising its rights under this Section 45, including any relevant increased administrative expenses. Project Co shall take commercially reasonable steps to mitigate such costs.

### **45.4 No Other Rights to Terminate**

- (a) Project Co shall have no right or entitlement to terminate this Project Agreement, nor to accept any repudiation of this Project Agreement, and shall not exercise, nor purport to exercise, any such right or entitlement except as expressly set forth in this Project Agreement.

## **46. RELIEF EVENT AND NON-DEFAULT TERMINATION**

### **46.1 Termination for Relief Event**

- (a) Subject to Section 46.1(b), if a Relief Event occurs and the effects of the Relief Event continue for 180 days from the date on which the Party affected gives notice to the other Party pursuant to Section 42.3(c), either Party may, at any time thereafter, terminate this Project Agreement by written notice to the other Party having immediate effect, provided that the effects of the Relief Event continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.
- (b) Neither Party shall be entitled to exercise its right to terminate this Project Agreement in accordance with Section 46.1(a) if Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with its requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, an amount which, together with the Monthly Service Payment, is equal to or greater than 85% of the Maximum Service Payment for the relevant Payment Period.

### **46.2 Termination for Force Majeure**

- (a) If an event of Force Majeure occurs and the Parties, having used commercially reasonable efforts, have failed to reach agreement on any modification to this Project Agreement pursuant to Section 43.5 within 180 days from the date on which the Party affected gives notice to the other Party as set out therein, either Party may, at any time thereafter, terminate this Project Agreement by written notice to the other Party having immediate effect, provided that the effects of the event of Force Majeure continue during

such period to prevent either Party from performing a material part of its obligations under this Project Agreement.

#### **46.3 Termination for Convenience**

- (a) WGH shall, in its sole discretion and for any reason whatsoever, be entitled to terminate this Project Agreement at any time on 180 days' written notice to Project Co. Such written notice shall include confirmation that WGH has, in respect of such termination, obtained the prior written consent of MOHLTC.
- (b) In the event of notice being given by WGH in accordance with this Section 46.3, WGH shall, at any time before the expiration of such notice, be entitled to direct Project Co to refrain from commencing, or allowing any third party to commence, the Works, or any part or parts of the Works, or the Project Co Services, or any element of the Project Co Services, where such Works or Project Co Services have not yet been commenced.

#### **46.4 Automatic Expiry on Expiry Date**

- (a) This Project Agreement shall terminate automatically on the Expiry Date.
- (b) Project Co shall not be entitled to any compensation due to termination of this Project Agreement on expiry of the Project Term on the Expiry Date.

### **47. EFFECT OF TERMINATION**

#### **47.1 Termination**

- (a) Notwithstanding any provision of this Project Agreement, upon the service of a notice of termination or termination on the Expiry Date pursuant to Section 46.4, this Section 47 shall apply in respect of such termination.

#### **47.2 Continued Effect - No Waiver**

- (a) Notwithstanding any breach of this Project Agreement by a Party, the other Party may elect to continue to treat this Project Agreement as being in full force and effect and to enforce its rights under this Project Agreement without prejudice to any other rights which such other Party may have in relation to such breach. The failure of either Party to exercise any right under this Project Agreement, including any right to terminate this Project Agreement and any right to claim damages, shall not be deemed to be a waiver of such right for any continuing or subsequent breach.

#### **47.3 Continuing Performance**

- (a) Subject to any exercise by WGH of its rights to perform, or to seek, pursuant to this Project Agreement, a third party to perform, the obligations of Project Co, the Parties shall continue to perform their obligations under this Project Agreement (including, if applicable, pursuant to Schedule 23 - Compensation on Termination), notwithstanding

the giving of any notice of default or notice of termination, until the termination of this Project Agreement becomes effective in accordance with this Section 47.

#### **47.4 Effect of Notice of Termination**

- (a) On the service of a notice of termination, or termination on the Expiry Date pursuant to Section 46.4:
- (i) if termination is prior to the Substantial Completion Date, in so far as any transfer shall be necessary to fully and effectively transfer such property to WGH as shall not already have been transferred to WGH pursuant to Section 54.1, Project Co shall transfer to, and there shall vest in, WGH, free from all Encumbrances other than the Title Encumbrances and any Encumbrances derived through WGH, such part of the Works and Facility as shall have been constructed and such items of the Plant and equipment as shall have been procured by Project Co, and, if WGH so elects:
    - (A) all plant, equipment and materials (other than those referred to in Section 47.4(a)(i)(B)) on or near to the Site shall remain available to WGH for the purposes of completing the Works; and
    - (B) all construction plant and equipment shall remain available to WGH for the purposes of completing the Works, subject to payment by WGH of the Construction Contractor's reasonable charges;
  - (ii) if termination is prior to the Substantial Completion Date, Project Co shall deliver to WGH (to the extent such items have not already been delivered to WGH) one complete set of all Project Data and Intellectual Property relating to the design, construction and completion of the Works and the Facility;
  - (iii) in so far as title shall not have already passed to WGH pursuant to Section 54.1 or Section 47.4(a)(i), Project Co shall hand over to, and there shall vest in, WGH, free from all Encumbrances other than the Title Encumbrances and any Encumbrances derived through WGH, the Facility together with all other assets and rights capable of being transferred that are necessary for the performance of the Project and the Project Operations and all facilities and equipment, including the Equipment, and to the extent that any such assets or rights are not capable of being transferred by Project Co to WGH, Project Co shall enter into agreements or make other arrangements in order to permit the use of the assets or rights by WGH in order to enable it, or its designated agents or subcontractors, to continue to perform the activities which would have otherwise been performed by Project Co if this Project Agreement had not been terminated;
  - (iv) if WGH so elects, Project Co shall ensure that any of the Subcontracts between Project Co and a Subcontractor (including the Construction Contract and the Service Contract), any other instrument entered into between any such

Subcontractor and Project Co for securing the performance by such Subcontractor of its obligations in respect of the Project Operations or to protect the interests of Project Co, shall be novated or assigned to WGH or its nominee, provided that where termination occurs other than as a result of a Project Co Event of Default, the consent of the relevant Subcontractor shall be required, and further provided that any such novation or assignment of a Subcontract with the Construction Contractor or the Service Provider shall be made by WGH pursuant to, and subject to, the terms of the applicable Direct Agreement;

- (v) Project Co shall, or shall ensure that any Project Co Party shall, offer to sell (and if WGH so elects, execute such sale) to WGH at a fair value (determined as between a willing vendor and willing purchaser, with any Disputes as to such fair value being resolved in accordance with Schedule 27 - Dispute Resolution Procedure), free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through WGH), 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 Project Co Parties and dedicated to or predominantly used in respect of the Facility, and reasonably required by WGH in connection with the operation of the Facility or the provision of the Project Co Services;
- (vi) Project Co shall deliver to WGH (to the extent such items have not already delivered to WGH) one complete set of:
  - (A) the most recent As Built Drawings in the format that WGH, acting reasonably, considers most appropriate at the time showing all alterations made to the Facility since the Substantial Completion Date;
  - (B) the most recent maintenance, operation and training manuals for the Facility and for the Schedule 21 Maintenance and Replacement Equipment; and
  - (C) the Computerized Maintenance Management System, fully updated;
- (vii) Project Co shall use commercially reasonable efforts to assign, or otherwise transfer, to WGH, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through WGH), the benefit of all manufacturers' warranties, including all documentation in respect thereof, in respect of mechanical and electrical plant and equipment used or made available by Project Co under this Project Agreement and included in the Facility;
- (viii) Project Co shall deliver to WGH all information, reports, documents, records and the like referred to in Section 36, including as referred to in Schedule 26 - Record Provisions, except where such are required by Applicable Law to be retained by Project Co or the Project Co Parties (in which case complete copies shall be delivered to WGH);

- (ix) Project Co shall ensure that the Transferred Employees are made available to be employed by WGH to enable WGH to carry out the activities previously carried out by Project Co under this Project Agreement; and
- (x) in the case of the termination of this Project Agreement on the Expiry Date in accordance with Section 46.3, the Facility and elements of the Facility, as well as the Schedule 21 Maintenance and Replacement Equipment shall be in the condition required in accordance with Section 49 and Schedule 24 – Expiry Transition Procedure.

#### **47.5 Ownership of Information**

- (a) Subject to Section 50, all information obtained by Project Co, including the Existing Design, the As Built Drawings and other technical drawings and data, supplier agreements and contracts, utilities consumption information, environmental and technical reports, static building information, lease, licence and subletting data and contracts, asset condition data, standard operating procedures, processes and manuals and all other information directly related to the Project Operations accumulated over the course of the Project Term shall be the property of WGH and upon termination of this Project Agreement shall be provided or returned to WGH, as applicable, in electronic format acceptable to WGH, acting reasonably, where it exists in electronic format, and in its original format, when not in electronic format.

#### **47.6 Provision in Subcontracts**

- (a) Project Co shall make provision in all Subcontracts to which it is a party (including requiring the relevant Subcontractors to make such provision and to require other Subcontractors to make such provision) to ensure that WGH shall be in a position to exercise its rights, and Project Co shall be in a position to perform its obligations, under this Section 47.

#### **47.7 Transitional Arrangements**

- (a) On the termination of this Project Agreement for any reason, for a reasonable period both before and after any such termination, Project Co shall, subject to the continued provision of Project Co Services pursuant to Sections 3.2 and 3.3 of Schedule 23 - Compensation on Termination if applicable:
  - (i) cooperate fully with WGH and any successors providing to WGH services in the nature of any of the Project Co Services or any part of the Project Co Services in order to achieve a smooth transfer of the manner in which WGH obtains services in the nature of the Project Co Services and to avoid or mitigate, in so far as reasonably practicable, any inconvenience or any risk to the health and safety of the users of the Facility, including employees, patients, volunteers and visitors to the Facility and members of the public;



- (ii) as soon as practicable remove from the Site all property belonging to Project Co or any Project Co Party that is not acquired by WGH pursuant to Section 47.4 or otherwise, and, if Project Co has not done so within 60 days after any notice from WGH requiring it to do so, WGH may, without being responsible for any loss, damage, costs or expenses, remove and sell any such property and shall hold any proceeds, less all costs incurred to the credit of Project Co;
  - (iii) forthwith deliver to the WGH Representative:
    - (A) all keys to, and any pass cards and other devices used to gain access to any part of the Facility; and
    - (B) to the extent transferable and without prejudice to WGH's rights pursuant to Section 50, any copyright licences for any computer programs, or licences to use the same, used in connection with the operation of the Facility; and
  - (iv) as soon as practicable vacate the Site and, without limiting Project Co's obligations under Schedule 24 - Expiry Transition Procedure, shall leave the Site and the Facility in a safe, clean and orderly condition.
- (b) If WGH wishes to conduct a competition prior to the Expiry Date with a view to entering into an agreement for the provision of services, which may or may not be the same as, or similar to, the Project Co Services or any of them, following the expiry of this Project Agreement, Project Co shall, subject to payment of Project Co's reasonable costs, cooperate with WGH fully in such competition process, including by:
- (i) providing any information which WGH may reasonably require to conduct such competition, including all information contained in the Computerized Maintenance Management System, other than Sensitive Information; and
  - (ii) assisting WGH by allowing any or all participants in such competition process unrestricted access to the Site and the Facility.

#### **47.8 Termination upon Aforesaid Transfer**

- (a) On completion of Project Co's obligations pursuant to this Section 47, this Project Agreement shall terminate and, except as provided in Section 47.9, all rights and obligations of WGH and Project Co under this Project Agreement shall cease and be of no further force and effect.

#### **47.9 Survival**

- (a) Except as otherwise provided in this Project Agreement, termination of this Project Agreement shall be without prejudice to, and shall not affect:
  - (i) all representations, warranties and indemnities under this Project Agreement; and

- (ii) Sections 1.2, 1.3, 5, 6, 7, 15.2, 16.1, 16.3(a), 24.6, 25.13, 27.8, 30.4, 31, 33.12, 33.13, 33.14, 34, 35, 36, 44.6, 45.3, 46.4, 47, 48, 49, 50, 51, 52, 54, 55, 56, 57, 59.3, 60.1, 61.4, 61.8, 61.9, 61.10, 61.11, 61.12 of this Project Agreement, Schedule 23 - Compensation on Termination, Sections 2, 4 and 5 of Schedule 24 - Expiry Transition Procedure, Sections 1.2 to 1.8 of Schedule 26 - Record Provisions, Schedule 27 - Dispute Resolution Procedure and any other provisions of this Project Agreement which are expressed to survive termination or which are required to give effect to such provisions which survive termination or to such termination or the consequences of such termination,

all of which shall survive the termination of this Project Agreement, including for termination on the Expiry Date pursuant to Section 46.4.

## **48. COMPENSATION ON TERMINATION**

### **48.1 Compensation on Termination**

- (a) If this Project Agreement is terminated in accordance with the terms hereof, then Schedule 23 - Compensation on Termination shall apply and WGH shall pay Project Co any applicable compensation on termination.

### **48.2 Full and Final Settlement**

- (a) Except as otherwise provided in Section 48.2(b), any compensation paid pursuant to this Section 48, including pursuant to Schedule 23 - Compensation on Termination in the total amount owing thereunder, shall be in full and final settlement of any claims, demands and proceedings of Project Co and WGH, and each shall be released from all liability to the other in relation to any breaches or other events leading to such termination of this Project Agreement, and the circumstances leading to such breach or termination, and Project Co and WGH shall be precluded from exercising all other rights and remedies in respect of any such breach or termination whether in contract, tort, restitution, statute, at common law or otherwise.
- (b) Section 48.2(a) shall be without prejudice to:
  - (i) any liability of either Party to the other, including under the indemnities contained in this Project Agreement, that arose prior to the Termination Date (but not from the termination itself or the events leading to such termination) to the extent such liability has not already been set off pursuant to Section 33.12 or taken into account pursuant to Schedule 23 - Compensation on Termination in determining or agreeing upon the WGH Default Termination Sum, Adjusted Highest Qualifying Tender Price, Adjusted Estimated Fair Value, Non-Default Termination Sum, Prohibited Acts Termination Sum or any other termination sum, as the case may be; and

- (ii) any liabilities arising under or in respect of any breach by either Party of their obligations under Section 47.9 of this Project Agreement, or the Sections referred to therein, which did not lead to such termination and which arises or continues after the Termination Date.

## **49. EXPIRY TRANSITION PROCEDURE**

### **49.1 Expiry Transition**

- (a) Project Co and WGH shall each comply with the requirements of Schedule 24 - Expiry Transition Procedure.

## **50. INTELLECTUAL PROPERTY**

### **50.1 Representation and Warranty**

- (a) Project Co represents and warrants to WGH and agrees that:
  - (i) Project Co is and shall be the sole and exclusive owner of the Project Data and the Intellectual Property Rights or has and shall have the right to provide the licences granted to WGH herein; and
  - (ii) the Project Data and the Intellectual Property Rights do not and shall not infringe, and are not and shall not be a misappropriation of, any third party Intellectual Property Rights, and as of the date of this Project Agreement Project Co has not received any alleged infringement or misappropriation notices from third parties regarding the Project Data or the Intellectual Property Rights.

### **50.2 Delivery of Project Data and Intellectual Property Rights**

- (a) Project Co shall make all Project Data and Intellectual Property Rights available to, and upon request shall deliver to, WGH free of charge all Project Data, and shall obtain all necessary licences, permissions and consents to ensure that Project Co shall make the Project Data and Intellectual Property Rights available to and deliver the Project Data to WGH on the aforesaid terms of this Section 50.2, for any and all of the Approved Purposes.

### **50.3 Licence of Project Data and Intellectual Property Rights**

- (a) Project Co:
  - (i) hereby grants to WGH an irrevocable, worldwide, royalty free, perpetual, non-exclusive and transferable licence, including the right to grant sub-licences, to use the Project Data and the Intellectual Property Rights for any and all of the Approved Purposes;

- (ii) shall, at Project Co's cost, where any Intellectual Property Rights are or become vested in the Construction Contractor or the Service Provider, obtain the grant of an equivalent licence to that referred to in Section 50.3(a)(i), provided that such licence may, in respect of the Construction Contractor's and the Service Provider's Intellectual Property Rights that are proprietary and subject to trademark or copyright, be limited to the term of the relevant Subcontract; and
  - (iii) shall, at Project Co's cost, where any Intellectual Property Rights are or become vested in a third party (other than the Construction Contractor or the Service Provider), obtain the grant of an equivalent licence to that referred to in Section 50.3(a)(i), provided that Project Co is able to obtain such licence from such third party on reasonable commercial terms and conditions.
- (b) In this Section 50.3 and Section 50.5(a), "use" includes any and all acts of copying, modifying, adapting, translating, incorporating with other materials, creating derivative works and otherwise using the Project Data and Intellectual Property Rights.

#### **50.4 Jointly Developed Materials**

- (a) To the extent any data, documents, drawings, reports, plans, software, formulae, calculations or designs or any other materials are developed jointly by Project Co and WGH pursuant to this Project Agreement or in relation to the Facility, the Site or Project Operations (the "**Jointly Developed Materials**"), then the Parties hereby acknowledge and agree that WGH shall be the sole and exclusive owner of all right, title and interest in and to the Jointly Developed Materials, any Intellectual Property associated therewith and any and all improvements, modifications and enhancements thereto. Project Co shall, at the request of WGH, execute such further agreements and cause the Project Co Parties to execute any and all assignments, waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision.
- (b) WGH hereby grants Project Co a royalty free, non-exclusive and non-transferable licence, with a right to grant sub-licences to the Subcontractors, to use the Jointly Developed Materials during the Project Term for the sole purposes of Project Co or any Subcontractor performing its obligations under this Project Agreement or its Subcontract, as applicable.
- (c) Upon termination of this Project Agreement, all rights and licences whatsoever granted to Project Co in the Jointly Developed Materials shall automatically terminate, and Project Co shall return any and all Jointly Developed Materials in the custody or possession of Project Co to WGH.

#### **50.5 Maintenance of Data**

- (a) To the extent that any of the data, materials and documents referred to in this Section 50 are generated by, or maintained on, a computer or similar system, Project Co shall procure for the benefit of WGH, either at no charge or at the lowest reasonable fee, the

grant of a licence or sub-licence for any relevant software to enable WGH or its nominee to access and otherwise use (as such term is defined in Section 50.3(b)), subject to the payment by WGH of any relevant fee, such data, materials and documents for the Approved Purposes.

- (b) Without limiting the obligations of Project Co under Section 50.5(a), Project Co shall ensure the back up and storage in safe custody of the data, materials and documents referred to in this Section 50 in accordance with Good Industry Practice. Project Co shall submit to the WGH Representative Project Co's proposals for the back up and storage in safe custody of such data, materials and documents and WGH shall be entitled to object if the same is not in accordance with Good Industry Practice. Project Co shall comply, and shall cause all Project Co Parties to comply, with all procedures to which the WGH Representative has not objected. Project Co may vary its procedures for such back up and storage subject to submitting its proposals for change to the WGH Representative, who shall be entitled to object on the basis set out above. Any Disputes in connection with the provisions of this Section 50.5(b) may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure with reference to Good Industry Practice.

#### **50.6 Claims**

- (a) Where a demand, claim, action or proceeding is made or brought against WGH or a WGH Party which arises out of the alleged infringement or misappropriation of any rights in or to any Project Data or Intellectual Property Rights or because the use of any materials, Plant, machinery or equipment in connection with the Project Operations infringes any rights in or to any Intellectual Property of a third party then, unless such infringement has arisen out of the use of any Project Data or Intellectual Property Rights by WGH otherwise than in accordance with the terms of this Project Agreement, Project Co shall indemnify, defend and hold harmless WGH from and against all such demands, claims, actions and proceedings and Section 55.3 shall apply.

#### **50.7 WGH Trade-Marks**

- (a) Project Co shall not use any WGH Trade-Marks without obtaining a trade-mark licence on terms and conditions mutually satisfactory to WGH and Project Co, both acting reasonably.

#### **50.8 Confidential Information**

- (a) It is expressly acknowledged and agreed that nothing in this Section 50 shall be deemed to create or convey to a Party any right, title, or interest in and/or to the Confidential Information of the other Party.

## 50.9 Government Use of Documents

- (a) The Parties hereby disclaim any right, title or interest of any nature whatsoever they each may have in or to this Project Agreement that might prohibit or otherwise interfere with MEI's, Infrastructure Ontario's, MOHLTC's or the Province's ability to use this Project Agreement in any manner desired by MEI, Infrastructure Ontario, MOHLTC or the Province.
- (b) Each of the Parties hereby consents to the use by MEI, Infrastructure Ontario, MOHLTC and/or the Province of this Project Agreement, and any portion thereof, subject to compliance with the *Freedom of Information and Protection of Privacy Act* (Ontario) and to the removal by WGH (in consultation with Project Co) of any information supplied in confidence to MEI, Infrastructure Ontario, MOHLTC and/or the Province by either Party in circumstances where disclosure may be refused under section 17(1) of the *Freedom of Information and Protection of Privacy Act* (Ontario).

## 51. CONFIDENTIALITY

### 51.1 Disclosure

- (a) Subject to Sections 51.1(b), 51.1(c) and 51.2, but notwithstanding anything else in this Project Agreement to the contrary, Project Co acknowledges and agrees that, in accordance with the transparency and accountability principles of the IPFP Framework, WGH has a right to disclose or publish (including on websites) this Project Agreement, any or all terms hereof, including any or all contractual submissions and other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) as WGH, in its sole discretion, may consider appropriate. In exercising its discretion, WGH will be guided by the principles set out in Sections 51.1(b) and 51.1(c).
- (b) WGH will not disclose portions of this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) which would be exempt from disclosure under section 17(1) of the *Freedom of Information and Protection of Privacy Act* (Ontario) if WGH was bound thereby.
- (c) Notwithstanding Section 51.1(b), but subject to Section 51.2, where a compelling public interest in the disclosure of the information clearly outweighs the public interest in limiting the disclosure of the information supplied by Project Co (or any Project Co Party), WGH may disclose such information.

## 51.2 Redaction

- (a) Prior to disclosing or publishing this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party), WGH shall provide to Project Co a redacted version of this Project Agreement or other documents or information to be disclosed or published, on the basis that the information so redacted constitutes information which should not be disclosed pursuant to Section 51.1(b). The Parties acknowledge and agree that the Annual Service Payment, but not the breakdown thereof, may be disclosed and published.
- (b) If Project Co, acting in good faith, contends that any of the information not redacted constitutes information that falls within the scope of Section 51.1(b) and, accordingly, would be exempt from disclosure under the *Freedom of Information and Protection of Privacy Act* (Ontario), the dispute may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure, and WGH shall not disclose any information in dispute until a determination is made. Any such determination shall be made with reference to the text and principles of the *Freedom of Information and Protection of Privacy Act* (Ontario), notwithstanding that such Act does not apply directly to WGH.

## 51.3 Disclosure to Government

- (a) Project Co acknowledges and agrees that WGH will be free to disclose any information, including Confidential Information, to MEI, Infrastructure Ontario, MOHLTC and/or the Province, and, subject to compliance with the *Freedom of Information and Protection of Privacy Act* (Ontario), MEI, Infrastructure Ontario, MOHLTC and/or the Province will be free to use, disclose or publish (including on websites) the information on such terms and in such manner as MEI, Infrastructure Ontario, MOHLTC and/or the Province see fit.
- (b) For greater certainty, the Parties acknowledge and agree that, subject only to the removal of any information which the Parties are (or would be) entitled to refuse to disclose pursuant to section 17(1) of the *Freedom of Information and Protection of Privacy Act* (Ontario), this Project Agreement, any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) are public documents and information and, as such, may be disclosed by MEI, Infrastructure Ontario, MOHLTC and/or the Province.

## 51.4 Freedom of Information and Protection of Privacy Act

- (a) The Parties acknowledge and agree that the *Freedom of Information and Protection of Privacy Act* (Ontario) applies to MEI, Infrastructure Ontario, MOHLTC and the

Province, and that MEI, Infrastructure Ontario, MOHLTC and the Province are required to fully comply with the *Freedom of Information and Protection of Privacy Act* (Ontario).

- (b) MEI, Infrastructure Ontario, MOHLTC and/or the Province shall, within the time periods provided in the *Freedom of Information and Protection of Privacy Act* (Ontario) for a party to exercise rights to prevent disclosure of information, advise Project Co of any request for Confidential Information that relates to Project Co (or any Project Co Party) or of MEI, Infrastructure Ontario, MOHLTC and/or the Province's intention to voluntarily release any information or documents which contain Confidential Information that relates to Project Co (or any Project Co Party).

### **51.5 Use and Disclosure of Confidential Information**

- (a) Except as authorized hereunder, each Party shall hold in confidence, not disclose and not permit any person any manner of access to, whether directly or indirectly, any Confidential Information of the other Party, provided that this Section 51 shall not restrict either Party from disclosing such Confidential Information to its professional advisors, to the extent necessary, to enable that Party to perform, to cause to be performed, or to enforce, its rights or obligations under this Project Agreement.
- (b) Project Co may:
  - (i) disclose in confidence to the Lenders and prospective Lenders and their professional advisors such Confidential Information as is reasonably required by the Lenders in connection with the raising or syndication of the financing or any sub-participation in the financing of the Project Operations or which Project Co is obliged to supply by the terms of the Lending Agreements; and
  - (ii) disclose in confidence to any Project Co Party and their professional advisors, such Confidential Information as is necessary for the performance by that Project Co Party of that Project Co Party's obligations under this Project Agreement.
- (c) Project Co acknowledges that MEI, Infrastructure Ontario, MOHLTC and/or the Province may use the Project Co Confidential Information for purposes not specific to the Project, but for other general governmental purposes, such as development of the Province's alternate procurement and financing policies and framework. MEI, Infrastructure Ontario, MOHLTC and/or the Province will advise Project Co prior to using any Project Co Confidential Information for non-Project purposes.
- (d) Subject to the foregoing, neither Party shall use, or directly or indirectly cause, authorize or permit any other person to use, any Confidential Information of the other Party except for the purposes of this Project Agreement, as permitted by this Project Agreement or as authorized by the disclosing Party in writing.
- (e) Each Party shall protect all Confidential Information of the disclosing Party with the same degree of care as it uses to prevent the unauthorized use, disclosure, publication, or



dissemination of its own confidential information of a similar nature or character, but in no event less than a reasonable degree of care.

## 51.6 Exceptions

- (a) Information of a Party (the "**Proprietor**") will not be considered to be Confidential Information in the following circumstances:
- (i) the Proprietor advises the other Party to whom the information has been disclosed (the "**Confidant**") that the information is not required to be treated as Confidential Information;
  - (ii) the information is as of the date of this Project Agreement, or becomes at any time thereafter, generally available to or accessible by the public through no fault or wrongdoing of the Confidant;
  - (iii) the information is a matter of public record or in the public domain;
  - (iv) the information was in the possession of the Confidant prior to its disclosure;
  - (v) the information is received by the Confidant on a non-confidential basis from a source other than the Proprietor, provided that to the best of the Confidant's knowledge such source is not bound by a confidentiality agreement with the Proprietor or otherwise prohibited from disclosing the information to the Confidant by a contractual, legal or fiduciary obligation;
  - (vi) the information was independently developed by the Confidant without access to the Confidential Information, as evidenced by written records;
  - (vii) the information is required to be disclosed pursuant to Applicable Law, provided that the Confidant provides the Proprietor with reasonable notification and an opportunity to contest such requirement prior to disclosure;
  - (viii) the information is disclosed to WGH upon a termination of this Project Agreement, pursuant to Section 47 or is otherwise required by WGH for the purposes of performing (or having performed) the Project Operations, including the design or construction of the Facility, the operation, maintenance or improvement of the Facility, or any other operations or services the same as, or similar to, the Project Operations; or
  - (ix) the information would not be exempt from disclosure under the *Freedom of Information and Protection of Privacy Act* (Ontario).

**51.7 Survival of Confidentiality**

- (a) The obligations in Section 51.1 to Section 51.6 will cease on the date that is 3 years after the Termination Date and accordingly shall survive the termination of this Project Agreement.

**52. PERSONAL INFORMATION****52.1 General**

- (a) Project Co acknowledges the importance of maintaining the confidentiality and privacy of Personal Information.
- (b) Project Co shall, and shall require Subcontractors to, only collect, hold, process, use, store and disclose Personal Information with the prior consent of WGH and only to the extent necessary to perform Project Co's obligations under this Project Agreement.
- (c) Project Co shall, and shall require Subcontractors to, at all times treat Personal Information as strictly confidential and shall comply with all applicable requirements of the Output Specifications and the requirements of Applicable Law, including the *Freedom of Information and Protection of Privacy Act* (Ontario) and the *Personal Health Information Protection Act, 2004* (Ontario).
- (d) Project Co shall take all necessary and appropriate action, and shall require Subcontractors to take all necessary and appropriate action, against any person who fails to comply with this Section 52.
- (e) Project Co shall allow WGH on reasonable notice to inspect the measures of Project Co and the Subcontractors to protect Personal Information.

**52.2 Protection of Patient Information**

- (a) Project Co shall take all necessary steps, including the appropriate technical and organizational and physical security measures, and shall require its Subcontractors to take all necessary steps and to include provisions in Subcontracts to require their Subcontractors and other Project Co Parties to take all necessary steps, such that Project Co, the Project Co Parties, and its and their staff shall protect, secure and keep confidential any Patient Information.
- (b) Project Co shall keep confidential, and shall require its Subcontractors to keep confidential and to include provisions in all Subcontracts to require all Subcontractors and other Project Co Parties to keep confidential, all Patient Information that any of them may encounter or obtain during the course of their duties.
- (c) WGH may from time to time require that Project Co and any Project Co Party or member of its or their staff execute and deliver within 2 Business Days of such request an

agreement satisfactory to WGH, acting reasonably, requiring such person to keep Patient Information confidential.

- (d) This Section 52.2 shall not limit Section 52.1.

### **52.3 Survival**

- (a) The obligations in this Section 52 shall survive the termination of this Project Agreement.

## **53. INSURANCE AND PERFORMANCE SECURITY**

### **53.1 General Requirements**

- (a) Project Co and WGH shall comply with the provisions of Schedule 25 - Insurance and Performance Security Requirements.

### **53.2 No Relief from Liabilities and Obligations**

- (a) Neither compliance nor failure to comply with the insurance provisions of this Project Agreement shall relieve Project Co or WGH of their respective liabilities and obligations under this Project Agreement.

## **54. TITLE**

### **54.1 Title**

- (a) Subject to Section 54.1(b), title to each item and part of the Facility and the Equipment, including any materials, supplies, equipment, facilities, parts and any other deliverable or component items, but not the risk of loss or damage or destruction thereto or thereof, shall pass to WGH (or as WGH may direct) upon the receipt of such item on the Site, provided however that title to items of tangible personal property (as defined in the *Retail Sales Tax Act* (Ontario)) that comprise the Facility or are to be affixed or attached to the Facility prior to Substantial Completion shall pass to WGH (or as WGH may direct) at the time that such items are included in the Facility or affixed or attached to the Facility.
- (b) Project Co shall purchase all items of tangible personal property which may be acquired exempt from Ontario retail sales tax pursuant to paragraph 7(1)38 of the *Retail Sales Tax Act* (Ontario) for WGH (or as WGH may direct). Project Co agrees that any reimbursement of RST applicable to such tangible personal property is included in the Monthly Service Payments.

## **55. INDEMNITIES**

### **55.1 Project Co Indemnities to WGH**

- (a) Project Co shall indemnify and save harmless WGH and its directors, officers, employees, agents and representatives from and against any and all Direct Losses which

may be brought against them, suffered, sustained or incurred as a result of, in respect of, or arising out of any one or more of the following:

- (i) a failure by Project Co to achieve Substantial Completion by the Scheduled Substantial Completion Date;
- (ii) any physical loss of or damage to all or any part of the Site and the Facility, or to any equipment, assets or other property related thereto;
- (iii) the death or personal injury of any person;
- (iv) any physical loss of or damage to property or assets of any third party; or
- (v) any other loss or damage of any third party,

in each case, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance or any breach of this Project Agreement by Project Co or any act or omission of Project Co or any Project Co Party, except to the extent caused, or contributed to, by:

- (vi) the breach of this Project Agreement by WGH; or
  - (vii) in respect of Section 55.1(a)(i), any deliberate or negligent act or omission of WGH or any WGH Party; or
  - (viii) in respect of Sections 55.1(a)(ii), 55.1(a)(iii), 55.1(a)(iv) or 55.1(a)(v), any act or omission of WGH or any WGH Party; or
  - (ix) a deliberate or negligent act or omission of a Hospital Service User that results in undue interference with Project Co's performance of the Project Co Services and Project Co has been unable to take commercially reasonable steps necessary to prevent, negate or mitigate the undue interference due to acting in accordance with a recommendation or instruction of WGH or an appropriate WGH Party, except to the extent:
    - (A) any such deliberate or negligent act or omission is caused or contributed to by Project Co or any Project Co Party; or
    - (B) Hospital Service User is acting in accordance with a direction, recommendation or instruction of Project Co or any Project Co Party.
- (b) Project Co shall indemnify and save harmless WGH its directors, officers, employees, agents and representatives, from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by Project Co herein.

- (c) Project Co shall indemnify and save harmless WGH and its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of or involving or relating to any one or more of the following:
- (i) the performance by Project Co of this Project Agreement not in accordance with or in breach of the requirements of any Permits, Licences and Approvals, Applicable Law or requirements of Governmental Authorities, or the failure of Project Co to obtain all necessary Project Co Permits, Licences and Approvals in accordance with this Project Agreement;
  - (ii) any Contamination on, in or under, or migrating to or from, the Site, except for Contamination for which WGH is responsible pursuant to Section 16.2(a); or
  - (iii) any claim from a third party arising from a failure of Project Co to comply with its obligations under Section 18.3(c),

except to the extent that such Direct Losses are caused, or contributed to, by the breach of this Project Agreement by WGH or by any act or omission of WGH or any WGH Party.

- (d) Without prejudice to WGH's rights under Section 44 and any other rights under this Project Agreement, if WGH exercises its step-in rights under the Construction Contractor's Direct Agreement or the Service Provider's Direct Agreement, Project Co shall indemnify WGH for all obligations of Project Co assumed by WGH under the Construction Contract or the Service Contract, as the case may be, and for all reasonable costs and expenses incurred by WGH in relation to the exercise of WGH's rights.

## 55.2 WGH Indemnities to Project Co

- (a) WGH shall indemnify and save harmless Project Co and the Project Co Parties and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be brought against them, suffered, sustained or incurred as a result of, in respect of, or arising out of any one or more of the following:
- (i) the death or personal injury of any person arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance of, or breach of this Project Agreement by WGH or any act or omission of WGH or any WGH Party, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party;
  - (ii) any physical loss of or damage to all or any part of any property or assets of Project Co or any Project Co Party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by WGH or any deliberate or negligent act or omission of WGH or any WGH Party, except to the extent caused, or contributed to, by the breach of this Project

Agreement by Project Co or by any act or omission of Project Co or any Project Co Party; and

- (iii) any physical loss of or damage to property or assets of any third party, or any other loss or damage of any third party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by WGH or any deliberate or negligent act or omission of WGH or any WGH Party, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party,

provided that there shall be excluded from the indemnity given by WGH any liability for the occurrence of risks against which Project Co is required to insure under this Project Agreement to the extent of the proceeds available or that should have been available but for a failure by Project Co to comply with its obligations to properly insure under this Project Agreement.

- (b) WGH shall indemnify and save harmless Project Co and its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be brought against them, suffered, sustained or incurred as a result of, in respect of, or arising out of any breach of a representation or warranty by WGH herein.

### 55.3 Conduct of Claims

- (a) This Section 55.3 shall apply to the conduct of claims, made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Project Agreement. The party having, or claiming to have, the benefit of the indemnity is referred to as the "**Beneficiary**" and the Party giving the indemnity is referred to as the "**Indemnifier**".
- (b) 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 under this Section 55, the Beneficiary shall give written notice to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (c) Subject to Sections 55.3(d), 55.3(e) and 55.3(f), on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all, but not part only, of the liability arising out of the claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary's reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) 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 shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and Beneficiary.

- (d) With respect to any claim conducted by the Indemnifier:
- (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
  - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;
  - (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
  - (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
  - (v) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which this Section 55.3 relates.
- (e) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Project Agreement if:
- (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 55.3(c);
  - (ii) 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 55.3(b) or notifies the Beneficiary that the Indemnifier does not intend to take conduct of the claim; or
  - (iii) the Indemnifier fails to comply in any material respect with Section 55.3(d).
- (f) The Beneficiary shall be free at any time to give notice to the Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section 55.3(c) applies. For greater certainty, Project Co acknowledges and agrees that where WGH is the Beneficiary, WGH may retain or take over such conduct in any matter involving patient, clinical or research confidentiality or any matter involving public

policy. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section 55.3(f), then the Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.

- (g) If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the "**Recovery Amount**") which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
- (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
  - (ii) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity,

provided that there shall be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier is repaid only to the extent that the Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the loss sustained by the Beneficiary except, however, that if the Beneficiary elects not to pursue a Recovery Amount, the Indemnifier shall be entitled to require an assignment to it of the right to do so.

- (h) Any person taking any of the steps contemplated by this Section 55.3 shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Project Agreement.

#### **55.4 Mitigation - Indemnity Claims**

- (a) For greater certainty, Section 61.4 applies to any indemnity given under this Project Agreement and any such indemnity shall not extend to Direct Losses which could have been reduced or avoided by the Beneficiary complying with such Section.

### **56. LIMITS ON LIABILITY**

#### **56.1 Indirect Losses**

- (a) Subject to Section 56.1(b), without prejudice to WGH's rights under the Payment Mechanism, or the Parties' rights in respect of payments provided for herein, the indemnities under this Project Agreement shall not apply and there shall be no right to claim damages for breach of this Project Agreement, in tort or on any other basis whatsoever, to the extent that any loss claimed by either Party is:



- (i) for punitive, exemplary or aggravated damages;
- (ii) for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity; or
- (iii) is a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by either Party,

(collectively, "**Indirect Losses**").

- (b) With respect to the indemnity in Section 55.1(a)(i) only, the exceptions in Section 56.1(a)(ii) and (iii) shall not apply as a result of, or in relation to, WGH's loss of use of the Facility or a portion thereof, which for the purposes of Section 55.1(a)(i), shall be Direct Losses.

### **56.2 No Liability in Tort**

- (a) Subject to the indemnities provided herein and to the limited right of action created in Section 18.6, WGH and the WGH Parties shall not be liable in tort to Project Co or any Project Co Party, and neither Project Co nor any Project Co Party shall be liable in tort to WGH or any WGH Party in respect of any negligent act or omission of any such person relating to or in connection with this Project Agreement and no such person shall bring such a claim. For greater certainty, this Section 56.2 shall not limit either WGH's or Project Co's ability to pursue claims against any Design Consultant for indemnity with respect to negligent design or engineering, subject to the limitations set out in Section 18.6.

### **56.3 Sole Remedy**

- (a) Subject to:
  - (i) any other rights of WGH expressly provided for in this Project Agreement; and
  - (ii) WGH's right to claim, on or after termination of this Project Agreement, the amount of its reasonable costs, losses, damages and expenses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of this Project Agreement by Project Co except to the extent that the same has already been recovered by WGH pursuant to this Project Agreement or has been taken into account to reduce any compensation payable by WGH pursuant to Section 48,

the sole remedy of WGH in respect of a failure to provide the Project Co Services in accordance with this Project Agreement shall be the operation of the Payment Mechanism.

- (b) Nothing in Section 56.3(a) shall prevent or restrict the right of WGH to seek injunctive relief or a decree of specific performance or other discretionary remedies of a court of competent jurisdiction.

- (c) Notwithstanding any other provision of this Project Agreement, and except to the extent recovered under any of the insurances required pursuant to Schedule 25 – Insurance and Performance Security Requirements, neither Party shall be entitled to recover compensation or make a claim under this Project Agreement, or any other agreement in relation to the Project, in respect of any loss that it has incurred (or any failure of the other Party) to the extent that the Party has already been compensated in respect of that loss or failure pursuant to this Project Agreement, or otherwise.

#### **56.4 Maximum Liability**

- (a) Subject to Section 56.4(b), the maximum aggregate liability of each Party in respect of all claims under Section 55 shall not exceed \$[REDACTED]. This limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to policies maintained in accordance with Schedule 25 - Insurance and Performance Security Requirements. This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.
- (b) Project Co's maximum aggregate liability in respect of all claims under Section 55.1(a)(i) shall not exceed \$[REDACTED]. This limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to policies maintained in accordance with Schedule 25 – Insurance and Performance Security Requirements. This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.
- (c) Nothing in this Section 56.4 shall restrict, limit, prejudice or in any other way impair the rights and/or remedies of the Parties under any other provision of this Project Agreement and, for greater certainty, this Section 56.4 shall not limit either WGH's or Project Co's ability to pursue claims against any Design Consultant for indemnity with respect to negligent design or engineering, subject to the limitations set out in Section 18.6.

#### **57. DISPUTE RESOLUTION PROCEDURE**

- (a) All Disputes shall be resolved in accordance with, and the Parties shall comply with, Schedule 27 - Dispute Resolution Procedure.

#### **58. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL**

##### **58.1 Project Co Assignment**

- (a) Project Co shall not assign, transfer, charge, dispose of or otherwise alienate any interest in this Project Agreement, the Construction Contract, the Service Contract or any agreement entered into in connection with this Project Agreement without the prior written consent of WGH, not to be unreasonably withheld or delayed, provided however that no assignment, transfer, charge, disposition or other alienation shall be permitted to a person where that person or its Affiliates is a Restricted Person or a person whose standing or activities are inconsistent with WGH's role as a hospital, or may compromise

WGH's reputation or integrity or the nature of the Province's health care system, so as to affect public confidence in that system.

- (b) Section 58.1(a) shall not apply to the grant of any security for any loan made to Project Co under the Lending Agreements provided that any grantee of such security shall enter into the Lenders' Direct Agreement in relation to the exercise of its rights, if WGH so requires.

## 58.2 WGH Assignment

- (a) WGH may assign, transfer, dispose of or otherwise alienate any interest in this Project Agreement or any agreement in connection with this Project Agreement to which Project Co and WGH are parties:
- (i) to the Local Health Integration Network;
  - (ii) to any public hospital under the *Public Hospitals Act* (Ontario) to whom MOHLTC, exercising its statutory rights, would be entitled to transfer same;
  - (iii) to any successor of WGH, where such successor arises as a result of a direction or approval under the *Public Hospitals Act* (Ontario) or a reorganization of the delivery of health services initiated by the Province; or
  - (iv) to any person that is regulated and funded by the Province as a healthcare institution and is approved by MOHLTC as a transferee of same;

provided that:

- (v) the person to whom any such assignment, transfer, disposition or other alienation is made has the legal capacity, power and authority to accept such assignment, transfer, disposition or other alienation and agrees in writing with Project Co to perform, all the obligations of WGH hereunder and under any agreement in connection with this Project Agreement to which Project Co and WGH are parties; and
  - (vi) MOHLTC confirms to the assignee its commitment to fund the assignee on terms and conditions no less favourable than those set out in the WGH Development Accountability Agreement.
- (b) WGH shall not be released of any of its obligations under this Project Agreement except upon an assignment, transfer, disposition or other alienation of its interest in this Project Agreement in accordance with this Section 58.2.

## 58.3 Subcontractors

- (a) Project Co shall not subcontract any interest in this Project Agreement, the Construction Contract or the Service Contract to and shall not permit the Construction Contractor or

the Service Provider to subcontract any interest in the Construction Contract or the Service Contract to a Restricted Person, or any Affiliate thereof, or a person whose standing or activities are inconsistent with WGH's role as a hospital, or may compromise WGH's reputation or integrity or the nature of the Province's health care system, so as to affect public confidence in that system.

- (b) Project Co shall not terminate, agree to the termination of or replace the Construction Contractor or the Service Provider unless Project Co has complied with Sections 7.2(a), 58.3(c) and 58.3(d) or received the prior written consent of WGH, not to be unreasonably withheld or delayed.
- (c) Subject to Section 58.3(d), if either the Construction Contract or the Service Contract shall at any time lapse, terminate or otherwise cease to be in full force and effect, whether by reason of expiry, default or otherwise, with the effect that the Construction Contractor or the Service Provider, as the case may be, shall cease to act in relation to the Project, Project Co shall forthwith appoint a replacement, subject to WGH's prior written consent, acting reasonably, as to the suitability of the replacement.
- (d) It is a condition of replacement of the Construction Contractor or Service Provider that, and Project Co shall require that, any replacement enter into a contract upon the same or substantially similar terms as the person so replaced and into a direct agreement on the same terms as the Direct Agreement entered into by the person so replaced, unless any material variations are approved by WGH, acting reasonably.

#### **58.4 Changes in Ownership and Control**

- (a) No Change in Ownership of Project Co, or any person with an ownership interest in Project Co, shall be permitted:
  - (i) where the person acquiring the ownership interest is a Restricted Person or a person whose standing or activities are inconsistent with WGH's role as a hospital, or may compromise WGH's reputation or integrity or the nature of the Province's health care system, so as to affect public confidence in that system; or
  - (ii) if such Change in Ownership would have a material adverse effect on the performance of the Project Operations or the Hospital Services.
- (b) Prior to the third anniversary of the Substantial Completion Date, WGH shall be entitled to receive a 50 per cent share of any Excess Equity Gain arising from a Change in Ownership of Project Co.
- (c) Subject to Sections 58.4(a) and (b), no Change in Control of Project Co, or any person with an ownership interest in Project Co, shall be permitted without the prior written consent of WGH, not to be unreasonably withheld or delayed.
- (d) This Section 58.4 shall not apply to a Change in Ownership or Change in Control of companies whose equity securities are listed on a recognized stock exchange.

- (e) Whether or not Project Co is required to obtain WGH's consent pursuant to this Section 58.4, Project Co shall provide notice to WGH of any Change in Ownership or Change in Control of Project Co, or any person with an ownership interest in Project Co, as the case may be, within 5 Business Days of such Change in Ownership or Change in Control, and such notification shall include a statement identifying the then current owners and their respective holdings in the ownership interests of Project Co, or any person with an ownership interest in Project Co, as the case may be.

## 59. PROHIBITED ACTS

### 59.1 Definition

- (a) The term "**Prohibited Act**" means:
- (i) offering, giving or agreeing to give to WGH or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, any gift or consideration of any kind as an inducement or reward:
    - (A) for doing or not doing, or for having done or not having done, any act in relation to the obtaining or performance of this Project Agreement or any other agreement with WGH or any public body in connection with the Project; or
    - (B) for showing or not showing favour or disfavour to any person in relation to this Project Agreement or any other agreement with WGH or any public body in connection with the Project;

provided that this Section 59.1(a)(i) shall not apply to Project Co or any Project Co Party (or anyone employed by or acting on their behalf) providing consideration to WGH or any public body in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with WGH or any public body in connection with the Project;

- (ii) entering into this Project Agreement or any other agreement with WGH or any public body in connection with the Project if a commission or a fee has been paid or has been agreed to be paid by Project Co, or on its behalf or to its knowledge, WGH or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, unless, before the relevant agreement is entered into, particulars of any such commission or fee have been disclosed in writing to WGH, provided that this Section 59.1(a)(ii) shall not apply to a fee or commission paid by Project Co or any Project Co Party (or anyone employed by or acting on their behalf) to WGH or any public body pursuant to an agreement where such fee or commission is paid in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with WGH or any public

body in connection with the Project without contravening the intent of this Section 59;

- (iii) breaching or committing any offence under any Applicable Law in respect of corrupt or fraudulent acts in relation to this Project Agreement or any other agreement with WGH or any public body in connection with the Project; or
- (iv) defrauding or attempting to defraud or conspiring to defraud WGH or any other public body.

## 59.2 Remedies

- (a) If Project Co or any Project Co Party (or anyone employed by or acting on their behalf) commits any Prohibited Act, then WGH shall be entitled to act in accordance with the following:
  - (i) if the Prohibited Act is committed by Project Co or by an employee acting under the direction of a director or officer of Project Co, then WGH may give written notice to Project Co and Section 44 shall apply;
  - (ii) if the Prohibited Act is committed by an employee of Project Co acting independently of a direction of a director or officer of Project Co, then WGH may give written notice to Project Co and Section 44 shall apply, unless, within 30 days of receipt of such notice, Project Co terminates the employee's employment and ensures that the relevant part of the Project Operations shall be performed by another person;
  - (iii) if a Prohibited Act is committed by a Project Co Party or by an employee of that Project Co Party not acting independently of a direction of a director or officer of that Project Co Party, then WGH may give written notice to Project Co and Section 44 shall apply, unless, within 30 days of receipt of such notice, Project Co terminates the relevant Subcontract and ensures that the relevant part of the Project Operations shall be performed by another person, where relevant, in accordance with Section 58.3;
  - (iv) if the Prohibited Act is committed by an employee of a Project Co Party acting independently of a direction of a director or officer of that Project Co Party, then WGH may give notice to Project Co and Section 44 shall apply, unless, within 30 days of receipt of such notice, Project Co causes the termination of the employee's employment and ensures that the relevant part of the Project Operations shall be performed by another person; and
  - (v) if the Prohibited Act is committed on behalf of Project Co or a Project Co Party by a person not specified in Sections 59.2(a)(i) to 59.2(a)(iv), then WGH may give notice to Project Co and Section 44 shall apply, unless, within 30 days of receipt of such notice, Project Co causes the termination of such person's

employment or the appointment of their employer and, if necessary, ensures that the relevant part of the Project Operations shall be performed by another person.

- (b) Any notice of termination under this Section 59.2 shall specify:
- (i) the nature of the Prohibited Act;
  - (ii) the identity of the person whom WGH believes has committed the Prohibited Act; and
  - (iii) the date of termination in accordance with the applicable provisions of this Project Agreement.
- (c) Without prejudice to its other rights or remedies under this Section 59.2, WGH shall be entitled to recover from Project Co any Direct Loss sustained in consequence of any breach of this Section 59.

### **59.3 Permitted Payments**

- (a) Nothing contained in this Section 59 shall prevent Project Co or any other person from paying any proper commission, fee or bonus whether to its employees within the agreed terms of their employment or otherwise, and such commission fee or bonus shall not constitute a Prohibited Act.

### **59.4 Notification**

- (a) Project Co shall notify WGH of the occurrence and details of any Prohibited Act promptly on Project Co becoming aware of its occurrence.

### **59.5 Replacement of Project Co Party**

- (a) Where Project Co is required to replace any Project Co Party pursuant to this Section 59, the party replacing such Project Co Party shall from the time of the replacement be deemed to be a Project Co Party and the provisions of this Project Agreement shall be construed accordingly.

## **60. NOTICES**

### **60.1 Notices to Parties**

- (a) All notices, requests, demands, instructions, certificates, consents and other communications (each being a "**Notice**") required or permitted under this Project Agreement shall be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable provision of this Project Agreement) and served by sending the same by registered mail, facsimile or by hand, as follows:

If to Project Co: 5000 Yonge Street, Suite 1805  
Toronto, Ontario  
M2N 7E9

Fax No.: [REDACTED]  
Attn.: [REDACTED]

If to WGH: 270 Riddell Street  
Woodstock, Ontario  
N4S 6N6

Fax No.: [REDACTED]  
Attn.: [REDACTED]

**60.2 Notices to Representatives**

- (a) In addition to the notice requirements set out in Section 60.1, where any Notice is to be provided or submitted to the WGH Representative or the Project Co Representative it shall be provided or submitted by sending the same by registered mail, facsimile or by hand as follows:

If to Project Co Representative: 89 Queensway Avenue West  
Suite 800  
Mississauga, Ontario  
L5B 2V2

Fax No.: [REDACTED]  
Attn.: [REDACTED]

If to WGH Representative: 270 Riddell Street  
Woodstock, Ontario  
N4S 6N6

Fax No.: [REDACTED]  
Attn.: [REDACTED]

**60.3 Facsimile**

- (a) Where any Notice is provided or submitted to a Party via facsimile, an original of the Notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 60.3.

**60.4 Change of Address**

- (a) Either Party to this Project Agreement may, from time to time, change any of its contact information set forth in Sections 60.1 or 60.2 by prior Notice to the other Party, and such



change shall be effective on the Business Day that next follows the recipient Party's receipt of such Notice unless a later effective date is given in such Notice.

### **60.5 Deemed Receipt of Notices**

- (a) Subject to Sections 60.5(b), 60.5(c) and 60.5(d):
  - (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (b) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 60.
- (c) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (d) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

### **60.6 Service on WGH**

- (a) Where any Notice is required to be served on WGH, the obligation to serve such Notice shall be fulfilled by serving it on WGH in accordance with the provisions of this Section 60.

## **61. GENERAL**

### **61.1 Amendments**

- (a) This Project Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Project Agreement.

**61.2 Waiver**

- (a) No waiver made or given by a Party under or in connection with this Project Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

**61.3 Relationship Between the Parties**

- (a) The Parties are independent contractors. This Project Agreement is not intended to and does not create or establish between the Parties, or between WGH and any Project Co Party, any relationship as partners, joint venturers, employer and employee, master and servant, or (except as provided in this Project Agreement), of principal and agent, and does not create or establish any relationship whatsoever between WGH and any representative or employee of Project Co or the Project Co Parties.
- (b) The Parties further agree that:
  - (i) except as expressly provided in this Project Agreement, neither Party shall be, or be deemed to be, an agent of the other Party, and neither Party shall have authority hereunder to represent it that is an agent of the other Party, or to accept any order, or enter into any contract or agreement, or make any representations or warranties of any kind to any person, or to assume or create any obligation, express or deemed, on behalf of or binding, or purportedly binding upon, the other Party;
  - (ii) neither Party shall be required to make or pay employment benefits, contributions for Employment Insurance, Canada Pension Plan, Workers' Compensation Board or other similar levies with respect to any persons employed or engaged by the other Party;
  - (iii) except as otherwise expressly provided in this Project Agreement, each Party shall be free from the control of the other Party as to the manner in which it shall perform its obligations, or cause same to be performed, under this Project Agreement; and
  - (iv) any person which a Party may engage as an agent, employee, subcontractor or otherwise, to perform such Party's obligations under this Project Agreement, as permitted hereby, shall, unless the Parties otherwise agree in writing, be engaged

by such Party to act solely on behalf of such Party, and such person shall not act, or be deemed to act, on behalf of the Party that did not engage its services.

#### **61.4 General Duty to Mitigate**

- (a) WGH and Project Co shall at all times take commercially reasonable steps to minimize and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Project Agreement.

#### **61.5 Actual Knowledge**

- (a) Without limitation to its actual knowledge and/or such knowledge which it, at law, may from time to time, be deemed to have, Project Co and WGH shall, for all purposes of this Project Agreement, be deemed to have such knowledge in respect of the Project as is actually held (or ought reasonably to be held) by their respective directors and officers.

#### **61.6 Entire Agreement**

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

#### **61.7 No Reliance**

- (a) Each of the Parties acknowledge that:
  - (i) it has not entered into this Project Agreement on the basis of and does not rely, and has not relied, upon any statement or representation, whether negligent or innocent, or warranty or other provision, whether oral, written, express or implied, made or agreed to by any person, whether a Party to this Project Agreement or not, except those expressly made, given or repeated in this Project Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be those expressly provided for in this Project Agreement; and
  - (ii) this Section 61.7 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Project Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Project Agreement.

#### **61.8 Severability**

- (a) Each provision of this Project Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Project Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be

severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Project Agreement. If any such provision of this Project Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Project Agreement as near as possible to its original intent and effect.

### **61.9 Enurement**

- (a) This Project Agreement and any other agreement entered into in connection with the Project to which both WGH and Project Co are parties shall enure to the benefit of, and be binding on, WGH and Project Co and their respective successors and permitted transferees and assigns.

### **61.10 Governing Law and Jurisdiction**

- (a) This Project Agreement, and each of the documents contemplated by or delivered under or in connection with this Project Agreement, shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) Subject to Schedule 27 - Dispute Resolution Procedure, both Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

### **61.11 Cumulative Remedies**

- (a) Except as otherwise set forth in this Project Agreement, the rights, powers and remedies of each Party set forth in this Project Agreement are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such Party under this Project Agreement.

### **61.12 Further Assurance**

- (a) Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Project Agreement.

### **61.13 Costs**

- (a) Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Project Agreement.

**61.14 Language of Agreement**

- (a) Each of the parties acknowledges having requested and being satisfied that this Project Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en declare satisfaite.
- (b) For greater certainty, all correspondence, notices, drawings, test reports, certificates, specifications, information, operating and maintenance instructions, name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Project Agreement shall be in English.

**61.15 Proof of Authority**

- (a) WGH and Project Co each reserve the right to require any person executing this Project Agreement on behalf of the other Party to provide proof, in a form acceptable to WGH or Project Co, as applicable, that they have the requisite authority to execute this Project Agreement on behalf of and to bind WGH or Project Co, as applicable.

**61.16 Counterparts**

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

**IN WITNESS WHEREOF** the Parties have executed this Project Agreement as of the date first above written.

**WOODSTOCK GENERAL HOSPITAL  
TRUST**

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: President and Chief Executive  
Officer

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: Chair of the Board

I/We have authority to bind the corporation.

*[The remainder of this page is intentionally left blank]*

**INTEGRATED TEAM SOLUTIONS  
WGH PARTNERSHIP**, by its partners,

**LED (ITS) WGH INC.**

Per: \_\_\_\_\_  
Name:  
Title:

**LED (ITS) WGH GENERAL PARTNER  
INC.**, in its capacity as general partner of  
**LED (ITS) WGH LIMITED  
PARTNERSHIP**

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the partnership.

## SCHEDULE 1

### DEFINITIONS AND INTERPRETATION

- 1. Definitions.** In the Project Agreement, unless the context otherwise requires:
- 1.1 "Accessibility Condition" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.2 "Account Trustee" has the meaning given in Schedule 30 - Insurance Trust Agreement.
- 1.3 [REDACTED]
- 1.4 [REDACTED]
- 1.5 "Adjusted Estimated Fair Value" has the meaning given in Schedule 23 - Compensation on Termination.
- 1.6 "Ad-Hoc Services" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.7 "Ad-Hoc Services Request" has the meaning given in Schedule 20 – Payment Mechanism.
- 1.8 "Adjusted Annual Energy Target" has the meaning given in Schedule 20 – Payment Mechanism.
- 1.9 "Adjusted Highest Qualifying Tender Price" has the meaning given in Schedule 23 – Compensation on Termination.
- 1.10 "Affected Hospital Employees" means the Affected Non-Union Employees and the Affected Unionized Employees.
- 1.11 "Affected Non-Union Employees" means those non-unionized employees who perform services at the Existing Facilities immediately prior to the Transfer Date.
- 1.12 "Affected Unionized Employees" means those unionized employees who perform services at the Existing Facilities prior to the Transfer Date.
- 1.13 "Affiliate" means an "affiliate" as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto, and, in the case of Project Co, shall include each of the unitholders, shareholders, partners or owners, as the case may be.
- 1.14 "Ancillary Documents" means the Construction Contract, the Service Contract, the Interface Agreement, the Lenders' Direct Agreement, the Construction Contractor's Direct Agreement, the Service Provider's Direct Agreement, the Independent Certifier



Agreement, the Performance Security, the Standby Letter of Credit, the Insurance Trust Agreement, the Trust Account Agreement and the Management Services Agreement.

- 1.15 "**Annual Energy Target**" has the meaning given in Schedule 20 – Payment Mechanism.
- 1.16 "**Annual Review Date**" has the meaning given in Schedule 20 – Payment Mechanism.
- 1.17 "**Annual Service Payment**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.18 "**Anticipated Substantial Completion Date**" has the meaning given in Section 25.8(a) of the Project Agreement.
- 1.19 "**Applicable Law**" means:
- (a) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
  - (b) any Authority Requirement; and
  - (c) any judgment of a relevant court of law, board, arbitrator or administrative agency which is a binding precedent in the Province of Ontario,
- in each case, in force in the Province of Ontario, or otherwise binding on Project Co, any Project Co Party, WGH or any WGH Party and, in particular, shall include the *Public Hospitals Act* (Ontario).
- 1.20 "**Approved Purposes**" means:
- (a) WGH and the WGH Parties performing the Hospital Services (and their operations relating to the performance of the Hospital Services), their obligations under the Project Agreement and/or any other activities in connection with the Facility and the Site;
  - (b) following termination of the Project Agreement the design, construction and/or maintenance of the Facility and/or the performance of any other operations the same as, or similar to, the Project Operations; and
  - (c) the development by MOHLTC and/or the Province of best practices for healthcare facilities in Ontario.
- 1.21 "**Architect of Record**" means Parkin Architects Limited.
- 1.22 "**Architect's Contract**" has the meaning given in Section 18.7(h) of the Project Agreement.
- 1.23 "**Area Weighting Percentage**" has the meaning given in Schedule 20 - Payment Mechanism.

- 1.24 "**As Built Drawings**" means drawings prepared by Project Co in a format and with content and details that WGH, acting reasonably, considers appropriate.
- 1.25 "**ASHRAE**" has the meaning given in Schedule 20 – Payment Mechanism.
- 1.26 "**Associated Liabilities**" has the meaning given in Section 34.8(b) of the Project Agreement.
- 1.27 "**Authority Requirements**" means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority.
- 1.28 "**Availability Condition**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.29 "**Availability Failure**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.30 "**Availability Failure Deduction**" has the meaning given in Schedule 20 – Payment Mechanism.
- 1.31 "**Average Unit Cost**" has the meaning given in Schedule 20 – Payment Mechanism.
- 1.32 "**Background Information**" means any and all drawings, reports (including the Environmental Reports and the Geotechnical Reports), studies, data, documents, or other information, given or made available to Project Co or any Project Co Party by WGH or any WGH Party, or which was obtained from or through any other sources to the date of the Project Agreement, excluding the Existing Design.
- 1.33 "**Base Case Equity IRR**" means [REDACTED]%.
- 1.34 "**Base Date**" has the meaning given in Schedule 20 – Payment Mechanism.
- 1.35 "**Baseload**" has the meaning given in Schedule 20 – Payment Mechanism.
- 1.36 "**Baseload and Slope Review Date**" has the meaning given in Schedule 20 – Payment Mechanism.
- 1.37 "**Baseload and Slope Review Period**" has the meaning given in Schedule 20 – Payment Mechanism.
- 1.38 [REDACTED]
- 1.39 [REDACTED]
- 1.40 "**Bedding-In Period**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.41 "**Benchmarking Exercise**" has the meaning given to it in Schedule 31 – Benchmarking and Market Testing Procedure.

- 1.42 "**Beneficiary**" has the meaning given in Section 55.3(a) of the Project Agreement.
- 1.43 "**Building Code**" means the regulations made under Section 34 of the *Building Code Act, 1992* (Ontario), as amended or replaced from time to time.
- 1.44 "**Building Permit**" means the building permit issued by the City of Woodstock with respect to the construction of the Facility on the Site in accordance with the Existing Design.
- 1.45 "**Building Systems**" means those systems which enable the building to function such as heating, air conditioning, electrical and water systems.
- 1.46 "**Business Day**" means any day other than a Saturday, a Sunday, a statutory holiday in the Province of Ontario or any day on which banks are not open for business in the City of Woodstock, Ontario.
- 1.47 "**Business Opportunities**" has the meaning given in Section 4.1(a) of the Project Agreement.
- 1.48 "**CaGBC**" means the Canadian Green Building Council.
- 1.49 "**Canadian and Industry Standards**" means, at the applicable time, those standards, practices, methods and procedures applicable to Good Industry Practice.
- 1.50 "**Canadian GAAP**" means generally accepted accounting principles in Canada, consistently applied from one period to the next.
- 1.51 "**Capital Expenditure**" means capital expenditure as interpreted in accordance with Canadian GAAP.
- 1.52 "**Central Dispatch**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.53 "**Central Dispatch Services**" means those central dispatch services to be carried out in accordance with Section 3.6 of Schedule 15 – Output Specifications.
- 1.54 "**Change in Control**" means, with respect to a person:
- (a) any Change in Ownership, where the effect of such change is to result in control of the decisions made by or on behalf of such person subsequently being with a different entity or entities than prior to such change;
  - (b) any other change in respect of the power to elect a majority of the directors of the person or otherwise control the decisions made on behalf of such person; or
  - (c) any other change of direct or indirect power to direct or cause the direction of the management, actions or policies of such person.

- 1.55 "**Change in Law**" means the coming into effect or repeal (without re-enactment or consolidation) in Ontario of any Applicable Law, or any amendment or variation of any Applicable Law, including any judgment of a relevant court of law which changes binding precedent in Ontario in each case after the date of the Project Agreement.
- 1.56 "**Change in Ownership**" means, with respect to a person, any change in ownership, whether beneficial or otherwise, of any of the shares or units of ownership of such person, or in the direct or indirect power to vote or transfer any of the shares or units of ownership of such person.
- 1.57 "**Clinical Functionality**" means the ability of the Facility to enable WGH to carry out the Clinical Services in a manner that meets WGH's operating requirements.
- 1.58 "**Clinical Services**" means the direct and/or indirect provision of medical and healthcare services at the Facility to or for the benefit of persons requesting or requiring such services, including all management and administrative operations in support thereof.
- 1.59 "**Collective Agreement**" means, for the Affected Hospital Employees, the collective agreement (as defined in the *Labour Relations Act* (Ontario)) in effect on the date immediately preceding the Transfer Date.
- 1.60 "**Collective Agreement Rates**" has the meaning given in Schedule 20 – Payment Mechanism.
- 1.61 "**Commissioning Tests**" means all commissioning tests:
- (a) described in Schedule 14 - Outline Commissioning Program;
  - (b) required by Applicable Law, Canadian and Industry Standards or CSA Standards;
  - (c) recommended by the manufacturer of any part of the Plant or Equipment; and
  - (d) required to be included in the Final Commissioning Program by the Independent Certifier, the Hospital Commissioning Agent or the WGH Representative during its development pursuant to Section 25.3 of the Project Agreement.
- 1.62 "**Compensation Date**" has the meaning given in Schedule 23 - Compensation on Termination.
- 1.63 "**Compensation Event**" has the meaning given in Section 40.1(a) of the Project Agreement.
- 1.64 "**Confidant**" has the meaning given in Section 51.6(a)(i) of the Project Agreement.
- 1.65 "**Confidential Information**" means all confidential and proprietary information which is supplied by or on behalf of a Party, whether before or after the date of the Project Agreement, but excluding Patient Information.

- 1.66 "**Construction Contract**" means the construction contract between Project Co and the Construction Contractor dated on or about the date of Financial Close.
- 1.67 "**Construction Contractor**" means EllisDon Corporation, engaged by Project Co to perform the Works and any substitute building contractor engaged by Project Co as may be permitted by the Project Agreement.
- 1.68 "**Construction Contractor's Direct Agreement**" means the direct agreement between WGH, Project Co, the Construction Contractor and [REDACTED] in the form set out in Schedule 5-1 - Construction Contractor's Direct Agreement.
- 1.69 [REDACTED]
- 1.70 "**Construction Quality Plan**" means the plan relating to the performance of the Works to be jointly developed and agreed by WGH and Project Co in accordance with Section 13.1 of the Project Agreement, an outline of which is set forth in Schedule 11 – Construction Quality Plan, which includes various elements of sub-plans referred to therein and appended thereto, including, among other things, the Equipment Procurement and Installation Sub-Plan.
- 1.71 [REDACTED]
- 1.72 "**Contamination**" means the presence of any Hazardous Substance in the environment, except Hazardous Substances present in the environment in concentrations below applicable standards as set by Applicable Laws. If Contamination is present in soil, surface water or groundwater, then the soil, surface water or groundwater, as applicable, containing the Contamination shall also be deemed to be Contamination for the purposes of the Project Agreement.
- 1.73 "**Contract Day**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.74 "**Contract Month**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.75 "**Contract Year**" means the period of 12 calendar months that commences on April 1<sup>st</sup> of each year and ends on the next ensuing March 31<sup>st</sup>, provided that:
- (a) the first Contract Year shall be the period that commences on the Payment Commencement Date and ends on the next ensuing March 31<sup>st</sup>; and
  - (b) the final Contract Year shall be such period that commences on April 1<sup>st</sup> that precedes the date on which the Project Agreement expires or is terminated for whatever reason, and ends on the expiry or termination of the Project Agreement.
- 1.76 "**Cooling Degree Days**" has the meaning given in Schedule 20 – Payment Mechanism.
- 1.77 "**Corrective Maintenance Work**" has the meaning given in Section 27.4(a) of the Project Agreement.

- 1.78 "**Countdown Notice**" has the meaning given in Section 25.8(a) of the Project Agreement.
- 1.79 "**CPI**" means CPI-XFET, as published by Statistics Canada from time to time, or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 27 - Dispute Resolution Procedure, most closely resembles such index.
- 1.80 "**CPI<sub>n</sub>**" is the value of CPI on April 1 of the relevant Contract Year "n", to be determined by reference to the relevant index in the month of February most recently preceding the indexation date.
- 1.81 "**CPI<sub>0</sub>**" is the value of CPI on the Base Date, to be determined by reference to the relevant index in the month immediately preceding the Base Date.
- 1.82 "**CSA Standard**" means, at the applicable time, the Canadian Standards Association standards.
- 1.83 "**Custodian**" means the person appointed as the Custodian pursuant to the Custody Agreement and as may be permitted pursuant to the Project Agreement.
- 1.84 "**Custody Agreement**" means the custody agreement between Project Co, WGH, the Custodian and the Lenders' Agent in the form set out in Schedule 3 - Custody Agreement.
- 1.85 "**Deduction**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.86 "**Default Interest Rate**" means simple interest at an annual rate equal to 2% over the rate of interest per annum quoted by the Bank of Nova Scotia from time to time as its reference rate for Canadian Dollar demand loans made to its commercial customers in Canada and which it refers to as its "prime rate", as such rate may be changed by it from time to time.
- 1.87 "**Delay Events**" has the meaning given in Section 39.1(a) of the Project Agreement.
- 1.88 "**Design Consultants**" means:
- (a) Architect of Record;
  - (b) Stantec Consulting Ltd.;
  - (c) The Walter Fedy Partnership;
  - (d) Vertechs Design Inc.;
  - (e) Larden Muniak Consulting Inc.;
  - (f) Upper Canada Specialty Hardware;

- (g) Aercoustics Engineering Ltd.;
  - (h) F.H. Theakston Environmental Control Inc.;
  - (i) Shaheen & Peaker Limited;
  - (j) RS & G Commissioning Ltd.;
  - (k) Enermodal Engineering Limited;
  - (l) Resource Planning Group, Inc. (RPG); and
  - (m) Minnich Design Associates Ltd.
- 1.89 **"Development Approval"** means development permits, building permits, zoning approvals and any other planning or development permit, consent or applicable Permits, Licences and Approvals required from time to time for construction of the Facility.
- 1.90 **"Direct Agreements"** means the Construction Contractor's Direct Agreement and the Service Provider's Direct Agreement.
- 1.91 **"Direct Cost"** has the meaning given in Schedule 22 -Variation Procedure.
- 1.92 **"Direct Losses"** means all damage, losses, liabilities, penalties, fines, assessments, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on a substantial indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law, except Indirect Losses.
- 1.93 **"Discount Rate"** has the meaning given in Schedule 23 - Compensation on Termination.
- 1.94 **"Discriminatory Change in Law"** means any Change in Law the effect of which is to discriminate directly against or impose additional Taxes which apply specifically to:
- (a) hospitals whose design, construction, financing and facilities management are procured by a contract similar to the Project Agreement in relation to other similar hospitals;
  - (b) the Facility in relation to other hospitals;
  - (c) Project Co in relation to other persons; or
  - (d) persons undertaking projects for design, construction, financing and facilities management that are procured by a contract similar to the Project Agreement in relation to other persons undertaking similar projects procured on a different basis,

except that such Change in Law shall not be a Discriminatory Change in Law:

- (e) where it is in response to any act or omission on the part of Project Co which contravenes Applicable Law (other than an act or omission rendered illegal by virtue of the Discriminatory Change in Law itself);
- (f) solely on the basis that its effect on Project Co is greater than its effect on other companies; or
- (g) where such Change in Law is a change in Taxes that affects companies generally.

1.95 "**Dispute**" has the meaning given in Schedule 27 - Dispute Resolution Procedure.

1.96 "**Dispute Resolution Procedure**" means the procedure set out in Schedule 27 - Dispute Resolution Procedure.

1.97 "**Distribution**" has the meaning given in Schedule 28 - Refinancing.

1.98 "**Effective Date**" has the meaning given to it in Schedule 31 – Benchmarking and Market Testing.

1.99 "**Elevator Availability Failure**" has the meaning given in Schedule 20 - Payment Mechanism.

1.100 "**Elevator Availability Failure Deduction**" has the meaning given in Schedule 20 - Payment Mechanism.

1.101 "**Emergency**" means any situation, event, occurrence, or multiple occurrences that:

- (a) constitutes or may constitute a hazard to or jeopardizes or may jeopardize the health and/or safety of persons;
- (b) causes or may cause damage or harm to property, buildings and/or equipment; or
- (c) materially interferes with or prejudices or may materially interfere with or prejudice the safe operation of the Facility, any part of the Site, the conduct of the Project Operations and/or the conduct of the Hospital Services,

and which, in the opinion of WGH, requires immediate action to prevent and/or mitigate the occurrence (or risk of the occurrence) of the foregoing.

1.102 "**Employee Termination Payments**" has the meaning given in Schedule 23 - Compensation on Termination.

1.103 "**Encumbrance**" means any mortgage, lien, pledge, judgment, execution, charge, security interest, restriction, claim or encumbrance of any nature whatsoever, including claims of the Workplace Safety and Insurance Board, Canada Revenue Agency, and other Governmental Authorities.



- 1.104 **"Energy"** has the meaning given in Schedule 20 – Payment Mechanism.
- 1.105 **"Energy Consumption"** has the meaning given in Schedule 20 – Payment Mechanism.
- 1.106 **"Energy Year"** has the meaning given in Schedule 20 – Payment Mechanism.
- 1.107 **"Environmental Reports"** means (i) the Report dated May 26, 2003 and prepared by F.H. Theakston Environmental Control Inc.; (ii) the Environmental Study dated June 20, 2003 and prepared by F.H. Theakston Environmental Control Inc.; (iii) Emission Summary and Dispersion Modeling Report dated July 1, 2003 prepared by F.H. Theakston Environmental Control Inc.; and (iv) the letter relating to noise – Woodstock General Hospital: Certificate of Approval (Air) dated April 14, 2005 prepared by F. H Theakston Environmental Control Inc.
- 1.108 **"Equipment"** means all equipment listed in Schedule 21 - Equipment List.
- 1.109 **"Equipment Procurement and Relocation Fee"** means \$[REDACTED].
- 1.110 **"Equipment Procurement and Relocation Services"** has the meaning given in Section 22.11(a) of the Project Agreement.
- 1.111 **"Equipment Procurement and Installation Sub-Plan"** means the plan relating to the decommissioning, dismantling, disconnection, transfer, installation and commissioning of Equipment, as applicable (other than Equipment listed as "O/O" (Owner Supplied/Owner Installed) on Schedule 21 – Equipment List) and the procurement of Equipment and equipment services contracts for WGH in accordance with Section 22 of the Project Agreement to be jointly developed and agreed by WGH and Project Co in accordance with Section 13.1 of the Project Agreement, which plan forms part of the Construction Quality Plan.
- 1.112 **"Equipment RFP"** means the tenders, quotations or request for proposals to be prepared by Project Co in consultation with the Equipment Steering Committee for the purchase and procurement of O/C Category 2 New Equipment, O/V Category 1 New Equipment and O/V Category 2 New Equipment and the procurement of equipment services contracts for each item of O/V Category 2 New Equipment and O/V Category 1 Existing Equipment based on the specifications provided by WGH in accordance with Section 22.3 of the Project Agreement.
- 1.113 **"Equipment Steering Committee"** has the meaning given in Section 22.1(a) of the Project Agreement.
- 1.114 **"Equity Capital"** means the aggregate (without double counting) of all subscribed share capital, shareholder loans and other contributed capital of Project Co, excluding, for greater certainty, any amounts advanced to Project Co under the Lending Agreements which has a fixed return without equity participation, step-up rights or rights to share in Project Co's excess cash flow and a coupon equal to or less than 150% of the coupon payable to the Senior Lenders.

- 1.115 "**Equity IRR**" has the meaning given in Schedule 28 - Refinancing.
- 1.116 "**Equity Providers**" means [REDACTED] and [REDACTED].
- 1.117 "**Equity Sale IRR**" means the Equity IRR to the date of any sale of Equity Capital calculated by taking into account the full Implied Equity Value, together with all Distributions paid in respect of the Equity Capital, and the actual timing of payment of all such amounts.
- 1.118 "**Escalation Factor**" has the meaning given in Schedule 20 – Payment Mechanism.
- 1.119 "**Escrow Account**" has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.120 "**Estimate**" has the meaning given in Schedule 22 - Variation Procedure.
- 1.121 "**Estimated Fair Value**" has the meaning given in Schedule 23 - Compensation on Termination.
- 1.122 "**Estimated Increased Maintenance Costs**" has the meaning given in Section 27.3(b) of the Project Agreement.
- 1.123 "**Event**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.124 "**Excess Equity Gain**" means an amount equal to the greater of zero and the difference between:
- (a) the amount paid in consideration of the percentage of Equity Capital (as at Financial Close) sold in a particular sale of Equity Capital; and
  - (b) the Threshold Equity Sale Amount.
- 1.125 "**Excusing Cause**" has the meaning given in Section 41.1(a) of the Project Agreement.
- 1.126 "**Exempt Refinancing**" has the meaning given in Schedule 28 - Refinancing.
- 1.127 "**Exercise Date**" has the meaning given in Schedule 4 - Lenders' Direct Agreement.
- 1.128 "**Existing Design**" means the completed construction working drawings and documentation listed in Schedule 33 - Existing Design, as amended in accordance with the Project Agreement.
- 1.129 "**Existing Equipment**" means all equipment marked as "Exist" on Schedule 21 – Equipment List.
- 1.130 "**Existing Facilities**" means the hospital facilities located at 270 Riddell Street, Woodstock, Ontario, N4S 6N6.
- 1.131 "**Expert**" has the meaning given in Schedule 27 - Dispute Resolution Procedure.

- 1.132 "**Expiry Date**" means the 30<sup>th</sup> anniversary of the original Scheduled Substantial Completion Date, without taking into account any extensions to such date pursuant to Section 39 of the Project Agreement.
- 1.133 "**Expiry Lifecycle Costs**" has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.134 "**Expiry Transition Amount**" has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.135 "**Expiry Transition Procedure**" means the procedure for Expiry Transition described in Schedule 24 - Expiry Transition Procedure.
- 1.136 "**Expiry Transition Requirements**" has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.137 "**Expiry Transition Security**" has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.138 "**Expiry Transition Works**" has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.139 "**Expiry Transition Works Costs**" has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.140 "**Facilities Management Committee**" has the meaning given in Section 12.1(a) of the Project Agreement.
- 1.141 "**Facility**" means:
- (a) all buildings, facilities and other structures;
  - (b) the Plant;
  - (c) all site services, utilities, roadways and parking spaces required to support such buildings, facilities and structures; and
  - (d) all supporting systems, infrastructure and improvements,
- in each case, required by the Technical Requirements and whether or not in the course of construction, installation or completion.
- 1.142 "**Facility Condition Report**" has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.143 "**Failure Points**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.144 "**Failure Type**" has the meaning given in Schedule 20 - Payment Mechanism.

- 1.145 "**Final Commissioning Program**" means the program to be jointly developed and agreed by WGH and Project Co in accordance with Section 25.3 of the Project Agreement.
- 1.146 "**Final Completion**" means the completion of the Works in accordance with the Project Agreement, including completion of all Minor Deficiencies.
- 1.147 "**Final Completion Certificate**" means the certificate to be issued by the Independent Certifier in accordance with Section 25.12(d) of the Project Agreement.
- 1.148 "**Final Completion Date**" means the date on which Final Completion is achieved as evidenced by the Final Completion Certificate, as such date shall be stated therein.
- 1.149 "**Final Completion Notice**" has the meaning given in Section 25.12(b) of the Project Agreement.
- 1.150 "**Final Facility Condition Report**" has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.151 "**Financial Close**" means the first date that funding is available under the Lending Agreements.
- 1.152 "**Financial Close Target Date**" means October 23, 2008, as such date may be extended in accordance with the provisions of the Project Agreement.
- 1.153 "**Financial Model**" means the computer spreadsheet model for the Project incorporating statements of Project Co's cashflows including all expenditure, revenues, financing and taxation of the Project Operations together with the profit and loss accounts and balance sheets for Project Co throughout the Project Term accompanied by details of all assumptions, calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the model.
- 1.154 "**Five Year Capital Plan**" means the rolling plan to be prepared by or on behalf of Project Co for the lifecycle renewal of the Facility in accordance with Schedule 15 - Output Specifications and the other provisions of the Project Agreement during each five year period, which plan shall be based, in part, on the Project Co Proposal Extracts.
- 1.155 "**Force Majeure**" has the meaning given in Section 43.1(a) of the Project Agreement.
- 1.156 "**Functional Area**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.157 "**Functional Part**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.158 "**Functional Unit**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.159 "**Gainshare Adjustment**" has the meaning given in Schedule 20 – Payment Mechanism.
- 1.160 "**Geotechnical Reports**" means Geotechnical Investigation dated October 9, 2002 and prepared by Shaheen & Peaker Limited, as supplemented by letter reports each prepared

by Shaheen & Peaker Limited dated October 18, 2002, November 5, 2002, November 20, 2002, February 11, 2003, February 28, 2003, March 13, 2003, June 19, 2003, July 14, 2003, October 15, 2003 and March 2, 2004 and October 31, 2007.

- 1.161 "**Gigajoule**" has the meaning given in Schedule 20 – Payment Mechanism.
- 1.162 "**Good Industry Practice**" means using standards, practices, methods and procedures to a good commercial standard, conforming to Applicable 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.
- 1.163 "**Governmental Authority**" means MOHLTC, the Local Health Integration Network and any other 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 legal jurisdiction in any way over WGH, any aspect of the performance of the Project Agreement or the operation of the Facility or the Hospital Services, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.
- 1.164 "**Grounds**" means all external elements of the Facility.
- 1.165 "**Grounds Maintenance Services**" means those grounds maintenance and snow and ice management services to be carried out pursuant to the Sections 3.2 and 3.3 of Schedule 15 – Output Specifications.
- 1.166 "**GST**" means the tax payable and imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.
- 1.167 "**H&S Conviction**" has the meaning given in Section 44.1(a)(xvii) of the Project Agreement.
- 1.168 "**Hazardous Substances**" means any contaminant, pollutant, dangerous substance, toxic substance, liquid waste, industrial waste, gaseous waste, hauled liquid waste, hazardous material, or hazardous substance as defined or identified pursuant to any Applicable Law.
- 1.169 "**Health Specific Change in Law**" means any Change in Law which principally affects or principally relates only to the provision or operation of healthcare premises.
- 1.170 "**Heating Degree Days**" has the meaning given in Schedule 20 – Payment Mechanism.
- 1.171 "**Heritage Guidelines and Protocols**" means the Government of Ontario's Best Practice Guidelines for the Treatment of Human Skeletal Remains Discovered Outside a Licensed Cemetery and the Cultural Heritage Protocol Agreement between the Ministry of Government Services and the Ministry of Culture and Communications.

- 1.172 "**Hospital Commissioning**" means the commissioning activities to be carried out by WGH in accordance with the Final Commissioning Program.
- 1.173 "**Hospital Commissioning Period**" means the period during which WGH is performing the Hospital Commissioning.
- 1.174 "**Hospital Commissioning Tests**" means all commissioning tests required to be performed by WGH pursuant to the Final Commissioning Program.
- 1.175 "**Hospital FM Services**" means all services and activities, other than the Clinical Services, provided or performed at the Facility by WGH from time to time, including select housekeeping services, select waste management services, select parking management services (revenue collection), portering services, select materials management services (purchase and replacement of select furniture, fixtures and equipment), select space management services, medical equipment materials management services, select food services (patient and non-patient), clinical engineering services, laundry and linen services, room-set up and meeting room bookings services, and select information systems services.
- 1.176 "**Hospital HR Policy**" means WGH's human resources policies and guidelines, as they may be amended from time to time and provided to Project Co in writing.
- 1.177 "**Hospital Policy**" means WGH's purchasing and procurement policies, as they may be amended from time to time and provided to Project Co in writing.
- 1.178 "**Hospital Service User**" means any person lawfully present at the Facility for any purpose, including to make use of or be benefited by the Hospital Services (and such term shall exclude Project Co, any WGH Party or any Project Co Party save where such person is present at the Facility solely to make use of or be benefited by the Hospital Services).
- 1.179 "**Hospital Services**" means the Clinical Services and the Hospital FM Services.
- 1.180 "**Hospital Systems**" means systems relating to patient care such as medical gas and the nurse call system.
- 1.181 "**HVAC**" means heating, ventilation and air conditioning.
- 1.182 "**Implied Equity Value**" means the amount paid in consideration of a percentage of Equity Capital divided by the percentage of Equity Capital (as at Financial Close) sold in a particular sale of Equity Capital.
- 1.183 "**Indemnifiable Taxes**" has the meaning given in Section 34.8(b) of the Project Agreement.
- 1.184 "**Indemnifier**" has the meaning given in Section 55.3(a) of the Project Agreement.

- 1.185 "**Independent Certifier**" means the person appointed as the Independent Certifier pursuant to the Independent Certifier Agreement and as may be permitted pursuant to the Project Agreement.
- 1.186 "**Independent Certifier Agreement**" means the contract entered into between Project Co, WGH and the Independent Certifier in substantially the form attached hereto as Schedule 6 - Independent Certifier Agreement.
- 1.187 "**Independent Inspector**" has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.188 "**Indirect Losses**" has the meaning given in Section 56.1(a) of the Project Agreement.
- 1.189 "**Infrastructure Ontario**" means the Ontario Infrastructure Projects Corporation.
- 1.190 "**Initial Labour Adjustment**" has the meaning given in Schedule 20 – Payment Mechanism.
- 1.191 "**Initial Period**" has the meaning given in Schedule 20 – Payment Mechanism.
- 1.192 "**Innovation Proposal**" has the meaning given in Section 38.2(b) of the Project Agreement.
- 1.193 "**Insurance Adjustment**" means [REDACTED].
- 1.194 [REDACTED]
- 1.195 [REDACTED]
- 1.196 [REDACTED]
- 1.197 [REDACTED]
- 1.198 [REDACTED]
- 1.199 [REDACTED]
- 1.200 "**Insurance Review Date**" means [REDACTED].
- 1.201 [REDACTED]
- 1.202 [REDACTED]
- 1.203 [REDACTED]
- 1.204 [REDACTED]

- 1.205 "**Insurance Trust Agreement**" means the insurance trust agreement to be entered into between WGH, the Lenders' Agent, Project Co and the Account Trustee in the form set out in Schedule 30 - Insurance Trust Agreement.
- 1.206 "**Intellectual Property**" means in connection with a specified subject matter, on a worldwide basis, all registered or unregistered Trade-Marks, trade names, patents, copyrights, trade secrets, designs, rights of publicity, mask work rights, utility models and other industrial or intangible property rights of a similar nature, all grants and registrations worldwide in connection with the foregoing and all other rights with respect thereto existing other than pursuant to grant or registration; all applications for any such grant or registration, all rights of priority under international conventions to make such applications and the right to control their prosecution, and all amendments, continuations, divisions and continuations-in-part of such applications; and all corrections, reissues, patents of addition, extensions and renewals of any such grant, registration or right.
- 1.207 "**Intellectual Property Rights**" means all Intellectual Property in or associated with the Project Data and all Intellectual Property which, or the subject matter of which, is at any time before or after the date of the Project Agreement created, brought into existence, acquired, used or intended to be used by Project Co, any Project Co Party or by other third parties (for such third parties' use by or on behalf of or for the benefit of Project Co) for any or all of the purposes of:
- (a) the Works, including the design and construction of the Facility (excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction);
  - (b) the Project Co Services, including the operation, maintenance, improvement and testing of the Facility;
  - (c) any other Project Operations; or
  - (d) the Project Agreement.
- 1.208 "**Interface Agreement**" means the interface agreement between Project Co, the Construction Contractor and the Service Provider dated on or about the date of Financial Close.
- 1.209 "**Invoice Date**" has the meaning given in Schedule 23 - Compensation on Termination.
- 1.210 "**Irrecoverable Tax**" has the meaning given in Section 34.4(b) of the Project Agreement.
- 1.211 "**IPFP Framework**" has the meaning given in Recital E of the Project Agreement.
- 1.212 "**Joint Insurance Cost Report**" has the meaning set forth in Section 9.1 of Schedule 25 - Insurance and Performance Security Requirements.
- 1.213 [REDACTED]



- 1.214 [REDACTED]
- 1.215 "**Jointly Developed Materials**" has the meaning given in Section 50.4(a) of the Project Agreement.
- 1.216 "**Junior Debt Amount**" has the meaning given in Schedule 23 – Compensation on Termination.
- 1.217 "**Junior Debt Makewhole**" has the meaning given in Schedule 23 – Compensation on Termination.
- 1.218 "**Junior Debt Service Amount**" means, for any period, the principal and interest payable by Project Co or any Project Co Party to the Junior Lenders in the normal course under the Lending Agreements.
- 1.219 "**Junior Lenders**" This definition is not applicable as of the date of this Project Agreement and accordingly, any references to "Junior Lenders", "Junior Debt Amount", "Junior Debt Makewhole" and "Junior Debt Service Amount" throughout the Project Agreement, the Schedules and any Ancillary Documents are not applicable as of the date of this Project Agreement.
- In the event that lenders are intended to be introduced as "Junior Lenders" in any Refinancing and/or other financing, WGH's consent is required. If WGH consent is obtained, appropriate amendments will be made to this Project Agreement, the applicable Schedules and the applicable Ancillary Documents.
- 1.220 "**LED GP Inc.**" means LED (ITS) WGH General Partner Inc.
- 1.221 "**LED Inc.**" means LED (ITS) WGH Inc.
- 1.222 "**LED LP**" means LED (ITS) WGH Limited Partnership.
- 1.223 "**LEED**" means Leadership in Energy & Environmental Design.
- 1.224 "**LEED Certification**" means certification level that achieves twenty six credits referred to as "certified" under LEED-NC Version 1.0 by the CaGBC, including any addenda or updates thereto issued prior to the date of the Project Agreement.
- 1.225 "**LEED Rating System**" means CaGBC's Leadership in Energy & Environmental Design (LEED) Green Building Rating System For New Construction And Major Renovations, LEED-NC Version 1.0.
- 1.226 "**Lenders**" means all or any of the persons who provide financing to Project Co in respect of the Project Operations under the Lending Agreements, including, without limitation, the Senior Lenders and the Junior Lenders, and, where the context so permits, prospective financiers or lenders.
- 1.227 "**Lenders' Agent**" has the meaning given in Schedule 4 - Lenders' Direct Agreement.

- 1.228 "**Lenders' Direct Agreement**" means the direct agreement to be entered into between WGH, the Lenders' Agent and Project Co in the form set out in Schedule 4 - Lenders' Direct Agreement.
- 1.229 "**Lending Agreements**" has the meaning given in Schedule 23 - Compensation on Termination.
- 1.230 "**Lifecycle Replacement Schedule**" means a program for the planned or scheduled replacement, refreshment and/or refurbishment of building systems, equipment (including, for certainty, the Schedule 21 Maintenance and Replacement Equipment) and fixtures that have reached the end of their useful service life during the Project Term, as set out in Appendix A to Schedule 24 - Expiry Transition Procedure.
- 1.231 "**Lifecycle Technical Review**" means an assessment conducted by an independent consultant every 5 years to assess the performance and effectiveness of both the Preventive Maintenance and lifecycle works completed over the previous period and the work planned and scheduled for the upcoming five-year period in accordance with the Lifecycle Replacement Schedule and Schedule 15 – Output Specifications.
- 1.232 "**Liquid Market**" has the meaning given in Schedule 23 - Compensation on Termination.
- 1.233 "**Local Health Integration Network**" means the South West Local Health Integration Network.
- 1.234 "**Longstop Date**" has the meaning given in Section 44.1(a)(ii) of the Project Agreement.
- 1.235 "**M&E Systems Verification Period**" means the period beginning on the day following the Substantial Completion Date and ending on the day that is 24 months following the Substantial Completion Date.
- 1.236 "**Maintenance Work**" means any work after Substantial Completion for maintenance or repair of the Facility and for the Schedule 21 Maintenance and Replacement Equipment, in each case in accordance with the requirements of the Project Agreement and Schedule 15 – Output Specifications.
- 1.237 "**Major Quality Failure**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.238 "**Major Quality Failure Deduction**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.239 "**Major Service Failure**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.240 "**Major Service Failure Deduction**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.241 "**Management Services Agreement**" means the management services agreement between Project Co, EllisDon Corporation and Fengate Capital Management Ltd. dated on or about the date of Financial Close.

- 1.242 "**Manuals**" means all manuals to be prepared by Project Co pursuant to the Project Agreement, including all policy and procedure manuals.
- 1.243 "**Market Tested Service**" has the meaning given in Schedule 31 - Benchmarking and Market Testing Procedure.
- 1.244 "**Market Testing**" has the meaning given in Schedule 31 – Benchmarking and Market Testing Procedure.
- 1.245 "**Market Value Availability Deduction Amount**" has the meaning given in Schedule 23 - Compensation on Termination.
- 1.246 "**Maximum Service Payment**" has the meaning given in Schedule 23 - Compensation on Termination.
- 1.247 "**Medical Contamination**" means a disease carrying agent which cleaning and prevention of infection or contamination techniques in use in accordance with Good Industry Practice and the Project Agreement cannot substantially prevent or cannot substantially remove with the result that:
- (a) it is unsafe to admit patients or staff to the relevant area or to use the area for the purpose for which it is intended; and
  - (b) the area cannot be made safe for the admission of patients or staff.
- 1.248 "**Medium Quality Failure**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.249 "**Medium Quality Failure Deduction**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.250 "**Medium Service Failure**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.251 "**Medium Service Failure Deduction**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.252 "**MEI**" means Her Majesty the Queen in Right of Ontario as represented by the Minister of Energy and Infrastructure, and includes any successors thereto or persons exercising delegated power under the Minister's authority.
- 1.253 "**Minimum Agreed Availability Conditions**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.254 "**Minimum Unavailability Deductions**" has the meaning given in Schedule 20 - Payment Mechanism.

- 1.255 "**Minor Deficiencies**" means any defects, deficiencies and items of outstanding work (including in relation to seasonal work), which would not materially impair WGH's use and enjoyment of the Facility (including for the Hospital Commissioning) or the performance of the Hospital Services by WGH or the performance of the Project Co Services by Project Co.
- 1.256 "**Minor Deficiencies List**" has the meaning given in Section 25.9(a) of the Project Agreement.
- 1.257 "**Minor Quality Failure**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.258 "**Minor Quality Failure Deduction**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.259 "**Minor Service Failure**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.260 "**Minor Service Failure Deduction**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.261 "**MOHLTC**" means Her Majesty the Queen in Right of Ontario as represented by the Minister of Health and Long-Term Care, and includes any successors thereto or persons exercising delegated power under the Minister's authority.
- 1.262 "**Monitoring Notice**" has the meaning given in Section 30.4(a) of the Project Agreement.
- 1.263 "**Monitoring Period**" has the meaning given in Schedule 20 – Payment Mechanism.
- 1.264 "**Monthly Energy Report**" has the meaning given in Schedule 20 – Payment Mechanism.
- 1.265 "**Monthly Service Payment**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.266 "**MSDS**" means the material safety data sheets prescribed by the applicable WHMIS legislation.
- 1.267 "**New Agreement**" has the meaning given in Schedule 23 - Compensation on Termination.
- 1.268 "**New Project Co**" has the meaning given in Schedule 23 - Compensation on Termination.
- 1.269 "**No Cost Measures**" means energy saving measures, including those related to good housekeeping, involving no material additional expenditure and/or no Capital Expenditure.
- 1.270 "**No Default Interest Rate**" means the rate of interest per annum quoted by the Bank of Montreal from time to time as its reference rate for Canadian Dollar demand loans made

- to its commercial customers in Canada and which it refers to as its "prime rate", as such rate may be changed by it from time to time.
- 1.271 "**Non-Default Termination Sum**" has the meaning given in Schedule 23 - Compensation on Termination.
- 1.272 "**Non-Resident**" means a Person that is, at the relevant time, a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).
- 1.273 "**Normal Wear and Tear**" means wear and tear that is reasonable given the use and age of the Facility (notwithstanding that any furniture, decorative fittings, finishes (including paintwork, fabric and special finishes), floor coverings and soft furnishings would be obsolete on the Expiry Date, but is still functional and operable), and consistent with wear and tear that could reasonably be expected to exist at a facility similar to the Facility, operating in a similar environment and similar circumstances and of a similar age, but does not include any degradation in the functionality or operability of the Facility, including furniture, decorative fittings, finishes (including paintwork, fabric and special finishes), floor coverings and soft furnishings (even if obsolete on the Expiry Date) so that the Facility or any element of the Facility (subject to the exceptions specified in Section 2.2 of Schedule 24 - Expiry Transition Procedure) fails to meet the Output Specifications, or fails to comply with Applicable Law.
- 1.274 "**Notice of Dispute**" has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.275 "**O/C Category 1 Existing Equipment**" has the meaning given in Section 22.2.1(b)(A) of the Project Agreement.
- 1.276 "**O/C Category 2 Existing Equipment**" has the meaning given in Section 22.2.1(b)(B) of the Project Agreement.
- 1.277 "**O/C Category 1 New Equipment**" has the meaning given in Section 22.2.1(a)(A) of the Project Agreement.
- 1.278 "**O/C Category 2 New Equipment**" has the meaning given in Section 22.2.1(a)(B) of the Project Agreement.
- 1.279 "**O/C Equipment**" means collectively, the O/C Category 1 New Equipment, the O/C Category 2 New Equipment, the O/C Category 1 Existing Equipment and the O/C Category 2 Existing Equipment.
- 1.280 "**Occupancy Permit**" means all Permits, Licences and Approvals required for the occupancy of the Facility as a health care facility in compliance with Applicable Law.
- 1.281 "**Operational Term**" means the period from the Substantial Completion Date until the end of the Project Term.

- 1.282 "**Outline Commissioning Program**" means the schedule setting out the standards, specifications, procedures and other requirements for the performance and completion of the commissioning activities of the Parties outlined in Schedule 14 - Outline Commissioning Program.
- 1.283 "**Output Specifications**" means Schedule 15 - Output Specifications.
- 1.284 "**O/V Category 1 Existing Equipment**" has the meaning given in Section 22.2.2(b)(A) of the Project Agreement.
- 1.285 "**O/V Category 2 Existing Equipment**" has the meaning given in Section 22.2.2(b)(B) of the Project Agreement.
- 1.286 "**O/V Category 1 New Equipment**" has the meaning given in Section 22.2.2(a)(A) of the Project Agreement.
- 1.287 "**O/V Category 2 New Equipment**" has the meaning given in Section 22.2.2(a)(B) of the Project Agreement.
- 1.288 "**O/V Category 2 New Pre-Substantial Completion Equipment**" has the meaning given in Schedule 14 – Outline Commissioning Program.
- 1.289 "**O/V Equipment**" means collectively, the O/V Category 1 New Equipment, the O/V Category 2 New Equipment, the O/V Category 1 Existing Equipment and the O/V Category 2 Existing Equipment.
- 1.290 "**Painshare Adjustment**" has the meaning given in Schedule 20 – Payment Mechanism.
- 1.291 "**Party**" means either WGH or Project Co, and "**Parties**" means both WGH and Project Co, but, for greater certainty, such definitions do not include Infrastructure Ontario, MOHLTC or MEI.
- 1.292 "**Party Representative**" and "**Party Representatives**" have the meanings given in Schedule 27 - Dispute Resolution Procedure.
- 1.293 "**Pass-Through Adjusted Service Payment**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.294 "**Pass-Through Adjustment**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.295 "**Patient Information**" means Personal Information of patients, clients, and other users and recipients of the Hospital Services.
- 1.296 "**Payment Adjustment Report**" has the meaning given in Section 33.5(j)(ii) of the Project Agreement.

- 1.297 "**Payment Commencement Date**" means the date that is 2 Business Days after the Substantial Completion Date.
- 1.298 "**Payment Mechanism**" means Schedule 20 - Payment Mechanism.
- 1.299 "**Payment Periods**" means the payment periods of one calendar month (as adjusted in this definition) established by WGH for each Contract Year, provided that the first Payment Period in the first Contract Year, and the last Payment Period in the last Contract Year may be a shorter period as a result of the timing of the Payment Commencement Date and the Expiry Date within the Payment Periods otherwise established in accordance with the foregoing.
- 1.300 "**Pension Plan**" means the Hospitals of Ontario Pension Plan and any successors thereof.
- 1.301 "**Performance Action Plan Failure**" has the meaning given in Schedule 15 – Output Specifications.
- 1.302 "**Performance Audit**" has the meaning given in Section 27.8(a) of the Project Agreement.
- 1.303 [REDACTED]
- 1.304 "**Performance Indicator**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.305 "**Performance Monitoring**" means those performance monitoring services to be carried out pursuant to Schedule 15 - Output Specifications.
- 1.306 "**Performance Monitoring Period**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.307 "**Performance Monitoring Program**" has the meaning given in Schedule 15 - Output Specifications.
- 1.308 "**Performance Monitoring Report**" means the performance monitoring report contemplated by Schedule 15 – Output Specifications.
- 1.309 "**Performance Security**" means the performance security required pursuant to Section 21 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.310 "**Periodic Labour Adjustment**" has the meaning given in Schedule 20 – Payment Mechanism.
- 1.311 "**Permanent Repair**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.312 "**Permanent Repair Deadline**" has the meaning given in Schedule 20 - Payment Mechanism.

- 1.313 "**Permits, Licences and Approvals**" means the Project Co Permits, Licenses and Approvals and the WGH Permits, Licenses and Approvals.
- 1.314 "**Permitted Borrowing**" means:
- (a) any advance to Project Co under the Lending Agreements;
  - (b) any additional financing approved by WGH in accordance with Section 1.9 of Schedule 22 - Variation Procedure to the Project Agreement; and
  - (c) any amendment, waiver or exercise of a right under the Lending Agreements made during the Step-In Period that does not increase WGH's liabilities under the Project Agreement whether actual or contingent, present or future, known or unknown.
- 1.315 "**person**" means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.
- 1.316 "**Personal Information**" means all personal information (as the term "**personal information**" is defined in the *Personal Information Protection and Electronic Documents Act* (Canada)) in the custody or control of Project Co or its Subcontractors other than personal information of the employees of Project Co or its Subcontractors and other than personal information that is wholly unrelated to the Project Operations and not derived directly or indirectly from WGH in respect of the Project.
- 1.317 "**Plant**" means all buildings, building services, infrastructure, building fabric, and mechanical and electrical services, which are required to meet the operational needs of WGH.
- 1.318 "**Plant Services**" means each of the following plant services to be carried out pursuant to Schedule 15 – Output Specifications:
- (a) those management and administration services to be carried out in accordance with Section 2 (including each of Sections 2.1 through and including 2.31) of Schedule 15 – Output Specifications;
  - (b) those hard infrastructure services to be carried out in accordance with Section 3.9 of Schedule 15 – Output Specifications;
  - (c) those project management services to be carried out in accordance with Section 3.11 of Schedule 15 – Output Specifications;
  - (d) those specialized hospital systems services to be carried out in accordance with Section 3.12 of Schedule 15 – Output Specifications;
  - (e) the Utilities Management Services;
  - (f) those maintenance and inventory management (movable assets) services to be carried out in accordance with Section 3.4 of Schedule 15 – Output Specifications;



- (g) those management of hazardous materials, waste and recycling services to be carried out in accordance with Section 3.5 of Schedule 15 – Output Specifications;
  - (h) the Central Dispatch Services;
  - (i) those management of systems controls (building control) services to be carried out in accordance with Section 3.8 of Schedule 15 – Output Specifications; and
  - (j) those access control/protection/security operations services to be carried out in accordance with Sections 3.1(n), (o), (p), (q) and (v) of Schedule 15 – Output Specifications.
- 1.319 **"Post Termination Service Amount"** has the meaning given in Schedule 23 - Compensation on Termination.
- 1.320 **"Preventive Maintenance"** means, where that term is specifically defined for all or part of Schedule 15 - Output Specifications, the meaning it is given therein, but only in respect of that part of Schedule 15 - Output Specifications to which such definition applies, and in all other instances means all maintenance and other work which Project Co is to perform in accordance with the Project Agreement, including the Output Specifications, and the Preventive Maintenance Plan, and the performance of any replacement, refreshment and/or refurbishment of building systems, equipment (including, for certainty, the Schedule 21 Maintenance and Replacement Equipment) and fixtures in accordance, with the Project Agreement, Schedule 15 – Output Specifications, and the Lifecycle Replacement Schedule.
- 1.321 **"Preventive Maintenance Plan"** means the plan to be prepared by or on behalf of Project Co for the maintenance of the Facility and of the Schedule 21 Maintenance and Replacement Equipment in accordance with Schedule 15 – Output Specifications and the other provisions of the Project Agreement during each Contract Year, which plan shall be based, in part, on the Project Co Proposal Extracts.
- 1.322 **"Prohibited Act"** has the meaning given in Section 59.1(a) of the Project Agreement.
- 1.323 **"Prohibited Acts Termination Sum"** has the meaning given in Schedule 23 - Compensation on Termination.
- 1.324 **"Project"** has the meaning given in Recital B of the Project Agreement.
- 1.325 **"Project Agreement"** has the meaning given in Recital C of the Project Agreement.
- 1.326 **"Project Agreement Arbitration"** has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.327 **"Project Co"** means Integrated Team Solutions WGH Partnership, a general partnership existing under the laws of Manitoba between LED (ITS) WGH Inc. and LED (ITS) WGH Limited Partnership.

- 1.328 "**Project Co Commissioning**" means the commissioning activities to be carried out by Project Co prior to the issuance of the Substantial Completion Certificate in accordance with the Final Commissioning Program.
- 1.329 "**Project Co Commissioning Coordinator**" means the person appointed by Project Co as its commissioning agent.
- 1.330 "**Project Co Commissioning Tests**" means all Commissioning Tests required to be performed by Project Co pursuant to the Final Commissioning Program.
- 1.331 "**Project Co Construction Design Issues**" has the meaning given in Section 18.4(a) of the Project Agreement.
- 1.332 "**Project Co Design Contingency**" has the meaning given in Section 6.3(a)(ii) of the Project Agreement.
- 1.333 "**Project Co Design Issues**" has the meaning given in Section 18.4(c) of the Project Agreement.
- 1.334 "**Project Co Design Issue Claim**" has the meaning given in Section 18.6(a) of the Project Agreement.
- 1.335 "**Project Co Event of Default**" has the meaning given in Section 44.1(a) of the Project Agreement.
- 1.336 "**Project Co M&E Design Issues**" has the meaning given in Section 18.4(b) of the Project Agreement.
- 1.337 "**Project Co Operating Design Issues**" has the meaning given in Section 18.4(b) of the Project Agreement.
- 1.338 "**Project Co Party**" means:
- (a) the Construction Contractor;
  - (b) the Service Provider;
  - (c) any person engaged by Project Co, the Construction Contractor, and/or the Service Provider from time to time as may be permitted by the Project Agreement to procure or manage the provision of the Project Operations (or any of them); and
  - (d) in respect of each of the above, their subcontractors of any tier, agents, employees, officers and directors,
- and "**Project Co Parties**" shall be construed accordingly.

- 1.339 "**Project Co Permits, Licences and Approvals**" means all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorizations to be obtained by Project Co in accordance with the Project Agreement and as required by Applicable Law, and all necessary consents and agreements from any third parties (including all Development Approvals and the approval of the Fire Marshall of Ontario), needed to perform the Project Operations in accordance with the Project Agreement.
- 1.340 "**Project Co Proposal Extracts**" means the documents attached as Schedule 13 - Project Co Proposal Extracts.
- 1.341 "**Project Co Representative**" means the person designated as such by Project Co on or prior to the date of the Project Agreement and any permitted replacement.
- 1.342 "**Project Co Services**" means the services to be performed by Project Co and referred to in Schedule 15 - Output Specifications, as such services may from time to time be varied in accordance with the Project Agreement, but specifically excluding the Hospital Services.
- 1.343 "**Project Co Variation Notice**" has the meaning given in Schedule 22 - Variation Procedure.
- 1.344 "**Project Data**" means:
- (a) all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the provision of the Project Co Services; and
  - (b) any other materials, documents and or data acquired, brought into existence or used in relation to the Project Operations or the Project Agreement,
- other than the Existing Design, the Jointly Developed Materials and Background Information and other than Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction.
- 1.345 "**Project Documents**" means the Ancillary Documents and the Lending Agreements.
- 1.346 [REDACTED]
- 1.347 [REDACTED]
- 1.348 "**Project Operations**" means:
- (a) the performance of the Works;
  - (b) the delivery of the Project Co Services; and
  - (c) the performance of all other obligations of Project Co under the Project Agreement.

- 1.349 "**Project Term**" means the period commencing on the date of the Project Agreement and expiring at midnight on the Termination Date.
- 1.350 "**Proprietor**" has the meaning given in Section 51.6(a) of the Project Agreement.
- 1.351 "**Province**" means Her Majesty the Queen in Right of Ontario.
- 1.352 "**Qualification Criteria**" has the meaning given in Schedule 23 - Compensation on Termination.
- 1.353 "**Qualifying Bank**" has the meaning in Schedule 28 - Refinancing.
- 1.354 "**Qualifying Bank Transaction**" has the meaning in Schedule 28 - Refinancing.
- 1.355 "**Qualifying Refinancing**" has the meaning given in Schedule 28 - Refinancing.
- 1.356 "**Qualifying Tender**" has the meaning given in Schedule 23 - Compensation on Termination.
- 1.357 "**Qualifying Tenderer**" has the meaning given in Schedule 23 - Compensation on Termination.
- 1.358 "**Quality Failure**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.359 "**Quality Failure Deduction**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.360 "**Quality Plans**" has the meaning given in Section 13.1(a) of the Project Agreement.
- 1.361 "**Recoverable Tax**" has the meaning given in Section 34.4(c) of the Project Agreement.
- 1.362 "**Recovery Amount**" has the meaning given in Section 55.3(g) of the Project Agreement.
- 1.363 "**Rectification**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.364 "**Rectification Costs**" has the meaning given in Schedule 23 - Compensation on Termination.
- 1.365 "**Rectification Time**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.366 "**Refinancing**" has the meaning given in Schedule 28 - Refinancing.
- 1.367 "**Refinancing Financial Model**" has the meaning given in Schedule 28 - Refinancing.
- 1.368 "**Refinancing Gain**" has the meaning given in Schedule 28 - Refinancing.
- 1.369 "**Reimbursement Event**" has the meaning given in Section 31.5(a) of the Project Agreement.

- 1.370 "**Relevant Change in Law**" means a Discriminatory Change in Law or a Health Specific Change in Law.
- 1.371 "**Relevant Conviction**" means a conviction under the *Criminal Code* (Canada) for which no pardon has been granted.
- 1.372 "**Relief Events**" has the meaning given in Section 42.1(a) of the Project Agreement.
- 1.373 "**Remedial Period**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.374 "**Replacement Lifecycle**" means the cycle, expressed in years, for which a material or system or other item is expected to remain in good condition and, if applicable, operating order, (Normal Wear and Tear excepted) before requiring complete replacement.
- 1.375 "**Request for Information**" means the process by which Project Co may request an interpretation of or ask a question with respect to the Existing Design.
- 1.376 "**Request for Proposals**" means the request for proposals issued in respect of the Project and dated January 8, 2008.
- 1.377 "**Rescue Refinancing**" has the meaning given in Schedule 28 - Refinancing.
- 1.378 "**Response Time**" has the meaning given in Schedule 20 – Payment Mechanism.
- 1.379 "**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 its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
  - (c) in the case of an individual, he or she (or in the case of a legal entity, any of the members of its 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, less than five years prior to the date at which the consideration of whether such individual is a "**Restricted Person**" is made hereunder;
  - (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 a material claim of WGH or the Province under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a "**Restricted**

**Person**" is made hereunder, and which (in respect of any such pending claim, if it were to be successful) would, in WGH's view, in either case, be reasonably likely materially to affect the ability of Project Co to perform its obligations under the Project Agreement; or

- (f) has a material interest in the production of tobacco products.
- 1.380 "**Return Date**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.381 "**Review Procedure**" means the procedure set out in Schedule 10 - Review Procedure.
- 1.382 "**Revised Facility Condition Report**" has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.383 "**RST**" means the tax payable and imposed pursuant to the *Retail Sales Tax Act* (Ontario), and any successor legislation thereto.
- 1.384 "**Safety Condition**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.385 "**Safety Plan**" means the construction safety sub-plan included in Schedule 11 – Outline Construction Plan, to be jointly developed by Project Co and WGH pursuant to Section 13.1 of the Project Agreement.
- 1.386 "**Schedule**" means a schedule to the Project Agreement.
- 1.387 "**Schedule 21 Maintenance and Replacement Equipment**" means all O/C Category 1 New Equipment, O/C Category 2 Existing Equipment, O/V Category 1 New Equipment and O/V Category 2 Existing Equipment.
- 1.388 "**Scheduled Final Completion Date**" means the last date for the completion of Minor Deficiencies pursuant to the Minor Deficiencies List.
- 1.389 "**Scheduled Substantial Completion Date**" means June 24, 2011, as such date may be extended pursuant to Section 39 of the Project Agreement.
- 1.390 "**Seasonal Bedding-In Period**" has the meaning given in Schedule 20 – Payment Mechanism.
- 1.391 "**Security**" has the meaning given in Schedule 4 - Lenders' Direct Agreement.
- 1.392 "**Security and Parking Management Services**" means those access control/protection/security operations and parking management services to be carried out in accordance with Section 3.1 of Schedule 15 – Output Specifications (other than those services identified in Sections 3.1(n), (o), (p), (q) and (v) of Schedule 15 – Output Specifications) and be carried out in accordance with Section 3.10 of Schedule 15 – Output Specifications.

- 1.393 "**Security Documents**" has the meaning given in Schedule 4 - Lenders' Direct Agreement.
- 1.394 "**Senior Debt Amount**" has the meaning given in Schedule 23 – Compensation on Termination.
- 1.395 "**Senior Debt Makewhole**" has the meaning given in Schedule 23 – Compensation on Termination.
- 1.396 "**Senior Debt Service Amount**" means, for any period, the principal and interest payable by Project Co or any Project Co Party to the Senior Lenders in the normal course under the Lending Agreements.
- 1.397 "**Senior Lenders**" means each of the following lenders providing financing under the Lending Agreements: Sun Life Assurance Company of Canada, The Great-West Life Assurance Company, Industrial Alliance Insurance and Financial Services Inc. and CIT Financial Ltd., and including any permitted successors and assigns.
- 1.398 "**Sensitive Information**" means financial or commercial information which would, if disclosed to a competitor of Project Co or any Project Co Party, give that competitor a competitive advantage over Project Co or such Project Co Party and thereby prejudice the business of Project Co or such Project Co Party.
- 1.399 "**Service Contract**" means the service contract between Project Co and the Service Provider dated on or about the date of Financial Close.
- 1.400 "**Service Failure**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.401 "**Service Failure Deduction**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.402 "**Service Failure Performance Indicator**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.403 [REDACTED]
- 1.404 "**Service Provider**" means Honeywell Limited, engaged by Project Co to perform the Project Co Services and any substitute service provider engaged by Project Co as may be permitted by the Project Agreement.
- 1.405 "**Service Provider's Direct Agreement**" means the direct agreement between WGH, Project Co, the Service Provider and the [REDACTED], in the form set out in Schedule 5-2 - Service Provider's Direct Agreement.
- 1.406 "**Service Quality Plan**" means the plan relating to the performance of the Project Co Services to be jointly developed and agreed by WGH and Project Co in accordance with Section 13.1 of the Project Agreement, the Output Specifications and the Final Commissioning Program, an outline of which is set forth in Schedule 12 – Outline

- Service Quality Plan, which includes various elements of sub-plans referred to therein and appended thereto, as such Service Quality Plan is updated and replaced from time to time in accordance with the requirements set forth in the Output Specifications.
- 1.407 "**Service Standards**" means the performance standards ascribed to each Project Co Service in Schedule 15 - Output Specifications.
- 1.408 "**Service Submittal**" has the meaning given in Section 12.1 of Schedule 10 – Review Procedure.
- 1.409 "**Severe Market Disruption**" means any occurrence of exceptional circumstances in financial markets in Europe, the United States of America and/or Canada, which adversely affects access by Project Co to national or relevant international capital or interbank markets.
- 1.410 "**Shareholder(s)**" means the party or parties listed in Schedule 7 – Project Co Information, as amended from time to time in accordance with the Project Agreement.
- 1.411 "**Site**" means the land located in the City of Woodstock, Ontario being P.I.N. 000871297.
- 1.412 "**Site Conditions**" means the condition of the Site, including the physical, geophysical, climatic, ecological, environmental, geotechnical and archaeological conditions.
- 1.413 "**Slope**" has the meaning given in Schedule 20 – Payment Mechanism.
- 1.414 "**Small Works**" means any works, including facilities and equipment, of a minor nature that are requested by WGH to be performed having an individual cost or aggregate cost with other linked works, including facilities and equipment, of a minor nature, not exceeding \$100,000 (index linked), or as otherwise agreed from time to time, but excluding any works, including facilities and equipment, which will increase the likelihood of Service Failures, will increase the cost to Project Co of performing the Project Operations or will materially hinder Project Co in the performance of the Project Co Services.
- 1.415 "**Specific Service Specification**" has the meaning given in Schedule 15 – Output Specifications.
- 1.416 "**Standby Letter of Credit**" has the meaning given in Section 2.2(a) of the Project Agreement.
- 1.417 "**Step-In Period**" has the meaning given in Schedule 4 - Lenders' Direct Agreement.
- 1.418 "**Subcontractor**" means any subcontractor of Project Co engaged by or through Project Co to perform any of the Project Operations, including the Construction Contractor, the Service Provider, any Supplier or consultant, and any subcontractor of any other subcontractor at any tier.



- 1.419 "**Subcontractor Losses**" has the meaning given in Schedule 23 - Compensation on Termination.
- 1.420 "**Subcontracts**" means the contracts entered into by or between Project Co and any Subcontractor or between any Subcontractor at any tier, including the Construction Contractor and the Service Provider, and any other Subcontractor at any tier in relation to any aspect of the Project Operations.
- 1.421 "**Submittal**" means either a Works Submittal or Service Submittal.
- 1.422 "**Substantial Completion**" means the point at which the Facility has been completed in accordance with the Project Agreement (including, for certainty, the Technical Requirements), the Occupancy Permit has been issued, a certificate of substantial performance of the Works is published in accordance with Section 32(1) of the *Construction Lien Act* (Ontario), and all requirements for Substantial Completion described in the Final Commissioning Program, other than in respect of Minor Deficiencies, have been satisfied.
- 1.423 "**Substantial Completion Certificate**" means the certificate to be issued by the Independent Certifier in accordance with Section 25.5(d) of the Project Agreement.
- 1.424 "**Substantial Completion Date**" means the date on which Substantial Completion is achieved as evidenced by the Substantial Completion Certificate, as such date shall be stated therein.
- 1.425 "**Substantial Completion Notice**" has the meaning given in Section 25.5(b) of the Project Agreement.
- 1.426 "**Substantial Completion Payment**" means \$[REDACTED].
- 1.427 "**Suitable Substitute**" has the meaning given in Schedule 4 - Lenders' Direct Agreement.
- 1.428 "**Suitably Qualified Person**" means a person with appropriate trade certification from a professional or industry body and who is licensed to undertake the work in the Facility or on the Site.
- 1.429 "**Supplemental Instruction**" means an instruction issued by the Architect of Record only for the purpose of recording any clarification or interpretation of the Existing Design.
- 1.430 "**Supplier**" means a person who supplies to Project Co, or to any Subcontractor, any equipment, materials, supplies or services as part of, or for, the Project Operations.
- 1.431 "**Taxes**" means any and all taxes, levies, imposts, duties, fees, withholdings, assessments, deductions or charges whatsoever, imposed, assessed, levied or collected by any Governmental Authority, together with interest thereon and penalties with respect thereto, and includes all RST and GST except where stated to the contrary, provided however that "**Taxes**" shall not include the WGH Taxes.

- 1.432 "**Technical Reports**" means the Environmental Report and the Geotechnical Report.
- 1.433 "**Technical Requirements**" means all requirements set out or identified in the Existing Design and Schedule 15 - Output Specifications.
- 1.434 "**Temporary Alternative Accommodation**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.435 "**Temporary Repair**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.436 "**Tender Costs**" has the meaning given in Schedule 23 - Compensation on Termination.
- 1.437 "**Tender Process**" has the meaning given in Schedule 23 - Compensation on Termination.
- 1.438 "**Tender Process Monitor**" has the meaning given in Schedule 23 - Compensation on Termination.
- 1.439 "**Termination Date**" means the earlier of the Expiry Date and such earlier date, if any, on which termination of the Project Agreement takes effect in accordance with its terms.
- 1.440 "**Third Party Arbitration**" has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.441 "**Third Party Litigation**" has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.442 "**Threshold Equity Sale Amount**" means the amount which, if paid in consideration of the percentage of Equity Capital (as at Financial Close) sold in a particular sale of Equity Capital, would result in an Implied Equity Value that, if received in full on the day of the sale of Equity Capital, taken together with all Distributions paid in respect of the Equity Capital, and taking account of the actual timing of payment of all such amounts, would result in an Equity Sale IRR equal to the Threshold Equity Sale IRR.
- 1.443 "**Threshold Equity Sale IRR**" means [REDACTED]%.
- 1.444 "**Title Encumbrances**" means the Encumbrances listed in Schedule 16 - Title Encumbrances and any other Encumbrance consented to by WGH and reasonably required in connection with the development of the Facility and the Project Operations.
- 1.445 "**Trade-Marks**" means any registered or unregistered mark, trade-mark, service mark, distinguishing guise, logo, insignia, seal, design or symbol.
- 1.446 "**Transfer Date**" means the date on which the Affected Hospital Employees are transferred to Project Co or any Project Co Party pursuant to Section 28 of the Project Agreement, which date shall, unless otherwise agreed by the Parties or as provided in Schedule 17 - Employee Transition, be the Substantial Completion Date.

- 1.447 "**Transferred Employees**" means the Transferred Non-Union Employees and the Transferred Unionized Employees.
- 1.448 "**Transferred Non-Union Employees**" means all Affected Non-Union Employees who are transferred to Project Co or the relevant Project Co Party pursuant to Section 28 of the Project Agreement.
- 1.449 "**Transferred Unionized Employees**" means all Affected Unionized Employees who are transferred to Project Co or the relevant Project Co Party pursuant to Section 28 of the Project Agreement.
- 1.450 "**Transition**" has the meaning given in Section 25.14(a) of the Project Agreement.
- 1.451 "**Transition Advisor**" has the meaning given in Section 25.14(c) of the Project Agreement.
- 1.452 "**Transition Services Fee**" means \$[REDACTED].
- 1.453 "**Transition Subcommittee**" has the meaning given in Section 25.15(a) of the Project Agreement.
- 1.454 "**Trust Account Agreement**" means the trust account agreement to be entered into between WGH, Project Co and the Trustee in the form set out in Schedule 35 – Trust Account Agreement.
- 1.455 "**Trustee**" has the meaning given in Schedule 35 – Trust Account Agreement.
- 1.456 [REDACTED]
- 1.457 [REDACTED]
- 1.458 "**Unavailable**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.459 "**Uninsurable Event**" means any event which arises directly and solely from an Uninsurable Risk.
- 1.460 "**Uninsurable Risk**" has the meaning given in Section 8.1 of Schedule 25 - Insurance and Performance Security Requirements to the Project Agreement.
- 1.461 "**Unit of Energy**" has the meaning given in Schedule 20 – Payment Mechanism.
- 1.462 "**Unit Weighting Percentage**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.463 "**Use Condition**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.464 "**Use Parameters**" has the meaning given in Schedule 20 - Payment Mechanism.

- 1.465 "**Utilities**" means energy/power supplies and waste recovery, including electricity, natural gas/fuel oil, water, sanitary waste, storm water, and bulk medical gas compounds.
- 1.466 "**Utilities Management Services**" means those utilities management services to be carried out in accordance with Sections 2.31 and 3.7 of Schedule 15 – Output Specifications.
- 1.467 "**Utilities Management Subcommittee**" has the meaning given in Schedule 20 - Payment Mechanism.
- 1.468 "**Utility Company**" means any company or companies designated by Project Co to provide Utilities.
- 1.469 "**Utility User(s)**" means those persons using Utilities at the Facility or on the Site.
- 1.470 "**Variation**" has the meaning given in Schedule 22 - Variation Procedure.
- 1.471 "**Variation Confirmation**" has the meaning given in Schedule 22 - Variation Procedure.
- 1.472 "**Variation Directive**" has the meaning given in Schedule 22 - Variation Procedure.
- 1.473 "**Variation Enquiry**" has the meaning given in Schedule 22 - Variation Procedure.
- 1.474 "**Variation Procedure**" means the procedure set out in Schedule 22 - Variation Procedure.
- 1.475 "**Warning Notice**" has the meaning given in Section 30.3(a) of the Project Agreement.
- 1.476 "**WGH**" means the Woodstock General Hospital Trust.
- 1.477 "**WGH Commissioning Agent**" means the person appointed by WGH as its commissioning agent.
- 1.478 "**WGH Default Termination Sum**" has the meaning given in Schedule 23 - Compensation on Termination.
- 1.479 "**WGH Design Issues**" has the meaning given in Section 18.4(c) of the Project Agreement.
- 1.480 "**WGH Development Accountability Agreement**" means the development accountability agreement between MOHLTC and WGH dated on or about the date of Financial Close with respect to, among other things, the terms and conditions of funding for WGH's obligations related to the Project.
- 1.481 "**WGH Equipment**" means all equipment listed as "O/O" (Owner Supplied/Owner Installed) on Schedule 21 – Equipment List along with all other furniture and equipment at the Facility from time to time other than (a) equipment and furniture included in the Existing Design and required to be provided, installed and commissioned by Project Co in

- accordance with the Technical Requirements, (b) the O/V Equipment, and (c) the O/C Equipment.
- 1.482 **"WGH Event of Default"** has the meaning given in Section 45.1(a) of the Project Agreement.
- 1.483 **"WGH Funding and Approval Letter"** means the funding and approval letter from MOHLTC to WGH dated on or about the date of Financial Close with respect to, among other things, the terms and conditions of funding by MOHLTC of certain of WGH's obligations related to the Project and MOHLTC's approval of the Project.
- 1.484 **"WGH Party"** means any of WGH's agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged in respect of the Hospital Services, but excluding Project Co and any Project Co Party, and the **"WGH Parties"** shall be construed accordingly.
- 1.485 **"WGH Permits, Licences and Approvals"** means the Building Permit.
- 1.486 **"WGH Representative"** means the person designated as such by WGH on or prior to the date of the Project Agreement and any permitted replacement.
- 1.487 **"WGH Taxes"** means taxes, or payments in lieu of taxes, imposed on WGH based on or measured by income or profit of WGH or capital taxes based on or measured by the capital of WGH and GST and property taxes for which WGH is responsible pursuant to Section 34 of the Project Agreement.
- 1.488 **"WGH Trade-Marks"** means any and all Trade-Marks used by WGH in any manner whatsoever.
- 1.489 **"WGH Work"** has the meaning given in Schedule 22 - Variation Procedure.
- 1.490 **"WHMIS"** means the system for the labeling and warning of Hazardous Substances used in the workplace, commonly referred to as a workplace hazardous materials information system, prescribed by Applicable Law over the delivery, storage and use of Hazardous Substances in the Province of Ontario.
- 1.491 **"Works"** means the limited design, construction, installation, testing, commissioning and completion of the Facility, including rectification of any Minor Deficiencies, and any other activities required to enable or facilitate the commencement of the Project Co Services, other than the Hospital Commissioning.
- 1.492 **"Works Change in Law"** means any Change in Law that:
- (a) is not a Relevant Change in Law;
  - (b) occurs after the date of the Project Agreement;

- (c) requires Project Co to perform any work of alteration, addition, demolition, extension or variation in the quality or function of the Facility which is not Works, Maintenance Work or capital replacement work which Project Co would otherwise be required to perform in order to comply with its obligations under the Project Agreement; and
- (d) was not reasonably foreseeable at the date of the Project Agreement by an experienced contractor carrying out activities and/or performing design and/or other operations similar to those to be carried out and/or performed by any Project Co Party in relation to the Project.

