

**AMENDED AND RESTATED  
PROJECT AGREEMENT  
(EXECUTION VERSION)**

**WOMEN'S COLLEGE HOSPITAL**

**CONFIDENTIAL**

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**Women’s College Hospital**

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Schedule 5	-	Direct Agreements
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Schedule 7	-	Intentionally Deleted
Schedule 8	-	Existing Facilities Services Management Agreement
Schedule 9	-	Key Individuals
Schedule 10	-	Review Procedure
Schedule 11	-	Design Quality Plan and 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
Schedule 18	-	Communications Protocol
Schedule 19	-	Heritage Guidelines and Protocols
Schedule 20	-	Payment Mechanism
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Schedule 22	-	Variation Procedure
Schedule 23	-	Compensation on Termination
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Schedule 26	-	Record Provisions
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Schedule 32	-	Financial Model Extracts
Schedule 33	-	Trust Account Agreement
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Schedule 36	-	Redevelopment Transition Parameters

**THIS AMENDED AND RESTATED PROJECT AGREEMENT** is made as of the 13<sup>th</sup> day of July, 2010

**BETWEEN:**

**WOMEN'S COLLEGE HOSPITAL**, a non-share capital corporation incorporated under the laws of the Province of Ontario

(**"WCH"**)

**AND:**

**WOMEN'S COLLEGE PARTNERSHIP, [REDACTED]**

(**"Project Co"**)

**WHEREAS:**

- A. WCH, with the assistance of IO, wishes to procure a new hospital in Toronto, Ontario.
- B. WCH will provide the Hospital Services at the Facility and Project Co will provide the Project Operations, which include the design, construction, financing and maintenance of the Facility (the **"Project"**).
- C. WCH and Project Co entered into a project agreement dated the date of this Project Agreement, which sets out the terms and conditions upon which Project Co shall perform the Project Operations, and amended such project agreement pursuant to the First Amendment to the Project Agreement.
- D. Pursuant to the First Amendment to the Project Agreement, WCH and Project Co wish to enter into this amended and restated project agreement (the **"Project Agreement"**).
- E. The overriding priorities of WCH 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.
- F. The Project will proceed as an alternative financing and procurement project 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"**).
- G. 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.
- H. 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.
- I. 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.
- J. 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 therefore 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.
- K. 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.
- L. Project Co recognizes and understands that WCH is a public hospital under the *Public Hospitals Act (Ontario)* and is, therefore, subject to a highly regulated legal and operational environment.
- M. 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 WCH 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	- Intentionally Deleted
Schedule 8	- Existing Facilities Services Management Agreement
Schedule 9	- Key Individuals
Schedule 10	- Review Procedure
Schedule 11	- Design Quality Plan and 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
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Schedule 29B	- Phase 2A Works Standby Letter of Credit
Schedule 30	- Insurance Trust Agreement
Schedule 31	- Project Co Information
Schedule 32	- Financial Model Extracts



Schedule 33	-	Trust Account Agreement
Schedule 34	-	Works Report Requirements
Schedule 35	-	Intentionally Deleted
Schedule 36	-	Redevelopment Transition Parameters

- (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, WCH 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 WCH, no consent, approval or satisfaction of WCH or the WCH 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 Intentionally Deleted;
  - (viii) Schedule 15 Output Specifications;
  - (ix) Schedule 25 Insurance and Performance Security Requirements;
  - (x) Schedule 22 Variation Procedure;
  - (xi) Schedule 10 Review Procedure;
  - (xii) Schedule 14 Outline Commissioning Program;
  - (xiii) Schedule 11 Design Quality Plan and Construction Quality Plan;
  - (xiv) Schedule 28 Refinancing;
  - (xv) Schedule 23 Compensation on Termination;
  - (xvi) Schedule 26 Record Provisions;
  - (xvii) Schedule 24 Expiry Transition Procedure;
  - (xviii) the other Schedules in the order in which they are listed in Section 1.1(b); and
  - (xix) Schedule 13 Project Co Proposal Extracts.
- (b) Subject to Section 1.2(a), 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 WCH, upon discovery of same, shall immediately give notice to the WCH Representative. The WCH 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) WCH and Project Co shall comply with the determination of the WCH Representative pursuant to this Section 1.2 unless WCH or Project Co disputes the decision of the WCH Representative in which event such Dispute may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