1.493 "**Works Committee**" has the meaning given in Section 11.1(a) of the Project Agreement.

1.494 "**Works Report**" has the meaning given in Section 21.5 of the Project Agreement.

1.495 "**Works Schedule**" has the meaning given in Section 21.2(c) of the Project Agreement.

1.496 "**Works Submittal**" has the meaning given in Section 1.1 of Schedule 10 – Review Procedure.

1.497 "**20 Year Average**" has the meaning given in Schedule 20 – Payment Mechanism.

- 2. Interpretation.** The Project Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:
- 2.1 The tables of contents, headings, marginal notes and references to them in the Project Agreement are for convenience of reference only, shall not constitute a part of the Project Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, the Project Agreement.
- 2.2 Except where the context requires otherwise (irrespective of whether some, but not all, references in a Schedule specifically refer to that Schedule or to other portions of the Project Agreement) references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement are references to such Sections, Clauses, Paragraphs, or Subparagraphs of, Schedules to, or divisions of the Project Agreement and the terms "Section" and "Clause" are used interchangeably and are synonymous.
- 2.3 Except where the context requires otherwise, references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement followed by a number are references to the whole of the Section, Clause, Paragraph, Subparagraphs, Schedule or other division of the Project Agreement as applicable, bearing that number, including all subsidiary provisions containing that same number as a prefix.
- 2.4 Except where the context requires otherwise, references in the Output Specifications to specific Parts, Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Output Specifications shall be construed such that each such reference on a page of the Output Specifications will be read to be preceded by and to include the prefix Section number or other reference at the top of the applicable page, and all cross-references to any Section in Schedule 15 - Output Specifications shall be interpreted to include the applicable prefix Section number or other reference.
- 2.5 The Schedules to the Project Agreement are an integral part of the Project Agreement and a reference to the Project Agreement includes a reference to the Schedules.
- 2.6 All references in the Project Agreement to a Schedule shall be to a Schedule of the Project Agreement.
- 2.7 All capitalized terms used in a Schedule shall have the meanings given to such terms in Schedule 1, unless stated otherwise in a particular Schedule in which case such definition shall have the meaning given to it in that Schedule solely for the purposes of that Schedule.
- 2.8 The language of the Output Specifications and other documents comprising the Project Agreement is in many cases written in the imperative for brevity. Clauses containing instructions, directions or obligations are directed to Project Co and shall be construed and interpreted as if the words "Project Co shall" immediately preceded the instructions, directions or obligations.

- 2.9 Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- 2.10 Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- 2.11 Unless otherwise provided in the Project Agreement, all accounting and financial terms used in the Project Agreement shall be interpreted and applied in accordance with Canadian GAAP.
- 2.12 References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of the Project Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- 2.13 References to any Applicable Law, including any statutes or other Applicable Law specifically referred to herein, whether or not amendments or successors to such Applicable Law are referred to herein, are to be construed as references to that Applicable Law as from time to time amended or to any Applicable Law covering the same or similar subject matter from time to time replacing, extending, consolidating or amending the same.
- 2.14 References to a statute shall include all regulations, by-laws, ordinances and orders made under or pursuant to the statute.
- 2.15 References to persons shall include their successors and assigns. References to a public organization shall include their successors and assigns, and if a public organization ceases to exist or ceases to perform its functions without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization.
- 2.16 A reference in the Project Agreement or in any Project Document to any right, power, obligation or responsibility of any Governmental Authority shall be deemed to be a reference to the Governmental Authority that, pursuant to Applicable Laws has such right, power, obligation or responsibility at the relevant time.
- 2.17 References to a deliberate act or omission or deliberate or negligent act or omission of WGH or any WGH Party shall be construed having regard to the interactive nature of the activities of WGH, the WGH Parties and Project Co and further having regard to:
- (a) acts contemplated by the Output Specifications;



- (b) acts or omissions in the ordinary course of the Hospital Services and expressly or reasonably inferred from the Output Specifications to be taken into account by Project Co in the performance of the Project Co Services; or
  - (c) acts otherwise provided for in the Project Agreement.
- 2.18 The words in the Project Agreement shall bear their natural meaning.
- 2.19 Each of Project Co's and WGH's respective obligations shall be construed as separate obligations owed to the other.
- 2.20 References containing terms such as:
  - (a) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to the Project Agreement taken as a whole; and
  - (b) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".
- 2.21 In construing the Project Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach apply to the construction of the Project Agreement and, accordingly, general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- 2.22 Where the Project Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of days after a stipulated date or event the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.23 Where the Project Agreement states that an obligation shall be performed "no later than" or "by" a prescribed number of days before a stipulated date or event or "by" a date which is a prescribed number of days before a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.24 Where the Project Agreement states that an obligation shall be performed "on" a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.25 Any reference to time of day or date means the local time or date in Woodstock, Ontario.

- 2.26 Unless otherwise indicated, time periods will be strictly construed.
- 2.27 Whenever the terms "will" or "shall" are used in the Project Agreement in relation to Project Co or WGH they shall be construed and interpreted as synonymous and to read "Project Co shall" or "WGH shall" as the case may be.
- 2.28 Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.
- 2.29 Unless otherwise identified in the Project Agreement, all units of measurement in any documents submitted by Project Co to WGH shall be in accordance with the SI system of units.
- 2.30 Terms not defined herein and used in the Project Agreement which have a technical meaning commonly understood by the health care sector in Ontario will be construed as having that meaning unless the context otherwise requires.
- 2.31 Save where expressly stated otherwise, references to amounts or sums expressed to be "indexed" or "index linked" are references to amounts or sums which require adjustment to reflect the effects of inflation. Such adjustment shall be calculated in accordance with the following formula:

$$\text{Adjusted amount or sum} = \text{Amount or sum} \times \frac{\text{CPI}_n}{\text{CPI}_o}$$

**SCHEDULE 2****COMPLETION DOCUMENTS**

In this Schedule 2, "certified" shall mean that the relevant document is certified as a true and complete copy in full force and effect and unamended as of the date of the relevant certificate by an officer or director of the relevant corporation.

**1. Documents to be delivered by Project Co**

Unless an original document is specifically required, a certified copy of each of the following documents (in each case, executed by the parties to such agreement other than WGH and in form and substance satisfactory to WGH, acting reasonably) is to be delivered by Project Co to WGH on or prior to the Financial Close Target Date:

- 1.1 an original of this Project Agreement;
- 1.2 an original of the Custody Agreement;
- 1.3 an original of the Lenders' Direct Agreement;
- 1.4 an original of the Construction Contractor's Direct Agreement;
- 1.5 an original of the Service Provider's Direct Agreement;
- 1.6 an original of the Independent Certifier Agreement;
- 1.7 an original of the Insurance Trust Agreement;
- 1.8 an original of the Trust Account Agreement;
- 1.9 an original notice of appointment of the Project Co Representative;
- 1.10 an original of the release by Project Co of Infrastructure Ontario, MEI, MOHLTC and the Province in the form attached as Appendix A to this Schedule 2;
- 1.11 an original of the acknowledgement and undertaking in the form attached as Appendix B to this Schedule 2;
- 1.12 the Lending Agreements;
- 1.13 the Construction Contract;
- 1.14 the Service Contract;
- 1.15 a certificate of insurance and draft policies of insurance for the insurances required to be taken out by the Construction Contractor for the period prior to the Substantial Completion Date;

- 1.16 one (1) printed copy of the Financial Model and two (2) copies on CD-Rom and/or DVD Rom;
- 1.17 an original certificate of an officer of Project Co certifying:
  - (a) a true copy of the Financial Model audit report dated the date of Financial Close prepared by Mercer (Australia) Pty Ltd.;
  - (b) that the Financial Model algorithms have not changed from the audit report referred to in (a) above;
- 1.18 an original certificate of an officer of the Construction Contractor substantially in the form attached as Appendix C to this Schedule 2;
- 1.19 an original certificate of an officer of the Service Provider substantially in the form attached as Appendix C to this Schedule 2;
- 1.20 an original certificate of an officer of the [REDACTED] substantially in the form attached as Appendix C to this Schedule 2;
- 1.21 an original certificate of an officer of the [REDACTED] substantially in the form attached as Appendix C to this Schedule 2;
- 1.22 an original certificate of an officer of LED Inc. in respect of both Project Co and LED Inc. substantially in the form attached as Appendix C to this Schedule 2;
- 1.23 an original certificate of an officer of LED GP Inc. in respect of both Project Co and LED GP Inc. substantially in the form attached as Appendix C to this Schedule 2;
- 1.24 an original of the opinion from counsel to Project Co, LED Inc., LED LP, LED GP Inc., the Construction Contractor, the Service Provider, the [REDACTED], the [REDACTED] and such other Project Co Parties as WGH may reasonably require substantially in the form attached as Appendix D to this Schedule 2 and otherwise acceptable to WGH and its counsel;
- 1.25 the Interface Agreement;
- 1.26 the Performance Security;
- 1.27 a certificate of good standing from the Workplace Safety and Insurance Board; and
- 1.28 such other documents as the parties may agree, each acting reasonably.

## **2. Documents to be delivered by WGH**

Unless an original document is specifically required, a copy of each of the following documents (in each case, where WGH is a party to such document, executed by WGH and, if applicable, any WGH Party or Governmental Authority) is to be delivered by WGH to Project Co on or prior to the Financial Close Target Date:

- 2.1 an original of this Project Agreement;
- 2.2 an original of the Custody Agreement;
- 2.3 an original of the Lenders' Direct Agreement;
- 2.4 an original of the Construction Contractor's Direct Agreement;
- 2.5 an original of the Service Provider's Direct Agreement;
- 2.6 an original of the Independent Certifier Agreement;
- 2.7 an original of the Insurance Trust Agreement;
- 2.8 an original of the Trust Account Agreement;
- 2.9 an original notice of appointment of the WGH Representative;
- 2.10 the Building Permit;
- 2.11 a copy of the WGH Funding and Approval Letter;
- 2.12 a copy of the WGH Development Accountability Agreement;
- 2.13 a certificate of an officer of WGH substantially in the form attached as Appendix E to this Schedule 2;
- 2.14 an original of the opinion from counsel to WGH substantially in the form attached as Appendix F to this Schedule 2;
- 2.15 a reliance letter from Shaheen & Peaker Limited in respect of the following: (i) Geotechnical Investigation, Proposed Woodstock General Hospital, Stone Gate Drive, Woodstock, Ontario, Project: SP4447, dated October 9, 2002; (ii) Field Inspection and Testing (Compaction) reports for monitoring of engineered fill, Project: SPB418, dated June to September 2003; (iii) Review and Certification of Engineered Fill, Woodstock General Hospital, Project SPB418 dated March 2, 2004; and (iv) Geotechnical Investigation of Building Pad Engineered Fill, Proposed Woodstock Hospital, Woodstock, Ontario, Project: SPB418C, dated October 31, 2007;
- 2.16 a certificate of insurance for the insurances required in accordance with this Project Agreement to be taken out by WGH; and
- 2.17 such other documents as the parties may agree, each acting reasonably.

**APPENDIX A  
FORM OF RELEASE**

**TO:** Ontario Infrastructure Projects Corporation ("**Infrastructure Ontario**")

**AND TO:** Her Majesty the Queen in Right of Ontario as represented by the Minister of Energy and Infrastructure ("**MEI**")

**AND TO:** Her Majesty the Queen in Right of Ontario as represented by the Minister of Health and Long-Term Care ("**MOHLTC**")

**AND TO:** Her Majesty the Queen in Right of Ontario (the "**Province**")

**RE:** Project agreement (as amended, supplemented or modified from time to time, the "**Project Agreement**") dated the [•] day of [•], 2008 between Woodstock General Hospital Trust ("**WGH**") and Integrated Team Solutions WGH Partnership ("**Project Co**")

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In consideration of WGH entering into the Project Agreement, the undersigned hereby acknowledges and agrees that Infrastructure Ontario, MEI, MOHLTC and the Province have no obligations or liabilities to Project Co or any other person arising out of or in connection with the Project Agreement of any nature or kind whatsoever, including, without limitation, any obligations for payments or other covenants on the part of WGH contained in the Project Agreement, and hereby releases Infrastructure Ontario, MEI, MOHLTC and the Province from and against any and all claims, demands, causes of action, judgments, costs and liability of any nature or kind whatsoever arising out of or in connection with the Project Agreement and all matters relating thereto, including, without limitation, any act or omission of WGH, its employees, officers, directors or agents.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**INTEGRATED TEAM SOLUTIONS WGH  
PARTNERSHIP, by its partners,**

**LED (ITS) WGH INC.**

Per:

\_\_\_\_\_

Name:

Title:

**LED (ITS) WGH GENERAL PARTNER  
INC., in its capacity as general partner of LED  
(ITS) WGH LIMITED PARTNERSHIP**

Per:

\_\_\_\_\_

Name:

Title:

I/We have authority to bind the partnership.

**APPENDIX B  
FORM OF UNDERTAKING AND ACKNOWLEDGEMENT**

**TO:** Woodstock General Hospital Trust ("**WGH**")

**AND TO:** Her Majesty the Queen in Right of Ontario as represented by the Minister of Health and Long-Term Care ("**MOHLTC**")

**RE:** Project agreement (as amended, supplemented or modified from time to time, the "**Project Agreement**") dated the [●] day of [●], 2008 between WGH and Integrated Team Solutions WGH Partnership ("**Project Co**")

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1. The undersigned acknowledges that:
  - (a) The Project will proceed as an alternative financing and procurement project under the MEI's *ReNew Ontario* infrastructure investment plan, and complies with the principles set out in the IPFP Framework.
  - (b) The IPFP Framework establishes five fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
    - (i) The public interest is paramount.
    - (ii) Value for money must be demonstrable.
    - (iii) Appropriate public control/ownership must be preserved.
    - (iv) Accountability must be maintained.
    - (v) All processes must be fair, transparent and efficient.
  - (c) The IPFP Framework states that, consistent with the principle of appropriate public ownership/control, public ownership of assets will be preserved in the hospital sector.
2. The undersigned undertakes to comply with the *Public Hospitals Act* (Ontario) and all regulations thereunder in any direction or order issued by MOHLTC or the Local Health Integration Network to WGH to the extent that the direction or order affects the Project Operations.
3. Capitalized terms used but not defined herein have the respective meanings ascribed thereto in the Project Agreement.

**DATED** this \_\_\_\_ day of \_\_\_\_\_, 2008.



**INTEGRATED TEAM SOLUTIONS WGH  
PARTNERSHIP**, by its partners,

**LED (ITS) WGH INC.**

Per:

\_\_\_\_\_

Name:

Title:

**LED (ITS) WGH GENERAL PARTNER  
INC.**, in its capacity as general partner of **LED  
(ITS) WGH LIMITED PARTNERSHIP**

Per:

\_\_\_\_\_

Name:

Title:

I/We have authority to bind the partnership.

**APPENDIX C**  
**FORM OF PROJECT CO/PROJECT CO PARTY OFFICER'S CERTIFICATE**

**Certificate of an Officer of**  
**[•]**  
**(the "Corporation")**

**TO: WOODSTOCK GENERAL HOSPITAL TRUST ("WGH")**  
**AND TO: ONTARIO INFRASTRUCTURE PROJECTS CORPORATION**  
**AND TO: OGILVY RENAULT LLP**  
**AND TO: MCMILLAN LLP**  
**AND TO: CIT FINANCIAL LTD.**  
**AND TO: MCCARTHY TÉTRAULT LLP**

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I, [•], being the [•] of the Corporation and an authorized signatory of the Corporation and being duly authorized by the Corporation to deliver this certificate, hereby make the following certifications and confirmations for and on behalf of the Corporation and without incurring personal liability and that the same may be relied upon by you without further inquiry:

1. Constating Documents

- (a) The Corporation is a subsisting corporation duly incorporated under the laws of **[the Province of Ontario]**.
- (b) Attached hereto as **Schedule "A"** are true and complete copies of the articles, together with all amendments thereto, of the Corporation (the "**Articles**"). The Articles are in full force and effect on the date hereof and no other articles have been issued and no proceeding has been taken or is contemplated to the date hereof to authorize the Corporation to amend, surrender or cancel the Articles.
- (c) Attached hereto as **Schedule "B"** are true and complete copies of the by-laws of the Corporation (the "**By-laws**") enacted on or before the date hereof. The By-laws have been in full force and effect from and after the date thereof as set out therein and are in full force and effect, unamended as of the date hereof. No proceeding has been taken to the date hereof to authorize the Corporation to amend the By-laws and neither the directors nor the shareholders of the Corporation have passed, confirmed or consented to any resolutions amending or varying the By-laws.
- (d) Attached hereto as **Schedule "C"** is a true and complete copy of a unanimous shareholders' agreement between the shareholders of the Corporation and the Corporation (the "**Unanimous Shareholders' Agreement**") executed on or before the date hereof. The Unanimous Shareholders' Agreement has been in full

force and effect from and after the date thereof as set out therein and is in full force and effect, unamended as of the date hereof.

- (e) The minute books and corporate records of the Corporation made available to [●] are the original minute books and corporate records of the Corporation and contain all minutes of meetings, resolutions and proceedings of the shareholders and directors of the Corporation to the date hereof and there have been no meetings, resolutions or proceedings authorized or passed by the shareholders or directors of the Corporation to the date hereof not reflected in such minute books and corporate records. Such minute books and corporate records are true, complete and correct in all material respects and there are no changes, additions or alterations necessary to be made thereto to make such minute books and corporate records true, complete and correct in all material respects.
- (f) At the date hereof, no winding-up, liquidation, dissolution, insolvency, bankruptcy, amalgamation, arrangement, reorganization or continuation proceedings in respect of the Corporation have been commenced or are being contemplated by the Corporation, and the Corporation has no knowledge of any such proceedings having been commenced or contemplated in respect of the Corporation by any other party.
- (g) At the date hereof, the Corporation is up-to-date in the filing of all returns and other documents required to be filed by it by governmental authorities, including under corporate, securities and tax legislation, and no notice of any proceedings to cancel its certificate of incorporation or otherwise to terminate its existence has been received by the Corporation.
- (h) Pursuant to the Unanimous Shareholders' Agreement, the powers of the directors of the Corporation to manage the business and affairs of the Corporation, whether such powers arise from the [*Business Corporations Act (Ontario) (the "Act")*], the Articles or the By-laws of the Corporation, or otherwise, are restricted to the fullest extent permitted by law, and, in accordance with the Act and the Unanimous Shareholders' Agreement, the shareholders of the Corporation have and enjoy and may exercise and perform all the rights, powers, and duties of the directors of the Corporation to manage the business and affairs of the Corporation.
- (i) There are no provisions in the Articles, By-laws, Unanimous Shareholders' Agreement or in any other agreement binding on the Corporation which:
  - (i) restrict or limit the powers of the Corporation to enter into:
    - (1) a certain project agreement with WGH made as of [●], 2008(as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Project Agreement**") pursuant to which the Corporation will build, finance and maintain a new hospital facility;

- (2) a lenders' direct agreement between the Corporation, WGH and the Lenders' Agent;
  - (3) a direct agreement between EllisDon Corporation (the "**Construction Contractor**"), the Corporation, the [REDACTED] and WGH;
  - (4) a direct agreement between [REDACTED] (the "**Service Provider**"), the Corporation, the [REDACTED] and WGH; and
  - (5) [NTD: List other documents delivered at Financial Close.],  
(collectively, the "**Documents**"); or
- (ii) restrict or limit the authority of the directors or shareholders of the Corporation by resolution to delegate the powers set out in subparagraph (i) to a director or an officer of the Corporation.

## 2. Resolutions

- (a) Annexed hereto, forming part hereof and marked as **Schedule "D"** are true and complete copies of the resolutions of the [directors/shareholders] of the Corporation (the "**Resolutions**"), which have been duly and validly passed in accordance with applicable law, constituting authority and approval for the Corporation, *inter alia*, to enter into the Documents. The Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same are in full force and effect, unamended as of the date hereof.
- (b) The authorization, execution and delivery of each Document contemplated in the Resolutions, and the performance by the Corporation of its obligations thereunder, do not constitute or result in a violation or breach or default under:
  - (i) the Articles, By-laws or the Unanimous Shareholders' Agreement;
  - (ii) to the best of my knowledge and belief after due diligence, any order of any Canadian or [Ontario] governmental body by which it is bound;
  - (iii) to the best of my knowledge and belief after due diligence, the terms of any agreement or instrument under which any of its property or assets is bound; or
  - (iv) to the best of my knowledge and belief after due diligence, any writ, judgment, injunction, determination or award which is binding on the Corporation or any of its properties.
- (c) To the best of my knowledge and belief after due diligence, there is no claim, action, suit, proceedings, arbitration, investigation or inquiry before any governmental agency, court or tribunal, foreign or domestic, or before any private

arbitration tribunal, pending or threatened against the Corporation, or involving its properties or business. To the best of my knowledge and belief after due diligence, no administrative or court decree is outstanding in respect of the Corporation or its assets.

- (d) To the best of my knowledge and belief after due diligence, no consent, approval or other order of any Canadian or [Ontario] governmental authority which has not been obtained is required to permit the Corporation to execute and deliver the Documents.

**3. No Breach or Default**

Neither the execution and delivery by the Corporation of the Documents nor the consummation of the transactions therein contemplated nor the fulfilment or compliance with the terms thereof will contravene or result in a breach of any of the terms, conditions or provisions of, or constitute a default under the Articles, By-laws, Unanimous Shareholders' Agreement or under any other agreement binding on the Corporation.

**4. Specimen Signatures**

The persons whose names are set forth below are, at the date hereof, officers and/or directors of the Corporation, duly elected or appointed to the office or offices set forth opposite their respective names and authorized to execute the Documents on behalf of the Corporation. The signatures set forth opposite their respective names are the true signatures of those persons:

NAME	POSITION	SIGNATURE

**5. Capital**

Listed below are all of the issued and outstanding shares in the capital of the Corporation and the registered owner of such shares:

ISSUED SHARES	REGISTERED OWNER

Attached hereto as **Schedule "E"** are true copies of all certificates in respect of such issued and outstanding shares. The Corporation has issued no securities, including (without limitation) securities convertible or exchangeable into shares and/or securities in respect of debt, other than such issued and outstanding shares as are listed above.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Name:  
Title:

**APPENDIX D**  
**FORM OF PROJECT CO/PROJECT CO PARTY OPINION**

[INSERT DATE]

Woodstock General Hospital Trust  
207 Riddell Street  
Woodstock, Ontario  
N4S 6N6

Ontario Infrastructure Projects Corporation  
777 Bay Street, 9th Floor  
Toronto, Ontario  
M5G 2E5

Ogilvy Renault LLP  
Suite 3800, P.O. Box 84  
Royal Bank Plaza, South Tower  
200 Bay Street  
Toronto, ON  
M5J 2Z4

Dear Sirs/Mesdames:

**Re: Woodstock General Hospital Project**

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We have acted as counsel to ITS TEAM SOLUTIONS WGH PARTNERSHIP ("**Project Co**"), a general partnership of LED (ITS) WGH INC. ("**LED Inc.**") and LED (ITS) WGH Limited Partnership ("**LED LP**"), LED Inc., LED LP, LED (ITS) WGH General Partner Inc. ("**LED GP Inc.**"), EllisDon Corporation (the "**Construction Contractor**") and Honeywell Limited (the "**Service Provider**") in connection with the alternative financing and procurement transaction whereby Project Co has agreed to enter into a build, finance and maintain agreement for a new hospital facility in Woodstock, Ontario. [NTD: **Additional parties to be added depending on consortium structure and/or the financing package and opinions to extend to each of the parties referenced in Section 1.24 of Section 1 of this Schedule 2.**]

This opinion is being delivered to Woodstock General Hospital Trust ("**WGH**"), Ontario Infrastructure Projects Corporation and their counsel pursuant to Section 1.24 of Schedule 2 to the project agreement made as of [●], 2008 between WGH and Project Co (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Project Agreement**").

All capitalized terms used but not otherwise defined in this opinion shall have the respective meanings ascribed thereto in the Project Agreement.

In our capacity as counsel to Project Co, LED Inc., LED LP, LED GP Inc., the Construction Contractor and the Service Provider, we have participated in the preparation and negotiation, and

have examined an executed copy, of each of the following documents (unless otherwise indicated, all documents are dated as of [●], 2008):

1. the Project Agreement; and
2. the following project documents (collectively, the "**Implementation Documents**"):
  - (a) the Construction Contract;
  - (b) the Service Contract;
  - (c) the Lenders' Direct Agreement;
  - (d) the Construction Contractor's Direct Agreement; and
  - (e) the Service Provider's Direct Agreement.

The Project Agreement and the Implementation Documents are hereinafter collectively referred to as the "**Documents**", and each is individually referred to as a "**Document**". [NTD: **Additional documents to be added depending on consortium structure and/or the financing package.**]

We are qualified to practise law in the Province of Ontario. We have made no investigation of the laws of any jurisdiction other than Ontario, and the opinions expressed below are confined to the laws of Ontario and the federal laws of Canada applicable therein as at the date hereof.

We do not act as corporate counsel to [**Project Co, the Construction Contractor or the Service Provider**], nor have we participated in the general maintenance of their corporate records and corporate proceedings. Therefore, in expressing certain of the opinions below, we have, where indicated, relied exclusively, and without any independent investigation or enquiry, on certificates of public officials and a certificate of an officer of each of Project Co, the Construction Contractor and the Service Provider dated as of the date hereof (the "**Officer's Certificates**") as to certain factual matters.

### **Searches and Reliance**

We have conducted, or have caused to be conducted, the searches identified in Schedule "A" (the "**Searches**") for filings or registrations made in those offices of public record listed in Schedule "A". The Searches were conducted against the current name and all former names of Project Co, LED Inc., LED LP, LED GP Inc., the Construction Contractor and the Service Provider (including, in each case, both the English and French versions, if any). The results of the Searches are set out in Schedule "A".

We have also made such investigations and examined originals or copies, certified or otherwise identified to our satisfaction, of such certificates of public officials and of such other certificates, documents and records as we have considered necessary or relevant for purposes of the opinions expressed below, including, without limitation, the Officer's Certificates.



We have relied exclusively, and without any independent investigation or enquiry, on the Officer's Certificates and the certificates of public officials with respect to certain factual matters.

In connection with the opinions set forth in paragraphs 1, 2 and 3 below, we have relied exclusively on Certificates of Status issued by the **[Ministry of Government Services (Ontario)]** of even date, copies of which are attached as Schedule "B".

In connection with the opinions set forth in paragraphs 5, 8, 11, 17 and 20 below, we have relied exclusively, and without any independent investigation or enquiry, upon the opinion of **[●]** dated **[●]**, 2008 (the "**CC Opinion**"), a copy of which has been delivered to you. To the extent that the CC Opinion contains assumptions, qualifications, limitations or definitions, or is expressed as relying on any certificate(s) or other documents identified therein, the opinions herein expressed in reliance on the CC Opinion should be read as incorporating the identical assumptions, qualifications, limitations, definitions and reliances.

In connection with the opinions set forth in paragraphs 6, 9, 12, 18 and 21 below, we have relied exclusively, and without any independent investigation or enquiry, upon the opinion of **[●]** dated **[●]**, 2008 (the "**SP Opinion**"), a copy of which has been delivered to you. To the extent that the SP Opinion contains assumptions, qualifications, limitations or definitions, or is expressed as relying on any certificate(s) or other documents identified therein, the opinions herein expressed in reliance on the SP Opinion should be read as incorporating the identical assumptions, qualifications, limitations, definitions and reliances.

### **Assumptions**

For the purposes of the opinions expressed herein, we have assumed:

1. The genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as certified, true, conformed, photostatic or notarial copies or facsimiles thereof and the authenticity of the originals of such certified, true, conformed, photostatic or notarial copies or facsimiles.
2. Each of the parties (other than Project Co, LED Inc., LED LP, LED GP Inc., the Construction Contractor and the Service Provider) to each of the Documents is and was, at all relevant times, a subsisting corporation, partnership, limited partnership, limited liability company or trust, as applicable, under the laws of its jurisdiction of formation.
3. Each of the parties (other than Project Co, LED Inc., LED LP, LED GP Inc., the Construction Contractor and the Service Provider) has (and had) the corporate power, authority and capacity to own its property and assets and to carry on its business as such business is now (or as was then) being carried on by it, has (or had) all requisite corporate power, authority and capacity to execute and deliver each Document to which it is party and to perform its obligations thereunder, has taken all necessary corporate action, as applicable, to authorize the execution and delivery of each Document to which it is a party and the performance of its obligations thereunder, and has duly executed and delivered each Document to which it is a party and each Document to which it is a party

is a legal, valid and binding obligation of such party enforceable against it in accordance with its terms.

4. The completeness, truth and accuracy of all facts set forth in the Officer's Certificates.
5. The completeness, truth and accuracy of all facts set forth in official public records and certificates and other documents supplied by public officials.
6. Value has been given by each of the parties (other than Project Co, LED Inc., LED LP, LED GP Inc., the Construction Contractor and the Service Provider) to Project Co, LED Inc., LED LP, LED GP Inc., the Construction Contractor and the Service Provider.

### **Opinions**

Based upon and subject to the foregoing, and to the qualifications, exceptions and limitations hereinafter expressed, we are of the opinion that, as of the date hereof:

#### *Incorporation and Existence*

1. Project Co is a corporation incorporated under the laws of **[the Province of Ontario]** and has not been dissolved. **[NTD: Amend for general partnership and add corresponding opinions for LED Inc., LED LP and LED GP Inc.]**
2. The Construction Contractor is a corporation incorporated under the laws of **[the Province of Ontario]** and has not been dissolved.
3. The Service Provider is a corporation incorporated under the laws of **[the Province of Ontario]** and has not been dissolved.

#### *Corporate Power and Capacity*

4. Project Co has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Project Agreement, and to enter into and perform its obligations under each of the Documents to which it is a party. **[NTD: Amend for general partnership and add corresponding opinions for LED Inc., LED LP and LED GP Inc.]**
5. The Construction Contractor has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Documents, and to enter into and perform its obligations under each of the Documents to which it is a party.
6. The Service Provider has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Documents, and to enter into and perform its obligations under each of the Documents to which it is a party.

*Corporate Authorization*

7. Project Co has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party. **[NTD: Amend for general partnership and add corresponding opinions for LED Inc., LED LP and LED GP Inc.]**
8. The Construction Contractor has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.
9. The Service Provider has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.

*Execution and Delivery*

10. Project Co has duly executed and delivered each of the Documents to which it is a party. **[NTD: Add corresponding opinions for LED Inc., LED LP and LED GP Inc.]**
11. The Construction Contractor has duly executed and delivered each of the Documents to which it is a party.
12. The Service Provider has duly executed and delivered each of the Documents to which it is a party.

*Enforceability*

13. Each of the Documents to which Project Co is a party constitutes a legal, valid and binding obligation of Project Co, enforceable against it in accordance with its terms. **[NTD: Add corresponding opinions for LED Inc., LED LP and LED GP Inc.]**
14. Each of the Documents to which the Construction Contractor is a party constitutes a legal, valid and binding obligation of the Construction Contractor, enforceable against it in accordance with its terms.
15. Each of the Documents to which the Service Provider is a party constitutes a legal, valid and binding obligation of the Service Provider, enforceable against it in accordance with its terms.

*No Breach or Default*

16. The execution and delivery by Project Co of the Documents to which it is a party does not, and the performance by Project Co of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which Project Co is subject. **[NTD: Amend for general partnership and add corresponding opinions for LED Inc., LED LP and LED GP Inc.]**

17. The execution and delivery by the Construction Contractor of the Documents to which it is a party does not, and the performance by the Construction Contractor of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which the Construction Contractor is subject.
18. The execution and delivery by the Service Provider of the Documents to which it is a party does not, and the performance by the Service Provider of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which the Service Provider is subject.

### *Regulatory Approvals*

19. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by Project Co of the Documents to which it is a party and the performance of its obligations thereunder. **[NTD: Add corresponding opinions for LED Inc., LED LP and LED GP Inc.]**
20. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by the Construction Contractor of the Documents to which it is a party and the performance of its obligations thereunder.
21. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by the Service Provider of the Documents to which it is a party and the performance of its obligations thereunder.

### **Qualifications**

Our opinions herein are subject to the following qualifications and reservations, namely:

1. The enforceability of any Document and the rights and remedies set out therein or any judgment arising out of or in connection therewith is subject to and may be limited by any applicable bankruptcy, reorganization, winding-up, insolvency, moratorium or other laws of general application affecting creditors' rights from time to time in effect.
2. The enforceability of each of the Documents and the rights and remedies set out therein is subject to and may be limited by general principles of equity, and no opinion is given as to any specific remedy that may be granted, imposed or rendered, including equitable remedies such as those of specific performance and injunction, or the availability of equitable defences.

3. The enforceability of any Document will be subject to the limitations contained in the *Limitations Act, 2002* (Ontario), and we express no opinion as to whether a court may find any provision of any Document to be unenforceable as an attempt to vary or exclude a limitation period under that Act.
4. Pursuant to the *Currency Act* (Canada), a judgment in money rendered by a Court in the Province of Ontario must be awarded in Canadian currency and such judgment may be based on a rate of exchange in effect other than the day of payment of the judgment.
5. To the extent that a particular contractual provision is characterized by a Court as a penalty and not as a genuine pre-estimate of damages, it will not be enforceable.
6. A Court may not treat as conclusive those certificates and determinations which the Documents state are to be so treated.
7. A receiver or receiver and manager appointed pursuant to the provisions of any Document, for certain purposes, may not be treated by a Court as being solely the agent of Project Co notwithstanding any agreement to the contrary.
8. The ability to recover or claim for certain costs or expenses may be subject to judicial discretion.
9. With respect to any provisions of the Documents pursuant to which the parties to such Documents are permitted or required to submit a dispute arising out of such Documents to arbitration, we express no opinion as to the enforceability of such arbitration provisions in all circumstances since under the *Arbitration Act, 1991* (Ontario) a court of competent jurisdiction in Ontario may, in its discretion and upon certain grounds, refuse to stay judicial proceedings in which event an arbitration under such arbitration provisions may not be commenced or continued. In addition, the *Arbitration Act, 1991* (Ontario) provides that a court may hear an appeal of an arbitration award on a question of law, or set aside an arbitration award or declare it invalid, in each case on certain prescribed grounds.
10. Any requirement in any of the Documents that interest be paid at a higher rate after than before default may not be enforceable.
11. The effectiveness of provisions which purport to relieve a person from a liability or duty otherwise owed may be limited by law, and provisions requiring indemnification or reimbursement may not be enforced by a Court, to the extent that they relate to the failure of such person to perform such duty or liability.
12. No opinion is expressed as to the enforceability of any provision contained in any Document which purports to sever from the Document any provision therein which is prohibited or unenforceable under applicable law without affecting the enforceability or validity of the remainder of the document.
13. No opinion is expressed regarding any waiver of service of process, presentment, demand, protest or notice of dishonour which may be contained in any of the Documents.

14. Any award of costs is in the discretion of a Court of competent jurisdiction.
15. The enforceability of rights of indemnity set out in the Documents may be limited under applicable law to the extent that they directly or indirectly relate to liabilities imposed by law on WGH for which it would be contrary to public policy to require Project Co to indemnify WGH or to the extent that they constitute the indirect enforcement of a foreign revenue or penal law.

This opinion is being delivered solely in connection with the transaction addressed herein and may not be relied upon by any person other than the addressees, and their successors and permitted assigns, or for any purpose other than the transaction addressed herein.

Yours very truly,

**[INSERT NAME OF LAW FIRM]**

**APPENDIX E**  
**FORM OF WGH OFFICER'S CERTIFICATE**

**Certificate of an Officer of Woodstock General Hospital Trust**  
**(the "Corporation")**

**TO: OGIIVY RENAULT LLP**  
**AND TO: INTEGRATED TEAM SOLUTIONS WGH PARTNERSHIP ("Project Co")**  
**AND TO: MCMILLAN LLP**  
**AND TO: CIT FINANCIAL LTD. (the "Lenders' Agent")**  
**AND TO: MCCARTHY TÉTRAULT LLP**

The undersigned, being the [•] of the Corporation and an authorized signatory of the Corporation and being duly authorized by the Corporation to deliver this certificate, hereby make the following certifications and confirmations for and on behalf of the Corporation and without incurring personal liability and that the same may be relied upon by you without further inquiry:

1. Constatng Documents

- (a) The Corporation is a non share capital corporation formed under the *Corporations Act* (Ontario) (Corporation No. 5157).
- (b) Attached hereto as **Schedule "A"** are true and complete copies of the letters patent, together with all amendments thereto, of the Corporation (the "**Letters Patent**"). The Letters Patent are in full force and effect on the date hereof and no other letters patent have been issued and no proceeding has been taken or is contemplated to the date hereof to authorize the Corporation to amend, surrender or cancel the Letters Patent.
- (c) Attached hereto as **Schedule "B"** are true and complete copies of the by-laws of the Corporation (the "**By-laws**") enacted on or before the date hereof. The By-laws have been in full force and effect from and after the date thereof as set out therein and are in full force and effect, unamended as of the date hereof. No proceeding has been taken to the date hereof to authorize the Corporation to amend the By-laws and neither the directors nor the members of the Corporation have passed, confirmed or consented to any resolutions amending or varying the By-laws.
- (d) The minute books and corporate records of the Corporation made available to Ogilvy Renault LLP are the original minute books and corporate records of the Corporation and contain all minutes of meetings, resolutions and proceedings of the members and directors of the Corporation to the date hereof and there have been no meetings, resolutions or proceedings authorized or passed by the

members or directors of the Corporation to the date hereof not reflected in such minute books and corporate records. Such minute books and corporate records are true, complete and correct in all material respects and there are no changes, additions or alterations necessary to be made thereto to make such minute books and corporate records true, complete and correct in all material respects.

- (e) At the date hereof, no winding-up, liquidation, dissolution, insolvency, bankruptcy, amalgamation, arrangement, reorganization or continuation proceedings in respect of the Corporation have been commenced or are being contemplated by the Corporation, and the Corporation has no knowledge of any such proceedings having been commenced or contemplated in respect of the Corporation by any other party.
  - (f) At the date hereof, the Corporation is up-to-date in the filing of all returns and other documents required to be filed by it by governmental authorities, including under corporate, securities and tax legislation, and no notice of any proceedings to cancel its certificate of incorporation or otherwise to terminate its existence has been received by the Corporation.
  - (g) There are no provisions in the Letters Patent, By-laws, or in any other agreement binding on the Corporation which:
    - (i) restrict or limit the powers of the Corporation to enter into:
      - (1) a certain project agreement with Project Co made as of [●], 2008 (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Project Agreement**") pursuant to which Project Co will build, finance and maintain a new hospital facility;
      - (2) a lenders' direct agreement between the Corporation, Project Co and the Lenders' Agent;
      - (3) a direct agreement between EllisDon Corporation (the "**Construction Contractor**"), Project Co, the [REDACTED] and the Corporation;
      - (4) a direct agreement between Honeywell Limited (the "**Service Provider**"), Project Co, the [REDACTED] and the Corporation;
      - (5) a development accountability agreement between the Corporation and MOHLTC; and
      - (6) [NTD: List other documents delivered at Financial Close.],
- (collectively, the "**Documents**"); or



- (ii) restrict or limit the authority of the directors or members of the Corporation by resolution to delegate the powers set out in subparagraph (i) to a director or an officer of the Corporation.

## 2. Corporate Authorization

The Corporation has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents.

## 3. Resolutions

- (a) Annexed hereto, forming part hereof and marked as **Schedule "C"** are true and complete copies of the resolutions of the directors of the Corporation (the "**Resolutions**"), which have been duly and validly passed in accordance with applicable law, constituting authority and approval for the Corporation, *inter alia*, to enter into the Documents. The Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same are in full force and effect, unamended as of the date hereof. The Resolutions constitute the only corporate action necessary to authorize the execution and delivery of, and the performance of the Corporation's obligations under, each of the Documents.
- (b) The authorization, execution and delivery of each Document contemplated in the Resolutions, and the performance by the Corporation of its obligations thereunder, do not constitute or result in a violation or breach or default under:
  - (i) the Letters Patent or By-laws;
  - (ii) to the best of my knowledge and belief after due diligence, any order of any Canadian or Ontario governmental body by which it is bound;
  - (iii) to the best of my knowledge and belief after due diligence, the terms of any agreement or instrument under which any of its property or assets is bound; or
  - (iv) to the best of my knowledge and belief after due diligence, any writ, judgment, injunction, determination, award which is binding on the Corporation or any of its properties.
- (c) To the best of my knowledge and belief after due diligence, there is no claim, action, suit, proceedings, arbitration, investigation or inquiry before any governmental agency, court or tribunal, foreign or domestic, or before any private arbitration tribunal, pending or threatened against the Corporation, or involving its properties or business. To the best of my knowledge and belief after due diligence, no administrative or court decree is outstanding in respect of the Corporation or its assets.
- (d) To the best of my knowledge and belief after due diligence, no consent, approval or other order of any Canadian or Ontario governmental authority is required to

permit the Corporation to execute and deliver the Documents, other than the following consents and approvals, which have been obtained: **[list MOHLTC and any other required regulatory approvals]**.

4. Execution and Delivery

The Corporation, by its authorized signing officers, has duly authorized and delivered each of the Documents.

5. No Breach or Default

Neither the execution and delivery by the Corporation of the Documents nor the consummation of the transactions therein contemplated nor the fulfilment or compliance with the terms thereof will contravene or result in a breach of any of the terms, conditions or provisions of, or constitute a default under:

- (a) the Letters Patent or By-laws;
- (b) any other agreement binding on the Corporation;
- (c) any law, statute, rule or regulation to which the Corporation is subject; or
- (d) any regulatory approval described in Section 3(d) above.

6. Specimen Signatures

The persons whose names are set forth below are, at the date hereof, officers and/or directors of the Corporation, duly elected or appointed to the office or offices set forth opposite their respective names and authorized to execute the Documents on behalf of the Corporation. The signatures set forth opposite their respective names are the true signatures of those persons:

NAME	POSITION	SIGNATURE

DATED this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Name:  
Title:

**APPENDIX F  
FORM OF WGH OPINION**

[INSERT DATE]

[PROJECT CO]

[LENDERS' AGENT]

[COUNSEL TO PROJECT CO]

[COUNSEL TO LENDERS]

Dear Sirs/Mesdames:

**Re: Woodstock General Hospital Project**

We have acted as project counsel to Woodstock General Hospital Trust ("**WGH**") in connection with the alternative financing and procurement transaction whereby WGH and Integrated Team Solutions WGH Partnership ("**Project Co**") have agreed to enter into a build, finance and maintain agreement for a new hospital facility in Woodstock, Ontario.

This opinion is being delivered to Project Co, CIT Financial Ltd. (as agent for and on behalf of the Lenders, the "**Lenders' Agent**") and their respective counsel pursuant to Section 2.14 of Schedule 2 to the project agreement made as of [•], 2008 between WGH and Project Co (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Project Agreement**").

All capitalized terms used but not otherwise defined in this opinion shall have the respective meanings ascribed thereto in the Project Agreement.

In our capacity as project counsel to WGH, we have participated in the preparation and negotiation, and have examined an executed copy, of each of the following documents (unless otherwise indicated, all such documents are dated as of [•], 2008):

1. the Project Agreement; and
2. the following project documents (collectively, the "**Implementation Documents**"):
  - (a) the Lenders' Direct Agreement;
  - (b) the Construction Contractor's Direct Agreement;
  - (c) the Service Provider's Direct Agreement; and

(d) the WGH Development Accountability Agreement.

The Project Agreement and the Implementation Documents are hereinafter collectively referred to as the "**Documents**", and each is individually referred to as a "**Document**".

Our opinion is expressed only with respect to the laws of the Province of Ontario and the laws of Canada applicable in Ontario in effect on the date of this opinion.

We do not act as corporate counsel to WGH, nor have we participated in the general maintenance of its corporate records and corporate proceedings. Therefore, in expressing certain of the opinions below, we have, where indicated, relied exclusively, and without any independent investigation or enquiry, on certificates of public officials and a certificate of an officer of WGH dated as of the date hereof (the "**Officer's Certificate**") as to certain factual matters.

### **Searches and Reliance**

We have conducted, or have caused to be conducted, the searches identified in Schedule "A" (the "**Searches**") for filings or registrations made in those offices of public record listed in Schedule "A". The Searches were conducted against the current name and all former names of WGH (including, both the English and French versions, if any). The results of the Searches are set out in Schedule "A".

We have also made such investigations and examined originals or copies, certified or otherwise identified to our satisfaction, of such certificates of public officials and of such other certificates, documents and records as we have considered necessary or relevant for purposes of the opinions expressed below, including, without limitation, the Officer's Certificate.

In connection with the opinion set forth in paragraph 1 below, we have relied exclusively on a Certificate of Status issued by the Ministry of Government Services (Ontario) of even date, a copy of which is attached as Schedule "B".

In connection with the opinion set forth in paragraph 2 below, we have relied in part on the Officer's Certificate, and in part on the list maintained by the Minister of Health and Long-Term Care under subsection 32.1(2) of the *Public Hospitals Act* (Ontario), a copy of which is attached as Schedule "C".

In connection with the opinions set forth in paragraphs 3, 4 and 6, as to factual matters, including the accuracy and completeness of the documents made available for review, we have relied exclusively on the Officer's Certificate.

### **Assumptions**

For the purposes of the opinion expressed herein, we have assumed:

1. The requisite legal capacity of all individuals, the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as certified, true, conformed, photostatic or notarial copies

- or facsimiles thereof or other electronically retrieved copies and the authenticity of the originals of such certified, true, conformed, photostatic or notarial copies or facsimiles or electronically retrieved copies.
2. Each of the parties (other than WGH) to each of the Documents is and was, at all relevant times, a subsisting corporation, partnership, limited partnership, limited liability company or trust, as applicable, under the laws of its jurisdiction of formation.
  3. Each of the parties (other than WGH) has (and had) the corporate power, authority and capacity to own its property and assets and to carry on its business as such business is now (or as was then) being carried on by it, has (or had) all requisite corporate power, authority and capacity to execute and deliver each Document to which it is party and to perform its obligations thereunder, has taken all necessary corporate action, as applicable, to authorize the execution and delivery of each Document to which it is a party and the performance of its obligations thereunder, and has duly executed and delivered each Document to which it is a party, and each Document to which it is a party is a legal, valid and binding obligation of such party enforceable against it in accordance with its terms.
  4. The completeness, truth and accuracy of all facts set forth in the Officer's Certificate.
  5. The completeness, truth and accuracy of all facts set forth in official public records and certificates and other documents supplied by public officials.
  6. Value has been given by each of the parties (other than WGH) to WGH.
  7. WGH has obtained or will obtain all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorizations to be obtained by WGH in connection with the entering into and performance by WGH of its obligations under the Documents to which it is a party, including, without limitation, any approvals of the Minister of Health and Long-Term Care.

### **Opinions**

Based upon and subject to the foregoing, and subject to the qualifications, exceptions and limitations hereinafter expressed, we are of the opinion that, as of the date hereof:

#### *Incorporation and Existence*

1. WGH is a non-share capital corporation formed under the *Corporations Act* (Ontario) (Corporation No. 5157) and has not been dissolved.

#### *Corporate Power and Capacity*

2. WGH is a public hospital under the *Public Hospitals Act* (Ontario), and has the corporate power and capacity to carry on its undertakings in accordance with the *Public Hospitals Act* (Ontario), including to own or lease properties and assets, and to enter into and perform its obligations under each of the Documents.

*Corporate Authorization*

3. WGH has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents.

*Execution and Delivery*

4. WGH has duly executed and delivered each of the Documents.

*Enforceability*

5. Each of the Documents constitutes a legal, valid and binding obligation of WGH, enforceable against it in accordance with its terms.

*No Breach or Default*

6. The execution and delivery by WGH of the Documents does not, and the performance by WGH of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its letters patent or by-laws, or (ii) the provisions of any law, statute, rule or regulation having force of law applicable in Ontario to which WGH is subject.

**Qualifications**

Our opinions herein are subject to the following qualifications and reservations, namely:

1. The enforceability of any Document and the rights and remedies set out therein or any judgment arising out of or in connection therewith is subject to and may be limited by any applicable bankruptcy, reorganization, winding-up, insolvency, moratorium or other laws of general application affecting creditors' rights from time to time in effect.
2. The enforceability of any Document will be subject to the limitations contained in the *Limitations Act, 2002* (Ontario), and we express no opinion as to whether a court may find any provision of any Document to be unenforceable as an attempt to vary or exclude a limitation period under that Act.
3. Pursuant to the *Currency Act* (Canada), a judgment in money rendered by a Court in the Province of Ontario must be awarded in Canadian currency and such judgment may be based on a rate of exchange in effect other than the day of payment of the judgment.
4. To the extent that a particular contractual provision is characterized by a Court as a penalty and not as a genuine pre-estimate of damages, it will not be enforceable.
5. A Court may not treat as conclusive those certificates and determinations which the Documents state are to be so treated.

6. A receiver or receiver and manager appointed pursuant to the provisions of any Document, for certain purposes, may not be treated by a Court as being solely the agent of another party, notwithstanding any agreement to the contrary.
7. The ability to recover or claim for certain costs or expenses may be subject to judicial discretion.
8. With respect to any provisions of the Documents pursuant to which the parties to such Documents are permitted or required to submit a dispute arising out of such Documents to arbitration, we express no opinion as to the enforceability of such arbitration provisions in all circumstances since under the *Arbitration Act, 1991* (Ontario) a court of competent jurisdiction in Ontario may, in its discretion and upon certain grounds, refuse to stay judicial proceedings in which event an arbitration under such arbitration provisions may not be commenced or continued. In addition, the *Arbitration Act, 1991* (Ontario) provides that a court may hear an appeal of an arbitration award on a question of law, or set aside an arbitration award or declare it invalid, in each case on certain prescribed grounds.
9. A Court may decline to hear an action if it determines that it is not the proper forum.
10. Any requirement in any of the Documents that interest be paid at a higher rate after than before default may not be enforceable.
11. The effectiveness of provisions which purport to relieve a person from a liability or duty otherwise owed may be limited by law, and provisions requiring indemnification or reimbursement may not be enforced by a Court, to the extent that they relate to the failure of such person to perform such duty or liability.
12. No opinion is expressed as to the enforceability of any provision contained in any Document which purports to sever from the Document any provision therein which is prohibited or unenforceable under applicable law without affecting the enforceability or validity of the remainder of the Document.
13. No opinion is expressed regarding any waiver of service of process, presentment, demand, protest or notice of dishonour which may be contained in any of the Documents.
14. Any award of costs is in the discretion of a Court of competent jurisdiction.
15. The enforceability of rights of indemnity set out in the Documents may be limited under applicable law to the extent that they directly or indirectly relate to liabilities imposed by law on Project Co for which it would be contrary to public policy to require WGH to indemnify Project Co or to the extent that they constitute the indirect enforcement of a foreign revenue or penal law.
16. Any provision of any of the Documents which provides for (i) the forfeiture of a deposit or any other property, or (ii) a particular calculation of damages upon breach, may not be enforceable if it is interpreted by a court to be a penalty or if the court determines that relief from forfeiture is appropriate.

17. We express no opinion as to the enforceability of any provision of any of the Documents which states that modifications, amendments or waivers are not binding unless in writing.
18. We express no opinion as to the enforceability of any provision of a Document that is inconsistent with any provision of any other Document except where the inconsistency is addressed by a paramountcy clause.
19. The enforceability of each of the Documents, and any of the obligations of WGH under any of the Documents to which it is a party, is subject to and may be limited by public policy, or by general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing, the inherent jurisdiction of the Crown in its role as *parens patriae* and the inherent jurisdiction of the court in matters of charity, the role of the Public Guardian and Trustee as overseer of WGH as a trustee under the *Trustee Act* (Ontario) and the possible unavailability of specific performance, injunctive relief or other equitable remedies. Without limiting the generality of the foregoing, the availability of any particular remedy is subject to the discretion of the court.
20. Any approval given or deemed to have been given under the *Public Hospitals Act* (Ontario) in respect of a hospital may be suspended by the Minister of Health and Long-Term Care or revoked by the Lieutenant Governor in Council if the Minister of Health and Long-Term Care or the Lieutenant Governor in Council, as the case may be, considers it in the public interest to do so.

This opinion is being delivered solely in connection with the transaction addressed herein and may not be relied upon by any person other than the addressees, and their successors and permitted assigns, or for any purpose other than the transaction addressed herein.

Yours very truly,

OGILVY RENAULT LLP



**SCHEDULE 3**  
**CUSTODY AGREEMENT**

**THIS AGREEMENT** is made as of the • day of •, 2008

**BETWEEN:**

**WOODSTOCK GENERAL HOSPITAL TRUST**, a non-share capital corporation incorporated under the laws of Ontario

("WGH")

**AND:**

**INTEGRATED TEAM SOLUTIONS WGH PARTNERSHIP**, a partnership formed under the laws of Manitoba

("Project Co")

**AND:**

**COMPUTERSHARE TRUST COMPANY OF CANADA**, a trust company incorporated under the laws of Canada

(the "**Custodian**")

**AND:**

**CIT FINANCIAL LTD.**, acting as agent for and on behalf of the Senior Lenders

(the "**Lenders' Agent**")

**WHEREAS:**

- A. WGH and Project Co (collectively, the "**PA Parties**" and each, a "**PA Party**") have entered into the Project Agreement.
- B. Pursuant to the terms of the Project Agreement, the PA Parties wish to appoint the Custodian, and the Custodian wishes to accept such appointment, to perform certain services in connection with the Project Agreement.
- C. The PA Parties and the Custodian wish to enter into this Custody Agreement in order to record the terms by which the Custodian shall perform such services.

**NOW THEREFORE** in consideration of the mutual covenants and agreements of the PA Parties and the Custodian herein contained and for other good and valuable consideration, the

receipt and sufficiency of which are hereby acknowledged, the PA Parties and the Custodian covenant and agree as follows:

## 1. Definitions

In this Custody Agreement, including the recitals and appendices, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Custody Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:

- (a) **"Lenders' Agent"** means CIT Financial Ltd., acting as agent for and on behalf of the Senior Lenders.
- (b) **"Material"** means hard and electronic copies of the Financial Model.
- (c) **"PA Parties"** means both WGH and Project Co, and **"PA Party"** means either WGH or Project Co, as the context requires.
- (d) **"Party"** means WGH, the Custodian, Project Co or the Lenders' Agent, and **"Parties"** means WGH, the Custodian, Project Co and the Lenders' Agent.
- (e) **"Project Agreement"** means the project agreement made on or about [●], 2008 between WGH and Project Co.
- (f) **"Project Co"** means Integrated Team Solutions WGH Partnership.
- (g) **"Project Co Signatory"** has the meaning given in Section 6(a)(ii).
- (h) **"Step-Out Date"** has the meaning given in Section 14(e).
- (i) **"WGH"** means Woodstock General Hospital Trust.
- (j) **"WGH Signatory"** has the meaning given in Section 6(a)(i).

## 2. Interpretation

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

- (a) The headings in this Custody Agreement are for convenience of reference only, shall not constitute a part of this Custody Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Custody Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Paragraphs, Subparagraphs, or divisions of this Custody Agreement and the terms "Section" and "Section" are used interchangeably and are synonymous.

- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Custody Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Custody Agreement shall bear their natural meaning.
- (g) References containing terms such as:
  - (i) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Custody Agreement taken as a whole; and
  - (ii) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".
- (h) In construing this Custody Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this Custody Agreement and, accordingly, general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Custody Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Custody Agreement states that an obligation shall be performed "on" a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Woodstock, Ontario.

- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms "will" or "shall" are used in this Custody Agreement they shall be construed and interpreted as synonymous and to read "shall".

### **3. Project Co's Duties and Warranties**

- (a) WGH will, together with Project Co, verify the identity and consistency of two copies of the Material, which shall be delivered by Project Co to the Custodian on the date of this Custody Agreement.
- (b) Project Co shall at all times ensure that the Material as delivered to the Custodian is capable of being used to generate the latest version of the Financial Model issued to WGH and shall deliver further copies of the Material to the Custodian as and when necessary.
- (c) Upon creation of any new versions of the Financial Model and within 30 days from receipt of a notice served upon it by the Custodian under the provisions of Section 4(a)(v), the replacement copy of the Material shall be verified by the PA Parties in accordance with Section 3(a) and delivered by Project Co to the Custodian.
- (d) Project Co warrants that:
  - (i) it owns the Intellectual Property Rights in the Material and has authority to enter into this Custody Agreement;
  - (ii) the use of the Materials by WGH under the terms of this Custody Agreement shall not infringe any Intellectual Property Rights of any person; and
  - (iii) the Material delivered under Section 3(a) shall contain all information in human-readable form and on suitable media to enable a reasonably skilled programmer or analyst to understand, maintain and correct the Material without the assistance of any other person.

### **4. Custodian's Duties**

- (a) The Custodian shall:
  - (i) hold in safe custody all versions of the Financial Model delivered to it pursuant to the terms hereof, and the provisions of this Custody Agreement shall apply (with any necessary changes being made) to any revised Financial Model;
  - (ii) hold the Material in a safe and secure environment;
  - (iii) inform Project Co and WGH of the receipt of any copy of the Material;
  - (iv) at all times retain a copy of the latest verified deposit of the Material; and

- (v) promptly notify Project Co and WGH if it becomes aware at any time during the term of this Custody Agreement that any copy of the Material held by it has been lost, damaged or destroyed.
- (b) The Custodian shall not be responsible for procuring the delivery of the Material in the event of failure by Project Co to do so.
- (c) In accordance with Section 10, the Custodian shall allow the PA Parties to inspect and audit the Financial Model from time to time.

## 5. Payment

- (a) In consideration of the Custodian performing the services contemplated by this Custody Agreement, Project Co shall pay the Custodian's fees as agreed from time to time between the Custodian and Project Co. and all reasonable expenses, disbursements and advances incurred or made by the Custodian in the administration and execution of this Custody Agreement until all the duties of the Custodian shall have been finally and fully performed. Any amount due under this Section 5 and unpaid within thirty (30) days after the issuance of the invoice by the Custodian, shall bear interest at the then current rate of interest charged by the Custodian to its corporate customers. This Section 5 shall survive the removal or termination of the Custodian and the termination of this Custody Agreement.

## 6. Release Events

- (a) The Custodian shall hold the Material to the order of the PA Parties and shall honour the instructions and signatures of:
  - (i) the President & CEO and designated signing officers of WGH or such other person nominated by it and notified to the Custodian and Project Co in writing (the "**WGH Signatory**"); and
  - (ii) the President & CEO and designated signing officers of Project Co or such other person nominated by it and notified to the Custodian and WGH in writing (the "**Project Co Signatory**");

and shall, subject to Section 6(b), upon receiving signed joint instructions from the WGH Signatory and the Project Co Signatory, release one copy of the Material to the person either named in such instructions or previously identified in writing by the WGH Signatory and the Project Co Signatory.

- (b) The PA Parties each agree that they shall give joint instructions to the Custodian for the release of the Material, in accordance with Section 6(a), on each occasion that the Material is required to be released pursuant to the Project Agreement or that the Material must be released to allow the Material to be maintained and/or corrected.
- (c) The Custodian shall release the Material to a duly authorized officer of WGH on any termination of the Project Agreement prior to the Expiry Date.

**7. Records**

- (a) The PA Parties shall be entitled, during the regular business hours of the Custodian and upon giving the Custodian reasonable notice, to inspect any records kept by the Custodian in accordance with this Custody Agreement.

**8. Confidentiality**

- (a) The Material shall remain the confidential property of Project Co and, in the event that the Custodian provides a copy of the Material to WGH, WGH shall be permitted to use the Material only in accordance with the intellectual property and confidentiality obligations in the Project Agreement.
- (b) The Custodian agrees for itself, its directors, officers, employees, sub-contractors and agents, to maintain all information and/or documentation in whatever form coming into its possession or to its knowledge under or in connection with this Custody Agreement in strictest confidence and secrecy. The Custodian further agrees not to make use of such information and/or documentation other than for the purposes of this Custody Agreement and will not disclose or release it other than in accordance with the terms of this Custody Agreement.
- (c) In the event that the Material is released under Section 6, WGH shall:
  - (i) use the Material only for the purpose of understanding, maintaining and correcting the Financial Model exclusively on behalf of WGH;
  - (ii) not use the Material for any other purpose nor disclose it to any person, save such of its employees or contractors who need to know the same in order to understand, maintain and correct the Financial Model exclusively on behalf of WGH;
  - (iii) hold all media containing the Material in a safe and secure environment when not in use; and
  - (iv) forthwith destroy the same should WGH cease to be entitled to use the Financial Model.

**9. Intellectual Property Rights**

- (a) The release of the Material to WGH and to the Custodian will not act as an assignment of any Intellectual Property Rights that Project Co possesses in the Material.

**10. Inspection**

- (a) Subject to the following provisions of this Section 10, the Custodian shall bear no obligation or responsibility to any person, firm, company or entity whatsoever to determine the existence, relevance, completeness, accuracy, effectiveness or any other aspect of the Financial Model.

- (b) The PA Parties shall be entitled, during the regular business hours of the Custodian and upon giving the Custodian reasonable notice, to inspect and audit or to procure the inspection and audit of the Financial Model in accordance with this Section 10.
- (c) The Custodian shall, upon receiving duly signed instructions from both of the PA Parties (but only upon receiving such instructions), provide facilities for WGH and/or Project Co and/or such person identified in the duly signed written instructions to inspect and audit the Financial Model.
- (d) The Custodian shall maintain a record of any inspection and audit made pursuant to Section 10(c), including details of the person who made the inspection and/or audit and the date of the same.

#### **11. Custodian's Liability**

- (a) The Custodian, its officers, directors, employees or agents shall not be liable for any loss or damage caused to Project Co or WGH either jointly or severally except to the extent that such loss or damage is caused by the grossly negligent acts or omissions of or by bad faith or willful misconduct of the Custodian, its employees, agents or sub-contractors, and in such event, the Custodian's total liability in respect of all claims arising under or by virtue of this Custody Agreement shall not exceed the sum of \$5,000 (index-linked within the meaning of the Project Agreement).
- (b) The Custodian shall in no circumstances be liable to Project Co or WGH for indirect or consequential loss of any nature whatsoever whether for loss of profit, loss of business or otherwise.
- (c) Subject to complying with the provisions of Section 6, and save in the case of manifest error, the Custodian shall be protected in relying and acting upon any written request, waiver, consent, receipt or other document furnished to it pursuant to this Custody Agreement, not only in assuming its due execution and the validity and effectiveness of its provisions but also as to the truth and acceptability of any information contained in it, which the Custodian in good faith believes to be genuine and what it purports to be.
- (d) The duties, responsibilities and obligations of the Custodian shall be limited to those expressly set forth herein and no duties, responsibilities or obligations shall be inferred or implied. The Custodian shall not be subject to, nor required to comply with, any other agreement between or among any or all of the other Parties or to which any Party is a party, even though reference thereto may be made herein, or to comply with any direction or instruction (other than those contained herein or delivered in accordance herewith). The Custodian shall not be required to expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder except ordinary corporate costs incurred in the performance of such duties.
- (e) If at any time the Custodian is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Material (including, but not limited to, orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of property), the Custodian

is authorized to comply therewith in any manner as it or its legal counsel deems appropriate, acting reasonably; provided that the Custodian, when so served, shall promptly notify Project Co and WGH, in writing, of such process and the Custodian's intended action in order to provide Project Co and WGH a reasonable opportunity to intervene or challenge such process in a court or tribunal of competent jurisdiction.

- (f) The Custodian may consult with legal counsel at the expense of Project Co and WGH as to any matter relating to this Custody Agreement, and the Custodian shall not incur any liability in acting, or not acting, in good faith in accordance with any advice from such counsel. All reasonable fees and disbursements incurred by the Custodian shall be added to the fees otherwise payable hereunder.
- (g) The Custodian shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Custodian (including, but not limited to, any act or provision of any present or future law or regulation or governmental authority, any act of God or war, or the unavailability of any wire or communication facility).
- (h) The Custodian shall not be responsible in any respect for the form or content of the Material delivered to it hereunder.
- (i) In the event of any ambiguity or uncertainty hereunder or in any notice, instruction or other communication received by the Custodian hereunder, the Custodian shall notify Project Co and WGH in writing of such ambiguity or uncertainty and request instructions to eliminate such ambiguity or uncertainty. The Custodian may, acting reasonably, refrain from taking any action other than to retain possession of the Material, and shall not be held liable for refraining from taking such action, unless the Custodian receives written instructions, signed by Project Co and WGH, which eliminates such ambiguity or uncertainty.
- (j) In the event of any dispute between or conflicting claims by or among the PA Parties and/or any other person or entity with respect to the Material, the Custodian shall be entitled, acting reasonably, to refuse to comply with any and all claims, demands or instructions with respect to the Material so long as such dispute or conflict shall continue, and the Custodian shall promptly notify Project Co and WGH of its intention to do so. In such circumstances, the Custodian shall not be or become liable in any way to Project Co or WGH for failure or refusal to comply with such conflicting claims, demands or instructions. The Custodian shall be entitled to refuse to act until, acting reasonably, either (i) such conflicting or adverse claims or demands shall have been determined by a final order, judgment or decree of a court of competent jurisdiction, which order, judgment or decree is not subject to appeal, or settled by agreement between the conflicting parties as evidenced in writing satisfactory to the Custodian or (ii) the Custodian shall have received security or an indemnity satisfactory to it acting reasonably sufficient to hold it harmless from and against any and all losses which it may incur by reason of so acting. The Custodian may, in addition, elect, acting reasonably, to commence an interpleader action or seek other judicial relief or orders as it may deem, acting reasonably, necessary, including, without limiting the generality of the foregoing,



depositing all or any part of the Material into court. The costs and expenses (including reasonable attorneys' fees and expenses) incurred in connection with such proceeding shall be paid by, and shall be deemed a joint and several obligation of, Project Co and WGH.

- (k) Each of Project Co and WGH shall provide to the Custodian an incumbency certificate setting out the names and sample signatures of persons authorized to give instructions to the Custodian hereunder. The Custodian shall be entitled to rely on such certificate until a revised certificate is provided to it hereunder. The Custodian shall be entitled to refuse to act upon any instructions given by a party which are signed by any person other than a person described in the incumbency certificate provided to it pursuant to this section.
- (l) The Custodian shall be entitled to rely, and act upon, on any direction, order, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile transmission.
- (m) This Section 11 shall survive the termination of this Custody Agreement.

## **12. Indemnity**

- (a) Save for any claim falling within the provisions of Section 11(a), Project Co and WGH, on a joint and several basis, shall be liable for and shall indemnify and hold harmless the Custodian, and its officers, directors, employees and agents, from and against any and all claims, losses, liabilities, costs, damages or expenses (including reasonable attorneys' fees and expenses) arising from or in connection with or related to this Custody Agreement or acting as Custodian hereunder (including, but not limited to, losses incurred by the Custodian in connection with its successful defense of any claim of gross negligence or willful misconduct on its part), provided, however, that nothing contained herein shall require the Custodian to be indemnified for losses caused by its gross negligence, willful misconduct or bad faith. This Section shall survive the termination of this Agreement or the resignation or removal of the Custodian.

## **13. Termination**

- (a) The Custodian may terminate this Custody Agreement for failure by Project Co to pay any outstanding fee provided for herein within 30 days of receipt of written notice in respect thereof.
- (b) The Custodian may terminate this Custody Agreement by giving 60 days prior written notice to Project Co and WGH. In that event, Project Co and WGH shall appoint a mutually acceptable new custodian on terms similar to those contained in this Custody Agreement.
- (c) If the Custodian is not notified of the new custodian within the notice period given in Section 13(b), the Custodian will destroy the Material.
- (d) WGH may terminate this Custody Agreement by giving 30 days prior written notice to the Custodian and Project Co.

- (e) Project Co may, with the prior written consent of WGH, terminate this Custody Agreement by giving 30 days prior written notice to the Custodian and WGH.
- (f) This Custody Agreement shall terminate upon release of the Material to WGH in accordance with Section 6(c).
- (g) Upon termination under the provisions of Sections 13(d) or 13(e), the Custodian will deliver the Material to Project Co. If the Custodian is unable to trace Project Co within 60 days of writing to the last registered address notified by Project Co to the Custodian, the Custodian will destroy the Material.
- (h) Upon termination under the provisions of Section 13(a), the Material will be available for collection by Project Co from the Custodian for 60 days from the date of termination. After such 60-day period, the Custodian will destroy the Material.
- (i) The Custodian may forthwith terminate this Custody Agreement and destroy the Material if it is unable to trace Project Co within 60 days of writing to the last registered address notified by Project Co to the Custodian having used all reasonable endeavours to do so.
- (j) The provisions of Sections 8, 11 and 12 shall continue in full force and effect after termination of this Custody Agreement.
- (k) The Agreement shall terminate on the Expiry Date, at which time Project Co will write to the Custodian requesting the release of the Materials to it. The Custodian agrees that it will notify WGH of Project Co's request and, failing receipt of any notice of objection from WGH within 30 days of the receipt of the notice by WGH, it shall release the Materials to Project Co.
- (l) On termination of this Custody Agreement, Project Co shall remain liable to the Custodian for payment in full of any fee which has become due but which has not been paid as at the date of termination.

#### **14. Privacy**

The parties acknowledge that federal and/or provincial legislation that addresses the protection of individuals' personal information (collectively, "Privacy Laws") may apply to obligations and activities under this Agreement. Despite any other provision of this Agreement, no party shall take or direct any action that would contravene, or cause the other to contravene, applicable Privacy Laws. The Lenders' Agent and Project Co shall, prior to transferring or causing to be transferred personal information to the Custodian, obtain and retain required consents of the relevant individuals to the collection, use and disclosure of their personal information, or shall have determined that such consents either have previously been given upon which the parties can rely or are not required under the Privacy Laws. The Custodian shall use commercially reasonable efforts to ensure that its services hereunder comply with Privacy Laws. Specifically, the Custodian agrees: (a) to have a designated chief privacy officer; (b) to maintain policies and procedures to protect personal information and to receive and respond to any privacy complaint or inquiry; (c) to use personal information solely for the purposes of providing

its services under or ancillary to this Agreement and not to use it for any other purpose except with the consent of or direction from WGH, the Lenders' Agent or Project Co or the individual involved; (d) not to sell or otherwise improperly disclose personal information to any third party; and (e) to employ administrative, physical and technological safeguards to reasonably secure and protect personal information against loss, theft, or unauthorized access, use or modification.

## 15. Step-In Rights

- (a) The Custodian shall, from time to time:
- (i) permit WGH to perform or discharge any obligation of Project Co under this Custody Agreement, where Project Co is in breach of the same;
  - (ii) permit Project Co to perform or discharge any obligation of WGH under this Custody Agreement, where WGH is in breach of the same; and
  - (iii) following notification by the Lenders' Agent (who at the same time shall provide a copy of any such notification to WGH ), permit the Lenders' Agent or another person specified in such notice with effect from the date specified in the same to perform or discharge all the obligations of Project Co under this Custody Agreement, provided that the Lenders' Agent shall have the benefit of and be entitled to enforce against the Custodian any and all of the Custodian's obligations to Project Co under this Custody Agreement and the Custodian undertakes to perform such obligations in favour of the Lenders' Agent.
- (b) Project Co consents to the performance or discharge of its obligations by WGH pursuant to Section 15(a)(i).
- (c) WGH consents to the performance or discharge of its obligations by Project Co pursuant to Section 15(a)(ii).
- (d) The PA Parties consent to the performance or discharge of Project Co's obligations by the Lenders' Agent pursuant to Section 15(a)(iii).
- (e) WGH or the Lenders' Agent shall be entitled to terminate the Lenders' Agent's obligations pursuant to Section 15(a)(iii) on giving the Custodian prior notice (WGH or the Lenders' Agent at the same time shall provide a copy of any such notification to WGH) of at least 15 Business Days. On and from the date of expiry of such notice (the "**Step-Out Date**"), the Lenders' Agent shall be automatically released from all obligations pursuant to this Custody Agreement, except for any which have fallen due for performance or discharge on or before the Step-Out Date and which have not been fully and unconditionally performed or discharged.
- (f) The occurrence of the Step-Out Date shall not affect the continuation of Project Co's obligations towards the Custodian under this Custody Agreement.

- (g) The Lenders' Agent is a Party to this Custody Agreement solely for the purposes of taking the benefit of its rights under this Section 15 and shall have no rights or obligations or liabilities hereunder, except pursuant to the operation of this Section 15.

## 16. Assignment

- (a) This Custody Agreement shall be binding on, and enure to the benefit of, the Custodian, Project Co and WGH and their respective successors and permitted transferees and assigns.
- (b) Project Co may assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person to whom Project Co assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 58.1 of the Project Agreement.
- (c) WGH may assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person to whom WGH assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 58.2 of the Project Agreement.
- (d) The Custodian shall not, without the prior written consent of the PA Parties assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person. Notwithstanding the foregoing, any company into which the Custodian may be merged with or to which it may be consolidated, amalgamated or sold, or any company resulting from any merger, consolidation, sale or amalgamation to which the Custodian shall be a party or any corporation succeeding all or substantially all of the corporate trust business of the Custodian, shall be the successor Custodian under this Agreement without the execution of any instrument or any further act.

## 17. Recitals

Any statements of fact set out in the recitals to this Agreement are not representations of such facts by the Custodian and the Custodian shall have no liability to any party hereto in respect thereof.

## 18. Notices

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Custody Agreement shall be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable provision of this Custody Agreement) and served by sending the same by registered mail, facsimile or by hand, as follows:

If to WGH: 270 Riddell Street  
Woodstock, Ontario  
N4S 6Y6

Fax: [REDACTED]  
Attn.: President and Chief Executive Officer

If to Project Co: 5000 Yonge Street, Suite 1805  
Toronto, Ontario  
M2N 7E9

Fax: [REDACTED]  
Attn.: [REDACTED]

If to the Custodian: 100 University Avenue  
9<sup>th</sup> Floor, North Tower  
Toronto, Ontario  
M5J 2Y1

Fax: [REDACTED]  
Attn.: Manager, Corporate Trust

If to the Lenders' Agent: 207 Queen's Quay West  
Suite 700  
Toronto, Ontario  
M5J 1A7

Fax: [REDACTED]  
Attn.: Chief Operating Officer

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 16(b).
- (c) Any Party to this Custody Agreement may, from time to time, change any of its contact information set forth in Section 16(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 16(e), 16(f) and 16(g):
  - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 16.

- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

## **19. Amendments**

- (a) This Custody Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Custody Agreement.

## **20. Waiver**

- (a) No waiver made or given by a Party under or in connection with this Custody Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

## **21. Relationship Between the Parties**

- (a) The Parties are independent contractors. This Custody Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, trustee and beneficiary, employer and employee, master and servant, or principal and agent.

## **22. Entire Agreement**

- (a) Except where provided otherwise in this Custody Agreement, this Custody Agreement and the Project Agreement constitute the entire agreement between the Parties in connection with the subject matter of this Custody Agreement and supersede all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Custody Agreement.

## **23. Severability**

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

#### **24. Enurement**

- (a) This Custody Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

#### **25. Governing Law and Jurisdiction**

- (a) This Custody Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Custody Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

#### **26. Further Assurance**

- (a) Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Custody Agreement.

#### **27. Language of Agreement**

- (a) Each Party acknowledges having requested and being satisfied that this Custody Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ces documents soient rédigés en anglais et s'en declare satisfaite.

#### **28. Proof of Authority**

- (a) WGH reserves the right to require any person executing this Custody Agreement on behalf of Project Co or the Construction Contractor to provide proof, in a form acceptable to WGH, that such person has the requisite authority to execute this Custody Agreement on behalf of and to bind Project Co or the Construction Contractor, respectively.

#### **29. Counterparts**

- (a) This Custody Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall

constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to such Party an original signed copy of this Custody Agreement which was so faxed.

**IN WITNESS WHEREOF** the Parties have executed this Custody Agreement as of the date first above written.

**WOODSTOCK GENERAL HOSPITAL  
TRUST**

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: President and Chief Executive  
Officer

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: Chair of the Board

I/We have authority to bind the corporation.



**INTEGRATED TEAM SOLUTIONS  
WGH PARTNERSHIP**, by its partners,

**LED (ITS) WGH INC.**

Per: \_\_\_\_\_  
Name:  
Title:

**LED (ITS) WGH GENERAL PARTNER  
INC.**, in its capacity as general partner of  
**LED (ITS) WGH LIMITED  
PARTNERSHIP**

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the partnership.

**COMPUTERSHARE TRUST  
COMPANY OF CANADA**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the trust  
company.

**CIT FINANCIAL LTD.**

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the corporation.

**SCHEDULE 4**

**LENDERS' DIRECT AGREEMENT**

**THIS AGREEMENT** is made as of the • day of •, 2008

**BETWEEN:**

**WOODSTOCK GENERAL HOSPITAL TRUST**, a non-share capital corporation incorporated under the laws of Ontario

("WGH")

**AND:**

**CIT FINANCIAL LTD.**, acting as agent for and on behalf of the Senior Lenders

(the "**Lenders' Agent**")

**AND:**

**INTEGRATED TEAM SOLUTIONS WGH PARTNERSHIP**, a partnership formed under the laws of Manitoba

("Project Co")

**WHEREAS:**

- A. WGH and Project Co have entered into the Project Agreement.
- B. The overriding priorities of WGH in entering into and implementing the Project Agreement are the health and safety of the patients of the Facility, their healthcare needs and the provision of first-rate healthcare services.
- C. Under the Lending Agreements, financing is to be provided to Project Co by the Senior Lenders to finance the Project Operations, conditional on, among other things, Project Co granting the Security to the Lenders' Agent.
- D. The Lenders' Agent has agreed to enter into this lenders' direct agreement (the "**Lenders' Direct Agreement**") with WGH in relation to the Security, the exercise of its rights under the Security Documents and the remedying of breaches by Project Co under the Project Agreement.
- E. Project Co, the Lenders' Agent and the Senior Lenders recognize and understand that WGH is a public hospital under the *Public Hospitals Act* (Ontario) and is, therefore, subject to a highly regulated legal and operational environment.

- F. With a view to ensuring that WGH is able to properly and effectively discharge its duties, functions and responsibilities under Applicable Law, Project Co, the Lenders' Agent and the Senior Lenders commit to working collaboratively, responsibly and cooperatively with WGH throughout the Project Term.

**NOW THEREFORE** in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

## 1. DEFINITIONS

In this Lenders' Direct Agreement, unless the context otherwise requires:

- (a) "**Affiliate**" has the meaning given in the Project Agreement.
- (b) "**Appointed Representative**" means any of the following to the extent so identified in an Appointed Representative Notice:
  - (i) the Lenders' Agent, any Senior Lender or any of their Affiliates;
  - (ii) a receiver or receiver and manager of Project Co appointed under the Security Documents;
  - (iii) a trustee in bankruptcy or court-appointed receiver of Project Co;
  - (iv) an administrator of Project Co;
  - (v) a person directly or indirectly owned or controlled by the Lenders' Agent and/or any of the Senior Lenders; or
  - (vi) any other person approved by WGH (such approval not to be unreasonably withheld or delayed).
- (c) "**Appointed Representative Notice**" has the meaning given in Section 8(b).
- (d) "**Business Day**" has the meaning given in the Project Agreement.
- (e) "**Change in Control**" has the meaning given in the Project Agreement.
- (f) "**Change in Ownership**" has the meaning given in the Project Agreement.
- (g) "**Construction Contract**" has the meaning given in the Project Agreement.
- (h) "**Construction Contractor**" has the meaning given in the Project Agreement.
- (i) "**Default Notice**" has the meaning given in Section 7(b)(i).
- (j) "**Direct Agreements**" has the meaning given in the Project Agreement.

- (k) "**Enforcement Action**" means any acceleration of amounts due and owing to the Senior Lenders under any of the Lending Agreements and/or any enforcement proceeding or enforcement action commenced or taken under any of the Security Documents.
- (l) "**Enforcement Event**" means an event of default as defined in the Lending Agreements, or any other event which permits an Enforcement Action.
- (m) "**Exercise Date**" has the meaning given in Section 12(b).
- (n) "**Facility**" has the meaning given in the Project Agreement.
- (o) "**Failure Points**" has the meaning given in the Project Agreement.
- (p) "**Governmental Authority**" has the meaning given in the Project Agreement.
- (q) "**Indebtedness Notice**" has the meaning given in Section 7(b)(ii).
- (r) "**Lender Representative**" means a representative (which may be the Lenders' Agent) acting as agent or trustee for and on behalf of all of the lenders lending to a Suitable Substitute.
- (s) "**Lenders' Agent**" means CIT Financial Ltd., acting as agent for and on behalf of the Senior Lenders.
- (t) "**Lenders' Direct Agreement**" means this lenders' direct agreement.
- (u) "**Lending Agreements**" has the meaning given in the Project Agreement.
- (v) "**Longstop Date**" has the meaning given in the Project Agreement.
- (w) "**Monitoring Notice**" has the meaning given in the Project Agreement.
- (x) "**Notice Period**" means the period starting on the date of delivery of a Default Notice and ending 120 days later.
- (y) "**Novation Date**" has the meaning given in Section 10(a).
- (z) "**Novation Notice**" has the meaning given in Section 10(a).
- (aa) "**Party**" means any of WGH, Project Co or the Lenders' Agent, and "**Parties**" means all of WGH, Project Co and the Lenders' Agent.
- (bb) "**person**" has the meaning given in the Project Agreement.
- (cc) "**Project**" has the meaning given in the Project Agreement.
- (dd) "**Project Agreement**" means the project agreement made on or about [●], 2008 between WGH and Project Co.

- (ee) "**Project Co**" means Integrated Team Solutions WGH Partnership.
- (ff) "**Project Co Event of Default**" has the meaning given in the Project Agreement.
- (gg) "**Project Documents**" has the meaning given in the Project Agreement.
- (hh) "**Project Operations**" has the meaning given in the Project Agreement.
- (ii) "**Province**" has the meaning given in the Project Agreement.
- (jj) "**Refinancing**" has the meaning given in the Project Agreement.
- (kk) "**Restricted Person**" has the meaning given in the Project Agreement.
- (ll) "**Scheduled Substantial Completion Date**" has the meaning given in the Project Agreement.
- (mm) "**Security**" means the security interests granted by Project Co to the Lenders' Agent pursuant to the Security Documents.
- (nn) "**Security Documents**" means all security granted by Project Co to the Senior Lenders (or any trustee or agent thereof, including the Lenders' Agent) pursuant to or in connection with the Lending Agreements, including but not limited to:
  - (i) [REDACTED];
  - (ii) [REDACTED];
  - (iii) [REDACTED];
  - (iv) [REDACTED];
  - (v) [REDACTED]; and
  - (vi) [REDACTED].
- (oo) "**Senior Lenders**" has the meaning given in the Project Agreement.
- (pp) "**Service Contract**" has the meaning given in the Project Agreement.
- (qq) "**Service Provider**" has the meaning given in the Project Agreement.
- (rr) "**Step-In Date**" means the date on which WGH receives a Step-In Notice from the Lenders' Agent.
- (ss) "**Step-In Notice**" means the notice given by the Lenders' Agent to WGH pursuant to Section 8(a) stating that the Lenders' Agent is exercising its step-in rights under this Lenders' Direct Agreement.

- (tt) "**Step-In Period**" means the period from the Step-In Date up to and including the earlier of:
- (i) the Step-Out Date;
  - (ii) the Termination Date (provided that WGH has complied with its obligations in Section 7 of this Lenders' Direct Agreement);
  - (iii) the date that a transfer of Project Co's rights and obligations under the WGH Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective; and
  - (iv) if the Step-In Date occurs prior to the Substantial Completion Date, the earlier of:
    - (A) the date falling 180 days after the Longstop Date; or
    - (B) the date falling two years after the Step-In Date.
- (uu) "**Step-Out Date**" means the date falling 30 days after the date on which WGH receives a Step-Out Notice.
- (vv) "**Step-Out Notice**" has the meaning given in Section 9(a).
- (ww) "**Subcontractor**" has the meaning given in the Project Agreement.
- (xx) "**Subsequent Indebtedness Notice**" has the meaning given in Section 7(c).
- (yy) "**Substantial Completion Date**" has the meaning given in the Project Agreement.
- (zz) "**Suitable Substitute**" means a person, approved in writing by WGH in accordance with Sections 10(b) and 10(c), which:
- (i) has the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the WGH Project Documents; and
  - (ii) employs individuals having the appropriate qualifications, experience and technical competence, and having the resources available to it (including committed financial resources and subcontracts) that are sufficient to enable it to perform the obligations of Project Co under the WGH Project Documents.
- (aaa) "**Termination Date**" has the meaning given in the Project Agreement.
- (bbb) "**Warning Notice**" has the meaning given in the Project Agreement.
- (ccc) "**WGH**" means Woodstock General Hospital Trust.

(ddd) "**WGH Project Documents**" means the Project Agreement and all other documents to which both WGH and Project Co are parties pursuant to the Project Agreement.

(eee) "**Works**" has the meaning given in the Project Agreement.

## 2. INTERPRETATION

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

- (a) The headings in this Lenders' Direct Agreement are for convenience of reference only, shall not constitute a part of this Lenders' Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Lenders' Direct Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Lenders' Direct Agreement and the terms "Section" and "Clause" are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Lenders' Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Lenders' Direct Agreement shall bear their natural meaning.
- (g) References containing terms such as:
  - (i) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Lenders' Direct Agreement taken as a whole; and



- (ii) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".
- (h) In construing this Lenders' Direct Agreement, the rule known as the *ejusdem generis rule* shall not apply nor shall any similar rule or approach to the construction of this Lenders' Direct Agreement and, accordingly, general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Lenders' Direct Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Lenders' Direct Agreement states that an obligation shall be performed "on" a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Woodstock, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms "will" or "shall" are used in this Lenders' Direct Agreement they shall be construed and interpreted as synonymous and to read "shall".

### 3. CONFLICT OF DOCUMENTS

In the event of any ambiguity, conflict or inconsistency between the provisions of this Lenders' Direct Agreement, the Project Agreement and either of the Direct Agreements, the provisions of this Lenders' Direct Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.

### 4. TERM

- (a) This Lenders' Direct Agreement shall terminate automatically on the earliest of:
  - (i) the date on which all amounts which may be or become owing to the Senior Lenders under the Lending Agreements have been irrevocably paid in full;

- (ii) the Termination Date (provided that WGH has complied with its obligations in Section 7 of this Lenders' Direct Agreement); and
  - (iii) the date that any transfer of Project Co's rights and obligations under the WGH Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective and the agreements contemplated in Section 10(e)(iii) are executed and delivered by the parties thereto.
- (b) Within 30 days following its occurrence, the Lenders' Agent shall provide notice to WGH of the date referred to in Section 4(a)(i).

## 5. AGREEMENTS AND SECURITY

- (a) Project Co and the Lenders' Agent shall not amend or modify the Lending Agreements, or any of them, except where Project Co is permitted to do so pursuant to Section 7.3(a) of the Project Agreement.
- (b) Project Co and WGH shall not amend or modify the WGH Project Documents (other than in accordance with the terms of those agreements) without the prior written consent of the Lenders' Agent, not to be unreasonably withheld or delayed, which consent shall not be withheld if the relevant amendment or modification shall not (i) materially adversely affect the ability of the Senior Lenders to exercise their rights under the Security, (ii) materially adversely affect the value of the Security, or (iii) increase the liability of the Senior Lenders or Project Co under the relevant agreement. The Lenders' Agent shall respond to any request for consent under this Section 5(b) within 30 days of receipt thereof.
- (c) Project Co acknowledges and consents to the arrangements set out in this Lenders' Direct Agreement, and agrees not to do or omit to do anything that may prevent any other Party from enforcing its rights under this Lenders' Direct Agreement.
- (d) The Lenders' Agent acknowledges having received a copy of the Project Agreement.
- (e) WGH acknowledges having received copies of the Lending Agreements, and confirms that they are in form and substance satisfactory to WGH as at the date of Financial Close.
- (f) WGH acknowledges notice of and consents to the Security, and confirms that it has not received notice of any other security interest granted over Project Co's rights under any of the WGH Project Documents.
- (g) WGH agrees that any enforcement by the Lenders' Agent of a security interest in the Equity Capital of Project Co in favour of the Lenders' Agent as part of the Security following an Enforcement Event shall not constitute a Change in Ownership, Change in Control or Project Co Event of Default under the Project Agreement.

- (h) Project Co and the Lenders' Agent hereby authorize and instruct WGH (and WGH agrees) to pay all sums payable to Project Co under the Project Agreement to the [NTD: Insert relevant account information], and Project Co and WGH agree that upon the occurrence of an Enforcement Event, if so directed in writing by the Lenders' Agent upon giving reasonable notice, WGH shall pay any sum which it is obliged to pay to Project Co under the Project Agreement to a bank account specified by the Lenders' Agent.
- (i) WGH shall provide the Lenders' Agent with copies of any Warning Notice, Monitoring Notice or notice of default given to Project Co under the Project Agreement at the same time such notice is given to Project Co.
- (j) Prior to the irrevocable payment in full of all amounts owing to the Senior Lenders under the Lending Agreements, WGH shall not take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of Project Co or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to Project Co.

## 6. ENFORCEMENT OF SECURITY BY LENDERS' AGENT

- (a) The Lenders' Agent shall promptly notify WGH of any Enforcement Event, any Enforcement Action, any notice from the Senior Lenders to Project Co to accelerate the maturity of any amounts owing by Project Co to the Senior Lenders under the Lending Agreements or any notice from the Senior Lenders to Project Co to demand repayment of any amounts owing by Project Co to the Senior Lenders under the Lending Agreements.
- (b) The Lenders' Agent may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Security Documents to a successor agent in accordance with the terms of the Lending Agreements except where:
  - (i) such assignment, transfer or other disposition would constitute a Refinancing and the provisions of Schedule 28 - Refinancing to the Project Agreement have not been complied with in connection therewith; or
  - (ii) the person to whom such assignment, transfer or other disposition is to be made, or an Affiliate of such person, is a Restricted Person or a person whose standing or activities are inconsistent with WGH's role as a hospital, or may compromise WGH's reputation or integrity or the nature of the Province's health care system, so as to affect public confidence in that system.
- (c) Any Senior Lender may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Lending Agreements in accordance with the terms of the Lending Agreements.

**7. TERMINATION OF PROJECT AGREEMENT BY WGH**

- (a) Subject only to the rights expressly afforded to the Lenders' Agent pursuant to, and the restrictions set forth in, this Section 7, WGH may, at any time, serve notice terminating the Project Agreement if it is entitled to do so under the terms of the Project Agreement.
- (b) At any time other than during the Step-In Period (with the restriction on termination during the Step-In Period set out in Section 7(d)), WGH shall not exercise any right it may have to terminate or serve notice terminating the Project Agreement for a Project Co Event of Default unless:
  - (i) WGH promptly delivers written notice (a "**Default Notice**") to the Lenders' Agent setting out the Project Co Event of Default in reasonable detail;
  - (ii) not later than 30 days after the date of a Default Notice, WGH delivers written notice (an "**Indebtedness Notice**") to the Lenders' Agent setting out:
    - (A) all amounts owed by Project Co to WGH and any other existing liabilities and unperformed obligations of Project Co to WGH of which WGH is aware (having made reasonable enquiry), in each case, as of the date on which WGH sent the Default Notice; and
    - (B) all amounts which will become owing by Project Co to WGH and any other liabilities and obligations of Project Co to WGH of which WGH is aware (having made reasonable enquiry), in each case, on or before the end of the Notice Period; and
  - (iii) the Notice Period has expired and the Lenders' Agent has not delivered a Step-In Notice.
- (c) At any time after WGH sends an Indebtedness Notice but before WGH receives a Step-In Notice, if WGH discovers amounts that have become owing by Project Co to WGH or any other liabilities or obligations of Project Co to WGH that have come due but which were not included in the Indebtedness Notice, WGH shall deliver written notice (a "**Subsequent Indebtedness Notice**") to the Lenders' Agent setting out those amounts, liabilities or obligations.
- (d) During the Step-In Period, WGH shall not terminate the Project Agreement on grounds:
  - (i) that the Lenders' Agent has served a Step-In Notice or enforced any Security Document; or
  - (ii) arising prior to the Step-In Date of which WGH was aware (having made due inquiry) and whether or not continuing at the Step-In Date unless:

- (A) the grounds arose prior to the Substantial Completion Date, and the Substantial Completion Date does not occur on or before the date falling 180 days after the Longstop Date; or
  - (B) the grounds arose after the Substantial Completion Date, and neither the Appointed Representative nor Project Co, as the case may be, is diligently proceeding to cure any breach of the Project Agreement that:
    - (1) arose prior to the Step-In Date;
    - (2) is continuing and capable of being cured; and
    - (3) would have entitled WGH to terminate the Project Agreement; or
  - (C) the grounds (whenever they first arose) did not give rise to any right to terminate the Project Agreement until after the Step-In Date; or
- (iii) arising solely in relation to Project Co.
- (e) WGH shall be entitled to terminate the Project Agreement by written notice to Project Co and the Appointed Representative:
- (i) if any amount referred to in Section 7(b)(ii)(A) has not been paid to WGH on or before the Step-In Date;
  - (ii) if any amount referred to in Section 7(b)(ii)(B) has not been paid on or before the last day of the Notice Period;
  - (iii) if amounts included in a Subsequent Indebtedness Notice have not been paid on or before the date falling 30 days after the date on which the Subsequent Indebtedness Notice is delivered to the Lenders' Agent; or
  - (iv) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement, provided that, except as otherwise provided in Section 10, Failure Points and/or Warning Notices that arose prior to the Step-In Date shall not be taken into account during the Step-In Period but such Failure Points and Warning Notices (to the extent applicable under the terms of the Project Agreement) shall be taken into account after the Step-Out Date.

## 8. STEP-IN RIGHTS

- (a) Subject to Section 8(b) and without prejudice to rights of the Lenders' Agent to enforce the Security, the Lenders' Agent may give WGH a Step-In Notice at any time:

- (i) during which a Project Co Event of Default is subsisting (whether or not a Default Notice has been served);
  - (ii) during the Notice Period; or
  - (iii) during which an Enforcement Event is subsisting.
- (b) At least 5 Business Days before the Lenders' Agent delivers a Step-In Notice, the Lenders' Agent shall deliver written notice (an "**Appointed Representative Notice**") to WGH of:
- (i) its intention to deliver a Step-In Notice; and
  - (ii) the identity of its proposed Appointed Representative.
- (c) Upon issuance of a Step-In Notice, the Appointed Representative shall assume, jointly with Project Co, all of Project Co's rights under the WGH Project Documents.
- (d) During the Step-In Period, WGH shall deal with the Appointed Representative instead of Project Co in connection with all matters related to the WGH Project Documents. Project Co agrees to be bound by all such dealings between WGH and the Appointed Representative to the same extent as if they had been between WGH and Project Co.

## 9. STEP-OUT RIGHTS

- (a) The Appointed Representative may, at any time during the Step-In Period, deliver written notice (a "**Step-Out Notice**") to WGH to terminate the Step-In Period on the Step-Out Date.
- (b) On expiry of the Step-In Period:
- (i) the rights and obligations of the Appointed Representative in relation to WGH under the WGH Project Documents arising prior to the expiry of the Step-In Period will be assumed by Project Co to the exclusion of the Appointed Representative;
  - (ii) WGH will no longer deal with the Appointed Representative and will deal with Project Co in connection with all matters related to the WGH Project Documents; and
  - (iii) the Appointed Representative and WGH shall be and hereby are released from all obligations and liabilities to one another under the WGH Project Documents.
- (c) There will not be more than one Step-In Period following the issuance by WGH of any one Default Notice.

**10. NOVATION TO SUITABLE SUBSTITUTE**

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

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

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

- (d) If WGH withholds its approval of a proposed transferee as a Suitable Substitute in accordance with Section 10(c), the Lenders' Agent may give one or more subsequent Novation Notices pursuant to the provisions of Section 10(a) containing changed particulars relating to the same proposed transferee or particulars relating to another proposed transferee which the Lenders' Agent has good cause to believe will be acceptable to WGH, acting reasonably, provided that only one Novation Notice may be outstanding at any one time.
- (e) On the Novation Date:
- (i) Project Co and WGH will be released from their obligations under the WGH Project Documents to each other (except for those obligations which survive the termination of the Project Agreement), and the Suitable Substitute and WGH will assume all existing and future obligations towards each other as Project Co and WGH respectively, under the WGH Project Documents;
  - (ii) each of the rights of Project Co against WGH under the WGH Project Documents and the rights of WGH against Project Co under the WGH Project Documents will be cancelled (except for those rights which survive the termination of the Project Agreement), and the Suitable Substitute and WGH will acquire all existing and future rights against each other as Project Co and WGH respectively, under the WGH Project Documents;
  - (iii) the Parties will enter into, and the Lenders' Agent shall cause the Suitable Substitute and the Lender Representative to enter into, all such agreements or other documents as are reasonably necessary to give effect to the foregoing, including:
    - (A) an agreement between WGH and the Suitable Substitute, on substantially the same terms as the Project Agreement; and
    - (B) an agreement among WGH, the Suitable Substitute and the Lender Representative on substantially the same terms as this Lenders' Direct Agreement;
  - (iv) any Failure Points and Warning Notices that arose prior to the Novation Date shall be cancelled, provided that, where WGH was entitled to make Deductions under Schedule 20 - Payment Mechanism arising from such Failure Points and Warning Notices and those Deductions have not yet been made against any payments to Project Co preceding the Novation Date, those outstanding Deductions shall still apply; and
  - (v) any subsisting ground for termination by WGH of the Project Agreement will be deemed to have no effect and any subsisting Default Notice will be automatically revoked.



## 11. TRANSFERS

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

## 12. DIRECT AGREEMENTS

- (a) Notwithstanding any provision in the Direct Agreements, WGH hereby undertakes that it will not exercise any rights it may have under or arising out of any of the Direct Agreements, except as provided in Sections 12(b) to (f) inclusive.
- (b) Following termination of the Project Agreement (other than as a result of a novation pursuant to this Lenders' Direct Agreement) in accordance with this Lenders' Direct Agreement, WGH shall from such date (the "**Exercise Date**") be entitled to exercise its rights under the Direct Agreements to step in to and/or novate the Construction Contract and/or the Service Contract in accordance with the Direct Agreements.
- (c) Following the Exercise Date, WGH shall not do anything to prejudice the rights which are not transferred to it pursuant to the Direct Agreements.
- (d) Where all amounts which may be or become owing by Project Co to the Senior Lenders under the Lending Agreements have been irrevocably paid in full, the Lenders' Agent shall promptly release and discharge all Security in respect of any Construction Contract or Service Contract assumed or novated by WGH pursuant to a Direct Agreement.
- (e) Notwithstanding the terms of the Direct Agreements and any other provisions of this Section 12, each of the Construction Contractor and the Service Provider (and any guarantors thereof) shall remain responsible, and be liable, to Project Co in respect of all costs, claims, damages, losses and liabilities which shall have arisen out of or in connection with the Construction Contract and/or the Service Contract in respect of the period prior to the Exercise Date.
- (f) Without prejudice to Sections 12(a) to (e) inclusive, WGH shall not, prior to the date on which this Lenders' Direct Agreement terminates:
  - (i) claim, recover, retain or receive (or seek to claim, recover, retain or receive) any amount under the Direct Agreements (and/or the Construction Contract and/or the Service Contract) from the Construction Contractor or the Service Provider;

- (ii) take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of the Construction Contractor and/or the Service Provider or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to the Construction Contractor and/or the Service Provider; or
- (iii) compete with the rights of the Lenders' Agent on a winding-up or other insolvency or bankruptcy of the Construction Contractor or the Service Provider nor claim to be subrogated to any rights of the Lenders' Agent or any Lender.

WGH agrees and undertakes that if it receives any amount in contravention of the provisions of this Section 12(f), it will immediately turn the same over to the Lenders' Agent for the account of the Lenders' Agent and the Lenders and, pending such payment, hold the same in trust for the Lenders' Agent and the Lenders.

### 13. ASSIGNMENT

- (a) No Party to this Lenders' Direct Agreement may assign, transfer or otherwise dispose of any part of its rights or obligations under this Lenders' Direct Agreement save as provided in this Section 13.
- (b) Project Co may assign, transfer or otherwise dispose of the benefit of this Lenders' Direct Agreement to any person to whom Project Co assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 58.1 of the Project Agreement and the provisions of the Lending Agreements, and shall provide written notice to WGH and the Lenders' Agent of such assignment, transfer or other disposition. Such assignee, as a condition precedent to any such assignment, transfer or other disposition, shall assume the obligations and acquire the rights of Project Co under this Lenders' Direct Agreement pursuant to an assumption agreement with, and in form and substance satisfactory to, WGH and the Lenders' Agent, each acting reasonably. WGH and the Lenders' Agent shall, at Project Co's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.
- (c) WGH may assign, transfer or otherwise dispose of the benefit of this Lenders' Direct Agreement to any person to whom WGH assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 58.2 of the Project Agreement, and shall provide written notice to Project Co and the Lenders' Agent of such assignment, transfer or other disposition. Such assignee, as a condition precedent to any such assignment, transfer or other disposition, shall assume the obligations and acquire the rights of WGH under this Lenders' Direct Agreement pursuant to an assumption agreement with, and in form and substance satisfactory to, Project Co and the Lenders' Agent, each acting reasonably. Project Co and the Lenders' Agent shall, at WGH's cost and expense,

do all things and execute all further documents as may be necessary in connection therewith.

- (d) The Lenders' Agent may only assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement as permitted by the Lending Agreements and shall provide written notice to Project Co and WGH of such assignment, transfer or other disposition; provided, however, notwithstanding any provision of the Lending Agreements, the Lenders' Agent may not assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement to a Restricted Person. The Lenders' Agent, as a condition precedent to any such assignment, transfer or other disposition, shall cause the assignee to enter into a new agreement with Project Co and WGH on substantially the same terms as this Lenders' Direct Agreement and Project Co and WGH shall enter into such new agreement with the assignee. Project Co and WGH shall, at the Lenders' Agent's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

#### 14. NOTICES

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Lenders' Direct Agreement shall be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable provision of this Lenders' Direct Agreement) and served by sending the same by registered mail or by hand, as follows:

If to WGH: 270 Riddell Street  
Woodstock, Ontario  
N4S 6N6  
  
Attn.: President and Chief Executive Officer

If to the Lenders' Agent: 207 Queen's Quay West  
Suite 700  
Toronto, Ontario  
M5J 1A7  
  
Attn.: Chief Operating Officer

If to Project Co: 5000 Yonge Street, Suite 1805  
Toronto, Ontario  
M2N 7E9  
  
Attn.: [REDACTED]

- (b) Any Party to this Lenders' Direct Agreement may, from time to time, change any of its contact information set forth in Section 14(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows

the recipient Party's receipt of such notice unless a later effective date is given in such notice.

- (c) Subject to Sections 14(d) and 14(e):
  - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing; and
  - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered.
- (d) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made by personal delivery in accordance with this Section 14.
- (e) If any notice delivered by hand is so delivered either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next following Business Day.

## **15. AMENDMENTS**

This Lenders' Direct Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Lenders' Direct Agreement.

## **16. WAIVER**

- (a) No waiver made or given by a Party under or in connection with this Lenders' Direct Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

## **17. RELATIONSHIP BETWEEN THE PARTIES**

The Parties are independent contractors. This Lenders' Direct Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint

venturers, employer and employee, master and servant, or, except as provided in this Lenders' Direct Agreement, of principal and agent.

**18. ENTIRE AGREEMENT**

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

**19. SEVERABILITY**

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

**20. ENUREMENT**

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

**21. GOVERNING LAW AND JURISDICTION**

- (a) This Lenders' Direct Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Lenders' Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

**22. DISPUTE RESOLUTION PROCEDURE**

The Parties agree that the dispute resolution procedure provided for in Schedule 27 - Dispute Resolution Procedure to the Project Agreement shall not apply to any dispute under this Lenders' Direct Agreement.

**23. FURTHER ASSURANCE**

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Lenders' Direct Agreement.

**24. LANGUAGE OF AGREEMENT**

Each Party acknowledges having requested and being satisfied that this Lenders' Direct Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.

**25. COUNTERPARTS**

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

**26. CONFIDENTIALITY**

The Lenders' Agent agrees to comply with the obligations imposed on Project Co by the provisions of Section 51 of the Project Agreement, *mutatis mutandis*, provided that the Lenders' Agent will be permitted to disclose to any relevant regulatory authority only such Confidential Information as is necessary for the Lenders' Agent to comply with Applicable Law.

**IN WITNESS WHEREOF** the Parties have executed this Lenders' Direct Agreement as of the date first above written.

**WOODSTOCK GENERAL HOSPITAL TRUST**

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: President and Chief Executive Officer

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: Chair of the Board

I/We have authority to bind the corporation.

**CIT FINANCIAL LTD.**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

**INTEGRATED TEAM SOLUTIONS  
WGH PARTNERSHIP**, by its partners,

**LED (ITS) WGH INC.**

Per: \_\_\_\_\_

Name:

Title:

**LED (ITS) WGH GENERAL PARTNER  
INC.**, in its capacity as general partner of  
**LED (ITS) WGH LIMITED  
PARTNERSHIP**

Per: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the partnership.



**SCHEDULE 5-1**

**CONSTRUCTION CONTRACTOR'S DIRECT AGREEMENT**

**THIS AGREEMENT** is made as of the • day of •, 2008

**BETWEEN:**

**WOODSTOCK GENERAL HOSPITAL TRUST**, a non-share capital corporation incorporated under the laws of Ontario

("WGH")

**AND:**

**INTEGRATED TEAM SOLUTIONS WGH PARTNERSHIP**, a partnership formed under the laws of Manitoba

("Project Co")

**AND:**

**ELLISDON CORPORTION**, a corporation incorporated under the laws of Ontario

(the "**Construction Contractor**")

**AND:**

[REDACTED]

**WHEREAS:**

- A. WGH and Project Co have entered into the Project Agreement, which requires Project Co to enter into, and to cause the Construction Contractor and the [REDACTED] to enter into, this Construction Contractor's Direct Agreement with WGH.
- B. Project Co and the Construction Contractor have entered into the Construction Contract, which requires the Construction Contractor and the [REDACTED] to enter into this Construction Contractor's Direct Agreement with WGH.

**NOW THEREFORE** in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

## 1. Definitions

In this Construction Contractor's Direct Agreement, unless the context otherwise requires:

- (a) "**Approved Purposes**" has the meaning given in the Project Agreement.
- (b) "**Business Day**" has the meaning given in the Project Agreement.
- (c) "**Construction Contract**" has the meaning given in the Project Agreement.
- (d) "**Construction Contractor**" means EllisDon Corporation.
- (e) [REDACTED]
- (f) "**Default Notice**" has the meaning given in Section 5(a).
- (g) "**Governmental Authority**" has the meaning given in the Project Agreement.
- (h) "**Lenders**" has the meaning given in the Project Agreement.
- (i) "**Lenders' Direct Agreement**" has the meaning given in the Project Agreement.
- (j) "**Party**" means WGH, the Construction Contractor, the [REDACTED] or Project Co and "**Parties**" means WGH, the Construction Contractor, the [REDACTED] and Project Co.
- (k) "**Project**" has the meaning given in the Project Agreement.
- (l) "**Project Agreement**" means the project agreement made on or about [●], 2008 between WGH and Project Co.
- (m) "**Project Co**" means Integrated Team Solutions WGH Partnership.
- (n) "**Restricted Person**" has the meaning given in the Project Agreement.
- (o) "**Step-In Notice**" has the meaning given in Section 6(a).
- (p) "**Subcontractors**" has the meaning given in the Project Agreement.
- (q) "**Substitute**" has the meaning given in Section 6(a).
- (r) "**Variation**" has the meaning given in the Project Agreement.
- (s) "**WGH**" means Woodstock General Hospital Trust.
- (t) "**Works**" has the meaning given in the Project Agreement.

## 2. Interpretation

This Construction Contractor's Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Construction Contractor's Direct Agreement are for convenience of reference only, shall not constitute a part of this Construction Contractor's Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Construction Contractor's Direct Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Construction Contractor's Direct Agreement and the terms "Section" and "Clause" are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Construction Contractor's Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Construction Contractor's Direct Agreement shall bear their natural meaning.
- (g) References containing terms such as:
  - (i) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Construction Contractor's Direct Agreement taken as a whole; and
  - (ii) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be

without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".

- (h) In construing this Construction Contractor's Direct Agreement, the rule known as the *ejusdem generis rule* shall not apply nor shall any similar rule or approach to the construction of this Construction Contractor's Direct Agreement and, accordingly, general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Construction Contractor's Direct Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Construction Contractor's Direct Agreement states that an obligation shall be performed "on" a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Woodstock, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms "will" or "shall" are used in this Construction Contractor's Direct Agreement they shall be construed and interpreted as synonymous and to read "shall".

### **3. Conflict in Documents**

- (a) In the event of ambiguities, conflicts or inconsistencies between or among this Construction Contractor's Direct Agreement, the Project Agreement and the Construction Contract, this Construction Contractor's Direct Agreement shall prevail.
- (b) In the event of ambiguities, conflicts or inconsistencies between or among this Construction Contractor's Direct Agreement and the Lenders' Direct Agreement, the Lenders' Direct Agreement shall prevail.

### **4. Agreements**

- (a) Project Co and the Construction Contractor shall not amend, modify, or depart from the terms of the Construction Contract without the prior written consent of WGH, acting reasonably, which consent shall not be withheld or delayed where

such amendment, modification or departure does not materially and adversely affect the ability of Project Co to perform its obligations under this Construction Contractor's Direct Agreement and does not have the effect of increasing any liability of WGH, whether actual or potential. Project Co and the Construction Contractor shall provide to WGH a written copy of all such amendments, modifications or departures. The Parties acknowledge and agree that this Section 4(a) shall not apply to Variations provided for under the Project Agreement.

- (b) Each of the Parties acknowledges having received a copy of the Project Agreement and the Construction Contract.
- (c) If the Construction Contractor gives Project Co any notice of any default(s) under the Construction Contract that may give the Construction Contractor a right to terminate the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder, then the Construction Contractor shall concurrently provide WGH with a copy of such notice and set out in reasonable detail the default(s).

#### **5. No Termination by Construction Contractor without Default Notice**

The Construction Contractor shall not exercise any right it may have to terminate the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder unless:

- (a) the Construction Contractor first delivers a written notice (a "**Default Notice**") to WGH setting out in reasonable detail the default(s) on which the Construction Contractor intends to rely in terminating the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder; and
- (b) within a period of 5 Business Days of WGH receiving the Default Notice:
  - (i) the default(s) on which the Construction Contractor intends to rely in terminating the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder have not been remedied; and
  - (ii) the Construction Contractor has not received a Step-In Notice from WGH,

provided that if, within such period of 5 Business Days, WGH agrees to pay the Construction Contractor's reasonable costs of continued performance, such period of 5 Business Days shall be extended to 45 days.

## 6. Step-In Rights

- (a) WGH may at any time:
  - (i) within 5 Business Days or, if such period has been extended in accordance with Section 5, 45 days of WGH receiving a Default Notice; or
  - (ii) if WGH has not received a Default Notice and if WGH's right to terminate the Project Agreement has arisen and is continuing,

deliver a notice (a "**Step-In Notice**") electing to replace Project Co under the Construction Contract either with WGH or a third party designated by WGH in the Step-In Notice (the "**Substitute**"), provided that WGH can demonstrate to the Construction Contractor, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the Construction Contract.

- (b) Subject to Section 6(d), upon receipt by the Construction Contractor of a Step-In Notice:
  - (i) Project Co and the Construction Contractor will be deemed to be released from their existing and future obligations under the Construction Contract to each other (except with respect to any and all indemnities from Project Co or the Construction Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and WGH or the Substitute, as applicable, and the Construction Contractor will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);
  - (ii) the existing and future rights of Project Co against the Construction Contractor under the Construction Contract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from Project Co or the Construction Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and WGH or the Substitute, as applicable, and the Construction Contractor will be deemed to acquire those same existing and future rights against each other (except in respect of the aforesaid indemnities), subject to any applicable credit from the Construction Contractor to WGH if WGH pays for the Construction Contractor's reasonable costs of continued performance pursuant to Section 5;
  - (iii) any guarantee, bond or covenant in favour of Project Co from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of the Construction Contractor to be performed, observed or carried out by the Construction Contractor as contained in, referred to, or inferred from the Construction Contract shall be assigned, novated or granted, as required by WGH or the Substitute, as applicable, each acting reasonably, to WGH or the Substitute, as applicable, and the

Construction Contractor shall cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond or covenant, provided however that where Project Co shall continue to hold, or shall continue to be entitled to or have rights under, such guarantee, bond or covenant as security for any obligations of the Construction Contractor, the assignment, novation or grant of the guarantee, bond or covenant to the extent of any such obligations to Project Co shall be conditional on the satisfaction of those obligations to Project Co; and

- (iv) at WGH's request, the Construction Contractor shall enter into, and shall cause the [REDACTED] and any other [REDACTED], covenantor or surety under any guarantee, bond or covenant referred to in Section 6(b)(iii) to enter into, and WGH shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including, without limitation, an agreement between WGH or the Substitute, as applicable, and the Construction Contractor, acceptable to WGH and the Construction Contractor, each acting reasonably, on substantially the same terms as the Construction Contract.
- (c) Subject to Section 6(d), Project Co shall, at its own cost, cooperate fully with WGH and the Substitute in order to achieve a smooth transfer of the Construction Contract to WGH or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Construction Contract, ongoing supervisory activities and scheduling.
- (d) The rights granted by Sections 6(b) and (c) shall be of no force or effect if, at any time the Construction Contractor receives a Step-In Notice, the Construction Contractor has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the Construction Contract that it is or has validly exercised those step-in rights. If the Construction Contractor receives any such notice on the same day as a Step-In Notice, the Step-In Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Step-In Notice shall be effective.
- (e) If WGH gives a Step-In Notice within the time provided hereunder at any time after the Construction Contractor has terminated the Construction Contract or treated it as having been repudiated by Project Co or discontinued the Construction Contractor's performance thereunder in accordance with the terms of this Construction Contractor's Direct Agreement, the Construction Contractor agrees that the Construction Contract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and WGH shall pay the Construction Contractor's reasonable costs for re-commencing the obligations it has under the Construction Contract and the Construction Contractor shall be entitled to reasonable compensation and/or relief for re-commencing such obligations, having regard to the additional costs and delays

incurred as a result of having terminated the Construction Contract or having treated it as being repudiated by Project Co or having discontinued its performance thereunder.

## **7. Construction Contractor Liability**

- (a) The liability of the Construction Contractor hereunder shall not be modified, released, diminished or in any way affected by:
  - (i) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or for WGH, or by any failure or omission to carry out any such inspection, investigation or enquiry; or
  - (ii) the appointment by WGH of any other person to review the progress of or otherwise report to WGH in respect of the Project, or by any action or omission of such person whether or not such action or omission might give rise to any independent liability of such person to WGH,

provided always that nothing in this Section 7 shall modify or affect any rights which the Construction Contractor might have otherwise had to claim contribution from any other person whether under statute or common law.

- (b) In the event WGH delivers a Step-In Notice, the Construction Contractor shall have no greater liability to WGH or any Substitute than it would have had to Project Co under the Construction Contract, and the Construction Contractor shall be entitled in any proceedings by WGH or any Substitute to rely on any liability limitations in the Construction Contract.

## **8. Project Co as Party**

Project Co acknowledges and agrees that the Construction Contractor shall not be in breach of the Construction Contract by complying with its obligations hereunder.

## **9. [REDACTED]**

## **10. Assignment**

- (a) Project Co shall not, without the prior written consent of WGH, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Construction Contractor's Direct Agreement except to the extent entitled to do so under the Project Agreement.
- (b) WGH may assign or otherwise dispose of the benefit of the whole or part of this Construction Contractor's Direct Agreement to any person to whom WGH may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 58.2 of the Project Agreement but only in conjunction therewith, and shall provide written notice to Project Co and the Construction Contractor of such assignment or disposition.





If to the [REDACTED]: [REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 11(b).
- (c) Any Party to this Construction Contractor's Direct Agreement may, from time to time, change any of its contact information set forth in Section 11(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 11(e), 11(f) and 11(g):
  - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 11.
- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

## 12. Amendments

This Construction Contractor's Direct Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an

amendment, restatement or other modification, as the case may be, to this Construction Contractor's Direct Agreement.

### **13. Waiver**

- (a) No waiver made or given by a Party under or in connection with this Construction Contractor's Direct Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

### **14. Relationship Between the Parties**

The Parties are independent contractors. This Construction Contractor's Direct Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Construction Contractor's Direct Agreement, of principal and agent.

### **15. Entire Agreement**

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

### **16. Severability**

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

**17. Enurement**

This Construction Contractor's Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

**18. Governing Law and Jurisdiction**

- (a) This Construction Contractor's Direct Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Construction Contractor's Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

**19. Further Assurance**

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Construction Contractor's Direct Agreement.

**20. Language of Agreement**

Each Party acknowledges having requested and being satisfied that this Construction Contractor's Direct Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.

**21. Counterparts**

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

IN WITNESS WHEREOF the Parties have executed this Construction Contractor's Direct Agreement as of the date first above written.

**WOODSTOCK GENERAL HOSPITAL TRUST**

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: President and Chief Executive Officer

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: Chair of the Board

I/We have authority to bind the corporation.

**INTEGRATED TEAM SOLUTIONS WGH PARTNERSHIP, by its partners,**

**LED (ITS) WGH INC.**

Per: \_\_\_\_\_  
Name:  
Title:

**LED (ITS) WGH GENERAL PARTNER INC., in its capacity as general partner of LED (ITS) WGH LIMITED PARTNERSHIP**

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the partnership.

**ELLISDON CORPORATION**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

**[REDACTED]**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

**SCHEDULE 5-2**

**SERVICE PROVIDER'S DIRECT AGREEMENT**

**THIS AGREEMENT** is made as of the • day of •, 2008

**BETWEEN:**

**WOODSTOCK GENERAL HOSPITAL TRUST**, a non-share capital corporation incorporated under the laws of Ontario

("WGH")

**AND:**

**INTEGRATED TEAM SOLUTIONS WGH PARTNERSHP**, a partnership formed under the laws of Manitoba

("Project Co")

**AND:**

**HONEYWELL LIMITED**, a corporation incorporated under the laws of Canada

(the "Service Provider")

**AND:**

[REDACTED]

**WHEREAS:**

- A. WGH and Project Co have entered into the Project Agreement, which requires Project Co to enter into, and to cause the Service Provider and the [REDACTED] to enter into, this Service Provider's Direct Agreement with WGH.
- B. Project Co and the Service Provider have entered into the Service Contract, which requires the Service Provider and the [REDACTED] to enter into this Service Provider's Direct Agreement with WGH.

**NOW THEREFORE** in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

**1. Definitions**

In this Service Provider's Direct Agreement, unless the context otherwise requires:

- (a) "**Approved Purposes**" has the meaning given in the Project Agreement.
- (b) "**Business Day**" has the meaning given in the Project Agreement.
- (c) "**Default Notice**" has the meaning given in Section 5(a).
- (d) "**Governmental Authority**" has the meaning given in the Project Agreement.
- (e) "**Lenders**" has the meaning given in the Project Agreement.
- (f) "**Lenders' Direct Agreement**" has the meaning given in the Project Agreement.
- (g) "**Party**" means WGH, the Service Provider, the [REDACTED] or Project Co and "**Parties**" means WGH, the Service Provider, the [REDACTED] and Project Co.
- (h) "**Project**" has the meaning given in the Project Agreement.
- (i) "**Project Agreement**" means the project agreement made on or about [●], 2008 between WGH and Project Co.
- (j) "**Project Co**" means Integrated Team Solutions WGH Partnership.
- (k) "**Project Co Services**" has the meaning given in the Project Agreement.
- (l) "**Restricted Person**" has the meaning given in the Project Agreement.
- (m) "**Service Contract**" has the meaning given in the Project Agreement.
- (n) [REDACTED]
- (o) "**Service Provider**" means Honeywell Limited.
- (p) "**Step-In Notice**" has the meaning given in Section 6(a).
- (q) "**Subcontractors**" has the meaning given in the Project Agreement.
- (r) "**Substitute**" has the meaning given in Section 6(a).
- (s) "**Variation**" has the meaning given in the Project Agreement.
- (t) "**WGH**" means Woodstock General Hospital Trust.



## 2. Interpretation

This Service Provider's Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Service Provider's Direct Agreement are for convenience of reference only, shall not constitute a part of this Service Provider's Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Service Provider's Direct Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Service Provider's Direct Agreement and the terms "Section" and "Clause" are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Service Provider's Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Service Provider's Direct Agreement shall bear their natural meaning.
- (g) References containing terms such as:
  - (i) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Service Provider's Direct Agreement taken as a whole; and
  - (ii) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".

- (h) In construing this Service Provider's Direct Agreement, the rule known as the *ejusdem generis rule* shall not apply nor shall any similar rule or approach to the construction of this Service Provider's Direct Agreement and, accordingly, general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Service Provider's Direct Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Service Provider's Direct Agreement states that an obligation shall be performed "on" a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Woodstock, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms "will" or "shall" are used in this Service Provider's Direct Agreement they shall be construed and interpreted as synonymous and to read "shall".

### **3. Conflict in Documents**

- (a) In the event of ambiguities, conflicts or inconsistencies between or among this Service Provider's Direct Agreement, the Project Agreement and the Service Contract, this Service Provider's Direct Agreement shall prevail.
- (b) In the event of ambiguities, conflicts or inconsistencies between or among this Service Provider's Direct Agreement and the Lenders' Direct Agreement, the Lenders' Direct Agreement shall prevail.

### **4. Agreements**

- (a) Project Co and the Service Provider shall not amend, modify, or depart from the terms of the Service Contract without the prior written consent of WGH, acting reasonably, which consent shall not be withheld or delayed where such amendment, modification or departure does not materially and adversely affect the ability of Project Co to perform its obligations under this Service Provider's Direct Agreement and does not have the effect of increasing any liability of WGH, whether actual or potential. Project Co and the Service Provider shall

provide to WGH a written copy of all such amendments, modifications or departures. The Parties acknowledge and agree that this Section 4(a) shall not apply to Variations provided for under the Project Agreement.

- (b) Each of the Parties acknowledges having received a copy of the Project Agreement and the Service Contract.
- (c) If the Service Provider gives Project Co any notice of any default(s) under the Service Contract that may give the Service Provider a right to terminate the Service Contract or to treat it as having been repudiated by Project Co or to discontinue the Service Provider's performance thereunder, then the Service Provider shall concurrently provide WGH with a copy of such notice and set out in reasonable detail the default(s).

## 5. No Termination by Service Provider without Default Notice

The Service Provider shall not exercise any right it may have to terminate the Service Contract or to treat it as having been repudiated by Project Co or to discontinue the Service Provider's performance thereunder unless:

- (a) the Service Provider first delivers a written notice (a "**Default Notice**") to WGH setting out in reasonable detail the default(s) on which the Service Provider intends to rely in terminating the Service Contract or to treat it as having been repudiated by Project Co or to discontinue the Service Provider's performance thereunder; and
- (b) within the period ending 30 days after the Service Provider notifies WGH of the expiry of any relevant period for the exercise of step-in or similar rights by the Lenders, or, if the Lenders have no such step-in or similar rights, then 30 days after the later of WGH receiving Default Notice or the expiry of the applicable cure period under the Service Contract:
  - (i) the default(s) on which the Service Provider intends to rely in terminating the Service Contract or to treat it as having been repudiated by Project Co or to discontinue the Service Provider's performance thereunder have not been remedied; and
  - (ii) the Service Provider has not received a Step-In Notice from WGH,

provided that, until such time as WGH gives the Service Provider a notice that WGH will not be exercising its step-in rights, WGH shall pay the Service Provider's reasonable costs of continued performance.

## 6. Step-In Rights

- (a) WGH may at any time:
  - (i) within the period referred to in Section 5(b); or

- (ii) if WGH has not received a Default Notice and if WGH's right to terminate the Project Agreement has arisen and is continuing,

deliver a notice (a "**Step-In Notice**") electing to replace Project Co under the Service Contract either with WGH or a third party designated by WGH in the Step-In Notice (the "**Substitute**"), provided that WGH can demonstrate to the Service Provider, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the Service Contract.

- (b) Subject to Section 6(d), upon receipt by the Service Provider of a Step-In Notice:
  - (i) Project Co and the Service Provider will be deemed to be released from their existing and future obligations under the Service Contract to each other (except with respect to any and all indemnities from Project Co or the Service Provider to the other in respect of the period prior to the receipt of the Step-In Notice), and WGH or the Substitute, as applicable, and the Service Provider will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);
  - (ii) the existing and future rights of Project Co against the Service Provider under the Service Contract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from Project Co or the Service Provider to the other in respect of the period prior to the receipt of the Step-In Notice), and WGH or the Substitute, as applicable, and the Service Provider will be deemed to acquire those same existing and future rights against each other (except in respect of the aforesaid indemnities), subject to any applicable credit from the Service Provider to WGH if WGH pays for the Service Provider's reasonable costs of continued performance pursuant to Section 5;
  - (iii) any guarantee, bond or covenant in favour of Project Co from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of the Service Provider to be performed, observed or carried out by the Service Provider as contained in, referred to, or inferred from the Service Contract shall be assigned, novated or granted, as required by WGH or the Substitute, as applicable, each acting reasonably, to WGH or the Substitute, as applicable, and the Service Provider shall cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond or covenant, provided however that where Project Co shall continue to hold, or shall continue to be entitled to have rights under, such guarantee, bond or covenant as security for any obligations of the Service Provider, the assignment, novation or grant of the guarantee, bond or covenant to the extent of any such obligations to Project Co shall be conditional on the satisfaction of those obligations to Project Co; and

- (iv) at WGH's request, the Service Provider shall enter into, and shall cause the [REDACTED] and any other [REDACTED], covenantor or surety under any guarantee, bond or covenant referred to in Section 6(b)(iii) to enter into, and WGH shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including, without limitation, an agreement between WGH or the Substitute, as applicable, and the Service Provider, acceptable to WGH and the Service Provider, each acting reasonably, on substantially the same terms as the Service Contract.
- (c) Subject to Section 6(d), Project Co shall, at its own cost, cooperate fully with WGH and the Substitute in order to achieve a smooth transfer of the Service Contract to WGH or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Service Contract, ongoing supervisory activities and scheduling.
- (d) The rights granted by Sections 6(b) and (c) shall be of no force or effect if, at any time the Service Provider receives a Step-In Notice, the Service Provider has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the Service Contract that it is or has validly exercised those step-in rights. If the Service Provider receives any such notice on the same day as a Step-In Notice, the Step-In Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Step-In Notice shall be effective.
- (e) If WGH gives a Step-In Notice within the time provided hereunder at any time after the Service Provider has terminated the Service Contract or treated it as having been repudiated by Project Co or discontinued the Service Provider's performance thereunder in accordance with the terms of this Service Provider's Direct Agreement, the Service Provider agrees that the Service Contract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and WGH shall pay the Service Provider's reasonable costs for re-commencing the obligations it has under the Service Contract and the Service Provider shall be entitled to reasonable compensation and/or relief for re-commencing such obligations, having regard to the additional costs and delays incurred as a result of having terminated the Service Contract or having treated it as being repudiated by Project Co or having discontinued its performance thereunder.