**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 23, 27, 28, 32, 34 to 36 and 48 to 59, and Schedules 1 to 3, 7, 9 to 11, 13, 16 to 19, 21, 22, 25 to 27, 29A and 29B 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 WCH an irrevocable standby letter of credit (the "**Standby Letter of Credit**") in the amount of \$[REDACTED] substantially in the form of Schedule 29A - Standby Letter of Credit.
- (b) Unless the Standby Letter of Credit is drawn by WCH in accordance with the provisions of this Project Agreement, WCH 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 WCH 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 WCH the documents referred to in Section 1 of Schedule 2 - Completion Documents; and
  - (ii) WCH 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 WCH 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 WCH of its obligations under Section 2.3(b)(ii)) and WCH does not waive such requirement, WCH will be entitled to draw on the Standby Letter of Credit, in full or in part, to retain the proceeds thereof as liquidated damages and may 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 WCH will suffer as a result of the happening of the specified event and would be difficult or impossible to quantify such damages 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 WCH as a result of Project Co not achieving Financial Close. The Parties agree that such liquidated damages shall be payable whether or not WCH incurs or mitigates its damages, and that WCH shall not have any obligation to mitigate any such damages.
- (d) As contemplated under Section 10.3.2 of the Request for Proposals, Project Co shall, no later than 10 days following written instruction from IO at Financial Close, pay the Design and Bid Fee amount plus, for clarity, any applicable HST to each of the eligible unsuccessful Proponents (as that term is defined in the Request for Proposals), as directed by IO. If Project Co is directed to pay the Design and Bid Fee to fewer than two Proponents, then Project Co shall revise the Financial Model prior to Financial Close to reflect such change.
- (e) If WCH 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, subject to Project Co's obligation to renew the Standby Letter of Credit, pursuant to Section 2.2, 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.
- (b) If a Severe Market Disruption exists, then, at any time before such Severe Market Disruption ceases and prior to Financial Close, WCH may in its sole discretion either:
- (i) terminate this Project Agreement in its entirety by written notice having immediate effect; or
  - (ii) direct Project Co to assign to IO and IO will assume:

- (A) the Project Agreement, and all of Project Co's right, title and interest in the Project Data, the Intellectual Property Rights and the Project Co Permits, Licences, Approvals and Agreements; and
  - (B) those contracts between Project Co and any Project Co Party which IO elects to be assigned.
- (c) If WCH exercises its rights pursuant to Section 2.4(b), and, provided Project Co has, if directed, delivered the assignments provided for in (ii)(A) and (B) above, Project Co will be entitled to the return of its Standby Letter of Credit and to payment of an amount equal to the Design and Bid Fee pursuant to Section 10.3.2 of the Request for Proposals plus [REDACTED]% of such fee. WCH's obligation to return the Standby Letter of Credit and to pay such fee shall be contingent on the receipt of a waiver, in form and substance satisfactory to WCH, that such fee represents full and final satisfaction of any obligation or liability of WCH, IO and any other Government Entity to Project Co and any Project Co Parties in connection with the Project Agreement and the Request for Proposals.

### 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 WCH, except as otherwise provided in this Project Agreement. Project Co shall not have recourse to any Government Entity with respect to the subject matter of this Project Agreement.

#### 3.2 Existing Facilities Services Management Agreement

- (a) On or before the Financial Close Target Date, WCH and Project Co shall enter into an Existing Facilities services management agreement for the provision of management services by Project Co (the "**Existing Facilities Services Management Agreement**") in accordance with Schedule 8 - Existing Facilities Services Management Agreement.

### 4. BUSINESS OPPORTUNITIES

#### 4.1 Business Opportunities

- (a) Project Co acknowledges that WCH 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**"). WCH may, as set out in this Project Agreement, grant rights in the Business Opportunities to Project Co.