## **7. Service Provider Liability**

- (a) The liability of the Service Provider hereunder shall not be modified, released, diminished or in any way affected by:
  - (i) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or for WGH, or by any failure or omission to carry out any such inspection, investigation or enquiry;

- (ii) the appointment by WGH of any other person to review the progress of or otherwise report to WGH in respect of the Project, or by any action or omission of such person whether or not such action or omission might give rise to any independent liability of such person to WGH,

provided always that nothing in this Section 7 shall modify or affect any rights which the Service Provider might have otherwise had to claim contribution from any other person whether under statute or common law.

- (b) In the event WGH delivers a Step-In Notice, the Service Provider shall have no greater liability to WGH or any Substitute than it would have had to Project Co under the Service Contract, and the Service Provider shall be entitled in any proceedings by WGH or any Substitute to rely on any liability limitations in the Service Contract.

## **8. Project Co as Party**

Project Co acknowledges and agrees that the Service Provider shall not be in breach of the Service Contract by complying with its obligations hereunder.

## **9. [REDACTED]**

## **10. Assignment**

- (a) Project Co shall not, without the prior written consent of WGH, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Service Provider's Direct Agreement except to the extent entitled to do so under the Project Agreement.
- (b) WGH may assign or otherwise dispose of the benefit of the whole or part of this Service Provider's Direct Agreement to any person to whom WGH may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 58.2 of the Project Agreement but only in conjunction therewith, and shall provide written notice to Project Co and the Service Provider of such assignment or disposition.
- (c) The Service Provider shall not, without the prior written consent of WGH and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Service Provider's Direct Agreement, except as may be permitted under the Service Contract, provided that notwithstanding any provision of the Service Contract, the Service Provider may not assign, transfer, subcontract, subparticipate or otherwise dispose of any interest in this Service Providers' Direct Agreement to a Restricted Person.

## **11. Notices**

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Service Provider's Direct

Agreement shall be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable provision of this Service Provider's Direct Agreement) and served by sending the same by registered mail, facsimile or by hand, as follows:

If to WGH: 270 Riddell Street  
Woodstock, Ontario  
N4S 6N6  
  
Fax No.: [REDACTED]  
  
Attn.: President and Chief Executive Officer

If to Project Co: 5000 Yonge Street, Suite 1805  
Toronto, Ontario  
M2N 7E9  
  
Fax No.: [REDACTED]  
  
Attn.: [REDACTED]

If to the Service Provider: Honeywell Limited  
85 Enterprise Boulevard  
Suite 100  
Markham, Ontario  
L6G 0B5  
  
Fax No.: [REDACTED]  
  
Attn.: [REDACTED]

If to the [REDACTED]: [REDACTED]  
  
Fax No.: [REDACTED]  
  
Attn.: [REDACTED]

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 11(b).
- (c) Any Party to this Service Provider's Direct Agreement may, from time to time, change any of its contact information set forth in Section 11(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.

- (d) Subject to Sections 11(e), 11(f) and 11(g):
  - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 11.
- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

## 12. Amendments

This Service Provider's Direct Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Service Provider's Direct Agreement.

## 13. Waiver

- (a) No waiver made or given by a Party under or in connection with this Service Provider's Direct Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.



**14. Relationship Between the Parties**

The Parties are independent contractors. This Service Provider's Direct Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Service Provider's Direct Agreement, of principal and agent.

**15. Entire Agreement**

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

**16. Severability**

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

**17. Enurement**

This Service Provider's Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

**18. Governing Law and Jurisdiction**

- (a) This Service Provider's Direct Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Service Provider's Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

**19. Further Assurance**

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Service Provider's Direct Agreement.

**20. Language of Agreement**

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

**21. Counterparts**

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

**IN WITNESS WHEREOF** the Parties have executed this Service Provider's Direct Agreement as of the date first above written.

**WOODSTOCK GENERAL HOSPITAL  
TRUST**

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: President and Chief Executive Officer

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: Chair of the Board

I/We have authority to bind the corporation.

**INTEGRATED TEAM SOLUTIONS  
WGH PARTNERSHIP**, by its partners,

**LED (ITS) WGH INC.**

Per: \_\_\_\_\_  
Name:  
Title:

**LED (ITS) WGH GENERAL PARTNER  
INC.**, in its capacity as general partner of  
**LED (ITS) WGH LIMITED  
PARTNERSHIP**

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the partnership.

**HONEYWELL LIMITED**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

[REDACTED]

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the corporation.

**SCHEDULE 6**

**INDEPENDENT CERTIFIER AGREEMENT**

**THIS AGREEMENT** is made as of the • day of •, 2008

**BETWEEN:**

**WOODSTOCK GENERAL HOSPITAL TRUST**, a non-share corporation  
incorporated under the laws of Ontario

("WGH")

**AND:**

**INTEGRATED TEAM SOLUTIONS WGH PARTNERSHIP**, a partnership  
formed under the laws of Manitoba

("Project Co")

**AND:**

[•], a corporation incorporated under the laws of [Ontario]

(the "**Independent Certifier**")

**WHEREAS:**

- A. WGH and Project Co (collectively, the "**PA Parties**" and each, a "**PA Party**") have entered into the Project Agreement.
- B. Pursuant to the terms of the Project Agreement, the PA Parties wish to appoint the Independent Certifier, and the Independent Certifier wishes to accept such appointment, to perform certain services in connection with the Project Agreement.
- C. The PA Parties and the Independent Certifier wish to enter into this Independent Certifier Agreement in order to record the terms by which the Independent Certifier shall perform such services.

**NOW THEREFORE** in consideration of the mutual covenants and agreements of the PA Parties and the Independent Certifier herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the PA Parties and the Independent Certifier covenant and agree as follows:

## 1. DEFINITIONS

### 1.1 Definitions

- (a) In this Independent Certifier Agreement, including the recitals and appendices, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Independent Certifier Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:
- (i) "**Certification Services**" means:
    - (A) all of the functions and obligations described in the Project Agreement as being the responsibility of the Independent Certifier;
    - (B) all of the functions and obligations conferred on the Independent Certifier under this Independent Certifier Agreement, including the functions described in Appendix A to this Independent Certifier Agreement; and
    - (C) all other things or tasks which the Independent Certifier must do to comply with its obligations under this Independent Certifier Agreement.
  - (ii) "**Certification Services Variation**" is any change to the Certification Services.
  - (iii) "**Contract Material**" means all material:
    - (A) provided to the Independent Certifier or created or required to be created by either PA Party; and
    - (B) provided by or created or required to be created by the Independent Certifier as part of, or for the purpose of, performing the Certification Services,  
  
including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).
  - (iv) "**Fee**" means the fees payable by WGH and Project Co to the Independent Certifier for the Certification Services, as such fees are specified and made payable in Appendix B to this Independent Certifier Agreement.
  - (v) "**Intellectual Property**" means any and all intellectual property rights, whether subsisting now or in the future, including rights of any kind in inventions, patents, copyright, trademarks, service marks, industrial designs, integrated circuit topography rights, applications for registration of any of the foregoing, and know-how, trade secrets, confidential information and trade or business names.

- (vi) **"PA Parties"** means both WGH and Project Co, and **"PA Party"** means either WGH or Project Co, as the context requires.
- (vii) **"Project Agreement"** means that certain project agreement made on or about the date hereof between WGH and Project Co with respect to the construction, financing and facilities management of the Facility.

## 2. INTERPRETATION

### 2.1 Interpretation

- (a) In this Independent Certifier Agreement, unless the context indicates a contrary intention:
  - (i) words denoting the singular number include the plural and vice versa;
  - (ii) words denoting individuals include corporations and vice versa;
  - (iii) headings are for convenience only and do not affect interpretation;
  - (iv) references to Clauses, Sections or Parts are references to Clauses, Sections or Parts of this Independent Certifier Agreement;
  - (v) references to this Independent Certifier Agreement or any contract, agreement or instrument are deemed to include references to this Independent Certifier Agreement or such other contract, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
  - (vi) references to any party to this Independent Certifier Agreement includes its successors or permitted assigns;
  - (vii) words denoting any gender include all genders;
  - (viii) references to any legislation or to any section or provision of any legislation include any statutory modification or re-enactment of any statutory provision substituted for legislation, section or provision, and ordinances, by laws, regulations and other statutory instruments issued under that legislation, section or provision;
  - (ix) a reference to "\$" is to Canadian currency;
  - (x) the terms "including" and "include" mean "including" or "include" (as applicable) without limitation;
  - (xi) if a word or phrase is defined, then other parts of speech and grammatical forms of that word or phrase have a corresponding meaning; and
  - (xii) unless otherwise indicated, all time periods will be strictly construed.

## **2.2 Obligations and Exercise of Rights by PA Parties**

- (a) The obligations of the PA Parties under this Independent Certifier Agreement shall be several.
- (b) Except as specifically provided for in this Independent Certifier Agreement or the Project Agreement, the rights of the PA Parties under this Independent Certifier Agreement shall be jointly exercised by the PA Parties.

## **3. ROLE OF THE INDEPENDENT CERTIFIER**

### **3.1 Engagement**

- (a) The PA Parties hereby appoint the Independent Certifier, and the Independent Certifier hereby accepts such appointment, to carry out the Certification Services in accordance with this Independent Certifier Agreement. The Independent Certifier shall perform the Certification Services in accordance with this Independent Certifier Agreement.
- (b) Nothing in this Independent Certifier Agreement will be interpreted as giving the Independent Certifier any responsibility for performance of the design or construction, or for the certifications of the professionals of record.
- (c) Neither PA Party shall, without the prior written consent of the other PA Party, enter into any separate agreement with the Independent Certifier in connection with the Project, and Project Co shall ensure that no Project Co Party enters into any separate agreement with the Independent Certifier in connection with the Project.

### **3.2 Acknowledgement of Independent Certifier**

- (a) The Independent Certifier hereby acknowledges in favour of the PA Parties that it has received a copy of the Project Agreement.

### **3.3 Standard of Care**

- (a) The Independent Certifier must exercise the standard and skill, care and diligence in the performance of the Certification Services that would be expected of an expert professional experienced in providing services in the nature of the Certification Services for projects similar to the Project.

### **3.4 Duty of Independent Judgment**

- (a) In exercising its Certification Services, the Independent Certifier must:
  - (i) act impartially, honestly and independently in representing the interests of both PA Parties in accordance with the terms of the Project Agreement and this Independent Certifier Agreement;
  - (ii) act reasonably and professionally;



- (iii) act in a timely manner:
  - (A) in accordance with the times prescribed in this Independent Certifier Agreement and the Project Agreement; or
  - (B) where no times are prescribed, within 10 days or such earlier time so as to enable the PA Parties to perform their respective obligations under the Project Agreement; and
- (iv) act in accordance with the joint directions of the PA Parties provided that the directions are not inconsistent with the other terms of this Independent Certifier Agreement or the terms of the Project Agreement and do not vary or prejudice the Independent Certifier's authority or responsibilities or the exercise by the Independent Certifier of its professional judgment under this Independent Certifier Agreement.
- (b) Although the Independent Certifier may take account of any opinions or representations made by the PA Parties, the Independent Certifier shall not be bound to comply with any opinions or representations made by either of them in connection with any matter on which the Independent Certifier is required to exercise its professional judgment.
- (c) The Independent Certifier acknowledges that the PA Parties may rely on the Certification Services, including determinations, findings and certifications made by the Independent Certifier, and accordingly, the Independent Certifier will use its best skill and judgment in providing the Certification Services.
- (d) In connection with the determination that the criteria set out in Section 25.2(a) of the Project Agreement have been met the Independent Certifier shall rely upon the Architect of Record.

### **3.5 Authority to Act**

- (a) The Independent Certifier:
  - (i) is an independent consultant and is not, and must not purport to be, a partner, joint venturer or agent of either PA Party;
  - (ii) other than as expressly set out in this Independent Certifier Agreement or the Project Agreement, has no authority to give any directions to a PA Party or its officers, directors, members, employees, contractors, consultants or agents; and
  - (iii) has no authority to waive or alter any terms of the Project Agreement, nor to discharge or release a party from any of its obligations under the Project Agreement unless jointly agreed by the PA Parties in writing.

**3.6 Knowledge of the PA Parties' Requirements**

- (a) The Independent Certifier warrants that:
- (i) it has informed and will be deemed to have informed itself fully of the requirements of the Project Agreement;
  - (ii) it will inform itself fully of the requirements of such other documents and materials as may become relevant from time to time to the performance of the Certification Services;
  - (iii) without limiting Sections 3.6(a)(i) or 3.6(a)(ii), it has and will be deemed to have informed itself fully of all time limits and other requirements for any Certification Service which the Independent Certifier carries out under the Project Agreement and this Independent Certifier Agreement;
  - (iv) it has and will be deemed to have informed itself completely of the nature of the work necessary for the performance of the Certification Services and the means of access to and facilities at the Facility and Site including restrictions on any such access or protocols that are required; and
  - (v) it has satisfied itself as to the correctness and sufficiency of its proposal for the Certification Services and that the Fee covers the cost of complying with all of the obligations under this Independent Certifier Agreement and of all matters and things necessary for the due and proper performance and completion of the Certification Services.

**3.7 Co-ordination and Information by Independent Certifier**

- (a) The Independent Certifier must:
- (i) fully cooperate with the PA Parties;
  - (ii) carefully co-ordinate the Certification Services with the work and services performed by the PA Parties;
  - (iii) without limiting its obligations under Sections 3.4 and 3.7(a)(ii), perform the Certification Services so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the PA Parties; and
  - (iv) provide copies to the PA Parties of all reports, communications, certificates and other documentation that it provides to either PA Party.

### **3.8 Conflict of Interest**

- (a) The Independent Certifier warrants that:
- (i) at the date of signing this Independent Certifier Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Independent Certifier Agreement; and
  - (ii) if, during the term of this Independent Certifier Agreement, any such conflict or risk of conflict of interest arises, the Independent Certifier will notify the PA Parties immediately in writing of that conflict or risk of conflict and take such steps as may be required by either of the PA Parties to avoid or mitigate that conflict or risk.

### **3.9 Independent Certifier Personnel**

- (a) The Independent Certifier shall make reasonable efforts to ensure that the individuals listed in Appendix C remain involved in the performance of the Certification Services and, in particular, will not, for the duration of this Independent Certifier Agreement, require or request any such person to be involved in any other project on behalf of the Independent Certifier if, in the reasonable opinion of the PA Parties, such involvement would have a material adverse effect on the performance of the Certification Services.

### **3.10 Minimize Interference**

- (a) The Independent Certifier shall perform the Certification Services in such a way as to minimize any undue interference with the progress of the Works.

## **4. ROLE OF THE PA PARTIES**

### **4.1 Assistance**

- (a) The PA Parties agree to cooperate with and provide reasonable assistance to the Independent Certifier to familiarize the Independent Certifier with all necessary aspects of the Project to enable the Independent Certifier to carry out its obligations under this Independent Certifier Agreement.

### **4.2 Instructions in Writing**

- (a) Unless otherwise provided in this Independent Certifier Agreement or the Project Agreement, all instructions to the Independent Certifier by the PA Parties shall be given in writing and accepted or endorsed by both of the PA Parties.

### **4.3 Information and Services**

- (a) The PA Parties shall make available to the Independent Certifier, as soon as practicable from time to time, all information, documents and particulars necessary for the Independent Certifier to carry out the Certification Services, including such information,

documents and particulars required in order for the Independent Certifier to determine whether Substantial Completion and Final Completion have occurred, and shall provide copies of all such information, documents and particulars to the other party hereto.

#### **4.4 Additional Information**

- (a) If any information, documents or particulars are reasonably required to enable the Independent Certifier to perform the Certification Services and have not been provided by the PA Parties, then:
- (i) the Independent Certifier must give notice in writing to the Project Co Representative or the WGH Representative, as the case may be, of the details of the information, documents or particulars demonstrating the need and the reasons why they are required; and
  - (ii) Project Co or WGH, as the case may be, must arrange the provision of the required information, documents or particulars.

#### **4.5 Right to Enter and Inspect**

- (a) Upon giving reasonable notice to the Project Co Representative, the Independent Certifier (and any person authorized by it) may enter and inspect the Site, Facility or Works at any reasonable time in connection with the exercise or proposed exercise of rights under this Independent Certifier Agreement, subject to:
- (i) observance of the reasonable rules of Project Co as to safety and security for the Site, the Facility and the Works;
  - (ii) not causing unreasonable delay to the carrying out of the Works by reason of its presence at the Site, the Facility and the Works; and
  - (iii) not causing any damage to the Site, the Facility or the Works.

#### **4.6 PA Parties Not Relieved**

- (a) Neither PA Party shall be relieved from performing or observing its obligations, or from any other liabilities, under the Project Agreement as a result of either the appointment of, or any act or omission by, the Independent Certifier.

#### **4.7 PA Parties not Liable**

- (a) On no account will a PA Party be liable to another PA Party for any act or omission by the Independent Certifier whether under or purportedly under a provision of the Project Agreement, this Independent Certifier Agreement or otherwise, provided that any such act or omission shall not extinguish, relieve, limit or qualify the nature or extent of any right or remedy of either PA Party against or any obligation or liability of either PA Party to the other PA Party which would have existed regardless of such act or omission.

## **5. CERTIFICATION QUALITY PLAN**

### **5.1 Certification Quality Plan**

- (a) The Independent Certifier must:
- (i) develop and implement a certification quality plan identifying the processes and outcomes of the Certification Services that complies with all requirements of the Independent Certifier's quality assurance accreditation, and is otherwise satisfactory to each of the WGH Representative and the Project Co Representative;
  - (ii) within 14 days after the date of this Independent Certifier Agreement, provide such certification quality plan to each of the WGH Representative and the Project Co Representative;
  - (iii) if satisfactory to each of the WGH Representative and the Project Co Representative, implement such certification quality plan; and
  - (iv) if not satisfactory to each of the WGH Representative and the Project Co Representative, within 7 days after receiving notice thereof from either PA Party to that effect, revise and resubmit the certification quality plan to each of the WGH Representative and the Project Co Representative, and implement it if satisfactory to each of the WGH Representative and the Project Co Representative.

### **5.2 Certification Quality Plan not to Relieve Independent Certifier**

- (a) The Independent Certifier will not be relieved of any responsibilities or obligations in respect of the performance of the Certification Services and will remain solely responsible for them notwithstanding:
- (i) the obligation of the Independent Certifier to develop and implement a certification quality plan; or
  - (ii) any comment or direction upon, review or acceptance of, approval to proceed with or request to vary any part of the certification quality plan by either the WGH Representative or the Project Co Representative.

## **6. SUSPENSION**

### **6.1 Notice**

- (a) The Certification Services (or any part) may be suspended at any time by the PA Parties:
- (i) if the Independent Certifier fails to comply with its obligations under this Independent Certifier Agreement, immediately by the PA Parties giving joint notice in writing to the Independent Certifier; or

- (ii) in any other case, by the PA Parties giving 7 days joint notice in writing to the Independent Certifier.

## **6.2 Costs of Suspension**

- (a) The Independent Certifier will:
  - (i) subject to the Independent Certifier complying with Article 9, be entitled to recover the extra costs incurred by the Independent Certifier by reason of a suspension directed under Section 6.1(a)(ii) valued as a Certification Services Variation under Section 9; and
  - (ii) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Section 6.1(a)(i).

## **6.3 Recommencement**

- (a) The Independent Certifier must immediately recommence the carrying out of the Certification Services (or any part) on receipt of a joint written notice from the PA Parties requiring it to do so.

## **7. INSURANCE AND LIABILITY**

### **7.1 Independent Certifier's Professional Indemnity Insurance**

- (a) The Independent Certifier must have in place at all times during the term of this Independent Certifier Agreement:
  - (i) professional liability (errors and omissions) insurance:
    - (A) in the amount of \$[REDACTED] per claim and \$[REDACTED] in the aggregate, a deductible of not more than \$[REDACTED] per claim and from an insurer licensed to transact business in Ontario and that meets all other terms satisfactory to each of the PA Parties; and
    - (B) covering liability which the Independent Certifier might incur as a result of an error or omission in the performance of its obligations owed by the Independent Certifier in a professional capacity to the PA Parties, or either of them, under or in connection with this Independent Certifier Agreement or the provision of the Certification Services; and
  - (ii) commercial general liability insurance (C.G.L.):
    - (A) in the amount of \$[REDACTED] per occurrence and in the aggregate, a deductible of not more than \$[REDACTED] per occurrence and from an insurer licensed to transact business in Ontario and that meets all other terms satisfactory to each of the PA Parties; and

- (B) covering liability for bodily injury, property damage, and personal injury, including Employers' Liability, and Tenants' Legal Liability, for all liability which the Independent Certifier might incur in connection with this Independent Certifier Agreement or the provision of the Certification Services; and
  - (C) including the PA Parties as additional insureds under this policy for liability incurred by either of them, resulting directly or indirectly from the Independent Certifier in connection with this Independent Certifier Agreement or the provision of the Certification Services.
- (b) The Independent Certifier must provide copies of its insurance policies to each of the PA Parties upon execution of this Independent Certifier Agreement, and, at least 5 Business Days prior to the expiry date of any such insurance policy, the Independent Certifier must provide evidence of the renewal of any such insurance policy satisfactory to the PA Parties, acting reasonably.

## **7.2 Workers' Compensation Insurance**

- (a) The Independent Certifier must, at its own cost and at all times during the term of this Independent Certifier Agreement, insure its liability (including its common law liability) as required under any applicable workers compensation statute or regulation in relation to its employees engaged in the Certification Services.

## **8. PAYMENT FOR SERVICES**

### **8.1 Payment of Fee**

- (a) In consideration of the Independent Certifier performing the Certification Services in accordance with this Independent Certifier Agreement, each PA Party shall pay one-half of the Fee to the Independent Certifier in accordance with the payment schedule specified in Appendix B.
- (b) The obligation of each PA Party to pay one-half of the Fee to the Independent Certifier is a several obligation, and neither PA Party shall have any liability in respect of the non-payment by the other PA Party of any fees or costs payable by such other PA Party under this Independent Certifier Agreement.
- (c) The Fee includes all taxes (except for Goods and Services Tax), overheads and profit to perform the Certification Services.
- (d) The PA Parties acknowledge and agree that if any approved amount due and payable by the PA Parties to the Independent Certifier in excess of \$100,000 is outstanding for more than 60 days, the Independent Certifier shall not have any obligation to make any certification under the Project Agreement.

## **9. CERTIFICATION SERVICES VARIATIONS**

### **9.1 Notice of Certification Services Variation**

- (a) If the Independent Certifier believes, other than a "Certification Services Variation Order" under Section 9.4(c), that any direction by the PA Parties constitutes or involves a Certification Services Variation it must:
- (i) within 7 days after receiving the direction and before commencing work on the subject matter of the direction, give notice to the PA Parties that it considers the direction constitutes or involves a Certification Services Variation; and
  - (ii) within 21 days after giving the notice under Section 9.1(a)(i), submit a written claim to each of the WGH Representative and the Project Co Representative which includes detailed particulars of the claim, the amount of the claim and how it was calculated.
- (b) Regardless of whether the Independent Certifier considers that such a direction constitutes or involves a Certification Services Variation, the Independent Certifier must continue to perform the Certification Services in accordance with this Independent Certifier Agreement and all directions, including any direction in respect of which notice has been given under this Section 9.1.

### **9.2 No Adjustment**

- (a) If the Independent Certifier fails to comply with Section 9.1, the Fee will not be adjusted as a result of the relevant direction.

### **9.3 External Services**

- (a) Except as hereinafter provided, the Certification Services are to be performed by the Independent Certifier's internal personnel. In the event that external personnel or consultants are required for expert opinion with respect to a Certification Services Variation, then, with the prior written approval of the PA Parties, any additional fees relating to such external personnel or consultants will be payable by the PA Parties at the agreed upon amount.

### **9.4 Certification Services Variation Procedure**

- (a) The WGH Representative and the Project Co Representative may jointly issue a document titled "Certification Services Variation Price Request" to the Independent Certifier which will set out details of a proposed Certification Services Variation which the PA Parties are considering.
- (b) Within 7 days after the receipt of a "Certification Services Variation Price Request", the Independent Certifier must provide each of the WGH Representative and the Project Co Representative with a written notice in which the Independent Certifier sets out the effect which the proposed Certification Services Variation will have on the Fee.



- (c) Each of the WGH Representative and the Project Co Representative may then jointly direct the Independent Certifier to carry out a Certification Services Variation by written document titled "Certification Services Variation Order" which will state either that:
- (i) the Fee is adjusted as set out in the Independent Certifier's notice; or
  - (ii) the adjustment (if any) to the Fee will be determined under Section 9.5.

### **9.5 Cost of Certification Services Variation**

- (a) Subject to Section 9.2, the Fee will be adjusted for all Certification Services Variations or suspensions under Section 6.1(a)(ii) carried out by the Independent Certifier by:
- (i) the amount (if any) stated in the "Certification Services Variation Order" in accordance with Section 9.4(c);
  - (ii) if Section 9.5(a)(i) is not applicable, an amount determined pursuant to the fee schedule in Appendix B; or
  - (iii) where such rates or prices are not applicable, a reasonable amount to be agreed between the PA Parties and the Independent Certifier or, failing agreement, determined by the WGH Representative and the Project Co Representative jointly.
- (b) Any reductions in the Fee shall be calculated on the same basis as any increases.

## **10. TERM AND TERMINATION**

### **10.1 Term**

- (a) Subject to earlier termination, this Independent Certifier Agreement will commence on the date of the Project Agreement and continue in full force until:
- (i) the Final Completion Date; or
  - (ii) such later date as may be mutually agreed between the PA Parties and the Independent Certifier.

### **10.2 Notice of Breach**

- (a) If the Independent Certifier commits a breach of this Independent Certifier Agreement, the PA Parties may give written notice to the Independent Certifier:
- (i) specifying the breach; and
  - (ii) directing its rectification in the period specified in the notice being a period not less than 7 days from the date of service of the notice.

**10.3 Termination for Breach**

- (a) If the Independent Certifier fails to rectify the breach within the period specified in the notice issued under Section 10.2, the PA Parties may, without prejudice to any other rights of the PA Parties or either of them, immediately terminate this Independent Certifier Agreement.

**10.4 Termination for Financial Difficulty or Change in Control**

- (a) The PA Parties may, without prejudice to any other rights which the PA Parties or either of them may have, terminate this Independent Certifier Agreement immediately if:
- (i) events have occurred or circumstances exist which, in the opinion of the PA Parties, may result in or have resulted in an insolvency or a Change in Control of the Independent Certifier; or
  - (ii) the Independent Certifier has communications with its creditors with a view to entering into, or enters into, any form of compromise, arrangement or moratorium of any debts whether formal or informal, with its creditors.

**10.5 Termination for Convenience**

- (a) Notwithstanding anything to the contrary in this Independent Certifier Agreement, the PA Parties may, at any time, jointly, terminate this Independent Certifier Agreement upon 30 days written notice to the Independent Certifier. The PA Parties and the Independent Certifier agree that, notwithstanding the 30 days' notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed.

**10.6 Independent Certifier's Rights upon Termination for Convenience**

- (a) Upon a termination under Section 10.5, the Independent Certifier will:
- (i) be entitled to be reimbursed by the PA Parties for the value of the Certification Services performed by it to the date of termination; and
  - (ii) not be entitled to any damages or other compensation in respect of the termination and (without limitation) any amount in respect of:
    - (A) the lost opportunity to earn a profit in respect of the Certification Services not performed at the date of termination; and
    - (B) any lost opportunity to recover overheads from the turnover which would have been generated under this Independent Certifier Agreement but for it being terminated.

**10.7 Procedure upon Termination**

- (a) Upon completion of the Independent Certifier's engagement under this Independent Certifier Agreement or earlier termination of this Independent Certifier Agreement (whether under Section 10.3, 10.4 or 10.5 or otherwise), the Independent Certifier must:
- (i) cooperate with the PA Parties with respect to the transition of the Certification Services to a replacement certifier;
  - (ii) deliver to the PA Parties all Contract Material and all other information concerning the Project held or prepared by the Independent Certifier during the execution of work under this Independent Certifier Agreement; and
  - (iii) as and when required by the PA Parties, meet with them and such other persons nominated by them with a view to providing them with sufficient information to enable the PA Parties to execute the Project or the persons nominated to provide the Certification Services.

**10.8 Effect of Termination**

- (a) Except as otherwise expressly provided in this Independent Certifier Agreement, termination of this Independent Certifier Agreement shall be without prejudice to any accrued rights and obligations under this Independent Certifier Agreement as at the date of termination (including the right of the PA Parties to recover damages from the Independent Certifier).

**10.9 Survival**

- (a) Termination of this Independent Certifier Agreement shall not affect the continuing rights and obligations of the PA Parties and the Independent Certifier under Sections 7, 8, 10.6, 10.7, 10.8, 11, 12.7, 12.8 and this Section 10.9 or under any other provision which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

**11. INDEMNITY****11.1 PA Parties to Save Independent Certifier Harmless**

- (a) The PA Parties hereby indemnify and save the Independent Certifier completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any action taken by the Independent Certifier within the scope of its duties or authority hereunder.
- (b) The indemnity provided under this Section 11.1 shall not extend:
- (i) to any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom

it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible (in respect of which the Independent Certifier shall indemnify the PA Parties, as referred to in Section 11.2);

- (ii) to any action taken by the Independent Certifier outside the scope of authority set forth in this Independent Certifier Agreement, or any part or parts hereof; or
  - (iii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by the Independent Certifier.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.

## **11.2 Independent Certifier to Save PA Parties Harmless**

- (a) The Independent Certifier hereby indemnifies and saves the PA Parties, and their affiliated entities, subsidiaries and their respective directors, officers, employees, agents, permitted successors and assigns, completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible.
- (b) The indemnity provided under this Section 11.2 to a PA Party shall not extend:
- (i) to any negligent or unlawful act or omission or willful misconduct of such PA Party, its employees, servants or persons for whom it is in law responsible (in respect of which such PA Parties shall indemnify the Independent Certifier, as referred to in Section 11.1); or
  - (ii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by such PA Party.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.

## **12. GENERAL**

### **12.1 Entire Agreement**

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



If to Project Co: 5000 Yonge Street, Suite 1805  
Toronto, Ontario  
M2N 7E9

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to Independent [Address]  
Certifier:

Fax No.: •

Attn.: •

- (b) Where any notice is provided or submitted to a party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a party's failure to comply with this Section 12.4(b).
- (c) Any party to this Independent Certifier Agreement may, from time to time, change any of its contact information set forth in Section 12.4(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 12.4(e), 12.4(f) and 12.4(g):
  - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 12.4.
- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

**12.5 Transfer and Assignment**

- (a) The Independent Certifier:
  - (i) must not assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement without the prior written consent of the PA Parties, which each PA Party may give or withhold in its absolute discretion; and
  - (ii) agrees that any assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the Independent Certifier from any obligation or liability under this Independent Certifier Agreement.
- (b) For the purposes of this Section 12.5, an assignment will be deemed to have occurred where there is a Change in Control of the Independent Certifier after the date of this Independent Certifier Agreement.
- (c) Each of the PA Parties may assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement in accordance with the terms of the Project Agreement.

**12.6 Governing Laws and Jurisdictions**

- (a) This Independent Certifier Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The PA Parties and the Independent Certifier agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Independent Certifier Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

**12.7 Confidentiality**

- (a) The Independent Certifier must ensure that:
  - (i) neither it nor any of its officers, directors, members, employees, servants and agents disclose, or otherwise make public, any Contract Material or any other information or material acquired in connection with or during the performance of the Certification Services without prior written approval of the PA Parties; and
  - (ii) no Contract Material is used, copied, supplied or reproduced for any purpose other than for the performance of the Certification Services under this Independent Certifier Agreement.
- (b) The PA Parties may at any time require the Independent Certifier to give and to arrange for its officers, directors, members, employees, servants and agents engaged in the

performance of the Certification Services to give written undertakings, in the form of confidentiality agreements on terms required by the PA Parties, relating to the non disclosure of confidential information, in which case the Independent Certifier must promptly arrange for such agreements to be made.

### **12.8 Contract Material**

- (a) The PA Parties and the Independent Certifier agree that the Independent Certifier does not and will not have any rights, including any Intellectual Property, in any Contract Material provided to the Independent Certifier or created or required to be created by either PA Party.
- (b) As between the PA Parties and the Independent Certifier, all title and ownership, including all Intellectual Property, in and to the Contract Material created or required to be created by the Independent Certifier as part of, or for the purposes of performing the Certification Services, is hereby assigned jointly to the PA Parties on creation, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Contract Material, it will be assigned to the PA Parties on creation. In addition, to the extent that copyright may subsist in such Contract Material so created by the Independent Certifier, the Independent Certifier hereby waives all past, present and future moral rights therein and the Independent Certifier shall ensure that any agent or employee of Independent Certifier shall have waived all such moral rights. The PA Parties acknowledge and agree that as between the PA Parties, title, ownership and other rights to the foregoing shall be governed by the Project Agreement.
- (c) The Independent Certifier will do all such things and execute all such documents as reasonably requested by either of the PA Parties in order to confirm or perfect the assignment of Intellectual Property in the Contract Material referred to in Section 12.8(b).

### **12.9 Amendment**

- (a) This Independent Certifier Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the PA Parties and the Independent Certifier and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Independent Certifier Agreement.

### **12.10 Severability**

- (a) Each provision of this Independent Certifier Agreement shall be valid and enforceable to the fullest extent permitted by law. If the courts of a competent jurisdiction shall declare any provision of this Independent Certifier Agreement invalid, unenforceable or illegal, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Independent Certifier Agreement. If any such provision of this Independent Certifier Agreement is invalid, unenforceable or illegal, the parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or



illegality and to restore this Independent Certifier Agreement as near as possible to its original intent and effect.

**12.11 Enurement**

- (a) This Independent Certifier Agreement shall enure to the benefit of, and be binding on, each of the parties and their respective successors and permitted transferees and assigns.

**12.12 Counterparts**

- (a) This Independent Certifier Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any party providing its signature in faxed form shall promptly forward to such party an original signed copy of this Independent Certifier Agreement which was so faxed.

**IN WITNESS WHEREOF** the parties have executed this Independent Certifier Agreement as of the date first above written.

**WOODSTOCK GENERAL HOSPITAL TRUST**

Per: \_\_\_\_\_  
 Name: **[REDACTED]**  
 Title: President and Chief Executive Officer

Per: \_\_\_\_\_  
 Name: **[REDACTED]**  
 Title: Chair of the Board

I/We have authority to bind the corporation.

**INTEGRATED TEAM SOLUTIONS  
WGH PARTNERSHIP**, by its partners,

**LED (ITS) WGH INC.**

Per: \_\_\_\_\_  
Name:  
Title:

**LED (ITS) WGH GENERAL PARTNER  
INC.**, in its capacity as general partner of  
**LED (ITS) WGH LIMITED  
PARTNERSHIP**

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the partnership.

**[INDEPENDENT CERTIFIER]**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

**APPENDIX A****CERTIFICATION SERVICES**

Without limiting the other provisions of this Independent Certifier Agreement and the Project Agreement, the Independent Certifier shall provide the following:

- (a) Receive and monitor drawings and documents related to the development of the Existing Design as necessary for the Independent Certifier to be informed as to the progress of the Works and to provide an opinion in the event of a Dispute related to the development of the Existing Design.
- (b) Receive and monitor progress reports as necessary for the Independent Certifier to be informed as to the progress of the Works.
- (c) Review information relating to Delay Events and Compensation Events.
- (d) In accordance with Section 11.1(b) of the Project Agreement, attend meetings and participate, as necessary, in the activities of the Works Committee.
- (e) Review the draft Final Commissioning Program and the detailed tests, test methodology and expected test results proposed by Project Co and provide comments, including to report on the effectiveness of the Final Commissioning Program, to identify any errors or omissions, and to report any risks.
- (f) Monitor the Commissioning Tests (as indicatively described in Schedule 14 - Outline Commissioning Program to the Project Agreement) and other tests, including re-tests, to be performed as set out in the Final Commissioning Program or as otherwise required for Project Co to achieve Substantial Completion and Final Completion.
- (g) Prior to any certification, consider the views and comments of both Project Co and WGH in relation to the satisfaction of the conditions for certification.
- (h) Conduct inspections of the Works as necessary for the Independent Certifier to be satisfied that the Works are proceeding in accordance with the requirements of the Project Agreement.
- (i) Review relevant documentation, including floor area schedules, certificates and approvals, Permits, Licences and Approvals, certifications, test results, quality assurance audits, letters of assurance from professionals, schedules of equipments and staff profile schedules provided to the Independent Certifier pursuant to the Project Agreement.
- (j) Monitor the requirements, progress and results of all Project Co Commissioning and Hospital Commissioning.
- (k) Upon receipt of notice from Project Co requesting the issuance of the Substantial Completion Certificate or the Final Completion Certificate, as applicable, consider such

request and, within the time period set out in the Project Agreement and in accordance with the Project Agreement, either:

- (i) issue the applicable certificate; or
  - (ii) issue a report detailing the matters that the Independent Certifier considers are required to be performed prior to issuing the applicable certificate.
- (l) Upon notice from Project Co that the matters required to be performed prior to issuing the applicable certificate have been completed, re-inspect the Works or re-consider the matters specified to be performed, and repeat the procedures in Section (k) of this Appendix A until the issuance of the applicable certificate.
  - (m) Prepare, in consultation with Project Co and WGH, as soon as reasonably practicable and, in any event within, the time period specified in Section 25.8(a) of the Project Agreement, the Minor Deficiencies List, which Minor Deficiencies List will include an estimate of the cost and the time for rectifying the Minor Deficiencies and a schedule for the completion and rectification of the Minor Deficiencies.
  - (n) Provide any determinations contemplated in the Project Agreement, which determinations may be subject to final resolution between the PA Parties pursuant to Schedule 27 - Dispute Resolution Procedure to the Project Agreement.
  - (o) Participate in and give the PA Parties and their counsel reasonable cooperation, access and assistance (including providing or making available documents, information and witnesses for attendance at hearings and other proceedings) in connection with any proceedings between the PA Parties that relate to the Certification Services.
  - (p) Provide advice on other matters that may arise that both PA Parties may jointly require.

**APPENDIX B**

**INDEPENDENT CERTIFIER FEE**

**[REDACTED]**

**APPENDIX C**

**INDEPENDENT CERTIFIER PERSONNEL**

The following personnel shall be involved in the performance of the Certification Services:

**[NTD: Insert names and titles of relevant individuals.]**

## SCHEDULE 7

## PROJECT CO INFORMATION

Project Co represents and warrants that the following information is true and correct as of the date of this Project Agreement:

**A. Integrated Team Solutions WGH Partnership**

1. Name: Integrated Team Solutions WGH Partnership
2. Jurisdiction of Formation: Manitoba
3. Date of Formation: August 19, 2008
4. Partners:
  - (a) LED (ITS) WGH Limited Partnership, through its General Partner, LED (ITS) WGH General Partner Inc.
  - (b) LED (ITS) WGH Inc.

Name and address of Partners	Number of partnership units held by partner:	Interest in Partnership:	Initial Capital Contribution:
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LED (ITS) WGH Inc. 900-400 St. Mary Avenue Winnipeg, MB R3C 4K5	[REDACTED]	[REDACTED]	[REDACTED]
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LED (ITS) WGH Limited Partnership 900-400 St. Mary Avenue Winnipeg, MB R3C 4K5	[REDACTED]	[REDACTED]	[REDACTED]
---	------------	------------	------------

5. Subsidiaries: None
6. Loans:

Name and address of registered holder	Nominal value of loan
---------------------------------------	-----------------------

[REDACTED]	[REDACTED]
------------	------------

7. Other outstanding securities (including description of type of securities, name and address of holder and amount):

[REDACTED]

- 8. Summary of any constitutional, contractual or other special voting rights, restrictions on powers of directors or similar matters relevant to the control of Project Co:

[REDACTED]

**B. [REDACTED]**

- 1. Name: [REDACTED]
- 2. Date of Incorporation: [REDACTED]
- 3. Corporation Number: [REDACTED]
- 4. Directors:

Name	Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

- 5. Officers:

Name	Address	Office
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

- 6. Subsidiaries: [REDACTED]

- 7. Authorized and issued share capital: [REDACTED]

Name and address of registered holder	Number and class of shares held	Amount paid up
[REDACTED]	[REDACTED]	[REDACTED]



8. Loans:

Name and address of registered holder	Nominal value of loan
[REDACTED]	[REDACTED]

9. Other outstanding securities (including description of type of securities, name and address of holder and amount):

[REDACTED]

10. Summary of any constitutional, contractual or other special voting rights, restrictions on powers of directors or similar matters relevant to the control of [REDACTED]:

[REDACTED]

C. [REDACTED]

1. Name: [REDACTED]

2. Date of Incorporation: [REDACTED]

3. Corporation Number: [REDACTED]

4. Directors:

Name	Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

5. Officers:

Name	Address	Office
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

6. Subsidiaries: [REDACTED]

7. Authorized and issued share capital: [REDACTED]

<b>Name and address of registered holder</b>	<b>Number and class of shares held</b>	<b>Amount paid up</b>
[REDACTED]	[REDACTED]	[REDACTED]

8. Loans:

<b>Name and address of registered holder</b>	<b>Nominal value of loan</b>
[REDACTED]	[REDACTED]

9. Other outstanding securities (including description of type of securities, name and address of holder and amount):

[REDACTED]

10. Summary of any constitutional, contractual or other special voting rights, restrictions on powers of directors or similar matters relevant to the control of [REDACTED]:

[REDACTED]

**D. [REDACTED]**

1. Name: [REDACTED]

2. Jurisdiction of Formation [REDACTED]

3. Date of Formation [REDACTED]

4. Partners:

<b>Name and address of Partners</b>	<b>Number of partnership units held by partner:</b>	<b>Interest in Partnership:</b>	<b>Initial Capital Contribution:</b>
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED] <sup>1</sup>
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

5. Subsidiaries: [REDACTED]

---

<sup>1</sup> [REDACTED]

6. Loans:

**Name and address of  
registered holder**

**Nominal value of loan**

[REDACTED]

[REDACTED]

7. Other outstanding securities (including description of type of securities, name and address of holder and amount):

[REDACTED]

8. Summary of any constitutional, contractual or other special voting rights, restrictions on powers of directors or similar matters relevant to the control of [REDACTED]:

[REDACTED]

**SCHEDULE 8**

**[INTENTIONALLY DELETED]**

## SCHEDULE 9

## KEY INDIVIDUALS

## A. Key Individuals - Works

	<b>Project Co Party</b>	<b>Position</b>	<b>Name and Contact Information</b>
1.	Construction Contractor	Site Superintendent	[REDACTED]
2.	Construction Contractor	Construction Manager/Project Manager	[REDACTED]
3.	Construction Contractor	Health and Safety Officer	[REDACTED]
4.	Project Co	Project Co Project Manager	[REDACTED]
5.	Project Co	Project Co Representative (Project Director)	[REDACTED]
6.	Project Co	Equipment Coordinator	[REDACTED]
7.	Project Co	Transition Advisor	[REDACTED]

**B. Key Individuals – Services**

	<b>Project Co Party</b>	<b>Position</b>	<b>Name and Contact Information</b>
1.	Service Provider	FM OH&S Manager	[REDACTED]
2.	Service Provider	FM Compliance Officer (Quality Assurance)	[REDACTED]
3.	Project Co	ITS Project Director-Operations	[REDACTED]
4.	Project Co	Project Co Representative	[REDACTED]
5.	Service Provider	FM Process Transition Coordinator	[REDACTED]
6.	Service Provider	FM Human Resources Manager	[REDACTED]
7.	Service Provider	ITS Operation Group Manager (Service Operations Manager)	[REDACTED]

**SCHEDULE 10****REVIEW PROCEDURE****PART A – WORKS PHASE****1. Definitions**

1.1 The following terms shall have the following meanings:

- (a) "**Submittal Schedule**" means the schedule for Submittals prior to the Substantial Completion Date attached as Appendix A to this Schedule 10 as amended in accordance with this Schedule 10.

**2. Works Submittals**

- 2.1 The provisions of Part A of this Schedule 10 shall apply to and any and all items, documents and anything else required or specified by this Project Agreement in respect of the Works to be submitted to, reviewed or otherwise processed by WGH in accordance with the Review Procedure prior to Substantial Completion or after Substantial Completion in respect of the completion of Minor Deficiencies, including any and all subsequent revisions, amendments and changes thereto (collectively and individually, "**Works Submittal**" or "**Works Submittals**" as applicable in Part A of this Schedule 10).
- 2.2 All documents and/or other deliverables required to be delivered by Project Co to WGH for review pursuant to the requirements set out or identified in the Existing Design shall be reviewed in accordance with this Schedule 10 – Review Procedure.
- 2.3 All reports, plans and other documents that are required, pursuant to Schedule 15 – Output Specifications, to be delivered by Project Co to WGH for review prior to the Substantial Completion Date, shall be reviewed by WGH in accordance with this Schedule 10- Review Procedure.

**3. Submittal Schedule**

- 3.1 The Submittal Schedule may be amended by agreement of the Parties, or in the event the Parties cannot agree, by Project Co acting reasonably, in each case in accordance with the terms of this Section 3. Any amendment to the Submittal Schedule shall provide for a progressive and orderly flow of Works Submittals from Project Co to the WGH Representative to allow sufficient time for review of each Works Submittal by the WGH Representative, taking into account both the resources necessary to be available to the WGH Representative to conduct such review (as anticipated by or inferred from the Submittal Schedule attached as Appendix A to this Schedule 10) and whether delay in the review of the subject matter of the Works Submittal shall have a material impact on Project Co's ability to progress future anticipated Works Submittals and the Works in accordance with the Works Schedule.

- 3.2 The Submittal Schedule and any amendment to the Submittal Schedule shall allow a period of 10 Business Days (or such longer period as the Parties may agree) from the date of receipt for review of and response to each Works Submittal, provided that if Project Co has made major changes to the grouping and volume of Works Submittals, such period of time shall be adjusted by Project Co, acting reasonably, taking into account the factors set forth in Section 3.1 of this Schedule 10.
- 3.3 Project Co shall, in scheduling Works Submittals and in the performance of the Project Operations, allow adequate time prior to performing the Project Operations that are the subject of the Works Submittals, for review of the Works Submittals and for Project Co to make changes to Works Submittals that may be required if comments are received on the Works Submittals, such review and required changes to be in accordance with Part A of this Schedule 10.
- 3.4 If the Submittal Schedule indicates that a large number of Works Submittals will be made at one time, the WGH Representative may, at the WGH Representative's discretion, request a longer period for review or a staggering of the Works Submittals, and Project Co shall review and revise the Submittal Schedule accordingly, taking into account both the resources necessary to be available to the WGH Representative to conduct such review (as anticipated by or inferred from the Submittal Schedule attached as Appendix A to this Schedule 10) and whether delay in the review of the subject matter of the Works Submittal shall have a material impact on Project Co's ability to progress future anticipated Works Submittals and the Works in accordance with the Works Schedule.
- 3.5 Project Co shall submit the Submittal Schedule, as amended, to WGH on a monthly basis until the Substantial Completion Date.
- 3.6 All amended Submittal Schedules shall be required to meet all the requirements of this Section 3.
- 3.7 Project Co shall submit all Submittals to WGH in accordance with the current amended Submittal Schedule.

#### **4. General Requirements for Works Submittals**

- 4.1 Unless otherwise specified by the WGH Representative, Project Co shall issue 3 printed copies of all Works Submittals to WGH, together with an electronic copy in a format agreed by the Parties acting reasonably and one printed copy of each Works Submittal to the Independent Certifier.
- 4.2 Project Co shall compile and maintain a register of the date and contents of the submission of all Works Submittals and the date of receipt and content of all returned Works Submittals and comments thereon.
- 4.3 All Works Submittals shall be in English.
- 4.4 All Works Submittals required by this Project Agreement or by Applicable Law to be signed or sealed by persons with professional designations (including, where applicable,



by registered professional architects or engineers) shall, where applicable, be so signed and sealed.

- 4.5 All Works Submittals shall include copies of all documents to be reviewed and shall clearly identify the purpose of the Works Submittal and Project Co's proposed course of action relating to the Works Submittal and the Project Operations that are the subject of the Works Submittal.
- 4.6 All Works Submittals shall, where applicable, refer to the relevant provisions of the Technical Requirements.
- 4.7 All Works Submittals shall be clearly identified as a Works Submittal and shall be delivered with appropriate covering documentation, which shall include a list of all attached Works Submittals and for each Works Submittal:
- (a) the document number(s) or drawing number(s);
  - (b) revision numbers (if applicable);
  - (c) document or drawing title(s);
  - (d) name of entity that prepared the Works Submittal;
  - (e) the Works Submittal history showing date and delivery information and/or log number of all previous submissions of that Works Submittal; and
  - (f) identification of any previous Works Submittal superseded by the current Works Submittal.

## **5. Comments**

- 5.1 The WGH Representative shall review and respond to each Works Submittal in accordance with the time periods specified in Section 3.2 of this Schedule 10. The WGH Representative shall return Works Submittals to Project Co and assign one of the following 3 comments:
- (a) "REVIEWED";
  - (b) "REVIEWED AS NOTED"; or
  - (c) "REJECTED".
- 5.2 The comment "REVIEWED" will be assigned to those Works Submittals that, in the opinion of the WGH Representative, conform to the requirements of this Project Agreement. Project Co shall comply with and implement such Works Submittals.
- 5.3 The comment "REVIEWED AS NOTED" will be assigned to those Works Submittals that, in the opinion of the WGH Representative, generally conform to the requirements of this Project Agreement, but in which immaterial deficiencies have been found by the

WGH Representative's review. Project Co shall correct these Works Submittals and provide a copy of the corrected Works Submittals to the WGH Representative. Project Co shall comply with and implement such Works Submittals after correction, including in accordance with the comments. If at any time it is discovered that Project Co has not corrected the deficiencies on Works Submittals stamped "REVIEWED AS NOTED", then Project Co will be required to modify the Works Submittals and Project Operations, including the Facility if applicable, as required to ensure that the Works comply with the Output Specifications and Project Co may be required, at the WGH Representative's discretion, to resubmit relevant Works Submittals. In such circumstances the WGH Representative shall act promptly in considering whether such deficiencies have been corrected and Project Co shall obtain such confirmation prior to continuing. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.

- 5.4 The comment "REJECTED" will be assigned to those Works Submittals that, in the opinion of the WGH Representative, contain significant deficiencies or do not generally conform with the requirements of this Project Agreement, including this Schedule 10. Project Co shall correct and re-submit these Works Submittals within 10 Business Days after the comment has been provided to Project Co, or such longer period as Project Co may reasonably require, and (unless the Works Submittal is re-submitted within 5 Business Days) shall give the WGH Representative not less than 5 Business Days' notice of when the Works Submittals shall be resubmitted. The WGH Representative will then review such re-submitted Works Submittals and assign a comment to the corrected Works Submittal. The Works Submittals shall be corrected, revised and resubmitted as often as may be required to obtain a comment that permits Project Co to proceed. Except with the written consent of the WGH Representative, Project Co shall not proceed with any Project Operations to which such Works Submittals receiving the comment "REJECTED" relate until Project Co obtains a comment that permits Project Co to proceed. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 5.5 Where the WGH Representative issues the comment "REVIEWED AS NOTED" or "REJECTED", the WGH Representative shall provide reasons for the comment, referencing the particulars of the Section(s) of this Project Agreement (including the Technical Requirements and other Schedules) that the Works Submittal fails to satisfy, and, if requested by the Project Co Representative, the WGH Representative shall meet with the Project Co Representative to discuss the reasons for the comment.
- 5.6 If, at any time after assigning any comment to a Works Submittal, the WGH Representative or Project Co discovers any significant deficiencies or any failure to conform to the requirements of this Project Agreement, the WGH Representative may revise the comment assigned to any Works Submittal. If the Parties agree or it is determined in accordance with Section 6 below that the revised comment is correct, Project Co shall make all such corrections to the Works Submittals and the Project Operations. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.

- 5.7 For the purpose of facilitating and expediting the review and correction of Works Submittals, the WGH Representative and the Project Co Representative shall meet as may be mutually agreed to discuss and review any outstanding Works Submittals and any comments thereon.
- 5.8 Where a Works Submittal is voluminous, the WGH Representative at his or her discretion may elect to stamp only the cover page or first sheet of the Works Submittal with the appropriate comment, if any, and return to Project Co the cover page or first page together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to Project Co. Any pages returned without such an explanation as to their status shall be deemed to be "REVIEWED" by WGH.
- 5.9 In lieu of returning a Works Submittal, the WGH Representative may by letter notify Project Co of the comment assigned to the Works Submittal and if such comment is "REVIEWED AS NOTED" or "REJECTED" the letter shall contain comments in sufficient detail for Project Co to identify the correction sought.

## **6. Disputes**

- 6.1 If Project Co disputes any act of WGH or the WGH Representative in respect of a Works Submittal under this Part A, Project Co shall promptly notify the WGH Representative and the Independent Certifier of the details of such Dispute and shall submit the reasons why Project Co believes a different comment should be assigned, together with appropriate supporting documentation. The WGH Representative shall review the Works Submittal, the reasons and supporting documentation and within 5 Business Days after receipt thereof shall either confirm the original comment or notify Project Co of a revised comment. If the WGH Representative confirms the original comment, Project Co may request the Independent Certifier to resolve the Dispute and render a decision within 5 Business Days of such request.
- 6.2 If either Party is not satisfied, acting reasonably, with the resolution of the Independent Certifier, subject to Section 11.2 either Party may refer the matter for determination in accordance with Schedule 27 - Dispute Resolution Procedure.

## **7. Effect of Review**

- 7.1 Any review and comment by WGH or the WGH Representative of any Works Submittals is for general conformity to the obligations and requirements of this Project Agreement, and any such review and comment shall not relieve Project Co of the risk and responsibility for the Project Operations and for meeting all of its obligations under and requirements of this Project Agreement, and shall not create any new or additional obligations or liabilities for WGH. Without limiting the generality of the foregoing any and all errors or omissions in Works Submittals or of any review and comment shall not exclude or limit Project Co's obligations or liabilities in respect of the Works under this Project Agreement or exclude or limit WGH's rights in respect of the Works under this Project Agreement.

**8. Works Submittal Explanation**

- 8.1 At any time, the WGH Representative may, acting reasonably, require Project Co, including Project Co's consultants, Subcontractors, and any other relevant personnel, at no additional cost to WGH, to explain to the WGH Representative and WGH's advisors the intent of Project Co's Works Submittals, including in relation to any design and any associated documentation and as to its satisfaction of the Technical Requirements.

**9. Revisions**

- 9.1 Project Co shall ensure that Works Submittals keep the same, unique reference number throughout the review process, in a format approved by the Architect of Record, and that all subsequent revisions of the same Works Submittal are identified by a sequential revision number. Correspondence related to such Works Submittal shall reference the reference number and revision number.
- 9.2 Re-submittals shall clearly show all revisions from the previous Works Submittal. Bound documents, including reports and manuals, shall contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. A consistent format for mark-ups of documents shall be used (e.g. deletions struck out and additions underscored). Revised portions of drawings shall be clearly marked (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and the revision number and description of the revision shall be included on the drawing.
- 9.3 All revisions on print media shall be initialled by hand by the individual designer, design checker and, where applicable, by the drafter and the drafting checker and shall identify the persons who initialled the Works Submittal. Electronic versions of the Works Submittal shall identify the persons who initialled the revisions to the printed version of the Works Submittal. All such revisions must be able to be integrated into the As Built Drawings.

**10. Audit by the WGH Representative**

- 10.1 Without limiting any other right under this Project Agreement, the WGH Representative shall have the right to audit all Works Submittals, including comparing all Works Submittals to previous Works Submittals.
- 10.2 If during an audit or at any other time it is discovered by WGH or Project Co (or resolved pursuant to Section 10.3 below) that any Works Submittals were not correctly implemented, Project Co shall at its sole cost immediately take all necessary steps to correct and modify the applicable Works Submittals and the Project Operations to which they relate and shall advise the WGH Representative of all such corrections and modifications.
- 10.3 Any Dispute concerning the implementation of a Works Submittal, subject to Section 6.1 above, shall be referred in the first instance to the Independent Certifier for resolution.

**11. Variations**

- 11.1 Subject to Section 11.2 below, no alteration or modification to the design, quality and quantity of the Project Operations arising from the development of detailed design or from the co-ordination of the design in connection with any Works Submittal shall be construed or regarded as a Variation.
- 11.2 If, having received comments from the WGH Representative on any Works Submittal, Project Co considers that compliance with those comments would amount to a Variation, Project Co shall, within 10 Business Days of receipt of and before complying with the comments, provide written notice to WGH of the same and, if it is agreed by the Parties that a Variation would arise if the comments were complied with, WGH may, at its election, (a) issue a Variation Enquiry and it shall be dealt with in accordance with Schedule 22 - Variation Procedure or (b) amend its comment on the Works Submittal or (c) refer the matter to the Dispute Resolution Procedure in accordance with Section 6.2. Any failure by Project Co to notify WGH in accordance with this Section 11.2 that Project Co considers compliance with any comments of the WGH Representative would amount to a Variation shall constitute an irrevocable acceptance by Project Co that any compliance with the WGH Representative's comments shall be without cost to WGH and without any extension of time.

**SCHEDULE 10****REVIEW PROCEDURE****PART B – SERVICES PHASE****12. Service Submittals**

- 12.1 The provisions of Part B of this Schedule 10 shall apply to any and all items, documents and anything else required or specified by this Project Agreement, other than Works Submittals, to be submitted to, reviewed or otherwise processed by WGH in accordance with the Review Procedure after Substantial Completion except in respect of the completion of Minor Deficiencies, including any and all subsequent revisions, amendments and changes thereto (collectively and individually, "**Service Submittal**" or "**Service Submittals**" as applicable in Part B of this Schedule 10).
- 12.2 Project Co shall allow a period of 10 Business Days (or such longer period as the Parties may agree) from the date of receipt for review of and response to each Service Submittal.
- 12.3 Project Co shall, in scheduling Service Submittals and in the performance of the Project Operations, allow adequate time prior to performing the Project Operations that are the subject of the Service Submittals, for review of the Service Submittals and for Project Co to make changes to Service Submittals that may be required if comments are received on the Service Submittals, such review and required changes to be in accordance with Part B of this Schedule 10.

**13. General Requirements for Service Submittals**

- 13.1 Unless otherwise specified by the WGH Representative, Project Co shall issue 3 printed copies of all Service Submittals to WGH, together with an electronic copy in a format agreed by the Parties acting reasonably.
- 13.2 Project Co shall compile and maintain a register of the date and contents of the submission of all Service Submittals and the date of receipt and content of all returned Service Submittals and comments thereon.
- 13.3 All Service Submittals shall be in English.
- 13.4 All Service Submittals required by this Project Agreement or by Applicable Law to be signed or sealed by persons with professional designations (including, where applicable, by registered professional architects or engineers) shall, where applicable, be so signed and sealed.
- 13.5 All Service Submittals shall include copies of all documents to be reviewed and shall clearly identify the purpose of the Service Submittal and Project Co's proposed course of action relating to the Service Submittal and the Project Operations that are the subject of the Service Submittal.

- 13.6 All Service Submittals shall, where applicable, refer to the relevant provisions of the Technical Requirements.
- 13.7 All Service Submittals shall be clearly identified as a Service Submittal and shall be delivered with appropriate covering documentation, which shall include a list of all attached Service Submittals and for each Service Submittal:
- (a) the document number(s) or drawing number(s);
  - (b) revision numbers (if applicable);
  - (c) document or drawing title(s);
  - (d) name of entity that prepared the Service Submittal;
  - (e) the Service Submittal history showing date and delivery information and/or log number of all previous submissions of that Service Submittal; and
  - (f) identification of any previous Service Submittal superseded by the current Service Submittal.

#### **14. Comments**

- 14.1 The WGH Representative shall review and respond to each Service Submittal in accordance with the time periods specified in Section 12.2 of this Schedule 10. The WGH Representative shall return Service Submittals to Project Co and assign one of the following 3 comments:
- (a) "REVIEWED";
  - (b) "REVIEWED AS NOTED"; or
  - (c) "REJECTED".
- 14.2 The comment "REVIEWED" will be assigned to those Service Submittals that, in the opinion of the WGH Representative, conform to the requirements of this Project Agreement. Project Co shall comply with and implement such Service Submittals.
- 14.3 The comment "REVIEWED AS NOTED" will be assigned to those Service Submittals that, in the opinion of the WGH Representative, generally conform to the requirements of this Project Agreement, but in which immaterial deficiencies have been found by the WGH Representative's review. Project Co shall correct these Service Submittals and provide a copy of the corrected Service Submittals to the WGH Representative. Project Co shall comply with and implement such Service Submittals after correction, including in accordance with the comments. If at any time it is discovered that Project Co has not corrected the deficiencies on Service Submittals stamped "REVIEWED AS NOTED", then Project Co will be required to modify the Service Submittals and Project Operations as required to ensure that the Project Operations comply with the Output Specifications

- and Project Co may be required, at the WGH Representative's discretion, to resubmit relevant Service Submittals. In such circumstances the WGH Representative shall act promptly in considering whether such deficiencies have been corrected and Project Co shall obtain such confirmation prior to continuing. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 14.4 The comment "REJECTED" will be assigned to those Service Submittals that, in the opinion of the WGH Representative, contain significant deficiencies or do not generally conform with the requirements of this Project Agreement, including this Schedule 10. Project Co shall correct and re-submit these Service Submittals within 10 Business Days after the comment has been provided to Project Co, or such longer period as Project Co may reasonably require, and (unless the Service Submittal is re-submitted within 5 Business Days) shall give the WGH Representative not less than 5 Business Days' notice of when the Service Submittals shall be resubmitted. The WGH Representative will then review such re-submitted Service Submittals and assign a comment to the corrected Service Submittal. The Service Submittals shall be corrected, revised and resubmitted as often as may be required to obtain a comment that permits Project Co to proceed. Except with the written consent of the WGH Representative, Project Co shall not proceed with any Project Operations to which such Service Submittals receiving the comment "REJECTED" relate until Project Co obtains a comment that permits Project Co to proceed. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 14.5 Where the WGH Representative issues the comment "REVIEWED AS NOTED" or "REJECTED", the WGH Representative shall provide reasons for the comment, referencing the particulars of the Section(s) of this Project Agreement (including the Technical Requirements and other Schedules) that the Service Submittal fails to satisfy, and, if requested by the Project Co Representative, the WGH Representative shall meet with the Project Co Representative to discuss the reasons for the comment.
- 14.6 If, at any time after assigning any comment to a Service Submittal, the WGH Representative or Project Co discovers any significant deficiencies or any failure to conform to the requirements of this Project Agreement, the WGH Representative may revise the comment assigned to any Service Submittal. If the Parties agree or it is determined in accordance with Section 15 below that the revised comment is correct, Project Co shall make all such corrections to the Service Submittals and the Project Operations. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 14.7 For the purpose of facilitating and expediting the review and correction of Service Submittals, the WGH Representative and the Project Co Representative shall meet as may be mutually agreed to discuss and review any outstanding Service Submittals and any comments thereon.
- 14.8 Where a Service Submittal is voluminous, the WGH Representative at his or her discretion may elect to stamp only the cover page or first sheet of the Service Submittal with the appropriate comment, if any, and return to Project Co the cover page or first



page together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to Project Co. Any pages not returned without such an explanation as to their status shall be deemed to be "REVIEWED" by WGH.

- 14.9 In lieu of returning a Service Submittal, the WGH Representative may by letter notify Project Co of the comment assigned to the Service Submittal and if such comment is "REVIEWED AS NOTED" or "REJECTED" the letter shall contain comments in sufficient detail for Project Co to identify the correction sought.

## **15. Disputes**

- 15.1 If Project Co disputes any act of WGH or the WGH Representative in respect of a Service Submittal under this Part B, Project Co shall promptly notify the WGH Representative of the details of such Dispute and shall submit the reasons why Project Co believes a different comment should be assigned, together with appropriate supporting documentation. The WGH Representative shall review the Service Submittal, the reasons and supporting documentation and within 5 Business Days after receipt thereof shall either confirm the original comment or notify Project Co of a revised comment.
- 15.2 If after such review by the WGH Representative Project Co disputes the comment on a Service Submittal, subject to Section 20.1 Project Co may refer the matter for determination in accordance with Schedule 27 - Dispute Resolution Procedure.

## **16. Effect of Review**

- 16.1 Any review and comment by WGH or the WGH Representative of any Service Submittals is for general conformity to the obligations and requirements of this Project Agreement, and any such review and comment shall not relieve Project Co of the risk and responsibility for the Project Operations and for meeting all of its obligations under and requirements of this Project Agreement, and shall not create any new or additional obligations or liabilities for WGH. Without limiting the generality of the foregoing any and all errors or omissions in Service Submittals or of any review and comment shall not exclude or limit Project Co's obligations or liabilities under this Project Agreement in respect of matters related to the Service Submittal or exclude or limit WGH's rights under this Project Agreement in respect of matters related to the Service Submittal.

## **17. Service Submittal Explanation**

- 17.1 At any time, the WGH Representative may, acting reasonably, require Project Co, including Project Co's consultants, Subcontractors, and any other relevant personnel, at no additional cost to WGH, to explain to the WGH Representative and WGH's advisors the intent of Project Co's Service Submittals, including as to its satisfaction of the Technical Requirements.

**18. Revisions**

- 18.1 Project Co shall ensure that Service Submittals keep the same, unique reference number throughout the review process, and that all subsequent revisions of the same Service Submittal are identified by a sequential revision number. Correspondence related to such Service Submittal shall reference the reference number and revision number.
- 18.2 Re-submittals shall clearly show all revisions from the previous Service Submittal. Bound documents, including reports and manuals, shall contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. A consistent format for mark-ups of documents shall be used (e.g. deletions struck out and additions underscored). Revised portions of drawings shall be clearly marked (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and the revision number and description of the revision shall be included on the drawing.
- 18.3 All revisions on print media shall be initialled by hand by the individual designer, design checker and, where applicable, by the drafter and the drafting checker and shall identify the persons who initialled the Service Submittal. Electronic versions of the Service Submittal shall identify the persons who initialled the revisions to the printed version of the Service Submittal.

**19. Audit by the WGH Representative**

- 19.1 Without limiting any other right under this Project Agreement, the WGH Representative shall have the right to audit all Service Submittals, including comparing all Service Submittals to previous Service Submittals.
- 19.2 If during an audit or at any other time it is discovered by WGH or Project Co that any Service Submittals were not correctly implemented, Project Co shall at its sole cost immediately take all necessary steps to correct and modify the applicable Service Submittals and the Project Operations to which they relate and shall advise the WGH Representative of all such corrections and modifications.

**20. Variations**

- 20.1 If, having received comments from the WGH Representative on any Service Submittal, Project Co considers that compliance with those comments would amount to a Variation, Project Co shall, within 10 Business Days of receipt of and before complying with the comments, provide written notice to WGH of the same and, if it is agreed by the Parties, or is determined pursuant to Schedule 27 - Dispute Resolution Procedure, that a Variation would arise if the comments were complied with, WGH may at its election, either issue a Variation Enquiry and it shall be dealt with in accordance with Schedule 22 - Variation Procedure or amend its comment on the Service Submittal. Any failure by Project Co to notify WGH in accordance with this Section 20.1 that Project Co considers compliance with any comments of the WGH Representative would amount to a Variation shall constitute an irrevocable acceptance by Project Co that any compliance with the WGH

Representative's comments shall be without cost to WGH and without any extension of time.

Appendix A

**[REDACTED]**

**SCHEDULE 11**

**CONSTRUCTION QUALITY PLAN**

**[REDACTED]**

**SCHEDULE 12**

**SERVICE QUALITY PLAN OUTLINE**

**[REDACTED]**

**SCHEDULE 13**

**PROJECT CO PROPOSAL EXTRACTS**

**[REDACTED]**

**SCHEDULE 14**

**OUTLINE COMMISSIONING PROGRAM**

**[REDACTED]**



**1. APPLICABLE STANDARDS**

- 1.1 Project Co shall plan, schedule, coordinate and execute the commissioning of each item of equipment and building system provided as part of the Works in accordance with the following standards:
- (a) CAN/CSA Z318.0-05 (R1999) Commissioning of Health Care Facilities;
  - (b) 2007 ASHRAE HVAC Applications Handbook, Chapter 42, HVAC Commissioning; and
  - (c) ASHRAE Guideline 0, The Commissioning Process.

**2. PROJECT CO COMMISSIONING COORDINATOR**

- 2.1 Project Co shall appoint a commissioning coordinator (the "**Project Co Commissioning Coordinator**") at the start of the construction to undertake the role described in CAN/CSA Z318.0-05 and as outlined in Sections 01800, 01810 and 01820 of Division 1 specifications set forth in the Existing Design and Technical Requirements.
- 2.2 The Project Co Commissioning Coordinator shall be an individual, company or agency having a minimum of five (5) years experience in the design or commissioning of mechanical and electrical systems in similar health care facilities, shall be licensed or authorized by the Association of Professional Engineers of the Province of Ontario and shall be familiar with and knowledgeable about each of the standards listed in Section 1.1 of this Schedule 14.

**3. COMMISSIONING PARAMETERS**

- 3.1 The Project Co Commissioning Coordinator shall convene a meeting of the commissioning team to set commissioning parameters, designate the responsibilities of the various parties and establish the documentation requirements for each phase of the Works and the Project Co Commissioning.
- 3.2 Project Co shall incorporate the commissioning schedule into the Works Schedule.
- 3.3 The Project Co Commissioning Coordinator shall submit periodic reports to the Works Committee regarding the progress of the Project Co Commissioning.
- 3.4 Project Co is responsible for the supply, installation, start-up, testing, adjustment and cleaning of each item of equipment and building system provided as part of the Works.

**4. COMMISSIONING TEAM**

- 4.1 The commissioning team shall be comprised of:
- (a) a representative of Project Co;
  - (b) a representative of WGH;
  - (c) the Project Co Commissioning Coordinator;

- (d) the WGH Commissioning Agent;
- (e) representatives of the Construction Contractor and the Service Provider; and
- (f) representatives of the relevant equipment manufacturers and/or vendors.

4.2 Project Co and each of its Subcontractors shall assign an individual from each relevant trade to the commissioning team and shall ensure that representatives of the relevant equipment manufacturers and/or vendors are present during the relevant Project Co Commissioning.

4.3 Project Co shall provide all necessary labour, materials, equipment, testing apparatus and incidentals necessary to completely start-up, verify, performance test and commission each item of equipment and building system provided as part of the Works.

**5. COMMISSIONING PROCEDURES**

5.1 The commissioning team shall ensure that all regulation and code references in the construction documents are current and applicable.

5.2 Project Co shall start and bring to normal operating condition each item of equipment and building system provided as part of the Works.

5.3 Project Co shall operate and maintain each item of equipment and building system provided as part of the Works as required for the duration of the Project Co Commissioning.

5.4 Project Co shall modify or replace, re-adjust, re-test, re-balance and re-start any item of equipment or building system provided as part of the Works that fails to perform as required.

5.5 The Project Co Commissioning Coordinator shall lead the commissioning team through the start-up, verification and performance testing check sheets appropriate to each item of equipment and building system provided as part of the Works.

5.6 The Project Co Commissioning Coordinator shall prepare and issue start-up, verification and performance testing check sheets for each item of equipment and building system provided as part of the Works. Check sheets shall be prepared in accordance with the standards listed in Section 1.1 of this Schedule 14 and shall be modified to reflect the particular needs of the Project.

5.7 The Project Co Commissioning Coordinator shall complete the various check sheets. Each member of the commissioning team shall review the check sheets on completion and shall initial each check sheet to indicate their acceptance.

**6. COMMISSIONING SUBMITTALS**

6.1 Project Co shall prepare and submit to the WGH Representative a detailed commissioning plan for each item of equipment and building system provided as part of the Works.

6.2 Project Co shall prepare and submit to the WGH Representative a detailed commissioning schedule for each item of equipment and building system provided as part of the Works.

- 6.3 Project Co shall prepare and submit to the WGH Representative a detailed commissioning manual for each item of equipment and building system provided as part of the Works.
- 6.4 All commissioning manuals shall be bound in hard cover, D-ring binders with transparent cover on front and spine, personalized to indicate:
  - (a) name and logo of WGH;
  - (b) name of the Project;
  - (c) project number;
  - (d) identification of each item of equipment and building system commissioned; and
  - (e) date each item of equipment or building system was commissioned.
- 6.5 All commissioning manuals shall have machine printable index dividers to organize each manual by item of equipment or building system and by commissioning stage and shall include:
  - (a) test reports;
  - (b) equipment check sheets (start-up, verification and performance) for each item of equipment provided as part of the Works;
  - (c) building systems check sheets (start-up, verification and performance) for each building system provided as part of the Works; and
  - (d) interim and final acceptance check sheets for each item of equipment and building system provided as part of the Works.

**7. LEED REQUIREMENTS**

- 7.1 Project Co shall achieve the prerequisites and credits under the LEED Rating System as set forth in Article 23 of the Project Agreement.
- 7.2 The independent commissioning authority required to achieve Credit EAC3 – Best Practice Commissioning under Performance Category: Energy & Atmosphere will be appointed and paid by WGH.

**8. BUILDING SYSTEMS TO BE COMMISSIONED**

- (a) Fire Protection Systems
  - (i) Wet Sprinkler
  - (ii) Dry Sprinkler
  - (iii) Pre-action Sprinkler
  - (iv) Total Flooding – FM200

- (v) Total Flooding – CO2
- (vi) Total Flooding – Dry Chemical
- (vii) Total Flooding – Wet Chemical
- (viii) Standpipe & Hose – 1-1/2"
- (ix) Standpipe & Hose – 2-1/2"/1-1/2"
- (x) Portable Fire Extinguishers
- (b) Plumbing Systems
  - (i) Domestic water pressure boost
  - (ii) Domestic water distribution
  - (iii) Domestic water heating
  - (iv) Hot water recirculating
  - (v) Compressed air supply
  - (vi) Sanitary fixtures
  - (vii) Safety (emergency) fixtures
  - (viii) Kitchen equipment
  - (ix) WGH's equipment
- (c) Lab Gas Systems
  - (i) Lab Air
  - (ii) Oxygen
  - (iii) Lab Vacuum
- (d) Medical Gas Systems
  - (i) Medical Air
  - (ii) Medical Vacuum
  - (iii) Oxygen
  - (iv) Carbon Dioxide
  - (v) Nitrogen

- (vi) Nitrous Oxide
- (vii) Anesthetic Gas Scavenging
- (e) HVAC Systems
  - (i) Fuel supply
  - (ii) Standby fuel storage and supply
  - (iii) Heating Plant
  - (iv) Steam distribution – 100 psig
  - (v) Steam distribution – 12 psig
  - (vi) Condensate collection & return
  - (vii) Feedwater supply & treatment
  - (viii) Flue gas heat recovery
  - (ix) Heat exchangers
  - (x) Hot water heating – radiation
  - (xi) Hot water heating – reheat
  - (xii) Hot water/glycol heating – AHU
  - (xiii) Underfloor heating
  - (xiv) Snow melting
  - (xv) Soffit heating
  - (xvi) Chillers
  - (xvii) Cooling towers
  - (xviii) Chilled water distribution
  - (xix) Condenser water distribution
  - (xx) Direct expansion refrigeration
  - (xxi) Supply air distribution
  - (xxii) Return air collection
  - (xxiii) Outdoor air intake

- (xxiv) Air filtration
- (xxv) Air humidification
- (xxvi) Air dehumidification
- (xxvii) Air heating
- (xxviii) Air cooling
- (xxix) Exhaust air collection
- (xxx) Exhaust air discharge
- (xxxi) Energy recovery
- (xxxii) Pressurization fans
- (xxxiii) Isolation Rooms
- (f) Building Automation Systems
  - (i) Operator Workstations
  - (ii) Field panels
  - (iii) Network cabling
  - (iv) Valves, dampers and actuators
  - (v) Pumps
  - (vi) Fans
  - (vii) Meters
  - (viii) Heating systems
  - (ix) Ventilating systems
  - (x) Air conditioning systems
  - (xi) Pressurization systems
  - (xii) Humidification systems
  - (xiii) De-humidification systems
  - (xiv) Smoke control systems
  - (xv) Smoke evacuation

- (g) Electrical Systems
  - (i) Utility owned HV feeders
  - (ii) Utility owned HV switchgear
  - (iii) Utility owned HV transformers
  - (iv) High-voltage bus
  - (v) 600-V bus
  - (vi) 600-V switchgear
  - (vii) 600-V feeders
  - (viii) 600-V panelboards
  - (ix) 600-V Motor control centers
  - (x) 600-V Transformers
  - (xi) Low-voltage feeders
  - (xii) Low-voltage panelboards
  - (xiii) Low-voltage Motor control centers
  - (xiv) Wiring & equipment connections
  - (xv) Electrical devices
  - (xvi) Diesel-engine generator sets
  - (xvii) Diesel-engine generator controls
  - (xviii) Associated systems
  - (xix) Automatic Transfer switches
  - (xx) Power conditioners
  - (xxi) UPS systems
  - (xxii) Power factor correction
  - (xxiii) Lighting fixtures
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  - (xxv) Lighting controls

- (xxvi) Variable frequency drives
- (xxvii) Transient Voltage Surge Suppression
- (h) Communications Systems
  - (i) Voice (telephone)
  - (ii) Data (computer)
  - (iii) Paging
  - (iv) Nurse Call
  - (v) Intercom
  - (vi) Fire Detection and Alarm
  - (vii) Pagers
  - (viii) Cable Television
  - (ix) Satellite TV
- (i) Security & Safety Systems
  - (i) Closed-circuit TV
  - (ii) Magnetic door locks
  - (iii) Card readers
  - (iv) Systems monitors
  - (v) Crisis Alarm
  - (vi) Wandering Patient
  - (vii) Registries
  - (viii) Audio monitoring system

**9. EQUIPMENT COMMISSIONING**

9.1 Unless the Parties otherwise agree, each item of Equipment that Project Co is required to commission pursuant to Article 22 of this Project Agreement, shall be commissioned in accordance with the acceptance testing procedures (including, without limitation, the results and guidelines for acceptance) proposed by the relevant Equipment vendor.



9.2 The Final Commissioning Program shall provide that the following items of O/V Category 2 New Equipment shall be installed, commissioned and functional prior to the Scheduled Substantial Completion Date:

**[REDACTED]**

(collectively, the "**O/V Category 2 New Pre-Substantial Completion Equipment**").

**10. TRANSITION**

10.1 Subject to Section 1.2(f) of the Project Agreement, the Final Commissioning Program shall include the process for Transition from the Existing Facilities to the new Facility. The outline Transition process and parameters is as set forth in the attached Transition Management Sub-Plan, Quality Sub-Plan and Physical Transition Sub-Plan.

**11. OTHER**

11.1 Subject to Section 1.2(f) of the Project Agreement, in addition to the items set forth in this Schedule 14, the Final Commissioning Program to be developed by the Parties will also be based on the documents taken from Project Co's RFP Submission which is attached hereto as Appendix "A".

11.2 The Final Commissioning Program is to include a program for all such other matters identified in the Project Agreement and the Existing Design to be subject to or to be in compliance with the Final Commissioning Program.

**Appendix “A”**

**[REDACTED]**

# Schedule 15

# Woodstock General Hospital

## Facility Management Output Specifications



These Output Specifications are provided in Sections that work together.

Each section serves a specific purpose in describing the FM requirements and informing Project Co of their responsibilities and the expectations for their Services including the overall process, detailed Service expectations and performance management requirements.

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## **1.0 Introduction**

### **1.1 Facility Management Service Objectives**

The Facility is a special purpose building with unique operating requirements. The Facility will serve as a community health care facility providing primary and secondary Public Hospital services to the people within Oxford County and surrounding area; as a result, the Facility requires a high availability. The Facility will host critical patient care and business systems that require high security and high reliability. Project Co is obliged to provide Project Co Services to ensure continuity 24 hours per day 7 days per week throughout the Operational Term. All necessary measures must be taken by Project Co to ensure that the Facility is operating on a continuous basis for the purpose for which it is intended.

The Facility will be required to continue its operations during public emergencies and health emergencies, including but not limited to a pandemic. As a result, Project Co will be obliged to establish contingency plans and disaster recovery capabilities which shall ensure continuity.

Project Co shall take into account the following in providing Project Co Services:

- Project Co Services in respect of the Facility shall be provided by Project Co to maintain it in a safe manner so that the Facility may at all times be used for the purposes intended by WGH and be considerate of the needs and interests of WGH patients, employees, associated health partners and stakeholders, physicians, students, volunteers, visitors, relevant Governmental Authorities and the community at large.
- The Facility shall be maintained by Project Co as a valuable asset of WGH without diminishment in value other than as a result of Normal Wear and Tear. Project Co shall use only good quality materials and workmanship as appropriate, within a clinical environment, in the circumstances having regard to the needs of WGH.

## 1.2 Output Specifications Introduction

These Output Specifications are separated into sections that work together. Each section serves a specific purpose in describing the obligations of Project Co with respect to Project Co Services obligations from (i) an overall process and (ii) detailed Project Co Service expectations.

<b>Section</b>	<b>Topic</b>
Section 2.0	<b>Management and Administration Specifications</b> This section outlines the overall requirements, processes, approvals, WGH interfaces and management principles associated with the delivery of Project Co Services.
Section 3.0	<b>Specific Service Specifications</b> This section provides details of Project Co's responsibilities for specific Project Co Services. It also provides a reference to the performance measurements and reference information that must be used when performing the service, including applicable service response timeframes.

### 1.3 Output Specifications Interpretation

Project Co shall refer to, and comply with, all Definitions included in these Output Specifications and Schedule 1 - Definitions and Interpretation in the Project Agreement.

For the purposes of these Output Specifications, the following terms have the following meanings:

**“Critical Medical Areas”** means all areas where Clinical Services are performed or where other medical services or systems which are required to perform Clinical Services are located.

**“Facility IT Systems”** means the current and future infrastructure including networking, hardware, software and wireless devices.

**“Facility Occupants”** means any and all persons who occupy the Facility from time to time for an authorized purpose including but not limited to WGH employees, patients, physicians, students, volunteers, visitors and Hospital Service Users as defined in Schedule 1 of the Project Agreement.

**“FM Operations Committee”** means a group comprised of a minimum of 2 WGH and 2 Project Co representatives, which is co-chaired by their respective most senior representatives. If no committee has been named, the most senior representatives named by each of the Parties shall be deemed to be the FM Operations Committee.

**“Good Industry Practices for Hospitals”** means using standards, practices, methods and procedures to a good commercial standard, conforming to Applicable 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, as applied to Public Hospitals.

**“Individual Project”** means an identifiable scope of services and work to be performed as may be requested by WGH from time to time.

**“Key FM Individuals”** means the individuals listed in Part B of Schedule 9 – Key Individuals of the Project Agreement.

**“Lists of Reports and Plans”** means the reports and plans listed in Section 4.2 and 4.3 Appendix – Plans & Reports

**“Non Medical Space”** means areas of the Facility where Medical Staff, Patients and the general public have limited or no access, such as boiler rooms, housekeeping stations, administration offices, etc

**“Operating Procedures”** means procedures on a specific topic that are developed, administered and maintained by Project Co in order to comply with a WGH Policy and these Output Specifications. They shall be based on Industry Standards for hospitals and incorporate WGH requirements. All Operating Procedures shall be approved in advance of their implementation by WGH Representative.

**“Performance Action Plan”** has the meaning set out in Section 2 of these Output Specifications.

**“Performance Action Plan Failure”** has the meaning given in Section 2.13(e) of these Output Specifications.



**“Predictive Maintenance”** means using techniques to help determine the condition of in-service equipment in order to predict when maintenance should be performed or replacement should be undertaken to reduce or eliminate risk of failure; whereas preventive maintenance tasks are performed only when required.

**“Routine”** means any event or requests for a Project Co Service that are not seen as immediately detrimental and not causing significant operational problems.

**“Security Operational Procedures”** means as defined by WGH Policy.

**“Security Policy”** means as defined by WGH Policy.

**“Security & Surveillance Services”** means the provision of the Services described in Section 3.1 of these Output Specifications.

**“Specific Service Specifications”** means the service requirements and specifications set out in Section 3 of these Output Specifications.

**“Urgent”** means any event or request for a Project Co Service that shall cause operational problems if not attended to quickly, or which may develop into an Emergency if not remedied or an Ad-Hoc Services Request which requires attendance quickly to avoid operational problems or an Emergency if not remedied.

**“WGH Funded Projects”** means projects whose costs are not included in Project Co’s responsibilities as part of Project Operations and are initiated by and funded by WGH.

**“WGH Policy”** means policies developed, administered and maintained by WGH on a specific topic and are required to be complied with by Project Co. They provide the guiding principles and key considerations.

## 1.4 Services Reference Table

The following table provides a reference by service found in Section 2 and 3 of this Output Specification. The purpose of this table is to provide guidance as to the requirements of Project Co and its subcontractors for purposes of determining when escalating remedies may occur in accordance with Schedule 20 – Payment Mechanism of the Project Agreements.

### General Management

- 1.1 FACILITY MANAGEMENT SERVICE OBJECTIVES
- 1.2 OUTPUT SPECIFICATIONS INTRODUCTION
- 1.3 OUTPUT SPECIFICATIONS INTERPRETATION
- 2.0 MANAGEMENT AND ADMINISTRATION
- 2.1 GENERAL REQUIREMENTS
- 2.2 LEGISLATIVE REQUIREMENTS
- 2.3 STANDARDS, POLICIES AND PROCEDURES
- 2.4 DELIVERY ORGANIZATION
- 2.5 HR AND TRAINING / DEVELOPMENT
- 2.6 HEALTH AND SAFETY
- 2.7 COMMUNICATION
- 2.8 MANAGEMENT INTERFACES
- 2.9 REPORTING
- 2.10 CENTRAL DISPATCH
- 2.11 ENVIRONMENTAL MANAGEMENT
- 2.12 SUBCONTRACTOR MANAGEMENT
- 2.13 QUALITY MANAGEMENT
- 2.14 EMERGENCY MANAGEMENT
- 2.15 RECORDS MANAGEMENT
- 2.16 MAINTENANCE AND OPERATIONS PROCEDURE (MOP) MANUAL
- 2.17 LIFECYCLE RENEWAL
- 2.18 FURNITURE, FIXTURES AND EQUIPMENT (FF&E)
- 2.22 MATERIAL MANAGEMENT
- 2.23 SPARE PARTS AND CONSUMABLES MANAGEMENT
- 2.25 FM COMMISSIONING
- 2.26 CONTINUOUS COMMISSIONING
- 2.27 TRANSITION IN
- 2.28 TRANSITION OUT - HAND BACK
- 2.29 CULTURAL & RELIGIOUS OCCASIONS

### Security Services

- 2.30 SECURITY SERVICES
- 3.1 ACCESS CONTROL / PROTECTION SERVICES / SECURITY OPERATIONS

### Grounds

- 3.2 GROUND MAINTENANCE
- 3.3 SNOW AND ICE MANAGEMENT

### Housekeeping

- 2.21 HOUSEKEEPING
- 3.4 MAINTENANCE AND INVENTORY MANAGEMENT – MOVABLE ASSETS
- 3.5 MANAGEMENT OF HAZARDOUS WASTE AND RECYCLING
- 3.6 CENTRAL DISPATCH

**Utilities Management**

- 2.31 UTILITIES MANAGEMENT
- 3.7 UTILITIES MANAGEMENT SERVICES

**Hard Infrastructure Services**

- 2.19 PREVENTIVE MAINTENANCE PLAN
- 3.8 MANAGEMENT OF SYSTEM CONTROLS (BUILDING CONTROL)
- 3.9.1 MAINTENANCE AND REPAIR - EXTERIOR FINISHES
- 3.9.2 MAINTENANCE AND REPAIR - INTERIOR FINISHES
- 3.9.3 MAINTENANCE AND REPAIRS - GENERAL
- 3.9.4 MAINTENANCE AND REPAIRS - MECHANICAL SYSTEMS
- 3.9.5 MAINTENANCE AND REPAIRS - ELECTRICAL SYSTEMS
- 3.9.6 MAINTENANCE AND REPAIRS - ELEVATING DEVICES
- 3.9.7 MAINTENANCE AND REPAIRS - FIRE SUPPRESSION SYSTEMS
- 2.20 CORRECTIVE MAINTENANCE WORK

**Parking Services**

- 3.10 PARKING MANAGEMENT (NON O&M ACTIVITIES)

**Project Management**

- 3.11 PROJECT MANAGEMENT
- 2.24 PROJECT DELIVERY

**Specialized Hospital Systems**

- 3.12 SPECIALIZED HOSPITAL SYSTEMS

# Section Two

## Schedule 15 Woodstock General Hospital Facility Management Output Specifications



### Management & Administration Specifications

This section outlines the overall requirements, processes, approvals, WGH interfaces and management principles associated with the delivery of Project Co Services.

## **2.0 Management and Administration**

Project Co shall provide Project Co Services in accordance with the FM Service Specification established in these Output Specifications, and as amended in accordance with the Variation Procedures established in Schedule 22 – Variation Procedure of the Project Agreement. This section outlines the overall requirements, processes, approvals, WGH interfaces and management principles associated with the delivery of Project Co Services.

Project Co is obliged to undertake all functions and tasks that are necessary in the provision of Project Co Services so that the level of performance achieved meets the requirements necessary to carry out the Project Co Services in accordance with these Output Specifications.

These Service Specifications are to be read in conjunction with Section Three – Specific Service Specifications.

*The Specific Service Specifications included in these Output Specifications are proprietary to WGH and cannot be used for any purpose other than for Project Co to develop its proposal, including but not limited to the price, and for the provision of Project Co Services.*

<b>2.1 General Requirements</b>			
<b>Service Objectives</b>	The provision of Project Co Services by Project Co is to be done in a manner that supports the overall objectives and purpose of the Facility. Project Co shall deliver Project Co Services in accordance with Good Industry Practices for Hospitals in an organized, well-managed manner with suitable documentation and communication that not only guides Project Co Services to achieve the required objectives but also provides demonstrated evidence of achievement of performance requirements.		
<b>Element</b>	<b>Service Requirements</b>		
a. Delivery Requirements	All necessary measures must be taken by Project Co in order to ensure the availability of the Facility for its intended purpose on an ongoing and continuous basis. Project Co will also be required to perform additional Project Co Services on an as-needed or as required basis. The provision of as-needed or as required Project Co Services shall be dealt with through the Small Works process described in Schedule 22 – Variation Procedure of the Project Agreement or as a WGH Funded Project described in Section 2.24(e) of these Output Specification, as applicable.		
b. Application of General Requirements	<p>Project Co shall comply with the general requirements described in Section 2 of these Output Specifications. Project Co shall meet these general requirements in addition to those requirements specified in Section 3 of these Output Specifications. If there is a conflict of any nature between any of the Sections of this Output Specification, Project Co shall identify the conflict to WGH immediately after its identification of the conflict. Project Co shall provide WGH with a recommendation on how to address the conflict and the recommendation shall be consistent with WGH’s objectives and the nature of the Facility. WGH shall make the determination of the most appropriate course of action to be followed by Project Co in the event of a conflict.</p> <p>Section 2 of these Output Specifications provides the operating framework within which Project Co Services are to be rendered by Project Co.</p>		
c. Prudent Management	Project Co shall maintain the Facility as a valuable asset to a standard that would be achieved by a prudent facility manager for a public hospital facility, without material diminishment in value of the Facility other than that resulting from Normal Wear and Tear.		
d. Ongoing Operations	Project Co shall act in a professional manner that will not interfere with Hospital Services.		
e. Maintain Design Standards	Unless otherwise directed by WGH, Project Co shall maintain the same level of standards and product quality, or better, as those provided for in the Existing Design and Technical Requirements.		
f. Management and Control of Service Delivery	<p>Project Co shall provide all Project Co Services in an integrated and comprehensive manner. It shall:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; vertical-align: top;">Manage Project Co Services:</td> <td> <ul style="list-style-type: none"> <li>• Plan and proactively manage the delivery of Project Co Services</li> <li>• Procure all necessary resources required to carry out Project Co Services</li> <li>• Comply with applicable standards and policies and Applicable Law</li> </ul> </td> </tr> </table>	Manage Project Co Services:	<ul style="list-style-type: none"> <li>• Plan and proactively manage the delivery of Project Co Services</li> <li>• Procure all necessary resources required to carry out Project Co Services</li> <li>• Comply with applicable standards and policies and Applicable Law</li> </ul>
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2.1 General Requirements											
	<p>Control and Oversight</p> <ul style="list-style-type: none"> <li>Implement and manage Project Co Services in accordance with a quality assurance program required pursuant to these Output Specifications, in accordance with the Service Quality Plan and in accordance with Section 13 of the Project Agreement.</li> <li>Monitor Project Co Services, report on performance and take remedial action in the event that performance does not meet Project Co’s obligations as set forth in these Output Specifications and in the Project Agreement.</li> </ul>										
	<p>Deliver Project Co Services:</p> <ul style="list-style-type: none"> <li>Plan and schedule all Project Co Services, activities and tasks</li> <li>Manage and supervise all Subcontractors and their staff</li> <li>Liaise with WGH and other Facility Occupants as appropriate with respect to Project Co Services</li> <li>Inform WGH on matters that affect (or may affect) WGH’s business activities or the ability to deliver the Hospital Services</li> <li>Adhere to the restrictions or requirements communicated by WGH</li> </ul>										
g. Provide Continuous Services	<p>Project Co shall provide Project Co Services on a continuous, 24hr /365 day a year basis. This includes providing on-site resources for the performance of Project Co Services and responding to Routine, Urgent and Emergency matters in a manner that achieves the Performance Indictors. At a minimum, Project Co shall provide the following support:</p>										
	<table border="1" style="width: 100%;"> <thead> <tr> <th style="width: 30%;">Services</th> <th>Requirements</th> </tr> </thead> <tbody> <tr> <td>Service Availability</td> <td>Project Co shall be available to Acknowledge and respond to requests or events on a 24/365 basis by way of a Central Dispatch (not required to be physically on-site).</td> </tr> <tr> <td>Technical Response</td> <td>Project Co shall have on-site 24/365 presence of trained and qualified resources capable of fulfilling Project Co Services requirements within the required Response Times.</td> </tr> <tr> <td>Security Services</td> <td>Project Co shall have on-site 24/365 presence of at least [REDACTED] continuously.</td> </tr> <tr> <td>Management</td> <td>Project Co shall have on-site presence during regular business hours (8am – 5pm business days or as otherwise instructed by WGH) of a management resource capable of addressing WGH requests and empowered to make the necessary decisions on behalf of Project Co. The management resource or a suitably qualified back-up resource is also to be accessible on an on-call basis 24/365 via cell phone or pager.</td> </tr> </tbody> </table>	Services	Requirements	Service Availability	Project Co shall be available to Acknowledge and respond to requests or events on a 24/365 basis by way of a Central Dispatch (not required to be physically on-site).	Technical Response	Project Co shall have on-site 24/365 presence of trained and qualified resources capable of fulfilling Project Co Services requirements within the required Response Times.	Security Services	Project Co shall have on-site 24/365 presence of at least [REDACTED] continuously.	Management	Project Co shall have on-site presence during regular business hours (8am – 5pm business days or as otherwise instructed by WGH) of a management resource capable of addressing WGH requests and empowered to make the necessary decisions on behalf of Project Co. The management resource or a suitably qualified back-up resource is also to be accessible on an on-call basis 24/365 via cell phone or pager.
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	Security Services	Project Co shall have on-site 24/365 presence of at least [REDACTED] continuously.									
Management	Project Co shall have on-site presence during regular business hours (8am – 5pm business days or as otherwise instructed by WGH) of a management resource capable of addressing WGH requests and empowered to make the necessary decisions on behalf of Project Co. The management resource or a suitably qualified back-up resource is also to be accessible on an on-call basis 24/365 via cell phone or pager.										
h. Provide Project Co Services not Described	<p>Project Co acknowledges that in the course of describing Project Co Services and requirements in this Output Specification, there may be Project Co Services and requirements that are not explicitly described which are normally and customarily provided by a prudent manager and Project Co shall provide these Project Co Services and requirements as part of the provision of Project Co Services in accordance with Good Industry Practices for Hospitals.</p>										
i. Provide Integrated Project Co Services	<p>Project Co Services described in this section form part of the overall Project Co Services and Project Co is required to provide fully integrated Project Co Services and service management that are compliant with the Existing Design and Technical Requirements, the Project Agreement and related schedules and references.</p>										



<b>2.1 General Requirements</b>							
j. Miscellaneous Requests	For miscellaneous requests, if Project Co can provide Project Co Services using its existing resources, there shall be no additional charge to WGH.						
k. Provision of Resources	<p>Project Co shall provide all necessary tools, software, hardware, systems, consumables, materials, parts, hoarding, cranes, scaffolding, supplies and equipment necessary for the provision of Project Co Services.</p> <p>Project Co shall provide all labour (using its own forces or through Subcontractors), Permits, Licences and Approvals, designs, additional security and any other requirements of Project Co Services unless otherwise specified in the Project Agreement.</p>						
i. Provision of Telecommunications Requirements	<p>Project Co shall utilize the WGH telephone system on-site with extensions as assigned by WGH. The cost of long distance services may be billed back to Project Co and may be deducted from the Monthly Service Payment.</p> <p>Beyond telephone service described above, Project Co shall provide its own communication services and equipment, including internet and networking, cell phones, pagers, radios and all other similar communications for the provision of Project Co Services.</p> <p>Project Co must provide their own paging/radio equipment compatible with the paging/radio system used by WGH at the Facility.</p> <p>Any installation and maintenance of the telecommunications infrastructure, including cabling, routers, and similar telecommunications equipment required by Project Co must be coordinated with and pre-approved by WGH.</p> <p>Project Co shall follow the Existing Design and Technical Requirements regarding cable management.</p>						
m. Continuous Improvement	Project Co shall identify and implement (subject to approval by WGH) continuous improvements that are consistent with the purpose of the Facility.						
n. Meet Certification Requirements	<p>Project Co shall obtain and maintain up-to-date all necessary certification requirements identified in or required by these Output Specifications, the Existing Design, the Technical Requirements and as required by Applicable Law. Project Co shall prepare, submit and update all relevant and required material and pay all fees related to achieving and maintaining the certifications.</p> <p>Project Co shall be responsible for assisting WGH achieve their own required certifications by providing documentation, resources and participating in the certification process as required by WGH from time to time.</p> <p>In addition to the certifications requirements of Applicable Law or any other certifications set out in the Project Agreement, the following certifications are required to be achieved and maintained by Project Co to carry out Project Co Services:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%; text-align: center;">Certification</th> <th style="width: 40%; text-align: center;">Notes</th> <th style="width: 30%; text-align: center;">Timeframe</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Certification	Notes	Timeframe			
Certification	Notes	Timeframe					



2.1 General Requirements			
	Canadian Council on Health Services Accreditation	Project Co shall assist WGH and participate in the WGH CCHSA accreditation process which shall be required to be achieved within six months after the Substantial Completion Date, and thereafter, maintain at a minimum the Facility and all Project Co Services to Service Standards that are consistent with full accreditation by the Canadian Council on Health Services Accreditation.	As required by CCHSA
	Green Guide for Health Care	Project Co shall meet the Intent and Credit Goals of the Green Guide for Health Care Integrated Operations for ongoing operational services. A report shall be provided annually to WGH to identify progress and adherence.	Ongoing
o. Service Satisfaction Surveys	<p>Project Co shall conduct service satisfaction surveys twice annually (the “Service Satisfaction Survey”). The first satisfaction survey shall be conducted within 3 months of the Substantial Completion Date and each subsequent survey shall be conducted bi-annually thereafter unless otherwise directed by WGH.</p> <p>The survey shall include all WGH employees and a sampling of other occupants (excluding visitors and patients) as directed by WGH.</p> <p>Project Co shall propose the format, questions and methodology for WGH approval and agreement at least 2 months in advance of the first survey. Project Co shall adjust the methodology based on WGH comment. The survey shall not change in subsequent years without prior approval from WGH.</p> <p>The results of the service satisfaction survey shall be provided to WGH within 30 days following the completion of the survey. The results shall include analysis of the results.</p> <p>An action plan shall be developed and provided to WGH within 45 days following the completion of the survey. The action plan shall deal with any areas where the scores are in accordance with the following:</p>		
	<b>First Survey</b>	Any satisfaction results that are: <ul style="list-style-type: none"> <li>• Below the overall average of the survey</li> <li>• Of specific concern to WGH</li> </ul>	
	<b>Subsequent Surveys</b>	Any satisfaction results that are: <ul style="list-style-type: none"> <li>• Below the overall average of the previous survey</li> <li>• Below the overall average of the current survey</li> <li>• Of specific concern to WGH</li> <li>• Lower than the previous survey</li> </ul>	
p. WGH Surveys	<p>From time to time, WGH may administer surveys of their own or in participation with other organizations which may include questions related to the Project Co Services.</p> <p>Where the results are of concern to WGH, Project Co shall develop an action plan and provide to WGH within 45 days following the provision of the survey results to Project</p>		

<b>2.1 General Requirements</b>	
	Co.
q. Transaction Surveys	Project Co shall develop and implement a transaction survey to assess the level of satisfaction with Central Dispatch Project Co Services (as required to be performed by Project Co pursuant to Section 3.6 of these Output Specifications) as well as project delivery Project Co Services (as required to be performed by Project Co pursuant to Section 3.11 of these Output Specifications). Project Co shall submit the transaction survey methodology to WGH for prior review, comment and approval. Project Co shall adjust the methodology based on WGH comment. Transaction Surveys shall be conducted at a minimum quarterly.
r. Quality Audits	<p>Quality audits will be done in accordance with the Service Quality Plans. In addition to the quality monitoring that WGH may perform pursuant to Section 13.4 of the Project Agreement, WGH may, in its sole discretion, conduct periodic quality audits of Project Co Services and the quality of performance of Project Co Services using its own forces or a third party consultant. Project Co shall participate in and assist with the quality audit process on an as required basis at no additional cost to WGH.</p> <p>These quality audits are in addition to the Performance Audits that may be undertaken by WGH in accordance with Section 27.8 of the Project Agreement.</p>
s. Security Clearance Requirements	<p>Project Co shall ensure that all on-site Project Co staff and Subcontractor staff achieve and maintain the required security clearances to the levels set out in the Section 28.12 of the Project Agreement.</p> <p>Security clearances must be conducted annually for all Project Co staff and subcontractor staff.</p>
t. Site Access Requirements	<p>Project Co will manage and administer the access control system, including accepting or denying access to the Facility as well as programming access badges for specific or designated access level and areas as per WGH. Project Co shall advise WGH of all staff or Subcontractors that are to be granted access to the Facility, in accordance with WGH's Security Policy. WGH may, in its sole discretion, deny access to any individual or company to the extent set forth in the Project Agreement.</p> <p>Access to the Facility by individuals without security clearance shall only be granted in accordance with WGH Security Policy, which amongst other things shall state that all individuals who are to be granted access to the Facility and have not received the appropriate clearance, and have received prior written approval from WGH to enter the Facility, must be escorted at all times when on-site by a Project Co employee with the appropriate security clearance requirements. WGH may, in its sole discretion, change, modify or adjust the security and site access requirements from time-to-time.</p> <p>Material changes in site access and security requirements that impact Project Co Services shall be dealt with in accordance with the Variation Procedures established in Schedule 22 – Variation Procedure of the Project Agreement.</p>
u. Safeguarding Operations	Project Co shall ensure that security controls are in place to prevent unauthorized access to any equipment or systems that control any part of the Facility or contain Confidential Information, Personal Information and / or Patient Information. This shall include measures to secure systems accessed remotely or connected to the internet.

<b>2.1 General Requirements</b>											
v. Reporting Issues outside Scope of Responsibility	<p>Where Project Co, its staff or subcontractors observe or become aware of issues, risks or other non-conformances outside of their responsibilities, Project Co shall advise WGH immediately.</p> <p>If a Health &amp; Safety risk is identified, they shall make immediate efforts to mitigate the hazard.</p>										
w. Scheduling Work Activity	<p>Project Co shall follow the following process for approval of any work activities that may affect or disrupt Hospital Services such as excessive noise, odours, area closures or access restrictions, power or HVAC interruptions, etc.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;"><b>Project Activity</b></td> <td>Follow process outlined in Section 2.24 of these Output Specifications.</td> </tr> <tr> <td><b>Preventive and Corrective Maintenance Work Activity</b></td> <td>Follow the monthly process outlined in Section 2.19 of these Output Specifications and the process set out in the Project Agreement in addition to the notification process outlined below.</td> </tr> <tr> <td><b>Other Scheduled Services or Activities</b></td> <td>Follow the notification process outlined below.</td> </tr> <tr> <td><b>Unscheduled Services or Activities</b></td> <td>In the event that other unscheduled services or activities are required however the notification timeframes identified in the notification process below cannot be met, Project Co will provide as much notice as possible. WGH will reply in accordance with the urgency of the activity.</td> </tr> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;"><b>Notification process</b></td> <td> <p>In addition to reporting and update requirements outlined within the PA and Section 2.19 of these Output Specifications, the notification process provides enhanced communications and advance notice to WGH for work activities which have potential impact to Hospital Services. This provides time to adjust scheduling as required to accommodate specific Hospital Services requirements as necessary.</p> <p>For notification, follow this process:</p> <ol style="list-style-type: none"> <li>1. Project Co provides written notice to WGH at least 10 days in advance with details of scheduled work which has the potential to impact Hospital Services (i.e. noise, fumes, access restrictions, shutdowns, etc.)</li> <li>2. WGH replies within 3 days with one of:                             <ol style="list-style-type: none"> <li>a. Approval</li> <li>b. Approval with conditions</li> <li>c. Proposed alternate schedule</li> </ol> </li> <li>3. Project Co accepts WGH response or proposes alternatives, with explanation and discussion. WGH and Project Co jointly agree on alternative.</li> <li>4. WGH may request a reminder notice 1 day prior to the event.</li> </ol> </td> </tr> </table>	<b>Project Activity</b>	Follow process outlined in Section 2.24 of these Output Specifications.	<b>Preventive and Corrective Maintenance Work Activity</b>	Follow the monthly process outlined in Section 2.19 of these Output Specifications and the process set out in the Project Agreement in addition to the notification process outlined below.	<b>Other Scheduled Services or Activities</b>	Follow the notification process outlined below.	<b>Unscheduled Services or Activities</b>	In the event that other unscheduled services or activities are required however the notification timeframes identified in the notification process below cannot be met, Project Co will provide as much notice as possible. WGH will reply in accordance with the urgency of the activity.	<b>Notification process</b>	<p>In addition to reporting and update requirements outlined within the PA and Section 2.19 of these Output Specifications, the notification process provides enhanced communications and advance notice to WGH for work activities which have potential impact to Hospital Services. This provides time to adjust scheduling as required to accommodate specific Hospital Services requirements as necessary.</p> <p>For notification, follow this process:</p> <ol style="list-style-type: none"> <li>1. Project Co provides written notice to WGH at least 10 days in advance with details of scheduled work which has the potential to impact Hospital Services (i.e. noise, fumes, access restrictions, shutdowns, etc.)</li> <li>2. WGH replies within 3 days with one of:                             <ol style="list-style-type: none"> <li>a. Approval</li> <li>b. Approval with conditions</li> <li>c. Proposed alternate schedule</li> </ol> </li> <li>3. Project Co accepts WGH response or proposes alternatives, with explanation and discussion. WGH and Project Co jointly agree on alternative.</li> <li>4. WGH may request a reminder notice 1 day prior to the event.</li> </ol>
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<b>2.1 General Requirements</b>																			
	<p>In the event that WGH hospital operations (including Hospital Services) require postponing or rescheduling activities, Project Co shall reschedule the work at a time satisfactory to WGH.</p> <p>Except as set forth in section 27.4(b) of the Project Agreement in respect of Corrective Maintenance, and Section 27.3(b) of the Project Agreement in respect of Preventive Maintenance, WGH shall reimburse Project Co for any reasonable costs actually incurred by Project Co as a consequence of such postponing or rescheduling of activities, to be agreed in advance.</p> <p>The intent is to improve coordination with WGH and minimize disruption to occupants of the Facility and Hospital Services.</p>																		
x. Licenses, Permits and other requirements	Project Co shall apply for, achieve and maintain all required licensing and permits required to perform the Project Co Services.																		
y. General Service Response Times	<p>Unless stipulated elsewhere in these Output Specifications or agreed upon in advance by WGH, Response Times applicable to all Project Co Services shall be, at a minimum as described in the table below.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th rowspan="2" style="text-align: center;">Category</th> <th rowspan="2" style="text-align: center;">Response time</th> <th colspan="2" style="text-align: center;">Rectification Time</th> </tr> <tr> <th style="text-align: center;">Availability Conditions breached</th> <th style="text-align: center;">Availability Conditions not breached</th> </tr> </thead> <tbody> <tr> <td>Emergency</td> <td style="text-align: center;">15 minutes</td> <td style="text-align: center;">4 hours</td> <td style="text-align: center;">4 hours</td> </tr> <tr> <td>Urgent</td> <td style="text-align: center;">30 minutes</td> <td style="text-align: center;">4 hours</td> <td style="text-align: center;">24 hours</td> </tr> <tr> <td>Routine</td> <td style="text-align: center;">2 hours</td> <td style="text-align: center;">4 hours</td> <td style="text-align: center;">7 days</td> </tr> </tbody> </table> <p>Project Co shall notify WGH immediately upon becoming aware of any situation that has resulted or may result in serious injury or life threatening outcome to occupants on the Site, including, but not limited to both Project Co and Facility Occupants</p> <p>Project Co shall obtain WGH approval prior to shutting down any system that affects Hospital Services.</p> <p>Project Co shall address all health and safety, environmental and emergency issues or situations with respect to the Facility on a priority basis in a manner that is consistent with Good Industry Practices for Hospitals of a similar size and scope as the Facility.</p>	Category	Response time	Rectification Time		Availability Conditions breached	Availability Conditions not breached	Emergency	15 minutes	4 hours	4 hours	Urgent	30 minutes	4 hours	24 hours	Routine	2 hours	4 hours	7 days
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<b>2.1 General Requirements</b>							
z. HVAC Service Standards	<p>The table in Section 4.1 of these Output Specifications identify the HVAC standards to be met in each room type for the purposes of performance and for the purposes of establishing Availability Failures pursuant to Schedule 20 – Payment Mechanism.</p> <p>These standards are to be considered in context with the system parameters, functional capabilities and controls provided for and identified in the Existing Design. In any case, the specifications in the Existing Design shall prevail where different. The table represents standards during normal occupancy. Standards during unoccupied times are developed with and agreed to by WGH.</p> <p>In the event that there is a Utilities disruption from the utility company(s), Project Co will supply emergency Utilities as defined within the Existing Design. Performance measures related to Availability Failures, Service Failures and Quality Failures shall be adjusted accordingly.</p>						
aa. Review by WGH	<p>All reports, plans and other documents that are required, pursuant to these Output Specifications, to be delivered by Project Co to WGH for review prior to the Substantial Completion Date, shall be reviewed by WGH in accordance with Schedule 10 - Review Procedure.</p> <p>All other reports, plans and other documents which are to be provided to WGH in accordance with these Output Specifications are subject to review by WGH in accordance with the following process:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; padding: 5px;">Following receipt by WGH</td> <td style="padding: 5px;">WGH shall review and if deemed necessary, WGH will provide guidance or direction to Project Co to make corrections, modifications, changes or additions to the reports, plans and other documentation as directed by WGH, along with a requested time frame for re-submission, such timeframe may be discussed and agreed upon with Project Co at the discretion of WGH.</td> </tr> <tr> <td style="padding: 5px;">Project Co Amendments</td> <td style="padding: 5px;">Project Co shall re-submit the amended reports, plans or other documents to WGH in accordance with the agreed timeframe.</td> </tr> <tr> <td style="padding: 5px;">Re-Review</td> <td style="padding: 5px;">WGH shall re-review the documents again in accordance with this document if the amendments provided by Project Co do not address WGH requirements.</td> </tr> </table>	Following receipt by WGH	WGH shall review and if deemed necessary, WGH will provide guidance or direction to Project Co to make corrections, modifications, changes or additions to the reports, plans and other documentation as directed by WGH, along with a requested time frame for re-submission, such timeframe may be discussed and agreed upon with Project Co at the discretion of WGH.	Project Co Amendments	Project Co shall re-submit the amended reports, plans or other documents to WGH in accordance with the agreed timeframe.	Re-Review	WGH shall re-review the documents again in accordance with this document if the amendments provided by Project Co do not address WGH requirements.
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<b>2.2 Legislative Requirements</b>	
<b>Service Objectives</b>	Project Co shall provide, manage and monitor the Project Co Services with diligence and in a manner that is consistent with all Applicable Laws.
<b>Element</b>	<b>Requirements</b>
a. Meet Applicable Law	<p>Project Co shall comply with and meet or exceed all Applicable Laws. If there is a conflict among Applicable Law requirements, the most stringent shall apply. Project Co shall be fully informed of all Applicable Law in effect and shall implement all requirements as necessary to comply with Applicable Law.</p> <p>Project Co shall advise WGH of any aspects of existing or proposed Applicable Law that it is aware it would not be in compliance with and shall provide a report identifying the corrective measures and timeframes for compliance.</p> <p>Project Co shall also adhere to all standards identified in the Existing Design and the Technical Specifications.</p>
b. Applicable Law	<p>Applicable Law includes, but is not limited to the following :</p> <ul style="list-style-type: none"> <li>• Occupational Health and Safety Act</li> <li>• Public Hospitals Act</li> <li>• Federal Halocarbon Regulations</li> <li>• Designated substances Regulations</li> <li>• Ontario Fire Code</li> <li>• Ontario Building Code Act</li> <li>• Pesticides Act</li> <li>• ORC Barrier Free Guidelines</li> <li>• Workplace Hazardous Materials Information System (WHMIS) Regulation</li> <li>• Environmental Protection Act</li> <li>• Transportation of Dangerous Goods Act</li> <li>• Accessibility for Ontarians with Disabilities Act; and</li> <li>• Municipal legislation, regulations and by-laws.</li> </ul>

2.3 Standards, Policies and Procedures	
<b>Service Objectives</b>	WGH has existing standards and policies and may, from time to time, develop, implement, amend or adopt standards and policies to guide the activities related to public hospital facilities and services. Project Co shall ensure that it complies with those policies in the provision of Project Co Services, unless otherwise instructed by WGH.
<b>Element</b>	<b>Requirements</b>
a. Meet Standards and Policies	Project Co shall comply with all relevant standards and policies currently in effect and as amended from time to time. WGH may, in its sole discretion, introduce new guidelines, procedures or policies, which Project Co shall comply with.
b. Applicable Standards and Policies	In delivery of Project Co Services, Project Co shall comply with applicable standards and policies. The current versions of WGH applicable standards and policies are available by requesting them in writing from WGH.
c. Managing Changes	<p>When new WGH standards or policies are introduced, or existing standards or policies are modified or amended, Project Co shall provide advice and recommendations on the impact to Project Co Services and any impact that the change could have on WGH or the Facility. Project Co shall develop and submit a report on how Project Co is changing or modifying its work processes and activities to meet the new requirements.</p> <p>Changes that impact Project Co Services and cause a material increase in the Direct Costs to Project Co in the provision of Project Co Services shall be dealt with through Variation Procedures established in Schedule 22 of the Project Agreement unless changes in standards, policies and procedures have arisen as a result of a Change in Law, which, if applicable, shall be addressed in accordance with Article 37.</p>



2.4 Delivery Organization									
<b>Service Objectives</b>	Project Co shall provide an organization that is fully capable of meeting and delivering the requirements of Project Co Services in an effective, professional manner that is consistent with Good Industry Practices for Hospitals. Continuity of Project Co’s delivery organization is paramount to successful delivery and continuous improvement of Project Co Services, therefore an important objective is to ensure minimal and non-disruptive turnover of the staff on-site.								
<b>Element</b>	<b>Requirements</b>								
a. Initial Staffing	<p>Project Co shall hire the facility manager prior to the commissioning of the Facility.</p> <p>Project Co shall hire the additional management and technical resources sufficiently in advance of and no later than 90 days prior to the Scheduled Substantial Completion Date to ensure they are fully trained and familiar with the Facility prior to the Scheduled Substantial Completion Date.</p>								
b. Staffing Plan	<p>Project Co shall submit the initial completed staffing plan to WGH no later than 90 days prior to the Scheduled Substantial Completion Date and shall update it annually thereafter. The staffing plan shall include, but not be limited to:</p> <ul style="list-style-type: none"> <li>• Organization charts as described in Section 2.4c of these Output Specifications</li> <li>• Staff roles and job descriptions as described in Section 2.4d of these Output Specifications</li> <li>• Staffing schedules</li> <li>• Plans and procedures for backup staff to fill vacancies and sickness, and similar situations</li> <li>• Succession planning and staff transition plans</li> <li>• WGH interactions and relationships with Project Co staff</li> </ul> <p>In addition to the annual staffing plan, Project Co shall provide an updated staffing plan at any time there are significant changes to the content of any aspect of the staffing plan.</p>								
c. Organization Charts	<p>Project Co shall provide an organization chart that includes the following information:</p> <ul style="list-style-type: none"> <li>• Names and titles of all Key FM Individuals ( whether they are Project Co or Subcontractor staff) as well as names and titles of all other Project Co staff</li> <li>• Reporting relationships</li> <li>• Percentage that a named resource is dedicated or shared</li> <li>• Whether the resource is located on-site</li> </ul> <p>All changes are to be identified by Project Co in the facility management report. At a minimum, the organization charts shall meet the following requirements:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;"><b>Project Co Organization</b></td> <td>Visually depict the overall Project Co organization as it relates to Project Co Services</td> </tr> <tr> <td><b>Contract management</b></td> <td>Visually depict the contract management organization as it relates to WGH interfaces</td> </tr> <tr> <td><b>Site Staff</b></td> <td>Visually depict the specific on-site and partially dedicated staff</td> </tr> <tr> <td><b>Support services</b></td> <td>Visually depict the support services (e.g. Central Dispatch, corporate services, centre of expertise) and their interaction with Project Co’s Project Co Services dedicated unit</td> </tr> </table>	<b>Project Co Organization</b>	Visually depict the overall Project Co organization as it relates to Project Co Services	<b>Contract management</b>	Visually depict the contract management organization as it relates to WGH interfaces	<b>Site Staff</b>	Visually depict the specific on-site and partially dedicated staff	<b>Support services</b>	Visually depict the support services (e.g. Central Dispatch, corporate services, centre of expertise) and their interaction with Project Co’s Project Co Services dedicated unit
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d. Staff Roles and Job Descriptions	<p>Project Co shall provide and update as necessary, a job description for each member of the contract management and site staff positions. Job descriptions must include at least the following information:</p> <ul style="list-style-type: none"> <li>• Title and position requirements</li> </ul>								



2.4	<b>Delivery Organization</b>
	<ul style="list-style-type: none"><li>• Reporting relationships (upwards and downwards)</li><li>• Scope of responsibilities</li><li>• Specific duties and tasks</li></ul> <p>All changes to staff roles and job descriptions are to be identified by Project Co in the facility management report.</p>

<b>2.5 HR and Training / Development</b>	
<b>Service Objectives</b>	Project Co shall ensure that the Project Co Services are managed and performed by fully trained and qualified staff. Project Co staff shall be fully trained in the performance of their duties and the operation of equipment. Project Co shall provide its staff with relevant additional training, upgrading and development.
<b>Element</b>	<b>Requirements</b>
a. Provide Trained and Qualified Staff	<p>Project Co shall ensure that:</p> <ul style="list-style-type: none"> <li>• all Project Co employees and Subcontractor employees are fully trained in the delivery of their duties related to Project Co Services;</li> <li>• Project Co employees and Subcontractor employees who are performing tasks that require licenses, certificates or any other specific qualifications hold valid and up-to-date Permits, Licences and Approvals in accordance with the relevant Governmental Authority; and</li> <li>• All Project Co employees and Subcontractors understand the environment in which they are providing the Project Co Services and can communicate with stakeholders in English.</li> </ul> <p>All Project Co and Subcontractor management and operational employees must have a minimum equivalent of 5 years experience related to the duties they are performing. Project Co shall also ensure that all on-site and Central Dispatch staff receives training associated with a Hospital environment, including training specific to or mandated by WGH.</p> <p>Project Co shall coordinate or provide, as the case may be, an orientation course that addresses all necessary aspects of security, reliability, health and safety, emergency protocols and task specific processes to all new Project Co employees or Subcontractor employees, prior to them beginning to work at the Facility.</p> <p>Project Co shall ensure that the all Project Co employees or Subcontractor employees are fully trained through manufacturer training on all equipment and systems that are installed at the Facility and that the training is refreshed on a regular basis. This requirement includes operations and safety for any equipment that impacts the safe, efficient and reliable operation of the Facility whether maintained by Project Co or WGH.</p> <p>Project Co operations employees and Subcontractors shall wear uniforms with appropriate identification.</p>
b. Training Records	Project Co shall track, retain up-to-date copies and make available on request the training records, qualifications, certificates or licences of its employees and Subcontractor employees.
c. Training and Development Management Plan	<p>Project Co shall submit the initial completed training and development plan to WGH no later than 90 days prior to the Scheduled Substantial Completion Date and shall update it annually thereafter. The plan shall include the following:</p> <ul style="list-style-type: none"> <li>• Comprehensive list of specific training provided to on-site Project Co employees and Subcontractor employees</li> <li>• Schedules and plan for providing refresher training to on-site Project Co employees and Subcontractor employees</li> <li>• Methods for tracking, documenting and reporting training</li> </ul>

2.6 Health and Safety																						
<b>Service Objectives</b>	Project Co shall ensure the health and safety of Project Co employees, Subcontractor employees, Facility Occupants and visitors to the Facility. In planning, managing and delivering of Project Co Services, Project Co shall consider that health and safety is paramount.																					
<b>Element</b>	<b>Requirements</b>																					
a. Health and Safety Plan	<p>Project Co shall develop and implement a health and safety plan that includes the appropriate policies, procedures and practices to manage risks and ensure the health and safety of Project Co employees, Subcontractor employees, Facility Occupants and visitors to the Facility. The plan shall include a description of all matters relating to the following:</p> <ul style="list-style-type: none"> <li>• Roles and responsibilities</li> <li>• Training</li> <li>• Health and safety manual</li> <li>• Policies and procedures</li> <li>• Management of health and safety records and documentation</li> <li>• Health and safety audits</li> <li>• Management processes</li> <li>• Joint health and safety committee</li> </ul> <p>The health and safety plan shall be submitted to WGH no later than 90 days prior to the Scheduled Substantial Completion Date and shall be updated annually thereafter.</p> <p>Furthermore, Project Co shall provide WGH with a WSIB certificate of clearance every six months or as otherwise directed by WGH.</p>																					
b. Immunization & Testing	<p>In addition to the health screening requirements required to be performed by Project Co pursuant to the Project Agreement, Project Co shall ensure all Project Co employees and Subcontractor employees receive the following immunizations at no cost to the employee or Subcontractor employees and in accordance with the Public Health Act.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Illness</th> <th style="text-align: left;">Immunize</th> <th style="text-align: left;">Test</th> </tr> </thead> <tbody> <tr> <td>Tetanus, Diphtheria, Pertussis</td> <td>Yes</td> <td>n/a</td> </tr> <tr> <td>Influenza</td> <td>Yes</td> <td>Yes</td> </tr> <tr> <td>Tuberculosis</td> <td>Yes</td> <td>Yes</td> </tr> <tr> <td>Hepatitis B&amp;A</td> <td>Yes</td> <td>Yes</td> </tr> <tr> <td>MMR</td> <td>Yes</td> <td>Yes</td> </tr> <tr> <td>Varicella</td> <td>Yes</td> <td>Yes</td> </tr> </tbody> </table> <p>WGH will provide immunization and testing for full time permanent employees of Project Co at their discretion. All other Project Co and subcontractor staff immunization and testing shall be at the cost of Project Co, including the retention and management of all records.</p> <p>Project Co shall ensure that complete and accurate immunization records are retained and available, and are to be provided to WGH on request.</p> <p>The list of immunizations and testing may change from time to time, as determined by WGH.</p> <p>Project Co shall cooperate and be involved with programs to promote health such as influenza immunization with their staff and subcontractor staff and ensure their staff, if requested, are able to participate in the program.</p>	Illness	Immunize	Test	Tetanus, Diphtheria, Pertussis	Yes	n/a	Influenza	Yes	Yes	Tuberculosis	Yes	Yes	Hepatitis B&A	Yes	Yes	MMR	Yes	Yes	Varicella	Yes	Yes
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<b>2.6 Health and Safety</b>	
c. Personal Protective Equipment (PPE) for Airborne Biological Contamination	WGH will provide equipment (N95 masks) and fit testing as required for airborne biological contamination and PPE for full time permanent Project Co staff for use in areas where there is airborne biological contamination risk.
d. Do Not Compromise Health	Project Co shall follow all required contamination prevention procedures. Project Co shall develop and implement policies and procedures to ensure that its employees and Subcontractors employees who have a potentially transmittable illness take the necessary hygienic measures so that they do not compromise the reliability of the Facility through inadvertent transmission of their illness to others or by contaminating the Facility.
e. West Nile	Project Co shall take all necessary steps and precautions to eliminate sources of mosquito breeding.
f. Support WGH OH&S Activities	Project Co shall participate in WGH occupational health and safety committees to assist WGH ensure that adequate measures are in place to protect Project Co employees, Subcontractor employees and Facility Occupants. .

<b>2.7 Communications</b>					
<b>Service Objectives</b>	Project Co shall ensure that there is effective and efficient communications between itself and WGH. Project Co shall closely coordinate activities with WGH and notify WGH of issues or matters that could impact the Project Co Services or the Hospital Services. Project Co shall do this by providing well-defined and mutually agreed upon channels of communication and well-developed protocols for communicating in all possible situations.				
<b>Element</b>	<b>Requirements</b>				
a. Day-to-Day Site Communications	<p>Project Co’s most senior Key FM Individual shall maintain ongoing and regular day-to-day communications with the WGH Representative. Project Co’s employees shall communicate with WGH, on an as required basis, in order to ensure that the Project Co Services are provided in a manner that does not disrupt the Facility operations or create any risk to the Facility.</p> <p>Project Co’s communications role and responsibilities set forth in these specifications are in addition to and not in substitution of the roles, responsibilities and limitations set for in Schedule 18 of the Project Agreement.</p>				
b. Contact Information	<p>Project Co shall develop, update and maintain an emergency communications protocol that provides for adequate communications in the event of Urgent or Emergency events or if WGH needs to communicate with Project Co after normal business hours. The protocol shall be provided by Project Co to WGH and Project Co employees (including the Central Dispatch employees) to be used, as appropriate, in Urgent or Emergency situations:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%; vertical-align: top;">Project Co Information</td> <td>The emergency communications protocol shall include at a minimum cellular phone, pager and home phone numbers of all Key FM Individuals as outlined in Schedule 9 – Key Individuals of the Project Agreement, Subcontractor representatives (as required) and other relevant employees who provide Project Co Services.  The protocol shall also include an escalation process.</td> </tr> <tr> <td style="vertical-align: top;">WGH</td> <td>Project Co shall maintain an emergency communications list of WGH representatives, as provided by WGH.</td> </tr> </table>	Project Co Information	The emergency communications protocol shall include at a minimum cellular phone, pager and home phone numbers of all Key FM Individuals as outlined in Schedule 9 – Key Individuals of the Project Agreement, Subcontractor representatives (as required) and other relevant employees who provide Project Co Services.  The protocol shall also include an escalation process.	WGH	Project Co shall maintain an emergency communications list of WGH representatives, as provided by WGH.
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WGH	Project Co shall maintain an emergency communications list of WGH representatives, as provided by WGH.				
c. Communication Protocol Development and Updates	<p>Project Co shall submit the initial completed communication plan, which shall be developed in collaboration with WGH, to WGH no later than 90 days prior to the Scheduled Substantial Completion Date. Thereafter, the plan shall be updated no later than 24 hours after a change to its content.</p> <p>Project Co shall develop the communications protocol with the WGH Representative.</p>				
d. Site Communications to Facility Occupants	Project Co shall provide all communications to WGH staff or other Facility Occupants through the WGH Representative who shall approve as appropriate. Distribution shall be the responsibility of Project Co through various methods depending on the requirements, for instance memos, notices, desk drops, email distribution, etc.				
e. External, Third Party, Media or Public Communications	Project Co shall refer all external, third party, media or public communications requests to WGH. Project Co, its representatives, employees or Subcontractors shall not communicate directly with external parties, third parties, media or the public regarding the project or the Facility, without prior written approval by WGH in its sole discretion. WGH shall designate a media communications coordinator to whom Project Co shall refer all requests. Project Co may communicate with a third party or external party if it specifically relates to the provision of Project Co Services and only if the third party or external party adheres to the confidentiality requirements included in the Project				

<b>2.7 Communications</b>	
	<p>Agreement.</p> <p>In the event WGH approves contact with the media by Project Co, the Project Co Representative shall be provided with parameters and allowable topics by WGH. Project Co's Representative must be experienced with media contact.</p>
<p>f. Communication Response Requirements</p>	<p>Project Co shall provide any and all necessary information to enable WGH to respond to information requests or develop communications required by WGH to respond to internal or external requirements. Project Co shall make best efforts to provide the information in the shortest possible timeframe, taking into consideration that the request will generally be of an urgent nature.</p>

<b>2.8 Management Interfaces</b>	
<b>Service Objectives</b>	Project Co shall maintain effective and efficient interfaces between Project Co and WGH in order to ensure to develop a collaborative relationship in which the Parties are appropriately informed of elements that affect their respective operations. The objective is to develop an excellent working environment which leads to the successful delivery of Project Co Services and the provision of an environment and reliability required for Hospital Services.
<b>Element</b>	<b>Requirements</b>
a. Establish a Local FM Operations Committee	<p>Project Co shall develop a procedure and establish an on-site FM Operations Committee to enable effective regular communication between WGH and Project Co’s on-site representatives for the ongoing management of the Facility. The procedure shall be developed and submitted to WGH no later than 90 days prior to the Scheduled Substantial Completion Date and the FM Operations Committee shall meet monthly thereafter.</p> <p>The FM Operations Committee shall be one of the means by which Project Co shall communicate upcoming maintenance and other operational plans or activities. It shall also be used as a forum for Project Co to receive information related to WGH specific activities that may impact day-to-day Project Co operations. The overall performance of Project Co and status of Project Co on the implementation of the Performance Action Plans shall also be reviewed by the FM Operations Committee.</p> <p>Project Co is required to present reports, summarize activity, present and future plans, and upcoming changes that may impact the day-to-day operations of the Facility and discuss performance management results and any related corrective plans.</p> <p>Under the direction of WGH, Project Co shall develop agendas, manage the meetings and issue minutes of the FM Operations Committee no later than one week after each meeting. Action items are to be tracked, addressed and reported by Project Co at each meeting.</p> <p>The FM Operations Committee may be held jointly with the Facilities Management Committee described in the Project Agreement if mutually agreed upon.</p> <p>The FM Operations Committee does not relieve Project Co from its obligation to communicate issues, matters and activities on a regular, and, as where applicable, expeditious basis.</p>
b. Annual Management Plan	<p>Project Co shall develop and provide to WGH an annual management plan for the upcoming year. The first annual management plan shall be provided within 90 days after Scheduled Substantial Completion. Subsequent Annual Management Plans shall be provided in accordance with WGH’s required time frame.</p> <p>The Annual Management Plan must include the following at a minimum:</p> <ul style="list-style-type: none"> <li>• Timing of meetings and activities (such as building condition report)</li> <li>• Lifecycle, Preventive Maintenance, Capital Plans and other deliverables</li> <li>• Planned initiatives for service improvement and innovation</li> <li>• Anticipated changes to Subcontracted Project Co Services</li> <li>• Anticipated Utilities price adjustments and impact on WGH</li> <li>• Review, analysis and action that shall be taken based on results from Performance Management measures</li> <li>• Any other matter that is relevant to the service delivery model</li> </ul>

<b>2.8 Management Interfaces</b>	
c. Regular Inspections with WGH	Project Co shall conduct regular daily walk-thru inspections of the Facility in addition to scheduled walk-thru inspections with WGH Representative weekly or less frequently as directed by WGH.
d. Meeting Requirements	Project Co shall provide appropriate and duly qualified management representatives at all meetings as required by WGH.



<b>2.9 Reporting</b>	
<b>Service Objectives</b>	Reporting serves as an effective communication tool with WGH as well as providing important and necessary information and data in respect of contract management, performance requirements and legislative, historical and other Governmental Authority requirements. The objective is for Project Co to provide relevant, accurate, complete and timely reports.
<b>Element</b>	<b>Requirements</b>
a. Reporting Requirements	<p>Project Co shall ensure that all reports be available in hardcopy, softcopy, through an electronic web based repository and/or by directly accessing WGH information management systems, as specified by WGH. From time to time Project Co shall provide ad hoc reports. Project Co shall provide all additional reports that would normally be provided as part of Good Industry Practices for Hospitals when and as requested by WGH. Project Co shall change, modify or adjust reports as necessary or as a result of a request from WGH.</p> <p>Material changes that result in significant additional cost to develop, implement, maintain or produce reports shall be dealt with in accordance with the Variation Procedures established in Schedule 22 – Variation Procedure of the Project Agreement.</p>
b. Reporting Content and Format	<p>Project Co shall provide WGH with sample reports and sample data formats and test data no later than 90 days before the Scheduled Substantial Completion Date and prior to the first issuance of each report. WGH shall review the format and content and provide comments on adjustments or revisions that WGH deems necessary. Project Co shall make the adjustments in accordance with Section 2.9.a and this Section 2.9.b of these Output Specifications.</p> <p>Project Co shall submit all reports and data formats to WGH for approval in advance. All reports must be available in editable versions.</p>
c. Changes to Report Requirements	Project Co shall, from time-to-time, add new reports or modify or change reports and/or data, distribution, format, and other similar matters as required or requested by WGH due to emerging or changing requirements.
d. Timeliness, Quality and Completeness of Reporting	Project Co shall provide all information requested by WGH in a timely manner and shall ensure that the information provided is accurate and complete. Project Co shall ensure accuracy and completeness of all information and data, in terms of content, format and submission schedule through quality control and quality assurance of all data.
e. Applicable Law Compliance	Project Co shall prepare and submit reports on any compliance notices, orders, breaches or non-conformances with any Applicable Law no later than 2 hours after discovery or as otherwise agreed in writing by WGH. Project Co shall provide a report no later than 24 hours after the initial report on steps taken to that point, communication with the applicable legislative body, where appropriate, and action plans, including resources and timeframes, to rectify the non-conformity.
f. Facility Management Report (FMR)	Project Co shall also prepare a comprehensive Facility Management Report (FMR) that summarizes the activities for the period and provides analysis and commentary. The report shall contain different information depending on whether it is a monthly, quarterly or annual report as follows:

2.9 Reporting		Monthly (M)	Quarterly (Q)	Annually (A)
<b>Report Element (names of reports in this Section have been capitalized but are not defined terms)</b>				
Executive Summary		X	X	X
Operational				
<ul style="list-style-type: none"> <li>• Summary Highlights</li> </ul>		X	X	X
<ul style="list-style-type: none"> <li>• Litigious Claims Summary</li> </ul>			X	X
<ul style="list-style-type: none"> <li>• Non-Compliance Summary</li> </ul>		X	X	X
<ul style="list-style-type: none"> <li>• HR Issues - training, staffing, etc.</li> </ul>		X	X	X
<ul style="list-style-type: none"> <li>• Emergency, OH&amp;S and Incident Report Summary</li> </ul>		X	X	X
<ul style="list-style-type: none"> <li>• Central Dispatch Calls Summary</li> </ul>		X	X	X
<ul style="list-style-type: none"> <li>• Critical Failures</li> </ul>		X	X	X
<ul style="list-style-type: none"> <li>• Environmental Issues</li> </ul>		X	X	X
<ul style="list-style-type: none"> <li>• Preventive Maintenance Summary</li> </ul>				X
<ul style="list-style-type: none"> <li>• Project Co Comments, Recommendations and Innovations</li> </ul>		X	X	X
<ul style="list-style-type: none"> <li>• Green Guide for Health Care Integrated Operations</li> </ul>				X
Project Delivery				
<ul style="list-style-type: none"> <li>• Assets</li> </ul>				
<ul style="list-style-type: none"> <li>○ Planned Projects / Major Repairs</li> </ul>		X	X	X
<ul style="list-style-type: none"> <li>○ Emergency/Unplanned Projects/Major Repairs</li> </ul>		X	X	X
<ul style="list-style-type: none"> <li>• WGH Projects</li> </ul>		X	X	X
Utility Management (summary in addition to the requirements of Schedule 20 – Payment Mechanism of this Project Agreement.)				
<ul style="list-style-type: none"> <li>• Consumption</li> </ul>		X	X	X
<ul style="list-style-type: none"> <li>• Conservation Initiatives</li> </ul>			X	X
<ul style="list-style-type: none"> <li>• Quality Assurance</li> </ul>				X
Inspection and QA Results			X	X
Environmental Management				
<ul style="list-style-type: none"> <li>• Environmental Issues and initiatives</li> </ul>		X	X	X
<ul style="list-style-type: none"> <li>• Waste and Recyclables</li> </ul>		X	X	X
Emergency Management			X	X
A summary of all life safety actions, such as fire extinguisher inspections, generator testing, sprinkler testing, etc.		X	X	X
Summary Report of Potentially Service Affecting Incidents		X	X	X
Measurements, trends, historical information described in Section 2.9j		X	X	X
Delivery Organization information as per Section 2.4c,d				X

<b>2.9 Reporting</b>				
	<p>The following are Project Co’s deadlines for the submission of the reports:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; padding: 5px;">Monthly by the 10<sup>th</sup> Business Day of the following the month</td> <td style="width: 25%; padding: 5px;">Quarterly by the 15<sup>th</sup> Business Day of the month following the quarter</td> <td style="width: 25%; padding: 5px;">Annual by March 1<sup>st</sup> to align with WGH fiscal year.</td> </tr> </table>	Monthly by the 10 <sup>th</sup> Business Day of the following the month	Quarterly by the 15 <sup>th</sup> Business Day of the month following the quarter	Annual by March 1 <sup>st</sup> to align with WGH fiscal year.
Monthly by the 10 <sup>th</sup> Business Day of the following the month	Quarterly by the 15 <sup>th</sup> Business Day of the month following the quarter	Annual by March 1 <sup>st</sup> to align with WGH fiscal year.		
g. Deliverables	Project Co shall develop a list of deliverables during the transfer-in period.			
h. Provision / Transmission of Reports and Information	Project Co shall provide and maintain a secure electronic method for depositing and storing reports and other information to make them available to WGH for viewing or downloading. Project Co shall submit the proposed form and method of securing this electronic information for review and approval by WGH.			
i. Access to Systems On-line	Project Co shall provide on-line read-only, and where available, live, access by WGH to all building and management systems and software, including, but not limited to the BAS, Central Dispatch and CMMS system.			
j. Event and Alarm notifications	<p>All alarmed equipment (such as refrigerators, morgue cabinets, etc.) as identified in the Existing Design are to be monitored continuously and any alarms documented and reported by Project Co to WGH immediately in accordance with communication protocols developed with WGH.</p> <p>Notification may be required by paging designated WGH staff.</p> <p>Trending and historical information (i.e. temperatures where included in the Existing Design) is to be tracked, maintained, analyzed and reported to WGH along with observations and corrective action.</p> <p>In all cases, Project Co shall provide an explanation on the alarms and shall describe measures that are or have been taken to correct the situation.</p>			

<b>2.9 Reporting</b>	
<b>k. Performance Monitoring Report</b>	<p>As identified in the Facilities Management Report, Project Co shall prepare a Performance Monitoring Report and deliver it to WGH within five Business Days after the end of each month. The Performance Monitoring Report shall include but not be limited to the following information regarding the period just ended:</p> <ul style="list-style-type: none"> <li>a) All statistical data required for any provincial or federal reports/returns, including per period worked hours and billings by Project Co Services.</li> <li>b) Monitoring which has been performed in accordance with the Performance Monitoring Program with a summary of the findings.</li> <li>c) A summary of each service request received. The summary will include the applicable Response Time and Rectification Time, and the actual time of Response and Rectification. The summary will also identify the number of service requests assigned and the number completed for the timeframe in question.</li> <li>d) A summary of all Availability Failures, Service Failures, Quality Failures, Performance Action Plan Failures and Performance Action Plan Requests</li> <li>e) Failures and Service Failures (unless specifically identified otherwise), will only occur upon the expiry of the Response and Rectification Times stated in Section 2.1.z.</li> <li>f) Identification of the affected Functional Area(s) and Functional Unit(s).</li> <li>g) The deductions to be made from the Monthly Service Payment in respect of Availability Failures, Service Failures and Quality Failures, Performance Action Plan Failures consistent with the Project Agreement and/or Payment Mechanism.</li> </ul> <p>All reports provided by Project Co will clearly identify the Functional Area and/or Project Co Service in which an Availability Failure, Service Failure or Quality Failure has occurred.</p> <p>WGH shall notify Project Co within ten Business Days of receipt of the Performance Monitoring Report as to whether it accepts the contents of the Performance Monitoring Report and shall provide full details of any matter that is not resolved.</p>
<b>l. FCAP Reporting</b>	<p>Project Co shall cooperate with and assist WGH to report to the Ministry of Health for the Facility Condition Assessment Program (FCAP), which is being implemented as part of the Health Infrastructure Renewal Fund (HIRF) initiative.</p> <p>This includes providing the required data and information as well as creating the reports in accordance with the format and structure required by FCAP.</p>

2.10 Central Dispatch							
<b>Service Objectives</b>	The Central Dispatch service shall provide knowledgeable, available and timely response, tracking and management of issues. The service shall maintain an effective, efficient and reliable service for WGH and the Facility Occupants in keeping with the primary function of the Facility as a Public Hospital.						
<b>Element</b>	<b>Requirements</b>						
a. Accessibility Requirements	<p>Project Co shall provide Central Dispatch Project Co Services as set out in these Output Specifications. Project Co’s Central Dispatch shall be available on a continuous 24/365 day basis via telephone, e-mail and the web to access Project Co and get timely action on service requests, issues and Urgent or Emergency requirements.</p> <p>Project Co shall ensure that a live, qualified Central Dispatch operator answers to each call and is able to respond to the call, diagnose the problem, determine the appropriate course of action and dispatch appropriate resources.</p>						
b. Hospital Services	<p>In addition to responding to requests related to the Project Co Services, the Central Dispatch shall also respond to the following:</p> <table border="1"> <tr> <td>WGH Janitorial</td> <td>The Central Dispatch will receive and track calls in the Central Dispatch system for janitorial services under the responsibility of WGH. Calls will be dispatched directly to a designated representative.</td> </tr> <tr> <td>Other Services</td> <td> <p>The Central Dispatch will maintain a listing of other Hospital Services and departments as provided by WGH.</p> <p>When a Facility Occupant uses Central Dispatch for a service that Project Co is not responsible, the operator shall advise the caller and provide them with the correct contact information.</p> </td> </tr> </table>	WGH Janitorial	The Central Dispatch will receive and track calls in the Central Dispatch system for janitorial services under the responsibility of WGH. Calls will be dispatched directly to a designated representative.	Other Services	<p>The Central Dispatch will maintain a listing of other Hospital Services and departments as provided by WGH.</p> <p>When a Facility Occupant uses Central Dispatch for a service that Project Co is not responsible, the operator shall advise the caller and provide them with the correct contact information.</p>		
WGH Janitorial	The Central Dispatch will receive and track calls in the Central Dispatch system for janitorial services under the responsibility of WGH. Calls will be dispatched directly to a designated representative.						
Other Services	<p>The Central Dispatch will maintain a listing of other Hospital Services and departments as provided by WGH.</p> <p>When a Facility Occupant uses Central Dispatch for a service that Project Co is not responsible, the operator shall advise the caller and provide them with the correct contact information.</p>						
c. Central Dispatch System Requirements	<p>Project Co shall ensure the Central Dispatch system fulfills the following requirements:</p> <table border="1"> <tr> <td>Computerized System</td> <td>Install, maintain and operate a Central Dispatch information management system that meets Good Industry Practices for Hospitals requirements.</td> </tr> <tr> <td>Reporting</td> <td>The Central Dispatch system must be capable of providing performance reporting and reporting of the information identified below.</td> </tr> <tr> <td>Export Capabilities</td> <td>The Central Dispatch system must be capable of providing all data in a non-proprietary format.</td> </tr> </table>	Computerized System	Install, maintain and operate a Central Dispatch information management system that meets Good Industry Practices for Hospitals requirements.	Reporting	The Central Dispatch system must be capable of providing performance reporting and reporting of the information identified below.	Export Capabilities	The Central Dispatch system must be capable of providing all data in a non-proprietary format.
Computerized System	Install, maintain and operate a Central Dispatch information management system that meets Good Industry Practices for Hospitals requirements.						
Reporting	The Central Dispatch system must be capable of providing performance reporting and reporting of the information identified below.						
Export Capabilities	The Central Dispatch system must be capable of providing all data in a non-proprietary format.						

<b>2.10 Central Dispatch</b>		
	Information	<p>The Central Dispatch system shall be capable of maintaining, managing and reporting on information consistent with Good Industry Practices for Hospitals. It shall also be capable of providing performance measurement reporting, including the following:</p> <ul style="list-style-type: none"> <li>• Caller data (name, number, department, etc.)</li> <li>• Project Co Services type</li> <li>• Severity / priority</li> <li>• Date and time of call, Acknowledge, Response, Rectification and close-out, including action taken.</li> <li>• Whether an inquiry is a follow-up or subsequent call on the same issue</li> <li>• Issue and/or service/system using a planned tracking and coding method that enables reporting and analysis</li> <li>• Equipment or system related to the call, including criticality</li> <li>• Average speed of answer, hang-ups and similar Good Industry Practices for Hospitals</li> <li>• standard call centre metrics</li> <li>• Agreed date of Rectification if relevant</li> </ul>
	Tracking of all issues	<p>While the Central Dispatch may be used primarily by WGH and the Facility Occupants as a means to contact Project Co or request that Project Co provide Project Co Services, Project Co shall log all corrective actions or issues that are identified by WGH, Facility Occupants, Project Co employees or Subcontractors into in the Central Dispatch system for tracking and management purposes.</p> <p>All completed or rectified calls must be tracked and closed within the Central Dispatch system.</p>
d. Incident Management Process	<p>Project Co shall report issues or incidents that have the potential to impact Hospital Services in accordance with a WGH approved incident management process.</p> <p>Project Co shall ensure that the incident management process is developed, tested and implemented no later than 90 days prior to the Scheduled Substantial Completion Date.</p>	

2.11 Environmental Management											
<b>Service Objectives</b>	An environmental management plan provides for the management of potential environmental impacts associated with the maintenance and operation of the Facility. Project Co shall effectively manage environmental issues and information related to the Project Co Services in a manner that is respectful of WGH’s Community standards and its objective to provide leadership in environmental stewardship.										
<b>Element</b>	<b>Requirements</b>										
a. Environmental Management Plan	Project Co shall develop and implement an environmental management plan which shall document the key aspects of effective management of environmental issues at the Facility. Project Co shall submit the initial completed plan to WGH no later than 90 days prior to the Scheduled Substantial Completion Date and shall update it annually thereafter. The environmental management plan shall contain sections which cover the following elements:										
	<table border="1"> <thead> <tr> <th>Item</th> <th>Description</th> </tr> </thead> <tbody> <tr> <td>Environmental Management System (EMS)</td> <td> <p>The environmental management system (EMS) describes the organizational and management processes used to manage and mitigate environmental impacts. The EMS section should include elements similar in nature to the following:</p> <ul style="list-style-type: none"> <li>• Definitions</li> <li>• Scope</li> <li>• Environmental policy</li> <li>• Environmental requirements</li> <li>• Structure and responsibility</li> <li>• Organizational decision-making and planning</li> <li>• Assessment, prevention, and control</li> <li>• Incident and non-compliance investigations</li> <li>• Non-conformance, corrective and preventive action</li> <li>• Monitoring and measurement</li> <li>• Training, awareness and competence</li> <li>• Records management</li> <li>• Reporting</li> <li>• Environmental management system audits</li> <li>• Management review</li> </ul> </td> </tr> <tr> <td>Hazardous Substances Classification and Identification</td> <td>This section shall identify existing and potential Hazardous Substances and their associated risks that may be encountered during regular operations, handling, emergency situations, etc.</td> </tr> <tr> <td>Hazardous Substances Management</td> <td>This section shall describe the processes for safe and proper storage, handling, transportation and decommissioning of Hazardous Substances to meet regulatory compliance and ensure the health and safety of WGH and Project Co employees and Facility Occupants.</td> </tr> <tr> <td>Environmental Emergency Plan</td> <td>This section shall provide an emergency plan and provide step-by-step guidelines for dealing with environmental emergencies in a manner to reduce environmental impacts and preserve the health and safety of WGH and Project Co employees and Facility Occupants.</td> </tr> </tbody> </table>	Item	Description	Environmental Management System (EMS)	<p>The environmental management system (EMS) describes the organizational and management processes used to manage and mitigate environmental impacts. The EMS section should include elements similar in nature to the following:</p> <ul style="list-style-type: none"> <li>• Definitions</li> <li>• Scope</li> <li>• Environmental policy</li> <li>• Environmental requirements</li> <li>• Structure and responsibility</li> <li>• Organizational decision-making and planning</li> <li>• Assessment, prevention, and control</li> <li>• Incident and non-compliance investigations</li> <li>• Non-conformance, corrective and preventive action</li> <li>• Monitoring and measurement</li> <li>• Training, awareness and competence</li> <li>• Records management</li> <li>• Reporting</li> <li>• Environmental management system audits</li> <li>• Management review</li> </ul>	Hazardous Substances Classification and Identification	This section shall identify existing and potential Hazardous Substances and their associated risks that may be encountered during regular operations, handling, emergency situations, etc.	Hazardous Substances Management	This section shall describe the processes for safe and proper storage, handling, transportation and decommissioning of Hazardous Substances to meet regulatory compliance and ensure the health and safety of WGH and Project Co employees and Facility Occupants.	Environmental Emergency Plan	This section shall provide an emergency plan and provide step-by-step guidelines for dealing with environmental emergencies in a manner to reduce environmental impacts and preserve the health and safety of WGH and Project Co employees and Facility Occupants.
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<b>2.11 Environmental Management</b>									
	<table border="1" style="width: 100%;"> <tr> <td style="width: 25%;">Reduction and Prevention Plan</td> <td>This section shall outline reduction and prevention activities to reduce the environmental impacts to the environment and to ensure the health and safety of WGH and Project Co employees and Facility Occupants.</td> </tr> <tr> <td>Assessment and Audits</td> <td>This section shall identify the inspection and audit process related to the EMS for reduction and prevention as well as compliance with regulations, policies, procedures and guidelines as appropriate.</td> </tr> <tr> <td>Information Management</td> <td>This section shall provide a description of the means of maintaining and compiling information related to Hazardous Substances at the Facility. It also shall identify the mechanism and locations of the information.</td> </tr> <tr> <td>References</td> <td>This section shall contain references to all applicable documentation related to the Hazardous Substances at the Facility.</td> </tr> </table>	Reduction and Prevention Plan	This section shall outline reduction and prevention activities to reduce the environmental impacts to the environment and to ensure the health and safety of WGH and Project Co employees and Facility Occupants.	Assessment and Audits	This section shall identify the inspection and audit process related to the EMS for reduction and prevention as well as compliance with regulations, policies, procedures and guidelines as appropriate.	Information Management	This section shall provide a description of the means of maintaining and compiling information related to Hazardous Substances at the Facility. It also shall identify the mechanism and locations of the information.	References	This section shall contain references to all applicable documentation related to the Hazardous Substances at the Facility.
Reduction and Prevention Plan	This section shall outline reduction and prevention activities to reduce the environmental impacts to the environment and to ensure the health and safety of WGH and Project Co employees and Facility Occupants.								
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References	This section shall contain references to all applicable documentation related to the Hazardous Substances at the Facility.								
b. Integration with Emergency Management	The environmental management system shall be integrated with Project Co’s emergency management plan to ensure that any emergencies or incidents are handled in a manner that is consistent with the environmental management system.								
c. Reporting Requirements	Project Co shall provide all reporting required under Applicable Law to WGH prior to submitting the reports to the legislative authority. Project Co shall ensure that WGH has at least 7 Business Days to review the report prior to its due date.								



<b>2.12 Subcontractor Management</b>	
<b>Service Objectives</b>	Project Co is fully accountable for Project Co Services whether they are self-performed or subcontracted. Project Co is expected to select, train, manage and monitor its Subcontractors in order to avoid disruption to Project Co Services and in a manner that achieves the requirements set forth in these Output Specifications and the Project Agreement.
<b>Element</b>	<b>Requirements</b>
a. Compliance and Requirements	All requirements applicable to Project Co also apply to all Subcontractors. Project Co shall be fully accountable and responsible for the actions or inactions of all Subcontractors related to the performance of Project Co Services. Subcontractors and their on-site employees must review, accept and sign the maintenance and operations procedures (MOP) that apply to their services. Project Co shall ensure that all Subcontractors carry sufficient and appropriate insurance and meet legislative requirements as it relates to the services that they are providing.
b. Provide Subcontractor Lists	Project Co shall provide an up-to-date Subcontractor list to WGH with the company name, names of individuals, validation of their security clearance status and other details that may be required by WGH on a quarterly basis.
c. Sign-in Required	All Subcontractor employees shall be required to sign-in and out at the security desk in accordance with WGH security processes.

<b>2.13 Quality Management</b>																	
<b>Service Objectives</b>	<p>The critical nature of the Facility requires an enhanced level of quality control over all aspects of the service delivery to ensure continuous service. Project Co shall prepare and keep up-to-date a quality management system which provides processes that document, monitor and test for quality of Project Co Services and processes put in-place by Project Co.</p> <p>All quality assurance and quality monitoring (including Quality Monitoring as defined in the Specific Service Specifications) required by these Output Specifications shall form part of, but shall not be construed as limiting, Project Co’s quality assurance obligations as set out in the Service Quality Plan and in the Project Agreement, including Section 13 of the Project Agreement.</p>																
<b>Element</b>	<b>Requirements</b>																
a. Establish a Service Quality Plan	<p>Project Co shall develop and keep up-to-date a Service Quality Plan to manage quality of Project Co Services at the Facility, including auditing, reporting, management control and corrective actions, in accordance with Good Industry Practices for Hospitals. The plan shall include a quality manual as described in this Section 2.13. Project Co shall submit the initial completed plan to WGH no later than 90 days prior to the Scheduled Substantial Completion Date and shall update it annually thereafter.</p> <p>The service quality plan and any updates shall be subject to review by WGH in accordance with Schedule 10 – Review Procedure of the Project Agreement.</p>																
b. Document Procedures	<p>Project Co shall develop and implement procedures for service delivery to ensure quality, including audit provisions and effective communications and interface with WGH.</p> <p>Project Co shall submit the initial completed procedures and management practices to WGH no later than 90 days prior to the Scheduled Substantial Completion Date and shall update as required when Project Co Services change.</p>																
c. Develop a Quality Manual	<p>Project Co shall develop and keep up-to-date a quality manual with the following elements and any other elements required to implement an effective quality system. Project Co shall submit the initial completed plan to WGH no later than 90 days prior to the Scheduled Substantial Completion Date and shall update it as it changes thereafter. The quality manual shall include, but not be limited to, the following:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Item</th> <th style="text-align: center;">Description</th> </tr> </thead> <tbody> <tr> <td>Management System</td> <td>Outlines the management approach used to maintain and manage the quality system.</td> </tr> <tr> <td>Roles and Responsibilities</td> <td>Describes the roles and responsibilities of management in managing the quality system.</td> </tr> <tr> <td>Records Management</td> <td>Identifies the records management requirements for the quality management system.</td> </tr> <tr> <td>Document Control</td> <td>Outlines the document control processes for quality management documents and other controlled documents.</td> </tr> <tr> <td>Procedures</td> <td>Documents all procedures which are included in the quality system, along with the audit points.</td> </tr> <tr> <td>Auditing process</td> <td>Describes the audit process used to audit for quality in the quality management system, including identifying the auditors.</td> </tr> <tr> <td>Auditing Schedules</td> <td>Documents the annual schedule for audits.</td> </tr> </tbody> </table>	Item	Description	Management System	Outlines the management approach used to maintain and manage the quality system.	Roles and Responsibilities	Describes the roles and responsibilities of management in managing the quality system.	Records Management	Identifies the records management requirements for the quality management system.	Document Control	Outlines the document control processes for quality management documents and other controlled documents.	Procedures	Documents all procedures which are included in the quality system, along with the audit points.	Auditing process	Describes the audit process used to audit for quality in the quality management system, including identifying the auditors.	Auditing Schedules	Documents the annual schedule for audits.
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d. Quality Audits	<p>Quality Audits shall be performed by Project Co in accordance with the Service Quality Plan. Furthermore, Project Co shall conduct quality audits in accordance with its quality manual and auditing schedules at a frequency of at least Quarterly.</p> <p>Project Co shall report on the results of the quality audits in the FMR in the month</p>																

2.13	Quality Management
	following the audit.
e. Performance Action Plan	<p>In the event of Project Co’s recurring poor performance in the provision of Project Co Services in accordance with the standards set forth in these Output Specifications in the sole view of WGH, WGH may, acting reasonably, request that Project Co prepare and submit to WGH a plan (the “Performance Action Plan” or “PAP”) to address the WGH concerns. The Performance Action Plan shall, at a minimum, contain a summary of the issues raised by WGH, an analysis of the root causes of the issues, the steps that will be undertaken by Project Co to address and rectify the issues and specific time frames for such steps. For certainty, a PAP cannot include, and WGH may not request that a PAP include, more stringent standards or impose greater obligations on Project Co than the standards and obligations set forth in these Output Specifications, the Project Agreement or Schedule 20 – Payment Mechanism.</p> <p>The Facilities Management Committee shall meet within five (5) Business Days of receipt by the Project Co Representative of a notice requesting a PAP to discuss and consider the requirements of the PAP. If, after consideration by the Facilities Management Committee, both Project Co and WGH determine that a PAP is no longer required, then Project Co shall no longer be required to submit the PAP to WGH. If such determination is not made by both Project Co and WGH then Project Co must then forward a draft PAP to the WGH Representative within ten (10) Business Days of the meeting of the Facilities Management Committee. WGH may, acting reasonably, request changes, additions or amendments to the draft PAP which shall be addressed and/or incorporated in the final PAP by Project Co and shall be submitted to the WGH Representative within five (5) Business Days of the date of receipt by Project Co of the PAP change request from WGH.</p> <p>In respect of any one request by WGH that Project Co prepare and submit to WGH a PAP, in accordance with this Section 2.13(e), a performance action plan failure (a “Performance Action Plan Failure”) shall be deemed to have occurred on the earlier to occur of either of the following events: (a) in the event that Project Co fails to submit a draft PAP (which shall be a draft prepared in good faith by Project Co to address the WGH concerns, as determined by WGH, acting reasonably), within ten (10) Business Days of the meeting of the Facilities Management Committee if no changes are requested or 5 Business Days of the receipt of the PAP change request from WGH, as applicable; and (b) if a PAP acceptable to WGH has been submitted in accordance with the requirements of this provision, but Project Co fails to meet all of the requirements of the PAP within the required time frames specifically stated in the PAP. WGH reserves the right to extend any of the time frames set-out above and in any PAP in its sole discretion.</p> <p>The Deductions for a Performance Action Plan Failure is [REDACTED] per failure, subject to the provisions in Schedule 20 – Payment Mechanism. For greater clarity, in no event shall the Deductions for a Performance Action Plan Failure in respect of a single Performance Action Plan exceed in aggregate [REDACTED].</p> <p>For certainty, the requirements of this Section 2.13(e) do not in any manner whatsoever alter these Output Specifications with respect to performance monitoring, the scope of Project Co Services or any other matter, the operation of Schedule 20 – Payment Mechanism with respect to the application of Failure Points, Deductions or any other matter nor the application of other Project Agreement terms, including Article 13 – (Quality Assurance) and Article 31 – (WGH's Remedial Rights).</p>

2.13	Quality Management
<p>f. Performance Monitoring Program</p>	<p>WGH requires stringent performance levels by Project Co in order to allow WGH to carry out their Hospital Services. Project Co shall fully support the Hospital Services at all times. Project Co is responsible for monitoring Project Co Services. Project Co shall at all times have in place a performance monitoring program (the “Performance Monitoring Program” or “PMP”) for all of the Project Co Services in accordance with the Project Agreement, including this specific service specification. The PMP will at all times permit WGH to monitor whether Project Co has met the performance Service Standards in these Output Specifications and in the Project Agreement.</p> <p>In delivering the Project Co Services, Project Co shall provide the Project Co Services in accordance with these Output Specifications and in accordance with the Project Agreement. These Output Specifications represent the minimum acceptable standard of Service for Project Co to be entitled to receive its full monthly Service Payment. Any issues relating to the performance of Project Co Services are to be addressed by Project Co through a remedial program in which the issues are investigated and significant issues are escalated within Project Co’s organization. Financial remedies, in the form a deduction will be applied in accordance with the severity when Performance Indicators are not met.</p> <p>The Parties agree that they shall act in good faith in both the implementation and use of the Performance Monitoring Program. Project Co shall identify, advise WGH and investigate all Availability Failures, Quality Failures and Service Failures, so they can be adequately and expeditiously remedied. Following the identification of the failure to meet a Performance Indicator, Project Co shall be required to use all possible efforts to rectify the failure.</p> <p>WGH is primarily concerned with maintaining business continuity for the Facility and in maintaining the value of the Facility assets throughout the Operational Term. In order to achieve its objectives, WGH is prepared to work collaboratively with Project Co in a manner that ensures that the Project Co Services meet the expectations on an ongoing basis. As a result, WGH requires the following performance management framework. The benefits for measuring and monitoring performance include:</p> <ul style="list-style-type: none"> <li>• Reduction of risk through pro-active management of Performance Indicators</li> <li>• Collection and analysis of statistics that can enhance decision-making</li> <li>• Demonstration of internal and public accountability through objective evidence</li> <li>• Ability to better plan and establish goals for the future</li> <li>• More effective use of resources</li> <li>• Identification of gaps between goals and reality, and</li> <li>• Ingrained continuous improvement culture that focuses on what is important to WGH.</li> </ul> <p>The Performance Monitoring Program is designed to align the objectives of WGH and Project Co. The Performance Indicators emphasize advance monitoring so that the Parties can address issues before the Project Co Services are significantly affected. The Performance Monitoring Program is based on the following guiding principles:</p> <ul style="list-style-type: none"> <li>• it applies to events that are within Project Co’s control; and</li> <li>• it reflects the severity of the occurrence.</li> </ul>

2.13	Quality Management												
	<p>The application of Deductions is consistent with the notion that Project Co should not fully benefit from the provision of sub-standard Project Co Services. Any event, omission, circumstance, matter, failure, or other occurrence shall be deemed to have taken place or to be under “Project Co’s Control” if it results from an action, omission, lack of skill or negligence of Project Co or its employees, servants, agents, subcontractors or any person or entity engaged in providing any aspect of the Project Co Services or persons for whom Project Co is in law responsible.</p> <p>When the recording frequency of a Service Failure is categorized as “PE” and the events affect equipment, each individual unit impacted is counted as a separate failure.</p> <table border="1" data-bbox="418 619 1495 1801"> <tr> <td data-bbox="418 619 613 789">Monitoring</td> <td data-bbox="613 619 1495 789">In accordance with Article 30.1 of the Project Agreement, Project Co is responsible for monitoring Project Co Services, which shall entail prevention, detection, diagnosis and correction of deficiencies.. 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2.14 Emergency Management		
<b>Service Objectives</b>	WGH is essential to the provision of services in the event of a disaster and is designated a post disaster building as per the Building Code. Due to the critical nature of the Facility, Project Co must have an effective approach for identifying, mitigating, managing and responding to, and recovery from, emergencies and incidents that have the potential to impact Hospital Services and the health and safety of WGH and Project Co employees and Facility Occupants.	
<b>Element</b>	<b>Requirements</b>	
a. Project Co Services during an Emergency	<p>Project Co shall realign all onsite staff and Project Co Services to assist WGH in emergency response as required.</p> <p>WGH reserves the right to request an adjustment to Project Co Services during a disaster, public emergency, major medical emergency events or other similar situations. Should specific additional services be required and requested by WGH, Project Co shall provide WGH with an outline of anticipated costs if requested prior to engagement of additional services.</p> <p>At no time will this restrict the ability or responsibility of Project Co from responding to and rectifying Emergency situations for which they are responsible.</p>	
b. Responsibilities during an Emergency	<p>Subject to the right of WGH set forth in Section 31.3 of the Project Agreement, Project Co is to have primary responsibility for building operations and related contingency response during an emergency. This includes all resources necessary as they relate to Project Co services, traffic control, conducting of searches and coordination with WGH Control Headquarter Activities.</p> <p>Project Co shall work with WGH in accordance with established WGH protocols for decision making and implementation of plans as appropriate, including integration with specific Hospital Services emergency plans.</p>	
c. Implement an Emergency Management Plan	<p>Project Co shall submit the initial completed emergency management plan to WGH for approval no later than 90 days prior to the Scheduled Substantial Completion Date and shall update it annually thereafter. The plan shall address all Project Co Services under and detail both emergency response measures and operational continuity measures.</p> <p>The emergency management plan shall consider and provide continuity options and solutions for all possible emergency and disaster situations as well as for discontinuity of Project Co Services provided by Project Co employees or systems, Subcontracted Project Co Services or services provided by the other public entities (including municipalities, utility companies, or similar services).</p> <p>The emergency management plan shall be developed by Project Co in consultation with, and requires approval by, WGH. Project Co shall provide all input and information necessary for WGH to develop and update its own plans.</p>	
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2.14 Emergency Management																							
	<ul style="list-style-type: none"> <li>• Communications</li> <li>• Emergency contacts</li> <li>• Emergency team structure</li> <li>• Decision making structure and procedures</li> <li>• Building system details</li> <li>• Alternate Project Co Services/resources</li> <li>• Staffing plan</li> </ul> <ul style="list-style-type: none"> <li>• Fire (fire evacuation plan separately)</li> <li>• Bomb / bomb threats</li> <li>• Medical emergency</li> <li>• Power failure – Facility</li> <li>• Power failure – regional</li> <li>• Telecommunications failure</li> <li>• Water supply / sewage failure</li> <li>• Hazardous Substances release</li> <li>• Flooding / water leak</li> <li>• Failures of the Heating / cooling system</li> <li>• Terrorism incident / threat</li> <li>• Structural collapse</li> <li>• Winter storm</li> </ul> <p>Project Co may be required from time to time to prepare plans for potential incidents or emergencies which are not listed in this Section 2.14c. Project Co shall prepare such plans at no additional cost to WGH.</p> <p>Project Co shall be responsible for all related meetings, communications and training of required Facility Occupants related to emergency plans.</p>																						
d. WGH Emergency Measures	<p>Project Co shall participate in and assist with the review and development of response and contingency plans for the following as they relate to Project Co Services or support to Hospital Services:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Code / Measure</th> <th style="text-align: left;">Issue</th> </tr> </thead> <tbody> <tr> <td>Code red</td> <td>Fire</td> </tr> <tr> <td>Code blue</td> <td>Cardiac arrest</td> </tr> <tr> <td>Code pink</td> <td>Neonatal cardiac arrest</td> </tr> <tr> <td>Code green</td> <td>Evacuation</td> </tr> <tr> <td>Code orange</td> <td>Disaster</td> </tr> <tr> <td>Code black</td> <td>Bomb threat</td> </tr> <tr> <td>Code yellow</td> <td>Missing patient</td> </tr> <tr> <td>Code white</td> <td>Aggressive behaviour</td> </tr> <tr> <td>Code brown</td> <td>Chemical spill</td> </tr> <tr> <td>Code grey</td> <td>Air exclusion</td> </tr> </tbody> </table> <p>Project Co shall participate in Monthly Emergency Preparedness committee meetings.</p> <p>Project Co shall also participate in additional Codes or Emergency Measure requirements as added from time to time.</p> <p>Project Co’s staff must participate in all required training and testing.</p>	Code / Measure	Issue	Code red	Fire	Code blue	Cardiac arrest	Code pink	Neonatal cardiac arrest	Code green	Evacuation	Code orange	Disaster	Code black	Bomb threat	Code yellow	Missing patient	Code white	Aggressive behaviour	Code brown	Chemical spill	Code grey	Air exclusion
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<b>2.14 Emergency Management</b>	
e. Public Emergency	<p>Maintaining Hospital Services is critical to the continued delivery of healthcare services. Broader than a local emergency, a public emergency may require additional resources, and/or increased Project Co Services or standards of performance.</p> <p>Project Co will prepare a public emergency response plan to ensure continuous service in the event of a declared public emergency. This plan shall be delivered to WGH no later than 90 days before the Scheduled Substantial Completion Date.</p> <p>Project Co’s public emergency plan must integrate with WGH’s plans and be approved by WGH. Project Co will be expected to participate in WGH’s planning activities as part of WGH’s business continuity plan. The public emergency plan must include design elements related to the Facility as well as services, materials, supplies and personnel. The plan may reference the emergency management plan and Project Co business continuity plan for aspects that are externally affected.</p> <p>The format and content of the plan will be developed during Transition in consultation with WGH.</p>
f. Pandemic Planning	<p>A pandemic is one of the most severe of the Public Emergency declarations.</p> <p>Project Co must submit a business continuity plan as well as a plan addressing the influx of patients and increased security requirements during the pandemic. Project Co’s plan must address human resource, service continuity, alternative Project Co plans, Utilities and consumable procurement. Project Co’s plan must be a living document continually under amendment and be aligned with the WGH Pandemic Influenza Plan (PIP), the County of Oxford Public Health PIP, the Ontario PIP and the Government of Canada PIP.</p>
g. Operational Risk Assessment	<p>Project Co shall conduct a risk assessment in order to identify operational risks and potential operational risks in respect of Project Co Services that could affect the reliability of Hospital Services.</p> <p>Project Co shall provide a risk assessment report to WGH with recommendations and action plans to mitigate risks. The report shall include identified risks that are not suitably mitigated in the emergency management plan.</p> <p>On an ongoing basis, Project Co shall immediately report any known or identified risks to WGH if they pose a potential or immediate risk or threat to Hospital Services or to health and safety of WGH, Project Co employees and Facility Occupants.</p> <p>Project Co shall complete and submit the initial risk assessment report to WGH no later than 90 days prior to the Scheduled Substantial Completion Date and shall update the report annually thereafter. The risk assessment must include at least the following:</p> <ul style="list-style-type: none"> <li>• Site access / security;</li> <li>• Reliability;</li> <li>• Changes in surrounding environment;</li> <li>• Spare part / material / supplies availability;</li> <li>• Service / Subcontractor issues; and</li> <li>• System design issues.</li> </ul>
h. Fire Safety and Plan	<p>Project Co shall develop and implement a fire safety plan for the Facility in conjunction with WGH. Project Co shall submit the fire safety plan for approval to WGH and the local fire authorities. Project Co shall ensure that the appropriate approvals are received from WGH and regulatory authorities (including for certainty fire authorities) within a</p>



2.14	Emergency Management
	<p>reasonable timeframe, including timeframes required as per Occupancy permits or approvals.</p> <p>Project Co shall utilize graphic methods to illustrate exits, fire equipment, ‘you are here’ indicators, etc. on posted exit plans.</p> <p>Project Co shall submit the initial completed fire safety plan to WGH no later than 90 days prior to the Scheduled Substantial Completion Date and shall update the plan on a regular basis to reflect operational or equipment changes.</p>
i. Project Co Business Continuity Plan	<p>Project Co shall submit the initial completed business continuity plan for Project Co’s internal and off-site operations and systems that may affect service delivery to WGH no later than 90 days prior to the Scheduled Substantial Completion Date and shall update it annually thereafter.</p>
j. Training and Testing	<p>Project Co shall submit the initial completed training plan on emergency management measures and response to WGH no later than 90 days prior to the Scheduled Substantial Completion Date and shall update it annually thereafter. The training plan must include WGH input and approval on both content and scheduling.</p> <p>Project Co shall submit the initial completed plan for testing emergency and contingency measures to WGH no later than 90 days prior to the Scheduled Substantial Completion Date and update it annually thereafter. The testing plan shall include initial training and all refresher training. The training and testing of contingency plans shall be done annually in conjunction with WGH requirements and schedules.</p> <p>Project Co shall ensure that integrated building service system testing under Utilities power failure condition and under fire alarm conditions is conducted in accordance with Applicable Law. All systems shall be observed, verified and recorded by Project Co All testing is to be reported at the monthly WGH Emergency Preparedness Meetings.</p> <p>Project Co shall work collaboratively with WGH to develop and deliver education and training related to emergency measures. This includes providing orientation and training to new WGH staff and related personnel.</p>
k. Local Fire Department Cooperation	<p>Project Co shall work closely with the local fire department in the development of all related emergency programs, including working collaboratively in their educational programs.</p> <p>In addition, Project Co shall continue the WGH practice of providing tours to fire department personnel on a regular basis to familiarize them with the Facility Occupants, hazards, critical items and emergency procedures.</p> <p>Project Co shall ensure that emergency vehicles have unencumbered access to the Site and Facility at all times.</p>
l. Priority Status	<p>Project Co shall make every effort possible to secure a priority status for supplies, materials and shall make arrangements to have priority status for backup power fuel in the event of an emergency.</p>

<b>2.15 Records Management</b>	
<b>Service Objectives</b>	Effective records management is important for security and ongoing management as well as being important to the ability of WGH to effectively monitor and audit Project Co.
<b>Element</b>	<b>Requirements</b>
a. Confidentiality	All records and information related to the Facility and WGH are to be considered confidential and proprietary in accordance with Section 51 of the Project Agreement. Project Co shall put in place mechanisms to ensure the confidentiality of all Confidential Information and, if applicable, of Confidential Information of a Government Entity.
b. Non Proprietary Data and Information Formats	Project Co shall ensure that all data and information maintained by Project Co for the Facility shall be available in a non-proprietary format. Where the operational processes use a proprietary format, Project Co shall put in place agreements or capability with the vendor or Project Co to make the data available to WGH in the format that WGH requests.
c. Safeguarding Information	Project Co shall store, back up, organize and protect all information with due regard to security and disaster recovery. Project Co shall apply and comply with WGH standards regarding the protection of sensitive information and assets under its control. Project Co shall retain records in accordance with Good Industry Practices for Hospitals, with WGH Records Management Policy and with Schedule 26 – Record Provisions of the Project Agreement.
d. Availability of Records, Data and Information	Project Co shall ensure that all records, information and data can be retrieved and sent to WGH within a reasonable timeframe. Project Co shall make available all data and information related to the Facility when requested by WGH, including custom or ad hoc information, in the format required by WGH and in the software to be mutually agreed between Project Co and WGH.
e. Facility Drawings	<p>Project Co shall ensure that all drawings prepared, updated or obtained by Project Co are in an AutoCAD compatible format consistent with the standards (including layers, nomenclature, etc.) and requirements set for the in the Existing Design and Technical Requirements and in accordance with Good Industry Practices for Hospitals.</p> <p>If drawings are not in an AutoCAD compatible format, Project Co shall convert the original drawings to an AutoCAD compatible electronic format. Project Co shall manage and maintain drawings in an organized, planned method consistent with the Existing Design and Technical Requirements.</p> <p>Project Co shall ensure that all As-Built Drawings are kept up-to-date and that they include any and all changes made to the Facility. This includes, but is not limited to the following:</p> <ul style="list-style-type: none"> <li>• Architectural</li> <li>• Structural</li> <li>• Mechanical</li> <li>• Electrical</li> <li>• Cabling</li> <li>• Shop drawings</li> <li>• Single-line diagrams</li> <li>• Any other graphical representations</li> </ul>

<b>2.15 Records Management</b>	
<p>f. Operation and Maintenance Literature</p>	<p>Project Co shall ensure that all applicable literature is managed, maintained and updated and kept on-site at the Facility in an organized and planned method consistent with the Existing Design and Technical Requirements, these Output Specifications and Good Industry Practices for Hospitals. Project Co shall ensure that all relevant literature from suppliers and manufacturers required in the normal course of providing the Project Co Services is obtained and stored appropriately. This includes, but is not limited to the following:</p> <ul style="list-style-type: none"> <li>• Equipment maintenance and operations manuals</li> <li>• Equipment specifications, Data Sheets and Brochures, parts lists and assembly drawings, performance curves and other related data</li> <li>• Line drawings, valve charts and control sequences with description of the sequence of operations</li> <li>• Warranty documents as applicable</li> <li>• Service and maintenance reports</li> <li>• Specifications</li> <li>• Facility drawings</li> <li>• Commissioning reports, performance tests, calibration tests, etc.</li> </ul> <p>All O&amp;M literature documentation must be available in electronic, searchable format as well as the original format.</p>
<p>g. Information, Records and Reports Mandated by Applicable Law</p>	<p>Project Co shall manage and maintain up-to-date and on-site at the Facility all applicable literature, records, Permits, Licenses and Approvals and other documentation related to Project Co Services. All records, license requirements, test data, reports or other information required by legislative authorities are to be retained by Project Co and Project Co shall make them available and / or provide them to the appropriate authority in accordance with the Applicable Law. Prior to providing any information required under Applicable Law to the appropriate authority, Project Co shall provide a copy to WGH for review and approval.</p> <p>If requirements under Applicable Law set out specific timeframes or due dates, Project Co shall ensure adequate time for WGH to review and approve any documents to be submitted to meet Applicable Law requirements. At no time shall this requirement impede, prohibit or absolve Project Co of its responsibilities under Applicable Law regarding timely provision of required information to the applicable authorities.</p>

<b>2.16 Maintenance and Operations Procedure (MOP) Manual</b>	
<b>Service Objectives</b>	The maintenance and operations procedure manual (MOP) is an on-site document that provides guidance on the maintenance and operations of the Facility. It documents key aspects of the operation, including roles, responsibilities, information sources, system operations, procedures and other aspects that are required for the efficient, effective, safe, reliable and continuing operation of the Facility.
<b>Element</b>	<b>Requirements</b>
a. Living Document	The MOP is a living document that is updated by Project Co as required to reflect current operating conditions, procedures, equipment installations, and similar matters.
b. Integration with WGH	The MOP shall integrate with WGH procedures.
c. Integrate with Equipment O&M Manuals	The MOP shall reference and/or augment, as required, the standard equipment operations and maintenance manuals provided as part of the Existing Design, Technical Requirements and these Output Specifications.
d. Develop Processes	<p>Project Co shall prepare and submit the initial completed MOP to WGH no later than 90 days prior to the Scheduled Substantial Completion Date. Project Co shall develop processes that apply to all activities at the Facility. These processes must take into account all WGH related procedures and policies, in addition to Hospital Services requirements.</p> <p>Project Co shall maintain the processes and update them as necessary to reflect new techniques, equipment, Project Co Services or WGH procedures and policies.</p>
e. Manual Contents	<p>Project Co shall develop the MOP specifically for the Facility. It shall include all relevant content typically included in a MOP meeting Good Industry Practices for Hospitals as well as sections and content designated from time-to-time by WGH. A sample table of contents is as follows:</p> <ol style="list-style-type: none"> <li>1. General               <ol style="list-style-type: none"> <li>a. Central dispatch procedures</li> <li>b. Employee information and contacts</li> <li>c. Subcontractor information and contacts</li> <li>d. Utilities information and contacts</li> </ol> </li> <li>2. Inventory               <ol style="list-style-type: none"> <li>a. Emergency and routine spare part inventory lists and minimum quantities</li> <li>b. Maintenance supplies list and minimum quantities</li> <li>c. Equipment tagging and Identification protocols</li> </ol> </li> <li>3. Processes               <ol style="list-style-type: none"> <li>a. service requests, work orders procedures</li> <li>b. Building condition report (BCR) process and standards</li> <li>c. Standard Operating Procedures for Project Co Services and integration with Hospital Services</li> <li>d. Lockout/tag out procedures</li> <li>e. Project / Maintenance notification / safe work permits</li> <li>f. Incident reporting processes</li> <li>g. Computerized maintenance management system (CMMS) processes</li> <li>h. O&amp;M Critical System Management Plan (procedures and checklists)</li> <li>i. Project delivery procedures</li> <li>j. Loading dock procedures</li> <li>k. Shutdown and start-up procedures of Utilities and equipment.</li> </ol> </li> </ol>

<b>2.17 Lifecycle Renewal</b>	
<b>Service Objectives</b>	Project Co is responsible for the performance and reliability of the Facility in order to meet the performance objectives of WGH. Project Co is responsible for effective maintenance practices that ensure long-term reliability, integrity, operational efficiency, cost effectiveness and life of all Facility components and all Schedule 21 Maintenance and Replacement Equipment and minimizes operational risk. This includes effective long-range and short-term planning of replacement and refurbishment of all elements of the Facility and all Schedule 21 Maintenance and Replacement Equipment. This provides WGH with an appropriate method to monitor and measure ongoing performance and compliance with the condition of the assets.
<b>Element</b>	<b>Requirements</b>
a. Standards	<p>For greater clarity, the requirements for Lifecycle Renewal are in addition to the requirements set out in Schedule 24 – Expiry Transition Procedures of the Project Agreement.</p> <p>Project Co shall maintain all components of the Facility including building systems, the building envelope, architectural elements, finishes, structural components, site works, flooring and floor coverings, furniture, fixtures and equipment (FF&amp;E), software, all Schedule 21 Maintenance and Replacement Equipment to the same standard as required in the Existing Design and Technical Requirements, subject only to Normal Wear and Tear.</p> <p>The Lifecycle Replacement Schedule must include all equipment and systems included in the Existing Design, and all Schedule 21 Maintenance and Replacement Equipment. The replacement of any building systems, architectural elements, finishes, structural components, site works, flooring and floor coverings, furniture, fixtures and equipment, software, and Schedule 21 Maintenance and Replacement Equipment, etc. is to be with new components that meet the most current technological standards available.</p>
b. Building Condition Report	Project Co shall conduct an assessment and prepare a building condition report annually. This includes a general physical inspection of the Facility and Schedule 21 Maintenance and Replacement Equipment (not necessarily done by an engineering Professional) as well as an analysis of the Corrective Maintenance Work history. Subsequent to the first building condition report, this report shall also note significant changes in condition from the previous year. The assessment shall include establishing a facility condition index (FCI) in accordance with WGH current methodology and the MOHLTC Capital planning programs. In the last seven (7) years of the Operating Term the report shall be prepared in accordance with Schedule 24 – Expiry Transition Procedures of the Project Agreement.

**2.17 Lifecycle Renewal**

c. 30 Year Lifecycle Replacement Schedule Updates

Project Co shall update the original 30-year Lifecycle Replacement Schedule from Appendix A – Schedule 24 of the Project Agreement annually.

The analysis and update in respect of the Lifecycle Replacement Schedule must be based on the following inputs:

- Lifecycle Replacement Schedule included in Schedule 24 – Expiry Transition Procedures of the Project Agreement
- Building condition report
- System performance and maintenance trends
- Run-time data (where applicable)
- Preventive Maintenance and Lifecycle Replacement Schedule data
- WGH input
- Risk assessments (Project Co and WGH)
- Impact of Applicable Law

The Lifecycle Replacement Schedule shall include the following elements:

- All built components (equipment, finishes, architectural elements, structural elements, site works, etc.)
- Typical Service life as per Existing Design and Technical Requirements
- All Schedule 21 Maintenance and Replacement Equipment
- Theoretical life remaining on asset
- Condition of asset (scale of 1-5)
- Priority of asset (scale of 1-5)
- Adjusted life remaining on asset
- Anticipated year of replacement

Project Co shall present the updated Lifecycle Replacement Schedule to WGH for review. In any event that the lifecycle replacement for any component is adjusted later than the original Lifecycle Replacement Schedule, WGH approval is required; otherwise Project Co shall follow the original Lifecycle Replacement Schedule.

The approval process for the Lifecycle Replacement Schedule is as follows:

Step	Description
Prepare draft plan	A draft plan shall be prepared and presented to WGH by Project Co
WGH Review	WGH shall review and advise of changes as necessary
Coordinate Joint Review Meeting	Project Co shall organize a joint review meeting to discuss and finalize required changes.
Final Plan Prepared	Project Co shall prepare a final plan and present it to WGH for approval, incorporating any required changes. WGH may require Project Co to make additional changes at any time.

2.17 Lifecycle Renewal											
d. 5-Year Capital Plan	<p>Based on the Lifecycle Replacement Schedule, a five year capital plan shall be prepared by Project Co for WGH’s review on an annual basis. The capital plan shall include the next 5 years of the Lifecycle Replacement Schedule and incorporate high level commencement and completion dates for all scheduled replacements or refurbishments during the period.</p> <p>The approval process for the capital plan is as follows:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;">Step</th> <th>Description</th> </tr> </thead> <tbody> <tr> <td>Prepare Draft Capital Plan</td> <td>A draft capital plan shall be prepared and presented to WGH by Project Co</td> </tr> <tr> <td>WGH Review</td> <td>WGH shall review and advise of changes as necessary.</td> </tr> <tr> <td>Coordinate Joint Review Meeting</td> <td>Project Co shall organize a joint review meeting to discuss and finalize required changes.</td> </tr> <tr> <td>Final Plan Prepared</td> <td>Project Co shall prepare a final capital plan and present it to WGH for approval, incorporating any required changes. WGH may require Project Co to make additional changes at any time.</td> </tr> </tbody> </table>	Step	Description	Prepare Draft Capital Plan	A draft capital plan shall be prepared and presented to WGH by Project Co	WGH Review	WGH shall review and advise of changes as necessary.	Coordinate Joint Review Meeting	Project Co shall organize a joint review meeting to discuss and finalize required changes.	Final Plan Prepared	Project Co shall prepare a final capital plan and present it to WGH for approval, incorporating any required changes. WGH may require Project Co to make additional changes at any time.
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Final Plan Prepared	Project Co shall prepare a final capital plan and present it to WGH for approval, incorporating any required changes. WGH may require Project Co to make additional changes at any time.										
e. Annual Capital Program	<p>Based on the 5-year capital plan, Project Co shall prepare a detailed capital program for the upcoming year. This program shall use standard project management techniques to identify the budget and schedule for each capital replacement, major repair or refurbishment in the upcoming year. The program shall be updated monthly by Project Co throughout the year and be submitted to WGH in accordance with the Reporting section of these Output Specifications.</p>										
f. Lifecycle Technical Reviews	<p>A Lifecycle Technical Review shall be conducted every five years for the first 25 years of the Project Agreement by an independent consultant commencing on the 5<sup>th</sup> year of the Operational Term. This review shall assess the performance and effectiveness of Project Co’s Preventive Maintenance Plan and Lifecycle Replacement Schedule over the previous five years in addition to reviewing and assessing Project Co’s Preventive Maintenance Plan and Lifecycle Replacement Schedule for the upcoming five years. Project Co shall fully cooperate and support the independent consultant in its performance of the technical review.</p> <p>The requirements in these lifecycle renewal provisions are in addition to the requirements set forth in Schedule 24 of the Project Agreement.</p> <p>WGH shall select the independent consultant and shall pay for the technical review. The technical review prepared by the independent consultant shall take into account any or all of the reports and plans as well as Normal Wear and Tear. The technical review report shall at a minimum include the following:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;">Item</th> <th>Description</th> </tr> </thead> <tbody> <tr> <td>General Observations</td> <td>This section shall provide general observations about the overall condition of the Facility</td> </tr> <tr> <td>Process Observations</td> <td>This section shall provide specific observations on the techniques, processes and resources used by Project Co to implement and manage their asset planning and Preventive Maintenance Plan</td> </tr> <tr> <td>Asset Conditions Observed</td> <td>This section shall itemize all assets and their relative condition, in accordance with the condition assessment methodology used by Project Co</td> </tr> <tr> <td>Deficiencies Observed</td> <td>This section shall identify deficiencies in asset condition and processes</td> </tr> </tbody> </table>	Item	Description	General Observations	This section shall provide general observations about the overall condition of the Facility	Process Observations	This section shall provide specific observations on the techniques, processes and resources used by Project Co to implement and manage their asset planning and Preventive Maintenance Plan	Asset Conditions Observed	This section shall itemize all assets and their relative condition, in accordance with the condition assessment methodology used by Project Co	Deficiencies Observed	This section shall identify deficiencies in asset condition and processes
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2.17 Lifecycle Renewal													
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2.18 Furniture, Fixtures and Equipment (FF&E)	
<b>Service Objectives</b>	Furniture, fixtures and equipment is provided to enable Facility Occupants to effectively and safely perform their duties. The furniture, fixtures and equipment must be maintained by Project Co at a quality and standard that ensures it continues to support WGH and its staff.
<b>Element</b>	<b>Requirements</b>
a. Inventory	<p>Project Co must maintain the inventory electronically for all furniture, fixtures and equipment included in the Existing Design and all Schedule 21 Maintenance and Replacement Equipment. A means of tracking and identifying each item of furniture, fixtures and equipment included in the Existing Design and each item of Schedule 21 Maintenance and Replacement Equipment shall be put in place by Project Co. The inventory must be updated by Project Co as such equipment is replaced and be available to WGH in hardcopy or softcopy format as requested. The inventory must contain at least the following information:</p> <ul style="list-style-type: none"> <li>• Unique item identifier</li> <li>• Type</li> <li>• Manufacturer</li> <li>• Model number</li> <li>• Serial number (if applicable)</li> <li>• Room location</li> <li>• Date of installation</li> <li>• Planned date of replacement</li> </ul>

2.19 Preventive Maintenance Plan					
<b>Service Objectives</b>	The Preventive Maintenance Plan is part of the overall approach to ensuring the ongoing reliability and condition of the Facility in keeping with its critical nature. Project Co’s Preventive Maintenance Plan shall be based on practices and procedures that are consistent with Good Industry Practices for Hospitals.				
<b>Element</b>	<b>Requirements</b>				
a. Application of the Preventive Maintenance Plan	The Preventive Maintenance Plan applies to all building systems and all components of the Facility including but not limited to building systems, architectural elements, finishes, structural components, site works, flooring and floor coverings, furniture, fixtures and equipment (FF&E) and software under the responsibility of Project Co. and also includes all Schedule 21 Maintenance and Replacement Equipment. At Substantial Completion, Project Co shall be responsible for all components, including specialized Hospital components and systems, required to meet the Existing Design and the Technical Requirements. The Preventive Maintenance Plan identifies all Preventive Maintenance to be performed in accordance with the Specific Service Specifications in Section Two of these Output Specifications as well as any other Preventive Maintenance that is required. An up-to-date inventory of the components shall be maintained in a Computerized Maintenance Management Systems (CMMS).				
b. Objectives of the Preventive Maintenance Plan	The objectives of the Preventive Maintenance Plan are: <ul style="list-style-type: none"> <li>• Safety;</li> <li>• Compliance with the Applicable Law;</li> <li>• Maximize efficiency;</li> <li>• Reliability; and</li> <li>• Maximizing equipment or system life.</li> </ul>				
c. Annual Preventive Maintenance Plan	Project Co shall submit the initial completed Preventive Maintenance Plan to WGH no later than 90 days prior to the Scheduled Substantial Completion Date and shall update it annually thereafter. The Preventive Maintenance Plan shall include the information elements identified in Section 2.19f.				
d. Scheduling	The Preventive Maintenance Plan for each subsequent 1 month period is to be provided to WGH by Project Co on a monthly basis 1 month in advance, for review and coordination with WGH activities and the Hospital Services.  In accordance with Section 27 of the Project Agreement and these Output Specifications, WGH may require Project Co to re-schedule the work or modify the work plan, at WGH’ sole discretion, to accommodate WGH needs or concerns. Project Co shall adjust the plans accordingly.				
e. Maintenance Windows	Maintenance which has the potential to be service affecting or have an impact on Hospital Services shall be performed by Project Co within the approved time window.  Maintenance shall be scheduled to minimize interference with Hospital Services. WGH shall have the sole authority to designate maintenance procedure timing.				
f. Preventive Maintenance Plan Requirements	Project Co shall ensure the Preventive Maintenance Plan fulfills the following requirements: <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Requirement</th> <th style="text-align: left;">Description</th> </tr> </thead> <tbody> <tr> <td>Computerized (CMMS)</td> <td>Install, maintain keep up-to-date and operate an industry recognized Computerized Maintenance Management System (CMMS)</td> </tr> </tbody> </table>	Requirement	Description	Computerized (CMMS)	Install, maintain keep up-to-date and operate an industry recognized Computerized Maintenance Management System (CMMS)
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<b>2.19 Preventive Maintenance Plan</b>									
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Electronic Document Filing	<p>The system shall be used to store electronic copies of all relevant Service documentation attached to the component or equipment.</p> <p>WGH shall be provided with remote read only access to the CMMS system at all times.</p>								
g. Preventive Maintenance	Preventive Maintenance routines shall comply, at a minimum, with manufacturers recommended routines to maintain reliability and maintain condition in accordance with the recommended life.								
h. Predictive Maintenance	Predictive Maintenance shall be implemented for applicable equipment in accordance with the Project Co Services described in Section 3 of these Output Specifications.								
i. Tracking and Management of Assets	Project Co shall track all assets that are part of the Preventive Maintenance Plan as of the Scheduled Substantial Completion Date as well as add any assets that are added, changed or refurbished through the Operational Term and delete assets that are removed from the Facility.								
j. Tracking and Management of Work Activity	Project Co shall track the information identified in Section 2.19(f) for all scheduled and unscheduled maintenance activity in the CMMS system, including Corrective Maintenance Work.								
k. Documentation	In addition to the data contained within the CMMS system, all maintenance service records shall be retained in paper format and/or electronically stored in accordance with the “Record Management” subsection of these Output Specifications.								

<b>2.20 Corrective Maintenance Work</b>	
<b>Service Objectives</b>	As a Facility that operates 24 hours a day 365 days a year, the needs of WGH as well as the Facility’s maintenance and operational requirements periodically require Corrective Maintenance Work. Project Co shall implement an effective mechanism to act upon and document Corrective Maintenance Work requests and their resolution in order to minimize the time during which the equipment or rooms are out of service. Ensure the coordination of the maximum number of concurrent activities when performing maintenance in a particular room to minimize disruptions.
<b>Element</b>	<b>Requirements</b>
a. Application of Corrective Maintenance Work	Corrective Maintenance Work applies to all building systems and all components of the Facility including but not limited to building systems, architectural elements, finishes, structural components, site works, flooring and floor coverings, furniture, fixtures and equipment (FF&E) and software under the responsibility of Project Co. included in the Existing Design and all Schedule 21 Maintenance and Replacement Equipment.
b. Scheduling	<p>If Corrective Maintenance Work could potentially affect the Hospital Services, Project Co shall obtain approval from WGH in advance of proceeding with the Corrective Maintenance Work in accordance with Section 2.20 of these Output Specifications.</p> <p>If Corrective Maintenance Work is necessary to address a service affecting or potentially service affecting impact, Project Co may take the necessary action to address the issue, as long as it has advised WGH.</p> <p>Project Co may be requested to provide a work plan prior to proceeding with Corrective Maintenance Work. Project Co may be required to modify the work plan to accommodate the needs or concerns of WGH.</p>
c. Requirements or Demands	Project Co shall respond to and act upon all WGH requests and requirements for Project Co Services and/or corrective action within the scope of Project Co Services provided by Project Co.

<b>2.21 Housekeeping</b>	
<b>Service Objectives</b>	Housekeeping services must be delivered using techniques and products that are conducive to the nature of the Facility. The sensitive nature of the Facility requires a very specific and carefully controlled housekeeping process to ensure the environment is not contaminated and that the cleaning activities do not pose a risk.
<b>Element</b>	<b>Requirements</b>
a. WGH Provided Housekeeping	WGH provides housekeeping services to the interior of the Facility in offices, common areas, elevators, washrooms and clinical areas except as otherwise noted below. Project Co shall coordinate and manage all their activities in a way that does not impede nor cause increased workload for WGH housekeeping staff.
b. Project Co Housekeeping	<p>Project Co shall provide Housekeeping services within specific areas of the Facility that are not serviced by WGH housekeeping staff as described above.</p> <p>This includes areas and activities such as:</p> <p>All exterior areas of the building, including land, structures, surfaces and other elements. This includes, but is not limited to:</p> <ul style="list-style-type: none"> <li>• parking lot</li> <li>• building exterior</li> </ul> <p>All interior areas of the building that are designated for Project Co’s use in providing the services. These shall include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• electrical and mechanical rooms</li> <li>• service spaces</li> <li>• utility closets</li> </ul> <p>All areas and elements that cannot be cleaned without the use of tools or specialized equipment, such as:</p> <ul style="list-style-type: none"> <li>• Entrance grills and drains</li> <li>• Kitchen grease traps</li> </ul> <p>All housekeeping duties shall be in accordance with WGH infection Control policies and WGH operational needs.</p>
c. Coordination, Training and Standards	<p>WGH staff will provide housekeeping services for areas and surfaces for which Project Co is responsible for maintenance, repair and lifecycle replacement. This includes flooring, kitchen equipment and all fixtures and wall surfaces, for example.</p> <p>Project Co shall provide WGH staff with appropriate training and guidance on the techniques and products to use in the care of all surfaces and fixtures. Those techniques and products must adhere to infection control, green policies and other requirements of WGH as indicated in these specifications.</p>

2.22 Material Management	
<b>Service Objectives</b>	Effective management of materials used in the operations and maintenance of the Facility ensures a safe and secure environment for the Facility.
<b>Element</b>	<b>Requirements</b>
a. All Applicable Laws and Regulations	Project Co shall ensure that all Applicable Laws are followed in the storing and handling of products, supplies and materials used for the purposes of performing Project Co Services.
b. Environmentally Friendly Products	<p>Environmentally friendly products are to be the first choice where available.</p> <p>Project Co shall develop and use an environmentally friendly pesticide free program to align with local and provincial safe healthcare programs.</p> <p>Project Co shall submit to WGH an environmentally friendly purchasing policy and program.</p> <p>Project Co shall, on an annual basis, submit to WGH a report on the compliance and non-compliances with the plan. All materials substantiating the program shall be provided to WGH upon request.</p>
c. Confidential Recycling	Project Co shall submit the initial completed plan for safeguarding confidential recycling materials, including safeguarding, tracking and auditing to WGH no later than 90 days prior to the Scheduled Substantial Completion Date and update it annually thereafter.

2.23 Spare Parts and Consumables Management	
<b>Service Objectives</b>	The management of spare parts at the Facility ensures quick and reliable response and restoration of failures that may threaten the ongoing operation of the Facility.
<b>Element</b>	<b>Requirements</b>
a. Spare Parts Lists	Project Co shall maintain an electronic inventory of spare parts that is readily available and kept up-to-date, including minimum quantities required on-hand.
b. Emergency Spare Parts	<p>The inventory shall include long lead time or specialty items as necessary to ensure reliability and continuous function.</p> <p>Project Co shall maintain an inventory of appropriate spare parts on-site and ensure ready availability as required to ensure reliability and continuous operations of the Facility. This inventory shall be available for review by WGH.</p> <p>Project Co shall renew or dispose of emergency spare parts when they become obsolete or when they are beyond their life.</p>
c. Routine Spare Parts	The inventory includes commonly available parts. Project Co shall maintain an inventory of appropriate spare parts on-site. Project Co shall renew or dispose of routine spare parts when they become obsolete or when they are beyond their life.
d. Consumables	The inventory includes commonly required consumables. Project Co shall maintain an appropriate level of consumables on-site. Project Co shall renew or dispose of consumables when they become obsolete or when they are beyond their life.
e. Replenish	Project Co shall ensure that at the end of the Project Term, the same quantity of consumables and spare parts are on-site at hand-back.

2.24 Project Delivery							
<b>Service Objectives</b>	The processes and methods used by Project Co to deliver projects of all natures within the Facility shall be performed in accordance with Good Industry Practices for Hospitals in order to avoid or minimize the potential impact on on-going services.						
<b>Element</b>	<b>Requirements</b>						
a. Projects Include	Projects include the following categories:						
	<table border="1"> <thead> <tr> <th>Category</th> <th>Description</th> </tr> </thead> <tbody> <tr> <td>Lifecycle Replacement / Repair</td> <td>These are Project Co initiated and Project Co funded</td> </tr> <tr> <td>Moves, adds and changes, interior fit-up projects or other projects</td> <td>These are initiated and funded by WGH</td> </tr> </tbody> </table>	Category	Description	Lifecycle Replacement / Repair	These are Project Co initiated and Project Co funded	Moves, adds and changes, interior fit-up projects or other projects	These are initiated and funded by WGH
Category	Description						
Lifecycle Replacement / Repair	These are Project Co initiated and Project Co funded						
Moves, adds and changes, interior fit-up projects or other projects	These are initiated and funded by WGH						
b. Procedures	Project Co shall develop and implement procedures and approval processes for project delivery, in consultation with WGH. The delivery of project management Project Co Services shall be in accordance with the standards of the Project Management Institute (PMI).						
c. Project Planning	Project Co shall develop and propose a delivery plan for each Individual Project. For all project work, Project Co shall plan and schedule the work activity with WGH. WGH may require additional security or backup measures, scheduling of projected activity within certain dates or time frames, or other requirements deemed necessary by WGH to ensure Hospital Services are not interfered with.						
d. Equipment and Cabling	Project Co is responsible for the installation and placement of electrical service, HVAC, alarms and other elements that support WGH Equipment within the Facility. Such installation and placement is to be mutually agreed upon with WGH.						
e. Approvals	Project Co shall follow WGH protocols for approvals for any project delivery that is funded by WGH.						
f. Coordinate Projects	Project Co shall coordinate with WGH during all project activity and follow the protocols established by WGH regarding changes that may affect Hospital Services.						
g. Managing Projects	With the exception of WGH-Funded Projects, unless a written prior approval is obtained from WGH, all projects that are undertaken by Project Co are considered to be included in Project Co Services.						
h. Coordination with Other Organizations	<p>If project activities are undertaken on behalf of WGH by another organization, Project Co shall interface and coordinate with the other organization as required to ensure successful completion and implementation, including:</p> <ul style="list-style-type: none"> <li>• Review of standards and design to ensure adherence to Existing Design and Technical Requirement.</li> <li>• Review of compatibility with existing components and maintenance</li> <li>• No interference with the ongoing operations of the Facility</li> <li>• Cooperation and assistance during installation/construction for access, shutdowns, etc.</li> </ul>						
i. Standards	In all cases, the standards used by Project Co shall be at a minimum those identified in the Existing Design and Technical Requirements, unless otherwise authorized in writing by WGH.						
j. Documentation	All documentation related to a project shall be maintained by Project Co in accordance with these Output Specifications.						



**2.24 Project Delivery**

k. Change Process  
To ensure that the operating standards for each piece of WGH Equipment are met when WGH Equipment is installed, changed or relocated, a formal change management process shall be used by Project Co. The procedure shall be consistent with WGH’s standard processes.

i. WGH Funded Projects  
Where WGH requires project delivery services for WGH Funded Projects, WGH may request Project Co to perform project management services on a non-exclusive basis in accordance with the following :

<b>Project Value (based on approved Direct Costs)</b>	<b>Aggregate Value</b>	<b>Project Management Fee as a % of approved Direct Costs</b>	<b>Designation</b>
Under \$100K each	up to annual aggregate of \$500K	[REDACTED]	Included minor projects
	in excess of the annual aggregate of \$500K	[REDACTED] % Fee	Additional Minor Projects
Between \$100K and \$1M each	No limits	[REDACTED] % Fee	Major Projects
Over \$1M each (Based on approved budget)	No limits	[REDACTED] %	Major Projects

WGH Funded Projects are anticipated to consist of the following types of activities:

- Alterations to existing space;
- New construction and additions;
- Space optimization;
- Equipment and furniture installation;
- System furniture and office re-configuration;
- Move coordination; and
- Other WGH operationally driven moves, adds and changes.

For greater certainty, WGH Funded Projects do not include repairs, maintenance or lifecycle activities to the Existing Facilities and its components.

Approved Direct Costs shall include only Project Co’s Direct Costs.

Equipment related to WGH Funded Projects may, at WGH discretion, be procured and paid for directly by WGH. In this case, the cost of this equipment shall not be included in the Direct Costs.

2.24	<b>Project Delivery</b>							
	<p>Project Co shall provide project delivery for all WGH Funded Projects in accordance with the Ministry of Health and Long Term Care Capital Planning process and policies.</p> <p>Payment for WGH Funded Projects shall be within 20 days of receipt of an invoice with all required backup documentation and after such invoice and documentation is found sufficient to WGH, however in any case, such payment shall not be made until the WGH Funded Project has been completed to the satisfaction of WGH unless otherwise agreed.</p> <p>The following additional requirements apply to WGH Funded Projects:</p> <table border="1" data-bbox="418 533 1481 751"> <tbody> <tr> <td data-bbox="418 533 669 636">Final inspection and acceptance</td> <td data-bbox="669 533 1481 636">WGH reserves the right to perform a final inspection and acceptance. Remediation shall be arranged by Project Co as appropriate.</td> </tr> <tr> <td data-bbox="418 636 669 674">Warranty</td> <td data-bbox="669 636 1481 674">Project Co shall provide the warranty information to WGH.</td> </tr> <tr> <td data-bbox="418 674 669 751">Documentation</td> <td data-bbox="669 674 1481 751">WGH may request, at its sole discretion, to take possession of the related documentation or copies thereof.</td> </tr> </tbody> </table>		Final inspection and acceptance	WGH reserves the right to perform a final inspection and acceptance. Remediation shall be arranged by Project Co as appropriate.	Warranty	Project Co shall provide the warranty information to WGH.	Documentation	WGH may request, at its sole discretion, to take possession of the related documentation or copies thereof.
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Warranty	Project Co shall provide the warranty information to WGH.							
Documentation	WGH may request, at its sole discretion, to take possession of the related documentation or copies thereof.							

2.25 <b>FM Commissioning</b>	
<b>Service Objectives</b>	Involvement by Project Co’s employees and Subcontractors in the commissioning activities enables a smooth transition from the construction activity to the operational activity, including staff who are not only trained in the systems, but have been involved with the commissioning process. They should also be equipped with enhanced skills and knowledge for ongoing Project Co Services as well as continuous commissioning activity.
<b>Element</b>	<b>Requirements</b>
a. FM Representative during Commissioning	<p>Project Co shall hire the facility manager for Project Co Services prior to the commencement of Commissioning activities.</p> <p>The facility manager shall be involved in the commissioning and testing to ensure the facility manager has knowledge of the Facility prior to the Scheduled Substantial Completion Date.</p>

2.26 Continuous Commissioning	
<b>Service Objectives</b>	Continuous Commissioning serves to ensure that all systems continue to perform in accordance with the Existing Design, including variations to the Facility and system and ensure that systems are optimized for performance and energy efficiency.
<b>Element</b>	<b>Requirements</b>
a. Monitor Performance	Project Co shall monitor and track system performance and plan re-commissioning when performance no longer meets Existing Design and Technical Requirements. Where the Existing Design and Technical Requirements have been adjusted due to changes, renovations or new installations as approved by WGH, any related new performance specifications will apply.
b. New Installations or Changes	Project Co shall conduct commissioning as required due to new installations or changes to systems or configurations through the life of the Facility.
c. Planning	Project Co shall plan commissioning activities with WGH in accordance with protocols established for project delivery.
d. Reporting	Project Co shall report on the results of commissioning activities in the FMR.
e. IAQ Testing	Project Co shall test and provide the report on Indoor Air Quality (IAQ) in the Facility. If the testing does not meet the required standard, Project Co shall remediate and re-test until the standard is met.

2.27 Transition In	
<b>Service Objectives</b>	The transition plan is an important element to provide planning, structure and management to the start-up process associated with completion of the construction and initiation of the ongoing Project Co Services and Hospital Services. The plan provides a comprehensive view of all activities and milestones for Project Co and WGH.
<b>Element</b>	<b>Requirements</b>
a. Transition Commencement	<p>As soon as the Facilities Management Committee is established in accordance with the Project Agreement, the Parties shall begin the Transition in and shall work collaboratively to ensure the deliverables and transition are conducted and completed in a timely manner.</p> <p>The provisions of these Output Specifications supplement the provisions of Section 25.14 and Section 25.15 of the Project Agreement.</p> <p>All systems used for the monitoring, management or reporting of information shall be in operation, tested and commissioned by Project Co, no later than 30 days prior to the Scheduled Substantial Completion Date.</p> <p>Project Co shall furthermore develop the Central Dispatch protocol for review and approval by WGH Representative no later than 30 days prior to the Scheduled Substantial Completion Date.</p>
b. Transition Advisor	In accordance with Section 25.14 of the Project Agreement, Project Co shall appoint a Transition Advisor to represent it during the transition-in phase. The Transition Advisor shall be named no later than 18 months prior to the Scheduled Substantial Completion Date. The transition advisor shall be responsible for managing and integrating all activities of the Transition. This includes setting, managing, reporting and providing minutes and other support for all transition-in meetings, meetings of the Transition Subcommittee and activities, in accordance with Section 25.15 of the Project Agreement.
c. Transition Sub Committee	Project Co shall establish a transition subcommittee with WGH in accordance with Section 25.15 of the Project Agreement to ensure a smooth transition. The committee shall be established no later than 180 days following Financial Close. This committee shall be responsible for ensuring that all aspects of the transition are suitably resourced, planned, guided and managed.
d. WGH Transition Plans	<p>WGH will engage a transitional planning consultant to guide and lead the transitional planning activities as they relate to Hospital Services, external agencies, move planning and authority planning.</p> <p>Project Co and the Transition Advisor shall attend all transitional planning meetings set by WGH and coordinate with WGH transition activities.</p>

2.27 Transition In																					
e. Transition Plan	<p>The transition plan shall be developed by Project Co with the input and involvement of WGH to ensure the transition plan is coordinated with any required Hospital Services and with WGH’s own transition plan for Hospital operations.</p> <p>The plan shall be completed no later than 180 days prior to the Scheduled Substantial Completion Date.</p> <p>The transition plan shall include a timetable for completion of all activities, including the following:</p> <ul style="list-style-type: none"> <li>• Milestones at which WGH must provide input and approvals</li> <li>• Timeframes for the transition-in based on priorities, starting with the most complex and critical Project Co Services and issues</li> </ul> <p>The transition plan must include the following elements:</p> <ul style="list-style-type: none"> <li>• Implementation plan for Project Co Services</li> <li>• All contract deliverables</li> <li>• All documents and plans referred throughout this Output Specification for delivery during transition</li> <li>• Training and/or orientation of WGH staff on the Project Co Services.</li> </ul> <p>Project Co’s transition plan, shall also address, but not be limited to, the following:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="text-align: center;">Activity</th> </tr> </thead> <tbody> <tr> <td colspan="2">Schedule of delivery or milestone dates to implement the requirements</td> </tr> <tr> <td colspan="2">Development of processes and procedures in conjunction with WGH, including change management interaction with WGH</td> </tr> <tr> <td colspan="2">Documentation and reporting, including data elements and report formats</td> </tr> <tr> <td colspan="2">Information requirements and transfer</td> </tr> <tr> <td colspan="2">Meetings and WGH input / feedback</td> </tr> <tr> <td colspan="2">Status and reporting mechanism</td> </tr> <tr> <td colspan="2">Human resource implications</td> </tr> <tr> <td colspan="2">WGH Equipment implications</td> </tr> <tr> <td colspan="2">Training development and implementation for both Project Co on-site and support organizations</td> </tr> </tbody> </table>	Activity		Schedule of delivery or milestone dates to implement the requirements		Development of processes and procedures in conjunction with WGH, including change management interaction with WGH		Documentation and reporting, including data elements and report formats		Information requirements and transfer		Meetings and WGH input / feedback		Status and reporting mechanism		Human resource implications		WGH Equipment implications		Training development and implementation for both Project Co on-site and support organizations	
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f. Transition Plan Approval	<p>The transition plan shall be submitted to WGH for review.</p> <p>If accepted, the transition plan will be used as a management document to guide the Transition activities.</p> <p>If not accepted, Project Co shall re-submit within 2 weeks or on a later date identified by WGH. WGH shall re-review the plan and either accepts the plan or request further revisions until the transition plan is accepted.</p>																				
g. Required Activities	<p>Project Co shall conduct the following specific activities in addition to other activities required for transition-in:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tbody> <tr> <td style="width: 30%;">Security Audit</td> <td>Prepare a complete Security Audit to validate the security features of the Facility and confirm that they are fully functional</td> </tr> <tr> <td>WGH Equipment Installation</td> <td>WGH will develop and implement a WGH Equipment installation plan with respect to WGH Equipment.</td> </tr> </tbody> </table>	Security Audit	Prepare a complete Security Audit to validate the security features of the Facility and confirm that they are fully functional	WGH Equipment Installation	WGH will develop and implement a WGH Equipment installation plan with respect to WGH Equipment.																
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2.27 Transition In	
	<p>Project Co and the Transition Advisor must closely integrate their activities with the WGH Equipment installation plan to achieve:</p> <ul style="list-style-type: none"> <li>• Effective communication between the teams</li> <li>• Consistent understanding of base requirements, scheduled milestones, interdependencies and handover points</li> <li>• Close co-ordination of schedules and activities</li> </ul> <p>During the transition phase, the WGH Equipment installation will be considerable. Project Co is expected to provide sufficient resources to accommodate WGH’s requirements.</p>
Post construction Cleaning protection	<p>WGH cleaning staff will conduct a final hospital cleaning following the final construction clean. Project Co shall provide protection of all room contents and surfaces if re-entry into the room is required after hospital cleaning is conducted.</p> <p>A plan of protection shall be submitted to and approved by WGH for re-entry procedures and protection methods.</p>
WGH Orientation & Training	<p>In addition to (and not in substitution of) training requirements set forth in the Project Agreement, Project Co shall develop a plan and deliver Orientation Training programs to WGH staff addressing all safety requirement, policies and operating procedures for everything that is relevant and part of the Existing Design and for all Schedule 21 Maintenance and Replacement Equipment that may be operated or used by WGH staff or required to be used in emergency situations.</p> <p>These programs are to be developed to address multiple shifts and provide assistance for retraining of staff as required to familiarize all staff with the new facilities.</p>

<b>2.28 Transition Out - Hand Back</b>	
<b>Service Objectives</b>	There must be an organized, well-managed transition from Project Co to WGH or a new Project Co that WGH may designate to take over management of the Facility at the conclusion of the Operational Term or in the event of termination.
<b>Element</b>	<b>Requirements</b>
a. Application of the Transition Out Requirements	The transition out / hand back requirements apply at the end of the Operational Term or in the event of a Termination in accordance with the Project Agreement.
b. Work Together Collaboratively	<p>Project Co shall work collaboratively with WGH to establish and manage a transition out – hand back process.</p> <p>Project Co shall work with WGH and new Project Co who may be designated to take over management of the Facility. The new Project Co may be either a third party Project Co or WGH itself.</p> <p>Project Co may be required to participate in and support committees and activities of the new Project Co.</p> <p>Project Co shall make personnel available as required to accompany WGH representatives during any site visits conducted as part of the transition or related procurement process for a new services provider and/or subcontracted goods or services.</p> <p>Project Co shall also provide WGH with the information required to respond to questions related to any procurement processes initiated by WGH.</p>
c. Expeditious and Orderly Transfer of Project Co Services	Project Co shall ensure a seamless transition that provides expeditious and orderly transfer of Project Co’s responsibilities with no disruption to WGH, the Facility or the Project Co Services or Hospital Services.
d. Transition Manager	<p>Project Co shall appoint a transition manager to represent it during the transition-out. The transition manager shall be named 18 months prior to termination of the Project Agreement or the end of the Operational Term, as applicable. Under the direction of WGH, the transition manager shall be responsible for managing and integrating all related activities of the transition-out. This includes setting, managing, reporting and providing minutes and other support for all transition-out meetings and activities.</p> <p>The transition manager shall also be responsible for interfacing and coordinating with WGH and/or new provider as required to ensure a smooth and orderly transition.</p>
e. Transition Committee	Project Co shall establish a transition committee with WGH to ensure a smooth transition-out. The transition committee shall be established 18 months prior to termination of the Project Agreement or the end of the Operational Term. This committee shall be comprised of senior managers of both Project Co and WGH and shall be responsible for ensuring that all aspects of the transition-out are suitably resourced, planned, guided and managed. The transition manager shall chair the transition-out committee.
f. Transition-Out Plan	<p>Project Co shall be responsible for developing a detailed transition-out plan jointly with WGH in accordance with the provisions and general guidelines provided in this Section. The plan shall be completed 18 months prior to Termination Date and shall include at least the following:</p> <ul style="list-style-type: none"> <li>• Schedule of activities and sub-activities to be undertaken during the transition, including at a minimum proposed start and end dates and duration (e.g. level of</li> </ul>



2.28 Transition Out - Hand Back							
	effort), assigned resources, priority and dependencies <ul style="list-style-type: none"> <li>• Human resources</li> <li>• Operations, warranty management and logistics</li> <li>• Project Co Services that have been subcontracted</li> <li>• Health, safety and environmental matters</li> <li>• Finance</li> <li>• Information technology</li> <li>• Records Management, data and information</li> <li>• Project management (including transferring ongoing projects)</li> <li>• Central dispatch</li> <li>• Communications with authorities, Project Co and Subcontractors</li> </ul>						
g. Transition-Out Plan Review and Approval Process	Project Co shall provide the transition-out plan, no later than 18 months prior to the Termination Date to WGH who shall review the plan and either:						
	<table border="1"> <thead> <tr> <th>Action</th> <th>Description</th> </tr> </thead> <tbody> <tr> <td>Accept the transition-out plan</td> <td>The transition-out plan shall be used as a management document to guide the transition-out activities.</td> </tr> <tr> <td>Request revisions to the transition-out plan</td> <td>Project Co shall re-submit within 2 weeks or on a later date identified by WGH. WGH shall re-review the plan in accordance with this process.</td> </tr> </tbody> </table>	Action	Description	Accept the transition-out plan	The transition-out plan shall be used as a management document to guide the transition-out activities.	Request revisions to the transition-out plan	Project Co shall re-submit within 2 weeks or on a later date identified by WGH. WGH shall re-review the plan in accordance with this process.
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Request revisions to the transition-out plan	Project Co shall re-submit within 2 weeks or on a later date identified by WGH. WGH shall re-review the plan in accordance with this process.						
h. Information and Data	Project Co shall ensure that all information and data in whatever form is returned to WGH in accordance with the Project Agreement and these requirements:						
	<table border="1"> <thead> <tr> <th>Type</th> <th>Requirement</th> </tr> </thead> <tbody> <tr> <td>Soft Copy</td> <td>                     All information and data in soft copy related to the Facility must be provided to WGH in a non-proprietary format and at a time to be determined and agreed-upon at the time of transition-out.                       If WGH or new Project Co prefers, Project Co is to provide the original proprietary format in a manner that can be subsequently utilized in a current licence of the same proprietary system used by Project Co                       At the option of WGH, Project Co may be requested to transfer its licence to WGH or new Project Co as the case may be.                 </td> </tr> <tr> <td>Hard Copy</td> <td> <p><b><u>On-Site</u></b>                      All hard copy information and data normally retained on-site is to be left on-site at the Facility in an organized state. Project Co shall provide an inventory of all hard copy information or data, including its location and information on the relevant filing system as applicable.</p> <p><b><u>Off-Site</u></b>                      Any hard copy information and data retained off-site is to be returned to WGH in an organized state. Project Co shall provide an inventory of all hard copy information or data that is returned from off-site locations.</p> <p>Where the information and data is archived with a third party, Project Co shall enable WGH to continue the archive service with the third-party at the sole discretion of WGH.</p> </td> </tr> </tbody> </table>	Type	Requirement	Soft Copy	All information and data in soft copy related to the Facility must be provided to WGH in a non-proprietary format and at a time to be determined and agreed-upon at the time of transition-out.  If WGH or new Project Co prefers, Project Co is to provide the original proprietary format in a manner that can be subsequently utilized in a current licence of the same proprietary system used by Project Co  At the option of WGH, Project Co may be requested to transfer its licence to WGH or new Project Co as the case may be.	Hard Copy	<p><b><u>On-Site</u></b>                      All hard copy information and data normally retained on-site is to be left on-site at the Facility in an organized state. Project Co shall provide an inventory of all hard copy information or data, including its location and information on the relevant filing system as applicable.</p> <p><b><u>Off-Site</u></b>                      Any hard copy information and data retained off-site is to be returned to WGH in an organized state. Project Co shall provide an inventory of all hard copy information or data that is returned from off-site locations.</p> <p>Where the information and data is archived with a third party, Project Co shall enable WGH to continue the archive service with the third-party at the sole discretion of WGH.</p>
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<b>2.28 Transition Out - Hand Back</b>	
i. Subcontracted Goods and Project Co Services	<p>Twelve months prior to the Expiry Date, Project Co shall provide a complete list of goods and services including contact information for Project Co, the Suppliers, the vendors or Subcontractors involved in the delivery of all Project Co Services, goods or Utilities to the Facility. Project Co shall communicate with all vendors, Suppliers and Subcontractors to advise them of the transition and request that they cooperate with either WGH or new Project Co.</p> <p>No Project Co Services performed by a subcontractor shall terminate within the 3 month period prior to the Expiry Date however must not extend more than 12 months after the Expiry Date. Any contract extending beyond the Expiry Date must be assignable and contain a termination for convenience provision without penalty upon 90 days written notice.</p>
j. Transfer of Project Activities	<p>Project Co shall make reasonable efforts to ensure that projects are completed prior to the Expiry Date. In the event that projects extend beyond the Expiry Date, Project Co shall work with WGH to establish a mechanism to complete the projects. WGH may elect to perform the project itself, award it to the new Project Co or any other provider, or request Project Co to continue with the project with no additional compensation.</p>
k. Central Dispatch	<p>Project Co shall work with WGH to ensure a continuation of Central Dispatch Project Co Services until the end of the Operational Term. Project Co shall work with WGH or new provider to communicate and transition to a new telephone number.</p>
l. Remaining Equipment Service Life	<p>Project Co shall ensure that at Expiry Date, the remaining service life of the Facility and the remaining life of Schedule 21 Maintenance and Replacement Equipment is in accordance with the Lifecycle Replacement Schedule.</p>

<b>2.29 Cultural &amp; Religious Occasions</b>	
<b>Service Objectives</b>	As a public facility within the community, observance of cultural and religious occasions for the community and patients is important to WGH. Project Co is an important element in establishing, preparing and implementing plans to observe these occasions.
<b>Element</b>	<b>Service Requirements</b>
a. Annual Plan	Annually, WGH shall provide Project Co with a list of religious observances and other special local, provincial or national occasions to be recognized.
b. Arrangements Established	Through discussions with WGH, Project Co shall develop and present reasonable plans for implementing required activities and coordinating with WGH activities in a manner that reflects the occasion and community recognition.  WGH shall review the plans and make recommendations for adjustments as necessary.
c. Unplanned occasions	In the event that an unplanned or sudden occasion requires implementation, Project Co shall implement the necessary plans as required. While most requirements should be addressed using existing resources, any significant incremental costs incurred shall be dealt with in accordance with the Small Works or Variance Procedures as appropriate.

<b>2.30 Security Services</b>	
<b>Service Objectives</b>	Security services are intended to provide a safe and secure environment for Facility Occupants and the Facility. Security services must achieve a safe facility without impeding Hospital Services or imparting an unreasonable security presence at the Facility.
<b>Element</b>	<b>Service Requirements</b>
a. Ad Hoc Security Services	<p>Project Co may be requested to provide services that are in addition to the scope of services identified in Section 3.0. These services include supervising identified patients or other Facility Occupants.</p> <p>These shall be performed at no additional cost where they can be performed with existing resources. If adjustments to scheduling or scope are required to perform the ad-hoc services with no additional costs, Project Co shall identify the options to WGH for approval.</p> <p>If WGH does not approve the scheduling or scope changes and there are incremental costs associated with the ad-hoc services, Project Co shall identify the costs for approval in advance in accordance with the Schedule 22 - Variation Procedure of the Project Agreement.</p>

<b>2.31 Utilities Management</b>	
<b>Service Objectives</b>	Utilities Management is required to ensure a continuous and uninterrupted supply of Utilities to the Facility to ensure that the Project Co Services and the Hospital Services are not interrupted. In addition, achieving lowest possible unit costs for Utilities as well as minimizing overall consumption is an important objective.
<b>Element</b>	<b>Service Requirements</b>
a. Management and Administration	Project Co shall develop and implement appropriate operational policies, procedures and practices, together with customer service philosophy, relative to the management of utilities three months prior to Substantial Completion, which shall include, but not be limited to the Project Co Services described in Section 3.7.
b. Utilities Management Sub-Committee	Project Co shall implement a Utilities Management Sub-Committee as part of the Facilities Management Committee in consultation with WGH to manage Utilities at the Facility and address the requirements of the Project Agreement and the Payment Mechanism.
b. Backup Systems Fuel (Diesel / Propane)	<p>Project Co shall develop a procurement process with WGH’s involvement that shall ensure a suitable process is in place for WGH to review and accept or reject vendors and contract terms for the provision of diesel or propane used for backup systems.</p> <p>Project Co shall submit the initial completed plan for the review of prospective vendors and contract terms to WGH no later than 90 days prior to the Scheduled Substantial Completion Date and shall update it annually thereafter.</p> <p>Project Co shall manage the procurement process for backup fuel supplies and WGH shall enter into the contracts directly with the vendors and be responsible for payment.</p> <p>Project Co shall be responsible for ensuring timely and continuous supply of backup fuel supplies and shall interact directly with the vendors to secure the supply and arrange for delivery as necessary.</p>

**Performance Indicators**

Performance Indicators Legend

<b>Failure Type</b>	<b>Category</b>	<b>Response</b>	<b>Rectification</b>	<b>Recording Frequency</b>
AF = Availability Failure	Major	N/A = Not Applicable	N/A = Not Applicable	PR = Per Request
SF = Service Failure	Medium			PE = Per Event
QF = Quality Failure	Minor			D = Daily
	AF			W = Weekly
				M = Monthly
				Q = Quarterly
				B = Bi-Annually
				A = Annually
				R = Randomly, At Any Moment in Time

Reference	Parameter	Failure Type	Category	Response Time	Rectification Time	Recording Frequency	Application
<b>General management</b>							
PI# 2-1 (All)	Administrative and management services provided in accordance with the standards	QF	Medium	N/A	N/A	R	One QF per Contract Month
PI# 2-2 2.0 (various)	Employees, Subcontractors and Facility Occupants have received orientation and training as per standards	QF	Medium	N/A	N/A	PE	One QF per event
PI# 2-3 2.1 y 2.5 a	Proof of licenses, permits and qualification provided annually	QF	Major	N/A	N/A	A	One QF per Contract Year
PI# 2-4 2.5 a	Employees and Subcontractors are uniformed, presentable and wear ID badges at all times	QF	Medium	N/A	N/A	R	One QF per Contract Month
PI# 2-5 2.1 t,u	Employees and Subcontractors undergo satisfactory Security Record Check	QF	Major	N/A	N/A	R	One QF per Contract Month
PI# 2-6 2.1 o	Collaboration during WGH accreditation process	QF	Major	N/A	N/A	R	One QF per non-compliance
PI# 2-7 2.14 d, j	Project Co has participated in and reviewed annually all of its contingency plans	QF	Major	N/A	N/A	A	One QF per non-compliance
PI# 2-8 2.7, 2.9j	Project Co fulfills its obligations regarding communications protocols	QF	Medium	N/A	N/A	R	One QF per non-compliance
PI# 2-9 2.17 f	Project Co addresses issues identified by the Lifecycle Technical Reviews within the prescribed timeframe	QF	Major	N/A	N/A	R	One QF per non-compliance
PI# 2-10 2.9	Reports required to satisfy regulatory requirements are submitted on time and are accurate	QF	Major	N/A	N/A	PE	One QF per event
PI# 2-11 2.9	Reports are submitted on time & are accurate	QF	Major	N/A	N/A	PE	One QF per event
PI# 2-12 Various	Plans are submitted on time and are accurate	QF	Medium	N/A	N/A	PE	One QF per event
PI# 2-13 2.12	Subcontractor selection and management is accordance with the agreed upon process	QF	Medium	N/A	N/A	R	One QF per contract month

	Parameter	Failure Type	Category	Response Time	Rectification Time	Recording Frequency	Application
<b>Reference</b>	<b>General management</b>						
<b>PI# 2-14 2.10, 2.19, 2.30</b>	Information management systems is available and up-to-date	QF	Major	N/A	N/A	R	One QF per contract month
<b>PI# 2-15 2.24</b>	Projects are deliver in accordance with approved schedule and budget	QF	Medium	N/A	N/A	PE	One QF per non-compliance
<b>PI# 2-16 2.1 p,r</b>	Satisfaction surveys are conducted in accordance with agreed upon process	QF	Major	N/A	N/A	A	Two QF per Contract Year
<b>PI# 2-17 2.2</b>	All Services are to be performed in accordance with Applicable Law	QF	Major	N/A	N/A	R	One QF per Contract Month
<b>PI# 2-18 2.3</b>	All Services are to be performed in accordance with WGH Policies	QF	Major	N/A	N/A	R	One QF per Contract Month
<b>PI# 2-19 2.17</b>	Lifecycle Services are provided in accordance with the standards	QF	Major	N/A	N/A	R	One QF per non-compliance
<b>PI# 2-20 2.23</b>	Spare Parts and Consumables list provided and updated, and parts on-hand.	SF	Medium	N/A	N/A	PE	One SF per Event
<b>PI# 2-21 2.26</b>	Commissioning of all new installations and systems in accordance with standard	QF	Major	N/A	N/A	R	One QF per non-compliance
<b>PI# 2-22 2.16</b>	Regular review of maintenance and Operations Procedures (MOP) manuals and updates as required	QF	Medium	N/A	N/A	A	One QF per Contract Year
<b>PI# 2-23 Various</b>	Annual review of plans and updates as required	QF	Medium	N/A	N/A	A	One QF per Plan per Contract Year

# Section Three

## Schedule 15 Woodstock General Hospital Facility Management Output Specifications



### Specific Service Specifications

This section provides details of Project Co responsibilities for specific Services it is responsible for performing.

It also outlines the 'level' of the Service required in words and describes the objectives of the Service.



### **3.0 Specific Service Specifications**

Project Co shall provide Project Co Services in accordance with the Service Specification established in these Output Specifications, and as amended in accordance with the Variation Procedures established in Schedule 22 – Variation Procedure of the Project Agreement. The list of activities included in the Service Specification charts in this Section 3 are provided to identify the performance results that Project Co is obliged to achieve and are not to be considered a comprehensive list of “tasks” that Project Co is to perform in providing Project Co Services.

Project Co is obliged to undertake all functions and tasks that are necessary in the provision of Project Co Services so that the level of performance achieved meets the requirements necessary to carry out the Project Co Services.

These Specific Service Specifications are to be read in conjunction with Section Two – Management and Administration Output Specifications.

*The Specific Service Specifications included in these Output Specifications are proprietary to WGH and cannot be used for any purpose other than for Project Co to develop its proposal, including but not limited to the price, and for the provision of Project Co Services.*

3.1 Access Control / Protection Services / Security Operations	
<b>Objectives:</b> Control and regulate access to the installations for the security of the confidential information contained on-site and the well-being of Facility Occupants and visitors. The systems and equipment associated with access control, protection services and security must be maintained to assure the safety of personnel, the installations and their contents.	
Element	FM Service Specification
Project Co shall provide the following Project Co Services and shall achieve the following results:	
[REDACTED]	

3.2 Grounds Maintenance	
<b>Objectives:</b>	
Maintain the grounds in a manner that is consistent with the Existing Design and Technical Requirements, generally reflects the neighbouring properties and in a manner that is consistent with WGH’s public image. Ensure that the delivery of the Project Co Services do not cause risks to the patients’ health.	
Element	FM Service Specification
Project Co shall provide the following Project Co Services and shall achieve the following results:	
a. Ecolawn Areas	<ul style="list-style-type: none"> <li>Maintain in accordance with Existing Design and Technical Requirements</li> </ul>
b. Grass	<ul style="list-style-type: none"> <li>Grass is usually green but may yellow during periods of low rain</li> <li>Maintained in accordance with bylaw requirements and neighbouring appearance, Maximum length 2 inches and some tolerance for weeds</li> <li>Watering periodically in accordance with LEED requirements; Weeding spring only; Trim is cut at regular intervals</li> <li>Application of weed &amp; fertilization products at the beginning of season</li> </ul>
c. Pesticides	<ul style="list-style-type: none"> <li>Use an environmentally friendly pesticide free program</li> </ul>
d. Grass removal	<ul style="list-style-type: none"> <li>Grass is mulched (clump free) and left on the landscaped ground</li> <li>Grass is removed from any hard surfaces (i.e. sidewalks, driveways)</li> </ul>
e. Spring cleaning	<ul style="list-style-type: none"> <li>Removal of sand residue from any hard surfaces, including parking and circulation routes</li> <li>Seed or Sod all areas where grass was damaged; clean drains, grass is raked</li> </ul>
f. Fall preparation	<ul style="list-style-type: none"> <li>Delicate bushes are covered or fenced; flowers and plants are removed (where applicable)</li> <li>Seed all areas where grass was damaged; clean drains, grass is raked</li> </ul>
g. Exterior furniture	<ul style="list-style-type: none"> <li>Limited amount of moveable exterior furniture to bring out in spring and put away in fall</li> </ul>
h. Storage of furniture	<ul style="list-style-type: none"> <li>Storage of moveable furniture on-site</li> </ul>
i. Planting	<ul style="list-style-type: none"> <li>Maintain landscaping plan in accordance with the original landscape design</li> <li>Planting of some flowers on the Facility and removal of flowers that have died during the season</li> <li>Limited to no weeds in the garden</li> <li>Application of weed &amp; fertilization products at the beginning of season</li> </ul>
j. Tree maintenance (Public Areas)	<ul style="list-style-type: none"> <li>Pruning of trees for safety and security reasons</li> <li>Ensure health of trees and bushes</li> <li>Shaping of bushes and removal of dead or dying branches twice during the season to maintenance appearance</li> <li>Dead or dying branches are removed</li> <li>Limited or no litter collected in trees</li> <li>Annual inspections and maintenance of tree to ensure safety and avoid obstructions, or as requested</li> <li>Timely removal of leaves from grounds</li> </ul>
k. Tree maintenance	<ul style="list-style-type: none"> <li>Pruning of trees for safety and security reasons only</li> <li>Ensure health of trees and bushes</li> <li>Shaping of bushes and removal of dead or dying branches once during the season and annually</li> </ul>
<b>General Description</b>	
<ul style="list-style-type: none"> <li>The patients’ health and welfare is paramount and must be considered when scheduling activities and determining the means to be used, for example patients should not be exposed to residues and ambient particles</li> <li>Parking and site circulation routes include: pavings, paths, driveways, roads, car parking areas, Facility entrances, buildings accesses (including any external staircases)</li> </ul>	

**Performance Indicators**

Performance Indicators Legend

<b>Failure Type</b>	<b>Category</b>	<b>Response</b>	<b>Rectification</b>	<b>Recording Frequency</b>
AF = Availability Failure SF = Service Failure QF = Quality Failure	Major Medium Minor AF	N/A = Not Applicable	N/A = Not Applicable	PR = Per Request PE = Per Event D = Daily W = Weekly M = Monthly Q = Quarterly B = Bi-Annually A = Annually R = Randomly, At Any Moment in Time

	<b>Parameter</b>	<b>Failure Type</b>	<b>Category</b>	<b>Response Time</b>	<b>Rectification Time</b>	<b>Recording Frequency</b>	<b>Application</b>
<b>Reference</b>	<b>Grounds Maintenance</b>						
<b>PI# 3.2-1 3.2a,b,c,d,e ,f,g,h,i,j,k</b>	Performing activities - Services performed as per requirements.	SF	Major	N/A	N/A	PE	One SF per event
<b>PI# 3.2-2 3.2j</b>	Testing - inspection for safety purposes	QF	Minor	N/A	N/A	A	One QF per event
<b>PI# 3.2-3 All</b>	Emergency – Respond / Rectification Times not met	SF	Major	See 2.1(z)	See 2.1(z)	PE	One SF per event
<b>PI# 3.2-4 All</b>	Urgent – Respond / Rectification Times not met	SF	Medium	See 2.1(z)	See 2.1(z)	PE	One SF per event
<b>PI# 3.2-5 All</b>	Routine – Respond / Rectification Times not met	SF	Minor	See 2.1(z)	See 2.1(z)	PE	One SF per event

3.3 Snow and Ice Management	
<b>Objectives:</b>	
Ensure safe access of the Facility Occupants and visitors to the building.	
Element	FM Service Specification
Project Co shall provide the following Project Co Services and shall achieve the following results:	
a. Snow clearing - Vehicle Access	<ul style="list-style-type: none"> <li>• Snow removal to ensure safe access.</li> <li>• Snow removal by pre-determined times and/or when accumulation reaches 5 cm (maintain accumulation-free environment)</li> </ul>
b. Snow clearing – Pedestrian Access / patient transfer routes	<ul style="list-style-type: none"> <li>• Snow removal to ensure safe access</li> <li>• Preventive removal to ensure limited to no accumulation / drifts on the pedestrian access/ patient transfer routes at all times</li> </ul>
c. Ice hazard prevention	<ul style="list-style-type: none"> <li>• Use all necessary means to ensure appropriate ice hazard prevention in order to avoid ice build up and the safety of the Facility Occupants and visitors</li> </ul>
d. Snow Fencing	<ul style="list-style-type: none"> <li>• Some snow fencing will be required to mitigate drifting snow</li> </ul>
e. Removal	<ul style="list-style-type: none"> <li>• Designated on-site area for snow dumping is of moderate size</li> <li>• Periodic removal of snow from on-site snow dump</li> </ul>
<b>General Description</b>	
Parking and site circulation routes include: pavings, paths, driveways, roads, car parking areas, Facility entrances, buildings accesses (including any external staircases).	
Project Co must ensure that:	
<ul style="list-style-type: none"> <li>• Clearing of snow be done in a professional manner that will not interfere with the Hospital Services</li> <li>• Snow accumulation caused by winds, even if not accompanied by precipitation, must be cleared</li> <li>• Snow must be cleared per requests of WGH</li> <li>• No damage will be caused to the building, vehicles, landscaping (including lawn, trees, bushes, etc.) or any other property on the Site</li> <li>• Project Co Services are to rendered in a manner that does not disturb neighbours</li> <li>• Appropriate documentation is kept to demonstrate due diligence in snow removal and ice control</li> <li>• Snow or ice accumulation must not impede the accessibility or functionality of any systems or equipment.</li> </ul>	

**Performance Indicators**

Performance Indicators Legend

Failure Type	Category	Response	Rectification	Recording Frequency
AF = Availability Failure	Major	N/A = Not Applicable	N/A = Not Applicable	PR = Per Request
	Medium			PE = Per Event
	Minor			D = Daily
SF = Service Failure	AF			W = Weekly
				M = Monthly
				Q = Quarterly
				B = Bi-Annually
				A = Annually
				R = Randomly, At Any Moment in Time

Reference	Parameter	Failure Type	Category	Response Time	Rectification Time	Recording Frequency	Application
	<b>Snow and Ice Management</b>						
<b>PI# 3.3-1 3.3a,b,c</b>	Performing activities - Services performed as per requirements.	SF	Major	N/A	N/A	PE	One SF per event
<b>PI# 3.3-2 3.3d,e</b>	Following standards or procedures - Services performed as per requirements.	SF	Medium	N/A	N/A	PE	One SF per event
<b>PI# 3.3-3 All</b>	Emergency – Respond / Restore / Rectification Times not met	SF	Major	See 2.1(z)	See 2.1(z)	PE	One SF per event
<b>PI# 3.3-4 All</b>	Urgent – Respond / Restore / Rectification Times not met	SF	Medium	See 2.1(z)	See 2.1(z)	PE	One SF per event
<b>PI# 3.3-5 All</b>	Routine – Respond / Restore / Rectification Times not met	SF	Minor	See 2.1(z)	See 2.1(z)	PE	One SF per event
<b>PI# 3.3-6 3.3a,b,c</b>	Performing activities - Services performed as per requirements.	SF	Major	N/A	N/A	PE	One SF per event
<b>PI# 3.3-7 3.3d,e</b>	Following standards or procedures - Services performed as per requirements.	SF	Medium	N/A	N/A	PE	One SF per event
<b>PI# 3.3-8 All</b>	Emergency – Respond / Rectification Times not met	SF	Major	See 2.1(z)	See 2.1(z)	PE	One SF per event
<b>PI# 3.3-9 All</b>	Urgent – Respond / Rectification Times not met	SF	Medium	See 2.1(z)	See 2.1(z)	PE	One SF per event
<b>PI# 3.3-10 All</b>	Routine – Respond / Rectification Times not met	SF	Minor	See 2.1(z)	See 2.1(z)	PE	One SF per event

**3.4 Maintenance and Inventory Management – Movable Assets**

**Objectives:**  
 Provide users with (i) movable assets which are included in the Existing Design (ii) Schedule 21 Maintenance and Replacement Equipment in good working order, appropriate to the intended use, while protecting their useful life.

Element	FM Service Specification
Project Co shall provide the following Project Co Services and shall achieve the following results:	
a. Office and Non-office Furnishings	<ul style="list-style-type: none"> <li>Monthly inspections</li> <li>Repairs as required</li> <li>Minor repairs by request</li> </ul>
b. Moving	<ul style="list-style-type: none"> <li>Project Co receives and dispatches request</li> <li>Project Co is responsible for executing request for moving furniture</li> </ul>
c. Inventory	<ul style="list-style-type: none"> <li>Annual inventory of assets which are included in the Existing Design or are Schedule 21 Maintenance and Replacement Equipment.</li> <li>Follow-up using the acquisitions, dispositions and list of lost/stolen items</li> </ul>

**General Description:**

- None

**Performance Indicators**

Performance Indicators Legend

Failure Type	Category	Response	Rectification	Recording Frequency
AF = Availability Failure	Major	N/A = Not Applicable	N/A = Not Applicable	PR = Per Request
SF = Service Failure	Medium			PE = Per Event
QF = Quality Failure	Minor			D = Daily
	AF			W = Weekly
				M = Monthly
				Q = Quarterly
				B = Bi-Annually
				A = Annually
				R = Randomly, At Any Moment in Time

	Parameter	Failure Type	Category	Response Time	Rectification Time	Recording Frequency	Application
<b>Reference</b>	<b>Maintenance and Inventory Management – Movable Assets</b>						
<b>PI# 3.4-1 3.4a</b>	Inspection of furnishing (monthly)	SF	Minor	N/A	N/A	M	One SF per event
<b>PI# 3.4-2 3.4b</b>	Performing activities - Services performed as per requirements.	SF	Minor	N/A	N/A	PE	One SF per event
<b>PI# 3.4-3 3.4c</b>	Taking inventory (annual)	SF	Minor	N/A	N/A	A	One SF per event

3.5 Management of Hazardous Waste and Recycling	
<b>Objectives:</b> Maintain an environment which is hygienic, safe and contributes to the 3R program: Reduce, Reuse and Recycle. Ensure that waste storage areas are kept clean, free from loose litter, free from pests, do not smell and minimize the risk of fire.	
Element	FM Service Specification
Project Co shall provide the following Project Co Services and shall achieve the following results:	
a. Central Waste Depot	<ul style="list-style-type: none"> <li>Project Co manages central waste depot spaces and hazardous waste building, including the safe storage of all waste and hazardous waste</li> </ul>
b. General Waste (interior)	<ul style="list-style-type: none"> <li>WGH shall arrange for general waste removal services and pay the costs associated with disposal fees. Project Co shall be responsible for the management of the waste removal contracts including management the pick-up and drop-off and maintenance of the waste removal equipment.</li> </ul>
c. General Waste (exterior)	<ul style="list-style-type: none"> <li>Project Co shall empty and reline waste containers daily and brings waste to central depot</li> <li>Project Co shall pick up and dispose of garbage and litter from grounds</li> <li>Project Co shall dispose of waste from central depot</li> </ul>
d. Hazardous Waste	<ul style="list-style-type: none"> <li>Project Co is responsible for the costs of removal and disposal of any hazardous waste generated by Project Co as a result of the provision of Project Co Services. WGH is responsible for the costs associated with removal and disposal of hazardous waste (including biological) generated by WGH. WGH will procure and engage the required contracts; however Project Co will be responsible for managing the pick-ups from the central waste depot as required.</li> </ul>
e. Recyclable Materials – e.g. paper, cardboard, glass, plastics metals, printer cartridges, batteries, wood pallets, organics, etc.	<ul style="list-style-type: none"> <li>WGH collects recyclable materials and brings to central depots</li> <li>Project Co collects recyclable waste from their own operations and brings to central depots</li> <li>Project Co arranges pick up of recycled materials from central depots and arranges for disposal</li> </ul>
f. Furnishings and Equipment Waste	<ul style="list-style-type: none"> <li>Project Co shall develop, manage and implement programs for the disposal of or recycling of any equipment or furnishings waste as may be required from time to time Project Co shall manage the furnishings and equipment waste management program</li> <li>Any proceeds from or costs associated to the physical removal and disposal from Site shall be flowed through to WGH</li> </ul>
g. Confidential Paper Shredding	<ul style="list-style-type: none"> <li>WGH picks up general confidential material to be shredded from work areas and deposits in designated areas</li> <li>Project Co arranges pick up of material from designated area for on-site shredding</li> </ul>
<b>General Description:</b> None	

**Performance Indicators**

Performance Indicators Legend

Failure Type	Category	Response	Rectification	Recording Frequency
AF = Availability Failure	Major	N/A = Not Applicable	N/A = Not Applicable	PR = Per Request
SF = Service Failure	Medium			PE = Per Event
QF = Quality Failure	Minor			D = Daily
	AF			W = Weekly
				M = Monthly
				Q = Quarterly
				B = Bi-Annually
				A = Annually



				R = Randomly, At Any Moment in Time
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	Parameter	Failure Type	Category	Response Time	Rectification Time	Recording Frequency	Application
<b>Reference</b>	<b>Management of Hazardous Waste</b>						
<b>PI# 3.5-1 3.5 (all)a</b>	Performing activities - Services performed as per requirements.	SF	Major	N/A	N/A	PE	One SF per event
<b>PI# 3.5-2 All</b>	Emergency – Respond / Rectification Times not met	SF	Major	See 2.1(z)	See 2.1(z)	PE	One SF per event
<b>PI# 3.5-3 All</b>	Urgent – Respond / Rectification Times not met	SF	Medium	See 2.1(z)	See 2.1(z)	PE	One SF per event
<b>PI# 3.5-4 All</b>	Routine – Respond / Rectification Times not met	SF	Minor	See 2.1(z)	See 2.1(z)	PE	One SF per event

3.6 Central Dispatch	
<b>Objectives:</b> Easy access and prompt responses to requests for service.	
<b>Element</b>	<b>FM Service Specification</b>
Project Co shall provide the following Project Co Services and shall achieve the following results:	
a. Availability	<ul style="list-style-type: none"> <li>Project Co shall respond to and dispatch calls 24 hours / 7 days / 365(6) days / year</li> <li>Project Co shall ensure that there are no busy signals, calls are not put on hold and that all calls are responded to within 5 rings</li> </ul>
b. Response	<ul style="list-style-type: none"> <li>Project Co shall acknowledge the request quickly, in accordance with Industry Practices for Hospitals</li> <li>Project Co shall Respond to the request and perform a diagnosis</li> <li>Project Co shall restore functionality</li> <li>Project Co shall repair or address the issue or emergency or ensure that the issue or emergency is addressed in the manner described in these Output Specifications</li> <li>Requests/calls for Security that are received by the Central Dispatch are dealt with in the manner described in Section 3.1 of these Output Specifications.</li> <li>Requests shall be closeout within a reasonable timeframe as established by Industry Standards for Hospitals</li> </ul>
c. Requestor Feedback	<ul style="list-style-type: none"> <li>Project Co contacts the requestor to confirm that the matter has been appropriately addressed for relevant requests</li> <li>Project Co shall document relevant comments on every request</li> </ul>
d. Reports	<ul style="list-style-type: none"> <li>Project Co shall report on call centre statistics (type, volume, tendencies, response time, etc.) in accordance with Section 2.9 of these Output Specifications</li> <li>Project Co shall provide ad-hoc reports that are reasonably requested by WGH</li> </ul>
<b><u>General Description</u></b>	
<ul style="list-style-type: none"> <li>Project Co shall respond to service requests in a prompt and timely manner.</li> <li>Project Co shall update the Central Dispatch protocol from time-to-time to reflect changes requested by the WGH Representative.</li> </ul>	

**Performance Indicators**

Performance Indicators Legend

Failure Type	Category	Response	Rectification	Recording Frequency
AF =Availability Failure	Major	N/A = Not Applicable	N/A = Not Applicable	PR = Per Request
SF = Service Failure	Medium			PE = Per Event
QF = Quality Failure	Minor			D = Daily
	AF			W = Weekly
				M = Monthly
				Q = Quarterly
				B = Bi-Annually
				A = Annually
				R = Randomly, At Any Moment in Time

Reference	Parameter	Failure Type	Category	Response Time	Rectification Time	Recording Frequency	Application
	<b>Central Dispatch</b>						
<b>PI# 3.6-1 3.6a</b>	Central Dispatch Services available 24/7/365	QF	Major	N/A	N/A	PE	One SF per event
<b>PI# 3.6-2 3.6b</b>	Performing activities - Services performed as per requirements.	QF	Minor	N/A	N/A	PE	One QF per event
<b>PI# 3.6-3 3.6c</b>	Performing activities - Services performed as per requirements.	QF	Medium	N/A	N/A	M	One QF per Month

3.7 Utilities Management Services	
<b>Objectives:</b>	
Guarantee the constant supply of the required sources of energy, so that the Facility can continuously operate for the purpose for which it is intended. Ensure effective consumption management and minimization of costs, without causing unauthorized disruptions to the Hospital Services.	
Element	FM Service Specification
Project Co shall provide the following Project Co Services and shall achieve the following results:	
a. Supply and Management of Utilities	<ul style="list-style-type: none"> <li>• Ensure the provision of adequate and continuous supply (24 hours per day 365(6) days) per year of the required sources of Utilities needed by the Facility and to meet the requirements of WGH operations, efficiently, economically and with due regard to current principles of sustainable technology/management procedures</li> <li>• Project Co Services detailed within this Section 3.6 of these Output Specifications forms one aspect of what will be fully integrated and coordinated services; and Project Co will integrate and coordinate this service category with all other service categories to provide, from WGH’s perspective, an integrated and complete facilities management solution,</li> <li>• Project Co acknowledges that there may be services or tasks to be performed that are not described herein, but are necessarily ancillary to the Utilities Management Service Specification and these shall be performed by the Project Co as part of the Project Services.</li> </ul>
b. Management of utilities services	<p>(a) Management of all utility services including, but not limited to:</p> <ul style="list-style-type: none"> <li>• Electricity</li> <li>• Natural gas/fuel oil</li> <li>• Water (including water conservation)</li> <li>• Sanitary waste</li> <li>• Storm water</li> <li>• Bulk and canister medical gas compounds</li> <li>• Alternative Fuel supplies (Propane, Diesel)</li> </ul> <p>(b) Ensuring the service is cost effective, comprehensive in nature, addresses all technical, managerial, and operational issues, and maintains the integrity of supply of utilities. The Utilities Management Services shall include:</p> <ul style="list-style-type: none"> <li>• Administering hazard and safety notices, distributing and evaluating such notices and ensuring that all required notification procedures regarding any equipment or Facility failures are complied with</li> <li>• Advising on Utilities consumption and are cost implications throughout the Project Term for equipment and Facility upgrading/modernization schemes and new development</li> <li>• Working with WGH to establish a utilities conservation policy that sets consumption reduction targets; and</li> <li>• Ensuring that Project Co employees and Subcontractor employees are made aware of the aims of the energy policy and are given guidance on its implementation</li> </ul> <p>(c) Ensuring responsibility for:</p> <ul style="list-style-type: none"> <li>• Securing and maintaining connections to utility company services of appropriate specifications and adequate capacity to supply the requirements of WGH under all anticipated operating conditions (including standby provisions in the event of an earthquake or other catastrophic events); and</li> <li>• Undertaking all testing, cleaning and maintenance as required by the utility company</li> </ul> <p>(d) Reviewing and providing comment to WGH on the utility supply specifications such that they are consistent with the requirements of Hospital Services. Providing technical support, advice and assistance in the negotiation of tariffs.</p> <p>(e) In the event that there is a utility disruption from the utility company(s), Project Co will supply emergency utilities as defined in the Existing Design.</p> <p>(f) Informing the WGH Representative of all scheduled interruptions to any utility supply that</p>

3.7 Utilities Management Services	
	<p>may or may not affect WGH and/or Project Co's operations immediately upon notice of disruption</p> <p>(g) Maintaining appropriate records in relation to all Project Co Permits, Licences and Approvals including, but not limited:</p> <ul style="list-style-type: none"> <li>• Ensuring all test certificates and appropriate documentation and records (in particular those relating to any aspects of safety or statutory compliance) are maintained accurately and updated appropriately and are available for inspection by WGH or any other relevant party;</li> <li>• Ensuring all information and records are up to date, precise and accurate and available for inspection by WGH or any other relevant party;</li> <li>• Preparing and supplying all information reasonably required by any party, to whom WGH are obliged to present information at any time in relation to the performance of the Utility Management Service, plus all statistical records which may be required provincially or federally.</li> <li>• Maintaining records detailing any complaints made with respect to any Project Co Service and action taken; and</li> <li>• Maintain records that have been provided to Project Co to WGH</li> </ul>
c. Annual Energy Targets	<ul style="list-style-type: none"> <li>• Subject to the provisions of Part H - of Schedule 20, Payment Mechanism, Project Co and WGH shall convene a meeting of the Utilities Management Subcommittee as soon as practical following Substantial Completion to review the respective roles, responsibilities and requirements of the Parties in respect of Energy matters.</li> <li>• If required to support the calculation of the Annual Energy Target and/or Adjusted Annual Energy Targets, WGH and Project Co will share equally in the cost of the appointment and services of an Energy Surveyor, including the payment of all amounts due to the Energy Surveyor pursuant to the Energy Surveyor's appointment.</li> <li>• The terms of reference for the Energy Surveyor may be amended and agreed between WGH and Project Co prior to any relevant survey to take into account the design and fit out of the Facility (including with respect to any equipment in use at the Facility) and the proportion of the relevant year it has been in use.</li> <li>• Calculation of the Annual Energy Target and Adjusted Annual Energy Targets will be carried out as per the procedures set out in Part H of Schedule 20, Payment Mechanism.</li> <li>• Following the Substantial Completion Date, Project Co will retain and maintain all records necessary to comply with the requirements of this specification and the relevant sections of Appendix B Energy Protocol and Part H – Energy of Schedule 20, Payment Mechanism.</li> <li>• Following the Substantial Completion Date, Project Co shall arrange for the consumption of the Energy Services to be recorded (irrespective of the dates and periods agreed by WGH with the relevant suppliers for metering and payments) at or as soon as practical after the end of each calendar month and forward these records of consumption (suitably authenticated) in writing to the WGH Representative within five (5) Business Days thereafter.</li> </ul>
d. Energy Analysis and Energy Report	<ul style="list-style-type: none"> <li>• Subject to the specific requirements and frequency agreed between the Parties through the Utilities Management Subcommittee, Project Co shall develop and prepare an Energy Analysis and Energy report. The objectives of a comprehensive Energy Analysis include, but are not limited to: <ul style="list-style-type: none"> <li>• Provide an audit of energy usage at the Facility.</li> <li>• Identify areas of potential energy and cost savings.</li> <li>• Provide an estimate of potential annual energy consumption savings broken down by fuel type, with implementation costs and payback periods.</li> <li>• Identify how methods of energy management should be developed to achieve, maintain and recognise further potential savings.</li> <li>• To provide a basis for calculation by WGH and Project Co of the Utility Adjustment.</li> </ul> </li> <li>• Methods of achieving these objectives include, but are not limited to:</li> </ul>

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- Analysis of invoiced and metered gas and electricity consumption.
- Observations and measurements on electrical and gas-consuming equipment during the survey period to determine energy efficiency and wastage.
- Examination of operating practices and management techniques.
- Establishment of a basis for continued monitoring of energy consumption, preparation of a report in the format outlined below containing recommendations supported by data, which, if implemented, would result in energy consumption savings.
- The Energy Report is to be provided detailing the findings and recommendations arising from the Energy Analysis and/or specific requirements set out by the Utilities Management Subcommittee. A copy of the Energy Report in an agreed electronic format shall be provided to WGH. The Energy Report is to include items such as:
  - A management summary, which outlines the energy performance and potential savings identified by the survey (including any changes made to the Annual Energy Target). The summary shall also show tables of individual recommendations based on no cost measures, low cost measures and high cost measures. Estimated cost and consumption savings broken down by Energy Service are to be shown with capital costs (specifying whether these include or exclude fees and GST) and payback periods.
- The Energy Report shall detail findings and recommendations in the following sections as set out in more detail below:
  - (1) Energy Analysis;
  - (2) Outstanding issues from any previous Energy Analysis and Energy Report; and
  - (3) Energy use by utility.