- (b) To encourage the development of Business Opportunities, Project Co may, from time to time, propose Business Opportunities for WCH's consideration. All such proposals shall describe the Business Opportunity in full with the expected financial and other advantages to both Parties. WCH may accept any such proposal in its sole discretion and subject to such terms and conditions as WCH may require.
- (c) Notwithstanding that Project Co has proposed a Business Opportunity to WCH for its consideration, Project Co acknowledges that WCH 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, WCH 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 WCH that as of Commercial Close:
  - (i) Project Co is a **[REDACTED]** formed and validly existing under the laws of the Province of Ontario, 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) **[REDACTED]** is a **[REDACTED]** and validly existing under the laws of the Province of 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 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) **[REDACTED]** is a **[REDACTED]** incorporated and validly existing under the laws of the Province of 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 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;
  - (iv) Project Co and the Project Co Parties, collectively, have extensive experience and are knowledgeable in the design, construction and maintenance of hospital facilities and

- have the required ability, experience, skill and capacity to perform the Project Operations in a timely and professional manner as set out in this Project Agreement;
- (v) Project Co 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;
  - (vi) no steps or proceedings have been taken or are pending to supersede or amend the constating documents, articles or by-laws of Project Co in a manner that would impair or limit its ability to perform the obligations of Project Co under this Project Agreement;
  - (vii) this Project Agreement has been duly authorized, executed, and delivered by Project Co and constitutes a legal, valid, and binding obligation of Project Co, enforceable against Project Co 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;
  - (viii) the execution, delivery, and performance by Project Co 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, including any by-laws;
    - (B) 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;
  - (ix) no Project Co Event of Default has occurred and is continuing;
  - (x) all of the information regarding Project Co set out in Schedule 31 - Project Co Information is true and correct in all material respects;
  - (xi) there are no actions, suits, proceedings, or investigations 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, 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;

- (xii) Project Co has carefully reviewed the whole of this Project Agreement, and all other documents made available to Project Co by or on behalf of WCH, 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;
- (xiii) Project Co is able to meet its obligations as they generally become due;
- (xiv) Project Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada) and its HST registration number is 80674 4058 RT0001;
- (xv) The Scheduled Interim Completion date and the Scheduled Substantial Completion Date are realistic dates and are achievable by Project Co performing the Works in accordance with this Project Agreement; and
- (xvi) Project Co is not a Non-Resident.

## **5.2 WCH Representations and Warranties**

- (a) WCH represents and warrants to Project Co that as of Commercial Close:
  - (i) WCH is a non-share capital corporation incorporated and validly existing under the laws of the Province of Ontario, is in good standing with the Ministry of Government and Consumer Services of Ontario 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;
  - (ii) WCH has the requisite power, authority and capacity to execute, 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) 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;



- (iv) this Project Agreement has been duly authorized, executed, and delivered by WCH and constitutes a legal, valid, and binding obligation of WCH, enforceable against WCH 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;
- (v) the execution, delivery, and performance by WCH 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) 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;
- (vi) no WCH Event of Default has occurred and is continuing;
- (vii) to the knowledge of WCH, there are no actions, suits, proceedings, or investigations pending or threatened against WCH or, to WCH's knowledge, any WCH Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) of which WCH has received written notice and 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 WCH or in any impairment of its ability to perform its obligations under this Project Agreement, and WCH 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;
- (viii) WCH is able to meet its obligations as they generally become due;
- (ix) WCH has rights of use and access to, on and over the Site and the Facility or has the requisite power to obtain such rights that are sufficient to enable WCH to grant or to cause to be granted to Project Co the licence rights contemplated in Section 14.1;
- (x) WCH is the registered owner of the Site and has good title thereto in the fee simple subject only to the Title Encumbrances; and

- (xi) 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, 16.4 and 16.5 WCH, any WCH Party or any Government Entity shall not be liable to Project Co or any Project Co Party for, and Project Co or any Project Co Party shall not seek to recover from WCH, any WCH Party or any Government Entity, 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, 16.4 and 16.5:
  - (i) neither WCH nor any Government Entity gives any warranty or undertaking of whatever nature in respect of the Background Information and, specifically (but without limitation), neither WCH nor any Government Entity warrants 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) neither WCH nor any Government Entity shall be liable to Project Co or any Project Co Party 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 or any Project Co Party any information, documents or data;
    - (B) to review or update the Background Information; or
    - (C) to inform Project Co or any Project Co Party 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; and

- (ii) except as expressly provided in Sections 6.4, 16.2, 16.3, 16.4 and 16.5, it shall not be entitled to and shall not, and shall ensure that no Project Co Party shall, make any claim against WCH, any WCH Party or any Government Entity (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) WCH agrees that, if at Commercial Close, except as disclosed in any Background Information or as otherwise disclosed by WCH or any WCH 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 WCH, incorrect or there is relevant information in the possession or control of WCH 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 the purposes of Section 6.4(a), "**to the actual knowledge of WCH**" means to the actual knowledge of the President and Chief Executive Officer of WCH, the Director of Facilities and Redevelopment of WCH, or the Vice President Finance and Chief Administration Officer of WCH.