The appendices shall include graphs, calculations and miscellaneous data, which are relevant to the Energy Analysis.
- The Energy Analysis shall include, but not be limited to
  - Data from the Building Management System (BMS) to include such items as:
    - (1) Daily average external ambient temperature for the Facility;
    - (2) Real-time temperature sensing with hourly measurements recorded for set-back/plant optimization Data to be provided in Microsoft Excel or other agreed electronic format;
    - (3) Operating status of heating plant, cooling plant, and central air handling units;
    - (4) On/off times recorded (both manual and programmed);
    - (5) Performance monitoring (temp / pressure / flow, etc.), as appropriate;
    - (6) Alarm status recorded: normal or critical, as appropriate;
    - (7) Energy metering to include maximum demand and through-day profiles (data to be provided in Microsoft Excel or other agreed electronic format);
    - (8) Incoming supplies - full telemetry;
    - (9) Space / room environmental conditions;
    - (10) Temperature-sensing for environmental control; and
    - (11) Miscellaneous sensors for plant control, as appropriate.
  - Building operating data to be provided by WGH shall include:
    - (i) Typical departmental operating schedules.
    - (ii) A summary of changes in major WGH Equipment.
    - (iii) A summary of physical changes in the building complete with date of the changes; and
    - (iv) A list of major procedural changes that may have affected the energy usage of the central plant.
  - Based on information obtained above and from energy invoices, metered

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consumption, observations and calculations, the following shall be produced:

- (i) Tables and graphs showing the consumption, unit costs, and total costs for all purchased energy for the previous 12 months;
  - (ii) A table showing the year over year percentage changes in energy consumption against the initial energy benchmark;
- Any outstanding recommendations or items for further consideration from a previous Energy Analysis are to be identified, with comments on reasons for non-implementation, and exceptional changes in consumption or pattern of use since any previous survey should be highlighted.
  - Project Co shall maintain an ongoing operating log and prepare an annual energy management analysis and recommendations report which details the energy impact of all plant maintenance, operating problems, breakdowns, corrective action, etc., including but not limited to:
    - (A) Central heating plant, including:
      - (1) Combustion efficiency tests shall be carried out on all boilers at high, medium and low fire rates (where applicable) and recommendations for the improvement of combustion efficiency shall be made where necessary;
      - (2) Seasonal efficiency of boilers shall be estimated, based on observed operating conditions and past records;
      - (3) Where low seasonal efficiencies are found, recommendations shall be made on savings achievable by replacement boilers, separate hot water heaters, or other facilities for seasonal operation;
      - (4) The general condition of the boilers shall be assessed and recommendations made for improvements where necessary;
      - (5) The condition of all distribution equipment shall be assessed and recommendations made for improvement where necessary;
      - (6) Suitability and settings of time and temperature or pressure controls shall be assessed and recommendations for improvements made where necessary;
      - (7) The treatment of the water and steam shall be performed and recommendations on improvements shall be reported;
      - (8) The condition of other equipment in the plant shall be reviewed and comments made on the resultant impact on energy;
      - (9) The use of waste heat recovery from boiler blow-down on steam boilers and the use of economizers on gas-fired boilers shall be evaluated and recommendations made on the viability and practicality of such schemes;
      - (10) The use of cheaper or alternative fuels shall be considered; and
    - (B) Central cooling plant, including:
      - (1) Based on a report provided by the chiller service company, comment on the efficiency of the chillers;
      - (2) Review the sequencing of the chiller operation and suggest where improvements could be made;
      - (3) Make recommendations on any potential changes to the types and sizes of the chillers;
      - (4) Assess the operating temperature of the chilled water and the condenser water and make recommendations on how they could be adjusted to minimize energy use;
      - (5) Suitability and settings of time and temperature or pressure controls shall be assessed and recommendations for improvements made where necessary; and
      - (6) Review the water treatment and assess the impact on energy use.
    - (C) Central air handling units, including:
      - (1) Review the operating logs and make recommendations with respect to altering the operating times, set-back schedules, etc.;
      - (2) Review the ventilation requirements and confirm that the units conform to the



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- needs of the Facility;
- (3) Check all dampers for proper operation including positive shut off when the units are off;
  - (4) Review the condition of all related equipment; and
  - (5) Review all heat recovery equipment and assess whether it is operating at maximum efficiency.
- (D) Heating, cooling and air distribution systems, including:
- (1) Condition of all distribution equipment;
  - (2) The operation of the terminal controls;
  - (3) The condition, settings, positioning and operation of existing controllers and sensors;
  - (4) The need for additional controls;
  - (5) The condition, positioning, and any obstruction of terminals;
  - (6) A sample of temperature readings in key work spaces and other relevant areas shall be check-measured to validate building management system data; and
  - (7) Air changes provided in critical areas of the Facility.
- (E) Domestic hot water service, including:
- (1) Condition of hot water heaters and tanks;
  - (2) Temperature settings, both normal and when flushing system; and
  - (3) Temperature of process hot water (kitchens) and the impact on usage.
- (F) Process equipment, including:
- (1) Assess the amount of energy being utilized for processes in the Facility; including but not limited to, diagnostic equipment, kitchen equipment, computer rooms, etc.; and
  - (2) Compare energy usage with the previous year and comment on the variation, taking into consideration changes in equipment and hours of operation.
- (G) Electrical power and lighting, including:
- (1) The total electrical consumption of the building shall be determined from building management system data;
  - (2) Assessment of the need for power factor correction, if low power factors are penalized by the supply authorities;
  - (3) Assessment of excessive transformer losses due to low loading of transformers;
  - (4) An assessment of connected power and lighting loads;
  - (5) Assessment of the type, condition, siting and switching arrangement of existing luminaries, and possible replacement by high-efficiency lamps;
  - (6) Assessment of any unnecessary use of lighting and power equipment, with particular attention to electric heating equipment;
  - (7) The performance and loading of air compressors, and the potential for waste heat recovery; and
  - (8) The potential for combined heat and electricity generation.
- Recommendations shall be made on the basis of the findings from the above observations and measurements.
- (H) Other energy uses, including:
- (1) The use of cheaper alternative fuels and heat recovery shall be considered; and
  - (2) Any unnecessary use of equipment shall be identified.
- (I) For building fabric provide comment on the following:
- (1) The impact of the wall condition, making special reference to the caulking and the flashing;
  - (2) The impact of door and window condition, especially excessive air infiltration due to badly fitting doors and windows;
  - (3) Excessive air infiltration due to doors and windows being left open; and
  - (4) Impact of roof system leakage.
- (J) Energy Management, including:



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	<ul style="list-style-type: none"> <li>(1) Time and temperature schedules compared to the actual usage of the space;</li> <li>(2) Assess the performance of the system compared to the latest technology; and</li> <li>(3) Make recommendations on improvements to the building management system.</li> </ul> <p>(K) Maintenance and training, including:</p> <ul style="list-style-type: none"> <li>(1) Review the findings of the report prepared under Section 3.7(d) of these Output Specifications and comment on the level of training and its effect on the operation of the Facility especially as it affects the energy usage and make recommendations on where improvements can be made.</li> </ul> <p>(L) Health and safety, including:</p> <ul style="list-style-type: none"> <li>(1) Review changes in the Facility over the previous year as they relate to health and safety and the impact on energy usage.</li> </ul> <ul style="list-style-type: none"> <li>• Project Co shall undertake an assessment of the existing energy management procedures, information available, and metering at the Facility. Recommendations shall be made on any improvement that can be made to the existing system. These recommendations shall take account of manpower availability and the cost requirements of setting up an improved system of energy management.</li> <li>• Project Co shall review management structures for collecting and processing data and taking action in response to the findings.</li> </ul>
e. Emergency responsiveness	<ul style="list-style-type: none"> <li>• Undertake all necessary testing required by the Utility Companies to ensure a constant supply of Utilities at the Facility</li> <li>• Maintain sufficient alternate sources of Utilities to ensure continuity of operations at the Facility as provided for in the Existing Design</li> <li>• Obtain and ensure the maintenance of a priority status for the Facility in the event of an emergency for re-supply</li> </ul>
f. Monitoring of power consumption and quality	<ul style="list-style-type: none"> <li>• Provide WGH direct “live” access to consumption and power quality information</li> <li>• Provide a monthly report on the consumption and power quality by area and sub-area as defined by WGH</li> <li>• Notify WGH of any significant changes in the quality of power immediately upon its occurrence and notify the WGH daily for all other changes in the quality of power</li> <li>• Exercise due diligence in the verification of consumption</li> <li>• Collect information in a database</li> </ul>
g. Monitoring of Water consumption and quality	<ul style="list-style-type: none"> <li>• Provide a monthly report on the consumption by area and sub-area as defined by the WGH</li> <li>• Monitor and report the water quality</li> <li>• Exercise due diligence in the verification of consumption</li> <li>• Collect information in a database</li> </ul>
h. Cost Savings	<ul style="list-style-type: none"> <li>• Investigate and implement (at the WGH’s discretion) bulk purchasing arrangements</li> <li>Propose, put in place and manage energy saving initiatives being assured of the collaboration of users</li> <li>• WGH has the right of approval of the initiatives</li> </ul>
<p><b><u>General Description</u></b></p> <ul style="list-style-type: none"> <li>• Project Co shall ensure that at no time shall any proposed energy conservation measure result in compromised operation of service delivery at the Facility or safety of the Facility Occupants. Nor shall any proposed conservation measure limit the Hospital Services</li> <li>• Notify WGH of any scheduled or unscheduled interruptions in Utilities and recommend adjustments to scheduled activities as required.</li> </ul>	

**Performance Indicators**

Performance Indicators Legend

Failure Type	Category	Response	Rectification	Recording Frequency
AF = Availability Failure SF = Service Failure QF = Quality Failure	Major Medium Minor AF	N/A = Not Applicable	N/A = Not Applicable	PR = Per Request PE = Per Event D = Daily W = Weekly M = Monthly Q = Quarterly B = Bi-Annually A = Annually R = Randomly, At Any Moment in Time

	Parameter	Failure Type	Category	Response Time	Rectification Time	Recording Frequency	Application
<b>Reference</b>	<b>Utilities Management</b>						
<b>PI# 3.7-1 3.7a</b>	Supply of Utilities provided uninterrupted	QF	Major	N/A	N/A	PE	One QF per event
<b>PI# 3.7-2 3.7b</b>	Following standards or procedures - Services performed as per requirements	QF	Major	N/A	N/A	PE	One QF per event
<b>PI# 3.7-3 3.7c,d</b>	Monitoring of consumption/quality and reported monthly	QF	Major	N/A	N/A	M	One QF per Month
<b>PI# 3.7-4 All</b>	Emergency – Respond / Restore / Rectification Times not met	SF	Major	See 2.1(z)	See 2.1(z)	PE	One SF per event
<b>PI# 3.7-5 All</b>	Urgent – Respond / Restore / Rectification Times not met	SF	Medium	See 2.1(z)	See 2.1(z)	PE	One SF per event
<b>PI# 3.7-6 All</b>	Routine – Respond / Restore / Rectification Times not met	SF	Minor	See 2.1(z)	See 2.1(z)	PE	One SF per event
<b>PI# 3.7-7 3.7a</b>	Supply of Utilities provided uninterrupted	QF	Major	N/A	N/A	PE	One QF per event
<b>PI# 3.7-8 3.7b</b>	Following standards or procedures - Services performed as per requirements	QF	Major	N/A	N/A	PE	One QF per event
<b>PI# 3.7-9 3.7c,d</b>	Monitoring of consumption/quality and reported monthly	QF	Major	N/A	N/A	M	One QF per Month
<b>PI# 3.7-10 3.7(c)</b>	Annual Energy Target established and ongoing analysis conducted in accordance with Schedule 20, Payment Mechanism	QF	Major	N/A	N/A	A	One QF per Contract Year
<b>PI# 3.7-11 3.7(d)</b>	Energy Analysis and Energy Report conducted in accordance with	QF	Major	N/A	N/A	A	One QF per Contract Year

Reference	Parameter	Failure Type	Category	Response Time	Rectification Time	Recording Frequency	Application
	<b>Utilities Management</b>						
	Section 3.7(d)						
<b>PI# 3.7-12 All</b>	Emergency – Respond / Rectification Times not met	SF	Major	See 2.1(z)	See 2.1(z)	PE	One SF per event
<b>PI# 3.7-13 All</b>	Urgent – Respond /Rectification Times not met	SF	Medium	See 2.1(z)	See 2.1(z)	PE	One SF per event
<b>PI# 3.7-14 All</b>	Routine – Respond / Rectification Times not met	SF	Minor	See 2.1(z)	See 2.1(z)	PE	One SF per event

3.8 Management of System Controls (Building Control)	
<b>Objectives:</b> Monitoring equipment controls to ensure their continuing operation to guarantee that the environment is suitable for the Facilities intended purpose.	
<b>Element</b>	<b>FM Service Specification</b>
Project Co shall provide the following Project Co Services and shall achieve the following results:	
a. System Controls	<ul style="list-style-type: none"> <li>Project Co shall monitor system controls 24/7</li> <li>Project Co shall carry out adjustments required to keep facilities services operational at optimal performance levels</li> </ul>
b. Maintenance of Control System	<ul style="list-style-type: none"> <li>Project Co shall provide inspection and recalibration of control points as per manufacturers recommendations and in accordance with the approved Final Commissioning Program.</li> <li>Project Co shall repair and replace the defective control points</li> <li>Project Co is responsible for upgrading and replacing the computer system</li> </ul>
c. Systems Testing	<ul style="list-style-type: none"> <li>Project Co shall provide annual fail over test on all relevant equipment (e.g. generate a failure and make sure that the systems perform)</li> </ul>
d. Software upgrades	<ul style="list-style-type: none"> <li>Project Co shall upgrade all systems control software as new versions become available</li> </ul>
<b>General Description:</b> The systems include, but are not limited to: building automation system, power management control system (PMCS), fire system, and similar systems. Project Co shall ensure that: <ul style="list-style-type: none"> <li>Service interruptions for unscheduled repairs are reduced to a minimum</li> <li>Schedule interruptions are pre-authorized by WGH</li> <li>BAS, PMCS and fire system used for monitoring and control functions are secure and meet WGH, legislated and requirements and applicable CSA standards.</li> </ul>	

**Performance Indicators**

Performance Indicators Legend

Failure Type	Category	Response	Rectification	Recording Frequency
AF = Availability Failure	Major	N/A = Not Applicable	N/A = Not Applicable	PR = Per Request
	Medium			PE = Per Event
	Minor			D = Daily
SF = Service Failure	AF			W = Weekly
				M = Monthly
QF = Quality Failure				Q = Quarterly
				B = Bi-Annually
				A = Annually
				R = Randomly, At Any Moment in Time

Reference	Parameter	Failure Type	Category	Response Time	Rectification Time	Recording Frequency	Application
	Management of Building Control Systems						
<b>PI# 3.8-1 3.8a</b>	Performing activities - Monitoring and system adjustment per requirements so that it is maintained within parameters established in the Design Standards	QF	Major	N/A	N/A	M	One QF per Month
<b>PI# 3.8-2 3.8b</b>	Performing activities - inspections and recalibration	SF	Major	N/A	N/A	M	One SF per Month
<b>PI# 3.8-3 All</b>	Emergency – Respond /Rectification Times not met	SF	Major	See 2.1(z)	See 2.1(z)	PE	One SF per event
<b>PI# 3.8-4 All</b>	Urgent – Respond / Rectification Times not met	SF	Medium	See 2.1(z)	See 2.1(z)	PE	One SF per event
<b>PI# 3.8-5 All</b>	Routine – Respond / Rectification Times not met	SF	Minor	See 2.1(z)	See 2.1(z)	PE	One SF per event

3.9 Hard Infrastructure Services

3.9.1 Maintenance and Repair – Exterior Finishes	
<b>Objectives:</b>	
Maintain a secure environment, protect the value and integrity of the Facility and protect the Facility Occupants from losses and damages.	
Element	FM Service Specification
Project Co shall provide the following Project Co Services and shall achieve the following results:	
a. Grounds (parking and site circulation routes and handrails)	<ul style="list-style-type: none"> <li>Repairs and replacement carried out when there is a risk of accident or danger or the potential degradation of assets or when there are significant signs of wear and tear</li> <li>Periodic visual inspection</li> <li>Damages documented and corrected as per Good Industry Practices for Hospitals</li> <li>Area to be free from standing water, ice and snow</li> <li>No loose stones and holes, protruding metals or other items so the site is safe</li> <li>Sound and safe surfaces in order avoiding tripping hazards or vehicle damage</li> <li>Even surface with no potholes or sinking</li> </ul>
b. Envelope, Eaves and Balconies	<ul style="list-style-type: none"> <li>Repairs and replacement carried out when there is a risk of accident or danger or the potential degradation of assets or when there are significant signs of wear and tear</li> <li>Periodic visual inspection</li> <li>Damages (including vandalism) documented and corrected in accordance with Good Industry Practices for Hospitals</li> <li>Weatherproof where appropriate</li> </ul>
c. Roof	<ul style="list-style-type: none"> <li>Repairs carried out when there is a risk of accident/danger or the potential degradation of assets or when there are significant signs of wear and tear</li> <li>Annual visual inspection and appropriate remedy applied as needed</li> <li>Conduct non-destructive predictive testing and assessment every 5 years minimum.</li> <li>Damages documented and corrected as per industry norms</li> <li>Roof anchors (as required) are structurally sound and secure</li> </ul>
d. Hard Surface Markings	<ul style="list-style-type: none"> <li>Lines and symbols must be visible to users</li> <li>Parking lines / directional markings repainted at a minimal every two years</li> <li>Accessibility demarcation / safety markings painted every year</li> </ul>
e. Fencing and Gates	<ul style="list-style-type: none"> <li>Fences and gates are secure, safe and intact</li> <li>Locks are operational</li> <li>Painted as needed to maintain appearance in a consistent manner with the neighbouring properties or at minimum annually</li> </ul>
f. Other Elements (Including bollards, exterior furnishings, etc.)	<ul style="list-style-type: none"> <li>Repairs and replacement carried out when there is a risk of accident or danger or the potential degradation of assets or when there are significant signs of wear and tear or vandalism</li> <li>Periodic visual inspection</li> <li>Damages documented and corrected in accordance with Good Industry Practices for Hospitals</li> </ul>
<b>General Description:</b>	
<ul style="list-style-type: none"> <li>External furniture and structures include: street lights, guard rails, ornamental objects</li> <li>Boundaries include fences, walls and gates</li> <li>Unless there is a serious risk, potholes shall be repaired by Project Co in the spring</li> <li>Replacements of damaged, degraded or vandalized assets shall be undertaken by Project Co</li> <li>Leaves and other accumulations that impede drainage or potentially damage other systems / building components are to be cleared regularly</li> <li>Project Co shall carry out weatherproofing where appropriate.</li> </ul>	

3.9.2 Maintenance and Repair – Interior Finishes	
<b>Objectives:</b>	
Maintenance of interior finishes to ensure an appropriate environment that is compatible with the uses of and the criteria of the Facility Occupants in accordance with manufacturers’ recommendations for use and care.	
Element	FM Service Specification
Project Co shall provide the following Project Co Services and shall achieve the following results:	
a. Floors and bases	<ul style="list-style-type: none"> <li>Regular inspections and repairs of all surfaces</li> <li>No tolerance of torn or missing floor tiles or other flooring finishes or associated systems</li> <li>Limited tolerance of degraded assets</li> </ul>
b. Walls / Vertical Surfaces	<ul style="list-style-type: none"> <li>Masonry/concrete/block walls are repainted as required</li> <li>Walls are recapped and waterproofed as required</li> <li>Caulking is renewed as required</li> <li>Walls are free from materials that are hazardous, cracks and/or deflection, and from undue damage and are of reasonable appearance for location</li> <li>Periodic inspections and repairs</li> </ul>
c. Ceilings	<ul style="list-style-type: none"> <li>Periodic inspections and replacement of damaged or stained tiles as required</li> <li>Limited tolerance for damaged or stained ceiling tiles</li> <li>Project Co investigates source of damage and correct the problem</li> </ul>
d. Paint and other wall coverings	<ul style="list-style-type: none"> <li>Annual inspections, touch-ups and repairs of vinyl and other surfaces</li> <li>Fully paint interior walls in the Facility in year 7, with the exception of mechanical and electrical rooms and the following storage rooms: L880; L881; L882; L846; L726</li> <li>In years 8, 9 and 10 touch up and refresh painting as required for surfaces that are beyond normal wear and tear</li> <li>For year 11 onward, paint a minimum of 10% of surfaces annually. On an annual basis Project Co shall provide evidence that the surfaces have been painted.</li> <li>Touch up interior walls as required</li> <li>Limited tolerance to chipped and scratched door frames</li> <li>Replace surfaces other than paint as required (This requirement does not include durable surfaces or integrated surfaces (such as counter tops, wood trim) that are dealt with through the Lifecycle Replacement Schedule )</li> </ul>
e. Fixed Furnishings	<ul style="list-style-type: none"> <li>Periodic inspections, touch-ups and repairs</li> </ul>
<b>General Description</b>	
<ul style="list-style-type: none"> <li>None</li> </ul>	

<b>3.9.3 Maintenance and Repairs – General</b>	
<b>Objectives:</b>	
Maintain and repair to ensure an appropriate standard, comfort, health and safety and ongoing productivity.	
Element	FM Service Specification
Project Co shall provide the following Project Co Services and shall achieve the following results:	
a. Signage (other) and Flags	<ul style="list-style-type: none"> <li>• Signs, of whichever type, and flags shall be inspected regularly and replaced when necessary</li> <li>• Flags are replaced at least once a year</li> <li>• Project Co is responsible for lowering &amp; raising the flag on special occasions as directed by WGH</li> </ul>
b. Signage – Exterior	<ul style="list-style-type: none"> <li>• Project Co shall provide signage</li> <li>• Project Co shall replace damaged signage</li> <li>• Project Co shall maintain the signage</li> </ul>
c. Signage – Interior (Wayfinding)	<ul style="list-style-type: none"> <li>• Project Co shall provide signage</li> <li>• Project Co shall replace damaged signage</li> <li>• Project Co shall maintain the signage</li> <li>• Project Co shall monitor and document wayfinding feedback from WGH and propose additional signage or modification to the existing wayfinding signage</li> </ul>
d. Signage – Interior (other)	<ul style="list-style-type: none"> <li>• Project Co shall provide signage</li> <li>• Project Co shall replace damaged signage</li> <li>• Project Co shall maintain the signage</li> </ul>
e. Interior lighting (replacement of lamps)	<ul style="list-style-type: none"> <li>• All interior lighting is washed at least once a year</li> <li>• Re-lamped in accordance with manufacturer's rating</li> <li>• Project Co shall replace burnt lights</li> <li>• Response time as per established criteria</li> </ul>
f. Exterior Lighting (lamps replacement)	<ul style="list-style-type: none"> <li>• All exterior lighting is washed at least once a year</li> <li>• Re-lamped in accordance with manufacturer's rating</li> <li>• Project Co replaces burnt lights</li> <li>• Light fixtures are securely fastened, well painted or finished</li> <li>• Response time as per established criteria</li> </ul>
g. Lighting Fixture Repair or Replacement	<ul style="list-style-type: none"> <li>• Periodic inspection and replacement as needed or as requested</li> <li>• Response time as per established criteria</li> </ul>
h. Pest Control	<ul style="list-style-type: none"> <li>• Project Co conducts regular scheduled inspections</li> <li>• Project Co applies corrective action as required or as requested</li> </ul>
i. Washroom	<ul style="list-style-type: none"> <li>• Regular inspections and repair or replacement of hardware as needed</li> <li>• Response time as per established criteria</li> </ul>
j. Doors	<ul style="list-style-type: none"> <li>• Regular inspection of doors and hardware to ensure functional</li> <li>• Repair or replace when required or to ensure a safe and secure environment</li> <li>• Response time according to established criteria</li> </ul>
k. Equipment – Schedule 21 Maintenance and Repair Equipment	<ul style="list-style-type: none"> <li>• Project Co shall provide maintenance and repair of all Schedule 21 Maintenance and Repair Equipment in accordance with manufacturers standards, legislation or other standards as may be applicable, subject to approval, agreement and guidance as the case may be from WGH.</li> </ul>
l. Ad-Hoc Services	<p>Project Co shall provide Ad-Hoc Services (general handyman services) as required by WGH from time to time. The Ad-Hoc Services shall include but are not limited to:</p> <ul style="list-style-type: none"> <li>• Installation or removal of pictures, display boards, minor equipment, etc.,</li> <li>• Minor relocations, moving and installations of furniture, furniture repairs and reconfiguration,</li> <li>• Supporting WGH for the installation of A/V or telecommunications or equipment</li> </ul>



**3.9.3 Maintenance and Repairs – General**

	<p>required by WGH,</p> <ul style="list-style-type: none"> <li>• Providing support to WGH, visitors or other building occupants by setting up (before and after) conference rooms; providing power extensions and other support material that is required,</li> <li>• Installation of electrical outlets, equipment and fixtures,</li> <li>• installation of individual system furniture components,</li> <li>• General handyman services and other general requirements typically provided by facilities management service providers.</li> </ul> <p>Ad Hoc Service are to be initiated by WGH through a service request which shall define the requirements, including the work to be performed, the location, timeframe and other related information necessary to perform the Ad-Hoc Services.</p> <p>The general handyman may from time to time perform painting or paint touch-ups; however, the performance of that service shall not affect the availability of Project Co resources to perform required Ad-Hoc Services.</p>
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<p><b><u>General Description</u></b></p> <ul style="list-style-type: none"> <li>• Project Co shall ensure that appropriate exterior lighting is not subject to load-shedding or other energy management initiatives</li> <li>• Project Co shall ensure that signage remains clear of obstructions and fully visible in accordance with the intent of the Existing Design and Technical Requirements.</li> </ul>	
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3.9.4 Maintenance and Repairs – Mechanical Systems	
<b>Objectives:</b>	
Ensure that the building environment is stable and that it meets WGH’s operational needs. Avoid disruption by eliminating equipment failure or by restoring functionality in a timely manner. Maintain asset value, assuming Normal Wear and Tear.	
Element	FM Service Specification
Project Co shall provide the following Project Co Services and shall achieve the following results:	
a. Maintenance and Repair	<ul style="list-style-type: none"> <li>• Compliance related Preventive Maintenance (for legal, regulatory, health &amp; safety or insurance purposes)</li> <li>• Manufacturers’ recommended Preventive Maintenance</li> <li>• Predictive testing and/or significant additional Preventive Maintenance (which exceeds manufacturers recommended)</li> <li>• Compliance related inspections conducted and permits obtained</li> <li>• Corrective Maintenance Work in accordance with response time specified in this FM Service Specification (emergency, urgent or routine requirements)</li> </ul>
b. Duct cleaning	<ul style="list-style-type: none"> <li>• Video inspection of ductwork every 5 years or more frequently if conditions warrant</li> <li>• Duct cleaning is performed based on inspection results to maintain air quality</li> <li>• Inspect anchoring of ductwork, fittings, pipe work so that they are appropriate and securely fastened</li> </ul>
c. Air Quality	<ul style="list-style-type: none"> <li>• Minimum fresh air shall not be less than ASHRAE Standard 62 CO2 levels are to be less than 850 ppm, taking into account CSA Guideline A204-94 (1994)</li> <li>• Testing of biological safety cabinets and hoods twice per year</li> <li>• Developing a maintenance program and Testing of Anaesthetic Gases levels in scavenging systems on a monthly basis</li> <li>• IAQ testing for anaesthetic gases 3 times per year</li> <li>• Testing of Formaldehyde levels in Laboratories annually</li> <li>• Testing of negative pressure rooms in accordance with applicable standards</li> <li>• Monitoring of air quality systems as required in accordance with Infection Control policies.</li> </ul>
d. Water Quality Testing	<ul style="list-style-type: none"> <li>• Project Co to conduct Water quality testing</li> <li>• As per the equipment manufacturers recommendations (i.e. cooling systems, boilers, etc.)</li> <li>• Testing of HVAC and cooling systems for Legionella in accordance with Good Industry Practices for Hospitals</li> <li>• Testing of softened water and Reverse Osmosis water systems on a monthly basis (i.e. for water quality)</li> <li>• WGH will operate and maintain the Reverse Osmosis water systems for dialysis program only</li> <li>• Potable water quality testing on an annual basis (chemical composition)</li> </ul>
e. Corrosion Prevention and Control	<ul style="list-style-type: none"> <li>• Project Co shall develop and monitor a program for the testing of corrosion in open and closed water systems</li> </ul>
f. Ambient temperature	<ul style="list-style-type: none"> <li>• Maintained within the range of acceptability established on the Room Type Specifications</li> <li>• Reactive measurement and adjustment on persistent complaints</li> <li>• Measurements taken on a continuous basis and adjustments made to ensure compliance to performance specifications</li> </ul>
g. Acoustic Performance	<ul style="list-style-type: none"> <li>• Maintained within the range of acceptability established on the Room Type Specifications</li> <li>• Measures taken periodically and adjustments made to ensure compliance to performance specifications</li> <li>• No undue noise or vibration</li> </ul>
<b>General Description</b>	
<ul style="list-style-type: none"> <li>• Project Co must make all necessary efforts to meet the required timeframes. In special circumstances, repair timeframes may be extended, with the prior approval of WGH</li> <li>• All specified ASHRAE standards are to be amended from time to time and be approved by WGH prior to their</li> </ul>	

**3.9.4**

**Maintenance and Repairs – Mechanical Systems**

implementation

- WGH may identify any observed or pending equipment or systems failure to Project Co in the event such a condition is detected by WGH staff engaged in normal operations at the Facility. Project Co shall arrange for the investigation and remediation of the observed condition at the earliest possible opportunity. This in no way releases Project Co from conducting their own reviews and monitoring of systems, equipment, in accordance with the Project Agreement and these Output Specifications.
- Develop and review of work plans with WGH Infection Control Policies and Procedures in advance of all maintenance procedures.

3.9.5 Maintenance and Repairs – Electrical Systems	
<b>Objectives:</b>	
Ensure that WGH and Facility Occupants’ needs for power are met, taking into consideration the criticality of certain areas within the Facility. Avoid disruption by reducing/eliminating equipment failure. Restore functionality in a timely manner. Maintain asset value, assuming Normal Wear and Tear.	
Element	FM Service Specification
Project Co shall provide the following Project Co Services and shall achieve the following results:	
a. Maintenance and Repair	<ul style="list-style-type: none"> <li>• Compliance related Preventive Maintenance (for legal, regulatory, health and safety or insurance purposes)</li> <li>• Manufacturers’ recommended Preventive Maintenance</li> <li>• Predictive testing and/or significant additional Preventive Maintenance (which exceeds manufacturers recommended)</li> <li>• Compliance related inspections conducted and permits obtained</li> <li>• Corrective Maintenance Work in accordance with response time specified in this FM Service Specification (Emergency, Urgent or Routine requirements)</li> </ul>
b. Testing and recalibration of power in the systems	<ul style="list-style-type: none"> <li>• Project Co shall provide WGH with the results of any tests, highlighting the areas that do not fall within accepted ranges of acceptability, along with plans to correct the deficiency</li> <li>• Systems are balanced based on Predictive Maintenance results</li> <li>• Preventive recalibration annually</li> </ul>
c. Lighting Control Systems	<ul style="list-style-type: none"> <li>• Lighting levels are maintained in accordance with Existing Design, some tolerance for burnt non emergency lighting in Non Medical Space</li> <li>• Restore within 24 hours for service requests where the lighting level is below standard, but where work can still be done</li> <li>• Restore immediately for service requests where the space is not available</li> </ul>
d. Emergency battery powered lighting units	<ul style="list-style-type: none"> <li>• Tested monthly and record readings to demonstrate that it is operationally and fully charged</li> <li>• Maintenance to ensure that batteries are adequately ventilated, free from acid leakage and fully charged</li> </ul>
e. Medium voltage and high voltage distribution Systems (including switchboards and distribution equipment)	<ul style="list-style-type: none"> <li>• Ratings remain clearly marked</li> <li>• Contacts and connections are cleaned and mechanically tightened at least annually.</li> <li>• Switchgear and transformers maintained annually, including trending of annual oil sampling of the power transformers</li> <li>• Infrared scanning performed annually</li> <li>• Injection testing at least every two years</li> </ul>
f. Emergency power Supply Systems	<ul style="list-style-type: none"> <li>• Emergency Power Systems and Generator Testing and inspection shall be conducted in accordance with applicable legislation and standards</li> <li>• Project Co shall develop Maintenance and Operations procedures (MOP) for all emergency power-testing programs, Primary Power systems and Emergency Power system activations and transfer of power systems during emergency power operations</li> <li>• Project Co shall coordinate with WGH and relevant authorities</li> </ul>
g. Load Capacity of UPS	<ul style="list-style-type: none"> <li>• UPS module and systems tested using onsite load bank system in order to demonstrate performance and transferability done at least annually</li> <li>• UPS system is managed at a capacity less than 80% and in order to ensure continuous uninterrupted power for 15 minutes under full load conditions</li> <li>• Maintenance and Operations procedures (MOP) to be developed by Project Co and coordinated with Hospital Services</li> </ul>
<b>General Description</b>	
<ul style="list-style-type: none"> <li>• All testing to be in accordance with relevant CSA standards related to Hospitals</li> <li>• The Project Co’s employees shall be available on an emergency and urgent call basis, 24 hours per day, 7 days per week, 365 days per year to respond to service requests</li> <li>• The Project Co shall immediately notify WGH of any electrical system equipment failure at the Facility and shall arrange for and expedite any and all necessary repairs to the electrical system equipment</li> </ul>	

**3.9.5 Maintenance and Repairs – Electrical Systems**

- WGH shall further identify any observed or pending electrical system equipment or systems failure to Project Co in the event such a condition is detected by WGH staff engaged in normal operations at the Facility. Project Co shall arrange for the investigation and remediation of the observed condition at the earliest possible opportunity

3.9.6 Maintenance and Repairs – Elevating Devices	
<b>Objectives:</b>	
Ensure availability of elevating devices with special consideration given to the safety of the users. Avoid disruption by reducing/eliminating equipment failure or by restoring functionality in a timely manner. Maintain asset value, assuming Normal Wear and Tear and comply with all required safety and code regulations.	
Element	FM Service Specification
Project Co shall provide the following Project Co Services and shall achieve the following results:	
a. Maintenance and Repair	<ul style="list-style-type: none"> <li>• Compliance related Preventive Maintenance (for legal, regulatory, health &amp; safety or insurance purposes)</li> <li>• Manufacturers’ recommended preventive maintenance</li> <li>• Periodic preventive maintenance program on all main components as per program actually in force with WGH</li> <li>• Compliance related inspections conducted and permits obtained</li> </ul>
b. Elevator Extractions	<ul style="list-style-type: none"> <li>• Project Co shall provide trained on-site personnel to execute immediate emergency extrication from elevators 24/365.</li> </ul>
c. Maintenance and Repair – Other elevating devices	<ul style="list-style-type: none"> <li>• Compliance related preventive maintenance (for legal, regulatory, health &amp; safety or insurance purposes)</li> <li>• Manufacturers’ recommended preventive maintenance</li> <li>• Periodic preventive maintenance program on all main components as per program actually in force with WGH</li> <li>• Compliance related inspections conducted and permits obtained</li> </ul>
<b>General Description</b>	
<ul style="list-style-type: none"> <li>• None</li> </ul>	

3.9.7 Maintenance and Repairs – Fire Suppression Systems	
<b>Objectives:</b> Minimize the impact to the Facility, Facility Occupants and Hospital Services in the event of life threatening events, with special consideration being given to compliance. Avoid disruption by eliminating equipment failure or restoring functionality in a timely manner. Maintain asset value, assuming Normal Wear and Tear.	
<b>Element</b>	<b>FM Service Specification</b>
Project Co shall provide the following Project Co Services and shall achieve the following results:	
a. Maintenance and Repair	<ul style="list-style-type: none"> <li>• Compliance related Preventive Maintenance (for legal, regulatory, health &amp; safety or insurance purposes)</li> <li>• Manufacturers’ recommended Preventive Maintenance</li> <li>• Predictive testing and/or significant additional Preventive Maintenance (which exceeds manufacturers recommended)</li> <li>• Compliance related inspections conducted and permits obtained</li> <li>• Corrective Maintenance Work in accordance with response time specified in this FM Service Specification (Emergency, Urgent or Routine requirements)</li> </ul>
b. Life Safety /Fire protection devices and/or suppression systems	<ul style="list-style-type: none"> <li>• Minimum annual inspections and preventive measures taken to ensure:                             <ul style="list-style-type: none"> <li>• Fire extinguishers, hydrants, sprinklers are operating at correct pressure and capacity.</li> <li>• Pre-action and dry systems operate when required at the correct pressure and capacity</li> <li>• Detection systems are performing at all times.</li> <li>• Fire Prevention systems are operational at all times including but not limited to positive pressure ventilation systems, fire dampers and components, door operators and seals, fusible links, fire separations are intact and fire sealing.</li> </ul> </li> <li>• All Fire protection systems are free from corrosion, leaks and drips</li> <li>• Extinguishers are in suitable locations and inspected / tested according to code requirements</li> <li>• All life safety/fire protection and/or suppression equipment that has been discharged, is refilled</li> <li>• Project Co shall provide reports to WGH on a monthly basis outlining any system discharge occurrences, the reasoning for the occurrences and the response or corrective actions taken by Project Co</li> </ul>
c. Exterior life safety systems	<ul style="list-style-type: none"> <li>• Project Co shall provide testing, inspection and maintenance of all exterior life safety systems in accordance with all applicable laws, standards, codes and local authority requirements</li> <li>• Flushing of water systems shall be coordinated with local authorities</li> </ul>
<b>General Description</b>	
<ul style="list-style-type: none"> <li>• None</li> </ul>	

**Performance Indicators**

Performance Indicators Legend

Failure Type	Category	Response	Rectification	Recording Frequency
AF =Availability Failure	Major	N/A = Not	N/A = Not	PR = Per Request
	Medium	Applicable	Applicable	PE = Per Event
SF = Service Failure	Minor			D = Daily
	AF			W = Weekly
				M = Monthly
QF = Quality Failure				Q = Quarterly
				B = Bi-Annually
				A = Annually
				R = Randomly, At Any Moment in Time

Reference	Parameter	Failure Type	Category	Response Time	Rectification Time	Recording Frequency	Application
	<b>Hard Infrastructure Services – Maintenance and Repairs</b>						
<b>PI# 3.9-1 3.9 (all)</b>	Performance of all insurance, statutory and regulatory tests and inspections	QF	Major	N/A	N/A	PE	One QF per Event
<b>PI# 3.9-2 3.9 (all)</b>	Perform a minimum of 85% of Preventive Maintenance activities as per Preventive Maintenance schedule	SF	Medium	N/A	N/A	PE	One SF per Event
<b>PI# 3.9-3 3.9 (all)</b>	Performing activities - Services performed as per requirements.	SF	Medium	N/A	N/A	PE	One SF per Event
<b>PI# 3.9-4 3.9 (all)</b>	Testing (inspection & documentation)	QF	Medium	N/A	N/A	PE	One QF per Event
<b>PI# 3.9-5 All</b>	Emergency – Respond / Rectification Times not met	SF	Major	See 2.1(z)	N/A	PE	One SF per Event
<b>PI# 3.9-6 All</b>	Urgent – Respond / Rectification Times not met	SF	Medium	See 2.1(z)	N/A	PE	One SF per Event
<b>PI# 3.9-7 All</b>	Routine – Respond / Rectification Times not met	SF	Minor	See 2.1(z)	N/A	PE	One SF per Event



3.10 Parking Management (non O&M Activities)	
<b>Objectives:</b>	
Provide an appealing, easy to access parking experience to WGH and Facility Occupants.	
<b>Element</b>	<b>FM Service Specification</b>
Project Co shall provide the following Project Co Services and shall achieve the following results:	
a. Revenue	<ul style="list-style-type: none"> <li>Project Co administers the coin revenue collection on behalf of WGH</li> <li>Project Co makes recommendations on parking rates based on usage and market levels</li> <li>WGH sets the parking rates</li> <li>Revenue is flowed through to WGH</li> </ul>
b. Occupancy	<ul style="list-style-type: none"> <li>Project Co coordinates parking spaces as required</li> <li>Project Co maintains and updates occupancy and waiting lists if required</li> </ul>
c. Revenue collection – Monthly Parking	<ul style="list-style-type: none"> <li>Project Co programs access card for parking access based on WGH instruction</li> <li>WGH collects revenue</li> </ul>
d. Revenue collection – Transient	<ul style="list-style-type: none"> <li>Collection only through parking gates (no staff)</li> <li>Project Co is responsible fro collection of coin revenue and delivering to WGH Finance Department.</li> </ul>
e. Cash Change Machine(s)	<ul style="list-style-type: none"> <li>Project Co ensures machines are fully stocked with change and collects money</li> <li>Project Co delivers money collected to WGH Finance department</li> </ul>
<b>General Description</b>	
<ul style="list-style-type: none"> <li>All maintenance, repair and lifecycle renewal are applicable to all parking equipment and the lot.</li> </ul>	

**Performance Indicators**

Performance Indicators Legend

Failure Type	Category	Response	Rectification	Recording Frequency
AF = Availability Failure	Major	N/A = Not Applicable	N/A = Not Applicable	PR = Per Request
SF = Service Failure	Medium			PE = Per Event
QF = Quality Failure	Minor			D = Daily
	AF			W = Weekly
				M = Monthly
				Q = Quarterly
				B = Bi-Annually
				A = Annually
				R = Randomly, At Any Moment in Time

	Parameter	Failure Type	Category	Response Time	Rectification Time	Recording Frequency	Application
<b>Reference</b>	<b>Parking Management</b>						
<b>PI# 3.10-1 3.10 (all)</b>	Availability of resources related parking operations 7/24	SF	Major	N/A	N/A	PE	One SF per Event
<b>PI# 3.10-2 3.10 (all)</b>	Performing activities - Services performed as per requirements.	SF	Medium	N/A	N/A	PE	One SF per Event
<b>PI# 3.10-3 3.10 (all)</b>	Availability of resources related parking operations 7/24	SF	Major	N/A	N/A	PE	One SF per Event
<b>PI# 3.10-4 3.10 (all)</b>	Performing activities - Services performed as per requirements.	SF	Medium	N/A	N/A	PE	One SF per Event

<b>3.11 Project Management</b>	
<b>Objectives:</b>	
Ensure the timely and efficient administration of WGH Funded Projects.	
<b>Element</b>	<b>FM Service Specification</b>
Project Co shall provide the following Project Co Services and shall achieve the following results:	
<b>a. Definition of Scope</b>	<ul style="list-style-type: none"> <li>• Project Co shall assist WGH in developing the high level scope from a facility operations perspective as necessary</li> <li>• Technical solutions resources (experts):                             <ul style="list-style-type: none"> <li>○ manages the value engineering solution</li> <li>○ validates the design from a technical perspective</li> </ul> </li> </ul>
<b>b. Estimates</b>	<ul style="list-style-type: none"> <li>• Project Co provides Class D and C estimates as part of the Project Management Fee</li> <li>• Project Co provides Class A and B estimates as part of Direct Costs where required by WGH.</li> </ul>
<b>c. Design and specifications</b>	<ul style="list-style-type: none"> <li>• Project Co shall manage the development of design and specifications required to execute the project</li> <li>• Project Co shall manage revisions and approval process with WGH as necessary to achieve final design and specifications</li> </ul>
<b>d. Tender and award process</b>	<ul style="list-style-type: none"> <li>• Project Co shall prepare all required tender documents following standard industry practice</li> <li>• Project Co shall manage the procurement process for tender and award in compliance with WGH contracting guidelines and requirements or as otherwise directed by WGH</li> </ul>
<b>e. Permits and Approvals</b>	<ul style="list-style-type: none"> <li>• Project Co shall apply for and achieve all required permits, approvals, etc. required to execute the project</li> <li>• All related fees paid to authorities are not subject to a Project Management Fee.</li> </ul>
<b>f. Invoice Processing</b>	<ul style="list-style-type: none"> <li>• Invoices are received by Project Co</li> <li>• Invoices are reviewed Project Co</li> <li>• Invoice are approved by Project Co</li> <li>• Invoices are processed and paid by Project Co</li> </ul>
<b>g. Contract/P.O. processing</b>	<ul style="list-style-type: none"> <li>• Initiated by Project Co</li> <li>• Approved by WGH</li> <li>• Tracked and Processed by Project Co</li> </ul>
<b>h. Forecasting / Budgeting / scheduling</b>	<ul style="list-style-type: none"> <li>• Project Co prepared budget forecast and schedule</li> <li>• Project Co monitors, updates and reports on budget and schedule</li> </ul>
<b>i. Reporting</b>	<ul style="list-style-type: none"> <li>• Project Co shall provide monthly reports on overall schedule and budget forecasting</li> <li>• Project Co shall provide weekly reports on Individual Projects as identified by WGH</li> </ul>
<b>j. Management Meetings</b>	<ul style="list-style-type: none"> <li>• Chair monthly management meetings to review status of projects, budgets, schedule, forecasts, etc.</li> </ul>
<b>k. Close-out - financial</b>	<ul style="list-style-type: none"> <li>• Project Co prepares close-out checklist</li> <li>• Project Co follows-up on outstanding information</li> <li>• Project Co finalizes financial close-out</li> <li>• Project Co maintains the files</li> </ul>
<b>l. Close-out - technical</b>	<ul style="list-style-type: none"> <li>• Project Co prepares close-out checklist</li> <li>• Project Co follows-up to obtain all technical &amp; project documents (including drawings, lien search, WSB, Statutory declaration)</li> <li>• Project Co maintains the files</li> </ul>
<b>m. Construction Management / Site</b>	<ul style="list-style-type: none"> <li>• Consultant do periodic site visits</li> </ul>

**3.11 Project Management**

<b>Supervision</b>	<ul style="list-style-type: none"> <li>• Site Supervision by Project Co operations staff</li> <li>• Ad hoc visit by the Project Manager</li> <li>• Reporting status/issues to the Project Manager</li> </ul>
<b>n. Schedule Details</b>	<ul style="list-style-type: none"> <li>• Detailed (Gantt/detailed chart)</li> <li>• Reporting according to Schedule</li> </ul>

**General Description**  
 Class A, B, C and D Estimates are based on industry standard levels of accuracy and preparation. A summary is as follows:  
 Class A – Estimated prior to tendering based on complete drawings and specifications providing an accurate cost estimate that enables validation of tender results and negotiation with suppliers  
 Class B – Estimated with preliminary design/drawings and outlines that it will establish a reasonably accurate cost estimate sufficient for project approval.  
 Class C – Estimated with description of preferred option, taking into consideration market conditions and construction experience, providing accuracy necessary for preliminary project approval and financial decisions.  
 Class D – Estimated with an outline of the potential solutions and statement of requirements along with market and construction knowledge to provide order of magnitude costing that enables ranking of the project and to seek approval to proceed.

**Performance Indicators**

Performance Indicators Legend

Failure Type	Category	Response	Rectification	Recording Frequency
AF = Availability Failure SF = Service Failure QF = Quality Failure	Major Medium Minor AF	N/A = Not Applicable	N/A = Not Applicable	PR = Per Request PE = Per Event D = Daily W = Weekly M = Monthly Q = Quarterly B = Bi-Annually A = Annually R = Randomly, At Any Moment in Time

	Parameter	Failure Type	Category	Response Time	Rectification Time	Recording Frequency	Application
<b>Reference</b>	<b>Project Management</b>						
<b>PI# 3.11-1 3.11 (all)</b>	Project Delivery – WGH Funded Projects delivered as per agreed plan	QF	Major	NA	NA	Daily	One QF per Event
<b>PI# 3.11-2 3.11 (all)</b>	Project Delivery – Identified Life Cycle Renewal Projects implemented as per plan	SF	Major	N/A	NA	Daily	One SF per Event
<b>PI# 3.11-3 3.11 (all)</b>	Following standards or procedures - Services performed as per requirements.	QF	Medium	N/A	NA	PE	One QF per Event

3.12 Specialized Hospital Systems	
<b>Objectives:</b>	
To ensure all specialized hospital systems which are within Project Co’s responsibility are appropriately operated and maintained as required in a safe, effective manner that reflects the critical importance of the systems to WGH’s operations.	
Element	FM Service Specification
Project Co shall provide the following Project Co Services and shall achieve the following results:	
<b>a. Heliport</b>	<ul style="list-style-type: none"> <li>• Maintain the usability and safety of the Heliport at all times to enable use during emergencies with little or no advance warning</li> <li>• Ensure that the Heliport area is free of snow, ice and debris at all times</li> <li>• Ensure that the lighting and direction aids are operational and visible at all times</li> <li>• Operate and Maintain the Heliport facilities in accordance with Transport Canada, ORNGE and Canadian Helicopter regulations, standards and best practices</li> <li>• Conduct inspection, audits and reporting on a yearly basis in co-operation with Heliport licensing or operations inspectors</li> </ul>
<b>b. Specialized Ventilation systems</b>	<ul style="list-style-type: none"> <li>• Project Co shall certify the biological safety hood /safety cabinet every 6 months and flow hoods every 12 months as per the applicable OH&amp;S Act, regulations or related Hospital standards</li> <li>• Follow appropriate standards and legislation and infection control guidelines regarding filtration, filter changes and air pressure requirements</li> </ul>
<b>c. Medical Gas Systems – Bulk Storage</b>	<ul style="list-style-type: none"> <li>• Inspect, Test and record all systems in accordance with CSA standards and on a monthly basis as a minimum</li> <li>• Inspect and verify volume levels of Bulk Supply on a daily basis, and coordinate ordering of supply from WGH selected vendor. Document and verify deliveries for coordination with WGH procurement requirements</li> <li>• Protect and maintain all services to and from Bulk Storage to the Facility</li> </ul>
<b>d. Medical Gas Systems – Bottled Gas</b>	<ul style="list-style-type: none"> <li>• Operate and maintain all manifold gas delivery systems in accordance with applicable CSA standards</li> <li>• Develop and implement a plan to assure that manifold medical gas systems provide service to the Facility at all times including but not limited to bottled gas procurement, delivery, storage, cylinder change-out and systems verification</li> <li>• Develop and implement, standard operating procedures addressing safety and quality control programs. Develop staff training, retraining and quality control audits on an on-going basis</li> </ul>
<b>e. Medical gas systems</b>	<ul style="list-style-type: none"> <li>• Conduct annual maintenance inspections on all medical gas and related equipment in accordance with applicable CSA standards and associated regulations. Submit reports to WGH outlining inspection &amp; testing results, Project Co’s plans for correction of deficiencies or system failures</li> <li>• Annual Inspection and testing shall include but not be limited to;                             <ul style="list-style-type: none"> <li>○ Source units</li> <li>○ Master alarm systems</li> <li>○ Remote alarm systems,</li> <li>○ Terminal unit mechanical and flow performance,</li> <li>○ Cross connection inspections,</li> <li>○ Zone valve and construction inspections,</li> <li>○ Medical air purity testing</li> </ul> </li> <li>• Develop and implement training programs for WGH staff on the safe operations, alarms response and shutdown procedures for all medical gas systems</li> </ul>
<b>f. Pneumatic tube systems</b>	<ul style="list-style-type: none"> <li>• Project Co shall be responsible for the operations and maintenance of pneumatic tube systems</li> <li>• Project Co shall develop and implement a plan for conducting a system cleaning program on an annual basis as a minimum and cleaning as required due to leaks, contamination or</li> </ul>

3.12 Specialized Hospital Systems	
	component failures to maintain effective infection control.
<b>g. Alternative Fuel Supplies and equipment</b>	<ul style="list-style-type: none"> <li>Project Co shall monitor the levels of alternative fuels and arrange for refilling as required</li> <li>Project Co shall develop and implement a testing and inspection program to assure that the transfer of alternative fuel supplies function when required</li> </ul>
<b>h. Food Service Equipment</b>	<ul style="list-style-type: none"> <li>Project Co Shall provide orientation and training on the use and cleaning of food service equipment to WGH staff</li> <li>Project Co shall maintain all food services equipment in accordance with Good Industry Practices for Hospitals and in accordance with local Public Health requirements</li> <li>Project Co shall clean and maintain all grease traps to Good Industry Practices for Hospitals and to meet any local waste service requirements</li> </ul>
<b>i. CSR Equipment</b>	<ul style="list-style-type: none"> <li>WGH is responsible for the daily operations of the sterilization equipment and processes and sterilization process monitoring</li> <li>Project Co shall be responsible for all CSR equipment and systems maintenance and work collaboratively with WGH staff for quality control measures</li> </ul>
<b>j. Communication Systems - Nurse Call</b>	<ul style="list-style-type: none"> <li>Project Co is responsible for the initial set-up, documentation and programming.</li> <li>Project Co is responsible for orientation and training of WGH staff</li> <li>Project Co shall provide ongoing support for re-training and re-programming</li> </ul>
<b>k. Communication Systems - Other</b>	<ul style="list-style-type: none"> <li>Project Co shall provide support to WGH personnel in the operations and maintenance of all other communication systems and systems integrations</li> </ul>
<b>l. IT systems</b>	<ul style="list-style-type: none"> <li>WGH shall maintain the Facility IT Systems. Project Co shall provide support to WGH for the operations and maintenance for the integration of systems and the components related to the facility operations, maintenance and security systems</li> <li>WGH will be responsible for the installation and commissioning of additional data or communication outlets as may be required from time to time for Hospital Services. Additional installations required for Project Cos operations shall be provide by Project Co All new initiations shall be reviewed with WGH prior to installation.</li> <li>WGH shall maintain an inventory of all data port connections and terminal. Project Co shall coordinate with WGH for any addition made to the inventory</li> <li>Project Co shall review all system modifications, equipment installations or devices with WGH prior to implementation and confirm compatibility with WGH systems and biomedical devices. Project Co shall produce biomedical testing results to WGH prior to implementation. All systems must not interfere with WGH patient care equipment or operations.</li> </ul>
<b>m. Patient Care Systems</b>	<ul style="list-style-type: none"> <li>WGH will provide and maintain additional systems as they relate directly to patient care and hospital operations</li> <li>Project Co shall assist WGH in access to spaces, services, installation of equipment, commissioning or integration with other systems as may be required.</li> </ul>
<b>n. Television &amp; Patient Entertainment systems</b>	<ul style="list-style-type: none"> <li>Project Co shall assure that all television and patient entertainment systems included in the Existing Design are maintained and are functional at all times</li> <li>WGH shall be responsible for the day-to-day management of all recording, playback and equipment management</li> </ul>
<b><u>General Description</u></b>	
None	

Performance Indicators

Performance Indicators Legend

Failure Type	Category	Response	Rectification	Recording Frequency
AF = Availability Failure SF = Service Failure QF = Quality Failure	Major Medium Minor AF	N/A = Not Applicable	N/A = Not Applicable	PR = Per Request PE = Per Event D = Daily W = Weekly M = Monthly Q = Quarterly B = Bi-Annually A = Annually R = Randomly, At Any Moment in Time

Reference	Parameter	Failure Type	Category	Response Time	Rectification Time	Recording Frequency	Application
<b>Specialized Hospital Systems</b>							
PI# 3.12-1 3.12a	Heliport is safe and available when needed.	QF	Major	N/A	N/A	PE	One QF per Event
PI# 3.12-2 3.12a	Perform activities – in accordance with the standards	QF	Major	N/A	N/A	PE	One QF per Event
PI# 3.12-3 3.12b	Specialized Ventilation systems is functional at all times	QF	Major	N/A	N/A	PE	One QF per Event
PI# 3.12-4 3.12b	Perform activities – in accordance with the standards	SF	Major	N/A	N/A	PE	One SF per event
PI# 3.12-5 3.12c,d	Medical gas systems is in good repair and available.	QF	Major	N/A	N/A	PE	One QF per Event
PI# 3.12-6 3.12c,d,e	Perform activities – in accordance with the standards	SF	Major	N/A	N/A	PE	One SF per event
PI# 3.12-7 3.12f	Pneumatic tube systems is in good repair and available	QF	Major	N/A	N/A	PE	One QF per Event
PI# 3.12-8 3.12f	Perform activities – in accordance with the standards	SF	Major	N/A	N/A	PE	One SF per event
PI# 3.12-9 3.12g	Alternative Fuel Supplies and equipment is available when required.	QF	Major	N/A	N/A	PE	One QF per Event
PI# 3.12-10 3.12g	Perform activities – in accordance with the standards	SF	Major	N/A	N/A	PE	One SF per event

Reference	Parameter	Failure Type	Category	Response Time	Rectification Time	Recording Frequency	Application
	<b>Specialized Hospital Systems</b>						
PI# 3.12-11 3.12h	Food Service Equipment in good repair and available	QF	Major	N/A	N/A	PE	One QF per Event
PI# 3.12-12 3.12h	Performing activities – in accordance with the standards	SF	Minor	N/A	N/A	PE	One SF per event
PI# 3.12-13 3.12i	CSR Equipment in good repair and available	QF	Major	N/A	N/A	PE	One QF per Event
PI# 3.12-14 3.12i	Performing activities – in accordance with the standards	SF	Major	N/A	N/A	PE	One SF per event
PI# 3.12-15 3.12j,k	Communications Equipment in good repair and available.	QF	Major	N/A	N/A	PE	One QF per Event
PI# 3.12-16 3.12j,k	Performing activities – in accordance with the standards	SF	Major	N/A	N/A	PE	One SF per event
PI# 3.12-17 3.12l	IT systems Performing activities – in accordance with the standards	SF	Major	N/A	N/A	PE	One SF per event
PI# 3.12-18 3.12m	Patient Care Systems Performing activities – in accordance with the standards	SF	Major	N/A	N/A	PE	One SF per Event
PI# 3.12-19 3.12n	Television & Patient Entertainment systems functional	QF	Medium	N/A	N/A	PE	One QF per Event
PI# 3.12-20 3.12n	Performing activities – in accordance with the standards	SF	Medium	N/A	N/A	PE	One SF per event
PI# 3.12-21 All	Emergency – Respond / Rectification Times not met	SF	Major	See 2.1(z)	See 2.1(z)	PE	One SF per event
PI# 3.12-22 All	Urgent – Respond / Rectification Times not met	SF	Medium	See 2.1(z)	See 2.1(z)	PE	One SF per event
PI# 3.12-23 All	Routine – Respond / Rectification Times not met	SF	Minor	See 2.1(z)	See 2.1(z)	PE	One SF per event



4.0 Appendix

4.1 Service Standards, HVAC

General					
<b>Outdoor Conditions</b>	<p>The HVAC standards identified in the table below are based on an outdoor air condition range of:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="text-align: center;"><b>Winter</b></td> <td style="text-align: center;">-20°C (OBC 1%)</td> </tr> <tr> <td style="text-align: center;"><b>Summer</b></td> <td style="text-align: center;">+29°C Dry Bulb / +23°C Wet Bulb (OBC 2½%)</td> </tr> </table>	<b>Winter</b>	-20°C (OBC 1%)	<b>Summer</b>	+29°C Dry Bulb / +23°C Wet Bulb (OBC 2½%)
<b>Winter</b>	-20°C (OBC 1%)				
<b>Summer</b>	+29°C Dry Bulb / +23°C Wet Bulb (OBC 2½%)				
<b>Temperature Control:</b>	<ul style="list-style-type: none"> <li>• Design Temperature means that the HVAC system has been designed to meet any set point within the design temperature range.</li> <li>• Maintained to temperature set point. Set point is adjustable either locally through adjustable room space temperature sensor or remotely through BAS within permissible set point adjustment range.</li> <li>• Temperature is to be maintained within the tolerances listed in the room standards chart below. During the Seasonal Bedding In Period only, the tolerances for temperature shall be increased by 0.5 degrees. As an example, an existing tolerance in the “Temp. Control Tolerance from Set point °C” column shown as ± 0.5 degrees shall be adjusted to ± 1.0 degrees during the Seasonal Bedding In Period.</li> <li>• Temperature is to be maintained within control tolerance from the set point.</li> <li>• Monitor compliance through continuous log of selected representative rooms, except all class 1 rooms, equipped with the thermostat, (as defined by CSA Standard Z317.2) are to be monitored trend logged at all times.</li> <li>• Selection of representative rooms to be logged is to be changed every reporting period and to be on continuous rollover assignment.</li> </ul>				
<b>Humidity Control:</b>	<ul style="list-style-type: none"> <li>• Return air humidity (or space humidity where applicable) maintained to set point within control tolerance as listed in table below and confirmed through trend logging.</li> <li>• During the Seasonal Bedding In Period only, the tolerances for humidity shall be increased by 5%. As an example, an existing tolerance in the “Humidity Control Tolerance from Set point % RH” column shown as ± 5 % shall be adjusted to ± 10 % during the Seasonal Bedding In Period.</li> </ul>				
<b>Supply Air Volumes:</b>	<ul style="list-style-type: none"> <li>• Maintained to percentage of design airflow quantities shown on drawings as listed in table below.</li> <li>• Demonstrate that airflow quantities are maintained through periodic reporting using physical flow hood measurement.</li> </ul>				
<b>Return Air Volumes:</b>	<ul style="list-style-type: none"> <li>• Maintained to percentage of design airflow quantities shown on drawings as listed in table below.</li> <li>• Demonstrate that airflow quantities are maintained through periodic reporting using physical flow hood measurement.</li> </ul>				
<b>Relative Pressurization:</b>	<ul style="list-style-type: none"> <li>• For rooms with critical relative pressurization requirements, maintain differential pressure within range as per table below and provide continuous monitoring and trend logging.</li> <li>• For all other spaces, maintenance of Positive (P), Negative (N) or Equal (E) relative pressurization requirements will result from demonstrating that supply and return/exhaust air volumes are being maintained, and by annual visual smoke tests where indicated.</li> </ul>				
<b>Filtration:</b>	<ul style="list-style-type: none"> <li>• Demonstrate that replacement of filters occurs when differential pressure reaches filter loading differential pressure set point as follows: Pre-Filters: 250 Pa, Final and HEPA Filters: 375 Pa.</li> <li>• Replacement filters to be of same type and to have same efficiency as prescribed in the design specifications.</li> </ul>				



Room Standards										
Type of Room / Area Designation <sup>4</sup>	Design Temp. °C	Permissible Temp. Set point Adjustment Range Min / Max °C	Temp. Control Tolerance from Set point °C	Return Air Humidity Set point Winter-Summer % RH	Humidity Control Tolerance from Set point % RH	Relative Pressurization Differential Pressure Set point & Tolerance Pa	Supply Air Volume % of Design Air Flow Quantity	Return or Exhaust Air Volumes % of Design Air Flow Quantity	Location is secure and safe	Equipment and input installed in the room is functional <sup>1</sup>
Typical Patient Bed Room	22-24	21 / 25	±0.5	30 - 60	±5.0%	E	±10%	±10%	X	X
Infectious Isolation Room	24	21 / 25	±0.5	30 - 60	±5.0%	N 3.75 Pa ±1.25 Pa Relative to Corridor	±5%	±5%	X	X
Isolation Ante-Room	24	21 / 25	±0.5	30 - 60	±5.0%	P or N Depends On Room 1.25 Pa ±0.25 Pa	±5%	±5%	X	X
Nursing Stations	24	21 / 25	±0.5	30 - 60	±5.0%	E	±10%	±10%	X	X
Medication Areas	24	21 / 25	±0.5	30 - 60	±5.0%	P	±10%	±10%	X	X
Clean Utility	24	21 / 25	±0.5	30 - 60	±5.0%	P	±10%	±10%	X	X
Soiled Utility	24	21 / 25	±0.5	30 - 60	±5.0%	N	±10%	±10%	X	X
Patient Care Corridors & Public Corridors	24	21 / 25	±0.5	30 - 60	±5.0%	E	±10%	±10%	X	X
Non Patient Corridors	24	21 / 25	±0.5	30 - 60	±5.0%	E	±10%	±10%	X	X
Waiting, Reception, Lounges	24	21 / 25	±0.5	30 - 60	±5.0%	N	±10%	±10%	X	X
Washrooms, Bathing Facilities & Showers	24	21 / 25	±0.5	30 - 60	±5.0%	N	NA	±10%	X	X
Janitor's Closets	24	21 / 25	±0.5	30 - 60	±5.0%	N	NA	±10%	X	X
Exam Rooms	24	21 / 25	±0.5	30 - 60	±5.0%	E	±10%	±10%	X	X
Dialysis Unit	24	21 / 25	±0.5	30 - 60	±5.0%	E	±10%	±10%	X	X
Emergency Decontamination	24	21 / 25	±0.5	30 - 60	±5.0%	N Visual Smoke Test	±5%	±5%	X	X
Emergency Dept.	24	21 / 25	±0.5	30 - 60	±5.0%	N	±10%	±10%	X	X
Diagnostic Imaging Rooms	21-24	21 / 25	±0.5	30 - 60	±5.0%	E / N	±10%	±10%	X	X
CDU Cubicles	24	21/25	±0.5	30 - 60	±5.0%	N	±10%	±10%	X	X
Film Processing / Dark Rooms	21-24	21 / 25	±0.5	30 - 60	±5.0%	N	±5%	±5%	X	X
LBRP -	24	21 / 25	±0.5	30 - 60	±5.0%	E	±10%	±10%	X	X
Operating Rooms	17-27	17 / 27	±0.5	45 - 55 Space Humidity	±5.0%	P Visual Smoke Test	±5%	±5%	X	X
Endoscopy	20-24	21 / 25	±0.5	30 - 60	±5.0%	P Visual Smoke Test	±5%	±5%	X	X

<sup>4</sup> All terms capitalized in this column do not require definition, as they simply refer to standard hospital terminology.

<sup>1</sup> As it relates to room availability, compliance will be measured on equipment or input (e.g. availability of medical gas) that Project Co is responsible to maintain. All of the equipment provided as part of the Existing Design is considered to be equipment that Project Co is responsible for.

Room Standards										
Type of Room / Area Designation <sup>4</sup>	Design Temp. °C	Permissible Temp. Set point Adjustment Range Min / Max °C	Temp. Control Tolerance from Set point °C	Return Air Humidity Set point Winter-Summer % RH	Humidity Control Tolerance from Set point % RH	Relative Pressurization Differential Pressure Set point & Tolerance Pa	Supply Air Volume % of Design Air Flow Quantity	Return or Exhaust Air Volumes % of Design Air Flow Quantity	Location is secure and safe	Equipment and input installed in the room is functional <sup>1</sup>
Sub-Sterile Room	24	21 / 25	±0.5	30 - 60	±5.0%	N	±10%	±10%	X	X
Clean Core / Sterile Corridor	24	21 / 25	±0.5	30 - 60	±5.0%	P	±10%	±10%	X	X
Scrub Rooms	24	21 / 25	±0.5	30 - 60	±5.0%	N	±10%	±10%	X	X
PACU	24	21 / 25	±0.5	50 – 60 Space Humidity	±5.0%	P Visual Smoke Test	±10%	±10%	X	X
Day Surgery Unit		21 / 25	±0.5	30 - 60	±5.0%	P Visual Smoke Test	±10%	±10%	X	X
ICU\CCU	24-27	21 / 28	±0.5	30 - 60	±5.0%	P Visual Smoke Test	±10%	±10%	X	X
Morgue / Autopsy	18 - 24	18 / 25	±0.5	30 - 60	±5.0%	N Visual Smoke Test	±10%	±10%	X	X
CSR Cleaning / Decontamination / Sterilization	18-20	18 / 24	±0.5	30 - 60	±5.0%	N Visual Smoke Test	±10%	±10%	X	X
CSR Assembly	20-23	18 / 25	±0.5	30 - 60	±5.0%	P Visual Smoke Test	±10%	±10%	X	X
Sterilizer Equipment Room	20 - 24	18 / 25	±0.5	30 - 60	±5.0%	N	±10%	±10%	X	X
Ambulatory & Outpatient Care Clinics	24	21 / 25	±0.5	30 - 60	±5.0%	N	±10%	±10%	X	X
Chemo Clinics	24	21 / 25	±0.5	30 - 60	±5.0%	N	±10%	±10%	X	X
Laboratory General	24	21 / 25	±0.5	30 - 60	±5.0%	N Visual Smoke Test	±5%	±5%	X	X
Pharmacy General	24	21 / 25	±0.5	35 –55	±5.0%	P Visual Smoke Test	±10%	±10%	X	X
Pharmacy Compounding	21	19-23	±0.5	35 –55	±5.0%	P 17.5 Pa ±2.5 Pa Relative to Ante Room	±5%	±5%	X	X
Pharmacy Chemo Prep	21	19-23	±0.5	35 –55	±5.0%	N 5 Pa ±2.5 Pa Relative to Ante Room	±5%	±5%	X	X
Pharmacy Ante Room	21	19-23	±0.5	35 –55	±5.0%	P 7.5 Pa ±2.5 Pa Relative to Corridor	±5%	±5%	X	X
Physical Therapy / Occupational Therapy	21-24	21 / 25	±0.5	30 - 60	±5.0%	E / N	±10%	±10%	X	X
Administrative Areas	24	21 / 25	±0.5	30 - 60	±5.0%	E	±10%	±10%	X	X
Linen & Laundry Rooms	20-23	20 / 23	±1.0	30 - 60	±5.0%	N	±10%	±10%	X	X
Staff Locker Rooms	24	21 / 25	±0.5	30 - 60	±5.0%	N	±10%	±10%	X	X
Storage Rooms	24	21 / 25	±1.0	30 - 60	±5.0%	E	±10%	±10%	X	X

Room Standards										
Type of Room / Area Designation <sup>4</sup>	Design Temp. °C	Permissible Temp. Set point Adjustment Range Min / Max °C	Temp. Control Tolerance from Set point °C	Return Air Humidity Set point Winter-Summer % RH	Humidity Control Tolerance from Set point % RH	Relative Pressurization Differential Pressure Set point & Tolerance Pa	Supply Air Volume % of Design Air Flow Quantity	Return or Exhaust Air Volumes % of Design Air Flow Quantity	Location is secure and safe	Equipment and input installed in the room is functional <sup>1</sup>
Main Kitchen & Prep Areas	24	21 / 25	±1.0	30 - 60	±5.0%	N Visual Smoke Test	±10%	±10%	X	X
Decentralized Kitchen & Prep Areas	24	21 / 25	±1.0	30 - 60	±5.0%	N Visual Smoke Test	±10%	±10%	X	X
Cafeteria / Dining Areas	24	21 / 25	±0.5	30 - 60	±5.0%	N	±10%	±10%	X	X
Garbage (non refrigerated and biomed)	NA	NA	NA	NA	NA	N	±10%	±10%	X	X

Where a corridor is not available all rooms off that corridor are also considered not available.

4.2 Plans

This Appendix is provided for convenience only and should not be considered to represent all plans required by these Output Specifications or the Project Agreement.

Section	Plan	Description	First Due Date	Renewal Date
2.1 General Requirements – p. Service Satisfaction Surveys & q. WGH Survey	Action Plan	The action plan shall deal with any areas where the scores are in accordance with the following: <ul style="list-style-type: none"> <li>• Below the overall average</li> <li>• Of specific concern to WGH</li> <li>• Lower than the previous survey</li> </ul>	Developed and provided to WGH within 45 days following the completion of the survey.	Following the completion of each subsequent survey.
2.4 Delivery Organization b. staffing plan	Staffing Plan	The staffing plan shall include, but not be limited to: <ul style="list-style-type: none"> <li>• Organization charts as described in Section 2.4c of these Output Specifications</li> <li>• Staff roles and job descriptions as described in Section 2.4d of these Output Specifications</li> <li>• Staffing schedules</li> <li>• Plans and procedures for backup staff to fill vacancies and sickness, and similar situations</li> <li>• Succession planning and staff transition plans</li> <li>• WGH interactions and relationships with Project Co staff</li> </ul>	Project Co shall submit the initial completed staffing plan to WGH no later than 90 days prior to the Scheduled Substantial Completion Date	shall update it annually thereafter In addition to the annual staffing plan, Project Co shall provide an updated staffing plan at any time there are significant changes to the content of any aspect of the staffing plan.
2.5 HR and Training c. Training and Development Management Plan	Training and Development Plan	The plan shall include the following: <ul style="list-style-type: none"> <li>• Comprehensive list of specific training provided to on-site Project Co employees or Subcontractor employees</li> <li>• Schedules and plan for providing refresher training to on-site Project Co employees or Subcontractor employees</li> <li>• Methods for tracking, documenting and reporting training</li> </ul>	Project Co shall submit the initial completed training and development plan to WGH no later than 90 days prior to the Scheduled Substantial Completion Date.	shall update it annually thereafter
2.6 Health and Safety a. Health and Safety Plan	Health and Safety Plan	Project Co shall develop and implement a health and safety plan that includes the appropriate policies, procedures and practices to manage risks and ensure the health and safety of Project Co employees, Subcontractor employees, Facility Occupants and visitors to the Facility. The plan shall include a description of all matters relating to the following: <ul style="list-style-type: none"> <li>• Roles and responsibilities</li> <li>• Training</li> <li>• Health and safety manual</li> <li>• Policies and procedures</li> </ul>	The health and safety plan shall be submitted to WGH no later than 90 days prior to the Scheduled Substantial Completion Date	Shall be updated annually thereafter.

Section	Plan	Description	First Due Date	Renewal Date
		<ul style="list-style-type: none"> <li>• Management of health and safety records and documentation</li> <li>• Health and safety audits</li> <li>• Management processes</li> <li>• Joint health and safety committee</li> </ul>		
2.7 Communications c. Communication Protocol Development and Updates	Communication Protocol Development and Updates	Project Co shall submit the initial completed communication plan, which shall be developed in collaboration with WGH,	To WGH no later than 90 days prior to the Scheduled Substantial Completion Date.	Thereafter, the plan shall be updated no later than 24 hours after a change to its content.
2.8 Management Interfaces b. Annual Management Plan	Annual Management Plan	<p>This plan shall include the following:</p> <ul style="list-style-type: none"> <li>• Timing of meetings and activities (such as building condition report)</li> <li>• Life Cycle, Preventive Maintenance Capital Plans and other deliverables</li> <li>• Planned initiatives for service improvement and innovation</li> <li>• Anticipated changes to Subcontracted Project Co Services</li> <li>• Anticipated Utilities price adjustments and impact on WGH</li> <li>• Review, analysis and action that shall be taken based on results from Performance Management measures</li> <li>• Any other matter that is relevant to the service delivery model</li> </ul> <p>The Annual Management Plan must align with WGH’s strategic planning process.</p>	Project Co shall develop and provide to WGH, annually at the date set-out in the Reporting Schedule, an overall management plan for the upcoming year.	Annually
2.11 Environmental Management Plan	Environmental Management Plan	The Project Co shall develop and implement an environmental management plan which shall document the key aspects of effective management of environmental issues within the Facility. The environmental management plan shall contain sections which cover the following elements:	The Project Co shall submit the initial completed plan to WGH no later than 90 days prior to the Scheduled Substantial Completion Date	Shall update it annually thereafter
2.12 Subcontractor Management b. Approval and Acceptance	Approval and Acceptance Plan	Project Co shall develop a procurement process with WGH’s involvement that shall ensure a suitable process is in place to review and accept or reject potential Subcontractors or their employees.	Project Co shall submit the initial completed plan for the review of prospective Subcontractors to WGH no later than 90 days prior to the Scheduled Substantial Completion Date	Shall update it annually thereafter.
2.13 Quality Management a. Establish a Service Quality	Service Quality Plan	Project Co shall develop and keep up-to-date a service quality plan to manage quality at the Facility, including auditing, reporting, management control and corrective actions,	Project Co shall submit the initial completed plan to WGH no later than	Shall update it annually thereafter.

<b>Section</b>	<b>Plan</b>	<b>Description</b>	<b>First Due Date</b>	<b>Renewal Date</b>
Plan		in accordance with Good Industry Practices for Hospitals. The plan shall include a quality manual as described in this Section 2.13.	90 days prior to the Scheduled Substantial Completion Date	
2.14 Emergency Management c. Implement an Emergency Management Plan	Emergency Management Plan	The plan shall addresses all Project Co Services under the responsibility of the Project Co and detail both emergency response measures and operational continuity measures	Project Co shall submit the initial completed emergency management plan to WGH no later than 90 days prior to the Scheduled Substantial Completion Date	Shall update it annually thereafter The Project Co may be required from time to time to prepare plans for potential incidents or emergencies which are not listed in this Section 2.14c.
2.14 Emergency Management e. Public Emergency	Emergency Response Plan	Project Co will prepare a public emergency response plan to ensure continuous service in the event of a declared public emergency.  Project Co’s public emergency plan must integrate with WGH’s plans and be approved by WGH. The Project Co will be expected to participate in WGH’s planning activities as part of WGH’s business continuity plan. The public emergency plan must include design elements related to the Facility as well as services, materials, supplies and personnel. The plan may reference the emergency management plan and Project Co business continuity plan for aspects that are externally affected.  The format and content of the plan will be developed during transition in consultation with WGH.	This plan shall be delivered to WGH no later than 90 days before the Scheduled Substantial Completion Date.	Update as required due to changes
2.14 Emergency Planning f. Pandemic Planning	Business Continuity Plan as well as a plan addressing The Influx Of Patients And Increased Security Requirement s During The Pandemic	The Project Co must submit a business continuity plan as well as a plan addressing the influx of patients and increased security requirements during the pandemic. Project Co’s plan must address human resource, service continuity, alternative Project Co plans, Utilities and consumable procurement. Project Co’s plan must be a living document continually under amendment and be aligned with WGH Pandemic Influenza Plan, the County of Oxford Public Health PIP, the Ontario PIP and the Government of Canada PIP.	No requested completion date	This is a living document continually under amendment and must be aligned with the WGH Pandemic Influenza Plan, the County of Oxford Public Health PIP, the Ontario PIP and the Government of Canada PIP
2.14 Emergency Planning h. Fire and Plan	Fire Safety Plan	Project Co shall develop and implement a fire safety plan for the Facility in conjunction with WGH. The Project Co shall submit the	Project Co shall submit the initial completed fire	Shall update the plan on a regular basis to reflect

Section	Plan	Description	First Due Date	Renewal Date
		<p>fire safety plan for approval to WGH and the local fire authorities. Project Co shall ensure that the appropriate approvals are received from WGH and regulatory authorities within a reasonable timeframe, including timeframes required as per Occupancy permits or approvals.</p> <p>Project Co shall utilize graphic methods to illustrate exits, fire equipment, ‘you are here’ indicators, etc. on posted exit plans.</p>	<p>safety plan to WGH no later than 90 days prior to the Scheduled Substantial Completion Date</p>	<p>operational or equipment changes.</p>
<p>2.14 Emergency Planning i. Project Co Business Continuity Plan</p>	<p>Project Co Business Continuity Plan</p>	<p>Project Co shall submit the initial completed business continuity plan for Project Co’s internal and off-site operations and systems that may affect service delivery to WGH</p>	<p>No later than 90 days prior to the Scheduled Substantial Completion Date</p>	<p>Annually</p>
<p>2.14 Emergency Planning j. Training and Testing</p>	<p>Training and Testing Plan (x2)</p>	<p>The Project Co shall ensure that integrated building service system testing under Utilities power failure condition and under fire alarm conditions is conducted in accordance with Applicable Law. All systems shall be observed, verified and recorded by Project Co. All testing is to be reported at the monthly WGH Emergency Preparedness Meetings.</p> <p>Project Co shall work collaboratively with WGH to develop and deliver education and training related to emergency measures. This includes providing orientation and training to new WGH staff and related personnel.</p>	<p>No later than 90 days prior to the Scheduled Substantial Completion Date</p>	<p>Annually</p>
<p>2.17 Life Cycle Renewal c. 30 Year Life Cycle Replacement Plan</p>	<p>Life Cycle Replacement Plan</p>	<p>Project Co shall provide and update the original 30-year Lifecycle Replacement Plan annually. The updated Lifecycle Replacement Plan shall extend for a minimum 10 year window beyond the Operating Term to provide required budgeting and planning information for WGH.</p>	<p>n.a</p>	<p>Annually</p>
<p>2.17 Life Cycle Renewal d. 5 Year Capital Plan</p>	<p>5 Year Capital Plan</p>	<p>Based on the Lifecycle Replacement Plan 5-year capital plan shall be prepared by Project Co for WGH’s review on an annual basis. The capital plan shall include the next 5 years of the Life Cycle Replacement Plan and incorporate high level commencement and completion dates for all scheduled replacements during the period.</p>	<p>n/a</p>	<p>Annually</p>

<b>Section</b>	<b>Plan</b>	<b>Description</b>	<b>First Due Date</b>	<b>Renewal Date</b>
2.19 Preventive Maintenance Plan (whole section)	Preventive Maintenance Plan	The Preventive Maintenance Plan is part of the overall approach to ensuring the ongoing reliability and condition of the Facility in keeping with its critical nature. Project Co's Preventive Maintenance Plan shall be based on practices and procedures that are consistent with Good Industry Practices for Hospitals.	No later than 90 days prior to the Scheduled Substantial Completion Date	Annually
2.22 Material Management b. Environmentally Friendly Products	Listed as a Program or plan for safeguarding confidential recycling materials, including safeguarding , tracking and auditing	Project Co shall, on an annual basis, submit a report on the compliance and non-compliances with the Program. All materials substantiating the program shall be provided to WGH upon request.	No later than 90 days prior to the Scheduled Substantial Completion Date	Annually
2.27 Transition In e. Transition Plan	Transition Plan	The transition plan shall be developed by Project Co with the input and involvement of WGH to ensure the transition plan is coordinated with any required Hospital Services and with WGH's own transition plan for Hospital operations.	Based on Transition Committee agreement, no later than no later than 180 days prior to Scheduled Substantial Completion Date.	n/a
2.28 Transition Out – Hand Back f. Transition Out Plan	Transition Out Plan	Project Co shall be responsible for developing a detailed transition-out plan jointly with WGH in accordance with the provisions and general guidelines provided in this Section.	Based on Transition Committee agreement, no later than 18 months prior to Scheduled Substantial Completion Date.	
2.29 Cultural and Religious Occasions a. Annual Plan	Annual Plan	Annually, the WGH shall provide the Project Co with a list of religious observances and other special local, provincial or national occasions to be recognized.	n/a	annually
3.12 Specialized Hospital Systems d. Medical Gas Systems-Bottled Gas	Manifold medical Gas System Plan	Develop and implement a plan to assure that manifold medical gas systems provide service to the Facility at all times including but not limited to bottled gas procurement, delivery, storage, cylinder change-out and systems verification	Submit no later than 90 days prior to the Scheduled Substantial Completion Date	n/a
2.13.e Performance Action Plan	Performance Action Plan	As required	n/a	As required



4.3 Reports

This Appendix is provided for convenience only and should not be considered to represent all plans required by these Output Specifications or the Project Agreement.

Section	Report	Description	First Due Date	Renewal Date / Follow up
<b>SECTION 2</b>				
2.9 Reporting – f. Facility Management Report (FMR) and Utility Report	Facility Management Report	Project Co shall also prepare a comprehensive facility management report (FMR) that summarizes the activities for the period and provides analysis and commentary. The report shall contain different information depending on whether it is a monthly, quarterly or annual report as follows: See section 2.9 for requirements for Monthly, Quarterly and Annual Requirements	Monthly by the 10 <sup>th</sup> Business Day of the following the month	
			Quarterly by the 15 <sup>th</sup> Business Day of the month following the quarter	
			Annual by March 1 <sup>st</sup> to align with WGH fiscal year.	
2.9 Reporting – f. Facility Management Report (FMR) and Utility Report	Utility Report	Project Co shall prepare the Utility/Energy reports described in Schedule 20 – Payment Mechanism.		
2.1 General Requirements – n. Meet Certification Requirements	Green Guide for Health Care Report	Project Co shall meet the Intent and Credit Goals of the Green Guide for Health Care Integrated Operations for ongoing operational services. A report shall be required annually to WGH to identify progress and adherence.	Annual by [March 1 <sup>st</sup> ] to align with WGH fiscal year.	Annually
2.2 Legislative Requirements – a. Meet Applicable Law <b>and</b> 2.9 Reporting – e. Applicable Law Compliance	Applicable Law – Corrective Measures Report	Project Co shall advise WGH of any aspects of existing or proposed Applicable Law that it is aware it would not be in compliance with and shall provide a report identifying the corrective measures and timeframes for compliance.	As-required basis  Within 2 hours after discovery or as otherwise agreed in writing by WGH	Dependant on the Report
2.3 Standards, Policies and Procedures – c. Managing Change	Work Processes and Activities Change Report	When new WGH standards or policies are introduced, or existing standards or policies modified or amended, Project Co shall provide advice and recommendations on the impact to Project Co Services and any impact that the change could have on WGH or the Facility. Project Co shall develop and submit a report on how Project Co is changing or modifying its work processes and activities to meet the new requirements.	As-required basis	Dependant on Report

Section	Report	Description	First Due Date	Renewal Date / Follow up
2.9 Reporting – b. Reporting Content and Format	Sample Reports and Sample Data Formats Report	Project Co shall provide WGH with sample reports and sample data formats and test data no later than 90 days before the Scheduled Substantial Completion Date and prior to the first issuance of each report. WGH shall review the format and content and provide comments on adjustments or revisions that WGH deems necessary. Project Co shall make the adjustments in accordance with Section 2, Sub-section 2.9.a. of these Output Specifications.	90 days before the Scheduled Substantial Completion Date  and  Prior to the first issuance of each report	
2.9 Reporting – j. Events and Alarm Notification	Events and Alarm Notification Report	Trending and historical information (i.e. temperatures where included in the Design Specification) is to be tracked, maintained, analyzed and reported to WGH along with observations and corrective action. In all cases, Project Co shall provide an explanation on the alarms and shall describe measures that are or have been taken to correct the situation.	Immediately in accordance with communication protocols developed with WGH.	As-required
2.10 Central Dispatch Incident Management Process	Summary Report of Potentially Service Affecting Incidents	Project Co shall report issues or incidents that have the potential to impact Hospital Services in accordance with an approved incident management process.	As per FMR	
2.11 Environmental Management c. Reporting Requirements	Environmental Management Report	Project Co shall provide all reporting required under Applicable Law to WGH prior to submitting the reports to the legislative authority. Project Co shall ensure that WGH has at least 7 Business Days to review the report prior to its due date.	Ad-Hoc	As required
2.13 Quality Management - d. Quality Audits	Quality Audit Report	Project Co shall conduct quality audits in accordance with its quality manual and auditing schedules at a frequency of at least annually. Project Co shall report on the results of the quality audits annually in the FMR in the month following the audit.	As per FMR	
2.14 Emergency Management – g. Operational Risk Assessment	Risk Assessment Report	Project Co shall provide a risk assessment report to WGH with recommendations and action plans to mitigate risks. The report shall include identified risks that are not suitably mitigated in the emergency management plan.  On an ongoing basis, Project Co shall immediately report any known or identified risks to WGH if they pose a potential or immediate risk or threat to Hospital Services or to health and safety.  The risk assessment must include at least	Severity High: Immediate report  No later than 90 days prior to the Scheduled Substantial Completion Date	Shall update the report annually.

<b>Section</b>	<b>Report</b>	<b>Description</b>	<b>First Due Date</b>	<b>Renewal Date / Follow up</b>
		the following: <ul style="list-style-type: none"> <li>• Site access / security;</li> <li>• Reliability;</li> <li>• Changes in surrounding environment;</li> <li>• Spare part / material / supplies availability;</li> <li>• Service / Subcontractor issues; and System design issues.</li> </ul>		
2.17 Life Cycle Renewal – b. Building Condition Report	Building Condition Report (BCR)	Project Co shall conduct an assessment and prepare a building condition report annually.	Following 1 <sup>st</sup> year of operations.	Annually
2.22 Materials Management – b. Environmentally Friendly Products	Report on Environmentally Friendly Products	Project Co shall, on an annual basis, submit a report on the compliance and non-compliances with the program. All materials substantiating the program shall be provided to WGH upon request.	Annual by [March 1 <sup>st</sup> ] to align with WGH fiscal year.	
2.26 Continuous Conditioning – d. reporting	Commissioning Activities Report Section of FMR	Project Co shall report on the results of commissioning activities in the FMR.	Monthly in FMR Summary Highlights or Project Delivery as appropriate	As per FMR
2.26 Continuous Conditioning – e. IAQ Testing	Report on IAQ Testing	Project Co shall test and provide the report on Indoor Air Quality (IAQ) in the Facility. If the testing does not meet the required standard, the Project Co shall remediate and re-test until the standard is met.	Within 90 days after Scheduled Substantial Completion	Quarterly
<b><u>SECTION 3</u></b>				
3.1 Access Control / Protection Services / Security Operations – r. Security Audit Environment	Report on the Security Audit	Project Co shall prepare and presents an annual security audit report, identifying risk areas, making recommendations on how to address them	Delivery date to be mutually agreed with WGH	Annually
3.6 Central Dispatch – d. Reports	Central Dispatch Calls Summary Report	Project Co shall report on call centre statistics (type, volume, tendencies, response time, etc.) in accordance with Section 2.9 of these Output Specifications	M/Q/A as per FMR	M/Q/A as per FMR
3.7 Utilities Management Services c. Annual Energy Target Report	Energy Target Report	Project Co shall report on energy consumption by Utility type	In accordance with Schedule 20 and Section 3.7(c) of these Output Specifications	Monthly
3.7 Utilities Management Services d. Energy Analysis and Energy Report	Energy Analysis and Energy Report	Project Co shall report on Energy Analysis and Energy Report.	In accordance with Schedule 20 and Section 3.7(d) of these Output Specifications	Monthly
3.7 Utilities Management	Power Quality Report	Provide a monthly report on the power quality by Area and sub-area as defined by	In accordance with the FMR	Monthly

Section	Report	Description	First Due Date	Renewal Date / Follow up
Services f. Monitoring of Power Consumption and Quality		WGH		
3.9.7 Maintenance and Repairs – Fire Suppression Systems – b. Life Safety /Fire protection devices and/or suppression systems	System Discharge Occurrences Report	Project Co shall provide reports to WGH on a monthly basis outlining any system discharge occurrences, the reasoning for the occurrences and the response or corrective actions taken by Project Co	Ad-hoc or in FMR	As required
3.11 Project Management - h. Forecasting / Budgeting / Scheduling	Report on Project Management Budgets and Schedules	Project Co shall monitor, update and report on budget and schedule	In accordance with the FMR	
3.11 Project Management - i. reporting	Project Management Status Reports	<ul style="list-style-type: none"> <li>• Project Co shall provide monthly reports on overall schedule and budget forecasting</li> <li>• Project Co shall provide weekly reports on Individual Projects as identified by WGH</li> </ul>	In accordance with the FMR Or otherwise identified by WGH	Monthly And/or Weekly as required
3.12 Specialized Hospital Systems – a. Heliport	Heliport Inspection and Audit Report	<ul style="list-style-type: none"> <li>• Conduct inspection, audits and reporting on a yearly basis in co-operation with Heliport licensing or operations inspectors</li> </ul>	In accordance with legislative requirements.	Annually
3.12 Specialized Hospital Systems – e. Medical Gas Systems	Medical Gas System Report	<ul style="list-style-type: none"> <li>• Conduct annual maintenance inspections on all medical gas and related equipment in accordance with applicable CSA standards and associated regulations. Submit reports to WGH outlining inspection &amp; testing results, Project Co’s plans for correction of deficiencies or system failures</li> <li>• Annual Inspection and testing shall include but not be limited to;                             <ul style="list-style-type: none"> <li>• Source units</li> <li>• Master alarm systems</li> <li>• Remote alarm systems,</li> <li>• Terminal unit mechanical and flow performance,</li> <li>• Cross connection inspections,</li> <li>• Zone valve and construction inspections,</li> <li>• Medical air purity testing</li> </ul> </li> </ul>	Within first year – mutually agreed.	Annually

*End of Output Specifications*

**SCHEDULE 16****TITLE ENCUMBRANCES**

"Title Encumbrances" means:

1. Instrument No. 471755 registered the 17<sup>th</sup> day of December, 2003, being an easement in favour of The Corporation of the County of Oxford with respect to that part of the Site designated as Part 1, Plan 41R-7298.
2. Liens, charges or prior claims for taxes (which term includes charges, rates and assessments) or utilities (including levies or imposts for sewers and other municipal utility services) not yet due or if due, the validity of which is being contested in good faith, and liens or charges for the excess of the amount of any past due taxes or utilities charges for which a final assessment or account has not been received over the amount of such taxes or utilities charges as estimated and paid by WGH.
3. Inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Site or of which notice in writing shall not at the time have been given to WGH pursuant to the *Construction Lien Act* (Ontario) or otherwise or any lien or charge, a claim for which, although registered, or notice of which, although given, relates to obligations not overdue or delinquent and in respect of any of the foregoing cases, WGH has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts so as to protect the Site therefrom.
4. The rights reserved to or vested in any municipality or governmental or other public authority by any statutory provision.
5. Any subsisting reservations, limitations, provisions and conditions contained in any original grants from the Crown of any land or interests therein, reservations of undersurface rights to mines and minerals of any kind.
6. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations as to the use of the Site, which do not materially impair the value of the Site or materially interfere with the use of the Site for the purposes for which it is held.
7. Any encroachments, easements, rights of way or similar interests which would be revealed by an up-to-date survey of the Site.

**SCHEDULE 17****EMPLOYEE TRANSITION****1. Affected Unionized Employees**

1.1 In respect of the Affected Unionized Employees identified by WGH to Project Co pursuant to Section 28.1(a) of the Project Agreement, WGH shall, no later than 90 days prior to the Transfer Date, and, thereafter, no later than 5 Business Days from completion of a payroll period in which there is a material change in the relevant information, provide Project Co or the relevant Project Co Party, as the case may be, with, in respect of those Affected Unionized Employees only,:

- (a) a list of the Affected Unionized Employees to be transferred pursuant to Section 28.2 of the Project Agreement;
- (b) a copy of the Collective Agreement, including any amendments thereto, applicable to any of the applicable Affected Unionized Employees together with a copy of any arbitration decisions under the Collective Agreement decided in the last 6 years (excluding any arbitration decisions relating to disciplinary matters or termination of an individual employee or group of employees) that WGH has in its possession at that time;
- (c) a list detailing the hourly wage rate, job classification or position, length of service, date of hire (if different), regular hours of work, overtime worked in the last 12 months, vacation pay entitlements, accumulated sick banks, employment status (active, paid or unpaid leave of absence and the nature of the leave of absence, layoff, short or long term disability, workers' compensation leave or discharged pending arbitration) and, if known, expected date of return if not actively at work for each applicable Affected Union Employee;
- (d) a description of the benefits to which the applicable Affected Unionized Employees may be entitled on the Transfer Date, including a description of any extended health and medical coverage, group life insurance, accidental death and dismemberment, short and long term disability, vision care, dental care and any other similar benefits;
- (e) a description of the retirement benefits to which the applicable Affected Unionized Employees will be entitled on the Transfer Date, including any registered pension plans and group retirement savings plans;
- (f) a description of any other material supplemental benefits to which the applicable Affected Unionized Employees will be entitled on the Transfer Date that are not specified in the Collective Agreement, including Canada Savings Bonds, group registered retirement savings plan programs and employee assistance programs; and

- (g) a list of any outstanding grievances or litigation, including claims under the *Human Rights Code* (Ontario), the *Occupational Health and Safety Act* (Ontario) and other provincial employment statutes, related to the applicable Affected Unionized Employees.
- 1.2 Project Co shall, or shall cause the relevant Project Co Party to, make offers of continuing employment to the Affected Unionized Employees identified by WGH to Project Co pursuant to Section 28.1(a) of the Project Agreement no later than 20 Business Days prior to the Transfer Date, to take effect from the Transfer Date.
- 1.3 WGH shall, no later than 3 Business Days after the Transfer Date, provide Project Co or the relevant Project Co Party with a list, updated to the Transfer Date, of any outstanding grievances or litigation related to the Transferred Unionized Employees.
- 1.4 Project Co may, in consultation with the union, issue or cause the relevant Project Co Party to issue, a confirmation of continuing employment to the Transferred Unionized Employees identified on the list described in Section 1.1(a) above.

## **2. Affected Non-Union Employees**

- 2.1 In respect of the Affected Non-Union Employees identified by WGH to Project Co pursuant to Section 28.1(a) of the Project Agreement, WGH shall, no later than 90 Business Days prior to the Transfer Date, and, thereafter, no later than 5 Business Days from completion of a payroll period in which there is a material change in the relevant information, provide Project Co or the relevant Project Co Party, as the case may be, with, in respect of those Affected Non-Unionized Employees only:
  - (a) a copy of any employment contract, including any amendments thereto, applicable to such Affected Non-Union Employee or, where there is not an existing written employment contract, a description of the terms of employment of such Affected Non-Union Employee, including salary, bonuses, incentive plans (short term and long term) and any other terms;
  - (b) a list detailing the salary, job classification or position, length of service, date of hire (if different), regular hours of work, overtime worked in the last 12 months, accumulated time off in lieu of overtime, vacation pay entitlements and employment status (active, paid or unpaid leave of absence and the nature of the leave of absence, layoff, short or long term disability or workers' compensation leave) and, if known, expected date of return if not actively at work for each such Affected Non-Union Employee;
  - (c) a description of the benefits to which such Affected Non-Union Employees may be entitled at the Transfer Date, including a description of any extended health and medical coverage, group life insurance, accidental death and dismemberment, short and long term disability, vision care, dental care and any other similar benefits;



- (d) a description of the retirement benefits to which such Affected Non-Union Employees may be entitled at the Transfer Date, including any registered pension plans, group retirement savings plans, deferred profit sharing plans, retirement compensation arrangements and supplemental retirement savings plans; and
  - (e) a list of any outstanding litigation, including claims under the *Human Rights Code* (Ontario), the *Occupational Health and Safety Act* (Ontario), the *Workplace Safety and Insurance Act, 1997* (Ontario), the *Employment Standards Act, 2000* (Ontario) and other provincial employment statutes, related to the Affected Non-Union Employees.
- 2.2 Project Co shall, or shall cause the relevant Project Co Party to, make offers of employment to the Affected Non-Union Employees identified by WGH to Project Co pursuant to Section 28.1(a) of the Project Agreement, no later than 20 Business Days prior to the Transfer Date, to take effect from and after the Transfer Date.
- 2.3 Project Co shall provide, or shall cause the relevant Project Co Party to provide, to WGH a list of the Affected Non-Union Employees that have accepted the offer of employment and will become Transferred Non-Union Employees.
- 2.4 WGH shall, no later than 3 Business Days after the Transfer Date, provide Project Co or the relevant Project Co Party with a list, updated to the Transfer Date, of any outstanding litigation related to the Transferred Non-Union Employees.

### **3. Benefit Plan**

- 3.1 No later than 20 Business Days prior to the Transfer Date, Project Co shall arrange, or shall cause the relevant Project Co Party to arrange, in accordance with Section 28 of the Project Agreement, for the establishment or designation of benefit plans in which any Transferred Employee would participate, on or after the Transfer Date, and shall immediately notify WGH, in writing, of the establishment or designation of such benefit plans. WGH will notify the applicable insurer(s) that the Transferred Employees will cease to participate in WGH's benefit plans effective as of the Transfer Date.

### **4. Pension Plan**

- 4.1 Subject to Section 4.2, no later than 60 Business Days prior to the Transfer Date, Project Co shall, or shall cause the relevant Project Co Party to, either:
- (a) provide confirmation, in writing, to WGH that Project Co, or the relevant Project Co Party, is currently a participating employer under the terms of the Pension Plan; or
  - (b) seek approval from the administrator of the Pension Plan that it qualifies as a participating employer under the terms of the Pension Plan so as to provide pension benefits in accordance with Section 28 of the Project Agreement for all Transferred Employees on and after the Transfer Date, and provide confirmation,

in writing, to WGH of the approval from the administrator of the Pension Plan no later than 5 Business Days after such approval.

- 4.2 If Project Co is unable to become a participating employer under the Pension Plan, no later than 60 Business Days prior to the Transfer Date, Project Co shall, or shall cause the relevant Project Co Party to, either:
- (a) establish a new pension plan so as to provide pension benefits in accordance with Section 28 of the Project Agreement for all Transferred Employees on and after the Transfer Date, and provide confirmation, in writing, to WGH of the establishment of a new pension plan no later than 5 Business Days after such establishment or designation; or
  - (b) designate an existing pension plan so as to provide pension benefits in accordance with Section 28 of the Project Agreement for all Transferred Employees on and after the Transfer Date, and provide confirmation, in writing, to WGH of the designation of an existing pension plan no later than 5 Business Days after such establishment or designation.
- 4.3 No later than 20 Business Days prior to the Transfer Date, WGH shall notify the administrator of the Pension Plan that, except as outlined in Section 5.2, the Transferred Employees will cease to be its employees effective as of the Transfer Date and, accordingly, that WGH will cease to be responsible for contributions on behalf of the Transferred Employees on and after the Transfer Date.

## **5. Leaves of Absence**

- 5.1 Affected Unionized Employees who are in receipt of short term disability or long term disability benefits on the date immediately preceding the Transfer Date or who are on WSIB or leave of absence on the Transfer Date will become Transferred Unionized Employees on the Transfer Date, if they have accepted continued employment with Project Co or a Project Co Party.
- 5.2 Affected Non-Union Employees who have accepted an offer of employment made by Project Co or a Project Co Party but who are in receipt of short term disability or long term disability benefits on the date immediately preceding the Transfer Date shall remain employees of WGH so as not to adversely affect their entitlement to benefits until such time as they cease to receive such disability benefits or are declared fit to resume employment, at which time, they will become Transferred Non-Union Employees pursuant to the Project Agreement, unless otherwise agreed to on an individual employee basis between the Parties. All other Affected Non-Union Employees who have accepted an offer of employment made by Project Co or a Project Co Party and who are on WSIB or leave of absence on the Transfer Date will become Transferred Non-Union Employees on the Transfer Date.

**6. List of Employees**

- 6.1 On Financial Close, WGH shall provide to Project Co a list of the names of the Affected Hospital Employees.
- 6.2 On or before the Transfer Date, WGH shall provide to Project Co an updated list of the names of the Affected Hospital Employees.

**7. Employee Files**

- 7.1 WGH shall (to the extent permitted by Applicable Law and the Collective Agreement) transfer to Project Co, no later than 2 Business Days following the Transfer Date, copies of all documents held in the Transferred Employees' employment files, excluding any Personal Information that may be relevant to the pension and benefit plans provided by WGH, which Personal Information shall not be transferred.

**8. Vacation and Overtime Accrual**

- 8.1 Notwithstanding Section 28.2(a) of the Project Agreement, WGH shall be responsible for vacation and overtime accruals which are attributed to the employment of each Transferred Employee prior to the Transfer Date, but which are claimed by the Transferred Employee after the Transfer Date, up to the value of such accruals as calculated by WGH as at the Transfer Date.
- 8.2 WGH shall notify Project Co as to the aggregate amount of such accruals no later than 5 Business Days after the Transfer Date and shall pay such amount to Project Co within 10 Business Days thereafter.
- 8.3 Project Co shall, following its receipt of such monies from WGH, transfer such monies to the Project Co Party that is the employer of the Transferred Employees, if applicable. For greater certainty, WGH's obligations under this Section 8 shall be fully satisfied by such payment to Project Co, regardless of whether a Project Co Party shall be the employer of any Transferred Employees.

**9. Sick Banks**

- 9.1 WGH's responsibility for all Transferred Employees' accumulated sick banks ends on the Transfer Date. For greater certainty, Project Co shall assume, or shall cause the relevant Project Co Party to assume, all liability and obligations related to the Transferred Employees' accumulated sick banks as at the Transfer Date.

**SCHEDULE 18****COMMUNICATIONS PROTOCOL****1. GENERAL****1.1 Communications Principles**

The Project represents an important infrastructure commitment by the Province. Accordingly, a comprehensive communications and stakeholder relations plan is required to ensure the public is informed and engaged where necessary and to meet both WGH and Infrastructure Ontario communications requirements. This plan will support effective communications between Project Co and WGH, and with WGH stakeholders and the greater Woodstock community.

**2. WGH RESPONSIBILITIES****2.1 Lead Communications Role**

WGH will assume the lead communications role for its local community. WGH will take primary responsibility for all communications matters and will be responsible for:

- (a) providing identified, dedicated lead communications contacts with applicable skills and experience with 24/7 availability on applicable aspects of communications and issues management;
- (b) providing an identified, dedicated media-trained lead media spokesperson, with back-up media-trained personnel, as required with 24/7 availability on applicable aspects of communications;
- (c) acting as primary media contact for the Project;
- (d) providing final review and approval of all public communications materials;
- (e) communicating promptly with all relevant parties on crisis issues and communicating within 24 hours on general issues;
- (f) maintaining and updating the Project website, as required; and
- (g) providing coordinated updates to internal/ external stakeholders, as required.

**2.2 WGH Communications Responsibilities During the Works Phase**

In the period up to the Substantial Completion Date, WGH will be responsible for the following matters:

- (a) Communications: To develop a comprehensive communications strategy and program that includes community relations, media relations, marketing, special events, employee communications and government relations regarding issues related to the Project.

- (b) Crisis Communications: To undertake, in cooperation with Project Co, required planning for potential crisis issues related to the Project. A plan will be developed within 30 days following Financial Close outlining the roles and responsibilities of both WGH and Project Co during a crisis situation.
- (c) Patient-Related Communication: To provide all communications related to the provision of the Hospital Services.
- (d) Performance Review: To review, on a periodic basis, Project Co's performance in providing communications support as outlined in Section 3 of this Schedule 18.

### **2.3 WGH Communications Responsibilities During the Operational Term**

No later than 30 days prior to the Scheduled Substantial Completion Date, the Parties will agree on a communications protocol to apply during the Operational Term.

## **3. PROJECT CO RESPONSIBILITIES**

### **3.1 Support Communications Role**

Project Co will assume a supporting role with respect to communications related to the Project. Project Co will be responsible for:

- (a) providing identified, dedicated media-trained lead media spokesperson (with back-up media-trained personnel, as required) with 24/7 availability on applicable aspects of communications;
- (b) responding to communications issues in accordance with agreed timeframes;
- (c) reviewing and/ or providing communications and/ or technical materials reasonably requested by WGH for website content;
- (d) updating, in collaboration with WGH, internal/ external stakeholders, as required, including involvement and participation in community events;
- (e) providing the public/ media reasonable access to the Site for milestone events;
- (f) directing all media enquiries and interview requests to WGH's lead communications contact;
- (g) maintaining a written record of all material public enquiries, complaints and communications and providing copies to WGH's lead communications contact on a weekly basis (or immediately if urgent);
- (h) reporting to WGH on communications matters on an agreed upon basis;
- (i) participating in WGH communications meetings, as required; and

- (j) during a crisis situation, ensuring and making available sufficient resources to work effectively with WGH and proactively manage and perform its communications responsibilities.

### **3.2 Project Co Communications Responsibilities During the Works Phase**

In the period up to the Substantial Completion Date, Project Co will:

- (a) within 30 days following Financial Close and in collaboration with WGH, develop, maintain and implement a construction liaison and communications plan that includes:
- (i) a description of Project Co's approach to all communications aspects of the Project;
  - (ii) a description of Project Co's communications team, including the roles and responsibilities for each team member and any Subcontractors who will provide any aspect of the communications program; and
  - (iii) the identification of proposed communication tools to be used to keep the community and other stakeholders informed with respect to the progress of the Project;
- (b) update the construction liaison and communications plan on an annual basis or as reasonably requested by WGH;
- (c) coordinate with WGH in the implementation of the construction liaison and communications plan;
- (d) attend regular meetings with WGH to discuss communication issues and developments;
- (e) produce monthly progress reports, which will include information on activities, public and media enquiries, any emerging issues, and actions taken in response to issues;
- (f) through WGH, provide regular updates to the immediately affected property owners and neighbourhoods on Works related issues with particular attention to communicating the scope, schedule and status of the Works. This will include processes to proactively address any Works related enquiries and issues (e.g., public enquiries and complaints re noise, hours of work, dust, etc.);
- (g) provide regular updates to WGH related to the management of local traffic during the Works;
- (h) develop, in collaboration with WGH, a crisis communication plan outlining roles and responsibilities for a list of potential crisis issues that could develop during the Works; and
- (i) follow any guidelines provided by WGH related to signage or advertising at the Site.

**3.3 Project Co Communications Responsibilities During the Operational Term**

No later than 90 days prior to the Scheduled Substantial Completion Date, the Parties will agree on a communications protocol to apply during the Operational Term.

**4. PUBLIC DISCLOSURE AND MEDIA RELEASES****4.1 Public Disclosure and Media Releases**

- (a) Project Co shall not, and shall ensure that no Project Co Party shall, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, this Project Agreement, the Hospital Services, or any matters related thereto, without the prior written consent of WGH, in its sole discretion.
- (b) Unless otherwise required by Applicable Law (but only to that extent), neither Party shall use the other Party's name or refer to the other Party, directly or indirectly, in any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, this Project Agreement, the Hospital Services, or any matter related thereto, without the prior written consent of the other Party.
- (c) Project Co shall, and shall ensure that all Project Co Parties and its and their subcontractors, agents, employees, officers and directors, in each case, comply, at all times, with WGH's media release and publicity protocols or guidelines, as such protocols and/or guidelines are updated by WGH from time to time.

**SCHEDULE 19**

**HERITAGE GUIDELINES AND PROTOCOLS**

See attached.



**BEST PRACTICE GUIDELINES FOR THE  
TREATMENT OF HUMAN SKELETAL REMAINS DISCOVERED OUTSIDE  
A LICENSED CEMETERY**

The attached document is a "best practices" guideline describing the procedures for the treatment of human skeletal remains discovered outside a licensed cemetery. It reflects an agreement among members of the various ministries and agencies involved in the resolution of such burials (i.e., First Nations Burial Committee of Toronto; Toronto Police Service; Ministry of Citizenship, Culture and Recreation; Cemeteries Regulation Section of Ministry of Consumer and Commercial Relations; Ministry of Transportation; and The Office of the Chief Coroner) and reflects what is seen as the best practice.

The document is intended to serve as a guide to approval authorities as a discovery goes through the many different steps involved in a reburial to ensure that human remains are treated with respect and dignity and processed in a timely and efficient manner.

It is intended that this guide be reviewed periodically to reflect experiences with the topic. The signatories to this guideline have agreed to ensure that staffs within their jurisdictions have access to this guideline.

Should clarification be required, please refer to the Cemeteries Act (Revised) R.S.O.1990 or contact one of the signatories.

Signatories:

First Nations Burial Committee of Toronto  
Toronto Police Service  
Ministry of Citizenship, Culture and Recreation  
Cemeteries Regulation Section of Ministry of Consumer and Commercial Relations  
Ministry of Transportation  
Office of the Chief Coroner

## The Discovery of Human Remains - Best Practices

### Introduction

The following is designed to assist all those involved in responding to and addressing discoveries of human skeletal remains outside of a licensed cemetery. The advice is presented as a series of best practices among the many overlapping interests and jurisdictions of several ministries, agencies, police services and other government bodies that are triggered when human skeletal remains are uncovered. This approach has been developed with the support and approval of the First Nations Burial Committee of Toronto. The practices outlined here are equally applicable to discoveries of human remains across Ontario.

These best practices support the existing regulatory and statutory mechanisms in Ontario. Responsibility for a burial passes through a number of jurisdictions (i.e., Police, Coroner, Cemeteries Regulation Section) and the intent of this document is to ensure this flow is effective and seamless. This information should be read along with the attached flow chart outlining the mandatory process to be followed under existing statutes. Although the flow chart describes the process as being linear, in many instances events can and do happen simultaneously.

### A Note on Public Notification:

Getting through the entire discovery and disposition process when human remains are found will see the authority of the issue shift among several agencies. As such, until all investigations have been carried out and the disposition resolved, formal press releases or contacting the media should only occur if all affected authorities have concurred (i.e. police, coroner and Cemeteries Registrar). In addition, after all investigations have been completed, the concerns of the landowner and group acting as representative for the deceased (e.g. First Nation) should be considered before media contact. Premature media notification, particularly prior to having accurate identification of the deceased, will lead to misinformation, misplaced concerns being raised, and potentially a hardening of attitudes. This can make a final disposition agreement more difficult to reach.

Any media interest should be directed to the agency that has authority over the burial site at the time of the media contact (i.e. police, Coroner's Office or Cemeteries Registrar). Media photography of the remains should be avoided: a publicly displayed photograph of skeletal remains is both disrespectful to the deceased and offensive to representatives for the deceased.

### A Note on Archaeology:

It is important to note that the discovery of human remains will occur in two basic contexts: either through accidental discovery by an individual in unexpected circumstances, or through discovery as part of an archaeological examination/excavation of a locale by a trained archaeologist, licensed by the Ministry of Citizenship, Culture & Recreation (MCzCR) under the Ontario Heritage Act. In the latter case, the archaeologist will possess the skills, knowledge and expertise to assist both the police and coroner in determining the age of the interment, as well as to assist the landowner in generating the information the Cemeteries Registrar will require to determine the nature, extent and cultural affiliation of the persons buried. His or her presence at the front end of the discovery process will greatly aid all authorities in making quick and

accurate determinations, and as such should be relied on as much as possible in such circumstances.

### **Under the Coroner's Act**

1. A person finding skeletal material may first contact staff in an agency other than the police or coroner (e.g. MCzCR or Ministry of Consumer & Commercial Relations [MCCR] staff). When that occurs, the person is to be immediately instructed to report the find to the local police or coroner. An appropriate contact list (e.g. Regional Coroner's offices) should be maintained by all agencies that may be first contacted about such a discovery.

2. When the police are first contacted they will attend the scene, protect the site and contact the local coroner. The coroner, or the police on behalf of the coroner, will conduct an investigation to determine if: a) the skeletal material is human and b) if the site represents a crime scene. The investigators will need to obtain all the information required to make a determination. However, efforts should be made at this stage to minimize site disturbance. All bone and associated grave goods still embedded in the ground should not be disturbed unless removal is essential for the coroner to make a determination. Poking, pulling, and digging up the bone in an uncontrolled manner can quickly destroy critical data essential to making accurate identifications.

3. Whenever possible, the police and coroner should seek the assistance of an archaeologist in conducting the investigation. This is especially critical since burials are archaeological deposits in their own right, and are often found as part of more extensive archaeological deposits. As such, confirming an association of the burial with a surrounding archaeological site will help determine whether or not the remains are part of a crime scene. Also, the archaeologist can help ensure that the larger heritage resource is not destroyed or damaged during investigation of the skeletal material. MCzCR staff can sometimes be called on to visit the scene with the police.

4. Archaeologists will consider issues such as the condition and discoloration of the bone, presence of artifacts around the discovery site, and knowledge of known archaeological sites in the area to determine chronological (and cultural) associations. If intact deposits are examined, features such as the presence/absence of a coffin, depth of remains, position of body, presence of grave goods, etc., will also assist the determination.

5. When skeletal material is found and it is not readily obvious that this material is either a burial or crime scene, coroners will often employ the services of a physical anthropologist or osteologist to examine the bone in detail. While the coroner requires only a basic determination of age (i.e. recent vs. historic/ancient) and nature of the interment, the physical anthropologist's study can also determine cultural affiliation (based on the presence/absence of specific skeletal traits), age of the individual at death, sex, and even funerary practices. This information will be essential for both the Cemeteries Registrar's investigation, as well as for the deceased's representative in determining the appropriate re-interment requirements. As such, latitude in allowing the physical anthropologist to complete a full, basic descriptive analysis of the skeletal material as a part of the coroner's investigation will greatly aid in addressing remaining issues associated with this process.

6. When the Coroner is satisfied the discovery site is not a crime scene, it is essential that he/she notifies the Registrar of Cemeteries of the discovery, and passes along any relevant information (e.g. contacts, results of any analyses, etc.). It is also essential that the landowner understand that he/she will need to preserve and protect the site from the point when the police are no longer involved, and until a disposition is made under the Cemeteries Act.

### **Under the Cemeteries Act**

1. Under the Cemeteries Act the Registrar will be required to determine and formally declare what the locale is: either an irregular burial site (unintentional interment), or an unapproved cemetery or unapproved Aboriginal Peoples cemetery. When the information is not already in hand (i.e. based on archaeological findings or the results of the coroner's investigation) the landowner normally will be required to undertake an investigation. Such an investigation will generate the information necessary for the Registrar to make an accurate declaration.

2. In most cases, such investigations will be undertaken by a licensed and qualified archaeologist hired by the landowner. MCzCR ensures that the Cemeteries Registrar has a current list of such licensees which can be made available to the landowner.

3. The intent of the investigation is to provide the Cemeteries Registrar with, the data necessary to make a declaration. As such, burial investigations will minimize normal archaeological fieldwork and reporting requirements. It will be determined following the Registrar's declaration and disposition agreement reached between landowner and deceased's representative whether disinterment is necessary.

4. The investigation for the Registrar must determine whether or not the interment(s) were intentional, and the basis on which this is made, the cultural affiliation of the deceased, and the defined limits of the area containing burials, the style and manner in which the remains are interred, and a description of the artifacts determined to form part of the burial site. It may also be necessary to determine the exact number of discrete burials present in the area. Excavation methods should maximize recovery of this data, while minimizing disturbances to the remains. Recording should also be limited to that required by the Registrar (e.g. emphasis on mapping location of burials in relation to property lines, existing structures, or other reference points). MCzCR will advise licensed archaeologists of the appropriate archaeological methods.

5. During the investigation, the remains must be treated with respect and care. All artifacts found in the burial are to be considered grave goods, and should be treated as part of the burial, and kept with the skeletal remains. Burials must not be unnecessarily exposed to the elements or to casual viewing, and must be covered over as soon as possible following identification. The landowner continues to be responsible for preserving and protecting the site during this investigation, and until a disposition is made under the Cemeteries Act.

6. At the conclusion of the investigation a report must be submitted to the Registrar. This report will need to include the information required in Point 4. For sites that date to the last 200 years, historical research (e.g. land title search, newspapers, local informant interviews, etc.) may be required to answer some of the information points outlined in Point 4. This report will also

serve to address the archaeologist's reporting requirements for the license issued by MCzCR under the Ontario Heritage Act.

7. Once the Registrar can make a declaration, and the locale is determined to be an unapproved cemetery, he/she will locate a representative for the deceased. If the locale is an unapproved Aboriginal Peoples cemetery, the Registrar will contact the nearest First Nation Government. Another community of Aboriginal People whose members have a close cultural affinity to the interred person may also act as representative. As well, if agreed-to and established before-hand, a designated "Burials Committee" can serve as the first point of Aboriginal contact for the Registrar. If the burial is non-aboriginal, the Registrar will attempt to find a representative through media notification. Where no descendant is found, a representative of the same religious denomination as the person buried can act for the deceased.

8. The representative and landowner will agree to a disposition agreement outlining what is to be done with the burials. Where there is no agreement, binding arbitration is provided under the Cemeteries Act. Typically there are three options: 1) leave the remains intact and establish the site as a cemetery; 2) establish a cemetery nearby, remove the remains and re-inter them there; 3) remove the remains and reinter them in an existing cemetery. The option selected with respect to an unapproved cemetery or unapproved Aboriginal Peoples cemetery will be negotiated between the landowner and representative for the deceased.

9. If the discovery is declared to be an irregular burial site, there are three options: 1) leave the remains intact and establish the site as a cemetery; 2) establish a cemetery nearby, remove the remains and re-inter them there; 3) remove the remains and re-inter them into an existing cemetery. The landowner will decide which option and is responsible for all costs.

10. In respect to an unapproved cemetery or unapproved Aboriginal Peoples cemetery, if a disinterment/reburial option is selected, the burials will need to be fully uncovered, removed and reinterred with a minimum of damage and time. Costs associated with a disposition agreement will be negotiated by the landowner and representative. While the time it takes to complete this work will be subject to the wishes of the landowner and representative, factors such as the number and nature of interments, level of observations required by the representative for re-interment purposes, etc., will affect the length of time needed to complete the removal and reinterment. Consequently, in order to minimize time while maximizing care and documentation, this work is best done by a licensed archaeologist under the direction of the disposition agreement.

11. During removal, detailed observations will need to be made of the archaeological context of the burial to ensure that all associated remains and grave goods are fully recovered. Age at death and sex of the individual should also be noted. This information will assist in determining the appropriate methods of re-interment, as well as to assist in determining what specific ceremonies need to accompany the reburial. Basic mapping can be used to aid in making these observations. No scientific analysis of the skeletal remains or grave goods can occur during this process without the consent of the representative of the deceased.

12. Should the disposition agreement impact on adjacent archaeological remains, or should concerns be raised for these deposits during negotiations, MCzCR will advise and work closely

with the Cemeteries Registrar and others concerned to determine what is the most appropriate course of action. MCzCR will also assist in mediating any issues that might arise between the licensed archaeologist and other parties.

July 15, 1998

**CULTURAL HERITAGE PROTOCOL  
AGREEMENT BETWEEN  
THE MINISTRY OF GOVERNMENT SERVICES &  
THE MINISTRY OF CULTURE & COMMUNICATIONS**

**Introduction**

The Cultural Heritage Protocol is an agreement between the Ministry of Government Services (MGS) and the Ministry of Culture and Communications (MCC) concerning the development of a process for identifying and protecting cultural heritage resources affected by those MGS real property undertakings addressed in the MGS Parent Class Environmental Assessment (EA).

Effective July 1, 1991, the Protocol applies to Ontario Regulation 1/90 (MGS 1021, and is intended to continue under and in parallel with the functioning of the MGS Parent Class EA.

**Cultural Heritage Resources**

The following are cultural heritage resources based in real property:

- archaeological sites
- buildings and structural remains of historical, architectural and contextual value
- districts or landscapes of historic and scenic value in rural, village and urban contexts
- places which hold significance because of sacred value or long traditional use

**MGS Responsibilities**

As a purchaser, property owner or vendor, MGS is responsible for protecting the provincial interest in preserving its cultural heritage resources. As a tenant, MGS must not adversely affect cultural heritage resources on leased property.

**Implementation Plan**

MGS will implement the Protocol in two phases commencing before the implementation date of MGS Parent Class EA.

- **Phase 1** is a short-term assignment to be performed by consultants in 3 stages.
- **Phase 2** is an ongoing responsibility requiring permanent resources.

**Phase 1:**

This phase will be implemented in 3 stages as follows:

- A. MGS will retain a consultant to carry out the following steps:

1. Develop operational definitions of the cultural heritage resources listed above.
  2. Develop simple and effective criteria for determining whether or not a property has potential heritage significance.
  3. Prepare a list of available MGS, MCC and other government data sources for the recognition of cultural heritage resources.
  4. Identify and review existing guidelines; adopt/adapt relevant materials for MGS purposes, resulting in:
    - (a) A Guideline for Appropriate Documentation indicating where, when, who, and to what extent documentation should be collected for buildings, groups of structures, structural remains, districts and landscapes.
    - (b) An Evaluation System which can assess the significance of the resource being documented.
    - (c) A Guideline for Maintenance, Repair and Alteration identifying appropriate means of carrying out changes, renovation, rehabilitation, restoration, or additions to structures which have heritage significance.
  5. Assemble a list of government and non-government consultative sources, based on the stakeholders listed below, for the four categories of cultural heritage resources.
  6. Develop heritage inventory forms which can be used by field staff and serve as the basis for a physical file.
- B. MGS will retain consultants on a regional basis to carry out the following steps;
1. Review additional non-government consultative sources, based on the stakeholders listed in Phase 2 "Evaluation Process", for the four categories of cultural heritage resources.
  2. Review MGS buildings and identify the potential cultural heritage resources: note any heritage implications of pertinent MGS building sites and develop an interim listing.
  3. Document any immediate threats to the heritage features, and the implications the heritage features might have on future property management or development.
- C. MGS will retain the consultant for Phase 1A to carry out the following step:



1. Review existing guidelines, as well as the "generic guidelines" developed in Phase 1A (step #4), and adopt/adapt relevant materials for MGS purposes, resulting in:
  - (a) A Guideline for the Assessment of Archeological Sites indicating where, when and how to access.
  - (b) A Guideline for Mitigative Measures relating to projects involving heritage structures. This would describe the appropriate means of dealing with unavoidable impacts and discuss relocation, moth balling, demolition and reassembly, screening, etc.
  - (c) A Guideline for Compatible Development indicating appropriate ways to build new structures which are compatible with existing buildings, districts or landscapes.

**Phase 2:**

This phase may commence before the completion of Phase 1, and will involve the following activities:

**A. Evaluation Process**

Using the "generic guidelines" from Phase 1A (Step #4), MGS will carry out active evaluations for specific projects, involving the collection of any necessary data, to determine the significance, options and courses of action to be documented in evaluation reports.

For specific undertakings, MGS and MCC will evaluate potential cultural heritage resources in consultation with stakeholders:

- for archaeological sites:  
contact MCC, Ministry of Natural Resources (MNR), aboriginal groups, historical societies
- for buildings and structural remains of buildings:  
contact MCC, local architectural conservation advisory councils (LACACs), historical societies, local and regional municipalities
- for districts or landscapes of historic and scenic value in rural, village and urban contexts:  
contact local and regional municipalities and LACACs
- for unorganized territories:  
contact MNR, Ministry of Municipal Affairs, aboriginal groups
- for places which hold significance because of sacred values or long traditional use:

contact aboriginal groups, local and regional municipalities

Upon approval of the MGS Parent Class EA, MGS will follow the consultation process outlined in the "Class EA Methodology" (Section 4).

**B. Inventory**

An inventory is required to capture and access heritage-related information. Based on the "interim listing" prepared as part of Phase IB (Step #2), any prevailing Information System will have fields to flag whether a property has, has not or may have heritage significance.

These "flags" must be cross-referenced to evaluation reports developed as part of the "evaluation process" which describe the heritage features in detail, identify immediate threats to them, and examine their potential implications on future property management or development.

The inventory will require ongoing maintenance, and must be readily available to MGS personnel.

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Tim Casey  
Assistant Deputy Minister  
Realty Group  
Ministry of Government Services

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Linda Stevens  
Assistant Deputy Minister  
Cultural Division  
Ministry of Culture and  
Communications

**SCHEDULE 20**

**PAYMENT MECHANISM**

**PART A:  
DEFINITIONS**

**1. DEFINITIONS**

- 1.1 "**Accessibility Condition**" means a state or condition of the relevant Functional Part or the means of access to it which allows all persons who are entitled to enter, occupy or use the relevant Functional Part to enter and leave the Functional Part safely and conveniently and using normal access routes. For the avoidance of doubt, in the event of an Elevator Availability Failure, it shall be assumed that WGH's access to the Lower Floor Level and the Second Floor Level of the Facility has been impaired and there shall be an Elevator Availability Failure Deduction.
- 1.2 "**Ad-Hoc Services**" means services which, in accordance with Schedule 15 - Output Specifications, WGH is entitled to require Project Co to provide but where Project Co's obligation to provide those services does not arise unless and until it is requested to do so by WGH.
- 1.3 "**Ad-Hoc Services Request**" means a request for the provision of Ad-Hoc Services made by WGH to Project Co in accordance with Schedule 15 - Output Specifications.
- 1.4 "**Adjusted Annual Energy Target**" shall have the meaning given to it in Section 1.3(a)(i) of Part H of this Schedule 20.
- 1.5 "**Annual Energy Target**" means the total amount of Energy which it is expected will be used at the Facility and is calculated in accordance with Section 1.1(g) of Part H of this Schedule 20, as adjusted in accordance with Section 1.2 of Part H of this Schedule 20.
- 1.6 "**Annual Review Date**" means the third and every subsequent anniversary of the commencement of the Initial Period.
- 1.7 "**Annual Service Payment**" means the sum in Canadian dollars calculated in accordance with the provisions set out in Part B of this Schedule 20.
- 1.8 "**Area Weighting Percentage**" means the percentage weighting ascribed to the relevant Functional Area for the purpose of calculating Deductions for Availability Failures as set out in Appendix D to this Schedule 20.
- 1.9 "**ASHRAE**" means the American Society for Heating Refrigeration and Air-Conditioning Engineers.
- 1.10 "**Availability Condition**" means any of (i) the Accessibility Condition, (ii) the Safety Condition or (iii) the Use Condition.
- 1.11 "**Availability Failure**" means an Event which has not been Rectified within the relevant Rectification Time and which causes a Functional Part to be Unavailable.

- 1.12 **"Availability Failure Deduction"** means a Deduction which may be made in respect of an Availability Failure.
- 1.13 **"Average Unit Cost"** means the average cost to WGH of each Unit of Energy purchased by WGH during the relevant Energy Year, calculated in accordance with Section 1.6 of Part H of this Schedule 20.
- 1.14 **"Base Date"** means April 1, 2008.
- 1.15 **"Baseload"** has in respect of the Facility the meaning set out in Section 1.1(e) of Part H of this Schedule 20.
- 1.16 **"Baseload and Slope Review Date"** means a date on which the Baseload and Slope are to be reviewed pursuant to Section 1.2(d) of Part H of this Schedule 20, being the date which is the fifth anniversary of the expiry of the Initial Period and every fifth anniversary thereafter until the Expiry Date or the Termination Date, as the case may be.
- 1.17 **"Baseload and Slope Review Period"** means the 60 calendar months ending on a Baseload and Slope Review Date.
- 1.18 **"Bedding-In Period"** means the three-month period following the Payment Commencement Date.
- 1.19 **"Benchmarking Exercise"** has the meaning given to it in Schedule 31.
- 1.20 **"Central Dispatch"** means the contact point to be established by Project Co pursuant to Schedule 15 - Output Specifications in respect of the Central Dispatch Service for the notification of Events and other day to day matters arising in relation to the provision of Project Co Services.
- 1.21 **"Collective Agreement Rates"** has the meaning given in Section 2.4 of Part B of this Schedule 20.
- 1.22 **"Contract Day"** means a 24 hour period commencing at midnight at the start of the relevant day.
- 1.23 **"Contract Month"** means a calendar month, except with respect to the first Contract Month, which runs from the Payment Commencement Date until the end of the calendar month in which the Payment Commencement Date falls, and the last Contract Month, which runs from the first day of the calendar month in which the Expiry Date falls until the Expiry Date.
- 1.24 **"Cooling Degree Days"** means, in respect of each calendar month, the figure published by Environment Canada showing the extent to which the mean outdoor temperature at the London International Airport, Ontario was greater than a mean temperature of +18 degrees Celsius.

- 1.25 **"Deduction"** means a deduction made from a Monthly Service Payment in accordance with this Schedule 20.
- 1.26 **"Elevator Availability Failure"** means an Event which has not been Rectified in the Rectification Time and which impacts on WGH's ability to use the elevator(s) in question. For the avoidance of doubt, in these circumstances it shall be assumed that the Accessibility Condition has been breached and that WGH's access to the Lower Floor Level and the Second Floor Level of the Facility is impaired.
- 1.27 **"Elevator Availability Failure Deduction"** means a Deduction which may be made in respect of an Elevator Availability Failure as calculated in accordance with the provisions set out in Section 13 of Part C of this Schedule 20.
- 1.28 **"Energy"** means electricity, gas, oil, coal and any other fossil-based fuel.
- 1.29 **"Energy Consumption"** means the total number of Units of Energy actually consumed at the Facility during a relevant period.
- 1.30 **"Energy Year"** means the period of 12 months beginning on the day after the expiry of the Initial Period and ending on the first Annual Review Date and each subsequent period of 12 months beginning on the day after an Annual Review Date.
- 1.31 **"Escalation Factor"** means the escalation factor calculated in accordance with Section 3.1 of Part B of this Schedule 20.
- 1.32 **"Event"** means an incident or state of affairs which does not meet or comply with the Performance Indicators set out in Schedule 15 - Output Specifications and/or results in an Availability Condition not being met in a Functional Part. An event is capable of becoming:
- (a) an Availability Failure, if it results in an Availability Condition not being met in a Functional Part and the Event is not Rectified within the Rectification Time;
  - (b) a Service Failure, if the Event is not responded to within the Response Time or Rectified within the Rectification Time; or
  - (c) if, in accordance with Schedule 15 - Output Specifications, no Rectification Time or Response Time applies, the Event shall be either a Service Failure or a Quality Failure as determined by the designation of the applicable Performance Indicator in Schedule 15 - Output Specifications as Failure Type "SF" or "QF" respectively.
- 1.33 **"Failure Points"** means points allocated to Project Co in respect of the occurrence of Availability Failures, Quality Failures and Service Failures which are determined by the provisions set out in Part G of and Appendix C to this Schedule 20.

- 1.34 **"Failure Type"** means the designation of Performance Indicators in Schedule 15 - Output Specifications as either "AF" (Availability Failure), "QF" (Quality Failure) or "SF" (Service Failure).
- 1.35 **"Functional Area"** means an area of the Facility specified as such in Appendix D to this Schedule 20 comprising one or more Functional Units.
- 1.36 **"Functional Part"** means a Functional Unit or a Functional Area according to the context in which it is used.
- 1.37 **"Functional Unit"** means a room or space within a Functional Area which is specified as such in Appendix D to this Schedule 20.
- 1.38 **"Gainshare Adjustment"** means the adjustment calculated in accordance with Section 1.4 of Part H of this Schedule 20.
- 1.39 **"Gigajoule"** means the international unit of energy being 1 Joule multiplied by a factor of 10 to the power 9.
- 1.40 **"Heating Degree Days"** means, in respect of each calendar month, the figure published by Environment Canada showing the extent to which the mean outdoor temperature at the London International Airport, Ontario was less than a mean temperature of +18 degrees Celsius.
- 1.41 **"Initial Labour Adjustment"** has the meaning given in Section 2.2 of Part B of this Schedule 20.
- 1.42 **"Initial Period"** means the period of two years beginning on the first day of the first full calendar month immediately after expiry of the 3 months following the Substantial Completion Date.
- 1.43 **"Major Quality Failure"** means a Quality Failure which has been designated in the Schedule 15 - Output Specifications or in this Schedule 20 as a Major Quality Failure.
- 1.44 **"Major Quality Failure Deduction"** means a Deduction which may be made in respect of a Major Quality Failure.
- 1.45 **"Major Service Failure"** means a Service Failure which has been designated in the Schedule 15 - Output Specifications or in this Schedule 20 as a Major Service Failure.
- 1.46 **"Major Service Failure Deduction"** means a Deduction which may be made in respect of a Major Service Failure.
- 1.47 **"Market Tested Services"** has the meaning given to it in Schedule 31.
- 1.48 **"Market Testing"** has the meaning given to it in Schedule 31.

- 1.49 **"Medium Quality Failure"** means a Quality Failure which has been designated in the Schedule 15 - Output Specifications or in this Schedule 20 as a Medium Quality Failure.
- 1.50 **"Medium Quality Failure Deduction"** means a Deduction which may be made in respect of a Medium Quality Failure.
- 1.51 **"Medium Service Failure"** means a Service Failure which has been designated in the Schedule 15 - Output Specifications or in this Schedule 20 as a Medium Service Failure.
- 1.52 **"Medium Service Failure Deduction"** means a Deduction which may be made in respect of a Medium Service Failure.
- 1.53 **"Minimum Agreed Availability Conditions"** means all of the Accessibility Condition, the Safety Condition and the Use Condition, as temporarily modified as permitted in accordance with Section 9 of Part C of this Schedule 20 for the purposes of a Temporary Repair.
- 1.54 **"Minimum Unavailability Deduction"** means the sum of \$10 which shall be index linked from the Base Date.
- 1.55 **"Minor Quality Failure"** means a Quality Failure which has been designated in the Schedule 15 - Output Specifications or in this Schedule 20 as a Minor Quality Failure.
- 1.56 **"Minor Quality Failure Deduction"** means a Deduction which may be made in respect of a Minor Quality Failure.
- 1.57 **"Minor Service Failure"** means a Service Failure which has been designated in the Schedule 15 - Output Specifications or in this Schedule 20 as a Minor Service Failure.
- 1.58 **"Minor Service Failure Deduction"** means a Deduction which may be made in respect of a Minor Service Failure.
- 1.59 **"Monitoring Period"** shall have the meaning given to it in Section 3.1 of Appendix B to Part H of this Schedule 20.
- 1.60 **"Monthly Energy Report"** shall have the meaning given to it in Section 4.1 of Appendix B to Part H of this Schedule 20.
- 1.61 **"Monthly Service Payment"** means the sum in Canadian Dollars payable by WGH to Project Co for the provision of the Project Co Services in accordance with the Project Agreement.
- 1.62 **"Painshare Adjustment"** means the adjustment calculated in accordance with Sections 1.5 of Part H of this Schedule 20.
- 1.63 **"Pass-Through Adjusted Service Payment"** means the amount that would be calculated for the relevant Contract Month in accordance with the formula set out in Section 1.1 of Part B of this Schedule 20 without deducting the sums represented by the symbol  $\Sigma D$ .



- 1.64 “**Performance Action Plan Failure**” has the meaning specified in Section 2.13 of Schedule 15 – Output Specifications.
- 1.65 "**Performance Indicator**" means a description in Schedule 15 - Output Specifications of the level of performance that Project Co must achieve to attain compliance with the allotted output specification.
- 1.66 "**Performance Monitoring Period**" means the periods of time specified in Schedule 15 - Output Specifications in respect of a Project Co Service or a part of a Project Co Service being the periods by reference to which Project Co has an obligation to monitor its performance of a Project Co Service as set out under the column headed "Recording Frequency" of the Performance Indicators Legend.
- 1.67 "**Performance Monitoring Report**" means the report specified in Schedule 15 - Output Specifications in respect of a Service or a part of a Service which Project Co has an obligation to prepare for WGH in respect of its performance of that Service or the relevant part of it during a specified period.
- 1.68 "**Periodic Labour Adjustment**" has the meaning given in Section 2.4 of Part B of this Schedule 20.
- 1.69 "**Permanent Repair**" means Rectification or Rectify or Rectified where a Temporary Repair has been permitted and carried out pursuant to Section 9 of Part C of this Schedule 20.
- 1.70 "**Permanent Repair Deadline**" has the meaning given in Section 9.1(b) of Part C of this Schedule 20.
- 1.71 "**Quality Failure**" means any failure by Project Co to provide the Project Co Services in accordance with Performance Indicators designated Failure Type "QF" in Schedule 15 - Output Specifications.
- 1.72 "**Quality Failure Deduction**" means a Deduction which may be made in respect of a Quality Failure.
- 1.73 "**Rectification**" means, following the occurrence of an Event and where rectification is applicable in accordance with Schedule 15 - Output Specifications, making good the Event so that the subject matter of the Event complies with the levels of service required pursuant to the Project Agreement. Without prejudice to the generality of the foregoing this shall include (a) restoring all functional capability and (b) ensuring that any Functional Part which has been affected by the relevant Event complies with the Availability Conditions and "**Rectify**" and "**Rectified**" shall be construed accordingly.
- 1.74 "**Rectification Time**" means in the case of an Event which, if not rectified, will result in Unavailability, a period of 4 hours or, in the case of any other Event, the period specified in Schedule 15 - Output Specifications within which Rectification of the relevant Event in the relevant Functional Part must be completed, calculated in either case from the time that such Event is reported to the Central Dispatch. For the avoidance of doubt, if no

period for Rectification is specified in Schedule 15 - Output Specifications in respect of the relevant Event, no Rectification Time applies.

- 1.75 **"Remedial Period"** means the period allowed for remedying a Quality Failure in accordance with Section 3.3 of Part C.
- 1.76 **"Response Time"** means the time that Project Co has, from a call to the Central Dispatch, to:
- (a) establish the nature, location and cause of the Event and attend the site if necessary;
  - (b) appoint a suitably qualified, experienced and accountable person to assess the situation who, within reasonable limits, is empowered to take or to authorize any required action;
  - (c) take all necessary actions to make the Functional Part safe and secure, thereby as a minimum fulfilling all health and safety requirements; and
  - (d) when necessary, give the WGH Representative an assessment of the problem, the action taken, details of any work required with timescales and any limitations that this may impose on the related Functional Parts or Project Co Services.
- 1.77 **"Return Date"** has the meaning given in Section 12.3(d) of Part C of this Schedule 20.
- 1.78 **"Safety Condition"** means a state or condition of the relevant Functional Part which allows those persons who it can reasonably be expected may from time to time require to enter, leave, occupy and use such Functional Part to do so safely, including compliance with Applicable Law, relevant WGH policies and MOHLTC requirements related to fire safety or health or workplace safety.
- 1.79 **"Seasonal Bedding-In Period"** means a calendar month during the first 12 calendar months following the Payment Commencement Date which is not contemporaneous with the Bedding-In Period.
- 1.80 **"Service Failure"** means any failure by Project Co to provide the Project Co Services in accordance with Performance Indicators designated Failure Type "SF" in Schedule 15 - Output Specifications and which, where a Response Time or Rectification Time applies, has not been responded to or Rectified (as the case may be) within the relevant time. For the avoidance of doubt, where no Response Time and/or Rectification Time applies (for example, in respect of scheduled activities) there shall be a Service Failure at the point at which the non-compliance occurred (for example, non-performance of the scheduled activity by the scheduled time).
- 1.81 **"Service Failure Deduction"** means a Deduction which may be made in respect of a Service Failure.

- 1.82 **"Service Failure Performance Indicator"** means a Performance Indicator designated as "SF" (Service Failure) in Schedule 15 - Output Specifications.
- 1.83 **"Slope"** shall have the meaning given to it in Section 1.1(f) of Part H of this Schedule 20.
- 1.84 **"Temporary Alternative Accommodation"** means accommodation offered to WGH by Project Co as a substitute for any Unavailable Functional Part pursuant to Section 12 of Part C of this Schedule 20.
- 1.85 **"Temporary Repair"** means, in respect of the occurrence of an Event which results in an Availability Condition not being met in a Functional Part, works of a temporary nature that do not constitute Rectification but satisfy the Minimum Agreed Availability Conditions and substantially make good the relevant Event for the period until a Permanent Repair can be undertaken.
- 1.86 **"Unavailable"** means, in relation to a Functional Part, that such Functional Part (or any part thereof) is in a state or condition which does not comply with any one or more of the Availability Conditions and **"Unavailability"** shall be construed accordingly.
- 1.87 **"Unit of Energy"** means one Gigajoule.
- 1.88 **"Unit Weighting Percentage"** means the percentage weighting ascribed to each Functional Unit for the purpose of calculating Deductions for Availability Failures as set out in Appendix D to this Schedule 20.
- 1.89 **"Use Condition"** means a state or condition of the relevant Functional Part which satisfies the Use Parameters for that Functional Part.
- 1.90 **"Use Parameters"** means the range of functional requirements for the proper use and enjoyment of a Functional Part for its particular purpose as set out in Schedule 15 - Output Specifications, Section 4.1.
- 1.91 **"Utilities Management Subcommittee"** has the meaning given to it in Appendix B of Part H of this Schedule 20.
- 1.92 **"20 Year Average"** means at the relevant date, the most recently available figure published by Environment Canada showing the number of Heating Degree Days per annum at the London International Airport, Ontario area calculated as an average over the immediately preceding 20 years.

**PART B:  
CALCULATION OF SERVICE PAYMENTS**

**1. MONTHLY SERVICE PAYMENT**

- 1.1 The Monthly Service Payment payable in respect of any Contract Month shall be calculated in accordance with the following formula:

$$\text{MSP} = (\text{ASPn}/12) - \Sigma\text{D} + \text{GS} - \text{PS}$$

where:

MSP is the Monthly Service Payment for the Contract Month for which the formula is to be applied;

ASPn is the Annual Service Payment for the relevant Contract Year;

$\Sigma\text{D}$  is the sum of Deductions in respect of the relevant Contract Month in relation to Performance Action Plan Failures, Quality Failures, Service Failures and Availability Failures calculated in accordance with the provisions set out in Part C of this Schedule 20;

GS is any Gainshare Adjustment arising pursuant to Section 1.4 of Part H of this Schedule 20; and

PS is any Painshare Adjustment arising pursuant to Section 1.5 of Part H of this Schedule 20.

- 1.2 In the Contract Month in which the Payment Commencement Date falls and in the last Contract Month of the Project Term, a pro rata adjustment shall be made to reflect the actual number of days in the relevant Contract Month from and including the Payment Commencement Date (for the first month) and up to and including the last day of the Project Term (for the last month).
- 1.3 WGH shall pay to Project Co the Monthly Service Payment in accordance with the provisions of this Schedule 20 and Section 33 of the Project Agreement.

**2. ANNUAL SERVICE PAYMENT**

- 2.1 The Annual Service Payment for any Contract Year shall be calculated in accordance with the following formula:

$$\text{ASPn} = (\text{ASPXo} \times (1 - \text{PESC} - \text{PCAR})) + (\text{ASPXo} \times \text{PESC} \times \text{ESCn}) + (\text{ASPXo} \times \text{PCAR} \times \text{PLAy}) + (\text{LCPn} \times \text{ESCn}) + \text{IA}$$

Where:

ASPn is the Annual Service Payment for the relevant Contract Year;

ASPX<sub>o</sub> is the Annual Service Payment, excluding the Lifecycle Payment for the relevant Contract Year as set out in Appendix F to this Schedule 20, as adjusted by the Initial Labour Adjustment and the Insurance Adjustment for the first Contract Year;

PESC is [REDACTED]%;

PCAR is [REDACTED]%;

PLA<sub>y</sub> is the Periodic Labour Adjustment calculated pursuant to Sections 2.4, 2.5 and 2.6 of this Part B;

LCP<sub>n</sub> is the Lifecycle Payment for the relevant Contract Year as set out in Appendix F to this Schedule 20;

IA is the Insurance Adjustment calculated in accordance with Section 2.7 of this Part B; and

ESC<sub>n</sub> is the Escalation Factor for the relevant Contract Year as calculated in accordance with Section 3.1 of this Part B.

- 2.2 For the first Contract Year, ASPX<sub>o</sub> shall be adjusted for the difference in terms and conditions of the Transferred Employees between the Base Date and the Transfer Date, as this difference in terms and conditions of employment affects Project Co's actual cost of discharging its obligations under the Project Agreement (the "**Initial Labour Adjustment**").
- 2.3 No later than 60 days prior to the Payment Commencement Date, Project Co will prepare and submit to WGH an analysis indicating the amount of the Initial Labour Adjustment. WGH and Project Co, both acting reasonably, will agree on the Initial Labour Adjustment to be applied to the Annual Service Payment as of the Payment Commencement Date.
- 2.4 The Annual Service Payment shall be adjusted from time to time to take account of changes in the centrally negotiated labour rates applicable to the Transferred Employees under the Collective Agreement (the "**Collective Agreement Rates**"), as these changes in labour rates affect Project Co's actual cost of discharging its obligations under the Project Agreement (the "**Periodic Labour Adjustment**"). WGH and Project Co, both acting reasonably, will agree on the Periodic Labour Adjustment to be applied to the Annual Service Payment for the relevant Contract Year, or part thereof.
- 2.5 The Periodic Labour Adjustment will constitute an adjustment to the Annual Service Payment when the Collective Agreement Rates take effect and after application of the escalation set out in Section 2.1 of this Part B.
- 2.6 Where a Collective Agreement Rate takes effect during a Contract Year, the Periodic Labour Adjustment shall be prorated for the remainder of the Contract Year, and the Annual Service Payment for such Contract Year, calculated pursuant to Sections 1.1 of this Part B, shall be adjusted accordingly.

- 2.7 No later than 60 days prior to each Insurance Review Date, Project Co will require its insurance broker to prepare and submit to WGH the Joint Insurance Cost Report. WGH and Project Co, both acting reasonably, will agree on the Insurance Adjustment to be applied to the Annual Service Payment for the next Contract Year.
- 2.8 The Insurance Adjustment will constitute an adjustment to the Annual Service Payment on the Payment Commencement Date. On each Insurance Review Date thereafter, the Insurance Adjustment will be applied in accordance with Section 2.1 of this Part B.

### 3. ESCALATION FACTOR

- 3.1 The Escalation Factor shall be calculated in accordance with the following formula:

$$ESC_n = CPI_n / CPI_o$$

Where:

ESC<sub>n</sub> is the escalation factor applicable to the relevant Contract Year;

CPI<sub>n</sub> is the value of CPI on April 1 of the relevant contract year “n”, to be determined by reference to the relevant index in the month immediately preceding the indexation date; and

CPI<sub>o</sub> is the value of CPI on the Base Date, to be determined by reference to the relevant index in the month immediately preceding the Base Date.

### 4. EFFECT OF BENCHMARKING AND MARKET TESTING ON ANNUAL SERVICE PAYMENT

- 4.1 The Annual Service Payment shall with effect from the Effective Date be the sum calculated in accordance with the following formula:

$$ASP_{Xo}(\text{new}) = ASP_{Xo}(\text{original}) \pm RVTA$$

where:

- (a) ASP<sub>Xo</sub> (new) is the Annual Service Payment revised to reflect any change to the costs of any of the Market Tested Services following a Market Testing or Benchmarking Exercise and expressed in value of money terms as if it were payable at the Base Date;
- (b) ASP<sub>Xo</sub> (original) is the figure in Canadian Dollars set out in paragraph 2.1 of this Part B (as adjusted from time to time pursuant to paragraph 4 of this Part B); and
- (c) RVTA is the adjustment to the cost of the Market Tested Services following a Market Testing or Benchmarking Exercise (if any and whether up or down) re-based to reflect the value of the amount of the adjustment at the Base Date.

4.2 For the purposes of paragraph 4.1 (a) of this Part B, RVTA shall be a figure in Canadian Dollars (whether positive or negative) calculated in accordance with the formula:

$$\text{RVTA} = (\text{NAP} - (\text{OPVT} \times \text{CPI}_{\text{In}}/\text{CPI}_{\text{Io}})) \times (\text{CPI}_{\text{Io}}/\text{CPI}_{\text{In}})$$

where:

- (a) NAP is the aggregate of the new annual prices for the Market Tested Services arising from the Market Testing or Benchmarking Exercise;
- (b) CPI<sub>Io</sub> is the value of CPI on the Base Date, to be determined by reference to the relevant index in the month immediately preceding the Base Date;
- (c) OPVT is the aggregate of the original annual prices for the Market Tested Services, as set out in Appendix G of this Schedule; and
- (d) CPI<sub>In</sub> is the value of CPI on April 1 of the relevant contract year “n”, to be determined by reference to the relevant index in the month immediately preceding the indexation date.

**PART C:  
DEDUCTIONS FROM SERVICE PAYMENTS**

**1. ENTITLEMENT TO MAKE DEDUCTIONS**

- 1.1 If at any time during the Operational Term a Performance Action Plan Failure, Quality Failure, a Service Failure or an Availability Failure shall occur, WGH shall, subject to Section 1.2 and 5 of this Part C, be entitled to make a Deduction from the relevant Monthly Service Payment in respect of that Performance Action Plan Failure, Quality Failure, Service Failure or Availability Failure.
- 1.2 The maximum aggregate of all Deductions that WGH can make from a Monthly Service Payment in respect of any Contract Month shall be the Pass-Through Adjusted Service Payment relating to that Contract Month.
- 1.3 The classification of an Event as a potential Performance Action Plan Failure, Quality Failure, Service Failure or Availability Failure shall be made at the time at which the occurrence of the Event is reported to the Central Dispatch. An Event which is incorrectly classified may be re-classified with the approval of the WGH Representative and the Project Co Representative, acting reasonably, in which case the applicable Performance Monitoring Report will be revised accordingly.

**2. BEDDING-IN PERIOD AND SEASONAL BEDDING-IN PERIOD**

- 2.1 Notwithstanding Article 19 of the Project Agreement M&E Systems Verification Period, in respect of each Project Co Service, there shall be a Bedding-In Period. During the Bedding-In Period, the following provisions shall apply:
- (a) during the first month of the Bedding-In Period, no Failure Points may be awarded and no Deductions may be made in respect of Quality Failures and Service Failures occurring in the provision of any Project Co Service; and
  - (b) during the second and third months of the Bedding-In Period, the number of Failure Points and the amount of any Deductions in respect of Quality Failures and Service Failures occurring in the provision of any Project Co Service shall be reduced by 50%.
- 2.2 For the avoidance of doubt, there shall be no relief from Failure Points or Deductions relating to Performance Action Plan Failures or Availability Failures during the Bedding-In Period.
- 2.3 Project Co shall be entitled to two Seasonal Bedding-In Periods. Project Co shall, by written notice to the WGH Representative, identify each Seasonal Bedding-In Period at least 30 days prior to the first day of such Seasonal Bedding-In Period.
- 2.4 During the Seasonal Bedding-In Periods, the revised environmental parameters identified in Section 4.1 of Schedule 15 - Output Specifications will be in effect.



2.5 For the avoidance of doubt, there shall be no relief from Failure Points or Deductions relating to Performance Action Plan Failures, Availability Failures, Quality Failures or Service Failures during the Seasonal Bedding-In Periods.

### **3. AMOUNT OF DEDUCTIONS FOR QUALITY FAILURES**

3.1 Subject to Sections 1, 2 and 5 of this Part C, the amount of the Deduction in respect of a Quality Failure shall be as follows:

- (a) in the case of a Minor Quality Failure, the sum of \$50 , index-linked;
- (b) in the case of a Medium Quality Failure, the sum of \$250, index-linked; and
- (c) in the case of a Major Quality Service Failure, the sum of \$500, index-linked.

3.2 There are no Response Times or Rectification Times in respect of Quality Failures. The occurrence of a Quality Failure will result in a Quality Failure Deduction in respect of the Contract Month in which the Quality Failure occurred.

3.3 Following the occurrence of a Quality Failure, Project Co shall be allowed a Remedial Period of one Contract Month. If, before the expiry of the Remedial Period, Project Co demonstrates, to the reasonable satisfaction of the WGH Representative, that it has remedied the Quality Failure, no further Deduction shall be made in respect of the Quality Failure. Otherwise, a further Deduction shall be made of the appropriate amount (as described in Section 3.1 of Part C of this Schedule 20) and a further Remedial Period or Remedial Periods of equal duration shall apply (and, if appropriate, Deductions shall continue to be made) until such time as Project Co shall demonstrate, to the reasonable satisfaction of the WGH Representative, that it has remedied the Quality Failure.

### **4. AMOUNT OF DEDUCTIONS FOR SERVICE FAILURES**

4.1 Subject to Sections 1, 2 and 5 of this Part C, the amount of the Deduction in respect of a Service Failure shall be as follows:

- (a) in the case of a Minor Service Failure, the sum of \$10, index-linked per Functional Unit affected;
- (b) in the case of a Medium Service Failure, the sum of \$50, index-linked per Functional Unit affected; and
- (c) in the case of a Major Service Failure, the sum of \$100, index-linked per Functional Unit affected.

4.2 Where a Service Failure Performance Indicator has a Response Time or a Rectification Time, a Service Failure shall only occur if the Event in question has not been responded to within the applicable Response Time or Rectified within the applicable Rectification Time.

- 4.3 Following the occurrence of a Service Failure, Project Co shall be allowed an additional Response Time or Rectification Time (as the case may be) equivalent to the original Response Time or Rectification Time. If, before the expiry of this additional period, Project Co demonstrates, to the reasonable satisfaction of the WGH Representative, that it has remedied the Service Failure, no further Deduction shall be made in respect of the Service Failure. Otherwise, a further Deduction shall be made of the appropriate amount (as described in Section 4.1 of Part C of this Schedule 20) and a further Response Time or Rectification Time of equal duration shall apply (and, if appropriate, Deductions shall continue to be made) until such time as Project Co shall demonstrate, to the reasonable satisfaction of the WGH Representative, that it has remedied the Service Failure.
- 4.4 The provisions of Section 4.3 of this Part C shall not apply to Service Failures in cases where, if the response or Rectification is not carried out within the Response Time or the Rectification Time, as applicable, the WGH Representative notifies the Project Co Representative that WGH no longer requires the relevant Project Co Service.
- 4.5 Where a Service Failure Performance Indicator has no Response Time or Rectification Time, a Service Failure shall occur upon the occurrence of the Event in question and a Service Failure Deduction shall apply in accordance with Section 4.1 of this Part C.

## 5. TOLERANCES FOR QUALITY FAILURES AND SERVICE FAILURES

- 5.1 No Deduction may be made to the Monthly Service Payment for the relevant Contract Month in respect of any Minor Quality Failure, Medium Quality Failure, Minor Service Failure or Medium Service Failure if, in respect of the Project Co Service in question, the combined total of the Minor Quality Failure Deductions, Medium Quality Failure Deductions, Minor Service Failure Deductions and Medium Service Failure Deductions which have occurred in the Contract Month in respect of that Project Co Service does not exceed in aggregate a sum calculated in accordance with the following formula:

$$SD = MSP \times 0.5\%$$

Where:

SD is the total of all such Deductions that could have been made in respect of the relevant Project Co Services; and

MSP is the monthly cost of providing the relevant Project Co Service, being one-twelfth of the sum set out in Appendix F in respect of that Project Co Service, subject to indexation from the Base Date.

- 5.2 If SD is exceeded a Deduction shall be made in respect of each and every Minor Quality Failure, Medium Quality Failure, Minor Service Failure, or Medium Service Failure which shall have occurred in respect of the relevant Project Co Service during that Contract Month.

**6. DEDUCTIONS FOR AVAILABILITY FAILURES**

6.1 Subject to Sections 1 and 2 of this Part C, the amount to be deducted from the Monthly Service Payment in respect of any Availability Failure shall be the higher of:

- (a) the Minimum Unavailability Deduction; and
- (b) the aggregate of amounts calculated in accordance with the following formula in respect of all Functional Parts made Unavailable as a result of the Availability Failure:

$$D = (ASP_n / (N_y \times 6)) \times AW \times UW \times DP$$

where:

D means the amount (in Canadian dollars) of the Deduction in respect of the Availability Failure;

ASP<sub>n</sub> means the Annual Service Payment at the time the relevant Availability Failure occurs;

N<sub>y</sub> means the number of days in the Contract Year (being the year in which the relevant Availability Failure occurs);

AW means the Area Weighting Percentage attributable to the Functional Area in which the Availability Failure occurs;

UW means the Unit Weighting Percentage attributable to the Functional Unit(s) in which the Availability Failure occurs; and

DP is 50% and shall apply only where the relevant Functional Part is Unavailable but WGH continues to use it (or any part thereof).

6.2 For the avoidance of doubt, if more than one Functional Unit or Functional Area is rendered Unavailable by an Availability Failure, the amount of the Minimum Unavailability Deduction in respect of that Availability Failure remains the same. However, if the Availability Failure is not rectified within a further 4 hour period, another Deduction (including the Minimum Availability Deduction) may be applied, since this is treated as a further Availability Failure.

6.3 In the event of an Elevator Availability Failure, Section 13 of this Part C explains the calculation of the corresponding Elevator Availability Failure Deduction.

**7. RECTIFICATION**

7.1 This Section applies where, in Schedule 15 - Output Specifications, a Rectification Time is specified in respect of an Event.

- 7.2 Subject to Sections 9 and 10 (in respect of Rectification only) of this Part C, no Service Failure or Availability Failure shall occur if Project Co successfully carries out the Rectification within the specified Rectification Time and in such circumstances no Deduction shall be made.
- 7.3 When carrying out a Rectification, or a Temporary Repair pursuant to Section 9 of this Part C, Project Co shall act in accordance with Applicable Law, Good Industry Practice, relevant WGH policies and MOHLTC requirements related to fire safety or health or workplace safety. Failure to do so shall be deemed to be a new Minor Service Failure, unless the failure constitutes a breach of Applicable Law, in which case it shall be deemed to be a new Major Service Failure.

## 8. RE-COMMISSIONING

- 8.1 Where a Functional Unit needs to be re-commissioned by WGH following Rectification, the WGH Representative shall determine, prior to commencement of any re-commissioning activities, that the Rectification has been properly carried out. The WGH Representative may delegate this task to any clinical practitioner or the senior nurse in the relevant Functional Unit and, if re-commissioning activities commence, it shall be assumed that the necessary determination has been made. If it does not then prove possible to successfully complete the re-commissioning of the relevant Functional Unit, Project Co shall, notwithstanding, still be deemed to have carried out Rectification successfully.
- 8.2 Section 8.1 of this Part C shall not affect the right of WGH to issue, in accordance with the Output Specifications, an Ad-Hoc Service Request for the provision of Ad-Hoc Services in connection with any re-commissioning activities carried out by WGH.

## 9. TEMPORARY REPAIRS

- 9.1 If Project Co informs WGH that it is unable to Rectify an Event within the specified Rectification Time due to the need for specialized materials or personnel that are not, and cannot reasonably be expected to be, immediately available at the Facility but that a Temporary Repair can be effected:
- (a) WGH shall permit Project Co to carry out the Temporary Repair proposed by Project Co unless WGH, acting reasonably, considers that, if the Temporary Repair proposed by Project Co is carried out, the use of the relevant Functional Part will not be in accordance with generally accepted clinical practices or not be in accordance with Good Industry Practice; and
  - (b) where a Temporary Repair is permitted, a deadline by which a Permanent Repair must be made shall be agreed to by the Parties, each acting reasonably, giving Project Co a reasonable period within which to carry out the Permanent Repair (the "**Permanent Repair Deadline**").
- 9.2 During any period beginning at the time when a Temporary Repair is permitted and ending at the earlier of:

- (a) the time at which a Permanent Repair is successfully completed; and
- (b) the Permanent Repair Deadline,

the Availability Conditions shall be replaced by the Minimum Agreed Availability Conditions for the purposes of assessing if the relevant Functional Part is Unavailable.

9.3 Subject to Section 7.3 of this Part C, if the Temporary Repair is effected within the specified Rectification Time and the Permanent Repair is effected by no later than the Permanent Repair Deadline, no Service Failure or Availability Failure will occur, and no Deduction may be made, in respect of the Event.

9.4 If the Temporary Repair is not effected within the specified Rectification Time, a Service Failure or, as the case may be, Availability Failure shall be deemed to occur and the following provisions shall apply:

- (a) there shall be a further period beginning at the expiry of the Rectification Time and of a duration equal to that of the Rectification Time;
- (b) Project Co shall ensure that the Temporary Repair is successfully carried out prior to the expiry of the additional period referred to in Section 9.4(a);
- (c) if the Temporary Repair is not successfully carried out prior to the expiry of the additional period referred to in Section 9.4(a), a further Service Failure or, as the case may be, Availability Failure shall occur and a further additional period shall commence;
- (d) unless the Temporary Repair has been successfully carried out prior to the expiry of the additional period then, subject to Section 9.4(e) of this Part C, a further Service Failure or, as the case may be, Availability Failure shall occur until such time as the Temporary Repair shall have been successfully completed; and
- (e) if the Temporary Repair is not successfully carried out prior to the Permanent Repair Deadline, and no Permanent Repair has been successfully carried out, the right for Project Co to carry out a Temporary Repair pursuant to this Section 9 shall cease and Section 9.5 of this Part C shall apply.

9.5 If the Permanent Repair is not effected by the Permanent Repair Deadline, a Service Failure or, as the case may be, Availability Failure shall be deemed to occur and the provisions of Sections 4 and 5 of this Part C shall apply.

## 10. REPEATED RECTIFICATION

10.1 Notwithstanding that Project Co completes a Rectification in respect of an Event within the relevant Rectification Time, there shall be deemed to be a Minor Service Failure on the occurrence of:

- (a) the third such Event that arises during the Contract Day; and/or

(b) the fourth such Event which occurs in any consecutive seven day period,

provided that:

(a) each such Event is in connection with the same service standard set out in Schedule 15 - Output Specifications and occurs in the same Functional Area; and

(b) whether the Events occur in the same Functional Unit or in different Functional Units within the same Functional Area there is reason to believe that the root cause of each Event is the same.

10.2 If the same such Event occurs more than three times in a Contract Day or more than four times in any consecutive seven day period, a Minor Service Failure shall be deemed to have occurred in respect of each and every Event which has occurred during the Contract Day or during the consecutive seven day period (as the case may be).

## **11. EFFECT OF UNAVAILABILITY ON OTHER DEDUCTIONS**

11.1 Until an Availability Failure has been Rectified, the Deduction in respect of the Availability Failure shall be the only Deduction available to be made in respect of any Functional Unit in which the Availability Failure has occurred. No further Deduction shall be made for any subsequent Service Failure which may occur in the relevant Functional Unit or Functional Area (as the case may be) during the period until Rectification has been completed provided that where WGH continues to use a Functional Unit which is affected by an Availability Failure, Project Co shall be obliged to continue to provide in respect of that Functional Unit such of the Project Co Services as are normally provided as part of the day to day functioning of that Functional Unit and, if those Project Co Services are not provided in a manner which satisfies the requirements of Schedule 15 - Output Specifications, WGH shall be entitled to award Failure Points in accordance with Appendix C of this Schedule 20 where appropriate.

11.2 For the avoidance of doubt, in the case of an Elevator Availability Failure, further Deductions in respect of unrelated Availability Failures that affect Functional Parts on the Lower Floor Level or Second Floor Level of the Facility shall continue to apply.

## **12. TEMPORARY ALTERNATIVE ACCOMMODATION**

12.1 If an Availability Failure occurs Project Co may offer WGH Temporary Alternative Accommodation by written notice to WGH within 10 Business Days from the commencement of the relevant Event.

12.2 The Temporary Alternative Accommodation shall:

(a) comply with:

(i) the Accessibility Condition;

(ii) the Safety Condition; and

- (iii) the Use Condition;
  - (b) be a temporary alternative having regard to the facts and the circumstances in existence;
  - (c) be upon terms which are not materially different from the terms upon which WGH occupied the affected Functional Part;
  - (d) unless WGH otherwise agrees, be accommodation for which WGH is not already paying within the Monthly Service Payment or other terms of the Project Agreement;
  - (e) be supplied with the Project Co Services to the standards set out in Section 4.1 of Schedule 15 - Output Specifications which Project Co would under normal circumstances be providing within the Unavailable Functional Part;
  - (f) not involve WGH incurring any additional cost or charges in respect of the Temporary Alternative Accommodation including, without limitation, the reasonable costs of any relocation to and from the Temporary Alternative Accommodation; and
  - (g) be in reasonable proximity to the Facility for which it is a temporary replacement, shall be reasonably accessible by public and private transport and shall have adequate parking facilities.
- 12.3 The written notice sent by Project Co to WGH pursuant to Section 12.1 of this Part C shall:
- (a) describe the Temporary Alternative Accommodation;
  - (b) invite WGH to inspect the Temporary Alternative Accommodation and shall give WGH reasonable notice of a time and a date when it may do so;
  - (c) set out its proposals regarding the timing and co-ordination of relocation to the Temporary Alternative Accommodation;
  - (d) specify the date (agreed by WGH before the submission of the written notice) by which Project Co reasonably expects WGH to be able to relocate back to the relevant Functional Part (the "**Return Date**"); and
  - (e) describe the terms upon which WGH shall be entitled to occupy such Temporary Alternative Accommodation including the proposed division of such accommodation into Functional Units and Functional Areas and the weighting to be attributed to them for the purposes of the operation of the Payment Mechanism.
- 12.4 If it requires an inspection of the Temporary Alternative Accommodation, WGH shall do so within 5 Business Days of receipt of the notice referred to in Section 12.1 above.



WGH shall notify Project Co in writing of its acceptance or refusal of the proposed Temporary Alternative Accommodation within 24 hours of its inspection of the same or, if WGH has elected not to carry out an inspection, within 5 Business Days of receipt of the notice referred to in Section 12.1 of this Part C. WGH shall act reasonably when deciding to accept or refuse any proposed Temporary Alternative Accommodation.

- 12.5 If WGH accepts the offer of Temporary Alternative Accommodation then, without affecting WGH's remedial rights under Section 31 of the Project Agreement, WGH shall not be entitled to vacate the Temporary Alternative Accommodation until the earlier of the Return Date and the date on which WGH is entitled and able to return to and use the Functional Part in accordance with the agreed program for relocation and re-commissioning referred to in Section 12.9 of this Part C.
- 12.6 For the avoidance of doubt, WGH's rights under Section 30 of the Project Agreement shall not be affected by the acceptance by WGH of the Temporary Alternative Accommodation.
- 12.7 If WGH accepts Project Co's offer of Temporary Alternative Accommodation, no further Deductions shall be made or Failure Points awarded in respect of a Functional Part vacated by WGH while the Temporary Alternative Accommodation replacing that Functional Part is being used by WGH.
- 12.8 WGH shall be entitled to award Failure Points and make Deductions as applicable in respect of any Service Failure or Availability Failure, and make Deductions in respect of any Performance Action Plan Failure, which occurs in the Temporary Alternative Accommodation as if the Temporary Alternative Accommodation was the Functional Part which it replaced and any Deduction in respect of an Availability Failure shall be calculated using the weightings Applicable to the Functional Part which the Temporary Alternative Accommodation has replaced.
- 12.9 When Project Co has completed the required works to enable WGH to return to the Functional Part, the WGH Representative shall confirm that the Availability Conditions for the Functional Part are met and the WGH Representative and Project Co shall agree on a relocation program to return to the Functional Part and on any necessary period for re-commissioning.
- 12.10 Where WGH has accepted the proposed Temporary Alternative Accommodation pursuant to Section 12.4 of this Part C, in the event that Project Co fails to complete the works to enable WGH to return to the relevant Functional Part on the Return Date, WGH may, in its absolute discretion, vacate the Temporary Alternative Accommodation at any time after the Return Date or remain in occupation. In such circumstances:
- (a) where WGH, in its discretion, remains in occupation of the Temporary Alternative Accommodation following the Return Date the Temporary Alternative Accommodation shall be deemed to be Unavailable with effect from the Return Date and WGH shall levy 50% of the Deduction which would have been levied in respect of that Availability Failure for each Contract Day on which



WGH occupies the Temporary Alternative Accommodation thereafter until the date on which the Availability Failure referred to in Section 12.1 of this Part C has been rectified and WGH is able to resume its use of the Functional Part; and

- (b) where WGH, in its discretion, vacates the Temporary Alternative Accommodation following the Return Date, the Temporary Alternative Accommodation shall be deemed to be Unavailable on each Contract Day on which WGH is not in occupation of the Temporary Alternative Accommodation until the date on which the Availability Failure referred to in Section 12.1 of this Part C has been rectified and WGH is able to resume its use of the Functional Part.

12.11 WGH shall specify a date, being a date no earlier than the Return Date, by which the Rectification shall be completed and if Project Co fails to complete the Rectification of the Functional Part for which the Temporary Alternative Accommodation is a replacement by such date the following shall apply:

- (a) WGH may (without prejudice to its rights under Section 44 of the Project Agreement or any other express rights of WGH under the Project Agreement) take such steps as it considers to be appropriate (either itself or by engaging others to take such steps) to restore any Functional Part for which the Temporary Alternative Accommodation is a replacement to a condition which satisfies in all respects the requirements of the Output Specifications; and
- (b) Project Co shall reimburse WGH for all reasonable costs, losses, expenses or damages incurred by WGH in relation to taking the steps, or engaging others to take the steps, referred to in Section 12.11(a) of this Part C and WGH shall be entitled to deduct any such amount from any amounts payable to Project Co under the provisions of the Project Agreement.

### 13. DEDUCTIONS FOR ELEVATOR AVAILABILITY FAILURES

13.1 In the event of an Elevator Availability Failure, the level of Availability Failure Deduction shall be based on the following formula:

$$D = (ASP_n / (N_y \times 6)) \times AW(\Sigma FL) \times 50\% \times DP(EAF)$$

where:

D means the amount (in Canadian dollars) of the Deduction in respect of the Availability Failure;

ASP<sub>n</sub> means the Annual Service Payment at the time the relevant Availability Failure occurs;

N<sub>y</sub> means the number of days in the Contract Year (being the year in which the relevant Availability Failure occurs);

AW( $\sum$ FL) means the sum of the Area Weighting Percentages attributable to the Functional Areas on the Lower Floor Level and the Second Floor Level of the Facility; and

DP(EAF) is the percentage set out in Appendix E to this Schedule 20 as determined by the number of Elevators that are Unavailable at any one time.

**14. DEDUCTIONS FOR PERFORMANCE ACTION PLAN FAILURE**

14.1 Subject to Section 1 of this Part C, the amount of Deduction in respect of a Performance Action Plan Failure shall be as stipulated in Section 2.13 of Schedule 15 – Output Specifications.

**PART D:  
REVIEW OF WEIGHTINGS**

**1. ANNUAL REVIEW**

- 1.1 The identification of Functional Areas, Functional Units, Response Times, Rectification Times, Area Weighting Percentages, Unit Weighting Percentages and the amount of Deductions for Performance Action Plan Failures, and for each category of Quality Failure, Service Failure and Availability Failure shall be reviewed by WGH and Project Co at any time if requested by either Party but in any event shall be reviewed at least once in every Contract Year.
- 1.2 WGH and Project Co shall act reasonably and diligently in carrying out the review.
- 1.3 For the avoidance of doubt, the Parties intend that any changes made as a result of such a review shall not alter the overall risk profile of the relevant Project Co Service or the likely magnitude of Deductions. Where proposed changes would result in any such alteration, the matter shall be deemed to be a Variation and Schedule 22 shall apply.
- 1.4 WGH and Project Co may, in respect of each matter that is the subject of the review, either:
  - (a) agree that the status of the relevant matter shall continue to apply unchanged in the Contract Year immediately following the review; or
  - (b) agree to adjustments to the relevant matter to take effect in the Contract Year immediately following the review.
- 1.5 Any agreed adjustment pursuant to a review shall be effective from the commencement of the Contract Year immediately following the relevant review carried out in accordance with Section 1.1 of this Part D.

**PART E:  
FAILURE BY PROJECT CO TO MONITOR OR REPORT**

**1. FAILURE BY PROJECT CO TO MONITOR OR REPORT**

- 1.1 Subject to Sections 1.2 to 1.6 inclusive of this Part E, the Performance Monitoring Report produced by Project Co for any Contract Month shall be the source of the factual information regarding the performance of the Project Co Services for the relevant Contract Month for the purposes of calculating the relevant Monthly Service Payment, the number of Failure Points awarded and the number of Warning Notices awarded.
- 1.2 If there shall be any error or omission in the Performance Monitoring Report for any Contract Month, Project Co and WGH shall agree to the amendment to the Performance Monitoring Report or, failing agreement within 10 days of notification of the error or omission which shall not be made more than 2 calendar months following the relevant Performance Monitoring Report except in the circumstances referred to in Section 1.5 of this Part E, either party may refer the matter to the Dispute Resolution Procedure.
- 1.3 If Project Co fails to monitor or accurately report an Event, Performance Action Plan Failure, Quality Failure, Service Failure, Availability Failure or Ad-Hoc Service Request then, without prejudice to the Deduction to be made in respect of the relevant Performance Action Plan Failure, Quality Failure, Service Failure or Availability Failure (if any), the failure to monitor or report the Event, Performance Action Plan Failure, Quality Failure, Service Failure, Availability Failure or Ad-Hoc Service Request shall be deemed to be a new Minor Quality Failure, unless the circumstances set out in Section 1.5 of this Part E apply, in which case it shall be deemed to be a new Major Quality Failure.
- 1.4 In the event that any inspection or investigation by WGH of records made available pursuant to the Project Agreement reveals any further matters of the type referred to in Sections 1.2 and 1.3 above, those matters shall be dealt with in accordance with Section 1.2 or 1.3 of this Part E, as appropriate, and WGH shall, in addition, be entitled to make Deductions in respect of any Performance Action Plan Failure, Quality Failures, Service Failures or Availability Failures in the manner prescribed in Part C of this Schedule 20. Any such Deductions shall be made from the Monthly Service Payment payable in respect of the Contract Month in which the relevant matters were revealed by WGH's investigations or, to the extent that WGH is unable to make any further deductions from the Monthly Service Payment in respect of that Contract Month by virtue of Section 1.2 of Part C of this Schedule 20, may be carried forward and deducted from Monthly Service Payments due in respect of subsequent Contract Months.
- 1.5 For the purposes of Sections 1.2, 1.3, and 1.4 of this Part E the relevant circumstances are:
- (a) fraudulent action or inaction;
  - (b) deliberate misrepresentation; or

- (c) gross misconduct or incompetence in each case on the part of Project Co or a Project Co Party.
- 1.6 The provisions of this Part E shall be without prejudice to any rights of WGH pursuant to Sections 30, 44 and 59 of the Project Agreement.

**PART F:  
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**PART G:  
FAILURE POINTS**

**1. FAILURE POINTS**

- 1.1 Failure Points shall be awarded for every Quality Failure, Service Failure and Availability Failure which occurs during the Operational Term unless such matters are disregarded pursuant to Section 2 of Part C of this Schedule 20 or such Failure Points are cancelled pursuant to any other provision of the Project Agreement.
- 1.2 For the avoidance of doubt when awarding Failure Points, where a further Availability Failure, Quality Failure or Service Failure is deemed to have occurred in accordance with Sections 3, 4 and 6 of Part C of this Schedule 20, the appropriate number of Failure Points shall be awarded in respect of each such Availability Failure, Quality Failure or Service Failure, even though they arise from the same circumstances.
- 1.3 If the same Availability Failure or Service Failure affects more than one Functional Unit, the number of Failure Points to be awarded in respect of that Availability Failure shall be determined by the number of Functional Units affected. For example, an Availability Failure affecting one Functional Unit will attract 20 Failure Points whereas an Availability Failure affecting five Functional Units will attract 100 (i.e. 5 x 20) Failure Points.
- 1.4 The number of Failure Points attributable to Performance Action Plan Failures, Quality Failures, Service Failures and Availability Failures is set out in Appendix C to this Schedule 20.
- 1.5 The maximum number of Failure Points that can be allocated to a single Availability Failure is 8000.

**PART H:  
ENERGY**

**1. ENERGY PAYMENT**

**1.1 Calculation of Annual Energy Target**

- (a) Both before and during the Initial Period there shall be no Annual Energy Target for the Facility, but the consumption of Energy during the Initial Period shall be measured in accordance with Section 1.9 of this Part H.
- (b) In respect of each Energy Year following the expiry of the Initial Period, the remaining provisions of this Section 1.1 shall apply for the purposes of calculating the Annual Energy Target applicable to the Facility.
- (c) By no later than 1 month after the expiry of the Initial Period, Project Co shall provide to WGH a certificate showing:
  - (i) the amount of Energy Consumption in each calendar month during the Initial Period, expressed as a number of Units of Energy and measured in accordance with Section 1.9(a) of this Part H;
  - (ii) the number of Heating Degree Days in respect of each of those calendar months; and
  - (iii) the number of Cooling Degree Days in respect to each of those calendar months.
- (d) The Parties shall, in respect of the Facility, plot individual graphs for heating energy and electrical energy using the information referred to in Section 1.1(c) in the following manner:
  - (i) for heating energy, the vertical axis of the graph shall show the total amount of Energy Consumption during the relevant calendar month and the horizontal axis shall show the number of Heating Degree Days in the relevant month;
  - (ii) for electrical energy, the vertical axis of the graph shall show the total amount of Energy Consumption during the relevant month and the horizontal axis shall show the number of Cooling Degree Days in the relevant month;
  - (iii) for each of the 24 months in the Initial Period, a point shall be plotted on the graph for Energy Consumption for that month against the number of Heating Degree Days or Cooling Degree Days, as applicable, in that month;



- (iv) for each graph, when all points on the graph have been plotted in accordance with Section 1.1(d)(iii), a straight line shall be drawn, which most closely corresponds to each of the points plotted on the graph, using the arithmetical technique of linear regression analysis.
- (e) The straight line referred to in Section 1.1(d)(iv) shall be projected until it crosses the vertical axis on the graph. The number of Units of Energy represented by the point at which the straight line crosses the vertical axis of the graph shall be the "Baseload", that is to say, the number of Units of Energy which is consumed each month at the Facility, regardless of the number of Heating Degree Days or Cooling Degree Days, as applicable, in that month.
- (f) The Parties shall calculate the slope of the straight line on each graph referred to in Section 1.1(d)(iv), expressed in terms of the number of Units of Energy used per Heating Degree Day (the "**Slope**") or the Units of Energy used per Cooling Degree Day. This, together with the Baseload, shall be used to calculate each Annual Energy Target until such time as the Baseload and Slope may be adjusted in accordance with Section 1.2(d).
- (g) Each Annual Energy Target shall be calculated using the following formula:

**Annual Heating Energy Target:**

$$HY=M(h)*X(h) + C(h)$$

Where HY is the Annual Heating Energy Target (expressed in ekWh);

M(h) is the Slope and is expressed as a number of Units of Energy used per Heating Degree Day, calculated in accordance with Section 1.1(f) of this Part H;

X(h) is the number of Heating Degree Days per annum, being the most recently published 20 Year Average as at the date of calculation of the Annual Energy Target; and

C(h) is the Baseload used each month, calculated in accordance with Section 1.1(e) of this Part H, multiplied by a factor of 12.

**Annual Electrical Energy Target:**

$$EY=M(c)*X(c) + C(c)$$

Where EY is the Annual Electrical Energy Target (expressed in ekWh);

M(c) is the Slope and is expressed as a number of Units of Energy used per Cooling Degree Day, calculated in accordance with Section 1.1(f) of this Part H;

X(c) is the number of Cooling Degree Days per annum, being the most recently published 20 Year Average as at the date of calculation of the Annual Energy Target; and

C(c) is the Baseload used each month, calculated in accordance with Section 1.1(e) of this Part H, multiplied by a factor of 12.

### **Annual Energy Target**

$$Y = HY + EY$$

Where:

HY is the Annual Heating Energy; and

EY is the Annual Electrical Energy.

- (h) The Annual Energy Target calculated in accordance with the provisions of this Section 1.1 shall be the target for Energy Consumption for the Facility during the first Energy Year and each and every subsequent year until expiry or earlier termination of the Project Agreement.
- (i) By way of indication only, an example of the graph which the Parties intend should be produced in accordance with this Section 1 is set out in Appendix A to this Schedule 20.

## 1.2 Adjustments to the Annual Energy Target

### *Adjustments at Annual Review Date*

- (a) Subject to Section 1.2(b), with effect from each Annual Review Date the Annual Energy Target shall be recalculated using the formula set out in Section 1.1(g), using, for the purposes of X(h) and X(c), the most recently published 20 Year Average as at the Annual Review Date.
- (b) For the purposes of the recalculation referred to in Section 1.2(a) of this Part H, C and M will be the figures representing the revised Baseload and Slope respectively at the time of the relevant Annual Review Date, as reviewed (where appropriate) in accordance with the following provisions of this Section 1.2.

### *Adjustments of Baseload and Slope*

- (c) By no later than one month after the date on which the figure for Heating Degree Days or Cooling Degree Days, as applicable, in respect of the final month of the Baseload and Slope Review Period for the Facility is published, Project Co shall provide to WGH a certificate showing:

- (i) the Energy Consumption in each calendar month during the Baseload and Slope Review Period expressed as a number of Units of Energy and measured in accordance with Section 1.9(a); and
  - (ii) the number of Heating Degree Days or Cooling Degree Days, as applicable, in respect of each of those calendar months.
- (d) Using the data referred to in Section 1.2(c) and taking account of such other matters relating to and/or affecting the Baseload and Slope as either party may table and following the same procedure as that set out in Sections 1.1(d) to 1.1(f) inclusive, the Parties shall re-calculate the Baseload and Slope. The recalculated factors of **C(h)**, **C(c)**, **M(h)** and **M(c)** shall be used for the purposes of calculating the Annual Energy Target, and any revisions to the Annual Energy Target, with effect from the Baseload and Slope Review Date and on each subsequent Annual Review Date until the next Baseload and Slope Review Date.
- (e) Project Co or WGH may each, on one occasion only in each five year period before a Baseload and Slope Review Date, refer the Baseload and Slope to an independent expert (being an appropriately qualified representative of ASHRAE or equivalent) for recalculation in accordance with the principles and methodology of this Section 1.2 (provided always that the independent expert may also take into account any other factors he considers relevant). In such a case, the commissioning party shall bear the costs of the appointment and Project Co shall make available such data as reasonably required by WGH or independent expert as soon as reasonably practical following such request. Any recalculated Baseload and Slope derived by such expert pursuant to such referral shall be used to recalculate the Annual Energy Target in accordance with Section 1.2(a) and such recalculated Baseload and Slope shall apply until the next Baseload and Slope Review Date.

*Adjustments for Variations*

- (f) The Annual Energy Target shall also be adjusted, if appropriate, as a result of a Variation.

*Adjustments for a Material Breach of the Energy Protocol*

- (g) In the event that either WGH or Project Co is found to be in material breach of the Energy Protocol contained in Appendix B to this Schedule 20, an appropriate adjustment shall be made to the Energy Target.

1.3 Comparing Actual Consumption of Energy with Target

- (a) By no later than 10 Business Days after either the submission by Project Co of a certificate referred to in Section 1.9(b), in respect of the month in which the Annual Review Date occurs, or the publication of the Heating Degree Days or Cooling Degree Days, as applicable, for the relevant month, whichever is the later to occur, the Parties shall:

- (i) make an adjustment to the Annual Energy Target (the "**Adjusted Annual Energy Target**") to reflect any variance between the number of Heating Degree Days or Cooling Degree Days, as applicable, in the Energy Year ending on the Annual Review Date and the 20 Year Average on which the Annual Energy Target for that year was based, and
  - (ii) calculate the amount by which Energy Consumption during the Energy Year ending on the Annual Review Date is greater or less than the Annual Energy Target, as adjusted under Section 1.3(a)(i) of this Part H.
- (b) If Energy Consumption is not less than 97% and not greater than 103% of the Adjusted Annual Energy Target, no adjustment to Monthly Service Payments shall be made.
  - (c) Subject to Section 1.7, if Energy Consumption is less than 97% of the Adjusted Annual Energy Target, a Gainshare Adjustment shall become due to Monthly Service Payments, calculated in accordance with Sections 1.4 and 1.6.
  - (d) Subject to Section 1.7, if Energy Consumption is greater than 103% of the Adjusted Annual Energy Target, a Painshare Adjustment shall become due to Monthly Service Payments, calculated in accordance with Sections 1.5 and 1.6.
  - (e) If Energy Consumption is identified at any time as less than 87% or greater than 113% of the Adjusted Annual Energy Target, then the variance shall be regarded as extraordinary and deserving of investigation. An independent expert (being an appropriately qualified representative of ASHRAE or equivalent) shall be commissioned at the joint cost of WGH and Project Co to assess and report on the cause of the variance and assess the responsibility of Project Co and WGH for that element of the energy consumption which is less than 87% or greater than 113% of the Adjusted Annual Energy Target and to apportion (as between WGH and Project Co) the appropriate share which should be borne of any excess costs (including but not limited to the costs of obtaining additional Allowances) or savings arising from such variance being less than 87% or greater than 113% of the Adjusted Annual Energy Target. The independent expert may be invited to consider making cost-effective recommendations for improving the efficiency of energy usage and/or minimizing carbon emissions. WGH and Project Co shall be bound by the findings of the independent expert pursuant to this Section and shall use reasonable endeavours to implement any additional recommendations that the independent expert may choose to make.

#### 1.4 Calculation of Gainshare Adjustment

A Gainshare Adjustment shall be calculated in accordance with the following formula:

$$\mathbf{GS = 0.5S \times AUC}$$

where:

GS is the Gainshare Adjustment;

S is the saving in energy, being the number of Units of Energy by which the volume of Energy Consumption is less than 97% of the Adjusted Annual Energy Target; and

AUC is the Average Unit Cost.

#### 1.5 Calculation of Painshare Adjustment

A Painshare Adjustment shall be calculated in accordance with the following formula:

$$\mathbf{PS = 0.5E \times AUC}$$

where:

PS is the Painshare Adjustment;

E is the excess energy consumption, being the number of Units of Energy by which the volume of Energy Consumption is greater than 103% of the Adjusted Annual Energy Target; and

AUC is the Average Unit Cost.

#### 1.6 Calculation of Average Unit Cost

The Average Unit Cost shall be calculated in accordance with the following formula:

$$\mathbf{AUC = (SC + US)/U}$$

Where:

AUC is the Average Unit Cost;

SC is the aggregate of all standing charges, levies, taxes and all other sums invoiced to WGH by its suppliers in respect of the supply of Energy during the relevant Energy Year, being sums which do not vary solely according to the amount of Units of Energy actually supplied;

US is the aggregate of all sums invoiced to WGH by its suppliers in respect of the supply of Units of Energy during the relevant Energy Year, being, in respect of each form of Energy, a price per Unit multiplied by the number of Units of that type of Energy actually supplied; and

U means the aggregate number of Units of Energy actually consumed in respect of the Facility in the course of the relevant Energy Year.

#### 1.7 Application of Gainshare or Painshare Adjustment

- (a) Where it is established in accordance with Section 1.3 that a Gainshare Adjustment or a Painshare Adjustment arises pursuant to Section 1.4 and 1.5, the relevant adjustment shall be given effect by way of (in the case of a Gainshare Adjustment) an increase to a Monthly Service Payment equal to the amount of the Gainshare Adjustment or (in the case of a Painshare Adjustment) by way of a decrease to a Monthly Service Payment equal to the amount of the Painshare Adjustment. In each case the relevant Monthly Service Payment to be adjusted shall be that which is due in respect of the Contract Month in which it is established that the relevant adjustment is required. In the event that a relevant adjustment arises in respect of the final Contract Year, the adjustment shall be made to the final Monthly Service Payment.
- (b) The making of any Gainshare Adjustment or Painshare Adjustment shall not affect the Annual Service Payment for the purposes of the application of Escalation Factor to the Project Agreement.
- (c) The Parties confirm that the Financial Model contains no provision for the cost of purchasing Energy.

#### 1.8 Supply of Energy

- (a) WGH shall from time to time as required enter into contracts with Energy suppliers for the supply of Energy to the Facility and shall be responsible for all payments due pursuant to such supply contracts.
- (b) The Parties agree that it is important to maintain an appropriate balance between (i) on the one hand, ensuring the efficient use of Energy and minimizing the level of emissions of greenhouse gases and harmful substances caused by the use of Energy (regardless of where the Energy is generated) and (ii) on the other hand, minimizing the monetary cost of Energy usage. There are set out in the Energy Protocol-Appendix B the agreed proportions for usage of different types of Energy. In managing the usage of Energy at the Facility Project Co shall wherever practicable ensure that these agreed proportions are followed.
- (c) Subject to Section 1.8(d) below, if the proportions of different types of Energy actually consumed at the Facility differ by more than 1% from the agreed proportions referred to above and such increase is the result of any change made by Project Co to the agreed proportions of usage of Energy referred to in Section 1.8(b) above without the agreement of the WGH Representative, any resultant increase in the cost to WGH of purchasing Energy shall be for Project Co's account and shall take effect by way of a reduction to Monthly Service Payments.
- (d) Section 1.8(c) shall not apply to the extent that a change in the proportions of Energy actually consumed results from a Variation or from an increase or decrease from time to time in WGH's requirements for usage of a particular type of energy, for example, because of an increase in the amount of plugged-in load

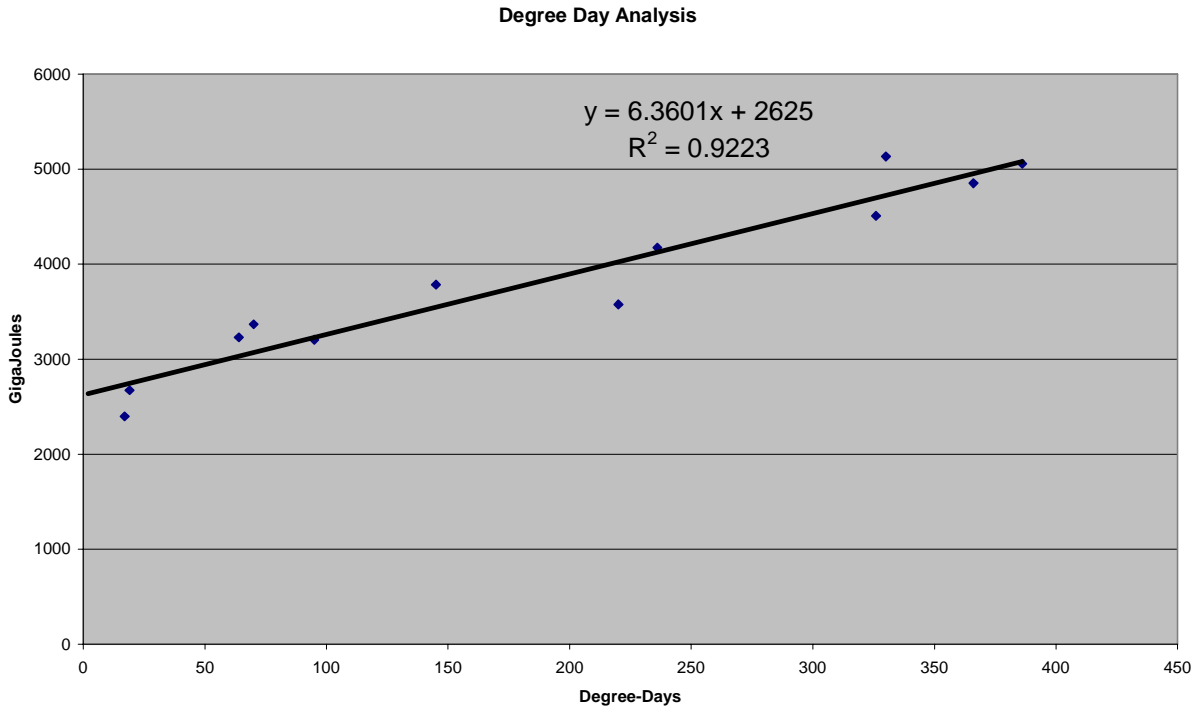
which could result in an increase in the use of electricity which may, in turn, change the overall percentage mix of fuel usage.

1.9 Measurement

- (a) Without prejudice to Schedule 15, Project Co shall measure the amount of Energy consumption for the Facility in respect of each calendar month beginning at the start of the Initial Period and ending on the expiry or earlier termination of the Project Agreement.
- (b) Without prejudice to Schedule 15 or Section 1.2(c) of this Part H, Project Co shall provide to WGH a summary of Energy Consumption in respect of each type of Energy at the Facility, at the end of each month, in the form of a certificate. The first such month shall begin on the first day of the Initial Period.

**APPENDIX A  
DEGREE DAY GRAPH**

Sample graph as referred to in Section 1.1(i) of Part H of this Schedule 20:





**APPENDIX B  
ENERGY PROTOCOL**

**1. PROTOCOL OBJECTIVES**

- 1.1 WGH and Project Co seek to minimize energy usage and costs within the parameters described within the Project Agreement through the design, construction, operation and efficient occupancy of the Facility.

**2. UTILITIES MANAGEMENT SUBCOMMITTEE AND CONTINUAL ADVICE**

- 2.1 Project Co shall provide an energy monitoring energy targeting and energy management service to WGH in accordance with this Appendix B.
- 2.2 A joint working group responsible for the management of the energy provisions within this Schedule 20 shall meet (the “Quarterly Monitoring Meetings”) each quarter throughout the Operational Term to analyze, review and discuss the monitoring of and record taking from plant and equipment (carried out by Project Co in accordance with Attachment 1 hereto (Outline of Energy Monitoring Procedures)) to ensure continued optimum performance.
- 2.3 The joint working group shall be composed of three (3) representatives nominated by Project Co and three (3) representatives nominated by WGH (the "**Utilities Management Subcommittee**"). Project Co will propose a detailed format and agenda for such Quarterly Monitoring Meetings at least two (2) weeks prior to each meeting (see Attachment 2 hereto for an example agenda). At the start of each Quarterly Monitoring Meeting, the representatives shall appoint one of their number to act as Chairperson, ensuring that the position is held by a Project Co representative and then a WGH representative on an alternating basis.
- 2.4 In connection with the ongoing monitoring, Project Co will also be expected to provide quarterly projections for the consumption of energy for the forthcoming twelve (12) months. Such projections will then be used by WGH for financial planning requirements.
- 2.5 Without prejudice to Project Co's obligations as articulated in the Project Agreement, prime energy usage monitoring must be undertaken on a utility by utility basis by the provision of metering which must be data logged, the results of which will be one of the inputs at the Quarterly Monitoring Meetings. Further information as to the methods of monitoring is contained in Attachment 1 hereto (Outline of Energy Monitoring Procedures).
- 2.6 Project Co shall ensure that representatives of the Service Provider attend the Quarterly Monitoring Meetings.
- 2.7 At the Quarterly Monitoring Meetings, Project Co will report on scheduled maintenance being undertaken together with unscheduled maintenance and emergency maintenance being undertaken relevant to energy consumption to ensure best operating efficiencies for

the Facility and the Utilities Management Subcommittee will review and provide feedback on such report.

- 2.8 Project Co shall commit to altering the schedule of programmed maintenance following receipt of feedback from the Utilities Management Subcommittee in the form of Monthly Energy Reports.
- 2.9 Project Co will be proactive at the Quarterly Monitoring Meetings and shall undertake regular value management reviews for the Facility to ascertain whether minor design alterations, technology changes or other technological enhancements will benefit lifecycle costings and further improved energy performance of the installations to the joint and equal benefit of the Parties. WGH may, but shall not be obliged to invoke the Variation Procedure, as outlined in Schedule 22 to the Project Agreement, in respect of any such suggestion.
- 2.10 In the event that the Parties and/or the Utilities Management Subcommittee are unable to reach agreement on any of the matters covered in this Appendix B, such matter shall be determined using the Dispute Resolution Procedure as set out in Schedule 27.
- 2.11 Project Co (acting through the Utilities Management Subcommittee) will advise WGH in relation to the following measures which it will expect WGH and WGH Parties to implement and Project Co shall implement and shall procure that Project Co Parties implement the same:
  - (a) control and efficient use of space heating and cooling;
  - (b) control and efficient use of lighting;
  - (c) control and efficient use of hot and cold water;
  - (d) control and efficient use of plugged-in equipment;
  - (e) any energy awareness campaigns; and
  - (f) all other relevant energy consumption advice.

### 3. INITIAL MONITORING

- 3.1 Throughout the initial period of energy monitoring (the "**Monitoring Period**"), Project Co shall ensure that all necessary energy management procedures and energy optimization initiatives are undertaken in accordance with Attachment 1 hereto.
- 3.2 Project Co shall demonstrate, to WGH's satisfaction, that during the Monitoring Period systems are optimized to operate at peak efficiencies and that all energy reduction techniques designed and included within the job are functioning correctly.

3.3 Energy measurements and meter readings shall be undertaken by Project Co on a calendar month basis during the Monitoring Period and Project Co shall provide a report on the measurements and readings to WGH.

#### **4. REPORTING SERVICES**

4.1 From the commencement of the Operational Period, Project Co shall provide to WGH a monthly report of the energy efficiency performance (each a "**Monthly Energy Report**").

4.2 Each Monthly Energy Report following the completion of the Monitoring Period shall compare actual performance to date with the performance targets as required by this Schedule 20 and monthly monitoring of the Facility shall include data on the thermal efficiency of the entire plant and equipment and operational efficiency of distribution systems to ensure continued optimum performance. It will also include trend analysis that will indicate malfunctions.

#### **5. ENERGY MONITORING**

5.1 All energy supplied to and used within the Facility shall be monitored using the building management system, capable of verification by WGH.

#### **6. COMPLIANCE**

6.1 WGH is entitled from time to time to appoint an energy consultant of its choice and at its cost to monitor and check Project Co's compliance with the provisions of this Appendix B. Project Co must cooperate with any such consultant and must allow such access to the Facility, all energy records and all facilities management maintenance data as such consultant may reasonably require.

#### **7. WGH AND PROJECT CO'S UNDERTAKINGS**

7.1 WGH shall assist, and shall encourage the WGH Parties to assist Project Co to achieve the energy consumption targets through the adoption of good house keeping techniques to be achieved through management and involvement of WGH staff. WGH will ensure that WGH Parties involve management, clinical and non-clinical staff in energy efficiency focus in order to incorporate good practice as part of WGH and WGH Parties' overall activities.

7.2 WGH and Project Co recognize that the energy consumption targets can only be achieved with the co-operation of their staff and therefore respectively undertake that their commitment to and the commitment of WGH staff and Project Co staff, service providers and other relevant parties (as the case may be) to energy efficiency will be adopted throughout their respective organizations, to ensure that staff are aware of and have been encouraged to practise the energy saving policy so that WGH, WGH staff, Project Co and Project Co staff, service providers and other relevant parties will prevent excessive energy usage. This will include without limitation:

- (a) providing their respective staff with information about why energy conservation is important, describing practical and environmental benefits;
  - (b) stressing that most energy is used by building occupants;
  - (c) informing staff of the minimum legal/design operation temperature requirements;
  - (d) including energy efficiency briefing within staff familiarization, training and new staff inductions;
  - (e) switching off equipment not in use or not required, including discouraging the leaving of equipment in standby mode where technically appropriate;
  - (f) sharing departmental energy use information with departmental managers;
  - (g) obtaining feedback from staff on measures to improve energy efficiency; and
  - (h) distributing appropriate promotional and publicity material to raise awareness of energy efficiency measures and achievements.
- 7.3 The Parties shall, for consideration by the Utilities Management Subcommittee, produce annual reports summarizing the above measures and including recommendations and suggestions received from staff to enhance energy efficiency at the Facility.
- 7.4 Project Co shall encourage representatives of the Service Provider to attend meetings of the Utilities Management Subcommittee.
- 7.5 Specific Service Specification documents shall be amended to reflect any changes to the organization and management of energy services agreed through the Utilities Management Subcommittee.
- 7.6 WGH shall advise each quarterly meeting of the Utilities Management Subcommittee of any departmental operational changes, which may affect utilities usage. This would include changes to the assumptions on which Project Co's original energy consumption figures were calculated, including, material increases in occupancy levels, department opening times and equipment levels.
- 7.7 Project Co shall undertake regular value management reviews for the services installations to ascertain whether minor design alterations, involving use of in-house resources, technology changes or other technological enhancements will benefit lifecycle costings and further improve energy performance of the installations. Any outputs of such value management exercises, which have the support of the Utilities Management Subcommittee, will be considered by Project Co and WGH at the Facilities Management Committee, which will then ascertain whether minor capital works are needed to continue to ensure best possible performance targets are achieved. Should work be required to increase energy efficiency then this will be dealt with through the Variation Procedure.

7.8 Project Co undertakes that it shall not intentionally alter the proportions of different types of energy consumed from the agreed proportions referred to within this Appendix B without the prior agreement of the Utilities Management Subcommittee.

**ATTACHMENT 1 – OUTLINE OF ENERGY MONITORING PROCEDURES****1. INTRODUCTION**

The purpose of this Attachment 1 is to outline how energy consumption will be monitored and measured at the Facility.

**2. ENERGY MONITORING**

Project Co has provided the following metering within the Facility:

- (a) electrical consumption;
- (b) gas consumption;
- (c) cold water consumption; and
- (d) potential metering of third party users.

The metering will be an integral part of the building management system, which will have the ability to record and log data regarding the energy consumption.

The data will be collected and presented in spreadsheet format or trend graphing allowing trends to be identified in the Monthly Energy Reports.

Once a database of monthly consumptions has been established any significant change which is apparent will be investigated.

**3. VARIATION DUE TO WEATHER AND CLIMATE DATA**

In addition to the Heating Degree Days or Cooling Degree Days, as applicable, figures, Project Co will obtain external temperature profiles from the Environment Canada local weather office and the building management system. The temperature profiles will be used to assist in the evaluation of quarterly energy trends particularly in the event that excessive summertime temperatures have been experienced. However, the Environment Canada local weather office data will be the prime source of weather data. Any trends in climate change will be noted and included in the Monthly Energy Reports.

**4. VARIATIONS DUE TO END USERS' CONSUMPTION**

Project Co will use available information to determine usage and where appropriate investigate the cause of any excess consumption.

This will require a period of operation under steady state conditions to allow collection of a representative database.

A summary of the database will be included in the Monthly Energy Report.

Project Co will evaluate all deviations as part of its duties to the Utilities Management Subcommittee as defined in Appendix B to this Schedule 20. The results will be logged as either:

- (a) deficient maintenance requiring rectification;
- (b) external influences outside Project Co's control (e.g. abnormal weather conditions);
- (c) deviations subject to Schedule 22 to the Project Agreement;
- (d) incidence of misuse of energy by WGH; and
- (e) incidence of misuse of energy by Project Co or any Project Co Party.

All deviations will be reviewed at the next Quarterly Monitoring Meeting where appropriate actions will be agreed.

In the event that the Utilities Management Subcommittee is unable to agree on the cause or magnitude of the deviation, the matter shall be determined using the Dispute Resolution Procedure as set out in Schedule 27.

## **5. ENERGY MANAGEMENT**

Project Co will evaluate energy consumption patterns. This will maximize the benefit of the database and trend logging and enable the focus of energy awareness matters particularly where less than efficient use is suspected.

## **6. TOTAL ENERGY CONSUMPTION**

Total energy consumption for the Facility will be recorded on a monthly basis and will be included in the Monthly Energy Report. This will be identified separately as fossil (gas), electricity, and water consumption using industry standard units of measurement.

## **7. ONGOING VALUE ENGINEERING**

Project Co will continue to evaluate new and existing technologies in respect of rising energy costs and advise where further investment could provide cost effective energy reductions.

## ATTACHMENT 2 – QUARTERLY MONITORING MEETING AGENDA

<b>Meeting Title:</b>	Quarterly Monitoring Meeting of the Utilities Management Subcommittee For The Period
<b>Date of Meeting:</b>	
<b>Venue:</b>	
<b>Those Present:</b>	Project Co Representatives WGH Representatives Representative of the Service Provider
<b>Item 1</b>	Apologies for absence
<b>Item 2</b>	Recorded energy consumption for the quarter  Gas:  Electric:  Oil:  Water:
<b>Item 3</b>	Report on Heating Degree Day and Cooling Degree Day data for corresponding period
<b>Item 4</b>	WGH Variations under Schedule 22
<b>Item 5</b>	Actual energy consumption compared against target
<b>Item 6</b>	Review Painshare and Gainshare mechanisms
<b>Item 7</b>	Report on Procedures
<b>Item 8</b>	Report on plant and systems performance and review of future planned maintenance program
<b>Item 9</b>	Review of energy trends and recommendations for improved energy efficiency and training
<b>Item 10</b>	Asset management and lifecycle issues
<b>Item 11</b>	New technologies and issues for consideration under ongoing value engineering



<b>Item 12</b>	Rolling 12 month annual energy totals
<b>Item 13</b>	Disputes subject to Schedule 27
<b>Item 14</b>	AOB and date of next meeting

**APPENDIX C  
FAILURE POINTS**

<b>Category</b>	<b>FPs</b>	<b>Application</b>
Minor Quality Failure	2	Per Quality Failure
Medium Quality Failure	6	
Major Quality Failure	20	
Minor Service Failure	2	Per Functional Unit affected by the Service Failure
Medium Service Failure	6	
Major Service Failure	20	
Availability Failure (for the avoidance of doubt, this applies whether or not WGH continues to make use of the relevant Functional Part)	20	Per Functional Unit affected by the Availability Failure
Performance Action Plan Failure	Nil	Not Applicable

**APPENDIX D**  
**FUNCTIONAL AREA AND FUNCTIONAL UNIT WEIGHTINGS**

[REDACTED]

**APPENDIX E**  
**DEDUCTION PERCENTAGES USED IN THE CALCULATION OF ELEVATOR**  
**AVAILABILITY FAILURES**

<b>Number of Elevators Unavailable (at any one time)</b>	<b>DP(EAF)</b>
<b>1</b>	<b>2.5%</b>
<b>2</b>	<b>10%</b>
<b>3</b>	<b>25%</b>
<b>4</b>	<b>50%</b>
<b>5</b>	<b>70%</b>
<b>6</b>	<b>80%</b>
<b>7</b>	<b>90%</b>
<b>8</b>	<b>100%</b>

**APPENDIX F  
ANNUAL SERVICE PAYMENT SCHEDULE**

<b>Contract Year</b>	<b>Annual Service Payment Excluding Lifecycle (ASPX) (in Base Date prices)</b>	<b>Lifecycle Payment (LCP) (in Base Date prices)</b>	<b>Annual Service Payment (ASP)</b>
1	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
2	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
3	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
4	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
5	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
6	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
7	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
8	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
9	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
10	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
11	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
12	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
13	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
14	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
15	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
16	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
17	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
18	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
19	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
20	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
21	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
22	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
23	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
24	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
25	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
26	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
27	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
28	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
29	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
30	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]
31	\$[REDACTED]	\$[REDACTED]	\$[REDACTED]

**APPENDIX G  
ORIGINAL ANNUAL PRICES FOR MARKET TESTED SERVICES**

<b>Services</b>	<b>Original Annual prices</b>
GROUNDS MAINTENANCE SERVICES	\$[REDACTED]
SECURITY AND PARKING MANAGEMENT SERVICES	\$[REDACTED]

**SCHEDULE 21  
EQUIPMENT LIST**

**[REDACTED]**

**SCHEDULE 22****VARIATION PROCEDURE****1. VARIATIONS****1.1 Definitions**

- (a) The following terms shall have the following meanings:
- (i) "**Direct Cost**" has the meaning given in Appendix A of this Schedule 22.
  - (ii) "**Estimate**" has the meaning given in Section 1.4(a) of this Schedule 22.
  - (iii) "**Project Co Variation Notice**" has the meaning given in Section 2.1(a) of this Schedule 22.
  - (iv) "**Variation**" means a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Project Operations, including in relation to the whole or any part of the Works or the Project Co Services.
  - (v) "**Variation Confirmation**" has the meaning given in Section 1.8(a)(ii) of this Schedule 22.
  - (vi) "**Variation Directive**" means a written instruction which is issued on a form designated as a "Variation Directive Form" and signed by the WGH Representative directing Project Co to immediately proceed with a Variation pending the finalization and issuance of a Variation Confirmation for that Variation.
  - (vii) "**Variation Enquiry**" has the meaning given in Section 1.3(a) of this Schedule 22.
  - (viii) "**WGH Work**" has the meaning given in Section 1.7(a) of this Schedule 22.

**1.2 General**

- (a) WGH has the right from time to time to propose and require Project Co to carry out and implement a Variation, and any such Variation shall be subject to the provisions of this Schedule 22.
- (b) WGH shall be obligated to proceed with a Variation in certain circumstances specified in this Project Agreement, and any such Variation shall be subject to the provisions of this Schedule 22.



- (c) Project Co will not be entitled to any payment, compensation or extension of time for a Variation except to the extent provided in a Variation Confirmation or Variation Directive in accordance with this Schedule 22.

### 1.3 Variation Enquiry

- (a) If WGH proposes or is obligated pursuant to the terms of this Project Agreement or Applicable Law to initiate a Variation it shall deliver to Project Co a written notice of the proposed Variation (a "**Variation Enquiry**").
- (b) A Variation Enquiry shall:
- (i) describe the proposed Variation with sufficient detail to enable Project Co to prepare a detailed Estimate;
  - (ii) in the event that the proposed Variation will require a Capital Expenditure, state whether WGH intends to pay for the Variation by way of lump sum payment or payments, adjustment to the Monthly Service Payments (and, if applicable, with a request for Project Co to obtain financing for all or part of the Variation), or a combination thereof; and
  - (iii) provide a preliminary indication of any provisions of this Project Agreement (including the Technical Requirements or the Project Co Proposal Extracts) that will be affected by the proposed Variation, as well as the amendments to this Project Agreement (including the Technical Requirements or the Project Co Proposal Extracts) that may be necessary to accommodate the Variation.

### 1.4 Delivery of Estimate

- (a) As soon as practicable and in any event within 15 Business Days after receipt of a Variation Enquiry, or such longer period as the Parties agree acting reasonably, Project Co shall deliver its detailed breakdown, estimate and other information (an "**Estimate**") prepared in accordance with and meeting the requirements of Section 1.6.

### 1.5 Project Co Grounds for Objection

- (a) Project Co may only refuse to deliver an Estimate if Project Co can demonstrate to WGH's satisfaction, acting reasonably, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), that:
- (i) the implementation of the Variation would materially and adversely affect the health and safety of any person;
  - (ii) the implementation of the Variation would:
    - (A) infringe any Applicable Law;

- (B) cause to be revoked any existing Permit, Licence or Approval required by Project Co to perform the Project Operations, and such Permit, Licence or Approval is not, using commercially reasonable efforts, capable of amendment or renewal; or
  - (C) require a new Permit, Licence or Approval for Project Co to perform the Project Operations, which Permit, Licence or Approval will not, using commercially reasonable efforts by Project Co or WGH, as applicable, be obtainable;
- (iii) the proposed Variation would have a material and adverse effect on performance of the Project Operations (except those Project Operations which have been specified as requiring amendment in the Variation Enquiry) in a manner not compensated pursuant to this Schedule 22;
  - (iv) the implementation of the Variation would be a departure from Good Industry Practice;
  - (v) WGH does not have the legal power or capacity to require the Variation to be implemented or to do anything envisaged by this Schedule 22 in respect of or in connection with the Variation;
  - (vi) the Variation would, if implemented, result in a change in the essential nature of the Facility;
  - (vii) the Variation Enquiry does not comply with the requirements of Section 1.3 (including a failure to include adequate information therein to enable Project Co to prepare an Estimate in respect thereof);
  - (viii) in the case of a Variation relating to the Works, the time specified for commencement and/or completion of such Variation cannot be achieved by Project Co despite commercially reasonable efforts; or
  - (ix) in the case of a Variation relating to the Project Co Services, the time specified for implementation of such Variation cannot be achieved by Project Co despite commercially reasonable efforts.
- (b) If Project Co refuses to provide an Estimate on the grounds set out in Section 1.5(a), Project Co shall, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), deliver to WGH a written notice specifying the grounds upon which Project Co rejects the Variation and the details thereof.

## **1.6 Estimate Requirements**

- (a) Unless WGH in a Variation Enquiry requires only specified limited information, each Estimate shall include the following information, sufficient to demonstrate to WGH's reasonable satisfaction:

- (i) the steps Project Co will take to implement the Variation, in such detail as is reasonable and appropriate in the circumstances;
- (ii) any impact on the Scheduled Substantial Completion Date, and any other schedule impact on the provision of the Facility and completion of the Works (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
- (iii) any impact on the performance of the Project Operations and any other impact on this Project Agreement (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
- (iv) any impact on expected usage of utilities, including those identified in Schedule 20 - Payment Mechanism, for the current Contract Year and subsequent Contract Years;
- (v) any amendments to this Project Agreement (including Schedule 20 - Payment Mechanism) or any Project Document required as a consequence of the Variation, the objective of such amendments being to ensure that (save for the obligation of WGH to make payments or altered payments in respect of the Variation) the Parties are in no better and no worse position in relation to the Project than they would have been in if the Variation had not been implemented and, in particular, that there will be no material adverse change to the risk profile of the Project as a result of the Variation;
- (vi) any impact on the Direct Costs of Project Co and its Subcontractors, including:
  - (A) any Capital Expenditure that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs (whether financed by Project Co or WGH); and
  - (B) any other costs that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs;
- (vii) either:
  - (A) a confirmation that the proposed Variation will not affect Project Co's existing financing or that Project Co's existing financing is adequate to implement the Variation, or
  - (B) if new or additional financing is required to implement the Variation, an indication as to the availability of such new or additional financing and the cost and terms of such new or additional financing;
- (viii) Project Co's confirmation that the projected internal rate of return on any additional equity capital required to finance the Variation will be the Base Case Equity IRR;

- (ix) Project Co's preliminary indication of the potential increase or decrease, if any, of the Monthly Service Payments, with such amount calculated by reference to the relevant parts of the Financial Model to demonstrate the impact of the proposed Variation;
- (x) any Permits, Licences and Approvals that must be obtained or amended for the Variation to be implemented, and the latest date by which Project Co must receive a Variation Confirmation and obtain or amend such Permits, Licences and Approvals for the Estimate to remain valid; and
- (xi) the proposed methods of certification of any construction or operational aspect of the Project Operations required by the Variation if not covered by the provisions of this Project Agreement,

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

- (b) In preparing its Estimate, Project Co shall include sufficient information to demonstrate to WGH's satisfaction, acting reasonably, that:
  - (i) Project Co has used or has obliged its Subcontractors (or will oblige any Subcontractors not yet selected) to use commercially reasonable efforts, including the use of competitive quotes or tenders (if appropriate or required by Sections 1.6(c) and 1.6(e)), to minimize any increase in costs and to maximize any reduction in costs;
  - (ii) all costs of Project Co and its Subcontractors are limited to Direct Costs;
  - (iii) Project Co, the Construction Contractor and the Service Provider shall charge only the margins for overhead and profit as set out in Appendix B hereto (such margins each calculated on the basis of the applicable Direct Costs so that no margin of Project Co, the Construction Contractor or the Service Provider is calculated on any other margin of Project Co, the Construction Contractor or the Service Provider), and no other margins or mark-ups;
  - (iv) the margins for overheads and profit as set out in Appendix B hereto as applicable to Project Co's Direct Costs shall only be chargeable on Direct Costs of Project Co, such that Project Co shall not charge any margins on any amounts charged by the Construction Contractor or the Service Provider;
  - (v) all costs of providing Project Operations, including Capital Expenditures, reflect:
    - (A) labour rates applying in the open market to providers of services similar to those required by the Variation or such other amount as is payable in accordance with the Collective Agreement;
    - (B) any and all changes in the Output Specifications arising out of the proposed Variation; and

- (C) any and all changes in risk allocation;
  - (vi) the full amount of any and all expenditures that have been reduced or avoided (including for any Capital Expenditure) and that all such expenditures, including all applicable margins for overhead and profit anticipated to be incurred but for the Variation, have been taken into account and applied in total to reduce the amount of all costs; and
  - (vii) Project Co has mitigated or will mitigate the impact of the Variation, including on the Works Schedule, the performance of the Project Operations, the expected usage of utilities, and the Direct Costs to be incurred.
- (c) Project Co will use commercially reasonable efforts to obtain the best value for money when procuring any work, services, supplies, materials or equipment required by the Variation and will comply with all Good Industry Practice in relation to any such procurement, to a standard no less than Project Co would apply if all costs incurred were to its own account without recourse to WGH, including using commercially reasonable efforts to mitigate such costs.
  - (d) As soon as practicable, and in any event not more than 15 Business Days after WGH receives an Estimate, Project Co and WGH shall discuss and seek to agree on the Estimate, including any amendments to the Estimate agreed to by the Parties.
  - (e) If WGH would be required by Applicable Law or any policy applicable to WGH to competitively tender any contract in relation to the proposed Variation, WGH may require Project Co to seek and evaluate competitive tenders for the proposed Variation in accordance with such Applicable Law or policy.
  - (f) WGH may modify a Variation Enquiry in writing at any time for any matter relating to the Estimate or the discussions in relation thereto, in which case Project Co shall, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification, notify WGH in writing of any consequential changes to the Estimate.
  - (g) If the Parties cannot agree on an Estimate pursuant to Section 1.6(d), then any Dispute will be determined in accordance with Schedule 27 - Dispute Resolution Procedure.

### **1.7 WGH's Right to Perform**

- (a) After Substantial Completion, WGH shall have the right to perform the subject matter of a proposed Variation ("**WGH Work**") itself, or through others contracting directly with WGH, without compensation to Project Co, except as specifically stated herein.
- (b) WGH shall indemnify and save Project Co harmless from and against any and all loss or expense which may be suffered, sustained or incurred by Project Co as a direct result of, in respect of, or arising out of the performance by WGH, or any third party, of WGH Work, including, without limitation, any loss or expense related to any adverse impacts on the Project Operations.

**1.8 Variation Confirmation**

- (a) As soon as practicable, and in any event within 15 Business Days after the later of the date the Estimate was delivered and the date the Estimate was either agreed to or any Dispute in respect thereof was determined in accordance with Schedule 27 - Dispute Resolution Procedure, WGH shall either:
- (i) withdraw the Variation Enquiry by written notice to Project Co; or
  - (ii) issue a written confirmation (the "**Variation Confirmation**") of the Estimate, including any agreed modifications thereto or any modifications resulting for the determination of a Dispute in respect thereof, which Variation Confirmation may be subject to Project Co obtaining financing pursuant to Section 1.9.
- (b) If WGH does not issue a Variation Confirmation within such 15 Business Days, then the Variation Enquiry shall be deemed to have been withdrawn.
- (c) Upon the Variation Confirmation being issued, and if applicable upon Project Co obtaining financing pursuant to Section 1.9:
- (i) the Parties shall as soon as practicable thereafter do all acts and execute all documents to amend this Project Agreement necessary to implement the Variation, including in respect of any required extension of time and including provision for payment to Project Co as provided in Section 1.10;
  - (ii) Project Co shall implement the Variation as provided for in the Variation Confirmation, and subject to amendments pursuant to Section 1.8(c)(i), all provisions of this Project Agreement applicable to the Project Operations shall apply to the Project Operations as thereby changed and no additional claim with respect to the Variation or Variation Confirmation will be considered; and
  - (iii) payment in relation to the Variation shall be as provided for in Section 1.10 and pursuant to any amendments pursuant to Section 1.8(c)(i).
- (d) If a Variation Confirmation is subject to Project Co obtaining financing pursuant to Section 1.9, then the Variation Confirmation shall not be effective until:
- (i) Project Co obtains such financing acceptable to WGH in its sole discretion; or
  - (ii) WGH in its sole discretion waives such requirement.
- (e) Except as hereinafter provided, until a Variation Confirmation has been issued:
- (i) the determination of whether or not to proceed with a Variation shall at all times be at WGH's sole discretion, despite any Dispute or any other matter in relation to a Variation being referred to or determined by Schedule 27 - Dispute Resolution Procedure; and

- (ii) WGH may at any time withdraw a Variation Enquiry and WGH shall not be obligated to Project Co in respect of a Variation until such time as WGH in its sole discretion issues a Variation Confirmation and, if applicable, Project Co has obtained the financing requested by WGH or WGH has waived such requirement,

provided that WGH may not withdraw a Variation Enquiry in circumstances where WGH is obligated pursuant to the terms of this Project Agreement to proceed with a Variation. In such circumstances Schedule 27 - Dispute Resolution Procedure shall be employed to finalize any aspects of the Variation which cannot otherwise be agreed to in accordance with the terms of this Schedule 22.

- (f) If a Variation Confirmation is not issued for any Variation Enquiry in respect of which Project Co has used commercially reasonable efforts to produce a fair and accurate Estimate, WGH shall reimburse Project Co for all Direct Costs reasonably and properly incurred by Project Co in connection with preparing the Estimate.

## **1.9 Financing**

- (a) If Project Co in its Estimate confirms that existing financing is not available to pay for the proposed Variation and if WGH requests Project Co to obtain financing for a Variation, then a Variation Confirmation may be issued subject to Project Co obtaining financing. In such event, Project Co shall use commercially reasonable efforts to obtain the requested financing on terms satisfactory to Project Co, the Lenders and WGH, provided that, prior to the Substantial Completion Date, Project Co shall not be required to seek financing from any source other than the Lenders.
- (b) If Project Co has used commercially reasonable efforts to obtain the requested financing but has been unable to obtain an offer of financing on terms reasonably satisfactory to Project Co and WGH within 60 days of the date that WGH issues the Variation Confirmation, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless WGH, in its sole discretion, waives the requirement for financing or unless WGH is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (c) If Project Co obtains an offer of financing on terms reasonably satisfactory to Project Co, Project Co shall provide WGH with details of such financing, and WGH shall, in its sole discretion, determine whether Project Co should proceed with such financing. If WGH determines that Project Co should not proceed with such financing, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless WGH, in its sole discretion, waives the requirement for financing or unless WGH is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (d) WGH may at any time withdraw the requirement for Project Co to use commercially reasonable efforts to obtain financing, after which Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to

financing shall no longer have any effect unless WGH in its sole discretion waives the requirement for financing or unless WGH is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.

- (e) If WGH waives the requirement for financing or if Project Co has no further obligation to obtain financing for the Variation pursuant to Sections 1.9(b), 1.9(c) or 1.9(d), then Project Co shall proceed with the Variation as set out in the Variation Confirmation and WGH shall pay for the Variation as provided for in Section 1.10(a)(ii).

### **1.10 Payment**

- (a) If a Variation Confirmation has been issued and is not subject to financing, or if the requirement for financing has been satisfied by Project Co or has been waived by WGH, a price adjustment for the Variation, as set out in the Estimate and as adjusted and confirmed by the Variation Confirmation, shall be made as follows:
  - (i) the Monthly Service Payments shall be adjusted as set out in the Variation Confirmation; and
  - (ii) payment for Capital Expenditures as set out in the Variation Confirmation and not financed by Project Co shall be paid as follows:
    - (A) WGH shall pay such Capital Expenditures in lump sum payments based on a payment schedule agreed by WGH and Project Co, acting reasonably, to reflect the amount and timing of the Capital Expenditures to be incurred by Project Co in carrying out the Variation to the extent borne by WGH; and
    - (B) where payment for part of the Variation reflects the carrying out of, or specific progress towards, an element within the Variation, Project Co shall provide satisfactory evidence confirming that the part of the Variation corresponding to each occasion when payment is due under the payment schedule has been duly carried out.

In the event WGH and Project Co fail to agree as to the terms of the payment schedule, the payment schedule shall be determined in accordance with Schedule 27 - Dispute Resolution Procedure, provided that, where all or any part of the Variation is being carried out by a third party under a contract with Project Co, subject to the terms of any contract between Project Co and that third party in relation to the implementation of the Variation having been approved by WGH (such approval not to be unreasonably withheld or delayed), the process under Schedule 27 - Dispute Resolution Procedure shall determine a payment schedule which would enable Project Co to be funded by WGH in time to make payments to that third party in accordance with its contract with Project Co.

- (b) WGH shall make payment to Project Co within 20 Business Days of receipt by WGH of invoices presented to WGH in accordance with the agreed payment schedule



accompanied (where applicable) by the relevant evidence that the relevant part of the Variation has been carried out.

- (c) Payments by WGH in respect of a Variation shall be subject to applicable holdback provisions of the *Construction Lien Act* (Ontario), as applicable.
- (d) Project Co shall not be entitled to any amount in excess of the amount of the Estimate confirmed in the Variation Confirmation.
- (e) Upon request by Project Co, WGH shall provide to Project Co copies of any consent or approval issued by MOHLTC or WGH's board of directors in connection with a proposed Variation.

### **1.11 Reduction in Project Operations**

- (a) If a Variation involves any reduction in Project Operations which results in savings in Direct Costs to Project Co, such savings shall result in a reduction in the compensation payable to Project Co under this Project Agreement in an amount equal to such reduction in Direct Costs, and Project Co shall compensate WGH by way of a reduction in the Monthly Service Payments.

### **1.12 Variation Directive**

- (a) If an Estimate is not promptly agreed upon by WGH and Project Co or if there is a Dispute in relation thereto or if WGH, in its sole discretion, requires a Variation to be implemented prior to issuing a Variation Confirmation, then WGH may issue a Variation Directive and, following receipt of the Variation Directive:
  - (i) Project Co shall promptly proceed with the Variation;
  - (ii) the determination of the valuation and time extensions, if any, required in connection with such Variation, shall be made as soon as reasonably possible after commencement of the implementation of the Variation; and
  - (iii) pending final determination of the valuation and time extensions, if any, required in connection with such Variation, the Independent Certifier (if such Variation is in respect of matters prior to Final Completion) or the WGH Representative, as applicable and, in each case, acting reasonably, shall determine the valuation in accordance with Appendices A and B hereto, with any Dispute to be determined in accordance with Schedule 27 - Dispute Resolution Procedure,

provided that, WGH shall fund all Variations implemented by way of a Variation Directive as provided for in Section 1.10(a)(ii).

## **2. PROJECT CO VARIATIONS**

### **2.1 General**

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

### **2.2 Project Co Variation Notice**

- (a) A Project Co Variation Notice shall:
- (i) set out details of the proposed Variation in sufficient detail to enable WGH to evaluate it in full;
  - (ii) specify Project Co's reasons for proposing the Variation;
  - (iii) indicate all reasonably foreseeable implications of the Variation, including whether there are any costs or cost savings to WGH, and whether an adjustment to the Monthly Service Payments is required; and
  - (iv) indicate the latest date by which a Variation Enquiry must be issued.
- (b) If WGH, in its sole discretion, elects to consider the Variation proposed by Project Co, WGH may issue to Project Co a Variation Enquiry and the procedure set out in Section 1 will apply.

## **3. SMALL WORKS**

### **3.1 General**

- (a) After the Substantial Completion Date, Project Co shall carry out all Small Works requested by WGH.
- (b) If Small Works are requested by WGH, Project Co shall, within 10 Business Days of each such request and prior to carrying out the Small Works, provide WGH with a price for carrying out the Small Works.
- (c) If Project Co's price is accepted by WGH, in its sole discretion, Project Co shall carry out the Small Works for such price.
- (d) WGH may at any time, in its sole discretion, including if WGH does not accept the price proposed by Project Co pursuant to Section 3.1(b), issue a Variation Enquiry or Variation Directive in respect of such Small Works, in which event the provisions of this Schedule 22, other than this Section 3, shall apply.
- (e) Project Co's price shall include only its Direct Costs, as calculated in accordance with Appendix A, together with applicable margins as set out in Appendix B.

- (f) For greater certainty, Small Works do not constitute WGH Funded Projects (as defined in Schedule 15 – Output Specifications) and no fees, including project management fees, project management services fees, project delivery services fees, margins or similar fees are required to be paid by WGH to Project Co in connection with the performance of Small Works other than as determined in accordance with the requirements of this Section 3.

### **3.2 Project Co to Minimize Inconvenience**

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

**APPENDIX A****CALCULATION OF DIRECT COSTS****1. DIRECT COSTS**

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

- (i) wages and benefits paid for labour in the direct employ of Project Co or its Subcontractors while performing that part of the Project Operations on Site;
- (ii) salaries, wages and benefits of Project Co's or its Subcontractors' personnel when stationed at the Site office in whatever capacity employed, or personnel engaged at shops or on the road, in expediting the production or transportation of materials or equipment;
- (iii) salaries, wages and benefits of Project Co's or its Subcontractors' office personnel engaged in a technical capacity;
- (iv) without limiting Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, contributions, assessments or taxes incurred for such items as employment insurance, provincial health insurance, workers' compensation, and Canada Pension Plan, insofar as such costs are based on the wages, salaries, or other remuneration paid to Project Co for employees pursuant to Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, but excluding for certainty all income taxes on such wages, salaries and other remuneration;
- (v) travel and subsistence expenses of Project Co's or its Subcontractors' officers or employees referred to in Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A;
- (vi) the cost of materials including hand tools which have a retail value of \$2000 or less;
- (vii) products, supplies, equipment, temporary services and facilities, including transportation and maintenance thereof, which are consumed in the performance of the Variation;
- (viii) the rental costs of all tools (excluding hand tools which have a retail value of \$2000 or less), machinery, and equipment used in the performance of the Variation, whether rented from or provided by Project Co or others, including installation, minor repair and replacement, dismantling, removal, transportation and delivery costs thereof;

- (ix) deposits lost;
- (x) the amount of all Subcontracts with Subcontractors;
- (xi) the amount paid for any design services;
- (xii) the cost of third party quality assurance required by WGH, such as independent inspection and testing services;
- (xiii) charges levied by Governmental Authorities, but excluding fines or penalties not related to the implementation of the Variation;
- (xiv) subject to Section 1.1(iv) of this Appendix A and without limiting the obligation of WGH to pay GST under this Project Agreement, Taxes, but excluding:
  - (A) GST;
  - (B) taxes imposed on Project Co or a Project Co Party based on or measured by income or profit or otherwise imposed under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;
  - (C) capital taxes based on or measured by the capital of Project Co or a Project Co Party;
  - (D) taxes relating to withholdings on any payments by Project Co or a Project Co Party; and
  - (E) taxes relating to any business or activity other than the business or activities related to, and conducted for, the purposes of the Project Operations;
- (xv) the cost of removal and disposal of contaminants, hazardous substances, waste products and debris for which Project Co is not responsible under this Project Agreement;
- (xvi) termination payments which are required under Applicable Law to be made to employees of Project Co reasonably and properly incurred by Project Co arising as a direct result of any Variation reducing the scope of the Project Operations, except to the extent that such termination payments are provided for in contracts of employment, agreements or arrangements that were not entered into in the ordinary course of business and on commercial arm's length terms;
- (xvii) the cost of financing, including additional financing costs related to any delay caused by the implementation of the Variation;
- (xviii) the cost of competitively tendering any contract in relation to the proposed Variation which is required by Applicable Law or any policy applicable to WGH;

- (xix) the cost of any additional insurance or performance security required or approved by WGH;
- (xx) the cost of obtaining all Permits, Licences and Approvals; and
- (xxi) reasonable fees and disbursements of Project Co's legal advisors.

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

- (i) the Direct Cost shall be net of all discounts, rebates and other price reductions and benefits, which relate to the Direct Cost incurred;
- (ii) the amount paid for materials, products, supplies and equipment incorporated into the Project Operations as a result of the Variation shall not exceed commercially competitive rates available in the Province for such materials, products, supplies and equipment from arms-length third party suppliers;
- (iii) the amount paid for any design services included in the Direct Cost, whether provided by Project Co's personnel, consultants, manufacturers or manufacturers' consultants, for hourly paid personnel shall not exceed two times the actual salary received by those personnel (actual salary to be inclusive of all benefits, statutory remittances and holidays), and for salaried personnel, the actual salary per hour shall be calculated by dividing the annual salary (inclusive of all benefits, statutory remittances and holidays) by 2080 hours;
- (iv) the amount paid for machinery and equipment rental costs shall not exceed the prevailing competitive commercial rate for which such equipment or machinery can be obtained in Woodstock, Ontario; and
- (v) the Direct Cost shall not include any cost incurred due to the failure on the part of Project Co to exercise reasonable care and diligence in its attention to the prosecution of that part of the Project Operations.

**APPENDIX B**

**APPLICABLE MARGINS**

<b>Party</b>	<b>Total Overhead and Profit Margin (as % of Direct Cost)</b>		
	<i>For projects under \$100,000</i>	<i>For projects between \$100,000 and \$1,000,000</i>	<i>For projects over \$1,000,000</i>
Project Co (Own Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
Construction Contractor (Own Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
Construction Contractor (Subcontracted Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
Service Provider (Own Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
Service Provider (Subcontracted Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%

**SCHEDULE 23****COMPENSATION ON TERMINATION****1. DEFINITIONS****1.1 Definitions**

The following terms shall have the following meanings:

(a) **"Adjusted Estimated Fair Value"** means the Estimated Fair Value adjusted as follows:

(i) where, in respect of any Payment Period or part of a Payment Period from the Termination Date to the Compensation Date, the Post Termination Service Amount is a negative number, the aggregate amount by which all such negative Post Termination Service Amounts are negative shall be set off against and shall reduce the Estimated Fair Value (whether or not such amounts have been set off by WGH pursuant to Section 3.3(f) of this Schedule 23);

(ii) the aggregate of the following amounts shall be deducted, without duplication, from the Estimated Fair Value;

(A) the Post Termination Service Amounts actually paid by WGH to Project Co prior to the Compensation Date;

(B) the Tender Costs; and

(C) amounts that WGH is entitled to set off or deduct; and

(iii) the aggregate of the following amounts shall be added, without duplication, to the Estimated Fair Value:

(A) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the Estimated Fair Value is calculated; and

(B) any insurance proceeds and other amounts owing to Project Co (and which Project Co is entitled to retain), to the extent not included in Section 1.1(a)(iii)(A),

to the extent that:

(C) Sections 1.1(a)(iii)(A) and 1.1(a)(iii)(B) have not been directly taken into account in calculating the Estimated Fair Value; and

(D) WGH has received such amounts in accordance with this Project Agreement.



- (b) **"Adjusted Highest Qualifying Tender Price"** means the price offered by the Qualifying Tenderer (if any) with the highest tender price, adjusted as follows:
- (i) where, in respect of any Payment Period or part of a Payment Period from the Termination Date to the Compensation Date, the Post Termination Service Amount is a negative number, the aggregate amount by which all such negative Post Termination Service Amounts are negative shall be set off against and shall reduce such highest tender price (whether or not such amounts have been set off by WGH pursuant to Section 3.3(f) of this Schedule 23);
  - (ii) the aggregate of the following amounts shall be deducted, without duplication, from such highest tender price:
    - (A) the Post Termination Service Amounts actually paid by WGH to Project Co prior to the Compensation Date;
    - (B) the Tender Costs; and
    - (C) amounts that WGH is entitled to set off or deduct; and
  - (iii) the aggregate of the following amounts shall be added, without duplication, to such highest tender price:
    - (A) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the highest priced Qualifying Tender is received; and
    - (B) any insurance proceeds and other amounts owing to Project Co (and which Project Co is entitled to retain), to the extent not included in Section 1.1(b)(iii)(A),  
  
to the extent that:
      - (C) Sections 1.1(b)(iii)(A) and 1.1(b)(iii)(B) have not been directly taken into account in that Qualifying Tender; and
      - (D) WGH has received such amounts in accordance with this Project Agreement.
- (c) **"Compensation Date"** means either:
- (i) if Section 3.3 of this Schedule 23 applies, the earlier of:
    - (A) the date that the New Agreement is entered into; and
    - (B) the date on which WGH pays the Adjusted Highest Qualifying Tender Price to Project Co; or

- (ii) if Section 3.4 of this Schedule 23 applies, the date that the Adjusted Estimated Fair Value has been agreed or determined.
- (d) **"Discount Rate"** means a rate equal to  $((A + B) / C) + D$ , where:
- A = the product of the outstanding principal amount of debt funded under the Lending Agreements on the date of calculation and the rate of interest applicable to such amount as shown in the Financial Model at Financial Close.
- B = the product of the Equity Capital as at Financial Close and the Base Case Equity IRR.
- C = the sum of the outstanding principal amount of debt funded under the Lending Agreements on the date of calculation and the Equity Capital as at Financial Close.
- D = the yield to maturity on a benchmark Government of Canada bond of the same maturity as the average life of the outstanding principal amount of debt funded under the Lending Agreements on the date of calculation, minus the yield to maturity on a benchmark Government of Canada bond of the same maturity as the average life of the outstanding principal amount of debt funded under the Lending Agreements as shown in the Financial Model at Financial Close.
- (e) **"Employee Termination Payments"** means termination payments which are required under Applicable Law to be made to employees of Project Co (or the Project Co Party to which the Transferred Employees are transferred) as a direct result of terminating this Project Agreement (provided that Project Co or the relevant Project Co Party shall take commercially reasonable steps to mitigate its loss) and provided that, in calculating such amount, no account should be taken of any liabilities and obligations of Project Co or the relevant Project Co Party arising out of:
- (i) contracts of employment or other agreements or arrangements entered into by Project Co or the relevant Project Co Party to the extent that such contracts of employment, agreements or arrangements were not entered into in connection with the Project; or
- (ii) contracts of employment or other agreements or arrangements entered into by Project Co or the relevant Project Co Party other than in the ordinary course of business and on commercial arm's length terms, save to the extent that amounts would have arisen if such contracts or other agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms.
- (f) **"Estimated Fair Value"** means the amount determined in accordance with Section 3.4 of this Schedule 23.
- (g) **"Invoice Date"** means the date that is the later of:

- (i) the date on which WGH receives an invoice from Project Co for the relevant termination sum; and
  - (ii) the date on which WGH receives the supporting evidence required pursuant to Section 8.1(a) of this Schedule 23.
- (h) "**Junior Debt Amount**" means, at any time, the then outstanding principal amount of debt funded under the terms of the Lending Agreements by the Junior Lenders to Project Co, together with all interest accrued thereon at that time. For greater certainty, the Junior Debt Amount includes any amount funded under the terms of the Lending Agreements which has a fixed return without equity participation, step-up rights or rights to share in Project Co's excess cash flow and a coupon equal to or less than 150% of the coupon payable to the Senior Lenders and excludes the Junior Debt Makewhole.
- (i) "**Junior Debt Makewhole**" means, at any time, any amount (other than the Junior Debt Amount) then due and payable to the Junior Lenders under the Lending Agreements, including any "make whole" payments, breakage fees (less any breakage benefits) and all other fees, costs and expenses reasonably and properly incurred which Project Co is obligated to pay to the Junior Lenders pursuant to the Lending Agreements.
- (j) "**Lending Agreements**" means any or all of the agreements or instruments to be entered into by Project Co or any of its Affiliates relating to the financing of the Project Operations, including, for greater certainty, the Security Documents and any agreements or instruments to be entered into by Project Co or any of its Affiliates relating to the rescheduling of their indebtedness in respect of the financing of the Project Operations or the refinancing of the Project Operations.
- (k) "**Liquid Market**" means that there are 2 or more willing parties (each of whom is capable of being a Suitable Substitute and of meeting the Qualification Criteria) in the market for agreements in Canada for the provision of services to healthcare facilities under an alternative financing and procurement or similar model (where such agreements are the same as or similar to this Project Agreement) such that the retendering process in Section 3.3 of this Schedule 23 can reasonably be expected to result in a highest Qualifying Tender price broadly in the range of values that would reasonably be expected to be achieved calculating the Estimated Fair Value under Section 3.4 of this Schedule 23.
- (l) "**Market Value Availability Deduction Amount**" means for any Payment Period or part of a Payment Period, an amount equal to the Deductions for Availability Failures that were made from the Monthly Service Payment under the Payment Mechanism in the Payment Period immediately preceding the Termination Date, less an amount equal to Deductions for Availability Failures that were made for Functional Units which were unavailable at the Termination Date but which have subsequently become available, whether as a result of WGH incurring Rectification Costs or otherwise.

- (m) **"Maximum Service Payment"** means the Monthly Service Payments payable at any time before any Deductions under the Payment Mechanism but allowing for indexation under the Payment Mechanism.
- (n) **"New Agreement"** means an agreement on substantially the same terms and conditions as this Project Agreement as at the Termination Date, but with the following amendments:
- (i) if this Project Agreement is terminated prior to the Substantial Completion Date, then the Longstop Date shall be extended by a period to allow a New Project Co to achieve Substantial Completion prior to such extended Longstop Date;
  - (ii) any accrued Failure Points shall be cancelled;
  - (iii) the term of such agreement shall be equal to the term from the Termination Date until the Expiry Date; and
  - (iv) any other amendments which do not adversely affect Project Co.
- (o) **"New Project Co"** means the person who has entered or who will enter into the New Agreement with WGH.
- (p) **"Non-Default Termination Sum"** has the meaning given in Section 4.1(b) of this Schedule 23.
- (q) **"Post Termination Service Amount"** means, for the purposes of Section 3.3 of this Schedule 23, for the whole or any part of a Payment Period for the period from the Termination Date to the Compensation Date, an amount equal to the Maximum Service Payment which would have been payable under this Project Agreement had this Project Agreement not been terminated, less an amount equal to the aggregate (without double counting) of:
- (i) the Market Value Availability Deduction Amount for that Payment Period; and
  - (ii) the Rectification Costs incurred by WGH in that Payment Period.
- (r) **"Prohibited Acts Termination Sum"** has the meaning given to it in Section 5.1(b) of this Schedule 23.
- (s) **"Qualification Criteria"** means the criteria that WGH requires tenderers to meet as part of the Tender Process, which (subject to compliance with Applicable Law) shall include the following:
- (i) that the tenders confirm acceptance of the New Agreement terms;
  - (ii) that the tenderers have, and are able to demonstrate on an indicative basis on request, the financial ability to pay the lump sum tendered;

- (iii) that tenderers may only bid on the basis of a single lump sum payment to be paid by the tenderer;
  - (iv) that the tenderer is experienced in providing the Project Co Services or similar services;
  - (v) that the technical solution proposed by the tenderers is capable of delivery and the tenderer is technically capable of delivery of the Project Operations; and
  - (vi) any other tender criteria established by WGH, acting reasonably.
- (t) **"Qualifying Tender"** means a tender that meets all of the Qualification Criteria.
- (u) **"Qualifying Tenderer"** means a tenderer who submits a Qualifying Tender.
- (v) **"Rectification Costs"** means, for the purposes of any Termination Date that occurs after the Substantial Completion Date, an amount equal to the reasonable and proper costs incurred by WGH in a particular Payment Period or part of a Payment Period in ensuring that the Project Co Services are carried out.
- (w) **"Senior Debt Amount"** means, at any time, the then outstanding principal amount of debt funded under the terms of the Lending Agreements by the Senior Lenders to Project Co, together with all interest accrued thereon at that time. For greater certainty, the Senior Debt Amount excludes the Senior Debt Makewhole.
- (x) **"Senior Debt Makewhole"** means, at any time, any amount (other than the Senior Debt Amount) then due and payable to the Senior Lenders under the Lending Agreements, including any "make whole" payments, breakage fees (less any breakage benefits) and all other fees, costs and expenses reasonably and properly incurred which Project Co is obligated to pay to the Senior Lenders pursuant to the Lending Agreements.
- (y) **"Subcontractor Losses"** means, subject to Project Co's obligations under this Project Agreement to limit any compensation to Subcontractors:
- (i) the amount reasonably and properly payable by Project Co to the Construction Contractor under the terms of the Construction Contract as a direct result of the termination of this Project Agreement (including any reasonable commercial breakage fee), provided that such amount shall be reduced to the extent that Project Co or Subcontractors fail to take commercially reasonable steps to mitigate such amount; and
  - (ii) the amount reasonably and properly payable by Project Co to the Service Provider under the terms of the Service Contract as a direct result of the termination of this Project Agreement (including any reasonable commercial breakage fee), provided that such amount shall be reduced to the extent that Project Co or Subcontractors fail to take commercially reasonable steps to mitigate such amount,

provided that, in both cases, no account should be taken of any liabilities and obligations of Project Co to the Subcontractors arising out of:

- (iii) any loss of overhead or profit of such Subcontractor relating to any period or costs after the Termination Date (save to the extent the same are properly included in any reasonable commercial breakage fee set out in any of the Ancillary Documents);
  - (iv) agreements or arrangements entered into by Project Co or the Subcontractors to the extent that such agreements or arrangements were not entered into in connection with those parties' obligations in relation to the Project; or
  - (v) agreements or arrangements entered into by Project Co or the Subcontractors other than in the ordinary course of business and on commercial arm's length terms, save to the extent that amounts would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms.
- (z) "**Tender Costs**" means the reasonable and proper costs of WGH incurred in carrying out the Tender Process or in connection with any calculation of the Estimated Fair Value.
- (aa) "**Tender Process**" means the process by which WGH requests tenders from any parties interested in entering into a New Agreement, evaluates the responses from those interested parties and enters into a New Agreement with a new Project Co, in accordance with Section 3.3 of this Schedule 23.
- (bb) "**Tender Process Monitor**" has the meaning given in Section 3.3(g) of this Schedule 23.
- (cc) "**WGH Default Termination Sum**" has the meaning given in Section 2.1(b) of this Schedule 23.

## 2. COMPENSATION ON TERMINATION FOR WGH DEFAULT OR CONVENIENCE

### 2.1 Compensation

- (a) If Project Co terminates this Project Agreement pursuant to Section 45 of this Project Agreement or WGH terminates this Project Agreement pursuant to Section 46.3 of this Project Agreement, WGH shall pay to Project Co the WGH Default Termination Sum.
- (b) The "**WGH Default Termination Sum**" shall be an amount equal to the aggregate of:
- (i) the Senior Debt Amount and the Senior Debt Makewhole;
  - (ii) the Junior Debt Amount and the Junior Debt Makewhole;
  - (iii) any amount payable by WGH to Project Co in accordance with Sections 42.2(b) and 43.2(b) of this Project Agreement;

- (iv) the Employee Termination Payments and Subcontractor Losses;
- (v) any reasonable costs properly incurred by Project Co to wind up its operations; and
- (vi) an amount which, if paid on the Termination Date and taken together with all dividends and other Distributions paid on or made in respect of the Equity Capital on or before the Termination Date and taking account of the actual timing of all such payments, but, in any event, excluding all amounts (whether for costs, overhead, profit or otherwise) after the Termination Date, gives a nominal internal rate of return to the Termination Date equal to the Base Case Equity IRR on the amount paid for the Equity Capital (to the extent that such Equity Capital has been applied by Project Co for the purposes of the Project);

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (vii) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where WGH is required to procure insurances and to make proceeds available to Project Co under this Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and this Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project and this Project Agreement) to WGH and, at no additional cost to Project Co, give WGH reasonable assistance in prosecuting such claims;
- (viii) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to WGH pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
  - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or

- (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (ix) amounts which WGH is entitled to set off pursuant to Section 33.12(a)(i) of this Project Agreement,

provided that the WGH Default Termination Sum shall never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole.

- (c) To the extent that such assets and rights referred to in Section 2.1(b)(viii) are not realized and applied pursuant thereto, Project Co shall, on payment of the WGH Default Termination Sum, assign such assets and rights to WGH.
- (d) WGH shall pay the WGH Default Termination Sum in accordance with Section 8 of this Schedule 23.

### **3. COMPENSATION FOR PROJECT CO DEFAULT**

#### **3.1 Compensation**

- (a) Save and except where Sections 5 or 6 apply, if WGH terminates this Project Agreement pursuant to Section 44 of this Project Agreement, WGH shall pay to Project Co either the Adjusted Highest Qualifying Tender Price according to the retendering procedure set out in Section 3.3 of this Schedule 23 or the Adjusted Estimated Fair Value according to the no retendering procedure set out in Section 3.4 of this Schedule 23, as applicable.

#### **3.2 Retendering Election**

- (a) WGH shall be entitled to retender the provision of the Project Operations in accordance with Section 3.3 of this Schedule 23 and the provisions thereof shall apply if:
  - (i) WGH notifies Project Co on or before the date falling 30 days after the Termination Date; and
  - (ii) there is a Liquid Market,

but, otherwise, WGH shall require a determination in accordance with the no retendering procedure set out in Section 3.4 of this Schedule 23 and the provisions thereof shall apply.

- (b) Until it is determined that the basis for determining the compensation to Project Co will be the no retendering procedure set out in Section 3.4 of this Schedule 23, Project Co shall continue to provide the Project Co Services and WGH shall pay Project Co in accordance with Section 3.3(e).



### 3.3 Retendering Procedure

- (a) The objective of the Tender Process shall be to enter into a New Agreement with a Qualifying Tenderer.
- (b) WGH shall commence the Tender Process promptly after delivering the notice pursuant to Section 3.2(a) and use commercially reasonable efforts to complete the Tender Process as soon as practicable.
- (c) WGH shall, as soon as reasonably practicable, notify Project Co of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process and shall act reasonably in setting such requirements and terms.
- (d) Project Co authorizes the release of any information by WGH under the Tender Process which would otherwise be prevented under Section 51 of this Project Agreement that is reasonably required as part of the Tender Process.
- (e) Project Co shall continue to provide the Project Co Services, and, for all or any part of a Payment Period falling within the period from the Termination Date to the Compensation Date, WGH shall pay to Project Co:
  - (i) the Post Termination Service Amount for each completed Payment Period, on or before the date falling 20 Business Days after the end of that Payment Period; and
  - (ii) the Post Termination Service Amount for the period from the end of the last completed Payment Period until the Compensation Date, on or before the date falling 30 days after the Compensation Date.
- (f) If any Post Termination Service Amount is negative, then the amount by which the Post Termination Service Amount is negative shall be carried forward and may be set off against any future positive Post Termination Service Amounts.
- (g) Project Co may, at its own cost, appoint a person (the "**Tender Process Monitor**") to monitor the Tender Process for the purpose of monitoring and reporting to Project Co and the Lenders on WGH's compliance with the Tender Process. The Tender Process Monitor shall enter into a confidentiality agreement with WGH in a form acceptable to WGH and shall be entitled to attend all meetings relating to the Tender Process, inspect copies of all the tender documentation and bids and make representations to WGH as to compliance with the Tender Process. WGH shall not be bound to consider or act upon such representations. The Tender Process Monitor will not disclose confidential information to Project Co or the Lenders but shall be entitled to advise Project Co and the Lenders on whether it considers that WGH has acted in accordance with the Tender Process and correctly determined the Adjusted Highest Qualifying Tender Price.
- (h) As soon as practicable after tenders have been received, WGH shall, acting reasonably, review and assess the Qualifying Tenders and shall notify Project Co of the Adjusted Highest Qualifying Tender Price.

- (i) If Project Co refers a Dispute relating to the Adjusted Highest Qualifying Tender Price to dispute resolution in accordance with Schedule 27 - Dispute Resolution Procedure, WGH shall, irrespective of such Dispute, be entitled to enter into a New Agreement.
- (j) WGH shall pay the Adjusted Highest Qualifying Tender Price in accordance with Section 8 of this Schedule 23.
- (k) WGH may elect, by notice to Project Co at any time prior to WGH ascertaining the Adjusted Highest Qualifying Tender Price, to follow the no retendering procedure set out in Section 3.4 of this Schedule 23. In addition, WGH shall follow such no retendering procedure if:
  - (i) only one Qualifying Tender is received; or
  - (ii) a New Agreement has not been entered into and compensation paid under Section 8.2 on or before the date falling 18 months after the Termination Date.
- (l) Project Co may give written notice to WGH at any time after the Termination Date and prior to the date for receipt of Qualifying Tenders that a Liquid Market does not exist (or shall not exist on the date for receipt of Qualifying Tenders). If WGH is in agreement with such notice, the provisions of Section 3.4 of this Schedule 23 shall apply. If WGH provides a written response within 10 Business Days of receipt of such notice stating that it is in disagreement with that notice or if no written response is provided by WGH within such 10 Business Day period, the matter shall be referred for determination in accordance with Schedule 27 - Dispute Resolution Procedure.