### **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 WCH.

## **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 30.3, 42.5, 56.3 and 57.2 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 WCH, 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 WCH, 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 WCH, 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 WCH, 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 Project Co Parties, including Section 56.3.

## **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 WCH, whether actual or potential, unless:

- (i) such action is a Permitted Borrowing; or
- (ii) such action is a Refinancing, other than a Mandatory 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. WCH RESPONSIBILITIES**

#### **8.1 General**

- (a) WCH 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 WCH Permits, Licences, Approvals and Agreements which may be required for the performance of the Project Operations;
  - (iii) comply with all Permits, Licences, Approvals and Agreements 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 WCH 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 WCH Development Accountability Agreement.
- (b) During the Operational Term, WCH shall use or permit the use of the Facility for the predominant purpose of a public hospital or any other healthcare related purpose, and for ancillary uses compatible with the foregoing.

- (c) WCH shall, and shall cause all WCH 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 WCH or any Government Entity in fulfilling its statutory or other functions under Applicable Law, and Project Co understands and agrees that nothing in this Project Agreement shall preclude WCH'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 WCH's board of directors from time to time, subject to Section 36.1(b).

**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 WCH, in its sole discretion.

**9.2 General**

- (a) Project Co 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) perform all Project Operations:
    - (A) in compliance with Applicable Law;
    - (B) in compliance with all Permits, Licences, Approvals and Agreements and so as to preserve the existence and continued effectiveness of any such Permits, Licences, Approvals and Agreements;
    - (C) so as to satisfy the Output Specifications;
    - (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 WCH, any of the WCH Parties or any Government Entity 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
- (iii) cooperate with WCH 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 WCH'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, Approvals and Agreements**

- (a) Project Co shall, at its own cost and risk:
  - (i) obtain, maintain, and, as applicable, renew all Project Co Permits, Licences, Approvals and Agreements which may be required for the performance of the Project Operations;
  - (ii) assume the obligations of Project Co under the WCH Permits, Licences, Approvals and Agreements as set out in Appendix 1 – WCH and Project Co Responsibility Table of Schedule 1 – Definitions and Interpretation, including, without limitation, the administration of all WCH Security Deposits which are subject to being released and returned to WCH and the administration of the renewal or replacement of the WCH Security Deposits if and as required, and Project Co shall cooperate with WCH and any other person, perform the obligations under the Permits, Licences, Approvals and Agreements for which Project Co is responsible which are conditions for the release to WCH of any such WCH Security Deposits, and take all such necessary actions to have such WCH Security Deposits released and returned to WCH; and
  - (iii) comply with all Permits, Licences, Approvals and Agreements in accordance with their terms.
- (b) Where any Permits, Licences, Approvals and Agreements have requirements that may impose any conditions, liabilities or obligations on WCH or any WCH Party, Project Co shall not obtain or renew such Permits, Licences, Approvals and Agreements without the

prior written consent of WCH not to be unreasonably withheld or delayed, provided that neither WCH nor any WCH Party shall be responsible for obtaining or for the failure of Project Co to obtain any Permit, Licence, Approval or Agreement or for the failure of Project Co to renew any WCH Permit, Licence, Approval or Agreement. WCH shall comply, or shall require compliance, with any conditions, liabilities or obligations as are imposed on WCH or any WCH Party by the requirements of any Permit, Licence, Approval or Agreement obtained with WCH consent under this Section 9.4(b).

- (c) WCH shall provide Project Co with such information and administrative assistance as Project Co may reasonably require in relation to the Permits, Licences, Approvals and Agreements. In respect of Section 9.4(a)(ii), WCH shall: (i) provide Project Co with relevant information and copies of notices received under the applicable WCH Permits, Licences, Approvals and Agreements and (ii) execute any documents under the applicable WCH Permits, Licences, Approvals and Agreements, which Applicable Law dictates that only WCH can execute.

## **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 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 WCH 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 WCH with a certificate of good standing from WSIB or any successor thereto once every 90 days.

## **9.6 Additional Works**

- (a) WCH reserves the right to carry out Additional Works. WCH may assign the methods and manner of construction (where applicable) of the Additional Works, the coordination and



scheduling of the Additional Works and the safety training in respect of the Additional Works to Project Co.

- (b) In connection with the Additional Works, WCH shall:
- (i) cause Additional Contractors to comply with the instructions of Project Co relating to matters of health and safety on the Site, methods and manner of construction (where applicable), and coordination and scheduling of the Additional Works with (A) the Works during the performance of the Works, and (B) at the request of WCH, with the Project Co Services during the performance of the Project Co Services as WCH considers appropriate taking into account the nature of the Additional Works and the potential for impact on the Project Co Services;
  - (ii) enter into separate contracts with Additional Contractors under conditions of contract which are compatible with the conditions of this Project Agreement and provide for compliance by Additional Contractors with Section 9.6(c) and all directions of Project Co in respect of any matter regarding health and safety on the Site, methods and manner of construction (where applicable), and coordination and scheduling of the Additional Works during the performance of the Works and during the performance of the Project Co Services in those cases where WCH has requested Project Co to proceed in accordance with Section 9.6(c);
  - (iii) ensure that insurance coverage is provided as would be required by a prudent owner similarly situated and coordinate such insurance with the insurance coverage of Project Co as it affects the Works and the Project Co Services and in any event, such insurance shall provide for liability insurance of not less than \$[REDACTED]; and
  - (iv) take all necessary steps to avoid labour disputes or other disputes on the Project arising from the Additional Works.
- (c) In connection with the Additional Works, Project Co shall, during the performance of the Works, and at the request of WCH, during the performance of the Project Co Services as WCH considers appropriate taking into account the nature of the Additional Works and the potential for impact on the Project Co Services:
- (i) where WCH has assigned to Project Co the matters referred to in Section 9.6(a) and subject to the performance by WCH of its obligations under Sections 9.6(b)(i) and 9.6(b)(ii), provide for the methods and manner of construction (where applicable) of the Additional Works and the coordination and scheduling of the Additional Works with the Works and the Project Co Services to be performed under this Project Agreement;
  - (ii) afford Additional Contractors reasonable opportunity to introduce and store their products and use their construction machinery and equipment to execute the Additional Works;

- (iii) participate with WCH and Additional Contractors in reviewing their construction schedules when directed to do so by WCH;
  - (iv) where part of the Works or Project Co Services is affected by or depends upon, for its proper execution, the Additional Works, promptly report to WCH in writing and prior to proceeding with that part of the Works or applicable Project Co Services, any readily apparent deficiencies in the Additional Works. Failure by Project Co to so report shall invalidate any claims against WCH by reason of such readily apparent deficiencies; and
  - (v) where WCH has assigned to Project Co the matters referred to in Section 9.6(a) and subject to the performance by WCH of its obligations under Sections 9.6(b)(i) and 9.6(b)(ii), for the Additional Contractors and in respect to such Additional Works, assume overall responsibility for compliance with all aspects of Applicable Law relating to health and safety, including all the responsibilities of the 'constructor' under the *Occupational Health and Safety Act* (Ontario) prior to Interim Completion in respect of the Works relating to the Phase 1 Facility and prior to Substantial Completion in respect of the Works relating to the Facility and, at the request of WCH exercised in a manner consistent with the said Act, at any time that Project Co is acting as a 'constructor' on the Site following Interim Completion in respect of the Phase 1 Facility and following Substantial Completion in respect of the Facility.
- (d) In the case of Additional Works carried out prior to Interim Completion in respect of the Phase 1 Facility and prior to Substantial Completion in respect of the Phase 2 Facility, if:
- (i) any Additional Contractors cause any damage to the Works;
  - (ii) Project Co incurs any additional costs or there is any delay in the Works Schedule as a result of any Additional Contractors not complying with the coordination, scheduling and safety instructions of Project Co; or
  - (iii) subject to the performance by Project Co of its obligations under Sections 9.6(c)(i), (ii), (iii) and (v), if Project Co incurs any additional costs or there is any delay in the Works Schedule as a result of any Additional Works (other than Additional Work that is required to meet the Output Specifications and provided such Additional Work is performed by such Additional Contractors in accordance with Good Industry Practice and in accordance with the terms of their respective contracts or engagements with WCH)
- then, any such delay in the Works Schedule or additional costs in respect of the Works shall, subject to and in accordance with Section 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event.
- (e) Claims, disputes, and other matters in question between Project Co and Additional Contractors shall be dealt with in substantially the same manner as contemplated in Schedule 27 – Dispute Resolution Procedure, provided the Additional Contractors have reciprocal