### **3.4 No Retendering Procedure**

- (a) Subject to Section 3.4(b), if the provisions of this Section 3.4 apply, Project Co shall not be entitled to receive any Post Termination Service Amount.
- (b) If WGH elects to require a determination in accordance with this Section 3.4 after it has elected to follow the procedure set out in Section 3.3, then WGH shall continue to pay to Project Co each Post Termination Service Amount until the Compensation Date in accordance with Section 3.3.
- (c) In determining the Estimated Fair Value, the Parties shall be obliged to follow the principles set out below:
  - (i) All forecast amounts should be calculated in nominal terms as at the Termination Date. Where relevant, adjustments for forecast inflation between the date of calculation and the forecast payment date(s) as set out in this Project Agreement will be made and, if made, will use an assumed inflation rate of 2% per annum.

- (ii) The Estimated Fair Value shall be calculated using the following formula (without double counting):

$$(A - B - C) - D$$

Where:

A = the present value of the Monthly Service Payments forecast to be made from the Termination Date to the Expiry Date, assuming that no Deductions will be made over that period, discounted at the Discount Rate

B = a contingency amount based on a reasonable risk assessment of any cost overruns that may reasonably arise (including in respect of any matter referred to in this Section 3.4(c)(ii)) whether or not forecast in the relevant base case and represented in the Financial Model as of the date of Financial Close, discounted at the Discount Rate

C = the present value of the costs of obtaining or providing the Project Co Services, reasonably forecast to be incurred by WGH from the Termination Date to the Expiry Date to the standard required, discounted at the Discount Rate

D = any rectification costs (including Rectification Costs) reasonably required to deliver the Project Operations to the standard required, including, if applicable, to complete the Works, any costs reasonably forecast to be incurred by WGH for up-front finance fees and related costs (excluding principal and interest payments) that would not arise at the time or in the future had the termination not occurred, and any other additional operating costs required to restore operating services standards less (to the extent that such sums are included in any calculation of rectification costs (including Rectification Costs) for the purposes of this item D) the aggregate of:

(A) any insurance proceeds received or which will be received pursuant to policies maintained in accordance with Schedule 25 - Insurance and Performance Security Requirements; and

(B) amounts payable by WGH in respect of Capital Expenditures under this Project Agreement which have not been paid,

discounted at the Discount Rate.

- (iii) The amount of (A - B - C) as defined in Section 3.4(c)(ii) shall be no greater than the Non-Default Termination Sum.
- (iv) All costs referred to in Section 3.4(c)(ii) are to be forecast at a level that will deliver the Project Co Services and other Project Operations to the standards required by this Project Agreement and to achieve the full Monthly Service Payments (without Deductions).
- (v) The calculation will take into consideration the obligations of the Parties with respect to allowances and payments under this Project Agreement.

- (d) If the Parties cannot agree on the Estimated Fair Value, then the Estimated Fair Value shall be determined in accordance with Schedule 27 - Dispute Resolution Procedure.
- (e) WGH shall pay the Adjusted Estimated Fair Value in accordance with Section 8 of this Schedule 23.

#### **4. CONSEQUENCES OF NON-DEFAULT TERMINATION AND TERMINATION BY WGH FOR RELIEF EVENT**

##### **4.1 Consequences**

- (a) If WGH terminates this Project Agreement pursuant to Section 46.1 of this Project Agreement or if either Party terminates this Project Agreement pursuant to Section 46.2 of this Project Agreement, WGH shall pay to Project Co the Non-Default Termination Sum.
- (b) The "**Non-Default Termination Sum**" shall be an amount equal to the aggregate of:
  - (i) the Senior Debt Amount and the Senior Debt Makewhole;
  - (ii) the Junior Debt Amount;
  - (iii) any amount payable by WGH to Project Co in accordance with Sections 42.2(b) and 43.2(b) of this Project Agreement;
  - (iv) the Employee Termination Payments and Subcontractor Losses (but excluding therefrom any claims for loss of profit); and
  - (v) an amount equal to the Equity Capital as at Financial Close, less all dividends and other Distributions paid on or made in respect of the Equity Capital on or before the Termination Date, provided that where such amount is negative, it shall be deemed instead to be zero;

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (vi) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where WGH is required to procure insurances and to make proceeds available to Project Co under this Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and this Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined

or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project and this Project Agreement) to WGH and, at no additional cost to Project Co, give WGH reasonable assistance in prosecuting such claims; and

- (vii) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to WGH pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
  - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
  - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (viii) amounts which WGH is entitled to set off pursuant to Section 33.12(a)(i) of this Project Agreement,

provided that the Non-Default Termination Sum shall never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole and the Junior Debt Amount.

- (c) To the extent that such assets and rights referred to in Section 4.1(b)(vii) are not realized and applied pursuant thereto, Project Co shall, on payment of the Non-Default Termination Sum, assign such assets and rights to WGH.
- (d) WGH shall pay the Non-Default Termination Sum in accordance with Section 8 of this Schedule 23.

## **5. CONSEQUENCES OF TERMINATION FOR PROHIBITED ACTS**

### **5.1 Consequences**

- (a) If WGH terminates this Project Agreement as a result of a Project Co Event of Default for failing to comply with Section 59 of this Project Agreement, WGH shall pay to Project Co the Prohibited Acts Termination Sum.
- (b) The "**Prohibited Acts Termination Sum**" shall be an amount equal to the aggregate of:
  - (i) the Senior Debt Amount and the Senior Debt Makewhole;

- (ii) any amount payable by WGH to Project Co in accordance with Sections 42.2(b) and 43.2(b) of this Project Agreement; and
- (iii) the following amounts calculated in respect of the Construction Contractor, if the Construction Contractor is not responsible for a Prohibited Act, and the Service Provider, if the Service Provider is not responsible for a Prohibited Act, and which Project Co can demonstrate will be paid directly to such persons:
  - (A) the Employee Termination Payments; and
  - (B) as applicable, the Construction Contractor's and Service Provider's out-of-pocket costs incurred as a direct result of termination of this Project Agreement (excluding any breakage fees and overhead and profit of the Construction Contractor and Service Provider, as applicable);

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (iv) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where WGH is required to procure insurances and to make proceeds available to Project Co under this Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and this Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project and this Project Agreement) to WGH and, at no additional cost to Project Co, give WGH reasonable assistance in prosecuting such claims;
- (v) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to WGH pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
  - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or

- (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (vi) amounts which WGH is entitled to set off pursuant to Section 33.12(a)(i) of this Project Agreement, provided that WGH shall only set off amounts which are due to WGH by Project Co pursuant to the terms of this Project Agreement, if and to the extent the Prohibited Acts Termination Sum exceeds the aggregate of the Senior Debt Amount and the Senior Debt Makewhole.
- (c) To the extent that such assets and rights referred to in Section 5.1(b)(v) are not realized and applied pursuant thereto, Project Co shall, on payment of the Prohibited Acts Termination Sum, assign such assets and rights to WGH.
- (d) WGH shall pay the Prohibited Acts Termination Sum in accordance with Section 8 of this Schedule 23.

## **6. CONSEQUENCES OF TERMINATION FOR BREACH OF REFINANCING**

### **6.1 Consequences**

- (a) If WGH terminates this Project Agreement as a result of a Project Co Event of Default for failing to comply with Section 7.3 of this Project Agreement or Schedule 28 - Refinancing or the Lender assigns, transfers or otherwise disposes of any right, title or interest it may have in, or obligations it may have pursuant to, the Security Documents in breach of the Lenders' Direct Agreement, WGH shall pay to Project Co a termination sum equivalent to, and calculated in accordance with Section 5.1(b)(i), (ii), (iii), (iv) and (v) of this Schedule 23, less amounts which WGH is entitled to set off pursuant to Section 33.12(a)(i) of this Project Agreement.
- (b) WGH shall pay such termination sum in accordance with Section 8 of this Schedule 23.

## **7. CONSEQUENCES OF TERMINATION BY PROJECT CO FOR RELIEF EVENT**

### **7.1 Consequences**

- (a) If Project Co terminates this Project Agreement pursuant to Section 46.1 of this Project Agreement, WGH shall pay to Project Co a termination sum equivalent to the greater of (i) an amount calculated and payable in accordance with, the Prohibited Acts Termination Sum; and (ii) the Adjusted Estimated Fair Value calculated in accordance with this Schedule 23.
- (b) WGH shall pay such termination sum in accordance with Section 8.1 or 8.3 of this Schedule 23, as applicable.

## 8. GENERAL

### 8.1 Payment and Interest Following Non-Project Co Default Termination

- (a) In respect of the termination payments to be made pursuant to any of Sections 2, 4, 5, 6 or 7 of this Schedule 23, as soon as practicable after, and, in any event, within 30 days after, the Termination Date, Project Co shall give to WGH an invoice for the relevant termination sum and sufficient supporting evidence, reasonably satisfactory to WGH, justifying the amount of the relevant termination sum including a detailed breakdown of each of the individual items comprising such sum.
- (b) WGH shall pay to Project Co:
- (i) the relevant termination sum within 60 days after the Invoice Date; and
  - (ii) interest on the relevant termination sum (or any part of such sum that remains outstanding) from the Termination Date until the date of payment:
    - (A) at the No Default Interest Rate for the period from (but excluding) the Termination Date to (and including) the date which is 60 days after the Invoice Date; and
    - (B) thereafter, at the Default Interest Rate.
- (c) In respect of the termination payments to be made pursuant to any of Sections 4, 5 or 6 of this Schedule 23, if the applicable termination sum is negative, WGH shall have no obligation to make any payment to Project Co and Project Co shall, within 60 days after the Invoice Date, pay to WGH the amount by which such termination sum is negative, failing which Project Co shall also thereafter pay interest thereon until the date of payment at the Default Interest Rate.

### 8.2 Payment and Interest Following Project Co Default - Retendering Procedure

- (a) Following the retendering procedure set out in Section 3.3 of this Schedule 23, WGH shall pay to Project Co the Adjusted Highest Qualifying Tender Price no later than the date falling 30 days after the later of:
- (i) the date on which WGH enters into the New Agreement with the New Project Co; and
  - (ii) if Project Co has, pursuant to Section 3.3(i) of this Schedule 23, referred a Dispute relating to the Adjusted Highest Qualifying Tender Price to be resolved in accordance with Schedule 27 - Dispute Resolution Procedure, the date on which the Dispute is finally determined, provided that WGH shall pay the undisputed amount on the date referred to in Section 8.2(a)(i),



together with interest thereon at the No Default Interest Rate from the date on which WGH entered into the New Agreement until the date that such payment is due and payable, and thereafter with interest at the Default Interest Rate.

- (b) If the Adjusted Highest Qualifying Tender Price is negative, WGH shall have no obligation to make any payment to Project Co and Project Co shall, on the date of the New Agreement, pay WGH the amount by which such termination sum is negative, failing which Project Co shall also thereafter pay interest thereon until the date of payment at the Default Interest Rate.

### **8.3 Payment and Interest Following Project Co Default - No Retendering Procedure**

- (a) If WGH follows the no retendering procedure set out in Section 3.4 of this Schedule 23, WGH shall pay to Project Co the Adjusted Estimated Fair Value no later than the date falling 60 days after the date on which the Adjusted Estimated Fair Value has been agreed or determined in accordance with Section 3.4 of this Schedule 23, together with interest on such amount calculated in accordance with Section 8.1(b)(ii) above.
- (b) If the Adjusted Estimated Fair Value is negative, WGH shall have no obligation to make any payment to Project Co and Project Co shall, on the Compensation Date, pay WGH the amount by which the Adjusted Estimated Fair Value is negative, failing which Project Co shall also thereafter pay interest thereon until the date of payment at the Default Interest Rate.

### **8.4 Costs**

- (a) The costs and expenses to be taken into account in the calculation of all termination sums due pursuant to this Schedule 23 shall only be such costs and expenses to the extent that they are reasonable and proper in quantum and shall have been or will be reasonably and properly incurred.

### **8.5 Undisputed Amounts**

- (a) If the calculation of any termination amount is disputed then any undisputed amount shall be paid in accordance with this Section 8 and the disputed amount shall be dealt with in accordance with Schedule 27 - Dispute Resolution Procedure.

### **8.6 Outstanding Debt Amounts**

- (a) WGH shall be entitled to rely on a certificate of the Lenders' Agent as conclusive as to the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole, as applicable, outstanding or payable at any relevant time.
- (b) If a receipt or other acknowledgement is given by the Lenders' Agent acknowledging or otherwise confirming receipt of payment or payments in respect of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole, as applicable, such receipt or other acknowledgement shall discharge

WGH's obligation to pay such portion of compensation due to Project Co that is equal to the amount acknowledged or confirmed.

**SCHEDULE 24****EXPIRY TRANSITION PROCEDURE****1. Independent Inspector**

- 1.1 Not less than 90 months prior to the Expiry Date, the Parties shall agree upon and, in accordance with WGH procurement policies, engage an independent and suitably qualified and experienced person (the "**Independent Inspector**") to carry out inspections of the Facility pursuant to this Schedule 24.
- 1.2 Project Co and WGH shall share equally the responsibility for the payment of all fees and costs of the Independent Inspector.
- 1.3 In the event of the Independent Inspector's engagement being terminated otherwise than for full performance, the Parties shall liaise and cooperate with each other in order to appoint a replacement as soon as reasonably practicable, and in any event within 10 Business Days of the termination of the last Independent Inspector's engagement.
- 1.4 In the event the Parties fail to agree upon the identity of the Independent Inspector either pursuant to Section 1.1 or Section 1.3 of this Schedule 24 by the specified deadline, then the Independent Inspector shall be selected as follows:
  - (a) each Party shall within 10 Business Days thereafter select three independent and suitably qualified and experienced persons that would be acceptable to that Party as the Independent Inspector, and shall provide notice thereof to the other Party; and
  - (b) if the Parties have both selected a common person, then such common person shall be the Independent Inspector; or
  - (c) if the Parties have not selected a common person, then the Independent Inspector shall be selected in accordance with Schedule 27 - Dispute Resolution Procedure.

**2. Condition of Facilities on Expiry**

- 2.1 Subject to the exceptions specified in Section 2.2, on the Expiry Date:
  - (a) each element of the Facility and the Site (including the ground soil located on the Site) as well as the Schedule 21 Maintenance and Replacement Equipment shall be in a condition which is consistent with due performance by Project Co of its obligations under this Project Agreement and, in particular, is consistent with the Facility and the Schedule 21 Maintenance and Replacement Equipment having been maintained in accordance with the Preventative Maintenance Plan and the Lifecycle Replacement Schedule, and, with respect to the Site and the ground soil located on the Site, does not deviate from the Pre-Existing Environmental Site

Conditions by reason of any Contamination for which Project Co is responsible pursuant to this Project Agreement;

- (b) each element of the Facility and each item of Schedule 21 Maintenance and Replacement Equipment shall be in good operating order (Normal Wear and Tear excepted) and capable of performing in accordance with the performance specifications and standards set out in Schedule 15 - Output Specifications; and
- (c) each element of the Facility and each item of Schedule 21 Maintenance and Replacement Equipment shall be in a condition which ensures that such element of the Facility and each such item of Schedule 21 Maintenance and Replacement Equipment will have a reasonable likelihood of completing its Replacement Lifecycle and/or remaining lifecycle in good condition and operating order (Normal Wear and Tear excepted), and, if applicable, shall not have any structural faults, deterioration and/or defect,

(collectively, the "**Expiry Transition Requirements**").

- 2.2 For greater certainty, except with respect to Schedule 21 Maintenance and Replacement Equipment, this Schedule 24 shall not apply to any other Equipment to be maintained by WGH in accordance with this Project Agreement.

### **3. Facility Inspections**

- 3.1 The Parties shall cause the Independent Inspector to perform an inspection of the Facility and the Schedule 21 Maintenance and Replacement Equipment and to produce and deliver to each of the Parties a written report (a "**Facility Condition Report**") not less than 7 years prior to the Expiry Date that:
  - (a) identifies the condition of the Facility, each element of the Facility and each item of Schedule 21 Maintenance and Replacement Equipment (subject to the exceptions specified in Section 2.2) in relation to the Expiry Transition Requirements;
  - (b) assesses Project Co's business case related to capital replacement (which, for greater certainty, will include consideration of energy consumption), and provides the Independent Inspector's opinion on both the adequacy of Project Co's proposed strategy and the consistency of Project Co's proposed strategy with the business case methodology and lifecycle strategy set out in Appendix A hereto;
  - (c) identifies any works required to ensure the Facility, each element of the Facility and each item of Schedule 21 Maintenance and Replacement Equipment (subject to the exceptions specified in Section 2.2) will meet the Expiry Transition Requirements on the Expiry Date (the "**Expiry Transition Works**"), and specifying the Contract Year in which each of those Expiry Transition Works would be required;

- (d) specifies the Independent Inspector's estimate of the costs that would be required to perform the Expiry Transition Works (the "**Expiry Transition Works Costs**"); and
  - (e) details how the Expiry Transition Works Costs were calculated.
- 3.2 The Parties shall cause the Independent Inspector to perform another inspection of the Facility and the Schedule 21 Maintenance and Replacement Equipment and produce and deliver to each of the Parties an updated Facility Condition Report (each a "**Revised Facility Condition Report**") on each anniversary of the date of the original Facility Condition Report.
- 3.3 The Preventative Maintenance Plan, the Five Year Capital Plan and the Lifecycle Replacement Schedule shall be amended and updated, as applicable, to include all Expiry Transition Works identified in either the Facility Condition Report or any Revised Facility Condition Report not already included in the then current Preventative Maintenance Plan, Five Year Capital Plan or Lifecycle Replacement Plan.
- 3.4 Project Co shall carry out the Expiry Transition Works at its own cost notwithstanding that the actual cost of the Expiry Transition Works may be higher than the Expiry Transition Works Costs.
- 3.5 Either Party may dispute the Facility Condition Report or any Revised Facility Condition Report, including the Expiry Transition Works and the Expiry Transition Works Costs, in accordance with Schedule 27 - Dispute Resolution Procedure. In the event that a final determination in accordance with Schedule 27 - Dispute Resolution Procedure specifies Expiry Transition Works or Expiry Transition Works Costs which are different than those set out in either the Facility Condition Report or any Revised Facility Condition Report, then either the Facility Condition Report or any Revised Facility Condition Report, as the case may be, shall be deemed to be amended accordingly, and the Preventative Maintenance Plan, Five Year Capital Plan and Lifecycle Replacement Schedule, as amended pursuant to Section 3.3, and all deductions and payments permitted or required by Section 4, shall be adjusted accordingly.

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

- 4.1 Following the date for delivery of the Facility Condition Report, for the purposes of Section 4.2, the Parties shall review the amount of the Expiry Transition Works Costs and the level of capital expenditure Project Co has allocated to spend in the same period pursuant to the Financial Model (the "**Expiry Lifecycle Costs**"). Where the Expiry Transition Works Costs are greater than the Expiry Lifecycle Costs, the difference between the Expiry Transition Works Costs and the Expiry Lifecycle Costs shall be apportioned equally over the Payment Periods from the date the Facility Condition Report is to be delivered hereunder to the Expiry Date (each installment being the "**Expiry Transition Amount**"). If the Facility Condition Report is delivered after the date for delivery hereunder, then the first installment to be paid shall also include the amounts to be paid under the installments that would have been payable prior to the date

the Facility Condition Report is delivered. Where the Expiry Transition Works Costs are amended pursuant to Section 3.2 or 3.5, the Parties agree that the Expiry Transition Amount shall be adjusted accordingly.

- 4.2 Subject to Sections 4.3 and 4.5, WGH may deduct the Expiry Transition Amount from each Monthly Service Payment, and pay into a separate interest bearing bank account, upon escrow terms acceptable to the Parties or in trust (the "**Escrow Account**"), the Expiry Transition Amount. If in any Payment Period, the Expiry Transition Amount is greater than the relevant Monthly Service Payment, WGH may deduct the difference between the Expiry Transition Amount and the Monthly Service Payment from the next Monthly Service Payment or from such other Payment Period as otherwise agreed between the Parties.
- 4.3 WGH shall not deduct any amount from a Monthly Service Payment as contemplated in Section 4.2 if, at such time, the funds in the Escrow Account exceed the value (based on the Expiry Transition Works Costs) of all or any part of the Expiry Transition Works (as amended) yet to be performed.
- 4.4 Project Co may from time to time, but not more often than once in any month, make written request for release of funds from the Escrow Account. WGH shall consider such request within 10 Business Days and if the funds in the Escrow Account exceed the value (based on the Expiry Transition Works Costs) of all or any part of the Expiry Transition Works (as amended) yet to be performed, then WGH shall pay the excess to Project Co from the Escrow Account within 10 Business Days thereafter, together with any interest that has accrued on such amount. Project Co shall include with its request all information reasonably required by WGH to evaluate such request.
- 4.5 Following the date of any Revised Facility Condition Report, if the amount in the Escrow Account (being the deductions of the Expiry Transition Amount made since the Facility Condition Report) together with the deductions to be made from the remaining Monthly Service Payments is less than the value (based on the Expiry Transition Works Costs) of the remaining Expiry Transition Works (as amended) yet to be performed, then WGH may deduct such shortfall, in equal installments, from each remaining Monthly Service Payment until the Expiry Date, and pay each installment into the Escrow Account and Section 4.4 shall continue to apply until the Expiry Date.
- 4.6 As an alternative to the deductions permitted by Sections 4.2 and 4.5 or the retention of any amount in the Escrow Account pursuant to the foregoing provisions of this Section 4, Project Co may (and if, at any time, the amounts which WGH is permitted to deduct pursuant to Sections 4.2 and 4.5 is greater than the remaining Monthly Service Payments, Project Co shall), within 5 Business Days of a written request from WGH, provide a bond or letter of credit (the "**Expiry Transition Security**") in favour of WGH in an amount equal to the amounts which WGH is permitted to deduct pursuant to Sections 4.2 and 4.5, in a form and from a surety or bank, as applicable, acceptable to WGH.

## 5. Project Co Not Relieved of Obligations

### 5.1 Notwithstanding:

- (a) any agreement of WGH to any Expiry Transition Works, Expiry Transition Works Costs or Expiry Transition Security;
- (b) any participation of WGH in any inspection under this Schedule 24; and
- (c) the complete or partial carrying out of the Expiry Transition Works,

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

## 6. Final Facility Condition Report

- 6.1 The Parties shall cause the Independent Inspector to perform an inspection of the Facility and the Schedule 21 Maintenance and Replacement Equipment and to produce and deliver to each of the Parties a Facility Condition Report within 30 Business Days after the Expiry Date (the "**Final Facility Condition Report**") that documents whether the Facility and the Schedule 21 Maintenance and Replacement Equipment met the Expiry Transition Requirements on the Expiry Date, as well as identifying any Expiry Transition Works and Expiry Transition Works Costs.
- 6.2 If the Final Facility Condition Report identifies any Expiry Transition Works, WGH may withdraw from the Escrow Account or call upon the Expiry Transition Security an amount equivalent to such Expiry Transition Works Costs, and WGH shall pay any remaining funds in the Escrow Account (including any interest accrued) to Project Co and return any remaining Expiry Transition Security to Project Co.
- 6.3 Provided that the funds in the Escrow Account and/or the Expiry Transition Security is adequate to meet Project Co's obligations in respect of the Expiry Transition Works identified in the Final Facility Condition Report, following any withdrawal from the Escrow Account or call upon the Expiry Transition Security in accordance with Section 6.2, Project Co shall have no further liability with respect to such Expiry Transition Works.
- 6.4 If no Expiry Transition Works are identified in the Final Facility Condition Report, WGH shall, within 20 Business Days of receipt by WGH of the Final Facility Condition Report, pay the funds in the Escrow Account (including any interest accrued) to Project Co and return the Expiry Transition Security to Project Co, unless WGH disputes the Final Facility Condition Report, in which case the Escrow Account and Expiry Transition Security shall be dealt with as determined in accordance with Schedule 27 - Dispute Resolution Procedure.

**APPENDIX A**

**LIFECYCLE REPLACEMENT SCHEDULE**

**[REDACTED]**



**SCHEDULE 25****INSURANCE AND PERFORMANCE  
SECURITY REQUIREMENTS****1. Works Phase Insurance Coverage**

- 1.1 WGH shall, at its own expense, obtain and maintain project specific Professional Liability (Design Errors and Omissions) Insurance as further described in Appendix A to this Schedule 25.
- 1.2 Subject to Section 8, from and after execution of this Project Agreement and until the Substantial Completion Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances as further described in Appendix A to this Schedule 25:
- (a) Property Builders' Risk "All Risks" including Boiler and Machinery;
  - (b) Wrap-up Liability;
  - (c) Contractors Pollution Liability;
  - (d) Automobile Liability; and
  - (e) Commercial General Liability.

**2. Services Phase Insurance Coverage**

- 2.1 Subject to Section 8, from and after the Substantial Completion Date and until the Expiry Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances as further described in Appendix A to this Schedule 25:
- (a) Commercial General Liability;
  - (b) Contractors Pollution Liability;
  - (c) Automobile Liability;
  - (d) Employee Dishonesty (Crime);
  - (e) Property Insurance; and
  - (f) Boiler and Machinery Insurance.

**3. No Limit on Recovery**

- 3.1 Notwithstanding any other provision of this Project Agreement, it is hereby agreed that the limits of liability specified in this Schedule 25 for insurance policies, whether such policies are required to be obtained by WGH or by Project Co, shall in no way limit Project Co's liability or obligations to WGH or WGH's liability or obligations to Project Co, as applicable.

**4. Additional Cover**

- 4.1 Without prejudice to the other provisions of this Schedule 25, each of WGH and Project Co shall, at all relevant times and at its own expense, obtain and maintain those insurances which it is required to obtain and maintain by Applicable Law or that it considers necessary.
- 4.2 WGH reserves the right to require Project Co to purchase such additional insurance coverage as WGH may reasonably require. WGH also reserves the right to request such higher or lower limits of insurance or otherwise alter the types of coverage requirements, their minimum amounts and deductibles (taking into consideration such matters as the nature of the Project Co Services and the Works, contract value, industry standards, and availability of insurance) as WGH may reasonably require from time to time. Any additional costs of such additional and/or amended insurance shall be borne by WGH and any cost savings resulting from the implementation of such additional and/or amended insurance shall be for the account of WGH.

**5. Responsibility for Deductibles**

- 5.1 The Party responsible for the matter giving rise to a claim, to the extent responsible therefor, shall be responsible and liable for the payment of deductibles under any policy of insurance under which it is an insured party or under any policy of insurance WGH is required to maintain under this Schedule 25. In the event that responsibility for the matter giving rise to the claim is indeterminable, the First Named Insured under the policy of insurance is responsible and liable for the payment of deductibles.

**6. Cooperation with Insurer's Consultant**

- 6.1 If an insurer or an insurer's appointed consultant, for underwriting purposes or as a term of an insurance policy, needs to review any part of the performance of this Project Agreement, then WGH and Project Co shall, and shall require the WGH Parties and the Project Co Parties, respectively, to:
- (a) cooperate with the insurer and its consultant, including providing them with such information and documentation as they may reasonably require; and
  - (b) allow the insurer and its consultant to attend meetings between Project Co and WGH (or, as applicable, and if reasonably required by the insurer, between Project Co and those engaged by or through Project Co).

**7. [REDACTED]****8. [REDACTED]****9. WGH Review of Joint Insurance Cost Report**

- 9.1
- (a) WGH shall be entitled to consult with its own insurance broker with respect to the content of any Joint Insurance Cost Report for [REDACTED] (in each case, a "**Joint Insurance**

**Cost Report**") and for purposes of Schedule 20 – Payment Mechanism, “**Joint Insurance Cost Report**” means [REDACTED].

- (b) WGH shall advise Project Co, in writing, within 15 days of receipt of a Joint Insurance Cost Report if, based on advice from its own insurance broker, it objects to any content of a Joint Insurance Cost Report.
- (c) Project Co and WGH shall as soon as possible after delivery by WGH of a notice in accordance with Section 9.1(b), meet, together with their respective insurance brokers, to discuss and consider WGH's objections to the Joint Insurance Cost Report and, if WGH and Project Co are unable to agree, the matter will be referred to the Dispute Resolution Procedure.
- (d) Prior to providing any Joint Insurance Cost Report to its insurance broker, WGH shall ensure that such insurance broker executes a confidentiality agreement in favour of Project Co consistent with the confidentiality provisions set forth in 51.5(a), (d), (e) of the Project Agreement in form and substance satisfactory to Project Co, acting reasonably.
- (e) For greater certainty, any consultation by WGH with its insurance broker pursuant to this Section 9 shall be at WGH's sole cost and expense.

## 10. Uninsurable Risks

- 10.1 The term "**Uninsurable Risk**" means a risk, or any component of a risk, against which Project Co is required to insure pursuant to this Schedule 25 and for which, at any time after the date of this Project Agreement, either:
- (a) the insurance required pursuant to this Schedule 25 (including the terms and conditions specified for such insurance herein) is not available in relation to that risk from insurers licenced in the Province of Ontario; or
  - (b) the insurance premium payable or the terms and conditions for insuring that risk are such that the risk is not generally being insured against in the Canadian insurance market.

Project Co has the onus of demonstrating, to WGH's reasonable satisfaction, that the foregoing definition applies to a particular risk.

- 10.2 Project Co shall notify WGH as soon as possible and, in any event, within 15 Business Days of becoming aware of same, that a risk, or any component of a risk, has become an Uninsurable Risk, and shall provide WGH with all relevant details in relation to such risk, including a copy of the relevant insurance policy.
- 10.3 Project Co and WGH shall, as soon as possible following the provision of the notice referred to in Section 8.2, meet to discuss, in good faith, the appropriate means by which the Uninsurable Risk should be managed and, if Project Co and WGH are able to agree to alternative arrangements, the Uninsurable Risk shall be managed in accordance with such alternative arrangements.

- 10.4 In the event that Project Co and WGH, each acting in good faith, are unable to agree to alternative arrangements with respect to the management of an Uninsurable Risk within 15 Business Days of the expiry of the period referred to in Section 8.2, WGH may, in its absolute discretion, either:
- (a) elect to assume responsibility for the Uninsurable Risk and, in respect of the year in which the relevant risk becomes an Uninsurable Risk and every year thereafter, withhold, in equal installments over the course of such year, from the payment or payments otherwise due to Project Co an amount equal to the annual premium (index linked) relating to the Uninsurable Risk as was current on the date immediately prior to the date on which the relevant risk became an Uninsurable Risk, in which case this Project Agreement shall continue in full force and effect; or
  - (b) terminate this Project Agreement in accordance with Section 46.2 as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 46.2 following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 23 – Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.
- 10.5 On the occurrence of an Uninsurable Event, WGH may, in its absolute discretion, either:
- (a) pay to Project Co an amount equal to the insurance proceeds that would have been payable to Project Co in connection with such Uninsurable Event had the relevant insurance continued to be available, in which case this Project Agreement shall continue in full force and effect; or
  - (b) terminate this Project Agreement in accordance with Section 46.2 as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 46.2 following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 23 – Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.
- 10.6 With respect to any Uninsurable Risk:
- (a) Project Co shall continue to approach the insurance market on a regular basis and, in any event, at intervals of not less than 180 days and use reasonable efforts to obtain insurance to cover as much or all of the Uninsurable Risk as can be insured in the available insurance market from time to time; and
  - (b) Project Co shall be relieved of its obligation to maintain insurance in respect of the Uninsurable Risk.
- 10.7 Where a risk which was previously an Uninsurable Risk ceases to be so, Project Co shall, at its own expense, obtain and maintain insurance in accordance with the requirements of this Schedule 25 in respect of the risk and the provisions of this Section 8 shall no longer apply to such risk.

10.8 From and after the Substantial Completion Date, the Parties shall meet on an annual basis to review the scope of insurance coverage and deductibles provided in this Schedule 25, and may make mutually agreed changes thereto.

## **11. Total or Substantial Destruction**

11.1 In the event of damage to, or destruction of, all or substantially all of the Facility for which there is coverage under an insurance policy, any insurance proceeds received by Project Co shall first be applied so as to ensure the performance by Project Co of its obligations under this Project Agreement, including, where appropriate, the reinstatement, restoration or replacement of the Facility or any other assets, materials or goods necessary or desirable for the carrying out of the Project Operations, all in accordance with the terms of the Insurance Trust Agreement.

## **12. Subcontractors**

12.1 Project Co shall require that all Subcontractors are covered by, or obtain, the insurance described in this Schedule 25, provided that Project Co shall determine the applicable limits to be obtained for such insurance. Project Co shall be solely responsible and liable for any damages which WGH may suffer as a direct result of Project Co's failure to comply with the foregoing.

12.2 If Project Co receives notice that any Subcontractor employed by or through Project Co is not covered by any insurance required by this Schedule 25 to be obtained by Project Co, Project Co shall:

- (a) ensure that such insurance coverage is put in place;
- (b) remove the Subcontractor from the Site and ensure that such Subcontractor does not perform any further part of the Project Operations until after such insurance coverage is put in place; or
- (c) if the Subcontractor cannot be covered by a particular policy as required by this Schedule 25, replace the Subcontractor with a new Subcontractor who can obtain the required insurance coverage; it being acknowledged by Project Co that the requirements and restrictions set forth in the Project Agreement regarding new and replaced Subcontractors shall be complied with.

## **13. Renewal**

13.1 Project Co shall provide to WGH, at least 5 Business Days prior to the expiry date of any policy of insurance required to be obtained by Project Co pursuant to this Schedule 25, evidence of the renewal of such policy satisfactory to WGH, acting reasonably.

## **14. Named and Additional Insureds and Waiver of Subrogation**

14.1 All insurance provided by Project Co, shall:

- (a) include Project Co, WGH and OIPC as Named Insureds to the extent specified in Appendix A of this Schedule 25;
- (b) include WGH, OIPC and the Lenders' Agent as Additional Insureds, or loss payees to the extent of their respective insurable interests to the extent specified in Appendix A of this Schedule 25;
- (c) contain a waiver of subrogation as against WGH and their respective directors, officers, employees, servants, consultants (other than Design Consultants) and agents, except with respect to the Automobile Liability policies;
- (d) contain a breach of warranty provision whereby a breach of a condition by Project Co will not eliminate or reduce coverage for any other insured; and
- (e) be primary insurance with respect to any similar coverage provided by any insurance obtained by or available to WGH, without any right of contribution of any insurance carried by WGH.

## **15. Certificates of Insurance and Certified Copies of Policies**

- 15.1 Prior to the commencement of any part of the Works, Project Co will provide WGH with certificates of insurance confirming that the insurances specified in Section 1.2 have been obtained and are in full force and effect. Certified copies of the entire contents of all relevant insurance policies will be provided to WGH no later than 90 days after execution of this Project Agreement.
- 15.2 Prior to the commencement of any part of the Project Co Services, Project Co will provide WGH with certificates of insurance confirming that the insurances specified in Section 2.1 have been obtained and are in full force and effect. Certified copies of the entire contents of all relevant insurance policies will be provided to WGH no later than 90 days after the Substantial Completion Date; however specimen wordings of all such insurance policies, along with the corresponding summary of coverage, limits and deductibles, must be provided to WGH no later than 90 days prior to the Substantial Completion.

## **16. Failure to Meet Insurance Requirements**

- 16.1 If Project Co fails to obtain or maintain the insurance required by this Schedule 25, fails to furnish to WGH a certified copy of each policy required to be obtained by this Schedule 25 or if, after furnishing such certified copy, the policy lapses, is cancelled, or is materially altered, then WGH shall have the right, without obligation to do so, to obtain and maintain such insurance itself in the name of Project Co, and the cost thereof shall either, at WGH's option, be payable by Project Co to WGH on demand or be deducted by WGH from the next payment or payments otherwise due to Project Co.
- 16.2 If coverage under any insurance policy required to be obtained by Project Co should lapse, be terminated or be cancelled, then, if directed by WGH, all work by Project Co shall immediately cease until satisfactory evidence of renewal is produced.

**17. Modification or Cancellation of Policies**

17.1 All insurance provided by Project Co shall contain endorsements confirming that the policy will not be cancelled, reduced, materially altered or materially amended without the insurer(s) giving at least 60 days prior written notice by registered mail to WGH, at the address specified by WGH.

**18. Insurers**

18.1 All policies of insurance to be obtained by Project Co in accordance with this Schedule 25 shall be obtained from an insurer acceptable to WGH, acting reasonably, and licensed to conduct the business of an insurer in the Province of Ontario.

**19. Policy Terms and Conditions**

19.1 All policies of insurance to be obtained by Project Co in accordance with this Schedule 25 shall be in form and substance satisfactory to WGH and its insurance advisors, acting reasonably.

**20. Failure to Comply**

20.1 Neither failure to comply nor full compliance by Project Co with the insurance provisions of this Schedule 25 shall relieve Project Co of its liabilities and obligations under this Project Agreement.

**21. Performance Security Requirements**

[REDACTED]

**22. Insurance Trust Agreement**

22.1 All losses under (i) the Property Builders' Risk "All Risks" broad form policy, including Boiler & Machinery Insurance carried by Project Co prior to Substantial Completion; (ii) the Property Insurance carried by Project Co after Substantial Completion; and (iii) the Boiler and Machinery Insurance carried by Project Co after Substantial Completion, which, in each case relate to Equipment purchased by WGH, shall be payable solely to WGH and shall not be payable to the Account Trustee or distributed pursuant to the Insurance Trust Agreement.

## Appendix A – Insurance Requirements



**Insurance – Part 1**

**Woodstock General Hospital Project**

**From First Access to Site until Substantial Completion Date (Insurances for Construction Phase)**

**Insurances to be provided, or caused to be provided, by Project Co**

Type	Amount	Maximum Deductibles	Principal Exclusions	Principal Cover	Estimated Premium
<b>Property Builders' Risk "All Risks" Broad Form, including Boiler &amp; Machinery</b>	Value declared equal to the estimated completed project cost of the Facility, including all equipment at the Site \$[REDACTED]	Earthquake [REDACTED]% of loss value / \$[REDACTED]	<ul style="list-style-type: none"> <li>• Data/Cyber</li> <li>• Fungi and Fungal Derivatives</li> <li>• Excludes faulty work, material, construction and design, but will include resultant damages</li> <li>• Terrorism</li> <li>• War</li> <li>• Nuclear or radioactive contamination</li> </ul>	All Risks Builders' Risk (project specific) broad form insurance covering the full insurable replacement cost of the construction project; and  Including Testing and Commissioning, Delay in Start-up, Soft Costs, Fire Liberalization Clause, Margin of Profit Clause, Resultant Damage Clause, Extra Expense and Expediting Expense coverage and no early occupancy restriction.	
	Delayed Start-up Soft Costs \$[REDACTED]	Flood \$[REDACTED]			
	Extra Expense – \$[REDACTED]	30 days waiting period applicable to Delay in Start-up			
	Boiler & Machinery, included in combined limit, as necessary	Testing and Commissioning \$[REDACTED]			
	Contingent Delayed Start-up	All other losses \$[REDACTED]			
Included:					
<ul style="list-style-type: none"> <li>• Valuable Papers \$[REDACTED]</li> <li>• Transit \$[REDACTED]</li> <li>• Unnamed locations: \$[REDACTED]</li> <li>• Professional Fees: \$[REDACTED]</li> <li>• Civil Authority 8 wks</li> <li>• Prevention of Ingress/Egress</li> <li>• Debris Removal \$[REDACTED]</li> <li>• Accounts Receivable \$[REDACTED]</li> <li>• Value of all Equipment at the Site prior to Substantial Completion (added at the time that the Equipment is brought onto the Site)</li> </ul>			Such insurance will extend coverage to include Inland Transportation and Off Premises coverage, Installation Floater, EDP Floater (as required), Flood and Earthquake, Sewer Backup, By-laws cover and include materials on site, property in storage, and property in transit.		
				Boiler & Machinery insurance coverage provided (as necessary) in comprehensive policy form	

Woodstock General Hospital

Type	Amount	Maximum Deductibles	Principal Exclusions	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> <li>Cost of Carrying Financing (36 Months)</li> </ul> <p>Applicable to Boiler &amp; Machinery coverage only:</p> <p>Principal Extensions of Coverage will be subject to a sublimit of \$[REDACTED]</p> <ul style="list-style-type: none"> <li>Ammonia Contamination</li> <li>Automatic Coverage</li> <li>Bylaws</li> <li>Errors and Omissions</li> <li>Expediting Expenses</li> <li>Hazardous Substances</li> <li>Professional Fees</li> <li>Water Damages</li> </ul>			and on a full replacement cost basis including all necessary business interruption and expediting expenses.	

<i>Comments</i>	<ul style="list-style-type: none"> <li>Named Insured includes Project Co, Woodstock General Hospital Trust (WGH), Ontario Infrastructure Projects Corporation (OIPC), Construction Contractor and WGH's Consultants</li> <li>Lenders' Agent named as First Mortgagee and Loss Payee, subject to the provisions of the Insurance Trust Agreement and this Schedule 25</li> <li>Senior Lenders names as Additional Insureds, subject to the provisions of the Insurance Trust Agreement and this Schedule 25</li> <li>Coverage extends to all contractors and subcontractors</li> <li>60 days notice of cancellation</li> <li>Coverage should be on an IBC Form 4042 combined with the CCDC Endorsement, or better.</li> <li>Coverage to include Boiler and Machinery breakdown during testing and commissioning.</li> <li>Equipment Breakdown extension to be added following testing and commissioning upon operation of all boiler and machinery equipment for its intended purpose.</li> <li>All amounts indicated as sub-limits are the minimum amounts required.</li> <li>Include coverage for all Project Co equipment and Equipment (including medical equipment at the time it is brought onto the Site) at the Site prior to Substantial Completion.</li> <li>This policy is not intended to cover contractors' equipment.</li> <li>Coverage begins from commencement of construction until Substantial Completion.</li> <li>Extensions of Coverage: <ul style="list-style-type: none"> <li>Frost/Freezing to Concrete – but only resultant damage from a peril not otherwise excluded</li> <li>Off-Premises Power Interruption</li> <li>Fire Fighting Expense</li> <li>Debris Removal</li> </ul> </li> </ul>
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**Woodstock General Hospital**

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- By-laws
- Replacement Cost
- Permission to Occupy
- Margin of Profit
- Joint Loss Agreement
- Delay caused by loss at suppliers' premises
- All losses under this policy, except for those relating to the Equipment purchased by WGH, shall be made payable solely to the Account Trustee and shall be used or distributed in accordance with the Insurance Trust Agreement.
- All losses under this policy relating to the Equipment purchased by WGH shall be payable solely to WGH and shall not be payable to the Account Trustee or distributed pursuant to the Insurance Trust Agreement.
- Upon Substantial Completion, this cover will cease and be replaced by the applicable Property and Boiler and Machinery Insurance.

**Underwriters**

- Principal underwriters will be not less than Qualified Insurers licensed to do business in Ontario and A. M. Best Ratings possessing a Financial Strength Rating of A- or better as well as a Financial Size Category Rating of at least VIII.

**Insurance – Part 1**

**Woodstock General Hospital Project**

**From First Access to Site until Substantial Completion Date (Insurances for Construction Phase)**

**Insurances to be provided, or caused to be provided, by Project Co**

Type	Amount	Maximum Deductibles	Principal Exclusions	Principal Cover	Estimated Premium
<b>Wrap-up Liability (Project Specific)</b>	<p>[\$REDACTED] each occurrence</p> <p>Sublimits:-</p> <ul style="list-style-type: none"> <li>• \$[REDACTED] Tenants' Legal Liability</li> <li>• \$[REDACTED] Non-Owned Automobile</li> <li>• \$[REDACTED] Legal Liability for Damages To Non-Owned Automobiles (SEF 94)</li> <li>• \$[REDACTED] Medical Payments</li> </ul>	<p>[\$REDACTED]</p>	<ul style="list-style-type: none"> <li>• Licensed Automobiles</li> <li>• Damage to the project except during completed operations</li> <li>• Cyber / Data</li> <li>• Terrorism</li> <li>• Asbestos</li> <li>• Professional Liability</li> <li>• Nuclear</li> </ul>	<p>Project specific Wrap-up Liability insurance covering all construction operations on an occurrence basis against claims for Bodily Injury, Personal Injury, Property Damage (including Loss of Use), and including broad form Completed Operations Liability insurance extended for a period of 36 months following substantial completion.</p> <p>Including XCU coverage (Explosion, collapse and underpinning)</p>	

<i>Comments</i>	<ul style="list-style-type: none"> <li>• Extended 36 months following Substantial Completion, Broad Form Completed Operations subject to aggregate policy limit</li> <li>• Named Insured: Project Co, Woodstock General Hospital Trust (WGH), Ontario Infrastructure Projects Corporation (OIPC), Construction Contractor, and WGH's Consultants</li> <li>• Coverage extends to the Lenders, Architect of Record, Project Manager and all contractors and subcontractors</li> <li>• Blanket Written Contractual</li> <li>• Employers Liability</li> <li>• Contingent Employers' Liability</li> <li>• Broad Form Property Damage and Completed Operations</li> <li>• Personal Injury</li> <li>• Cross Liability and Severability of Interest Clause</li> <li>• Employees included</li> <li>• Blasting/Demolition/Pile Driving/Caisson Work as applicable</li> <li>• Elevator and Hoist collision liability</li> <li>• 60 days notice of cancellation</li> <li>• Non-Owned Automobile – subject to sublimit</li> <li>• Tenants' Legal Liability (All Risks) – subject to sublimit</li> <li>• Medical Expenses – subject to sublimit</li> </ul>
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- Lenders' Agent and Senior Lenders as Additional Insureds
- Premises and Operations Liability (limited to construction operations at project site only)
- Permission for partial road use
- Liability for unlicensed equipment included
- Incidental Non-Owned Aircraft and Non-Owned Watercraft Liability

**Underwriters** • Principal underwriters will be not less than Qualified Insurers licensed to do business in Ontario and A. M. Best Ratings possessing a Financial Strength Rating of A- or better as well as a Financial Size Category Rating of at least VIII.

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**Insurance – Part 1**

**Woodstock General Hospital Project**

**From First Access to Site until Substantial Completion Date (Insurances for Construction Phase)**

**Insurances to be provided, or caused to be provided, by Woodstock General Hospital (WGH)**

Type	Amount	Maximum Self-Insured Retention	Principal Exclusions	Principal Cover	Estimated Premium
Single Project Professional Liability Insurance (Design Professional Errors and Omissions)	[\$REDACTED] minimum per claim / [\$REDACTED] in the aggregate	[\$REDACTED]	<ul style="list-style-type: none"> <li>• Terrorism</li> <li>• Asbestos</li> <li>• Fungi</li> <li>• Nuclear</li> <li>• Express warranties or guarantees</li> <li>• Punitive or exemplary damages, fines, penalties or interest, or liquidated punitive or exemplary damages or fees</li> </ul>	Project-specific Professional Liability insurance in connection with the design and construction of the project from beginning of first design, through the construction period, plus coverage for an extended reporting period of four years, following substantial completion	

<i>Comments</i>	<ul style="list-style-type: none"> <li>• First Named Insured is Woodstock General Hospital Trust (WGH ) (for policy administering purposes only)</li> <li>• Named Insured: Architect of Record, WGH's Consultants</li> <li>• Policy extended to cover all Design Consultants involved in the design before and during the construction of this project</li> <li>• A retroactive date to coincide with the day that the original design plans were developed</li> <li>• This policy will be the primary design professional liability insurance</li> <li>• Insurer acknowledges that there is a limitation of liability clause in the contract</li> <li>• Policy to be non-cancelable except for non-payment, material misrepresentation or concealment of facts, or a material breach of any provision of the policy</li> <li>• Note: This policy will not include the Independent Certifier, who is required to carry its own cover as per Schedule 6 of the Project Agreement.</li> </ul>
<b>Underwriters</b>	<ul style="list-style-type: none"> <li>• Principal underwriters will be not less than Qualified Insurers licensed to do business in Ontario and A. M. Best Ratings possessing a Financial Strength Rating of A- or better.</li> </ul>

**Insurance – Part 1**

**Woodstock General Hospital Project**

**From First Access to Site until Substantial Completion Date (Insurances for Construction Phase)**

**Insurances to be provided, or caused to be provided, by Project Co.**

Type	Amount	Maximum Deductibles	Principal Exclusions	Principal Cover	Estimated Premium
<b>Contractors Pollution Liability – Occurrence Basis (Project Specific)</b>	[\$REDACTED] per occurrence and aggregate	[\$REDACTED]	<ul style="list-style-type: none"> <li>• Known Conditions</li> <li>• Nuclear Hazard</li> <li>• Terrorism</li> </ul>	Pollution Liability insurance covering third party bodily injury and property damage liability, including clean-up costs  Broad form policy (not limited to sudden and accidental claims only-- includes gradual seepage of pollutants)  Includes on-site transportation	
<i>Comments</i>	<ul style="list-style-type: none"> <li>• Named Insured: Project Co, Construction Contractor</li> <li>• Additional Insureds: Woodstock General Hospital Trust (WGH), Ontario Infrastructure Projects Corporation (OIPC), WGH's Consultants, Lenders' Agent and Senior Lenders</li> <li>• Coverage extends to the Architect of Record, Project Manager and all contractors and subcontractors</li> </ul>				
<b>Underwriters</b>	<ul style="list-style-type: none"> <li>• Principal underwriters will be not less than Qualified Insurers licensed to do business in Ontario and A. M. Best Ratings possessing a Financial Strength Rating of A- or better as well as a Financial Size Category Rating of at least VIII.</li> </ul>				

**Insurance – Part 1****Woodstock General Hospital Project**

From First Access to Site until Substantial Completion Date (Insurances for Construction Phase)

Insurances to be provided, or caused to be provided, by Project Co.

Type	Amount	Maximum Deductibles	Principal Exclusions	Principal Cover	Estimated Premium
<b>Automobile Liability</b>	<p>[\$REDACTED] (Minimum) for Project Co and Contractor</p> <p>[\$REDACTED] for All other contractors and subcontractors</p>	[\$REDACTED]		<p>Standard Ontario Owners Form</p> <p>Commercial Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any automobile used in connection with the construction of the project on behalf of Project Co</p>	
<i>Comments</i>	<ul style="list-style-type: none"> <li>Includes all licensed automobiles owned and/or leased by Project Co, Construction Contractor and all other contractors and subcontractors</li> </ul>				
<b>Underwriters</b>	<ul style="list-style-type: none"> <li>Principal underwriters will be not less than Qualified Insurers licensed to do business in Ontario and A. M. Best Ratings possessing a Financial Strength Rating of A- or better as well as a Financial Size Category Rating of at least VIII.</li> </ul>				



**Insurance – Part 1**

**Woodstock General Project**

**From First Access to Site until Substantial Completion Date (Insurances for Construction Phase)**

**Insurances to be provided, or caused to be provided, by Project Co.**

Type	Amount	Maximum Deductibles	Principal Exclusions	Principal Cover	Estimated Annual Premium
<b>Commercial General Liability Insurance</b>	[\$REDACTED] per occurrence with a [\$REDACTED] aggregate limit	[\$REDACTED]	<ul style="list-style-type: none"> <li>Asbestos</li> <li>Data/Cyber</li> <li>Terrorism</li> <li>Professional Liability</li> </ul>	<p>Commercial General Liability insurance covering all operations and activities on an occurrence basis against claims for Bodily Injury, Personal Injury, Property Damage (including loss of use) and including Completed Operations Liability</p> <p>Also includes Employers' Liability, Tenants' Legal Liability, and Non-Owned Automobile Liability.</p> <p>This commercial general liability insurance will cover off-site work related to the project and completed operations that extend beyond the "wrap-up" completed operations period.</p>	
<i>Comments</i>	<ul style="list-style-type: none"> <li>Named Insured is: Project Co and Construction Contractor</li> <li>Additional Insureds: Woodstock General Hospital Trust (WGH), Ontario Infrastructure Projects Corporation (OIPC), the Lenders' Agent and the Senior Lenders</li> <li><b>NOTE: If Umbrella or Excess Liability Insurance is required to achieve the amount of insurance requested, then the corresponding policy must be written on a Follow Form Excess wording—containing no additional limitations or exclusions in cover.</b></li> </ul>				
<b>Underwriters</b>	Principal underwriters will be not less than Qualified Insurers licensed to do business in Ontario and A. M. Best Ratings possessing a Financial Strength Rating of A- or better as well as a Financial Size Category Rating of at least VIII.				

**Insurance – Part 2**

**Woodstock General Hospital Project**

**Operational Insurance to be provided, or caused to be provided, by Project Co from Substantial Completion Date until Termination Date**

Type	Amount	Maximum Deductibles	Principal Exclusions	Principal Cover	Estimated Annual Premium
<b>Commercial General Liability Insurance</b>	[\$REDACTED] per occurrence with a [\$REDACTED] aggregate limit	[\$REDACTED]	<ul style="list-style-type: none"> <li>Asbestos</li> <li>Data/Cyber</li> <li>Terrorism</li> <li>Professional Liability</li> </ul>	<p>Commercial General Liability insurance covering all operations (excluding professional medical services) on an occurrence basis against claims for bodily injury, personal injury, property damage (including loss of use), and including Products and Completed Operations Liability insurance.</p> <p>Coverage should also include Employers' Liability, Tenants' Legal Liability, Non-Owned Automobile Liability, and include liability for unlicensed equipment.</p>	

<i>Comments</i>	<ul style="list-style-type: none"> <li>Named Insured: Project Co, Service Provider</li> <li>Additional Insureds: Woodstock General Hospital Trust (WGH), Ontario Infrastructure Projects Corporation (OIPC), the Lenders' Agent and the Senior Lenders</li> <li>Restriction or exclusion permitted for the direct or indirect provision of professional medical services and malpractice liability in connection with or resulting from the Hospital Services and any allegations of malpractice, negligence, breach of contract or other cause of action related to the provision of these professional medical services or any resultant malpractice liability.</li> <li><b>NOTE: If Umbrella or Excess Liability Insurance is required to achieve the amount of insurance requested, then the corresponding policy must be written on a Follow Form Excess wording—containing no additional limitations or exclusions in cover.</b></li> <li>Written notice of cancellation, reduction, or material alteration or amendment of insurance to be provided to Project Co, Lenders Agent on behalf of itself and as Agent for Lenders and WGH</li> <li>Blanket Written Contractual</li> <li>Employers' Liability</li> <li>Contingent Employers' Liability</li> <li>Broad Form Property Damage</li> </ul>
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Type	Amount	Maximum Deductibles	Principal Exclusions	Principal Cover	Estimated Annual Premium
	<ul style="list-style-type: none"> <li>• Personal Injury</li> <li>• Cross Liability and Severability of Interest Clause</li> <li>• Employees included</li> <li>• Elevator and Hoist collision liability</li> <li>• Notice of Claim</li> <li>• Breach of Conditions</li> <li>• 60 days notice of cancellation required.</li> <li>• Non-Owned Automobile – subject to sub limit</li> <li>• Tenants' Legal Liability (All Risks) – subject to sub limit</li> <li>• Medical Expenses – subject to sub limit</li> <li>• Premises and Operations Liability</li> <li>• Liability for unlicensed equipment included</li> <li>• Incidental Non-Owned Aircraft and Watercraft Liability</li> </ul>				
<b>Underwriters</b>	Principal underwriters will be not less than Qualified Insurers licensed to do business in Ontario and A. M. Best Ratings possessing a Financial Strength Rating of A- or better as well as a Financial Size Category Rating of at least VIII.				

**Insurance – Part 2**

**Woodstock General Hospital Project**

**Operational Insurance to be provided, or caused to be provided, by Project Co from Substantial Completion Date until Termination Date**

Type	Amount	Maximum Deductibles	Principal Exclusions	Principal Cover	Estimated Annual Premium
<b>Contractors Pollution Liability</b>	[\$REDACTED] per occurrence and aggregate	[\$REDACTED]	<ul style="list-style-type: none"> <li>• Nuclear Hazards</li> <li>• Known Conditions</li> <li>• Terrorism</li> </ul>	Pollution Liability insurance covering third party bodily injury and property damage liability, including clean-up costs, and including underground storage tanks  Broad form policy (not limited to sudden and accidental claims only-- includes gradual seepage of pollutants)	

<i>Comments</i>	<ul style="list-style-type: none"> <li>• Named Insured: Project Co, Service Provider</li> <li>• Additional Insured: Lenders' Agent, Senior Lenders, Woodstock General Hospital Trust (WGH), Ontario Infrastructure Projects Corporation (OIPC)</li> </ul>
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<b>Underwriters</b>	<ul style="list-style-type: none"> <li>• Principal underwriters will be not less than Qualified Insurers licensed to do business in Ontario and A. M. Best Ratings possessing a Financial Strength Rating of A- or better as well as a Financial Size Category Rating of at least VIII.</li> </ul>
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**Insurance – Part 2**

**Woodstock General Hospital Project**

**Operational Insurance to be provided, or caused to be provided, by Project Co from Substantial Completion Date until Termination Date**

Type	Amount	Maximum Deductibles	Principal Exclusions	Principal Cover	Estimated Annual Premium
<b>Automobile Liability</b>	<p>[\$REDACTED] (Minimum) for Project Co and Service Provider</p> <p>[\$REDACTED] for All other contractors and subcontractors</p>	[\$REDACTED]		<p>Standard Ontario Owners Form</p> <p>Commercial Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any automobile used in connection with the Project Agreement on behalf of Project Co</p>	
<i>Comments</i>	<ul style="list-style-type: none"> <li>Includes all licensed automobiles owned and/or leased by Project Co, Service Provider and all other contractors and subcontractors</li> </ul>				
<b>Underwriters</b>	<ul style="list-style-type: none"> <li>Principal underwriters will be not less than Qualified Insurers licensed to do business in Ontario and A. M. Best Ratings possessing a Financial Strength Rating of A- or better as well as a Financial Size Category Rating of at least VIII.</li> </ul>				

**Insurance – Part 2**

**Woodstock General Hospital Project**

**Operational Insurance to be provided, or caused to be provided, by Project Co from Substantial Completion Date until Termination Date**

Type	Amount	Maximum Deductibles	Principal Exclusions	Principal Cover	Estimated Annual Premium
Employee Dishonestly (Crime) Insurance	\${REDACTED}	\${REDACTED}	<ul style="list-style-type: none"> <li>Data/Cyber</li> <li>Terrorism</li> </ul> As applicable at time of placement	Employee Dishonestly Insurance against the fraudulent/dishonest acts of employees of Named Insureds, including additional coverage for Broad Form Money and Securities, Money Orders and Counterfeit Paper, Depositors' Forgery, Computer Fraud and Funds Transfer Fraud, Audit Expenses and Credit Card Forgery.  Custodial endorsement extending protection to third parties.	
<i>Comments</i>	<ul style="list-style-type: none"> <li>Named Insured: Project Co, Service Provider</li> </ul>				
<b>Underwriters</b>	<ul style="list-style-type: none"> <li>Principal underwriters will be not less than Qualified Insurers licensed to do business in Ontario and A. M. Best Ratings possessing a Financial Strength Rating of A- or better as well as a Financial Size Category Rating of at least VIII.</li> </ul>				

**Insurance – Part 2**

**Woodstock General Hospital Project**

**Operational Insurance to be provided from Substantial Completion Date until Termination Date**

**Insurances to be provided, or caused to be provided, by Project Co.**

Type	Amount	Maximum Self-Insured Retention	Principal Exclusions	Principal Cover	Estimated Premium
<b>Property Insurance</b>	Full Replacement Cost of the Facility, all equipment utilized by Project Co, and all equipment Project Co is required to maintain under the Project Agreement	[\$REDACTED]; except with respect to Earthquake— [REDACTED]% of loss value / [\$REDACTED] min.	<ul style="list-style-type: none"> <li>- Data exclusion</li> <li>- Terrorism exclusion</li> <li>- Fungi and Fungal Derivatives exclusion</li> <li>- Total Asbestos exclusion</li> </ul>	<ul style="list-style-type: none"> <li>- Building, Equipment, and Contents Insurance including Electronic Data Processing</li> <li>- Extra Expense</li> <li>- Business Interruption</li> </ul>	

<i>Comments</i>	<ul style="list-style-type: none"> <li>• Named Insured: Woodstock General Hospital Trust; Project Co</li> <li>• Lenders' Agent named as First Mortgagee and Loss Payee, subject to the provisions of the Insurance Trust Agreement and this Schedule 25.</li> <li>• Senior Lenders names as Additional Insureds, subject to the provisions of the Insurance Trust Agreement and this Schedule 25.</li> <li>• <b>Highlights of cover:</b> Blanket Amount on Insured Property; Replacement Cost on building, equipment and all other assets insured on behalf of WGH, unless specifically limited or excluded; Broad Form, All Risk Coverage; Replacement on same site not required but settlement cost shall be based on replacing property on same site; Coverage provided for increased cost of repairs or replacement to the damaged portion of the property due to enforcement of any By-Law, Regulation, Ordinance or Law; Permission is granted to make additions, alterations and repairs, for property to remain vacant, for unrestricted use of the property and to keep and use such materials as are usual to the Insured's business (no reporting or value limitations applying); Debris Removal provided to the full policy limit; Flood and Earthquake coverage provided; Sewer back-up coverage provided; Newly acquired equipment (on behalf of the hospital) should be automatically covered with no reporting or value limitation applying; 60 days notice of cancellation provided.</li> <li>• Must provide full replacement cost cover on all property, with no limitation of liability clauses, no co-insurance clauses, or margins clause applying to this policy;</li> <li>• <b>This policy is intended to insure all equipment which Project Co maintains in accordance with the requirements in the Project Agreement, including all contents and equipment that forms part of the Facility or is used exclusively in the performance of Project Co Services as outlined in the Project Agreement; it is not intended to insure the equipment (including medical equipment) and contents owned and maintained by WGH.</b></li> <li>• All losses under this policy, except for those relating to the Equipment purchased by WGH, shall be made payable solely to the Account Trustee and shall be used or distributed in accordance with the Insurance Trust Agreement.</li> <li>• All losses under this policy relating to the Equipment purchased by WGH shall be payable solely to WGH and shall not be payable to the Account Trustee or distributed pursuant to the Insurance Trust Agreement.</li> </ul>
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<b>Underwriters</b>	Principal underwriters will be not less than Qualified Insurers licensed to do business in Ontario and A. M. Best Ratings possessing a Financial Strength Rating of A- or better as well as a Financial Size Category Rating of at least VIII.
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Woodstock General Hospital

Type	Amount	Maximum Self-Insured Retention	Principal Exclusions	Principal Cover	Estimated Premium
<b>Boiler and Machinery Insurance</b>	\$[REDACTED]  Minimum Sublimits: \$[REDACTED] for Water Damage; \$[REDACTED] for all Others	\$[REDACTED]	- Cyber risk clause exclusion - Terrorism exclusion - Hazardous Substance including Mould exclusion	- Extra Expense - Water damage (refrigeration and air conditioning piping and Other piping) - Ammonia Contamination - Expediting Expenses - Hazardous Substance (including PCB) - Spoilage (good under refrigeration) - Professional Fees - Data Restoration - Bylaw cover - Errors and Omissions Denial of Access - Business Interruption	
<i>Comments</i>	<ul style="list-style-type: none"> <li>• Named Insured: Woodstock General Hospital Trust; Project Co</li> <li>• Lenders' Agent named a First Mortgagee and Loss Payee, subject to the provisions of the Insurance Trust Agreement and this Schedule 25.</li> <li>• Senior Lenders named as Additional Insureds, subject to the provisions of the Insurance Trust Agreement and this Schedule 25.</li> <li>• <b>Highlights of Cover:</b> Comprehensive Blanket Coverage provided (Blanket all Locations); Insures for sudden and accidental breakdown to boilers, pressure vessels, mechanical and electrical objects and communication equipment; Breakdowns insured would include cracking, bulging, burning, explosion, mechanical breakdown and electrical burnout; Insures both damage to equipment and to other property resulting from these types of breakdowns; basis of recovery is repair or replacement cost; Broad Form Definition of Accident provided; Provides sudden and accidental breakdown to production machinery; New locations automatically covered Excluding Sub-Stations; Newly installed objects are covered Excluding Sub-Stations; Inspection and Certification Service is provided as required by law; Computer Control Equipment - coverage is provided for breakdown of equipment whenever it is used solely to control or operate an insured object; Errors and Omissions; Denial of Access.</li> <li>• All losses under this policy, except for those relating to the Equipment purchased by WGH, shall be made payable solely to the Account Trustee and shall be used or distributed in accordance with the Insurance Trust Agreement.</li> <li>• All losses under this policy relating to the Equipment purchased by WGH shall be payable solely to WGH and shall not be payable to the Account Trustee or distributed pursuant to the Insurance Trust Agreement.</li> </ul>				
<b>Underwriters</b>	Principal underwriters will be not less than Qualified Insurers licensed to do business in Ontario and A. M. Best Ratings possessing a Financial Strength Rating of A- or better as well as a Financial Size Category Rating of at least VIII.				



**Appendix B**

**[REDACTED]**

**SCHEDULE 26****RECORD PROVISIONS****1. General Requirements**

- 1.1 Project Co shall prepare, retain and maintain, at its own expense, all the records (including superceded records) referred to in Section 2.1 of this Schedule 26, as follows:
- (a) in accordance with this Section 1;
  - (b) in accordance with the Output Specifications;
  - (c) in accordance with the requirements of Good Industry Practice, which shall include all requirements of the Canadian Institute for Health Information;
  - (d) having due regard to the guidelines and policies of the Office of the Information and Privacy Commissioner of Ontario;
  - (e) in accordance with the most stringent of Project Co's, the Construction Contractor's and the Service Provider's normal business practices;
  - (f) in accordance with Canadian GAAP;
  - (g) in chronological order;
  - (h) in sufficient detail, in appropriate categories and generally in such a manner as to enable Project Co to comply with Project Co's obligations under Section 36 of this Project Agreement; and
  - (i) in a form that is capable of audit.
- 1.2 Project Co shall retain and maintain all records at the Facility or otherwise on the Site.
- 1.3 Wherever practical, original records shall be retained and maintained in a hard copy form. Project Co may retain true copies of original records where it is not practical to retain original records.
- 1.4 Any drawings (including, without limitation, the As Built Drawings) required to be made or supplied pursuant to this Project Agreement shall be of a size appropriate to show the detail to be depicted clearly without magnifying aids, shall be consistent in size and format to drawings previously submitted by Project Co to WGH, shall conform to the requirements of the Technical Requirements and Good Industry Practice and shall be provided in AutoCAD (latest available version) or other industry standard software acceptable to WGH, acting reasonably. Where by prior agreement WGH and Project Co have agreed to accept microfilm, microfiche, CD-ROM or other storage media, Project

Co shall make or supply drawings and other documents in such form as has been agreed by the Parties and shall include secure back up facilities.

- 1.5 Records may, with the consent of WGH, not to be unreasonably withheld or delayed, be stored in electronic form if WGH has access thereto and will continue to have access thereto, such that WGH will be able to read, copy, download, and search same without licence or payment.
- 1.6 Subject to Sections 1.7 and 1.8, Project Co shall retain and maintain in safe storage, at its expense, all records referred to in Section 2.1 of this Schedule 26 for a period of at least 7 years or such longer period as required by Applicable Law.
- 1.7 Project Co shall notify WGH if Project Co wishes to destroy any records referred to in this Schedule 26 which are more than 7 years old, or in respect of which the required period under Applicable Law for their retention has expired. The Parties agree that:
  - (a) within 60 days of such notice, WGH may elect to require Project Co to deliver such records to WGH, in which case Project Co shall, at the expense of WGH, deliver such records (with the exception of Sensitive Information) to WGH in the manner and to the location as WGH shall specify; or
  - (b) if WGH fails to notify Project Co of its election pursuant to Section 1.7(a) within such 60 day period, Project Co may, at its expense, destroy such records.
- 1.8 In the event of termination of this Project Agreement prior to the Expiry Date, Project Co shall deliver all records that Project Co retains and maintains pursuant to this Schedule 26 to WGH in the manner and to the location that WGH shall reasonably specify. WGH shall make available to Project Co all the records Project Co delivers pursuant to this Section 1.8 subject to prior reasonable notice. Project Co may deliver true copies of the original records required by:
  - (a) statute to remain with Project Co;
  - (b) Project Co in connection with its fulfillment of any outstanding obligations under this Project Agreement; or
  - (c) Project Co in connection with its fulfillment of any outstanding obligations under the Lending Agreements.
- 1.9 Where the termination of the Project Agreement arises:
  - (a) as a result of an WGH Event of Default or pursuant to Section 46.2 of this Project Agreement, then the costs of delivering the records and the costs for retaining such records in safe storage will be borne by WGH; or
  - (b) for any other cause, then the costs of delivering the records and the costs for retaining such records in safe storage for a period of at least six years following

the Termination Date (unless a longer period is required by Applicable Law), shall be borne by Project Co.

- 1.10 Within 30 days after the end of each Contract Year, Project Co shall deliver to WGH a report, as reasonably requested by WGH in connection with WGH's financial reporting, detailing to the best of Project Co's knowledge at the time of any such report any and all liabilities, claims and demands, including contingent liabilities, claims and demands, that Project Co has or may have against WGH or that may be owing by WGH to Project Co. The Parties acknowledge and agree that the contents of any such report or the failure to mention any matter in any such report shall not limit either Party's rights or remedies against the other Party as contemplated by this Project Agreement.
- 1.11 Project Co shall provide to WGH not later than 45 days after the end of each fiscal quarter and 140 days after the end of each fiscal year, part or all of which falls in a Contract Year, a copy of Project Co's audited financial statements, in respect of that period, prepared in accordance with Applicable Law and Canadian GAAP, together with copies of all related auditors' reports and, to the extent publicly available, all related directors' reports and other notices and circulars to shareholders or partners, all of which documents, whether or not marked or identified as confidential or proprietary but subject to the exceptions contained in Section 51 of this Project Agreement, shall be treated by WGH as Confidential Information of Project Co.

## **2. Records To Be Kept**

- 2.1 Without limiting any other requirement of this Project Agreement, Project Co shall prepare, retain and maintain at its own expense:
- (a) this Project Agreement, its Schedules and the Project Documents, including all amendments to such agreements;
  - (b) all records relating to the appointment and replacement of the WGH Representative and the Project Co Representative;
  - (c) any documents, drawings (including, without limitation, the As Built Drawings) or submissions in accordance with Schedule 10 - Review Procedure;
  - (d) any documents relating to Development Approvals and other Project Co Permits, Licences and Approvals, including any refusals and appeals relating to any applications;
  - (e) all records relating to any statutory inspections of the Facility or the Site, including any roadways;
  - (f) any notices, reports, results and certificates relating to Substantial Completion and Final Completion of the Works and completion of the Project Co Commissioning;
  - (g) all operation and maintenance manuals;

- (h) any documents relating to events of Force Majeure, Delay Events, Compensation Events, Relief Events and Excusing Causes;
- (i) all formal notices, reports or submissions made to or received from WGH in connection with the provision of the Project Co Services, the monitoring of performance, the availability of the Facility, and payment adjustments;
- (j) all certificates, licences, registrations or warranties related to the provision of the Project Co Services;
- (k) the invoices for Monthly Service Payments;
- (l) all documents submitted in accordance with Schedule 22 - Variation Procedure;
- (m) any documents related to decisions resulting from the Dispute Resolution Procedure;
- (n) any documents related to a Project Co Change in Ownership or Change in Control;
- (o) any documents relating to any Refinancing;
- (p) all accounts for Taxes and transactions relating to Taxes, including in relation to GST and RST applicable to the Project, but excluding any records for:
  - (i) Project Co's liabilities or payments under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;
  - (ii) Project Co's liabilities or payments for capital taxes based on or measured by the capital of Project Co;
  - (iii) the withholdings of any payments by Project Co; or
  - (iv) any business or activity in addition to the business or activities related to, and conducted for, the purpose of the Project;
- (q) the financial accounts of Project Co referred to in Section 1.11 above;
- (r) such documents as WGH may reasonably require relating to Business Opportunities in which WGH has a right or interest;
- (s) all records required by Applicable Law (including in relation to health and safety matters) to be maintained by Project Co with respect to the Project Operations;
- (t) any documents relating to insurance and insurance claims;
- (u) the Plant Services information management system;

- (v) all Jointly Developed Materials; and
  - (w) all other records, documents, information, notices or certificates expressly required to be produced or maintained by Project Co pursuant to this Project Agreement.
- 2.2 Either Party may review the documents required to be prepared, retained and maintained by Project Co pursuant to Section 2.1

**SCHEDULE 27****DISPUTE RESOLUTION PROCEDURE****1. General**

- 1.1 All disputes, controversies, or claims arising out of or relating to any provision of this Project Agreement, or the alleged wrongful exercise or failure to exercise by a Party of a discretion or power given to that Party under this Project Agreement, or the interpretation, enforceability, performance, breach, termination, or validity of this Project Agreement, including, without limitation, this Schedule 27, or any matter referred to for resolution pursuant to this Schedule 27 (collectively and individually, a "**Dispute**") shall be resolved in accordance with the provisions of this Schedule 27.
- 1.2 The Parties agree that at all times, both during and after the Project Term, each of them will make bona fide efforts to:
- (a) resolve by amicable negotiations any and all Disputes arising between them; and
  - (b) have all Disputes resolved at the lowest level of management before engaging the dispute resolution processes described in Sections 3 to 8 of this Schedule 27.
- 1.3 If the Parties are unable to resolve a Dispute at the lowest level of management pursuant to Section 1.2(b), either Party may deliver to the WGH Representative or the Project Co Representative, as applicable, a written notice of dispute (the "**Notice of Dispute**"), which Notice of Dispute shall initiate either the dispute resolution process described in Sections 3 to 8 of this Schedule 27 or the dispute resolution process described in Sections 6 to 8 where the Dispute is a Dispute in relation to the Independent Certifier's decisions for which Section 2.3 provides that Sections 3, 4 and 5 shall not apply. To be effective, the Notice of Dispute must expressly state that it is a notice of dispute, set out the particulars of the matter in dispute, describe the remedy or resolution sought by the Party issuing the Notice of Dispute and be signed by the WGH Representative, if given by WGH, or by the Project Co Representative, if given by Project Co.

**2. Independent Certifier**

- 2.1 All Disputes that arise prior to, or in relation to, Substantial Completion, that relate to completion of Minor Deficiencies, or that are referred to in this Project Agreement for determination by the Independent Certifier shall initially be submitted to the Independent Certifier for independent determination by the Independent Certifier within such period as may be specified in this Project Agreement, or if no period is specified, within 10 Business Days after submission to the Independent Certifier.
- 2.2 Without limiting any obligations of the Parties under the Independent Certifier Contract, the Parties shall cooperate with the Independent Certifier and provide such information,

records and documents as may be required by the Independent Certifier to make the determination within the period referred to in Section 2.1 of this Schedule 27.

- 2.3 The Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Payment Commencement Date, and a Dispute in relation to the Payment Commencement Date shall not be subject to resolution pursuant to this Schedule 27. Save and except as aforesaid, the Independent Certifier's determinations are not binding on the Parties, and all Disputes in relation to the Independent Certifier's decisions shall be resolved pursuant to this Schedule 27, provided however that Sections 3, 4 and 5 of this Schedule 27 shall not apply unless otherwise agreed by the Parties on terms acceptable to the Parties.

### **3. Amicable Resolution by Party Representatives**

- 3.1 On receipt of a Notice of Dispute, the WGH Representative and the Project Co Representative (collectively "**Party Representatives**" and individually "**Party Representative**") shall each promptly and diligently make all reasonable bona fide efforts to resolve the Dispute. Each Party Representative shall provide to the other, on a without prejudice basis, frank, candid and timely disclosure of relevant facts, information and documents (except such documentation that is subject to legal privilege) as may be required or reasonably requested by the other to facilitate the resolution of the Dispute.

### **4. Amicable Resolution by Senior Officers of each Party**

- 4.1 If a Dispute is not resolved by the Party Representatives within 10 Business Days after receipt by a Party of the applicable Notice of Dispute, or within such longer period of time as the Party Representatives may both expressly agree, then at any time after the expiry of such period of time either Party Representative may, by notice in writing to the other, refer the Dispute to an executive of a Party who:
- (a) is in a position of authority above that of the WGH Representative or the Project Co Representative, as the case may be; and
  - (b) subject only to approval of the board of directors or similar governing body of the Party, has full authority to resolve and settle the Dispute.

- 4.2 Once a Dispute is referred to them, the executive of each Party shall promptly and diligently make all reasonable bona fide efforts to resolve the Dispute. All discussions and negotiations, and all documents exchanged, between them related to the Dispute shall be on a without prejudice basis to facilitate the resolution of the Dispute.

### **5. Expert Determination**

- 5.1 If a Dispute is not resolved by negotiation pursuant to Section 4 within 10 Business Days after the date the Dispute is referred to the executives of the Parties for resolution by them, or within such longer period of time as the executives may expressly agree in writing in respect to a specific Dispute to allow them to continue their efforts to resolve



the Dispute, then either Party may at any time thereafter, by written notice signed by their Party Representative and delivered to the other Party Representative, require that the Dispute be resolved on an expedited basis by a qualified and experienced expert (the "**Expert**"). The Expert shall be appointed as follows:

- (a) if the Parties agree on the Expert, the Parties shall jointly appoint the Expert as soon as possible and, in any event, within 5 Business Days after delivery of the notice requiring that the Dispute be resolved by an Expert;
  - (b) if the Parties fail to agree or jointly appoint the Expert within such 5 Business Day period, either Party may apply to the Ontario Superior Court of Justice for appointment of the Expert, in which case the court shall appoint the Expert at the earliest opportunity from the list of potential Experts submitted by the Parties or, if either or both Parties fail to submit their list of potential Experts within 7 Business Days, the court may appoint such person as the Expert who meets the requirements set out in this Schedule 27 for qualifications and experience of the Expert.
- 5.2 No one shall be nominated or appointed to act as an Expert who is or was in any way interested, financially or otherwise, in the conduct of the Project Operations or in the business affairs of WGH, Project Co, or any consultant, subconsultant or subcontractor of any of them.
- 5.3 The Expert will be appointed on a Dispute by Dispute basis, with each Expert having the qualifications and experience relevant to the issues in the particular Dispute for which the Expert is appointed. Where the issues in Dispute include whether Project Co has or will adversely impact the Clinical Services then such qualifications and experience should include relevant experience in the provision of Clinical Services in a major acute care hospital.
- 5.4 The Expert shall determine the appropriate process for timely and cost effective resolution of the Dispute and, without limiting the generality of the foregoing, the Expert has discretion to, among other things:
- (a) solicit submissions and documents from both Parties, and impose deadlines for the receipt of such submissions;
  - (b) require some or all of the evidence to be provided by affidavit;
  - (c) direct either or both Parties to prepare and provide the Expert with such documents, test results or other things as the Expert may require to assist the Expert in the resolution of the Dispute and rendering of a decision;
  - (d) require either Party to supply or prepare for examination by the Expert and the other Party, any document or information the Expert considers necessary;

- (e) inspect the Project Operations, giving reasonable notice to each Party of the time when, and the place where, the Expert intends to conduct any inspections;
- (f) convene meetings of the Parties to have the Parties discuss the issues in Dispute in the presence of the Expert; and
- (g) take, or require either or both Parties to take and provide to the Expert, such measurements, perform such tests, audit such processes and procedures, and take any and all such other measures and steps as the Expert considers necessary to make a final determination in the Dispute.

5.5 The Expert shall render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than 10 Business Days after the date of the appointment of the Expert, or such longer period of time as agreed to in writing by the Parties. The Expert may give reasons or a summary of reasons for the Expert's decision, but shall not be required to provide reasons.

5.6 The Expert shall keep all information about the Dispute confidential and shall not disclose such information to anyone other than the Parties.

5.7 Each Party shall bear its own costs of the process for resolution of the Dispute by the Expert. The Expert has the jurisdiction and authority to order that the costs of the Expert be apportioned between the Parties in such proportion as the Expert in his or her discretion considers appropriate in the circumstances, including to order that all of the costs of the Expert be apportioned to and paid by only one Party. In exercising this discretion, the Expert will take into account the desire of the Parties that costs of the Expert should generally be borne by each Party in proportion to the relative success that each Party has in the Dispute before the Expert. If the Expert fails to apportion costs of the Expert between the Parties at the time the Expert's decision is rendered, the costs of the Expert shall be borne equally by the Parties.

5.8 Subject to a right to require the Dispute to be arbitrated or litigated pursuant to Sections 6, 7 and 8 by giving the required notices to arbitrate or litigate within the time periods specified therein, the Parties agree that the Expert's determination shall be final and binding on both Parties and not subject to appeal, arbitration, litigation or any other dispute resolution process, and both Parties expressly waive all rights of appeal in connection with the Expert's determination.

## **6. Referral of Disputes to Arbitration or Litigation**

6.1 If:

- (a) the amount awarded by the Expert to a Party pursuant to Section 5 is more than \$250,000 (index linked) in the aggregate or \$50,000 (index linked) per year, in the case of a decision by the Expert that would result in either a recurring annual payment (for a period of at least 5 years) by WGH or a recurring annual cost to Project Co;

- (b) the Dispute involves issues other than monetary claims by one Party against the other Party and which a Party reasonably believes are material and significant to that Party; or
- (c) a Notice of Dispute has been issued for a Dispute in relation to the Independent Certifier's decisions for which Section 2.3 provides that Sections 3, 4 and 5 shall not apply,

then, subject to the right of a Party to require litigation of the Dispute pursuant to Section 8.1 or a consolidation of proceedings pursuant to Section 10, either Party may, by written notice signed by their Party Representative, require that the Dispute be resolved by arbitration pursuant to Section 7. Such notice will not be effective unless it indicates it is a notice to arbitrate, is signed by the Party Representative and is delivered to the other Party Representative within 15 Business Days after receipt of the Expert's determination or the Notice of Dispute referred to in Section 6.1(c), as applicable, and provided further that such notice expressly identifies the specific Dispute and determination of the Expert or the Independent Certifier, as applicable, that is to be the subject of the arbitration.

- 6.2 If a Party is entitled to refer a Dispute to which Section 5 applies to arbitration or litigation pursuant to Sections 6.1 or 8.1 then, unless the Parties otherwise expressly agree in writing, all information, documents and submissions prepared by a Party for the Expert which are not business records that would otherwise be kept in the normal course of business by the Party for its business purposes, and all decisions and determinations by the Expert, shall be confidential and inadmissible in any arbitration or litigation proceeding.

## **7. Resolution by Arbitration**

- 7.1 If a Dispute is referred to arbitration pursuant to Section 6, the Dispute shall be resolved by arbitration in accordance with the *Arbitration Act, 1991* (Ontario).
- 7.2 Disputes referred to arbitration shall be resolved by a single arbitrator unless one of the Parties, by notice in writing delivered to the other Party within 5 Business Days after a notice to arbitrate pursuant to Section 6.1 has been delivered, expressly requires that the Dispute that is the subject of that notice to arbitrate be resolved by a three person arbitration tribunal, in which case that particular Dispute shall be resolved by a three person arbitration tribunal.
- 7.3 If the arbitration tribunal is comprised of a single arbitrator, the arbitrator shall be appointed as follows:
- (a) if the Parties agree on the arbitrator, the Parties shall jointly appoint the arbitrator as soon as possible and in any event within 5 Business Days after delivery of the notice to arbitrate pursuant to Section 6; and

- (b) if the Parties fail to agree or jointly appoint the arbitrator within such 5 Business Day period, either Party may apply to the Ontario Superior Court of Justice for appointment of the arbitrator, in which case the court shall appoint the arbitrator at the earliest opportunity in accordance with the following:
  - (i) from the lists of potential arbitrators submitted to the court by the Parties, provided that potential arbitrators meeting the necessary qualifications and experience set out in this Schedule 27 are on the list; or
  - (ii) if one Party fails to submit its list of potential arbitrators to the court within 5 Business Days of a request from the court to submit a list, from the list submitted by the other Party provided that potential arbitrators meeting the necessary qualifications and experience set out in this Schedule 27 are on the list of that other Party; or
  - (iii) if no list is submitted by either Party, or if the list or lists submitted do not include potential arbitrators with the necessary qualifications and experience, the court shall be entitled at its sole discretion to appoint anyone who meets the requirements set out in this Schedule 27 for the qualifications and experience of the arbitrator.

7.4 If the arbitration tribunal is comprised of three arbitrators:

- (a) the arbitrators shall be appointed as follows:
  - (i) each Party shall appoint one arbitrator no later than 5 Business Days after delivery of the notice to arbitrate pursuant to Section 6;
  - (ii) if a Party fails to appoint an arbitrator within 5 Business Days after delivery of the notice to arbitrate, the other Party is entitled to apply to the Ontario Superior Court of Justice to appoint that arbitrator, in which case the court shall appoint that arbitrator at the earliest opportunity using a comparable process to that described in Section 7.3(b);
  - (iii) the arbitrators appointed in accordance with the foregoing shall, within 5 Business Days after their appointment, jointly appoint a third arbitrator who shall also act as the chair of the arbitration tribunal and who, in addition to all other required qualifications, shall have experience in arbitration or judicial processes and procedures; and
  - (iv) if the two arbitrators appointed by the Parties fail to appoint a third arbitrator within the required time, either of the other two arbitrators may apply to the Ontario Superior Court of Justice for appointment of the third arbitrator, in which case the court shall appoint the third arbitrator at the earliest opportunity using a comparable process to that described in Section 7.3(b); and

- (b) the arbitrators appointed by the Parties shall at all times be neutral and act impartially and shall not act as advocates for the interests of the Party who appointed them.
- 7.5 All arbitrators must have qualifications and experience relevant to the issues in the Dispute and also have qualifications and experience as arbitrators. Where the issues in Dispute include whether Project Co has or will adversely impact the Clinical Services then such qualifications and experience should include relevant experience in the provision of Clinical Services in a major acute care hospital.
- 7.6 No one shall be nominated or appointed to act as an arbitrator who is or was in any way interested, financially or otherwise, in the conduct of the Project Operations or in the business affairs of WGH, Project Co, or any consultant, subconsultant or subcontractor of any of them.
- 7.7 The arbitrator(s) shall have the jurisdiction and power to:
- (a) amend or vary any and all rules under the *Arbitration Act, 1991* (Ontario), including rules relating to time limits, either by express agreement of the Parties or, failing such agreement, as the arbitrator(s) consider appropriate and necessary in the circumstances to resolve the Dispute and render an award;
  - (b) require some or all of the evidence to be provided by affidavit;
  - (c) hold a hearing at which evidence and submissions are presented by the Parties;
  - (d) direct either or both Parties to prepare and provide the arbitrator(s) with such documents, test results or other things as the arbitrator(s) may require to assist them in the resolution of the Dispute and rendering of an award;
  - (e) require either Party to supply or prepare for examination by the arbitrator(s) and the other Party, any document or information the arbitrator(s) considers necessary;
  - (f) inspect the Project Operations, giving reasonable notice to each Party of the time when, and the place where, the arbitrator(s) intend(s) to conduct any inspections;
  - (g) award any remedy or relief that a court or judge of the Ontario Superior Court of Justice could order or grant subject to and in accordance with this Project Agreement, including, without limitation, interim orders, interim and permanent injunctions, and specific performance; and
  - (h) require either or both Parties to take and provide to the arbitrator(s) such measurements, perform such tests, perform such audits, or take any and all such other measures or steps as the arbitrator(s) consider necessary or desirable to aid them in making a fair and reasonable award.

- 7.8 The place of arbitration shall be Woodstock, Ontario or Toronto, Ontario. The language of the arbitration shall be English.
- 7.9 The costs of an arbitration are in the discretion of the arbitrator(s) who, in addition to any jurisdiction and authority under applicable law to award costs, has the jurisdiction and authority to make an order for costs on such basis as the arbitrator(s) considers appropriate in the circumstances, including to award actual legal fees and disbursements and expert witness fees, and to specify or order any or all of the following:
- (a) the Party entitled to costs;
  - (b) the Party who must pay the costs;
  - (c) the amount of the costs or how that amount is to be determined; and
  - (d) how all or part of the costs must be paid.
- 7.10 In exercising discretion to award costs, however, the arbitrator(s) will take into account the desire of the Parties that costs should generally be awarded to each Party in proportion to the relative success that each Party has in the arbitration.
- 7.11 The award of the arbitrator(s) shall be final and binding upon both Parties, and both Parties expressly waive all rights of appeal in connection with the award of the arbitrator(s). Judgment may be entered upon the award in accordance with Applicable Law in any court having jurisdiction.
- 7.12 The Parties agree to and shall co-operate fully with the arbitrator(s) and proceed with the arbitration expeditiously, including in respect of any hearing, in order that an award may be rendered as soon as practicable by the arbitrator(s), given the nature of the Dispute. The arbitrator(s) shall render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than 20 Business Days after the date of the hearing, or such longer period of time as agreed to in writing by the Parties. If the arbitration tribunal is comprised of three arbitrators, the decision of a majority of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal, and where there is no majority decision, the decision of the chair of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal.
- 7.13 This Project Agreement, including this Schedule 27, constitutes an agreement to arbitrate that shall be specifically enforceable.
- 7.14 Any arbitrator appointed pursuant to this Section 7 shall keep all information about the Dispute confidential and shall not disclose such information to anyone other than the Parties.

## **8. Litigation**

- 8.1 Notwithstanding that a notice to arbitrate has been delivered pursuant to Section 6.1, following receipt of the Expert's award or determination pursuant to Section 5 or if

applicable a Notice of Dispute has been issued following receipt of a decision of the Independent Certifier if the Dispute is a Dispute in relation to the Independent Certifier's decisions for which Section 2.3 provides that Sections 3, 4 and 5 shall not apply, if one or more of the following apply then either Party may elect, by written notice signed by their Party Representative, to require that the Dispute be referred to and resolved solely by litigation in the Ontario Superior Court of Justice, and both Parties agree to attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of the Dispute:

- (a) if the actual or potential total value or amount at issue in the Dispute (as determined by adding all claims and counterclaims) is \$10,000,000 (index linked) or more, taking into account recurrence over time if the Dispute involves a recurring matter; or
- (b) if the Dispute is considered by WGH to involve material issues of public health or safety.

Such notice will not be effective unless it indicates it is a notice to submit the Dispute to litigation, is signed by the Party Representative and is delivered to the other Party Representative within 15 Business Days after receipt of the Expert's determination or the Notice of Dispute referred to in Section 6.1(c), as applicable, and provided further that such notice expressly identifies the specific Dispute and determination of the Expert or Independent Certifier, as applicable, that is to be the subject of the litigation.

8.2 If neither Party delivers a notice of election to resolve a particular Dispute by litigation in the manner and within the time specified in Section 8.1, then:

- (a) provided that one Party has, in the manner and within the time period specified in Section 6.1, given notice to the other Party of election to resolve that Dispute by arbitration, and subject to a consolidation of proceedings pursuant to Section 10, that Dispute shall be resolved only by arbitration pursuant to Section 7; and
- (b) subject to Section 8.2(a), where a Dispute was determined by the Expert, the Expert's determination is final and binding on both Parties and not subject to appeal, arbitration, litigation or any other dispute resolution process.

## **9. Consolidation of Project Agreement Arbitrations and Litigation**

9.1 For all Disputes that arise prior to Substantial Completion, unless:

- (a) both Parties otherwise agree; or
- (b) the issue in a particular Dispute arises in connection with the Review Procedure; or
- (c) the issue in a particular Dispute is such that waiting until after Substantial Completion to resolve that Dispute will cause irreparable harm to one of the Parties; or

- (d) the issue in a particular Dispute arises in connection with requirements of achieving or deficiencies in not achieving Substantial Completion; or
- (e) in respect to a particular Dispute, the Dispute is consolidated with a Third Party Dispute (as hereinafter defined) pursuant to Section 10;

all arbitral and litigation proceedings between the Parties prior to Substantial Completion shall be stayed and consolidated into, as applicable, a single arbitration and a single litigation proceeding, with the arbitration and, if applicable, litigation, proceeding promptly and expeditiously after Substantial Completion.

## 10. Consolidation with Third Party Disputes

- 10.1 Subject to Section 10.4, if either Party is involved in an arbitration in the Province of Ontario with a third party ("**Third Party Arbitration**"), and if such Third Party Arbitration involves common factual or legal issues (including common issues of damages) which are also the subject of a Dispute between the Parties for which a Notice of Dispute has been given, then any arbitration of the Dispute between the Parties which includes those common factual, legal or damages issues ("**Project Agreement Arbitration**") shall be stayed, consolidated or joined with the Third Party Arbitration(s) but only if WGH, Project Co and the other parties all agree or, failing their agreement, if a court in the Province of Ontario on application considers it just and convenient in all the circumstances that the Project Agreement Arbitration should be stayed or consolidated or joined with the Third Party Arbitration.
- 10.2 Subject to Section 10.4, if either Party is involved in litigation in the Province of Ontario with a third party ("**Third Party Litigation**") and if:
- (a) such Third Party Litigation involves common factual or legal issues (including common issues of damages) which are the subject of a Project Agreement Arbitration; and
  - (b) one of the Parties is brought directly into the Third Party Litigation as a party to that litigation,

then on the application of either Party to the court in the Province of Ontario having jurisdiction the court may, if it determines that it is just and convenient in all the circumstances, order a stay of either or both the Project Agreement Arbitration proceeding and Third Party Litigation, or order a joinder of the Project Agreement Arbitration and the Third Party Litigation. If such joinder is ordered, the Project Agreement Arbitration and the Third Party Litigation ordered to be joined by the court shall be determined by that court or by another court in Ontario such that the Project Agreement Arbitration and the Third Party Litigation shall be resolved in one forum. For purposes of the foregoing, joinder of the Project Agreement Arbitration and the Third Party Litigation shall be construed to include stays and conditional stays of issues in the Project Agreement Arbitration pending the commencement and completion of third party proceedings by one or both of the Parties in the Third Party Litigation.



- 10.3 In considering whether to order a stay, consolidation or joinder of a Project Agreement Arbitration with a Third Party Arbitration or Third Party Litigation, the court will be entitled to give substantial weight to the desire by the Parties that all Disputes which are related to Third Party Arbitration or Third Party Litigation be resolved in a single forum to avoid multiplicity of proceedings and the potential for contradictory findings of fact, liability and quantum, and to ensure the arbitrator or court has the advantage of obtaining full evidence and disclosure from the Parties and from the other parties, as applicable and as required to resolve the Dispute and to make findings of fact, liability and quantum of damages and awards or judgments binding on the Parties based on all available evidence.
- 10.4 Sections 10.1 and 10.2 only apply:
- (a) if the Dispute between the Parties includes a claim by one Party against the other for contribution or indemnity for that Party's liability or potential liability to the third party where such liability results or will result from an award in the Third Party Arbitration or a judgment in the Third Party Litigation; and
  - (b) to those specific issues that are common issues in the Project Agreement Arbitration, the Third Party Arbitration and the Third Party Litigation, such that all other issues in the Dispute shall continue to be resolved by Project Agreement Arbitration and shall not be consolidated with the Third Party Arbitration or Third Party Litigation.
- 10.5 Any reference herein to "**Third Party Disputes**" means, collectively "**Third Party Arbitration**" and "**Third Party Litigation**" and individually, either Third Party Arbitration or Third Party Litigation, as the case may be.

## **11. Miscellaneous**

- 11.1 Project Co and WGH shall diligently carry out their respective obligations under this Project Agreement during the pendency of any Disputes, including arbitration proceedings or litigation proceedings. If during the pendency of any Dispute it is considered necessary by either Party to proceed in respect of the matter that is in Dispute, then without prejudice to Project Co's rights in respect of the Dispute (including in respect of Delay Events, Compensation Events and Variations), Project Co shall proceed in accordance with the direction of WGH, and in the event the matter in dispute is determined in favour of Project Co, proceeding in accordance with WGH's position shall, subject to and in accordance with Section 39, be treated as a Delay Event and, subject to and in accordance with Section 40, be treated as a Compensation Event.
- 11.2 Nothing contained in this Schedule 27 will prevent the Parties from seeking interim protection from the courts of the Province of Ontario, including seeking an interlocutory injunction, if necessary to prevent irreparable harm to a Party.
- 11.3 Interest on amounts agreed to be paid pursuant to resolution of a Dispute by the Party Representatives or by the executives of the Parties pursuant to Sections 3 and 4, and interest on an award or judgment, shall be payable at the Default Interest Rate, accruing:

- (a) for amounts payable by Project Co to WGH, from the date of any overpayment to Project Co or, as applicable, from the date on which payment was due under this Project Agreement to WGH; or
  - (b) for amounts payable by WGH to Project Co, from the date on which payment was due under this Project Agreement to Project Co.
- 11.4 Project Co shall ensure that any and all documents and other information in the possession or control of any Project Co Party that are available to Project Co and that may be necessary for the resolution of a Dispute on an informed basis by the Party Representatives or by the executives of the Parties pursuant to Sections 3 and 4, or by an arbitrator or court of competent jurisdiction, are made available in a timely manner to WGH and the WGH Representative.
- 11.5 WGH shall ensure that any and all documents and other information in the possession or control of any WGH Party that are available to WGH and that may be necessary for the resolution of a Dispute on an informed basis by the Party Representatives or by the executives of the Parties pursuant to Sections 3 and 4, or by an arbitrator or court of competent jurisdiction, are made available in a timely manner to Project Co and the Project Co Representative.
- 11.6 The Parties can, by written agreement, on a Dispute by Dispute basis:
- (a) extend any or all timelines set out in this Schedule 27;
  - (b) agree to waive or by-pass any one or more of the Dispute resolution processes in Sections 3, 4 and 5 and, instead, proceed directly to resolution of the Dispute by arbitration or litigation pursuant to Sections 7 or 8;
  - (c) agree to resolve a Dispute by litigation rather than arbitration notwithstanding the requirements of Section 7, or agree to resolve a Dispute by arbitration rather than litigation notwithstanding the requirements of Section 8; and
  - (d) agree to resolve a Dispute relating to the decision of an Expert by arbitration or litigation, notwithstanding the provisions of Section 6 of this Schedule 27.

**SCHEDULE 28****REFINANCING****1. DEFINITIONS**

1.1 The following terms shall have the following meanings:

- (a) **"Distribution"** means, whether in cash or in kind, any:
- (i) dividend or other distribution in respect of the Equity Capital;
  - (ii) reduction of capital, redemption or purchase of shares or any other reorganization or variation to the Equity Capital;
  - (iii) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms; or
  - (iv) the receipt of any other benefit which is not received in the ordinary course of business nor on reasonable commercial terms,
- and where any such Distribution is not in cash, the equivalent cash value of such Distribution shall be calculated.
- (b) **"Equity IRR"** means the projected internal rate of return to the Equity Providers over the full term of this Project Agreement, taking into account the aggregate of all its investments and of all Distributions made and projected to be made.
- (c) **"Exempt Refinancing"** means:
- (i) any Refinancing that was fully taken into account in the calculation of the Monthly Service Payments and included in the output from the Financial Model as of the date of this Project Agreement;
  - (ii) a change in taxation or change in accounting treatment pursuant to a Change in Law or change in Canadian GAAP;
  - (iii) the exercise of any right, the grant of any amendment, waiver or consent or any similar action under the Lending Agreements that does not provide for a financial benefit to Project Co under those agreements;
  - (iv) any sale of Equity Capital or securitization of the existing rights or interests attaching to such Equity Capital, unless such sale or securitization involves increasing the Senior Debt Amount or Junior Debt Amount, as applicable, or amending the Senior Debt Makewhole or the

Junior Debt Makewhole, as applicable, on terms more favourable to Project Co than contained in the Lending Agreements;

- (v) any Qualifying Bank Transaction;
  - (vi) any Rescue Refinancing;
  - (vii) any Refinancing that was approved by WGH prior to the execution of this Project Agreement and occurs during the first six months following the date of this Project Agreement;
  - (viii) any amendment, variation or supplement of any agreement approved by WGH as part of any Variation under this Project Agreement; or
  - (ix) any Permitted Borrowing.
- (d) **"Qualifying Bank"** means a lending institution that is:
- (i) a bank listed in Schedule I, II or III of the *Bank Act* (Canada); or
  - (ii) a bank, life insurance company, pension fund or fund managed by a professional fund manager that controls funds in excess of \$500,000,000.00,
- provided such institution is not a Restricted Person or a person whose standing or activities are inconsistent with WGH's role as a hospital, or may compromise WGH's reputation or integrity or the nature of the Province's health care system, so as to affect public confidence in that system.
- (e) **"Qualifying Bank Transaction"** means:
- (i) the disposition by a Lender of any of its rights or interests in the Lending Agreements to a Qualifying Bank;
  - (ii) the grant by a Lender to a Qualifying Bank of any rights of participation in respect of the Lending Agreements; or
  - (iii) the disposition or grant by a Lender to a Qualifying Bank of any other form of benefit or interest in either the Lending Agreements or the revenues or assets of Project Co, whether by way of security or otherwise.
- (f) **"Qualifying Refinancing"** means any Refinancing that will give rise to a Refinancing Gain that is not an Exempt Refinancing.
- (g) **"Refinancing"** means:
- (i) any amendment, variation, novation, supplement or replacement of any Lending Agreement;

- (ii) the exercise of any right, or the grant of any waiver or consent, under any Lending Agreement;
  - (iii) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Lending Agreements or the creation or granting of any other form of benefit or interest in either the Lending Agreements or the contracts, revenues or assets of Project Co whether by way of security or otherwise; or
  - (iv) any other arrangement put in place by Project Co or another person which has an effect which is similar to any of the foregoing provisions of this definition above or which has the effect of limiting Project Co's ability to carry out any of the foregoing provisions of this definition.
- (h) **"Refinancing Financial Model"** means a comprehensive and detailed financial model satisfactory to WGH, acting reasonably, prepared for the purpose of Section 2 of this Schedule 28, which financial model shall be similar in form and content to the Financial Model, suitable for the purposes for which it will be used in this Schedule 28, and shall take into account:
- (i) cash flows for the entire remaining Project Term;
  - (ii) any changes in structure and funding since the date of this Project Agreement;
  - (iii) the performance of the Project Operations to the date of the Refinancing;
  - (iv) macroeconomic assumptions; and
  - (v) all other relevant factors.
- (i) **"Refinancing Gain"** means an amount equal to the greater of zero and  $(A - B)$ , where:
- A = the net present value, discounted at a discount rate equal to the Base Case Equity IRR, of all Distributions as projected immediately prior to the Refinancing (using the Refinancing Financial Model and taking into account the effect of the Refinancing) to be made over the remaining term of this Project Agreement following the Refinancing.
- B = the net present value, discounted at a discount rate equal to the Base Case Equity IRR, of all Distributions as projected immediately prior to the Refinancing (using the Refinancing Financial Model but without taking into account the effect of the Refinancing) to be made over the remaining term of this Project Agreement following the Refinancing.
- (j) **"Rescue Refinancing"** means any Refinancing which takes place due to the failure or prospective failure of Project Co to comply with any material financial

obligation under the Lending Agreements, or any of them, which does not increase any liability of WGH, whether actual or potential.

## **2. REFINANCING**

- 2.1 Project Co shall not carry out any Qualifying Refinancing unless Project Co has obtained the prior written consent of WGH, which consent, subject to Section 2.2, shall not be unreasonably withheld or delayed.
- 2.2 WGH may withhold its consent to any Qualifying Refinancing, in its sole discretion:
- (a) where any person with whom Project Co proposes to carry out a Qualifying Refinancing is a Restricted Person;
  - (b) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will materially adversely affect the ability of Project Co to perform its obligations under the Project Documents or this Project Agreement; or
  - (c) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will have the effect of increasing any liability of WGH, whether actual or contingent, present or future, known or unknown.
- 2.3 WGH shall be entitled to receive a 50 per cent share of any Refinancing Gain arising from a Qualifying Refinancing.
- 2.4 Project Co shall promptly provide WGH with full details of any proposed Qualifying Refinancing, including a copy of the proposed Refinancing Financial Model and the basis for the assumptions used in the proposed Refinancing Financial Model. WGH shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over the Refinancing Financial Model and any documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with such Refinancing (whether or not such Refinancing is determined to be a Qualifying Refinancing). Project Co shall promptly, and, in any event, within 5 Business Days of receiving a written request from WGH, provide any information in relation to a proposed Refinancing as WGH may reasonably require. Project Co shall keep WGH informed as to any changes to the material terms of the Refinancing.
- 2.5 Subject to Section 2.6, WGH shall have the right to elect to receive its share of any Refinancing Gain as:
- (a) a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing; and/or
  - (b) a reduction in the Monthly Service Payments over the remaining Project Term,

such that the total net present value, discounted at the Discount Rate, of the foregoing, calculated at the time immediately prior to the Refinancing, shall equal WGH's share of the Refinancing Gain.

- 2.6 WGH and Project Co will negotiate in good faith to agree upon the basis and method of calculation of the Refinancing Gain and payment of WGH's share of the Refinancing Gain (taking into account how WGH has elected to receive its share of the Refinancing Gain under Section 2.5 and the profile of the Refinancing Gain). If the parties fail to agree upon the basis and method of calculation of the Refinancing Gain or the payment of WGH's share, the Dispute shall be determined in accordance with Schedule 27 - Dispute Resolution Procedure.
- 2.7 The Refinancing Gain shall be calculated after taking into account the reasonable out-of-pocket costs that each Party directly incurs in relation to the Qualifying Refinancing and on the basis that, within 15 Business Days of any Qualifying Refinancing, Project Co will reimburse WGH for all such reasonable out-of-pocket costs incurred by WGH.

SCHEDULE 29

STANDBY LETTER OF CREDIT

[NTD: The Standby Letter of Credit must be issued by a bank acceptable to WGH, acting reasonably, and must be callable at the bank's counters in Toronto, Ontario.]

Letter of Credit: #[●]

Date: [●]

Woodstock General Hospital Trust  
270 Riddell Street  
Woodstock, Ontario  
N4S 6N6

Attention: President and Chief Executive Officer

Dear Sir/Madam:

RE: Woodstock General Hospital Project

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At the request of our client, Integrated Team Solutions WGH Partnership, a general partnership of LED (ITS) WGH Inc. and LED (ITS) WGH Limited Partnership ("**Project Co**"), we, **[insert name and address of issuing bank]**, hereby issue in your favour an irrevocable standby letter of credit (the "**Letter of Credit**") in the amount of **[REDACTED]** Dollars (\$**[REDACTED]**).

The amount available under this Letter of Credit is payable to Woodstock General Hospital Trust ("**WGH**"), at any time and from time to time, upon (a) receipt by us of a written demand for payment, accompanied by a certificate signed by two officers of WGH certifying that WGH is entitled to draw on this Letter of Credit pursuant to Section 2.3(c) of a project agreement dated **[●]** (as amended from time to time, the "**Project Agreement**"), and (b) presentation of the original of this Letter of Credit.

This Letter of Credit will expire at 5:00 p.m. on **[●]**, and WGH may call for payment of any amount outstanding under this Letter of Credit at any time up to 5:00 p.m. on that date should this Letter of Credit not be renewed.

It is a condition of this Letter of Credit that it shall be automatically extended, without amendment, for one year from the expiration date hereof, or any future expiration date, unless, at least 30 days prior to any expiration date, we notify you, in writing, that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt by you of such notice, you may draw the full amount hereunder by means of your demand.

Partial drawings are permitted.



We hereby agree that demands delivered under this Letter of Credit will be duly honoured upon presentation provided that all terms and conditions herein have been complied with.

Written demands drawn under this Letter of Credit shall state on their face that they are drawn under Letter of Credit #[●].

It is understood that **[insert name of issuing bank]** is obligated under this Letter of Credit for payments of monies only.

The Project Agreement is referred to herein for reference purposes only and does not form part of the terms of this Letter of Credit.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision) of the International Chamber of Commerce (ICC Publication No. 500) and, for matters not covered by such publication, it shall be governed by and construed in accordance with the laws of the Province of Ontario.

Yours very truly,

**[Name of Issuing Bank]**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE 30**

**INSURANCE TRUST AGREEMENT**

**THIS AGREEMENT** is made as of the • day of •, 2008

**BETWEEN:**

**WOODSTOCK GENERAL HOSPITAL TRUST**, a non-share capital corporation incorporated under the laws of Ontario

("WGH")

**AND:**

**CIT FINANCIAL LTD.**, a corporation incorporated under the laws of Ontario, acting as agent for and on behalf of the Senior Lenders

(the "**Lenders' Agent**")

**AND:**

**INTEGRATED TEAM SOLUTIONS WGH PARTNERSHIP**, a general partnership formed under the laws of Manitoba

("Project Co")

**AND:**

**ELLISDON CORPORATION**

(the "**Construction Contractor**")

**AND:**

**COMPUTERSHARE TRUST COMPANY OF CANADA**, a trust company incorporated under the laws of Canada

(the "**Account Trustee**")

**WHEREAS:**

- A. WGH and Project Co have entered into the Project Agreement.
- B. WGH, the Lenders' Agent and Project Co have entered into the Lenders' Direct Agreement.

- C. WGH, the Lenders' Agent and Project Co have agreed that all amounts from time to time contained in the Insurance Trust Account are to be held in trust by the Account Trustee in accordance with the terms of this Insurance Trust Agreement, and that no releases, distributions or transfers of any funds from the Insurance Trust Account shall be made other than in accordance with the terms of this Insurance Trust Agreement.
- D. WGH, the Lenders' Agent and Project Co are beneficiaries or obligees, as the case may be, under or otherwise in respect of certain performance support delivered by Project Co with respect to the Project pursuant to the Lending Agreements. The parties have agreed that their respective right to exercise rights and remedies under such performance support shall be governed by the provisions of this Insurance Trust Agreement.

**NOW THEREFORE** in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

## 1. DEFINITIONS

In this Insurance Trust Agreement, unless the context otherwise requires:

- (a) "**Account Trustee**" means Computershare Trust Company of Canada.
- (b) "**Bank**" means [•].
- (c) "**Business Day**" has the meaning given in the Project Agreement.
- (d) "**Change of Authorization Event**" has the meaning given in Section 11(a) of this Insurance Trust Agreement.
- (e) "**Change of Authorization Notice**" has the meaning given in Section 11(b)(ii) of this Insurance Trust Agreement.
- (f) "**Construction Contractor**" means EllisDon Corporation or a successor Construction Contractor appointed in accordance with the Project Agreement.
- (g) [REDACTED]
- (h) [REDACTED]
- (i) "**Damage Proceeds**" means any proceeds paid or payable to Project Co or the Lenders' Agent under the [REDACTED] or the [REDACTED] in respect of any indemnity claims or liquidated damages that Project Co may have against the Construction Contractor under the Construction Contract as a result of any Construction Contractor defaults arising prior to a Change in Authorization Event.
- (j) "**Default Notice**" means a written notice given by the Lenders' Agent to the Account Trustee that an event of default under the Lending Agreements has occurred and is continuing.

- (k) **"Default Period"** means the period commencing on the date upon which the Account Trustee receives a Default Notice and ending on the date upon which the Account Trustee receives written notice from the Lenders' Agent that the event of default which was the subject matter of the applicable Default Notice has been cured or waived.
- (l) **"Equipment"** has the meaning given in the Project Agreement.
- (m) **"Facility"** has the meaning given in the Project Agreement.
- (n) **"Governmental Authority"** has the meaning given in the Project Agreement.
- (o) **"Insurance Policies"** has the meaning given in Section 4(a) of this Insurance Trust Agreement.
- (p) **"Insurance Proceeds"** has the meaning given in Section 4(e) of this Insurance Trust Agreement.
- (q) **"Insurance Trust Account"** means Account No. [●] at [●].
- (r) **"Insurance Trust Agreement"** means this insurance trust agreement.
- (s) **"Lenders' Agent"** means CIT Financial Ltd., a corporation incorporated under the laws of Ontario, acting as agent for and on behalf of the Senior Lenders.
- (t) **"Lenders' Direct Agreement"** means the lenders' direct agreement made on or about the date hereof between WGH, Project Co and the Lenders' Agent.
- (u) **"Lending Agreements"** has the meaning given in the Project Agreement.
- (v) **"Order"** has the meaning given in Section 9(j) of this Insurance Trust Agreement.
- (w) **"Party"** means any of WGH, Project Co, the Lenders' Agent or the Account Trustee, and **"Parties"** means all of WGH, Project Co, the Lenders' Agent and the Account Trustee.
- (x) **"Performance Support Proceeds"** means, collectively, the [REDACTED] and the [REDACTED].
- (y) **"person"** has the meaning given in the Project Agreement.
- (z) **"Project"** has the meaning given in the Project Agreement.
- (aa) **"Project Agreement"** means the project agreement made on or about [●], 2008 between WGH and Project Co.
- (bb) **"Project Co"** means Integrated Team Solutions WGH Partnership, a general partnership formed under the laws of Manitoba.
- (cc) **"Project Co Event of Default"** has the meaning given in the Project Agreement.

- (dd) "**Project Operations**" has the meaning given in the Project Agreement.
- (ee) "**Revenue Replacement Proceeds**" means insurance proceeds in respect of any business interruption, liquidated damages or other revenue replacement coverage paid or payable to Project Co, the Lenders' Agent or WGH under or pursuant to any property or asset related insurance policies that Project Co is required to maintain under the Project Agreement, including Builders' Property Risk, all risk insurance and boiler and machinery insurance.
- (ff) "**Senior Lenders**" has the meaning given in the Project Agreement.
- (gg) [REDACTED]
- (hh) [REDACTED]
- (ii) "**Substantial Completion**" has the meaning given in the Project Agreement.
- (jj) "**Trust Property**" means all of the property held in trust by the Account Trustee pursuant to this Insurance Trust Agreement, including, without limitation, the Insurance Trust Account, and all amounts from time to time contained therein, the Insurance Policies, the Insurance Proceeds, the [REDACTED], the [REDACTED] and the Performance Support Proceeds.
- (kk) "**WGH**" means Woodstock General Hospital Trust.
- (ll) "**Works**" has the meaning given in the Project Agreement.

## 2. INTERPRETATION

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

- (a) The headings in this Insurance Trust Agreement are for convenience of reference only, shall not constitute a part of this Insurance Trust Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Insurance Trust Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Insurance Trust Agreement and the terms "Section" and "Clause" are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.

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

### 3. INSURANCE TRUST ACCOUNT

- (a) Other than (i) during a Default Period, or (ii) any time following a Change of Authorization Event, the Insurance Trust Account, and all amounts from time to time contained therein, including interest thereon, shall be held in trust by the Account Trustee for the benefit of Project Co. During a Default Period, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of the Lenders' Agent and the Senior Lenders, provided that, upon a Change of Authorization Event, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of WGH.
- (b) The Account Trustee shall not release, distribute or transfer any funds from the Insurance Trust Account other than in accordance with the terms of this Insurance Trust Agreement.
- (c) Notwithstanding any other provision of this Insurance Trust Agreement, the Lenders' Agent, WGH, Project Co and the Construction Contractor, as the case may be, agree that, if any of them either receives any Insurance Proceeds from the Insurance Trust Account or has the right to direct the Account Trustee to advance funds in respect of any Insurance Proceeds from the Insurance Trust Account to third parties, such funds shall be directed, used or advanced only for one of the following purposes:
  - (i) the repair, reinstatement, restoration or replacement of the Facility or any other assets, materials or goods necessary or desirable for the carrying out of the Project Operations in respect of which such Insurance Proceeds have been paid; or
  - (ii) the completion of the Project.
- (d) The Account Trustee shall distribute any excess Insurance Proceeds and Performance Support Proceeds remaining after the distributions contemplated in Sections 4, 5 and 6 have been made, including, without limitation, any Insurance Proceeds held in the Insurance Trust Account:
  - (i) other than (A) during a Default Period, or (B) any time following receipt by the Account Trustee of a Change of Authorization Notice, to Project Co in the case of Insurance Proceeds and [REDACTED] and to the Construction Contractor in the case of [REDACTED]; or
  - (ii) during a Default Period, to such persons as the Lenders' Agent may at any time from time to time direct in writing; or
  - (iii) following receipt by the Account Trustee of a Change of Authorization Notice, to such person as WGH may at any time or from time to time direct in writing.

#### 4. INSURANCE

- (a) Project Co shall deliver, or cause to be delivered, to the Account Trustee originals of all property and asset related insurance policies that Project Co is required to maintain under the Project Agreement (such policies excluding the [REDACTED] are referred to herein collectively, as the "**Insurance Policies**"), and the Account Trustee shall hold the Insurance Policies in trust for the benefit of each of the beneficiaries and loss payees, as the case may be, thereunder.
- (b) Each of Project Co, the Lenders' Agent, WGH and the Construction Contractor shall forthwith deliver, or cause to be delivered, to the Account Trustee, any and all Insurance Proceeds and Performance Support Proceeds it receives from time to time and is not otherwise entitled to in accordance with the terms of this Insurance Trust Agreement.
- (c) All losses under (i) the Property Builders' Risk "All Risks" broad form policy, including Boiler & Machinery Insurance carried by Project Co prior to Substantial Completion; (ii) the Property Insurance carried by Project Co after Substantial Completion; and (iii) the Boiler and Machinery Insurance carried by Project Co after Substantial Completion, which, in each case relate to Equipment purchased by WGH, shall be payable solely to WGH and shall not be payable to the Account Trustee or distributed pursuant to this Insurance Trust Agreement.
- (d) The Account Trustee shall deposit to the Insurance Trust Account all amounts that are paid over to it pursuant to the Insurance Policies and the Performance Support Proceeds or otherwise by Project Co, WGH or the Lenders' Agent and shall not transfer, release or distribute any such proceeds other than in accordance with this Insurance Trust Agreement.
- (e) The Account Trustee shall distribute any proceeds of any Insurance Policy that are paid over to it by any insurer, Project Co, the Lenders' Agent or WGH other than Revenue Replacement Proceeds (the "**Insurance Proceeds**") as follows:
  - (i) in the case of the Property Builders' Risk "All Risks" broad form insurance, boiler and machinery insurance or property insurance policies that Project Co is required to maintain under the Project Agreement:
    - (A) other than (i) during a Default Period, or (ii) any time following receipt by the Account Trustee of a Change of Authorization Notice:
      - (1) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same loss or claim, is less than \$[REDACTED], to Project Co to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; or
      - (2) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same loss



or claim, is equal to or greater than \$[REDACTED], to the Lenders' Agent to reimburse Project Co for the costs of repairing, restoring or replacing the assets in respect of which such Insurance Proceeds have been paid; or

- (B) if the Account Trustee has received a Default Notice, to the Insurance Trust Account to be distributed by the Account Trustee in such amounts and to such persons as the Lenders' Agent may at any time or from time to time direct in writing, provided that, if the Account Trustee has received a Change of Authorization Notice, the Account Trustee shall release such Insurance Proceeds from the Insurance Trust Account in such amounts and to such parties as WGH may at any time or from time to time direct in writing, in each case, to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid;
- (ii) in the case of proceeds of any other Insurance Policies other than Revenue Replacement Proceeds, to the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, to WGH, to be distributed to the parties entitled thereto;
- (iii) in the case of Revenue Replacement Proceeds to which WGH is entitled to WGH, and in the case of other Revenue Replacement Proceeds, to be applied in accordance with the terms of the Lending Agreements;
- (iv) the Account Trustee shall not be under any duty to enquire as to the correctness of any amounts received by it on account of any Insurance Proceeds, nor shall it be under any obligation to take any steps to enforce the payment thereof to it; and
- (v) the Account Trustee shall not be responsible for obtaining, placing or renewing any Insurance Policies or for the enforcement or observance of any such policy.

**5. [REDACTED]**

**6. [REDACTED]**

**7. ACCOUNT AGREEMENT**

- (a) The Account Trustee hereby agrees to promptly provide to the Lenders' Agent all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as the Lenders' Agent may from time to time request in writing.
- (b) The Account Trustee hereby agrees to promptly provide to WGH all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account

Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as WGH may from time to time request in writing.

**8. THE ACCOUNT TRUSTEE**

- (a) The Account Trustee shall not have any duty or obligation to manage, control, use, make any payment in respect of, register, record, insure, inspect, sell, dispose of or otherwise deal with any part of the Trust Property except as expressly provided by the terms of this Insurance Trust Agreement. The Account Trustee shall carry out all written directions given by the Lenders' Agent, WGH or Project Co, as applicable, in accordance with this Insurance Trust Agreement and shall not be required to exercise any discretion in exercising any of its duties under this Insurance Trust Agreement in pursuance of such written directions. The Account Trustee shall not be bound to do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall have been required to do so under the terms hereof and has received written instruction, advice or direction from the Lenders' Agent, WGH or Project Co, as applicable, as to the action to be taken (except with respect to actions specifically set out herein to be performed by the Account Trustee).
- (b) The Account Trustee will exercise its powers and carry out its obligations hereunder as Account Trustee honestly, in good faith and in the best interests of the beneficiaries hereunder and in connection therewith will exercise that degree of care, diligence, and skill that a reasonably prudent professional trustee would exercise in comparable circumstances. Unless otherwise required by law, the Account Trustee will not be required to give bond surety or security in any jurisdiction for the performance of any duties or obligations hereunder. No provision of this Insurance Trust Agreement shall be construed to relieve the Account Trustee from liability for its own gross negligence (including, without limitation, gross negligence in the handling of funds), wilful misconduct, bad faith or failure to comply with the standard of care referred to in Section 8(b).
- (c) The Account Trustee, its officers, directors, employees or agents will not be subject to any liability whatsoever, in tort, contract or otherwise in connection with the Trust Property or the carrying out of its duties under this Insurance Trust Agreement to the Lenders' Agent, the Senior Lenders, Project Co or any other person for any action taken or permitted by it to be taken, or for its failure to take any action, or for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Account Trustee (including, but not limited to, any act or provision of any present or future law or of any Governmental Authority, any act of God or war, or the unavailability of any wire or communication facility), provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, gross negligence, bad faith or failure to comply with the standard of care referred to in Section 8(b) by the Account Trustee. The Account Trustee in doing anything or permitting anything to be done in respect of the Trust Property or the carrying out of its duties under this Insurance Trust Agreement is,

and will be conclusively deemed to be, acting as trustee for the beneficiaries hereunder and not in any other capacity. Except to the extent provided in this Section 6(c), the Account Trustee, its officers, directors, employees or agents will not be subject to any liability for debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust Property, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of its duties hereunder and resort will be had solely to the Trust Property for the payment or performance thereof, and no other property or assets of the Account Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Insurance Trust Agreement.

- (d) The Account Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers hereunder, or in acting at the request or direction of the Lenders' Agent on behalf of the Senior Lenders, unless it shall have received adequate indemnity or security against such risk or liability satisfactory to it.
- (e) Notwithstanding the foregoing, the Account Trustee shall be liable for any action or failure to act arising from or in connection with the gross negligence (including, without limitation, gross negligence in the handling of funds), wilful misconduct, bad faith or the failure to comply with the standard of care referred to in Section 8(b).
- (f) Except as otherwise provided in Sections 8(c), 8(d) and 8(e):
  - (i) the Account Trustee may rely and shall be protected in acting or refraining from acting upon any signature, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document reasonably believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties; and
  - (ii) the Account Trustee may exercise its powers and perform its duties by or through such attorneys, representatives, agents and employees as it shall appoint; and may consult with counsel, accountants and other skilled persons selected and employed or retained by it, and the Account Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the written advice of such counsel, accountants or other skilled persons (provided that such advice pertains to such matters as the Account Trustee may reasonably presume to be within the scope of such person's area of competency) and not contrary to any express provision in this Insurance Trust Agreement.
- (g) Project Co hereby agrees to pay, indemnify and hold harmless the Account Trustee from and against any and all loss, liability, cost, claim and expense incurred by the Account Trustee with respect to the performance of this Insurance Trust Agreement by the Account Trustee or any of the Account Trustee's directors, officers or employees, unless arising from its or their own gross negligence (including, without limitation, gross negligence in the handling of funds), wilful misconduct, bad faith or failure to comply

with the standard of care referred to in Section 8(b). This Section shall survive termination of this Agreement or the resignation or removal of the Account Trustee.

- (h) Subject to the terms and conditions set forth in the Account Trustee fee letter, the Account Trustee shall receive from the Trust Property reasonable compensation for its services hereunder and shall be reimbursed by Project Co for its reasonable fees and expenses (including the disbursements and reasonable fees of counsel). Any amount owing under this Section and unpaid thirty (30) days after request for such payment will bear interest from the expiration of such thirty (30) days at a rate per annum equal to the then current rate charged by the Account Trustee to its corporate customers, payable on demand.
- (i) The Account Trustee agrees to look solely to Project Co, and not, except as expressly set forth herein, to the Lenders' Agent, the Senior Lenders or WGH for any claim for indemnification which may arise under this Insurance Trust Agreement.
- (j) The Account Trustee shall be responsible for keeping all appropriate books and records relating to the receipt and disbursement of all money which it receives hereunder.
- (k) If at any time the Account Trustee is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Trust Property held by it hereunder (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Trust Property) (each, an "**Order**"), the Account Trustee is authorized to comply therewith in any manner as it or legal counsel of its own choosing deems appropriate. The Account Trustee shall in no way be bound to call for further evidence (whether as to due execution, validity or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so. If the Account Trustee complies with any Order, the Account Trustee shall not be liable to any of the Parties hereto or to any other person or entity even though such Order may be subsequently modified or vacated or otherwise determined to have been without legal force or effect. If the Account Trustee is served with any Order, it shall forthwith and, in any event, within three (3) Business Days, deliver a copy of such Order to each of the Lenders' Agent, WGH and Project Co.
- (l) Unless otherwise specifically set forth herein, the Account Trustee shall proceed as soon as practicable to collect any cheques or other collection items at any time deposited hereunder. All such collections shall be subject to the Account Trustee's usual collection practices or terms regarding items received by the Account Trustee for deposit or collection. Except and to the extent provided herein, the Account Trustee shall not be required, or have any duty, to notify any person of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any cheque, note or security deposited hereunder, or to exercise any right or privilege which may be afforded to the holder of any such security.
- (m) In the event that the Account Trustee determines that any direction, instruction, notice or other communication given under this Insurance Trust Agreement by the Lenders' Agent

or, where the Account Trustee has received a Change of Authorization Notice, WGH, is ambiguous or uncertain, the Account Trustee may, in its sole discretion, refrain from taking any action other than retaining possession of the Trust Property, and shall not be held liable for refraining from taking such action, unless the Account Trustee has received written instructions, signed by the Lenders' Agent or, if the Account Trustee has received a Change of Authorization Notice, WGH, which resolve such ambiguity or uncertainty, provided that the Account Trustee shall, forthwith upon determining that such direction, instruction, notice or other communication is ambiguous or uncertain, seek clarification from the Lenders' Agent, or where the Account Trustee has received a Change of Authorization Notice, WGH, to resolve such ambiguity or uncertainty.

- (n) Prior to receipt of a Change of Authorization Notice by the Account Trustee, any instruction, notice or other communication delivered to the Account Trustee by the Lenders' Agent shall be paramount to and supersede any direction, instruction, notice or other communication from any other Party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from the Lenders' Agent. After the Account Trustee has received a Change of Authorization Notice, any instruction, notice or other communication delivered to the Account Trustee by WGH shall be paramount to and supersede any direction, instruction, notice or other communication from any other Party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from WGH.
- (o) Each of the Lenders' Agent and WGH shall provide to the Account Trustee an incumbency certificate setting out the names and sample signatures of individuals authorized to give instructions to the Account Trustee hereunder. The Account Trustee shall be entitled to rely on each such incumbency certificate until a revised or replacement incumbency certificate is provided to the Account Trustee by the Lenders' Agent or WGH, as applicable. The Account Trustee shall refuse to act upon any instruction given by the Lenders' Agent or WGH which is signed by any person other than an individual named in the incumbency certificate provided to the Account Trustee by the Lenders' Agent or WGH, as applicable, pursuant to this Section 6(o), as any such incumbency certificate may be amended, supplemented or replaced from time to time.
- (p) The Account Trustee shall be entitled to rely on, and act upon, any direction, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile transmission, provided that any such direction, instruction, notice or other communication is signed by an individual named in the incumbency certificate delivered to the Account Trustee by the Lenders' Agent or WGH, as applicable, pursuant to Section 6(o).

## **9. ANTI-MONEY LAUNDERING**

- (a) Each Party to this Agreement (other than the Trustee) hereby represents to the Trustee that any account to be opened by, or interest to be held by, the Trustee in connection with this Agreement, for or to the credit of such Party is not intended to be used by or on behalf of any third party except for the express purposes of this Agreement.

- (b) The Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Trustee, in its sole judgment, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Trustee, in its sole judgment, determine at any time that its acting under this Agreement has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign on ten (10) days written notice to the other Parties to this Agreement, provided (i) that the Trustee's written notice shall describe the circumstances of such non-compliance; and (ii) that if such circumstances are rectified to the Trustee's satisfaction within such ten (10) day period, then such resignation shall not be effective.

## 10. PRIVACY

The parties acknowledge that federal and/or provincial legislation that addresses the protection of individuals' personal information (collectively, "**Privacy Laws**") may apply to obligations and activities under this Agreement. Despite any other provision of this Agreement, no party shall take or direct any action that would contravene, or cause the other to contravene, applicable Privacy Laws. The Lenders' Agent and Project Co shall, prior to transferring or causing to be transferred personal information to the Account Trustee, obtain and retain required consents of the relevant individuals to the collection, use and disclosure of their personal information, or shall have determined that such consents either have previously been given upon which the parties can rely or are not required under the Privacy Laws. The Account Trustee shall use commercially reasonable efforts to ensure that its services hereunder comply with Privacy Laws. Specifically, the Account Trustee agrees: (a) to have a designated chief privacy officer; (b) to maintain policies and procedures to protect personal information and to receive and respond to any privacy complaint or inquiry; (c) to use personal information solely for the purposes of providing its services under or ancillary to this Agreement and not to use it for any other purpose except with the consent of or direction from WGH, the Lenders' Agent, Project Co or the individual involved; (d) not to sell or otherwise improperly disclose personal information to any third party; and (e) to employ administrative, physical and technological safeguards to reasonably secure and protect personal information against loss, theft, or unauthorized access, use or modification.

## 11. LENDERS' AGENT AND WGH RIGHTS TO DIRECT

- (a) Until the termination of the Project Agreement in accordance with the Lenders' Direct Agreement and receipt by Project Co of any amounts to which it is entitled pursuant to Schedule 23 - Compensation on Termination to the Project Agreement and all Insurance Proceeds and Performance Support Proceeds to the extent that the value of such Insurance Proceeds or Performance Support Proceeds was deducted from the amounts payable to Project Co by WGH (a "**Change of Authorization Event**"), the Lenders' Agent shall, subject to Sections 3, 4, 5 and 6 of this Insurance Trust Agreement, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account,

the Insurance Policies, the Insurance Proceeds, the [REDACTED], the [REDACTED] and the Performance Support Proceeds.

- (b) Upon the occurrence of a Change of Authorization Event:
- (i) the Lenders' Agent shall cease to be entitled, and WGH shall thenceforth be entitled, to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies, the Insurance Proceeds, the [REDACTED], the [REDACTED] and the Performance Support Proceeds; and
  - (ii) the Lenders' Agent and WGH shall jointly provide notice to the Account Trustee (a "**Change of Authorization Notice**") that WGH shall, as of the date of such Change of Authorization Event, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies, the Insurance Proceeds, the [REDACTED], the [REDACTED] and the Performance Support Proceeds.
- (c) Notwithstanding the foregoing, no Change of Authorization Event shall occur and no Change of Authorization Notice shall be delivered to the Account Trustee where a WGH Event of Default has occurred. Where a WGH Event of Default has occurred, upon receipt by the Lenders' Agent and Senior Lenders of all amounts owing by WGH to the Lenders' Agent and Senior Lenders under the Lenders' Direct Agreement, the Account Trustee shall release all amounts in the Insurance Trust Account, the Insurance Policies, the Insurance Proceeds, the [REDACTED], the [REDACTED] and the Performance Support Proceeds to Project Co or as Project Co may otherwise direct from time to time.
- (d) Notwithstanding any other provision of this Agreement, where Project Co shall continue to hold, or shall continue to be entitled to or have rights under the [REDACTED] or the [REDACTED] to Damages Proceeds in respect of any default by the Construction Contractor under the Construction Contract arising prior to a Change in Authorization Event, WGH's rights to the [REDACTED] and the [REDACTED] shall be conditional on the satisfaction of those obligations to Project Co.

## 12. TERMINATION

- (a) Subject to the provisions of Section 12(b), this Insurance Trust Agreement shall remain in full force and effect and be binding in accordance with and to the extent of its terms until:
- (i) the obligations of Project Co to the Lenders' Agent and the Senior Lenders under the Lending Agreements have been paid and performed in full and the Senior Lenders have no further obligation to make any further advances or other credit accommodations under the Lending Agreements; and
  - (ii) the obligations of Project Co to WGH have been paid and performed in full.
- (b) The Account Trustee may terminate this Insurance Trust Agreement at any time upon sixty (60) days prior written notice to the other Parties hereto, provided that no





If to the Lenders' Agent: CIT Financial Ltd.  
207 Queen's Quay West  
Suite 700  
Toronto, Ontario  
M5J 1A7

Fax: [REDACTED]

Attn.: Chief Operating Officer

If to Project Co: 5000 Yonge Street, Suite 1805  
Toronto, Ontario  
M2N 7E9

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to Construction Contractor: EllisDon Corporation  
89 Queensway Avenue West, Suite 800  
Mississauga, Ontario  
L5B 2V2

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to the Account Trustee: Computershare Trust Company of Canada  
100 University Avenue  
9<sup>th</sup> Floor, North Tower  
Toronto, Ontario  
M5J 2Y1

Fax: [REDACTED]

Attn.: Manager, Corporate Trust

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 14(b).
- (c) Any Party to this Insurance Trust Agreement may, from time to time, change any of its contact information set forth in Section 14(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 14(e), 14(f) and 14(g):

- (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 14.
- (f) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

## **15. CURRENCY**

Amounts to be paid or calculated under this Agreement are to be paid or calculated in Canadian Dollars.

## **16. AMENDMENTS**

This Insurance Trust Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Insurance Trust Agreement.

## **17. WAIVER**

- (a) No waiver made or given by a Party under or in connection with this Insurance Trust Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The

single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

**18. RELATIONSHIP BETWEEN THE PARTIES**

The Parties are independent contractors. This Insurance Trust Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Insurance Trust Agreement, of principal and agent.

**19. RECITALS**

Any statements of fact set out in the recitals to this Agreement are not representations of such facts by the Account Trustee and the Account Trustee shall have no liability to any party hereto in respect thereof.

**20. ENTIRE AGREEMENT**

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

**21. SEVERABILITY**

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

**22. ENUREMENT**

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

**23. GOVERNING LAW AND JURISDICTION**

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

- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Insurance Trust Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

**24. FURTHER ASSURANCE**

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Insurance Trust Agreement.

**25. LANGUAGE OF AGREEMENT**

Each Party acknowledges having requested and being satisfied that this Insurance Trust Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.

**26. COUNTERPARTS**

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

**IN WITNESS WHEREOF** the Parties have executed this Insurance Trust Agreement as of the date first above written.

**WOODSTOCK GENERAL HOSPITAL TRUST**

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: President and Chief Executive Officer

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: Chair of the Board

I/We have authority to bind the corporation.

**CIT FINANCIAL LTD.**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

**INTEGRATED TEAM SOLUTIONS  
WGH PARTNERSHIP, by its partners,**

**LED (ITS) WGH INC.**

Per: \_\_\_\_\_  
Name:  
Title:

**LED (ITS) WGH GENERAL PARTNER  
INC., in its capacity as general partner of  
LED (ITS) WGH LIMITED  
PARTNERSHIP**

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the partnership.

**ELLISDON CORPORATION**

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

**COMPUTERSHARE TRUST  
COMPANY OF CANADA**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the trust  
company.

**SCHEDULE 31**

**BENCHMARKING AND MARKET TESTING PROCEDURE**

**1. DEFINITIONS**

**1.1 Definitions**

The following defined terms are used in this Schedule:

**"Associated Entity"**

means:

- (a) an Affiliate of any of Project Co, the Service Provider, the Construction Contractor, the Shareholders, the Subcontractors or any other Project Co Party;
- (b) any partner in any partnership or any person who participates in any profit sharing or joint purse arrangement, in each case to which any of Project Co, the Service Provider, the Construction Contractor or the Shareholders or any person mentioned in paragraph (a) is also a party;
- (c) any shareholder, director, officer or employee of any of the persons referred to in paragraphs (a) and (b) or any of those persons' spouses, children, step-children or partners; or
- (d) any body corporate of which any person referred to in (c) above is a shareholder, director, officer or employee;

**"Benchmark Price"**

means the range of prices that is within 5% less than and 5% greater than the simple average of prices for the relevant Market Tested Services obtained from the suitable comparators as part of a Benchmarking Exercise conducted hereunder, once adjustments have been made to make such comparators comparable, including adjusting for standards, as agreed by the Parties, provided however that the higher limit of such range shall not exceed the highest of the suitable



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	comparators;
<b>"Benchmarking Exercise"</b>	has the meaning given to it in Article 3 of this Schedule - Benchmarking Procedure;
<b>"Benchmarking Meeting"</b>	means a meeting convened in accordance with paragraph 15.1 (Benchmarking Program) of this Schedule;
<b>"Benchmarking Proposal"</b>	means the final version of the Draft Benchmarking Proposal, as agreed by the Parties or as determined, in either case, in accordance with this Schedule;
<b>"Compliant Tender"</b>	means a tender received from a Tenderer which complies with the Tender Requirements;
<b>"Draft Benchmarking Proposal"</b>	means the proposal described in paragraph 16.1 of this Schedule;
<b>"Draft Market Testing Proposal"</b>	means the proposal described in paragraph 4.1 of this Schedule;
<b>"Effective Date"</b>	means each succeeding fifth anniversary date of the Payment Commencement Date;
<b>"Excluded Person"</b>	means Project Co, any Associated Entity, any subcontractor of an Associated Entity or any Associate of their respective subcontractors;
<b>"Grounds Maintenance Services"</b>	has the meaning given in Schedule 1 – Definitions and Interpretation of this Project Agreement;
<b>"Market Tested Services"</b>	means each of the following Project Co Services: (i) Grounds Maintenance Services; and (ii) Security and Parking Management Services;
<b>"Market Testing"</b>	means the process described in this Schedule for market testing and the term "Market Tested" shall be construed accordingly;
<b>"Market Testing Meeting"</b>	means a meeting convened in accordance with paragraph 3.1 (Market Testing Program) of this Schedule;

<b>"Market Testing Proposal"</b>	means the final version of the Draft Market Testing Proposal, as agreed by the Parties or as determined, in either case, in accordance with this Schedule;
<b>"Preferred Tenderer"</b>	means, following the Market Testing of any Market Tested Service or any part of any Market Tested Service (as the case may be), the Tenderer selected to provide such services in accordance with the provisions of paragraph 7 of this Schedule;
<b>"Prospective Tenderers"</b>	means those persons who express an interest in being requested to prepare and submit tenders for each Market Tested Service or any part of any Market Tested Service (as the case may be);
<b>"Security and Parking Management Services"</b>	has the meaning given in Schedule 1 – Definitions and Interpretation of this Project Agreement;
<b>"Service Satisfaction Surveys"</b>	has the meaning given in Schedule 15 – Output Specifications;
<b>"Tenderers"</b>	means those of the Prospective Tenderers selected to submit tenders in accordance with paragraph 5 of this Schedule;
<b>"Tender Requirements"</b>	means the form and requirements of the tender documents to be sent to Tenderers as agreed or determined in accordance with the provisions of this Schedule; and
<b>"Tender Validity Period"</b>	means the period within which tenders from Tenderers must be received if they are to be valid.

**ARTICLE 1 – REQUIREMENTS**

- 1. Options to perform either Market Testing or Benchmarking Procedures Program**
- 1.1 Prior to commencement of the Benchmarking Exercise or Market Testing Procedure, Project Co must declare the preferred value approach (either Market Testing or Benchmarking Exercise) to WGH for each of the Market Tested Services, provided that Project Co shall only be entitled to declare that proceeding with the Benchmarking Exercise is the preferred value approach if Project Co meets the requirements set forth in

paragraph 15.2 of this Schedule. The preferred value approach must be accepted by the WGH prior to proceeding with either procedure. If Project Co and WGH are unable to agree on the value approach, either party may refer the matter for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

## **ARTICLE 2 – MARKET TESTING PROCEDURE**

### **2. Market Testing Requirements**

2.1 The Market Testing of each Market Tested Service shall, notwithstanding any other provision of this Schedule (including, without limitation, the participation of WGH described in paragraph 3), be the responsibility of Project Co and shall be carried out in a timely manner in accordance with this Schedule so that the Preferred Tenderer shall commence provision of the relevant Market Tested Services on the relevant Effective Date.

### **3. Market Testing Program**

3.1 Except as provided in Article 4 of this Schedule, at least six (6) months before each Effective Date, the Parties shall hold Market Testing Meetings in respect of all Market Tested Services:

3.1.1 to review the Output Specifications in Schedule 15 for the Market Tested Service and, if required by WGH, amend the relevant Output Specifications as appropriate. Project Co may only object to any change in the requirements of WGH on the grounds referred to in Section 1.5 of Schedule 22 (Variation Procedure). Any such objection must be made by notice in writing to WGH within ten (10) Business Days of the relevant Market Testing Meeting;

3.1.2 to discuss and seek to agree on any division of any Market Tested Service into separate parts which will optimise the opportunity for WGH to obtain best value for money;

3.1.3 to discuss and seek to agree the appropriate media for advertising the Market Tested Services and identifying the Prospective Tenderers;

3.1.4 to discuss and seek to agree the basis on which the Tenderers shall be selected by Project Co from among the Prospective Tenderers;

3.1.5 to discuss and seek to agree the Tender Requirements which shall be in sufficient detail to allow Project Co, with WGH's agreement, to determine the Preferred Tenderer and shall include, without limitation:

(a) a statement of the Tender Validity Period;

- (b) requirements in respect of the possible division of the Market Tested Service into separate parts;
  - (c) details of the tender evaluation criteria;
  - (d) the information Tenderers are required to provide;
  - (e) a requirement that Tenderers shall be required to offer employment to all affected employees on terms and conditions as favourable as those the employees enjoy with the incumbent Service Provider; and
  - (f) to the extent applicable as agreed between the Parties, details of the required financial wherewithal and performance security/guarantees to be provided to support the Preferred Tender's obligations.
- 3.2 The time, place and agenda for the first Market Testing Meeting shall be advised by Project Co to WGH at least one month in advance of the meeting. Thereafter, each subsequent meeting shall be convened by either Project Co or WGH on not less than ten (10) Business Days' notice (identifying the agenda items to be discussed at the meeting) provided that in emergencies a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- 3.3 To avoid doubt, any tender evaluation criteria agreed between Project Co and WGH and made available to the Tenderers as part of the Tender Requirements must be objective and impartial.
- 4. Market Testing Proposal**
- 4.1 Notwithstanding any failure of the Parties to agree upon any matter referred to in paragraph 3.1, Project Co shall prepare and deliver to WGH no later than four (4) months before the relevant Effective Date a draft proposal for the Market Testing (the "**Draft Market Testing Proposal**") describing in detail Project Co's proposals for the Market Testing of each Market Tested Service. The Market Testing Proposal shall describe all of the matters referred to in and agreed pursuant to paragraph 3.1 and, if appropriate, the form of contract which the Preferred Tenderer will be required to accept.
- 4.2 WGH may, within 15 Business Days of WGH's receipt of the Draft Market Testing Proposal, provide comments and request amendments to the Draft Market Testing Proposal and Project Co shall revise the Draft Market Testing Proposal as required by WGH.
- 4.3 If Project Co and WGH are unable to agree on any matter relating to the Draft Market Testing Proposal within 30 Business Days of WGH's receipt of the Draft Market Testing Proposal, either party may refer the matter for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

- 4.4 It shall be a principle of the Market Testing Proposal that, unless otherwise agreed by the Parties, the allocation of risk to the Preferred Tenderer, if appointed to act as a Service Provider, shall not be materially greater than such allocation to the Service Provider whom the Preferred Tenderer is to replace.
- 4.5 The Output Specifications, Tender Requirements and form of contracts set out in the Market Testing Proposal shall be used for the Market Testing.

**5. Selection of Tenderers**

- 5.1 Project Co shall be responsible for compiling the list of Prospective Tenderers. Except with the prior written consent of WGH, in its sole discretion, the Prospective Tenderers shall not include any Restricted Person or other person who is not permitted to be a Subcontractor pursuant to the Project Agreement. If WGH recommends any Prospective Tenderers, then Project Co shall include any such recommendations in the list of Prospective Tenderers.
- 5.2 Project Co shall be responsible for selecting the Tenderers from the list of Prospective Tenderers on the basis of the following criteria:
  - 5.2.1 the financial standing of the Prospective Tenderers;
  - 5.2.2 the technical, managerial and other relevant experience and ability of the Prospective Tenderers (taking into account any relevant customer references); and
  - 5.2.3 any other basis or Tender Requirements identified pursuant to paragraph 3.1.4 or 3.1.5 of this Schedule.

All such relevant criteria shall be subject to the prior written approval of WGH, not to be unreasonably withheld.

- 5.3 WGH shall have a right to object to the selection of any person as a Prospective Tenderer if such person does not (or could not reasonably be considered to) comply with any of the criteria referred to in paragraph 5.2 above or with the requirements of Section 58.3 of the Project Agreement.
- 5.4 To avoid doubt, an Excluded Person shall not be disqualified from selection as a Tenderer merely by virtue of being a party to one or more of the Project Documents, subject to:
  - 5.4.1 compliance with all Applicable Laws; and
  - 5.4.2 the establishment of, and compliance with, arrangements reasonably satisfactory to WGH to avoid any conflict of interest or unfair advantage. Failure by Project Co to comply with any such arrangements shall automatically lead to the disqualification of the Excluded Person and the provisions of paragraph 11 shall apply.

- 5.5 WGH shall, in its absolute discretion, have the right to reject and veto the selection of any person as a Tenderer on the grounds that the Prospective Tenderer has committed a Prohibited Act, where the term "Prohibited Act" shall have the extended meaning given in Section 12.1 of this Schedule.
- 5.6 Project Co shall (after consultation with WGH) provide any Prospective Tenderer which is unsuccessful in being selected as a Tenderer with an appropriate explanation of the reasons behind its non-selection, if so requested by the person in question.
- 5.7 Where, in respect of any Market Tested Service or any part of any Market Tested Service, there are less than three Prospective Tenderers (or Project Co intends to select only one of the Prospective Tenderers as Tenderer), Project Co shall not be entitled to proceed with the Market Testing of the same without the prior written consent of WGH.

## **6. Tendering Process**

- 6.1 Project Co shall be responsible for managing and co-ordinating the Market Testing in an efficient and fair manner in accordance with the Market Testing Proposal (and in particular, but without limitation, the Tender Requirements) and shall ensure that only Tenderers selected in accordance with this Schedule are invited to submit tenders. Project Co shall ensure that the principle of equality of information to, and treatment of, Tenderers shall apply at all times.
- 6.2 Project Co shall send all necessary documents and information to Tenderers (including, without limitation, the Tender Requirements) in a timely manner.
- 6.3 Tenders must be assessed for compliance with the Tender Requirements and the value for money that the tenders represent for WGH.
- 6.4 Project Co shall bear all costs, fees and expenses associated with Market Testing.
- 6.5 WGH may, at its own cost, appoint a monitor for the purpose of monitoring and reporting to WGH on Project Co's compliance with all requirements for Market Testing. Such monitor shall be entitled to attend all meetings and processes relating to Market Testing, including without limitation, evaluation meetings and processes, inspect copies of all the tender documentation, bids and evaluation documentation and comment (on behalf of WGH) to Project Co as to compliance with the requirements for Market Testing.
- 6.6 In the event that Project Co does not comply with all requirements for Market Testing, then, without limiting any other remedies of WGH under this Project Agreement or otherwise, Project Co shall re-perform the relevant Market Testing in accordance with such requirements.

**7. Preferred Tenderer**

- 7.1 Following expiry of the Tender Validity Period, Project Co shall (subject to the provisions of this paragraph 7) determine which Tenderer (the "**Preferred Tenderer**") offers the Compliant Tender in respect of any Market Tested Service or individual part of the Market Tested Service, that represents (as the case may be) the best value for money for WGH.
- 7.2 Immediately upon making the determination referred to in paragraph 7.1, Project Co shall supply to WGH a copy of its tender evaluation, together with sufficient supporting information concerning the tender evaluation to enable WGH to analyse and understand the basis for Project Co's determination.
- 7.3 If WGH does not agree with Project Co's determination in the case of any Compliant Tender, WGH may, within fifteen (15) Business Days of being provided with the tender evaluation pursuant to paragraph 7.2 above, dispute such determination and, if the Parties do not resolve such dispute within a further fifteen (15) Business Days, the dispute shall be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

**8. Appointment**

- 8.1 Project Co shall ensure that the Preferred Tenderer (as agreed or determined in accordance with paragraph 7 above) is appointed to provide the relevant Market Tested Service or individual parts of any Market Tested Service (as the case may be) on the basis set out in their Compliant Tender as of the Effective Date, for five year terms and on the basis set out in their Compliant Tender.
- 8.2 Without prejudice to paragraph 5.7, where Project Co believes that less than three Compliant Tenders are likely to be submitted, or where only one Compliant Tender is in fact submitted, Project Co shall not be entitled to proceed further with the Market Testing or (as the case may be) to appoint the Preferred Tenderer without the prior written approval of WGH.
- 8.3 Project Co shall (after consultation with WGH) provide any Tenderer which is unsuccessful in being selected as the Preferred Tenderer with an appropriate explanation of the reasons behind its non-selection, if so requested by the party in question.

**9. Service Payment Adjustments**

- 9.1 On the appointment of any Preferred Tenderer, the Annual Service Payment shall be altered in accordance with Part B, Section 4 of Schedule 20 - Payment Mechanism.
- 9.2 Any alteration to the Annual Service Payment shall take effect from the Effective Date to which the Market Testing related.

**10. Information Requirements**

Without prejudice to any of Project Co's general obligations under the Project Agreement, including without limitation pursuant to Section 36.2 of the Project Agreement (Information and General Audit Rights), Schedule 26 - Record Provisions and the other provisions of this Schedule, Project Co shall:

- 10.1 maintain a full record and audit trail of each Market Testing and make all such records (including details of all tenders received) available for inspection by WGH and its authorised representatives on reasonable notice from WGH;
- 10.2 provide to WGH, in a comprehensive and accurate manner, all information necessary to enable WGH to review and assess all matters relating to the Market Testing;
- 10.3 certify to WGH within twenty (20) Business Days of expiry of the Tender Validity Period that:
  - 10.3.1 no Excluded Person intends to or will obtain any direct or indirect financial or other benefit from such appointment (other than the benefit of the contract itself);
  - 10.3.2 no Excluded Person has colluded in connection with the Market Testing; and
  - 10.3.3 there has been full compliance with all requirements relating to ensuring equality of information provided to, and treatment of, Tenderers.

**11. Indemnities**

Project Co shall indemnify and keep WGH fully indemnified at all times from and against all claims, demands or notices which may be brought or alleged or threatened against WGH and from and against all Direct Losses or fines which WGH may suffer or incur in relation to any such claims, demands or notices which occur as a result of or in connection with:

- 11.1.1 the implementation of this Schedule;
- 11.1.2 any breach of the provisions of this Schedule; and
- 11.1.3 any claim made by any person (including any Prospective Tenderer, Tenderer or Preferred Tenderer) that is not awarded a contract,

save to the extent that any such breach or claim results from any failure of WGH to comply with the express provisions of this Schedule.

**12. Irregularity in Award of Contracts****Acceptance by Project Co**



12.1 Where Project Co is required by this Agreement to carry out Market Testing, for the purposes of this Schedule and Section 59 of the Project Agreement, the following shall extend the definition of "**Prohibited Act**":

- (i) all references to "WGH" in such definition shall be deemed to be references to "Project Co or WGH";
- (ii) all references to "Project Co" in such definition shall be deemed to be references to "Project Co or the Service Tenderer"; and
- (iii) it shall be an additional Prohibited Act for Project Co or any Associated Entity (or anyone acting on its behalf) to:
  - (a) accept or agree to accept any gift or consideration of any kind as an inducement or reward;
  - (b) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of any Service Contract or other Subcontract; or
  - (c) for showing or not showing favour or disfavour to any person in relation to any Service Contract or Subcontract; or
  - (d) enter into any Service Contract or Subcontract for Market Tested Services in connection with which a commission or fee has been paid or has been agreed to be paid unless, before the Subcontract is made, particulars of any such commission or fee and of the terms and conditions of any such agreement for the payment of such commission or fee have been disclosed in writing to Project Co and WGH and WGH has consented to the same (in its absolute discretion),

and the provisions of Section 59 of the Project Agreement shall be deemed to be modified accordingly and to apply and be construed accordingly.

**Offer by Tenderer**

12.2 Where Project Co is required by this Agreement to carry out Market Testing and any Prospective Tenderer or Tenderer (or anyone acting on its or their behalf or any of its or their directors, officers or employees) offers or agrees to give to Project Co or any Associated Entity any gift or consideration of any kind as inducement or reward:

12.2.1 for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of any Subcontract to the Agreement; or

12.2.2 for showing or not showing favour or disfavour to any person in relation to any Subcontract to the Agreement,

WGH may (without prejudice to any of its other rights) by notice to Project Co require Project Co to secure, as soon as practicable, the termination of that person's involvement in the Market Testing or, if discovered after the award of the relevant contract, the termination of the relevant Subcontract (and the provisions of Article 59 of the Project Agreement shall be construed accordingly).

- 12.3 Project Co shall notify WGH of the occurrence (and details) of any Prohibited Act promptly on Project Co becoming aware of its occurrence.

**13. Market Testing of Service Contracts of the Project Agreement**

- 13.1 WGH in considering exercising its option under section 44.5 of the Project Agreement (in circumstances where section 44.5(b) of the Project Agreement applies) will require Project Co to carry out or procure the carrying out of a Market Testing of the relevant Service Contract or relevant Subcontract in line with this Schedule save that the Monthly Service Payment shall not be adjusted following such Market Testing.

**ARTICLE 3 – BENCHMARKING PROCEDURE**

**14. Benchmarking Requirements**

- 14.1 The benchmarking of the Market Tested Services shall, notwithstanding any other provision of this Schedule, be the responsibility of Project Co and such benchmarking exercise (the "**Benchmarking Exercise**") shall be carried out in accordance with this Schedule in a timely manner so that the Benchmarking Exercise shall be completed by the relevant Effective Date.

**15. Benchmarking Program**

- 15.1 Project Co may, at least 8 months before each Effective Date, give notice to WGH that Project Co wishes to carry out a Benchmarking Exercise of one or more of the Market Tested Services, rather than Market Testing as otherwise provided in this Schedule, and the Parties shall meet together as often as necessary in respect of the Market Tested Services to be subject to the Benchmarking Exercise.

- 15.2 Unless otherwise agreed by the Parties and subject to paragraph 1.1 of this Schedule, such notice referred to in paragraph 15.1 of this Schedule may only be given, and Project Co shall only be entitled to carry out a Benchmarking Exercise, in respect of a Market Tested Service if:

15.2.1 the Service Provider has, on the most recent Service Satisfaction Survey conducted in accordance with Schedule 15 - Output Specifications prior to the date of such notice, achieved a satisfaction score equal to or higher than the average satisfaction score for all surveys conducted prior to the date of such

notice or the satisfaction score achieved in the first bi-annual Service Satisfaction Survey performed in accordance with Schedule 15 – Output Specifications, whichever is higher. Such satisfaction score shall be for questions directly relating to the Market Tested Services; and

- 15.2.2 Project Co has received fewer than two Warning Notices during the twelve-month period prior to the date of such notice. All such scoring will not be subject to Schedule 27 - Dispute Resolution Procedure.
- 15.3 Within 7 days after receipt of the notice referred to in paragraph 15.1 of this Schedule, the Parties shall meet to:
- 15.3.1 to review the Output Specifications in Schedule 15 for each Market Tested Service that will be subject to the Benchmarking Exercise and, if required by WGH, amend the relevant Output Specifications after the Effective Date as appropriate. Project Co may only object to any change in the requirements of WGH on the grounds referred to in Section 1.5 of Schedule 22 - Variation Procedure. Any such objection must be made by notice in writing to WGH within ten (10) Business Days of the relevant Benchmarking Meeting at which the change was contemplated;
- 15.3.2 to discuss and seek to agree on any division of the Market Tested Service into separate parts which will optimise the opportunity for WGH to obtain best value for money; and
- 15.3.3 to discuss and agree upon the factors to be taken into account in the Benchmarking Exercise to ensure that the Market Tested Services are compared on a like to like basis with suitable comparators and reliable information, which shall include comparing the standards and prices of such Market Tested Services and the costs of providing them with the standards and prices of equivalent services and the costs of providing them in similar circumstances by reputable organizations possessing an appropriate degree of skill, resources, reputation and financial standing relative to the provision of such Market Tested Services;
- 15.4 If Project Co cannot establish to WGH's satisfaction, acting reasonably, that for a Market Tested Service there are suitable comparators and reliable information as described in paragraph 15.3 of this Schedule, then the Benchmarking Exercise for that Market Tested Service shall not proceed and Market Testing of such Market Tested Service shall be as otherwise provided in this Schedule.
- 15.5 The time, place and agenda for the first Benchmarking Meeting shall be advised by Project Co to WGH at least one month in advance of the meeting. Thereafter, each subsequent meeting shall be convened by either the Project Co or WGH on not less than ten (10) Business Days' notice (identifying the agenda items to be discussed at the meeting) provided that in emergencies a meeting may be called at any time on such notice as may be reasonable in the circumstances.

**16. Benchmarking Proposal**

- 16.1 Project Co shall, prior to the start of the Benchmarking Exercise, prepare and deliver to WGH a draft proposal for the Benchmarking Exercise (the "**Draft Benchmarking Proposal**") describing in detail Project Co's proposals for the Benchmarking of each Market Tested Service. The Draft Benchmarking Proposal shall describe all of the matters referred to in, and agreed pursuant to, paragraph 15.1. The pricing shall not exceed any amount contractually agreed between Project Co and the Service Provider that is applicable for the period after the Effective Date.
- 16.2 Project Co shall maintain complete and accurate records of each Benchmarking Exercise and shall present the results of the Benchmarking Exercise to WGH, together with all necessary supporting documentation and such other information for full transparency of relevant cost and other information relating to the Benchmarking Exercise and as WGH may reasonably require in order to evaluate properly the results of the Benchmarking Exercise. The Parties shall agree upon the Benchmark Price and, if no agreement can be reached, Article 2 above shall apply.
- 16.3 If the pricing of a Market Tested Service in the Benchmarking Proposal is less than the Benchmark Price, then Project Co shall confirm the appointment of the Service Provider then providing such Market Tested Service to continue providing such Market Tested Service for a further five year term and the re-pricing of such Market Tested Service shall be at the pricing set out in the Draft Benchmarking Proposal.
- 16.4 If the pricing of a Market Tested Service in the Draft Benchmarking Proposal is within the Benchmark Price, then at Project Co's option Project Co shall confirm the appointment of the Service Provider then providing such Market Tested Service to continue providing such Market Tested Service for a further five-year term at the pricing set out in the Draft Benchmarking Proposal. If Project Co does not exercise such option, then Market Testing of such Market Tested Service shall be as otherwise provided in this Schedule.
- 16.5 If the pricing of a Market Tested Service in the Draft Benchmarking Proposal is more than the Benchmark Price, then Market Testing of such Market Tested Service shall be conducted as otherwise provided in this Schedule.
- 16.6 Project Co shall bear all costs, fees and expenses associated with the Benchmarking Exercise.
- 16.7 The provisions of paragraphs 1 and 11 of this Schedule shall apply, *mutatis mutandis*, to the Benchmarking Exercise as provided in this paragraph 16.
- 16.8 The Parties acknowledge and agree that the Benchmarking Exercise is intended to be an expedited process that is completed at least 6 months prior to the relevant Market Testing Date to allow time for Market Testing to proceed as otherwise provided in this Schedule, and accordingly, either Party may, at any time after the date that is 10 months prior to the relevant Market Testing Date, request a meeting with the other Party to discuss the

likelihood and scope of a Benchmarking Exercise, as it is then known to the Parties, and to review the proposed timeline, details and issues concerning a Benchmarking Exercise. The other Party shall meet with the requesting Party, and both Parties, acting reasonably, shall consider the timelines set out in this paragraph 16 and, if agreed, the timelines set out in this paragraph 16 shall be modified for the Benchmarking Exercise.

**17. Service Payment Adjustments**

- 17.1 On the completion of the Benchmarking, the Annual Service Payment shall be altered in accordance with Part B, Section 4 of Schedule 20 (Payment Mechanism).
- 17.2 Any alteration to the Annual Service Payment shall take effect from the Effective Date to which the Benchmarking related.

**18. Information Requirements**

Without prejudice to any of Project Co's general obligations under the Project Agreement, including without limitation pursuant to Section 36.2 of the Project Agreement (Information and General Audit Rights), Schedule 26 (Record Provisions) and the other provisions of this Schedule, Project Co shall:

- 18.1 maintain a full record and audit trail of each Benchmarking and make all such records (including details of all tenders received) available for inspection by WGH and its authorised representatives on reasonable notice from WGH; and
- 18.2 provide to WGH, in a comprehensive and accurate manner, all information necessary to enable WGH to review and assess all matters relating to the Benchmarking.

**SCHEDULE 32**

**FINANCIAL MODEL EXTRACTS**

**[REDACTED]**

**SCHEDULE 33****EXISTING DESIGN****1. Rules of Interpretation**

The following rules will apply to the interpretation of the Existing Design:

- (a) The plans, specifications and other documents that comprise the Existing Design are complementary, and what is required by any one shall be as binding as if required by all.
- (b) Words and abbreviations which have well known technical or trade meanings are used in the Existing Design in accordance with such recognized meanings.
- (c) References in the Existing Design to the singular shall be considered to include the plural as the context requires.
- (d) The specifications are that portion of the Existing Design, wherever located and whenever issued, consisting of the written requirements and standards for products, systems, workmanship, and the services necessary for the performance of the Works.
- (e) The drawings are the graphic and pictorial portions of the Existing Design, wherever located and whenever issued, showing the design, location, and dimensions of the Works, generally including plans, elevations, sections, details, schedules, and diagrams.
- (f) Neither the organization of the specifications into divisions, sections, and parts, nor the arrangement of drawings shall control Project Co in dividing the work among Subcontractors and Suppliers or in establishing the extent of the work to be performed by a trade.
- (g) If there is a conflict within the Existing Design:
  - (i) the order of priority of documents, from highest to lowest, shall be:
    - (A) this Project Agreement, other than the Existing Design;
    - (B) Division 1 of the specifications;
    - (C) Division 2 through 16 of the specifications;
    - (D) schedules; and
    - (E) drawings;
  - (ii) drawings of larger scale shall govern over those of smaller scale of the same date;
  - (iii) dimensions shown on drawings shall govern over dimensions scaled from drawings;
  - (iv) later dated documents shall govern over earlier documents of the same type;

- (v) if an item is shown on one document, it shall be deemed to be shown on all documents; and
- (vi) written descriptions and words shall govern over graphic depictions.

The Architect of Record shall decide on issues related to any conflict between documents of equal precedence.

- (h) At Commercial Close, WGH shall provide Project Co, without charge, one (1) hard copy of the Existing Design (including all addenda) and one (1) CD-ROM copy of the Existing Design (including all addenda). Any additional copies of the Existing Design or part thereof shall be at the expense of Project Co. Project Co shall ensure that all copies of the Existing Design received from WGH shall be kept in a secure location.
- (i) After Financial Close, WGH shall provide Project Co, without charge, ten (10) copies of the construction drawings (Existing Design incorporating all addenda), two (2) of which shall be used for record drawings and one (1) copy of all administrative documents such as Variation Enquiries, Variation Confirmations and Variation Directives. Any additional copies of the construction drawings (Existing Design incorporating all addenda) or part thereof including additional copies of administrative documents, shall be at the expense of Project Co. Project Co shall ensure that all copies of the construction drawings (Existing Design incorporating all addenda) received from WGH shall be kept in a secure location.
- (j) Specifications, drawings, models, and copies thereof furnished by the Architect of Record are and shall remain the Architect of Record's property. All specifications, drawings, and models furnished by the Architect of Record are to be used only with respect to the Project and are not to be used on other work. These specifications, drawings, and models are not to be copied or altered in any manner, except in accordance with this Project Agreement, without the written authorization of the Architect of Record.
- (k) Models furnished by Project Co are the property of WGH.
- (l) Project Co and its Subcontractors shall verify the dimensions shown on the drawings before layout of work.

**2. Documents and Drawings Constituting the Existing Design:**

The following documents and drawings constitute the Existing Design:

**1.0 ADDENDA**

Addendum No. T001	Dated: February 13, 2008
Addendum No. T002	Dated: February 22, 2008
Addendum No. T003	Dated: March 25, 2008
Addendum No. T004	Dated: April 09, 2008
Addendum No. T005	Dated: April 23, 2008
Addendum No. T006	Dated: May 16, 2008
Addendum No. T007	Dated: May 22, 2008



Addendum No. T008

Dated: May 23, 2008

Addendum No. T009

Dated: May 29, 2008

Addendum No. T010A (Post-RFP Responses)

Dated: September 22, 2008

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*16320ADD	LOW VOLTAGE LIGHTING CONTROL	1 thru 3
*16330ADD	FLUORESCENT DIMMING SYSTEM	1 thru 12
*16300	LIGHTING	1 thru 5
*16350	EMERGENCY LIGHTING (BATTERY SYSTEM)	1 and 2
*16390	UNINTERRUPTABLE POWER SYSTEM	1 thru 10
*16490	TWO STAGE FIRE ALARM/VOICE COMMUNICATION SYSTEM (ZONED)	1 thru 11
*16500	MASTER CLOCK SYSTEM (SYNCHRONOUS WIRED)	1 thru 5
*16600	TELECOMMUNICATIONS AND SYSTEMS PATHWAYS	1 thru 4

*16690ADD	PAGING SYSTEM	1 thru 3
*16710	FIRE ALARM ZONING GRAPHIC	1 and 2
*16720	AUTOMATED NURSECALL SYSTEM	1 thru 12
*16740	CCTV SYSTEM	1 thru 7
*16900	BASIC TELECOMMUNICATIONS REQUIREMENTS	1 thru 10
*16910	SECURITY / ACCESS CONTROL SYSTEM	1 thru 16
*16999	PANEL SCHEDULES	1 thru 204

**LEGEND**

\* - *Specifications prepared by Design Consultants other than Architect of Record - Parkin Architects Limited have been prefixed with an asterisk. These specifications are not included under, nor governed by, Parkin Architects Limited's seal.*



### 3.0 LIST OF SCHEDULES

#### PART 2 -SCHEDULES (Bound with specifications)

#### 2.1. ROOM FINISH SCHEDULE

- 2.1.1. Room Finish Schedule Abbreviations (1 page).
- 2.1.2. Room Finish Schedule (60 pages).

#### 2.2. DOOR SCHEDULE

- 2.2.1. Door Schedule Abbreviations (1 page).
- 2.2.2. Door Schedule (36 pages).
- 2.2.3. This Document contains following sketches related to Door Schedule:
  - 2.2.3.1. Sheet Number: 0114-A1000 Door Types
  - 2.2.3.2. Sheet Number: 0114-A1001 Door Types
  - 2.2.3.3. Sheet Number: 0114-A2000 Frame Types
  - 2.2.3.4. Sheet Number: 0114-A2001 Frame Types
  - 2.2.3.5. Sheet Number: 0114-A2002 Frame Types
  - 2.2.3.6. Sheet Number: 0114-A2003 Frame Types
  - 2.2.3.7. Sheet Number: 0114-A3000 Screen Types
  - 2.2.3.8. Sheet Number: 0114-A3001 Screen Types
  - 2.2.3.9. Sheet Number: 0114-A3002 Screen Types
  - 2.2.3.10. Sheet Number: 0114-A3003 Screen Types
  - 2.2.3.11. Sheet Number: 0114-A4000 Door/Screen Details
  - 2.2.3.12. Sheet Number: 0114-A4001 Door/Screen Details
  - 2.2.3.13. Sheet Number: 0114-A4002 Lead Lined Door/Screen Details
  - 2.2.3.14. Sheet Number: 0114-A4003 Typical Trackless Sliding Door Jamb and Head Detail
  - 2.2.3.15. Sheet Number: 0114-A4004 Typical Interior Aluminum Door and Screen Details
  - 2.2.3.16. Sheet Number: 0114-A4005 Typical Interior Aluminum Door and Screen Details
  - 2.2.3.17. Sheet Number: 0114-A4006 Glazing Door w/Glazing Screen and Glazing Screen Details
  - 2.2.3.18. Sheet Number: 0114-A4007 Glazing screen w/Silicon Joints

**2.3. SCHEDULE OF FINISH HARDWARE \*\***

2.3.1. (614 pages).

**2.4. ELECTRIC HARDWARE APPLICATION RESPONSIBILITY CHART**

2.4.1. (6 pages)

**2.5. EQUIPMENT SKETCHES AND SCHEDULES**

2.5.1. This Document contains following schedule related to Sections 10100, 10800 and 10950:

2.5.1.1. WGH TB, WB, VB List (41 pages).

2.5.2. This Document contains following schedule related to Section 10800:

2.5.2.1. Washroom Accessories Chart (21 pages).

2.5.2.2. Film Illuminator Schedule (1 page)

2.5.3. This Document contains following schedule related to Section 11700:

2.5.3.1. Surgical Procedure Lighting Schedule (2 pages).

2.5.4. This Document contains following schedule related to Section 11701:

2.5.4.2. Corridor Mirrors (Hemispheric Safety Mirrors) - Equipment Detail Report - Contractor Supply and Install (5 pages).

2.5.5. This Document contains following schedule related to Sections 12510 and 12530:

2.5.6. Window Blind Abbreviation (1 page).

2.5.6.1. Window Blind Schedule (12 pages).

**2.6. LEED® LETTER TEMPLATES**

2.6.1. SS Prerequisite 1: Erosion & Sedimentation Control (2 pages).

2.6.2. SS Credit 1: Site Selection (1 page).

2.6.3. SS Credit 4.1: Alternative Transportation, Public Transportation Access (1 page).

2.6.4. SS Credit 4.2: Alternative Transportation, Bicycle Storage & Changing Rooms (1 page).

2.6.5. SS Credit 4.4: Alternative Transportation, Parking Capacity (1 page).

2.6.6. SS Credit 5.1: Reduced Site Disturbance, Protect or Restore Open Space (1 page).

2.6.7. SS Credit 5.2: Reduced Site Disturbance, Development Footprint (1 page).

2.6.8. SS Credit 7.2: Heat Island Effect, Roof (1 page).

2.6.9. SS Credit 8: Light Pollution Reduction (2 pages).

2.6.10. WE Credit 1.1: Water Efficient Landscaping, Reduce by 50% (1 page).

2.6.11. WE Credit 1.2: Water Efficient Landscaping, No Potable Use or No Irrigation (1 page).

2.6.12. WE Credit 3: Water Use Reduction (1 page).

2.6.13. EA Prerequisite 1: Fundamental Building Systems commissioning (1 page).

2.6.14. EA Prerequisite 2: Minimum Energy Performance (1 page).

2.6.15. EA Prerequisite 3: CFC Reduction HVAC&R Equipment and Eliminations of Halons (1 page).

2.6.16. EA Credit 1.1 - 1.10: Optimize Energy Performance (1 page).

- 2.6.17. EA Credit 3: Best Practice Commissioning (1 page).
- 2.6.18. EA Credit 4: Ozone Protection (1 page).
- 2.6.19. EA Credit 5: Measurement & Verification (1 page).
- 2.6.20. MR Prerequisite 1: Storage & Collection of Recyclables (1 page).
- 2.6.21. MR Credit 2.1 -2.2: Construction Waste Management (1 page).
- 2.6.22. MR Credit 4.1 - 4.2: Recycled Content (1 Page).
- 2.6.23. MR Credit 4.1 - 4.2: Recycled Content - Calculations for Post-Industrial Recycled Content for SCMs in Concrete (1 page).
- 2.6.24. MR Credit 5.1 - 5.2: Regional Materials (1 page).
- 2.6.25. MR Credit 6: Rapidly Renewable Materials (1 page).
- 2.6.26. EQ Prerequisite 1: Minimum IAQ Performance (1 page).
- 2.6.27. EQ Prerequisite 2: Environmental Tobacco Smoke (ETS) Control (1 Page).
- 2.6.28. EQ Credit 1: Carbon Dioxide (CO2) Monitoring (1 page).
- 2.6.29. EQ Credit 2: Ventilation Effectiveness (1 page).
- 2.6.30. EQ Credit 3.1: Construction IAQ Management Plan, During Construction (1 page).
- 2.6.31. EQ Credit 3.2: Construction IAQ Management Plan, Testing Before Occupancy (1 page).
- 2.6.32. EQ Credit 4.1 - 4.4: Low-Emitting Materials (4 pages)
- 2.6.33. EQ Credit 5: Indoor Chemical & Pollutant Source Control (1 page).
- 2.6.34. EQ Credit 6.1: Controllability of Systems, Perimeter (1 page).
- 2.6.35. EQ Credit 6.2: Controllability of Systems, Non-Perimeter (1 page).
- 2.6.36. EQ Credit 7.1 - 7.2: Thermal Comfort (1 page).
- 2.6.37. EQ Credit 8.1 - 8.2: Daylight and Views (1 page).

**LEGEND**

**\*\* - Schedules prepared by Architect of Records other than Parkin Architects Limited have been prefixed by an asterisk and are not included under, nor governed by, Parkin Architects Limited's seal.**

**3.0 DRAWING LIST**

<u>SHEET NUMBER</u>	<u>ELECTRONIC DWF TAG</u>	<u>SHEET TITLE</u>
<b>GENERAL</b>		
-----	0114-A001	COVER SHEET
0114-A002	0114-A002	DRAWING LIST
0114-A004	0114-A004	PARTITION, WALL, ROOF TYPES & LEGEND
<b>CIVIL</b>		
0114-C1-0	C1-0_2001-0630-33	EXISTING CONDITIONS PLAN
0114-C1-1	C1-1_2001-0630-33	SITE SERVICING PLAN
0114-C2-1	C2-1_2001-0630-33	SITE GRADING PLAN-NORTH
0114-C2-2	C2-2_2001-0630-33	SITE GRADING PLAN-SOUTH
0114-C3-1	C3-1_2001-0630-33	STANDARD SITE DETAILS
0114-C4-1	C4-1_2001-0630-33	EROSION & SEDIMENT CONTROL PLAN
<b>LANDSCAPING</b>		
0114-L100	0224-L100-L100-ISSUED FOR R.F.P.	OVERALL LANDSCAPE PLAN & OUTPATIENT ENTRY PLANS
0114-L101	0224-L101	MENTAL HEALTH COURTYARD & CENTRAL COURTYARD LAYOUT PLAN AND DETAILS
0114-L102	0224-L102	MENTAL HEALTH COURTYARD & CENTRAL COURTYARD GRADING PLAN AND DETAILS
0114-L103	0224-L103	MENTAL HEALTH COURTYARD & CENTRAL COURTYARD PLANTING PLAN AND DETAILS
0114-L104	0224-L104	MAIN ENTRANCE LAYOUT PLAN AND DETAILS
0114-L105	0224-L105	MAIN ENTRANCE PLANTING PLAN AND DETAILS
<b>ARCHITECTURAL</b>		
<b><u>SITE PLAN</u></b>		
0114-A010	0114-A010	TOPOGRAPHICAL SURVEY AND LOCATION PLAN
0114-A011	0114-A011	SITE PLAN

0114-A012	0114-A012	PARTIAL SITE PLAN
0114-A013	0114-A013	PARTIAL SITE PLAN
0114-A014	0114-A014	PROPOSED HELIPORT LOCATION AND NOTES

**KEY PLAN AND FIRE SEPARATIONS**

0114-A100	0114-A100	LOWER FLOOR PLAN KEY PLAN AND FIRE SEPARATION
0114-A101	0114-A101	MAIN FLOOR PLAN KEY PLAN AND FIRE SEPARATION
0114-A102	0114-A102	SECOND FLOOR PLAN KEY PLAN AND FIRE SEPARATION
0114-A103	0114-A103	PENTHOUSE/ROOF PLAN KEY PLAN AND FIRE SEPARATION

**FLOOR PLANS**

0114-A109	0114-A109	GRID SET UP DRAWING
0114-A110	0114-A110	PARTIAL LOWER FLOOR PLAN NORTHWEST WING
0114-A111	0114-A111	PARTIAL LOWER FLOOR PLAN NORTHEAST AND EAST WINGS
0114-A111A	0114-A111A	PARTIAL LOWER FLOOR PLAN SOUTHEAST WING
0114-A112	0114-A112	PARTIAL LOWER FLOOR PLAN SOUTHWEST WING
0114-A113	0114-A113	PARTIAL LOWER, MAIN & SECOND FLOOR PLANS NORTHWEST AND SOUTHWEST WINGS
0114-A114	0114-A114	PARTIAL MAIN FLOOR PLAN NORTHWEST WING
0114-A115	0114-A115	PARTIAL MAIN FLOOR PLAN NORTHEAST & EAST WINGS
0114-A115A	0114-A115A	PARTIAL MAIN FLOOR PLAN SOUTHEAST WING
0114-A116	0114-A116	PARTIAL MAIN FLOOR PLAN SOUTHWEST WING
0114-A117	0114-A117	PARTIAL SECOND FLOOR PLAN NORTHWEST WING
0114-A118	0114-A118	PARTIAL SECOND FLOOR PLAN NORTHEAST & EAST WINGS
0114-A118A	0114-A118A	PARTIAL SECOND FLOOR PLAN SOUTHEAST WING
0114-A119	0114-A119	PARTIAL SECOND FLOOR PLAN SOUTHWEST WING

0114-A120	0114-A120	PARTIAL PENTHOUSE / ROOF PLAN NORTHWEST WING
0114-A121	0114-A121	PARTIAL PENTHOUSE / ROOF PLAN NORTHEAST AND EAST WINGS
0114-A121A	0114-A121A	PARTIAL PENTHOUSE / ROOF PLAN SOUTHEAST WING
0114-A122	0114-A122	PARTIAL PENTHOUSE / ROOF PLAN SOUTHWEST WING
0114-A123	0114-A123	PENTHOUSE ROOF PLAN
0114-A124	0114-A124	PARTIAL PENTHOUSE ROOF PLAN NORTHEAST AND EAST WINGS
0114-A124A	0114-A124A	PARTIAL PENTHOUSE ROOF PLAN SOUTHEAST WING
0114-A125	0114-A125	PARTIAL PENTHOUSE / ROOF PLAN SOUTHWEST WING
0114-A126	0114-A126	CANOPY PLANS NORTHWEST WING

**REFLECTED CEILING PLANS**

0114-A130	0114-A130	PARTIAL LOWER LEVEL REFLECTED CEILING PLAN NORTHWEST WING
0114-A131	0114-A131	PARTIAL LOWER FLOOR REFLECTED CEILING PLAN NORTHEAST AND EAST WINGS
0114-A131A	0114-A131A	PARTIAL LOWER FLOOR REFLECTED CEILING PLAN SOUTHEAST WING
0114-A132	0114-A132	PARTIAL LOWER FLOOR REFLECTED CEILING PLAN SOUTHWEST WING
0114-A133	0114-A133	PARTIAL MAIN FLOOR REFLECTED CEILING PLAN NORTHWEST WING
0114-A134	0114-A134	PARTIAL MAIN FLOOR REFLECTED CEILING PLAN NORTHEAST AND EAST WINGS
0114-A134A	0114-A134A	PARTIAL MAIN FLOOR REFLECTED CEILING PLAN SOUTHEAST WING
0114-A135	0114-A135	PARTIAL MAIN FLOOR REFLECTED CEILING PLAN SOUTHWEST WING
0114-A136	0114-A136	PARTIAL SECOND FLOOR

0114-A137	0114-A137	REFLECTED CEILING PLAN NORTHWEST WING
0114-A137A	0114-A137A	PARTIAL SECOND FLOOR REFLECTED CEILING PLAN NORTHEAST AND EAST WINGS
0114-A138	0114-A138	PARTIAL SECOND FLOOR REFLECTED CEILING PLAN SOUTHWEST WING
<b><u>FLOOR PATTERN PLANS</u></b>		
0114-A150	0114-A150	PARTIAL LOWER FLOOR/ FLOOR PATTERN PLANNORTHWEST WING
0114-A151	0114-A151	PARTIAL LOWER FLOOR/ FLOOR PATTERN PLAN NORTHEAST AND EAST WINGS
0114-A151A	0114-A151A	PARTIAL LOWER FLOOR/ FLOOR PATTERN PLAN SOUTHWEST WING
0114-A152	0114-A152	PARTIAL LOWER FLOOR/ FLOOR PATTERN PLAN SOUTHWEST WING
0114-A153	0114-A153	PARTIAL MAIN FLOOR/ FLOOR PATTERN PLAN NORTHEAST WING
0114-A154	0114-A154	PARTIAL MAIN FLOOR/ FLOOR PATTERN PLAN NORTHEAST AND EAST WINGS
0114-A154A	0114-A154A	PARTIAL MAIN FLOOR/ FLOOR PATTERN PLAN SOUTHWEST WING
0114-A155	0114-A155	PARTIAL MAIN FLOOR/ FLOOR PATTERN PLAN SOUTHWEST WING
0114-A156	0114-A156	PARTIAL SECOND FLOOR/ FLOOR PATTERN PLAN NORTHWEST WING
0114-A157	0114-A157	PARTIAL SECOND FLOOR/ FLOOR PATTERN PLAN NORTHEAST AND EAST WINGS
0114-A157A	0114-A157A	PARTIAL SECOND FLOOR/ FLOOR PATTERN PLAN SOUTHWEST WING

0114-A158	0114-A158	PARTIAL SECOND FLOOR/ FLOOR PATTERN PLAN SOUTHWEST WING
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**EQUIPMENT PLANS**

0114-A170	0114-A170	PARTIAL LOWER FLOOR EQUIPMENT PLAN NORTHWEST WING
0114-A171	0114-A171	PARTIAL LOWER FLOOR EQUIPMENT PLAN NORTHEAST AND EAST WINGS
0114-A171A	0114-A171A	PARTIAL LOWER FLOOR EQUIPMENT PLAN SOUTHEAST WING
0114-A172	0114-A172	PARTIAL LOWER FLOOR EQUIPMENT PLAN SOUTHWEST WING
0114-A173	0114-A173	PARTIAL MAIN FLOOR EQUIPMENT PLAN NORTHWEST WING
0114-A174	0114-A174	PARTIAL MAIN FLOOR EQUIPMENT PLAN NORTHEAST AND EAST WINGS
0114-A174A	0114-A174A	PARTIAL MAIN FLOOR EQUIPMENT PLAN SOUTHEAST WING
0114-A175	0114-A175	PARTIAL MAIN FLOOR EQUIPMENT PLAN SOUTHWEST WING
0114-A176	0114-A176	PARTIAL SECOND FLOOR EQUIPMENT PLAN NORTHWEST WING
0114-A177	0114-A177	PARTIAL SECOND FLOOR EQUIPMENT PLAN NORTHEAST AND EAST WINGS
0114-A177A	0114-A177A	PARTIAL SECOND FLOOR EQUIPMENT PLAN SOUTHEAST WING
0114-A178	0114-A178	PARTIAL SECOND FLOOR EQUIPMENT PLAN SOUTHWEST WING

**ELEVATIONS**

0114-A200	0114-A200	ELEVATIONS
0114-A201	0114-A201	ELEVATIONS



0114-A202	0114-A202	ELEVATIONS
0114-A203	0114-A203	ELEVATIONS
0114-A204	0114-A204	COURTYARD ELEVATIONS
0114-A205	0114-A205	ELEVATIONS
0114-A206	0114-A206	COURTYARD ARCHIVE WALL & DETAILS
0114-A207	0114-A207	SALVAGED PLAQUES & DATE STONES

**BUILDING SECTIONS**

0114-A300	0114-A300	BUILDING SECTIONS
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**WALL SECTIONS**

0114-A310	0114-A310	SECTIONS
0114-A311	0114-A311	SECTIONS
0114-A312	0114-A312	SECTIONS
0114-A313	0114-A313	SECTIONS
0114-A314	0114-A314	SECTIONS
0114-A315	0114-A315	SECTIONS
0114-A316	0114-A316	SECTIONS
0114-A317	0114-A317	SECTIONS
0114-A318	0114-A318	SECTIONS
0114-A319	0114-A319	SECTIONS
0114-A320	0114-A320	SECTIONS
0114-A321	0114-A321	SECTIONS
0114-A322	0114-A322	SECTIONS
0114-A323	0114-A323	SECTIONS
0114-A324	0114-A324	SECTIONS
0114-A325	0114-A325	SECTIONS
0114-A326	0114-A326	SECTIONS
0114-A327	0114-A326	SECTIONS
0114-A328	0114-A328	SECTIONS

**PLAN DETAILS**

0114-A400	0114-A400	PLAN DETAILS LOWER FLOOR
0114-A401	0114-A401	PLAN DETAILS LOWER FLOOR
0114-A402	0114-A402	PLAN DETAILS MAIN FLOOR
0114-A403	0114-A403	PLAN DETAILS MAIN FLOOR
0114-A404	0114-A404	PLAN DETAILS SECOND FLOOR
0114-A405	0114-A405	PLAN DETAILS PENTHOUSE

**SECTION DETAILS AND WINDOW TYPES**

0114-A420	0114-A420	SECTION DETAILS
0114-A421	0114-A421	SECTION DETAILS
0114-A422	0114-A422	SECTION DETAILS

0114-A423	0114-A423	SECTION DETAILS
0114-A424	0114-A424	SECTION DETAILS
0114-A425	0114-A425	SECTION DETAILS
0114-A426	0114-A426	SECTION DETAILS
0114-A427	0114-A427	SECTION DETAILS
0114-A450	0114-A450	WINDOW TYPES
0114-A451	0114-A451	WINDOW TYPES
0114-A452	0114-A452	WINDOW DETAILS
<b><u>STAIR AND ELEVATOR DETAILS</u></b>		
0114-A500	0114-A500	STAIR PLANS
0114-A501	0114-A501	STAIR PLANS
0114-A502	0114-A502	STAIR PLANS
0114-A502A	0114-A502A	STAIR PLANS
0114-A503	0114-A503	STAIR SECTIONS
0114-A504	0114-A504	STAIR DETAILS
0114-A505	0114-A505	STAIR NO.2 SECTIONS AND DETAILS
0114-A506	0114-A506	STAIR NO.2 SECTIONS AND DETAILS
0114-A510	0114-A510	ELEVATOR PLANS
0114-A510A	114-A510A	ELEVATOR PLANS
0114-A511	0114-A511	ELEVATOR SECTIONS AND DETAILS ELEVATOR CAB PLANS & ELEVATIONS
<b><u>LARGE SCALE PLANS</u></b>		
0114-A525	0114-A525	TYPICAL PLANS - BEDS ROOMS
0114-A526	0114-A526	TYPICAL PLANS - BEDS ROOMS
0114-A527	0114-A527	TYPICAL PLANS - SPECIAL PROCEDURES, X-RAY, CT SCAN AND TRAUMA
0114-A528	0114-A528	PLANS – OPERATING ROOMS AND ENDOSCOPY
0114-A529	0114-A529	PLANS – MRI, PACU, ACUTE EXAM
0114-A530	0114-A530	PLANS - CCU
0114-A531	0114-A531	PLANS - WASHROOMS
0114-A532	0114-A532	PLAN – DIALYSIS UNIT
<b><u>INTERIOR ELEVATIONS AND DETAILS</u></b>		
0114-A550	0114-A550	TILE LAYOUTS

0114-A560	0114-A560	STANDARD MILLWORK LIBRARY LOWER FLOOR CORRIDOR ELEVATIONS
0114-A562	0114-A562	LOWER FLOOR INTERIOR ELEVATIONS
0114-A563	0114-A563	LOWER FLOOR INTERIOR ELEVATIONS
0114-A564	0114-A564	MAIN FLOOR CORRIDOR ELEVATIONS
0114-A565	0114-A565	MAIN FLOOR CORRIDOR ELEVATIONS
0114-A566	0114-A566	MAIN FLOOR INTERIOR ELEVATIONS
0114-A567	0114-A567	MAIN FLOOR INTERIOR ELEVATIONS
0114-A568	0114-A568	MAIN FLOOR INTERIOR ELEVATIONS
0114-A569	0114-A569	SECOND FLOOR CORRIDOR ELEVATIONS
0114-A570	0114-A570	SECOND FLOOR CORRIDOR ELEVATIONS
0114-A571	0114-A571	SECOND FLOOR INTERIOR ELEVATIONS
0114-A572	0114-A572	SECOND FLOOR INTERIOR ELEVATIONS
0114-A573	0114-A573	POWER DROP WALLS AT CARE STATIONS INTERIOR ELEVATIONS

**MILLWORK DETAILS**

0114-A580	0114-A580	MILLWORK DETAILS
0114-A581	0114-A581	MILLWORK DETAILS
0114-A582	0114-A582	MILLWORK DETAILS
0114-A583	0114-A583	MILLWORK DETAILS
0114-A584	0114-A584	MILLWORK DETAILS
0114-A585	0114-A585	3D DIGITAL DISPLAY ENCLOSURE WALL ELEVATIONS
0114-A586	0114-A586	MILLWORK DETAILS
0114-A587	0114-A587	MILLWORK DETAILS

**INTERIOR DETAILS**

0114-A590	0114-A590	INTERIOR DETAILS
0114-A591	0114-A591	INTERIOR DETAILS
0114-A592	0114-A592	INTERIOR DETAILS
0114-A593	0114-A593	INTERIOR DETAILS

0114-A594	0114-A594	INTERIOR DETAILS
0114-A595	0114-A595	SPECIALTY CEILING GRID LAYOUT
0114-A596	0114-A596	CHAPEL DETAILS
0114-A597	0114-A597	INTERIOR DETAILS
0114-A598	0114-A598	INTERIOR DETAILS

**MISCELLANEOUS DETAILS**

0114-A600	0114-A600	SERVICE STRIP ELEVATIONS
0114-A601	0114-A601	SERVICE STRIP ELEVATIONS
0114-A620	0114-A620	MISCELLANEOUS DETAILS
0114-A621	0114-A621	MISCELLANEOUS DETAILS
0114-A622	0114-A622	MISCELLANEOUS DETAILS
0114-A623	0114-A623	MISCELLANEOUS DETAILS
0114-A630	0114-A630	MOUNTING DETAILS
0114-A631	0114-A631	MOUNTING DETAILS

**FREE – STANDING SYSTEM COMPONENTS (SYSTEMS FURNITURE)**

0114-A700	0114-A700	SYSTEM FURNITURE PARTIAL PLANS
0114-A701	0114-A701	SYSTEM FURNITURE PARTIAL PLANS
0114-A702	0114-A702	SYSTEM FURNITURE PARTIAL PLANS
0114-A703	0114-A703	SYSTEM FURNITURE PARTIAL PLANS
0114-A704	0114-A704	SYSTEM FURNITURE PARTIAL PLANS

**FOOD SERVICES**

0114-K1	WGHFS-K SERIES LEVEL 1-0114-K1	FOODSERVICE EQUIPMENT LOWER FLOOR PLAN VIEW AND FS EQUIPMENT LIST
0114-K1.1	WGHFS-K SERIES LEVEL 1-0114-K1_1	FOODSERVICE EQUIPMENT LOWER FLOOR DEPRESSION PLAN AND OTHER LOWER FLOOR PLAN VIEWS
0114-K1.2	WGHFS-K SERIES LEVEL 1-0114-K1_2	FOODSERVICE EQUIPMENT LOWER FLOOR MAIN KITCHEN ELEVATIONS
0114-K1.3	WGHFS-K SERIES LEVEL 1-0114-K1_3	FOODSERVICE EQUIPMENT LOWER FLOOR CAFETERIA ELEVATIONS
0114-K1.4	WGHFS-K SERIES LEVEL 1-0114-K1_4	FOODSERVICE EQUIPMENT LOWER FLOOR CAFETERIA & MENTAL HEALTH

0114-K1.5	WGHFS-K SERIES LEVEL 1-0114-K1_5	ELEVATIONS FOODSERVICE EQUIPMENT LOWER FLOOR CAFETERIA & MENTAL HEALTH ELEVATIONS
0114-K2	WGHFS-K SERIES LEVEL 2-0114-K2	FOODSERVICE EQUIPMENT MAIN FLOOR PLAN VIEW & FS EQUIPMENT LIST
0114-K2.1	WGHFS-K SERIES LEVEL 2-0114-K2_1	FOODSERVICE EQUIPMENT SECOND FLOOR PLAN VIEW & ELEVATIONS
0114-K2.2	WGHFS-K SERIES LEVEL 2-0114-K2_2	FOODSERVICE EQUIPMENT SECOND FLOOR PLAN VIEW & ELEVATIONS
0114-K3	WGHFS-K SERIES LEVEL 3-0114-K3	FOODSERVICE EQUIPMENT SECOND FLOOR PLAN VIEW & FS EQUIPMENT LIST
0114-K3.1	WGHFS-K SERIES LEVEL 3-0114-K3_1	FOODSERVICE EQUIPMENT SECOND FLOOR PLAN VIEW & ELEVATIONS
0114-K3.2	WGHFS-K SERIES LEVEL 3-0114-K3_2	FOODSERVICE EQUIPMENT SECOND FLOOR PLAN VIEW & ELEVATIONS
0114-K4	WGHFS-K4 SERIES DETAILS-0114-K4	FOODSERVICE EQUIPMENT DETAILS & SECTIONS
0114-K4.1	WGHFS-K4 SERIES DETAILS-0114-K4_1	FOODSERVICE EQUIPMENT DETAILS & SECTIONS
0114-K4.2	WGHFS-K4 SERIES DETAILS-0114-K4_2	FOODSERVICE EQUIPMENT DETAILS & SECTIONS
<b><u>LABORATORY</u></b>		
0114- LE -1	0114- LE -01	LABORATORY PLAN
0114- LE -2	0114- LE -02	LABORATORY DETAILS
0114- LE -3	0114- LE -03	LABORATORY DETAILS
0114- LE -4	0114- LE -04	LABORATORY EQUIPMENT SCHEDULE
<b><u>PHARMACY CASEWORK</u></b>		
CP1	PHARMACY-1_COVER – PAGE_CP-1	COVER PAGE
MC1	PHARMACY- 2_MODULAR COMPONENT_MC-1	MODULAR COMPONENT PLAN
E1	PHARMACY- 3_ELEVATION_E-1	ELEVATIONS
E2	PHARMACY-	ELEVATIONS

D1	4_ELEVATION_E-2 PHARMACY- 5_DETAILS_D-1	DETAILS
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**STERILE PROCESSING EQUIPMENT**

D-1R1	STERILE_D-1R1	CENTRAL PROCESSING DEPARTMENT
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**STRUCTURAL DRAWING LIST****GENERAL**

0114-S-100	S100	GENERAL NOTES AND TYPICAL DETAILS
0114-S-101	S101	TYPICAL DETAILS
0114-S-102	S102	TYPICAL DETAILS
0114-S-103	S103	SNOW AND MECHANICAL UNITS LOADING DIAGRAM

**FLOOR PLANS**

0114-S-200	S200	PARTIAL LOWER FLOOR PLAN NORTHWEST WING
0114-S-201	S201	PARTIAL LOWER FLOOR PLANS NORTHEAST AND EAST WINGS
0114-S-201A	S201A	PARTIAL LOWER FLOOR PLANS SOUTHEAST WING
0114-S-202	S202	PARTIAL LOWER FLOOR PLAN SOUTHWEST WING
0114-S-203	S203	PARTIAL LOWER MAIN & SECOND FLOOR PLANS NORTHWEST & SOUTHWEST WINGS
0114-S-204	S204	PARTIAL MAIN FLOOR PLAN NORTHWEST WING
0114-S-205	S205	PARTIAL MAIN FLOOR PLANS NORTHEAST AND EAST WINGS
0114-S-205A	S205A	PARTIAL MAIN FLOOR PLANS SOUTHEAST WING
0114-S-206	S206	PARTIAL MAIN FLOOR PLAN SOUTHWEST WING
0114-S-207	S207	PARTIAL SECOND FLOOR PLAN NORTHWEST WING
0114-S-208	S208	PARTIAL SECOND FLOOR PLANS NORTHEAST AND EAST WINGS
0114-S-208A	S208A	PARTIAL SECOND FLOOR

0114-S-209	S209	PLAN SOUTHEAST WING PARTIAL SECOND FLOOR
0114-S-210	S210	PLAN SOUTHWEST WING PARTIAL PENTHOUSE / ROOF
0114-S-211	S211	PLAN NORTHWEST WING PARTIAL PENTHOUSE / ROOF
0114-S-2111A	S211A	PLANS NORTHEAST AND EAST WINGS
0114-S-212	S212	PARTIAL PENTHOUSE / ROOF PLAN SOUTHEAST WING
0114-S-213	S213	PARTIAL PENTHOUSE / ROOF PLAN SOUTHWEST WING
0114-S-213A	S213A	PENTHOUSE ROOF PLAN AND COOLING TOWER FRAMING - NORTHWEST WING
0114-S-213B	S213B	PENTHOUSE ROOF PLANS NORTHEAST AND EAST WINGS
0114-S-213C	S213C	PENTHOUSE ROOF PLANS SOUTHEAST WING
0114-S-214	S214	PENTHOUSE ROOF PLANS SOUTHWEST WING
0114-S-215	S215	CANOPY PLANS NORTHWEST WING
0114-S-216	S216	CANOPY PLANS NORTHWEST WING
0114-S-217	S217	PLANS NORTHWEST WING BRINE TANK PLAN AND DETAILS
0114-S-218	S218	ELEVATION AND PLANS GENERATOR STACK

**SECTIONS**

0114-S-300	S300	SECTIONS
0114-S-301	S301	SECTIONS
0114-S-302	S302	SECTIONS
0114-S-303	S303	SECTIONS
0114-S-304	S304	SECTIONS
0114-S-305	S305	SECTIONS
0114-S-306	S306	SECTIONS
0114-S-307	S307	SECTIONS
0114-S-308	S308	SECTIONS
0114-S-309	S309	SECTIONS
0114-S-310	S310	SECTIONS
0114-S-311	S311	MISCELLANEOUS DETAILS

**ELEVATIONS**

0114-S-400	S400	SHEAR WALL ELEVATIONS AND PLANS
0114-S-400A	S400A	SHEAR WALL ELEVATIONS AND PLANS
0114-S-401	S401	SHEAR WALL ELEVATIONS AND PLANS
0114-S-402	S402	SHEAR WALL ELEVATIONS AND PLANS
0114-S-403	S403	SHEAR WALL ELEVATIONS AND PLANS
0114-S-404	S404	SHEAR WALL ELEVATIONS AND PLANS
0114-S-405	S405	SHEAR WALL ELEVATIONS AND PLANS
0114-S-405A	S405A	SHEAR WALL PLANS NEW WING
0114-S-406	S406	STAIR NO.2 PLANS AND DETAILS
0114-S-407	S407	STAIR NO.2 SECTIONS AND DETAILS

**SCHEDULES**

0114-S-500	S500	COLUMN SCHEDULE
0114-S-501	S501	COLUMN SCHEDULE
0114-S-502	S502	COLUMN SCHEDULE
0114-S-503	S503	COLUMN SCHEDULE

**PILES**

0114-SHP-100	0114-SHP-100	GENERAL FOUNDATION PLAN AND HELICAL PILE GROUP LAYOUT
0114-SHP-200	0114-SHP-200	HELICAL PILE LAYOUTS PILE GROUPS 1-4
0114-SHP-201	0114-SHP-201	HELICAL PILE LAYOUTS PILE GROUPS 5-8
0114-SHP-202	0114-SHP-202	HELICAL PILE LAYOUTS PILE GROUPS 9-11 AND INSTALLATION DETAILS
0114-SHP-203	0114-SHP-203	HELICAL PILE LAYOUTS PILE GROUPS 12-15
0114-SHP-300	0114-SHP-300	CHANCE HELICAL PILE SPECIFICATION

**MECHANICAL DRAWING LIST**

0114-M-100	M100_2001-0630-33	ROOF FLOOR PLAN, ROOF
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		PLAN AND LEGEND, MECHANICAL LAYOUT
0114-M-200	M200_2001-0630-33	LOWER FLOOR PLAN, NORTH WEST WING, PLUMBING/ MED. GAS LAYOUT
0114-M-201	M201_2001-0630-33	LOWER FLOOR PLAN, NE, EAST AND SE WINGS, PLUMBING/ MED. GAS LAYOUT
0114-M-202	M202_2001-0630-33	LOWER FLOOR PLAN, SOUTH EAST WING, PLUMBING/ MED. GAS LAYOUT
0114-M-203	M203_2001-0630-33	MAIN FLOOR PLAN, NORTH WEST WING, PLUMBING/MED. GAS LAYOUT
0114-M-204	M204_2001-0630-33	MAIN FLOOR PLAN, NE, EAST AND SE WINGS, PLUMBING/MED. GAS LAYOUT
0114-M-205	M205_2001-0630-33	MAIN FLOOR PLAN, SOUTH EAST WING, PLUMBING/MED. GAS LAYOUT
0114-M-206	M206_2001-0630-33	SECOND FLOOR PLAN, NORTH WEST WING, PLUMBING/MED. GAS LAYOUT
0114-M-207	M207_2001-0630-33	SECOND FLOOR PLAN, NE, EAST AND SE WINGS, A/C AND VENTILATION LAYOUT
0114-M-208	M208_2001-0630-33	SECOND FLOOR PLAN, SOUTH EAST WING, A/C AND VENTILATION LAYOUT
0114-M-300	M300_2001-0630-33	LOWER FLOOR PLAN, NORTH WEST WING, A/C AND VENTILATION LAYOUT
0114-M-301	M301_2001-0630-33	LOWER FLOOR PLAN, NE, EAST AND SE WINGS, A/C AND VENTILATION LAYOUT
0114-M-302	M302_2001-0630-33	LOWER FLOOR PLAN, SOUTH EAST WING, A/C AND VENTILATION LAYOUT
0114-M-303	M303_2001-0630-33	MAIN FLOOR PLAN, NORTH WEST WING, A/C AND VENTILATION LAYOUT
0114-M-304	M304_2001-0630-33	MAIN FLOOR PLAN, NE, EAST AND SE WINGS, A/C AND VENTILATION LAYOUT
0114-M-305	M305_2001-0630-33	MAIN FLOOR PLAN, SOUTH

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0114-M-306	M306_2001-0630-33	EAST WING, A/C AND VENTILATION LAYOUT SECOND FLOOR PLAN, NORTH WEST WING, A/C AND VENTILATION LAYOUT
0114-M-307	M307_2001-0630-33	SECOND FLOOR PLAN, NE, EAST AND SE WINGS, A/C AND VENTILATION LAYOUT
0114-M-308	M308_2001-0630-33	SECOND FLOOR PLAN, SOUTH EAST WING, A/C AND VENTILATION LAYOUT
0114-M-309	M309_2001-0630-33	LOWER FLOOR PLAN, NORTH WEST WING, RADIATION LAYOUT
0114-M-310	M310_2001-0630-33	LOWER FLOOR PLAN, NE, EAST AND SE WINGS, RADIATION LAYOUT
0114-M-311	M311_2001-0630-33	LOWER FLOOR PLAN, SOUTH EAST WING, RADIATION LAYOUT
0114-M-312	M312_2001-0630-33	MAIN FLOOR PLAN, NORTH WEST WING, RADIATION LAYOUT
0114-M-313	M313_2001-0630-33	MAIN FLOOR PLAN, NE, EAST AND SE WINGS, RADIATION LAYOUT
0114-M-314	M314_2001-0630-33	MAIN FLOOR PLAN, SOUTH EAST WING, RADIATION LAYOUT
0114-M-315	M315_2001-0630-33	SECOND FLOOR PLAN, NORTH WEST WING, RADIATION LAYOUT
0114-M-316	M316_2001-0630-33	SECOND FLOOR PLAN, NE, EAST AND SE WINGS, RADIATION LAYOUT
0114-M-317	M317_2001-0630-33	SECOND FLOOR PLAN, SOUTH EAST WING, RADIATION LAYOUT
0114-M-400	M400_2001-0630-33	LOWER FLOOR PLAN, SPRINKLER LAYOUT
0114-M-401	M401_2001-0630-33	MAIN FLOOR PLAN, SPRINKLER LAYOUT
0114-M-402	M402_2001-0630-33	SECOND FLOOR PLAN, SPRINKLER LAYOUT
0114-M-403	M403_2001-0630-33	MECHANICAL PENTHOUSE/ ROOF PLAN, SPRINKLER

0114-M-500	M500_2001-0630-33	LAYOUT LOWER FLOOR PLAN, KITCHEN PLANS AND EQUIPMENT LIST, PLUMBING LAYOUT
0114-M-501	M501_2001-0630-33	MAIN AND SEC. FLOOR PLAN, KITCHEN PLANS AND EQUIPMENT LIST, PLUMBING LAYOUT
0114-M-502	M502_2001-0630-33	PENTHOUSE, NORTHWEST WING, BOILER AND CHILLER ROOM
0114-M-503	M503_2001-0630-33	PENTHOUSE UNIT 1, NORTHWEST WING, PLANS AND SCHEMATICS
0114-M-504	M504_2001-0630-33	PENTHOUSE UNIT 3 & 6, NE AND EAST WINGS, PLANS AND SCHEMATICS
0114-M-505	M505_2001-0630-33	PENTHOUSE UNIT 4 & 5, SE AND SW WINGS, PLANS AND SCHEMATICS
0114-M-506	M506_2001-0630-33	CROSS SECTIONS, MECHANICAL
0114-M-507	M507_2001-0630-33	LOWER FLOOR PLAN, MECHANICAL ROOMS, PLUMBING LAYOUT
0114-M-508	M508_2001-0630-33	FLOOR PLANS, SPECIAL APPLICATIONS, HVAC LAYOUT
0114-M-600	M600_2001-0630-33	SNOW MELTING & INFLOOR HEATING, MECHANICAL LAYOUT AND DETAILS
0114-M-601	M601_2001-0630-33	DETAIL AND SCHEMATICS, HVAC AND PLUMBING
0114-M-602	M602_2001-0630-33	RISER DIAGRAM, HVAC DUCT
0114-M-603	M603_2001-0630-33	RISER DIAGRAM, PLUMBING
0114-M-604	M604_2001-0630-33	RISER DIAGRAM & SCHEMATIC, PLUMBING/ MEDICAL GAS
0114-M-605	M605_2001-0630-33	RISER DIAGRAM, MEDICAL GAS
0114-M-606	M606_2001-0630-33	SERVICE SHAFTS PLANS & SECTIONS, MECHANICAL
0114-M-607	M607_2001-0630-33	STORM RISER DIAGRAM, PLUMBING

**ELECTRICAL DRAWING LIST**

0114-E-001	E001_2001-0630-33	ELECTRICAL DRAWING LIST
0114-E-100	E100_2001-0630-33	ELECTRICAL SITE PLAN AND LEGEND
0114-E-101	E101_2001-0630-33	HELIPORT LIGHTING DETAILS
0114-E-102	E102_2001-0630-33	SITE DETAILS
0114-E-103	E103_2001-0630-33	GENERATOR DETAILS
0114-E-200	E200R_2001-0630-33	PARTIAL LOWER FLOOR PLAN NORTHWEST WING LIGHTING LAYOUT
0114-E-201	E201R_2001-0630-33	PARTIAL LOWER FLOOR PLAN NORTHEAST AND EAST WINGS LIGHTING LAYOUT
0114-E-201a	E201Ra_2001-0630-33	PARTIAL LOWER FLOOR PLAN SOUTHEAST WING LIGHTING LAYOUT
0114-E-202	E202R_2001-0630-33	PARTIAL LOWER FLOOR PLAN SOUTHWEST WING LIGHTING LAYOUT
0114-E-203	E203R_2001-0630-33	PARTIAL MAIN FLOOR PLAN NORTHWEST WING LIGHTING LAYOUT
0114-E-204	E204R_2001-0630-33	PARTIAL MAIN FLOOR PLAN NORTHEAST AND EAST WINGS LIGHTING LAYOUT
0114-E-204a	E204Ra_2001-0630-33	PARTIAL MAIN FLOOR PLAN SOUTHEAST WING LIGHTING LAYOUT
0114-E-205	E205R_2001-0630-33	PARTIAL MAIN FLOOR PLAN SOUTHWEST WING LIGHTING LAYOUT
0114-E-206	E206R_2001-0630-33	PARTIAL SECOND FLOOR PLAN NORTHWEST WING LIGHTING LAYOUT
0114-E-207	E207R_2001-0630-33	PARTIAL SECOND FLOOR PLAN NORTHEAST AND EAST WINGS LIGHTING LAYOUT
0114-E-207a	E207Ra_2001-0630-33	PARTIAL SECOND FLOOR PLAN SOUTHEAST WING LIGHTING LAYOUT
0114-E-208	E208R_2001-0630-33	PARTIAL SECOND FLOOR PLAN SOUTHWEST WING LIGHTING LAYOUT
0114-E-209	E209R_2001-0630-33	PARTIAL PENTHOUSE/ROOF PLAN NORTHWEST WING

0114-E-210	E210R_2001-0630-33	LIGHTING LAYOUT PARTIAL PENTHOUSE/ROOF PLAN NORTHEAST AND EAST WINGS LIGHTING LAYOUT
0114-E-210a	E210Ra_2001-0630-33	PARTIAL PENTHOUSE/ROOF PLAN SOUTHEAST WING LIGHTING LAYOUT
0114-E-211	E211R_2001-0630-33	PARTIAL PENTHOUSE/ROOF PLAN SOUTHWEST WING LIGHTING LAYOUT
0114-E-300	E300R_2001-0630-33	PARTIAL LOWER FLOOR PLAN NORTHWEST WING POWER LAYOUT
0114-E-301	E301R_2001-0630-33	PARTIAL LOWER FLOOR PLAN NORTHEAST AND EAST WINGS POWER LAYOUT
0114-E-301a	E301Ra_2001-0630-33	PARTIAL LOWER FLOOR PLAN SOUTHEAST WING POWER LAYOUT
0114-E-302	E302R_2001-0630-33	PARTIAL LOWER FLOOR PLAN SOUTHWEST WING POWER LAYOUT
0114-E-303	E303R_2001-0630-33	PARTIAL MAIN FLOOR PLAN NORTHWEST WING POWER LAYOUT
0114-E-304*	E304R_2001-0630-33	PARTIAL MAIN FLOOR PLAN NORTHEAST AND EAST WINGS POWER LAYOUT
0114-E-304a	E304Ra_2001-0630-33	PARTIAL MAIN FLOOR PLAN SOUTHEAST WING POWER LAYOUT
0114-E-305	E305R_2001-0630-33	PARTIAL MAIN FLOOR PLAN SOUTHWEST WING POWER LAYOUT
0114-E-306*	E306R_2001-0630-33	PARTIAL SECOND FLOOR PLAN NORTHWEST WING POWER LAYOUT
0114-E-307	E307R_2001-0630-33	PARTIAL SECOND FLOOR PLAN NORTHEAST AND EAST WINGS POWER LAYOUT
0114-E-307a	E307Ra_2001-0630-33	PARTIAL SECOND FLOOR PLAN SOUTHEAST WING POWER LAYOUT
0114-E-308	E308R_2001-0630-33	PARTIAL SECOND FLOOR PLAN SOUTHWEST WING POWER LAYOUT

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0114-E-309	E309R_2001-0630-33	PARTIAL PENTHOUSE/ROOF PLAN NORTHWEST WING POWER LAYOUT
0114-E-310	E310R_2001-0630-33	PARTIAL PENTHOUSE/ROOF PLAN NORTHEAST AND EAST WINGS POWER LAYOUT
0114-E-310a	E310Ra_2001-0630-33	PARTIAL PENTHOUSE/ROOF PLAN SOUTHEAST WING POWER LAYOUT
0114-E-311	E311R_2001-0630-33	PARTIAL PENTHOUSE/ROOF PLAN SOUTHWEST WING POWER LAYOUT
0114-E-400	E400R_2001-0630-33	PARTIAL LOWER FLOOR PLAN NORTHWEST WING LIFE SAFETY AND SYSTEMS LAYOUT
0114-E-401	E401R_2001-0630-33	PARTIAL LOWER FLOOR PLAN NORTHEAST AND EAST WINGS LIFE SAFETY AND SYSTEMS LAYOUT
0114-E-401a	E401Ra_2001-0630-33	PARTIAL LOWER FLOOR PLAN SOUTHEAST WING LIFE SAFETY AND SYSTEMS LAYOUT
0114-E-402	E402R_2001-0630-33	PARTIAL LOWER FLOOR PLAN SOUTHWEST WING LIFE SAFETY AND SYSTEMS LAYOUT
0114-E-403	E403R_2001-0630-33	PARTIAL MAIN FLOOR PLAN NORTHWEST WING LIFE SAFETY AND SYSTEMS LAYOUT
0114-E-404	E404R_2001-0630-33	PARTIAL MAIN FLOOR PLAN NORTHEAST AND EAST WINGS LIFE SAFETY AND SYSTEMS LAYOUT
0114-E-404a	E404Ra_2001-0630-33	PARTIAL MAIN FLOOR PLAN SOUTHEAST WING LIFE SAFETY AND SYSTEMS LAYOUT
0114-E-405	E405R_2001-0630-33	PARTIAL MAIN FLOOR PLAN SOUTHWEST WING LIFE SAFETY AND SYSTEMS LAYOUT
0114-E-406	E406R_2001-0630-33	PARTIAL SECOND FLOOR PLAN NORTHWEST WING LIFE

		SAFETY AND SYSTEMS LAYOUT
0114-E-407	E407R_2001-0630-33	PARTIAL SECOND FLOOR PLAN NORTHEAST AND EAST WINGS LIFE SAFETY AND SYSTEMS LAYOUT
0114-E-407a	E407Ra_2001-0630-33	PARTIAL SECOND FLOOR PLAN SOUTHEAST WING LIFE SAFETY AND SYSTEMS LAYOUT
0114-E-408	E408R_2001-0630-33	PARTIAL SECOND FLOOR PLAN SOUTHWEST WING LIFE SAFETY AND SYSTEMS LAYOUT
0114-E-409	E409R_2001-0630-33	PARTIAL PENTHOUSE/ROOF PLAN NORTHWEST WING LIFE SAFETY AND SYSTEMS LAYOUT
0114-E-410	E410R_2001-0630-33	PARTIAL PENTHOUSE/ROOF PLAN NORTHEAST AND EAST WINGS LIFE SAFETY AND SYSTEMS LAYOUT
0114-E-410a	E410Ra_2001-0630-33	PARTIAL PENTHOUSE/ROOF PLAN SOUTHEAST WING LIFE SAFETY AND SYSTEMS LAYOUT
0114-E-411	E411R_2001-0630-33	PARTIAL PENTHOUSE/ROOF PLAN SOUTHWEST WING LIFE SAFETY AND SYSTEMS LAYOUT
0114-E-500	E500_2001-0630-33	POWER DISTRIBUTION SCHEMATIC
0114-E-501	E501_2001-0630-33	POWER DISTRIBUTION SCHEMATIC
0114-E-501a	E501A_2001-0630-33	POWER DISTRIBUTION SCHEMATIC
0114-E-502	E502_2001-0630-33	FIRE ALARM SCHEMATIC AND FIRE ALARM ZONING
0114-E-503	E503R_2001-0630-33	ELECTRICAL DETAILS
0114-E-504	E504_2001-0630-33	ELECTRICAL ROOMS
0114-E-505	E505_2001-0630-33	SECURITY DOOR DETAILS
0114-E-505a	E505a_2001-0630-33	SECURITY DOOR DETAILS
0114-E-506	E506_2001-0630-33	NURSE CALL AND SYSTEMS SCHEMATICS
0114-E-507	E507_2001-0630-33	SERVICE STRIP DETAILS/ELEVATIONS

0114-E-508	E508_2001-0630-33	SERVICE STRIP DETAILS/ELEVATIONS
0114-E-509	E509R_2001-0630-33	MAIN KITCHEN DETAILS
0114-E-510	E510R_2001-0630-33	KITCHENETTE DETAILS
0114-E-511	E511_2001-0630-33	DIAGNOSTIC IMAGING ROOM DETAILS
0114-E-512	E512R_2001-0630-33	DIAGNOSTIC IMAGING ROOM DETAILS
0114-E-513	E513_2001-0630-33	AMBULANCE GARAGE, SARS ALTERNATE FLOOR PLANS AND PATHWAY DETAILS
0114-E-514	E514_2001-0630-33	MAIN FLOOR LABORATORY SERVICE AND STANDARD OUTLET DETAILS
0114-E-600	E600_2001-0630-33	LIGHTING FIXTURE SCHEDULE AND APPLIANCE SCHEDULE
0114-E-601	E601_2001-0630-33	WIRING FOR MECHANICAL EQUIPMENT SCHEDULE 1 of 3
0114-E-602	E602_2001-0630-33	WIRING FOR MECHANICAL EQUIPMENT SCHEDULE 2 of 3
0114-E-602a	E602a_2001-0630-33	WIRING FOR MECHANICAL EQUIPMENT SCHEDULE 3 of 3
0114-E-603*	E603_2001-0630-33	MCC SECTION LAYOUT AND DETAILS
0114-T-100	T100_2001-0630-33	TELECOMMUNICATIONS LEGEND, DETAILS AND GENERAL NOTES
0114-T-200	T200R_2001-0630-33	PARTIAL LOWER FLOOR PLAN NORTHWEST WING TELECOMMUNICATIONS LAYOUT
0114-T-201	T201R_2001-0630-33	PARTIAL LOWER FLOOR PLAN NORTHEAST AND EAST WINGS TELECOMMUNICATIONS LAYOUT
0114-T-201a	T201Ra_2001-0630-33	PARTIAL LOWER FLOOR PLAN SOUTHEAST WING TELECOMMUNICATIONS LAYOUT
0114-T-202	T202R_2001-0630-33	PARTIAL LOWER FLOOR PLAN SOUTHWEST WING TELECOMMUNICATIONS LAYOUT
0114-T-203	T203R_2001-0630-33	PARTIAL MAIN FLOOR PLAN NORTHWEST WING



		TELECOMMUNICATIONS LAYOUT
0114-T-204	T204R_2001-0630-33	PARTIAL MAIN FLOOR PLAN NORTHEAST AND EAST WINGS TELECOMMUNICATIONS LAYOUT
0114-T-204a	T204Ra_2001-0630-33	PARTIAL MAIN FLOOR PLAN SOUTHEAST WING TELECOMMUNICATIONS LAYOUT
0114-T-205	T205R_2001-0630-33	PARTIAL MAIN FLOOR PLAN SOUTHWEST WING TELECOMMUNICATIONS LAYOUT
0114-T-206	T206R_2001-0630-33	PARTIAL SECOND FLOOR PLAN NORTHWEST WING TELECOMMUNICATIONS LAYOUT
0114-T-207	T207R_2001-0630-33	PARTIAL SECOND FLOOR PLAN NORTHEAST AND EAST WINGS TELECOMMUNICATIONS LAYOUT
0114-T-207a	T207Ra_2001-0630-33	PARTIAL SECOND FLOOR PLAN SOUTHEAST WING TELECOMMUNICATIONS LAYOUT
0114-T-208	T208R_2001-0630-33	PARTIAL SECOND FLOOR PLAN SOUTHWEST WING TELECOMMUNICATIONS LAYOUT
0114-T-209	T209_2001-0630-33	PENTHOUSE/ROOF PLAN TELECOMMUNICATIONS LAYOUT
0114-T-300	T300_2001-0630-33	TELECOMMUNICATION DETAILS

## SCHEDULE 34

## RISK ASSESSMENT GUIDELINES

As set out in Section 18.4(e) of the Project Agreement, the following chart illustrates the expected treatment of a number of possible issues which may be encountered during completion of the Works:

<b>RISK ASSESSMENT GUIDELINE:</b>		<b>A = Project Co Design Contingency (Project Co's Cost)</b> <b>B = Unforeseen (WGH's cost)</b> <b>C = Scope Change (WGH's cost)</b> <b>D = Core design functionality (WGH's cost)</b>			
		A	B	C	D
1.	At SPD level, add 5 fire dampers. Fire rated partition shown on drawings.	√			
2.	2 hour fire separation required for stairwell. One wall does not show proper Fire Resistance Rating (rated door, hardware, fire damper also required).	√			
3.	Add starter for fan EF-E7, located on roof.	√			
4.	Cost for preparation of interference drawings.	√			
5.	Structural design insufficient to accommodate loading requirements of the specified equipment in penthouse.				√
6.	Final equipment selection requires modifications to services/space outside the tolerances specified.			√	
7.	Reinforcing to install wall mounted equipment not shown, but is required by manufacturer.	√			
8.	Emergency voice communications speakers volume meets specification, but not sufficient when tested by building inspector. Relocation or additional speakers required.		√		
9.	Sprinkler layout does not comply with code requirements.	√			

<b>RISK ASSESSMENT GUIDELINE:</b>		<b>A = Project Co Design Contingency (Project Co's Cost) B = Unforeseen (WGH's cost) C = Scope Change (WGH's cost) D = Core design functionality (WGH's cost)</b>			
		A	B	C	D
10.	Re: exit requirements, Building inspector rules that travel distance is exceeded (different method of measuring). Additional measures to be implemented.		√		
11.	Building inspector and Fire Marshall have different interpretations of whether standpipe enclosure to be fire rated. Additional cost incurred.		√		
12.	Bulkhead impedes visibility of exit sign. Modifications to exit sign placement required.	√			
13.	Headroom does not meet Building Code or design requirements due to lack of design coordination and Subcontractor coordination.	√			
14.	Headroom does not meet Building Code or design requirements due to initial design fundamentally unable to meet headroom requirements.				√
15.	Barrier free washrooms do not achieve turning radius due to Project Co-initiated change to toilet size.	√			
16.	Barrier free washrooms do not achieve turning radius due to design/construction coordination issues.	√			
17.	Barrier free washrooms do not achieve turning radius due to initial design fundamentally unable to provide required turning radius.				√
18.	Providing additional electrical connections (not on the drawings) to supply fans (on the drawings) required additional capacity in the	√			√

<b>RISK ASSESSMENT GUIDELINE:</b>		<b>A = Project Co Design Contingency (Project Co's Cost) B = Unforeseen (WGH's cost) C = Scope Change (WGH's cost) D = Core design functionality (WGH's cost)</b>			
		A	B	C	D
	electrical panel. a. <u>Electrical connections</u> : Project Co Design Contingency b. <u>Capacity of panel</u> : WGH				
19.	Interference drawings and on-site conditions require additional lengths of ductwork/insulation.	√			
20.	Floor layout requires a total of 20,000 cfm air supply but unit is sized at 10,000 cfm.				√
21.	Drains required for refrigerator/freezers shown on equipment schedule but not on drawings. Requires larger main drain. a. <u>Drains</u> : Project Co Design Contingency b. <u>Main drain size increase</u> : WGH	√			√
22.	Infilling of existing structural openings found after demolition (not on existing documentation nor reasonably inferable).		√		
23.	Shower specified would not fit through door. Project Co can install prior to installing door.	√			
24.	Hospital food service provider requires changes to M&E services supplying coffee shop.			√	
25.	Sump pit shown on drawings but sump pit cover missing from specification.	√			
26.	Millwork schedule for a resident room shows nothing, but plans show millwork for clothing storage in resident room.	√			
27.	Fan shown on mechanical drawing but not connected on electrical drawings.	√			

<b>RISK ASSESSMENT GUIDELINE:</b>		<b>A = Project Co Design Contingency (Project Co's Cost) B = Unforeseen (WGH's cost) C = Scope Change (WGH's cost) D = Core design functionality (WGH's cost)</b>			
		A	B	C	D
	Connection of fan to closest Motor Control Centre.				
28.	Same as above but the feeder to Motor Control Centre needs to be modified to suit additional increase in Load.				√
29.	Five fire shutters shown, one additional fire shutter required on 6 <sup>th</sup> opening adjacent to other five.	√			
30.	Five fire shutters shown, one additional fire shutter required because building inspector interprets Building Code differently from the consultants and on which basis the building permit was received.		√		
31.	Mechanical specifications heat wheels as equipment in the Project, but they do not appear on the drawings so quantity and location not known.				√

- Note 1: Project Co shall be responsible to meet all codes, regulations, bylaws and standards to the same extent as per industry standard on similar projects in Ontario.
- Note 2: These examples are illustrative samples of the types of coordination issues which may be encountered, and the findings the Architect of Record might reasonably make as to whether the issues are Project Co Design Contingency issues. These examples are not intended to be definitive or complete.
- Note 3: It is the intent that all Subcontractors should also be aware of the Project Co Design Contingency.

**SCHEDULE 35**

**TRUST ACCOUNT AGREEMENT**

**THIS TRUST ACCOUNT AGREEMENT** is made as of the • day of •, 2008

**BETWEEN:**

**WOODSTOCK GENERAL HOSPITAL TRUST**, a non-share capital corporation incorporated under the laws of Ontario

("WGH")

**AND:**

**INTEGRATED TEAM SOLUTIONS WGH PARTNERSHIP**, a partnership formed under the laws of Manitoba

("Project Co")

**AND:**

**COMPUTERSHARE TRUST COMPANY OF CANADA**, a trust company incorporated under the laws of Canada

(the "Trustee")

**WHEREAS:**

- A. WGH and Project Co have entered into the Project Agreement.
- B. The Parties wish to establish a trust account for certain monies in connection with the Project.
- C. WGH is, under the Project Agreement, obligated to pay certain amounts to Project Co, including the Monthly Service Payment and any Compensation Payments.
- D. Under the Lenders' Direct Agreement, WGH has been authorized and instructed to pay all sums payable to Project Co under the Project Agreement to the Proceeds Account.
- E. Project Co has granted to the Lenders' Agent for the benefit of the Senior Lenders a security interest in all of its properties, including an assignment of its rights under this Trust Account Agreement and its interest in the Trust Funds.
- F. WGH has irrevocably designated the Trust Account as the account into which payments from MOHLTC of MOHLTC's share of the Monthly Service Payments, any Compensation Payments and any other amounts that may from time to time be payable

by WGH to Project Co under the Project Agreement pursuant to the WGH Funding and Approval Letter will be made.

- G. The foregoing recitals are made as statements and representations of fact by WGH and Project Co, and not by the Trustee.

**NOW THEREFORE** in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

## 1. DEFINITIONS

In this Trust Account Agreement, unless the context otherwise requires:

- (a) "**Beneficiaries**" has the meaning given in Section 3(a) of this Trust Account Agreement.
- (b) "**Business Day**" has the meaning given in the Project Agreement.
- (c) "**Compensation Payment**" means any of the WGH Default Termination Sum, Adjusted Highest Qualifying Tender Price, Adjusted Estimated Fair Value, Non-Default Termination Sum, Prohibited Acts Termination Sum (as each of those terms are defined in the Project Agreement) or any other termination sum payable by WGH to Project Co pursuant to the Project Agreement.
- (d) "**Dispute Resolution Procedure**" has the meaning given in the Project Agreement.
- (e) "**Governmental Authority**" has the meaning given in the Project Agreement.
- (f) "**Infrastructure Ontario**" has the meaning given in the Project Agreement.
- (g) "**Lenders' Agent**" means CIT Financial Ltd., acting as agent for and on behalf of the Senior Lenders.
- (h) "**Lenders' Direct Agreement**" means the lenders' direct agreement made on or about the date hereof between WGH, Project Co and the Lenders' Agent.
- (i) "**Major Bond Rating Agency**" means any one of Dominion Bond Rating Service Limited, Standard & Poor's Rating Group, Moody's Canada Inc. or any of their successors.
- (j) "**MEI**" has the meaning given in the Project Agreement.
- (k) "**MOHLTC**" has the meaning given in the Project Agreement.
- (l) "**Monthly Service Payment**" has the meaning given in the Project Agreement.
- (m) "**Non-Payment Notice**" has the meaning given in Section 4(d)(ii) of this Trust Account Agreement.

- (n) **"Party"** means any of WGH, Project Co or the Trustee, and **"Parties"** means all of WGH, Project Co and the Trustee.
- (o) **"Payment Instruction"** means a written instruction to the Trustee from:
- (i) WGH in accordance with Section 4(b)(i) or 4(b)(iv) and in the form attached as Appendix A hereto; or
  - (ii) WGH and Project Co in accordance with Section 4(b)(ii) or 4(b)(iii) and in the form attached as Appendix B hereto,
- in each case directing the disposition of Trust Funds.
- (p) **"Permitted Investments"** means:
- (i) demand deposits, term deposits, bankers' acceptances or certificates of deposit of or guaranteed by any bank or other financial institution which are rated by a Major Bond Rating Agency at least AA (low) or AA-; and
  - (ii) any bonds, debentures, notes, bills of exchange, securities or other evidences of indebtedness (including specific interest and principal payments thereof) issued or guaranteed by:
    - (A) the Government of Canada; or
    - (B) any Province of Canada,provided that such instruments are rated by a Major Bond Rating Agency at least AA (low) or AA- (as such ratings are determined as of the date hereof by Dominion Bond Rating Service Limited and Standard & Poor's Rating Group, respectively).
- (q) **"Privacy Laws"** has the meaning given in Section 7(g) of this Trust Account Agreement.
- (r) **"Proceeds Account"** means Account No. [●] at [●].
- (s) **"Project"** has the meaning given in the Project Agreement.
- (t) **"Project Agreement"** means the project agreement made on or about September 26, 2008 between WGH and Project Co.
- (u) **"Senior Lenders"** has the meaning given in the Project Agreement.
- (v) **"Termination Date"** has the meaning given in the Project Agreement.
- (w) **"Trust Account"** means the segregated investment trust account bearing Account No. [●] at [●] in the name of the Trustee.



- (x) **"Trust Account Agreement"** means this trust account agreement.
- (y) **"Trust Funds"** means, as of any particular time, all monies which have been transferred, conveyed or paid to, or acquired by the Trustee pursuant to this Trust Account Agreement, including all income, earnings, profits and gains therefrom, and which at such time are held by the Trustee.
- (z) **"Trustee"** means Computershare Trust Company of Canada.
- (aa) **"WGH Funding and Approval Letter"** has the meaning given in the Project Agreement.

## 2. INTERPRETATION

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

- (a) The headings in this Trust Account Agreement are for convenience of reference only, shall not constitute a part of this Trust Account Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Trust Account Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Trust Account Agreement and the terms "Section" and "Clause" are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Trust Account Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Trust Account Agreement shall bear their natural meaning.

- (g) References containing terms such as:
- (i) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Trust Account Agreement taken as a whole; and
  - (ii) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".
- (h) In construing this Trust Account Agreement, the rule known as the *ejusdem generis rule* shall not apply nor shall any similar rule or approach to the construction of this Trust Account Agreement and, accordingly, general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Trust Account Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Trust Account Agreement states that an obligation shall be performed "on" a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Woodstock, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms "will" or "shall" are used in this Trust Account Agreement they shall be construed and interpreted as synonymous and to read "shall".
- (n) Any reference herein to money amounts are to lawful currency of Canada, unless otherwise expressed.

### 3. DECLARATION OF TRUST

- (a) The Trustee hereby declares that it holds in trust as trustee all Trust Funds deposited in the Trust Account for the benefit of Project Co and WGH (collectively, the "**Beneficiaries**" and, individually, a "**Beneficiary**"), in accordance with and subject to the provisions of this Trust Account Agreement.

- (b) The purpose of this Trust Account Agreement is to establish the Trust Account for the benefit of the Beneficiaries and to provide for the delivery and distribution of the Trust Funds in accordance with this Trust Account Agreement.
- (c) The Trustee hereby accepts the trusts and other obligations in this Trust Account Agreement declared and provided and agrees to perform the same upon the terms and conditions herein set forth.

#### **4. PURPOSE**

- (a) WGH and Project Co acknowledge and agree that the Trust Account is established for the purpose of:
  - (i) receiving the monies contributed by MOHLTC which are designated, pursuant to the WGH Funding and Approval Letter, for payment of MOHLTC's share of Monthly Service Payments, any Compensation Payment and any other amounts that may from time to time be payable by WGH to Project Co under the Project Agreement; and
  - (ii) in accordance with the related Payment Instructions, paying to the applicable payee (or as it may direct), any payment that is outstanding under the Project Agreement.
- (b) The Trustee shall not accept any Payment Instruction to distribute Trust Funds other than as follows:
  - (i) for a Monthly Service Payment to Project Co, in accordance with a Payment Instruction signed only by WGH;
  - (ii) for a Compensation Payment to Project Co, in accordance with a Payment Instruction signed by both WGH and Project Co;
  - (iii) for any other amounts that may from time to time be payable by WGH to Project Co under the Project Agreement, in accordance with a Payment Instruction signed by both WGH and Project Co; or
  - (iv) in accordance with a Payment Instruction signed only by WGH if:
    - (A) the monies are to reimburse MOHLTC for any amount over-contributed by MOHLTC in respect of MOHLTC's share of Monthly Service Payments, any Compensation Payment or any other amounts that may from time to time be payable by WGH to Project Co under the Project Agreement;
    - (B) the monies are to reimburse WGH for any monies expended by WGH in respect of which WGH at that time has a right of set-off or is entitled to reimbursement under the Project Agreement; or

(C) the monies are to pay to WGH interest earned in accordance with Section 8(b),

and WGH certifies as to (A) and/or (B), as applicable. A Payment Instruction given by WGH pursuant to this 4(b)(iv) shall be addressed to Project Co and the Lenders' Agent as well as the Trustee.

- (c) The Trustee shall deliver a copy of any Payment Instruction signed only by WGH under Section 4(b)(iv) to Project Co and the Lenders' Agent forthwith upon receipt and, in any event, not less than five (5) Business Days before the Trustee distributes any Trust Funds pursuant to such Payment Instruction. At any time prior to the distribution of Trust Funds by the Trustee pursuant to the aforementioned Payment Instruction, Project Co may deliver to the Trustee an objection to the distribution of such Trust Funds.
- (d) Project Co agrees that the basis of an objection is limited to:
- (i) that the Payment Instruction is not for any of the purposes set out in Sections 4(b)(iv)(A), 4(b)(iv)(B) or 4(b)(iv)(C) in whole or in part; or
  - (ii) that WGH is, at the time, in default of any of its payment obligations under the Project Agreement and Project Co has issued a notice of non-payment to WGH under Section 45.1(a) of the Project Agreement (the "**Non-Payment Notice**").
- (e) Project Co shall state in its objection the amount under the Payment Instruction that is disputed which, in the case of 4(d)(ii) above shall not exceed the amount set out in the Non-Payment Notice. The Trustee shall not distribute any disputed Trust Funds until any disputed Payment Instruction has been resolved in accordance with Section 4(g).
- (f) Where the objection is only in respect to a portion of the amount under a Payment Instruction or where the amount under the Non-Payment Notice is less than the amount under the Payment Instruction, the objection of Project Co shall state the amount under the Payment Instruction that is not disputed and the undisputed portion of the amount under the Payment Instruction may be distributed by the Trustee.
- (g) Where Project Co objects to a Payment Instruction signed only by WGH, such dispute shall be resolved in accordance with the Dispute Resolution Procedure and, to the extent that such resolution confirms the entitlement of WGH to a withdrawal of disputed Trust Funds, the Trustee shall distribute such Trust Funds pursuant to a supplementary Payment Instruction signed only by WGH.

## 5. PAYMENT OF TRUST PROPERTY

- (a) Subject to Sections 4(c) to 4(g), the Trustee will comply with Payment Instructions from WGH under Sections 4(b)(i) and 4(b)(iv) and from WGH and Project Co under Sections 4(b)(ii) and 4(b)(iii) from time to time given to the Trustee. WGH and Project Co agree that all Payment Instructions shall be consistent with the Project Agreement.

- (b) The Trustee will have the power to incur and make payment of any charges or expenses which in the reasonable opinion of the Trustee are necessary or incidental to or proper for carrying out any of the purposes of this Trust Account Agreement and the administration of the Trust Account.
- (c) The Trustee will be entitled to be paid by Project Co, in default of which the Trustee is entitled to be paid from the Trust Funds, without any requirement of a passing of accounts in respect thereof or approval of any Beneficiary, such fees as the Trustee and Project Co may agree to from time to time for its services hereunder and all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration and execution of this Trust Account Agreement until all the duties of the Trustee shall be finally and fully performed, except any such expense, disbursement or advance as may arise from or in connection with the bad faith, wilful misconduct, gross negligence or the failure to comply with the standard of care referred to in Section 7(a) by the Trustee, its officers, employees or agents. All such amounts will be payable at such times as the Trustee, WGH and Project Co may agree from time to time. Any amount not paid when due shall bear interest at a rate per annum equal to the rate designated by the Trustee as the then current rate charged by the Trustee or its successors from time to time to its corporate customers, payable on demand. After default, all amounts so payable and the interest thereon shall be payable out of any funds coming into the possession of the Trustee or its successors in the trusts hereunder in priority to any payments to Beneficiaries. Project Co agrees with WGH that any amount not paid by Project Co to the Trustee in accordance with the foregoing and which the Trustee has satisfied by payment out of the Trust Funds may be set-off by WGH against any amounts that may from time to time be payable by WGH to Project Co under the Project Agreement. This Section 5(c) shall survive the termination of this Trust Account Agreement or the resignation or removal of the Trustee.
- (d) Payment Instructions purporting to be given to the Trustee under this Trust Account Agreement will, subject to Sections 4(c) to 4(g), be conclusive authority for the Trustee to act in accordance with that Payment Instruction. The Trustee is not obliged or required to monitor any requirements or obligations of WGH or any other person pursuant to this Trust Account Agreement or any other agreement and has no duty to question any Payment Instruction provided to the Trustee. Subject to Sections 4(c) to 4(g), each of Project Co and WGH authorizes the Trustee to act on any such Payment Instruction and waives any claim or action against the Trustee in connection therewith.

## **6. REPLACEMENT OF TRUSTEE**

- (a) If the Trustee desires to resign and be discharged from the trusts and powers reposed in or conferred on it by this Trust Account Agreement, it shall provide not less than 60 days prior notice in writing thereof, or such lesser notice as WGH and Project Co may accept. WGH and Project Co may, by instrument in writing, jointly appoint a successor trustee that is acceptable to replace the Trustee. If WGH and Project Co fail to appoint a successor trustee within a reasonable period of time, then application will be made by the Trustee to a Justice of the Ontario Superior Court of Justice at Toronto for appointment

of a successor trustee hereunder. The resignation of the Trustee shall not be effective until the appointment of its successor in accordance with the provisions of this Section 6(a). The expense of any act, document, deed or other instrument or thing required under this Section 6(a) will be satisfied from the Trust Funds.

- (b) The term of office of the Trustee will automatically terminate and a vacancy will occur in the event of the bankruptcy or insolvency of the Trustee or inability of the Trustee to exercise its duties under this Trust Account Agreement. No vacancy shall operate to annul this Trust Account Agreement. If a vacancy occurs in the office of the Trustee for any reason, WGH and Project Co may, by instrument in writing, jointly appoint a trustee to replace the Trustee. If WGH and Project Co fail to make such appointment, then an application will be made to a Justice of the Ontario Superior Court of Justice at Toronto for appointment of a successor trustee hereunder. Such application will be made by the Trustee or, if the Trustee elects not to do so, by WGH and Project Co. The expense of any act, document, deed or other instrument or thing required under this Section 6(b) will be satisfied from the Trust Funds.

## **7. STANDARD OF CARE, LIMITATION OF LIABILITY OF TRUSTEE AND OTHER MATTERS**

- (a) The Trustee will exercise its powers and carry out its obligations hereunder as trustee honestly, in good faith and in the best interests of the Beneficiaries and in connection therewith will exercise that degree of care, diligence, and skill that a reasonable and prudent professional trustee would exercise in comparable circumstances. Unless otherwise required by law, the Trustee will not be required to give a bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The duties, responsibilities and obligations of the Trustee shall be limited to those expressly set forth herein and no duties, responsibilities or obligations shall be inferred or implied. The Trustee shall not be subject to, nor required to comply with, any other agreement between or among any or all of the parties hereto, even though reference thereto may be made herein, or to comply with any direction or instruction other than those contained herein or delivered in accordance herewith. The Trustee shall not be required to, and shall not, expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.
- (b) The Trustee, its officers, directors, employees or agents will not be subject to any liability whatsoever, in tort, contract or otherwise, in connection with the Trust Funds, to the Beneficiaries, or to any other Person, for any action taken or permitted by it to be taken or for its failure to take any action including, without limitation, the failure to compel in any way any former or acting trustee to redress any breach of trust in respect of the execution of the duties of its office or in respect of the Trust Funds, provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with the bad faith, wilful misconduct, gross negligence or failure to comply with the standard of care referred to in Section 7(a) by the Trustee. The Trustee, in doing anything or permitting anything to be done in respect of the execution of the duties of its office or in respect of the Trust Funds, is and will be conclusively deemed to

be acting as trustee of the Trust and not in any other capacity. Except to the extent provided in this Section 7(b), the Trustee, its officers, directors, employees or agents will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust Account, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Trust Funds or the Trust activities and resort will be had solely to the Trust Funds for the payment or performance thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution, or other enforcement procedure with regard to any obligation under this Trust Account Agreement.

- (c) Subject as hereinafter specifically provided, the Trustee, its officers, directors, employees and agents, will at all times be indemnified and saved harmless by Project Co, in default of which the Trustee is entitled to be paid out of the Trust Funds, without any requirement of a passing of accounts in respect thereof or the approval of any Beneficiary, from and against all claims, demands, losses, actions, causes of action, costs, charges, expenses, damages and liabilities whatsoever, including without limitation, arising out of or related to actions taken or omitted to be taken by any agent appointed hereunder, reasonable legal fees and disbursements on a substantial indemnity basis and costs and expenses incurred in connection with the enforcement of this indemnity, which the Trustee may suffer or incur, whether at law or in equity, in any way caused by or arising, directly or indirectly, in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of its duties as the Trustee or which it sustains or incurs in or about or in relation to the Trust Funds. Further, the Trustee will not be liable to any Beneficiary or to any other Person for any loss or damage relating to any matter regarding the Trust Account, including any loss or diminution in the value of the Trust Funds. The foregoing provisions of this Section 7(c) do not apply to the extent that in any circumstances there has been bad faith, wilful misconduct, gross negligence or failure to comply with the standard of care referred to in Section 7(a) by the Trustee or its employees or agents engaged by the Trustee in the performance of its duties or obligations hereunder. Notwithstanding any other provision hereof, this indemnity shall survive the removal or resignation of the Trustee and termination of any trust created hereby. Project Co agrees with WGH that any amount not paid by Project Co to the Trustee in accordance with the foregoing and which the Trustee has satisfied by payment out of the Trust Funds may be set-off by WGH against any amounts that may from time to time be payable by WGH to Project Co under the Project Agreement.
- (d) The Trustee may exercise its powers and perform its duties by or through such attorneys, representatives, agents and employees as it shall appoint; and may consult with counsel, accountants and other skilled persons selected and employed or retained by it, and the Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the written advice of such counsel, accountants or other skilled persons (provided that such advice pertains to such matters as the Trustee may reasonably presume to be within the scope of such Person's area of competency) and not contrary to any express provision in this Trust Account Agreement.

- (e) The Trustee may rely and act upon any statement, report or opinion prepared by or any advice received from WGH and Project Co, and shall not be responsible or held liable for any loss resulting from so relying or acting if the Trustee acted reasonably in relying thereon.
- (f) The Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Trustee, in its sole judgment, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Trustee, in its sole judgment, determine at any time that its acting under this Trust Account Agreement has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign on 10 days' written notice to Project Co and WGH, or any shorter period of time as agreed to by Project Co and WGH, notwithstanding the provisions of Section 6(a) of this Trust Account Agreement, provided that (i) the Trustee's written notice shall describe the circumstances of such non-compliance; and (ii) if such circumstances are rectified to the Trustee's satisfaction within such 10 day period, then such resignation shall not be effective.
- (g) The parties acknowledge that federal and/or provincial legislation that addresses the protection of individuals' personal information (collectively, "**Privacy Laws**") may apply to obligations and activities under this Trust Account Agreement. Despite any other provision of this Trust Account Agreement, neither party shall take or direct any action that would contravene, or cause the other to contravene, applicable Privacy Laws. Project Co and WGH shall, prior to transferring or causing to be transferred personal information to the Trustee, obtain and retain required consents of the relevant individuals to the collection, use and disclosure of their personal information, or shall have determined that such consents either have previously been given upon which the parties can rely or are not required under the Privacy Laws. The Trustee shall use commercially reasonable efforts to ensure that its services hereunder comply with Privacy Laws. Specifically, the Trustee agrees: (a) to have a designated chief privacy officer; (b) to maintain policies and procedures to protect personal information and to receive and respond to any privacy complaint or inquiry; (c) to use personal information solely for the purposes of providing its services under or ancillary to this Trust Account Agreement and not to use it for any other purpose except with the consent of or direction from Project Co or WGH or the individual involved; (d) not to sell or otherwise improperly disclose personal information to any third party; and (e) to employ administrative, physical and technological safeguards to reasonably secure and protect personal information against loss, theft, or unauthorized access, use or modification.
- (h) Subject to Section 7(c), the Beneficiaries will not be held to have any personal liability as such, and no resort will be had to their private property for satisfaction of any obligation or claim arising out of or in connection with any contract or obligation in respect of which the Beneficiaries would otherwise have to indemnify the Trustee for any liability incurred by the Trustee as such, but rather the Trust Funds only will be subject to levy or execution for such satisfaction.



- (i) Any written instrument creating an obligation of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as the Trustee. Any written instrument creating an obligation of the Trustee will contain a provision to the effect that the obligations thereunder are not binding upon the Trustee except in its capacity as the Trustee, nor will resort be had to the property of the Trustee except in its capacity as the Trustee, but that the Trust Funds or a specific portion thereof only will be bound, and may contain any further provisions which the Trustee may deem appropriate, but the omission of any such provision will not operate to impose liability on the Trustee except as aforesaid.
- (j) If at any time the Trustee is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Trust Funds (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Trust Funds), the Trustee is authorized to comply therewith in any manner as it or its legal counsel of its own choosing deems appropriate. The Trustee shall in no way be bound to call for further evidence (whether as to due execution, validity or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so. If the Trustee complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, the Trustee shall not be liable to any of the parties hereto or to any other person or entity even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.
- (k) The Trustee shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Trustee (including but not limited to any act or provision of any present or future law or regulation or governmental authority, any act of God or war, or the unavailability of any wire or communication facility).
- (l) Each of WGH and Project Co shall provide to the Trustee an incumbency certificate setting out the names and sample signatures of persons authorized to give instructions to the Trustee hereunder. The Trustee shall be entitled to rely on such certificate until a revised certificate is provided to it hereunder. The Trustee shall be entitled to refuse to act upon any instructions given by a party which are signed by any person other than a person described in the incumbency certificate provided to it pursuant to this section.
- (m) In the event that the Trustee determines that any direction, instruction, notice or other communication given under this Trust Account Agreement by WGH and/or Project Co, is ambiguous or uncertain, the Trustee may, in its sole discretion, refrain from taking any action other than retaining possession of the Trust Funds, and shall not be held liable for refraining from taking such action, unless the Trustee has received written instructions, signed by WGH and/or Project Co, which resolve such ambiguity or uncertainty, provided that the Trustee shall, forthwith upon determining that such direction, instruction, notice or other communication is ambiguous or uncertain, seek clarification from WGH and/or Project Co to resolve such ambiguity or uncertainty.

- (n) The Trustee agrees to provide prompt written notice of all payments to or withdrawals from the Trust Account and any amendments to this Trust Account Agreement to each of the Parties hereto and Infrastructure Ontario and MOHLTC.

#### **8. ANTI-MONEY LAUNDERING**

- (a) Each Party to this Trust Account Agreement (other than the Trustee) hereby represents to the Trustee that any account to be opened by, or interest to be held by, the Trustee in connection with this Trust Account Agreement, for or to the credit of such Party is not intended to be used by or on behalf of any third party except for the express purposes of this Trust Account Agreement.

#### **9. RECORDS AND OTHER MATTERS**

- (a) The Trustee will keep or cause to be kept at Toronto, Ontario or at such other place in Canada designated by it proper records and books of account as are by law or good business practice necessary. Such books and records will be available for inspection by either Beneficiary upon reasonable notice during the normal business hours of the Trustee.
- (b) Any monies held by the Trustee may be invested and reinvested in the name or under the control of the Trustee in Permitted Investments, on the written direction of WGH. Pending such investment, such monies may be placed by the Trustee on deposit in any chartered bank in Canada against demand deposit certificates or with its own deposit department. No Party shall be responsible for ensuring the rate of return, if any, on the Permitted Investments. The Trustee shall have no responsibility or liability for any diminution of the funds invested which may result from any investment made in accordance with this Section 9(b). All interest (and interest on interest) earned shall be the property of WGH.

#### **10. TERMINATION OF THIS TRUST ACCOUNT AGREEMENT**

This Trust Account Agreement will continue in full force and effect from the date hereof until the Termination Date and thereafter for so long as any Trust Funds remain with the Trustee unless earlier terminated by joint written direction of the Beneficiaries.

#### **11. ASSIGNMENT**

The Trustee shall not assign, transfer or otherwise dispose of any of its rights or obligations under this Trust Account Agreement without the prior written consent of WGH and Project Co. Notwithstanding the foregoing, any company into which the Trustee may be merged with or to which it may be consolidated, amalgamated or sold, or any company resulting from any merger, consolidation, sale or amalgamation to which the Trustee shall be a party or any corporation succeeding all or substantially all of the corporate trust business of the Trustee, shall be the successor Trustee under this Trust Account Agreement without the execution of any instrument or any further act.

**12. NOTICES**

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Project Agreement shall be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable provision of this Trust Account Agreement) and served by sending the same by registered mail, facsimile or by hand, as follows:

If to WGH: 270 Riddell Street  
Woodstock, Ontario  
N4S 6N6

Fax No.: [REDACTED]  
Attn.: President and Chief Executive Officer

If to Project Co: 5000 Yonge Street, Suite 1805  
Toronto, Ontario  
M2N 7E9

Fax: [REDACTED]  
Attn.: [REDACTED]

If to the Trustee: Computershare Trust Company of Canada  
100 University Avenue  
9<sup>th</sup> Floor, North Tower  
Toronto, Ontario  
M5J 2Y1

Fax: [REDACTED]

Attn.: Manager, Corporate Trust

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 12(b).
- (c) Any Party to this Trust Account Agreement may, from time to time, change any of its contact information set forth in Section 12(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 12(e), 12(f) and 12(g):
- (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;

- (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 12.
  - (f) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
  - (g) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

### **13. AMENDMENTS**

This Trust Account Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Trust Account Agreement.

### **14. WAIVER**

- (a) No waiver made or given by a Party under or in connection with this Trust Account Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

### **15. RELATIONSHIP BETWEEN THE PARTIES**

The Parties are independent contractors. This Trust Account Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint

venturers, employer and employee, master and servant, or, except as provided in this Trust Account Agreement, of principal and agent.

**16. ENTIRE AGREEMENT**

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

**17. SEVERABILITY**

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

**18. ENUREMENT**

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

**19. GOVERNING LAW AND JURISDICTION**

- (a) This Trust Account Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Trust Account Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

**20. FURTHER ASSURANCE**

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Trust Account Agreement.

**21. LANGUAGE OF AGREEMENT**

Each Party acknowledges having requested and being satisfied that this Trust Account Agreement and related documents be drawn in English. Chacune des parties reconnaît

avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en declare satisfaite.

**22. COUNTERPARTS**

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

**23. COSTS**

Each of Project Co and WGH shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Trust Account Agreement. Project Co shall be responsible for paying the Trustee's costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Trust Account Agreement.

**[SIGNATURE PAGES IMMEDIATELY FOLLOWING]**

**IN WITNESS WHEREOF** the Parties have executed this Trust Account Agreement as of the date first above written.

**WOODSTOCK GENERAL HOSPITAL TRUST**

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: President and Chief Executive Officer

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: Chair of the Board

I/We have authority to bind the corporation.

**INTEGRATED TEAM SOLUTIONS WGH PARTNERSHIP, by its partners,**

**LED (ITS) WGH INC.**

Per: \_\_\_\_\_  
Name:  
Title:

**LED (ITS) WGH GENERAL PARTNER INC., in its capacity as general partner of LED (ITS) WGH LIMITED PARTNERSHIP**

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the partnership.

**COMPUTERSHARE TRUST  
COMPANY OF CANADA**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the trust company.



## APPENDIX A

## FORM OF PAYMENT INSTRUCTION BY WGH ONLY

Computershare Trust Company of Canada  
100 University Avenue  
9<sup>th</sup> Floor, North Tower  
Toronto, Ontario  
M5J 2Y1

Attn.: Manager, Corporate Trust

Dear Sir or Madam,

**Re: Instruction for Payment**

We refer to the Trust Account Agreement made as of [●], 2008 (the "**Trust Account Agreement**"), between Woodstock General Hospital Trust, Integrated Team Solutions WGH Partnership and Computershare Trust Company of Canada.

In accordance with Section 4(b)(i) or 4(b)(iv) of the Trust Account Agreement, this letter constitutes a Payment Instruction with respect to the payment of Trust Funds by the Trustee. **OR** In accordance with Section 4(g) of the Trust Account Agreement, this letter constitutes a supplementary Payment Instruction with respect to the payment of Trust Funds by the Trustee.

Please transfer the sum of \$[●] to [●] for credit to Account No. [●] maintained in the name [●].

**[Where the Payment Instruction is signed by WGH pursuant to Section 4(b)(i) or 4(b)(iv), WGH must also certify that the monies are being drawn as permitted by Section 4(b)(i) or 4(b)(iv), as applicable, and the Payment Instruction must also be addressed to each of Project Co and Lenders' Agent.]**

**WOODSTOCK GENERAL HOSPITAL  
TRUST**

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: President and Chief Executive  
Officer

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: Chair of the Board

I/We have authority to bind the corporation.

APPENDIX B

FORM OF PAYMENT INSTRUCTION BY WGH AND PROJECT CO

Computershare Trust Company of Canada  
100 University Avenue  
9<sup>th</sup> Floor, North Tower  
Toronto, Ontario  
M5J 2Y1

Attn.: Manager, Corporate Trust

Dear Sir or Madam,

**Re: Instruction for Payment**

We refer to the Trust Account Agreement made as of [●], 2008 (the "**Trust Account Agreement**"), between Woodstock General Hospital Trust, Integrated Team Solutions WGH Partnership and Computershare Trust Company of Canada.

In accordance with Section 4(b)(ii) or 4(b)(iii) of the Trust Account Agreement, this letter constitutes a Payment Instruction with respect to the payment of Trust Funds by the Trustee.

Please transfer the sum of \$[●] to [●] for credit to Account No. [●] maintained in the name [●].

**WOODSTOCK GENERAL HOSPITAL  
TRUST**

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: President and Chief  
Executive Officer

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: Chair of the Board

I/We have authority to bind the corporation.

**INTEGRATED TEAM SOLUTIONS  
WGH PARTNERSHIP**, by its partners,

**LED (ITS) WGH INC.**

Per: \_\_\_\_\_  
Name:  
Title:

**LED (ITS) WGH GENERAL PARTNER  
INC.**, in its capacity as general partner of  
**LED (ITS) WGH LIMITED  
PARTNERSHIP**

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the partnership.