obligations and WCH has made commercially reasonable efforts to ensure that such provisions are included in the contracts with the Additional Contractors. Project Co shall be deemed to have consented to arbitration of any dispute with any other contractor whose contract with WCH contains a similar agreement to arbitrate.

(f)

- (i) Project Co shall have a period of 10 Business Days following notice from WCH of WCH's intention to carry out Additional Works including a reasonable description of such Additional Works to request a Variation if such Additional Works are (A) reasonably expected to make a warranty made in favour of Project Co from a Project Co Party or equipment supplier and given in accordance with Good Industry Practice, void or (B) reasonably expected to have a material negative consequence on Project Co's ability to perform any of the Project Operations;
- (ii) if Project Co has made a request for a Variation in accordance with Section 9.6(f)(i), WCH shall, within 10 Business Days of such request, either issue a Variation Enquiry or give notice to Project Co that it does not agree that a Variation is required;
- (iii) either Party may refer the question of whether a Variation is required as the result of a warranty risk or risk in the performance of Project Operations for resolution in accordance with Schedule 27 - Dispute Resolution Procedure; and
- (iv) where WCH has, under Section 9.6(f)(ii), given notice to Project Co that it does not agree that a Variation is required, WCH shall, within 10 Business Days of a subsequent agreement or of a determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 - Variation Procedure shall apply except that:
  - (A) WCH shall not be entitled to withdraw any such Variation Enquiry unless WCH determines not to proceed with the Additional Works or to proceed only in a manner that the Additional Works will not result in a warranty becoming void (as contemplated in Section 9.6(f)(i)) or will not result in any material negative consequence on Project Co's ability to perform any of the Project Operations and Project Co has agreed with such conclusion, or the Parties otherwise agree; and
  - (B) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement, use commercially reasonable efforts to mitigate the adverse effects with respect to any void or voidable warranty and take commercially reasonable steps to minimize any increase in costs arising from any void warranty.

(g) Placing, installing, applying or connecting the Additional Works performed by Additional Contractors, on and to the Works performed by Project Co will not relieve Project Co from

its obligations under the Project Agreement with respect to the Works, except to the extent expressly described in any Variation Confirmation.

**10. REPRESENTATIVES**

**10.1 The WCH Representative**

- (a) Subject to the limitations set out in Section 10.1(d), the WCH Representative shall exercise the functions and powers identified in this Project Agreement as functions or powers to be performed by the WCH Representative and such other functions and powers of WCH under this Project Agreement as WCH may notify Project Co from time to time.
- (b) WCH may, from time to time by written notice to Project Co, change the WCH 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 WCH Representative has been appointed, or when the WCH Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the WCH Representative's functions under this Project Agreement, WCH shall perform or may, by written notice to Project Co, promptly appoint an alternative WCH Representative to perform the functions which would otherwise be performed by the WCH Representative. Upon receipt of such written notice, Project Co and the Project Co Representative shall be entitled to treat any act of such alternative WCH Representative which is permitted by this Project Agreement as being authorized by WCH, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.
- (d) The WCH 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 WCH Representative which is authorized by this Project Agreement as being authorized by WCH, 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 WCH, 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 WCH, 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 WCH'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, WCH and the WCH 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 WCH and the WCH 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, WCH and the WCH 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 WCH and the WCH 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 WCH 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 opinion of WCH acting reasonably, 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 opinion of WCH, acting reasonably, 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 WCH with relevant information on the proposed replacement and shall consult with WCH 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 WCH, which consent shall not be withheld or delayed where the proposed replacement is suitably qualified and experienced.
- (d) If WCH determines, acting reasonably, that it is in the best interests of WCH that any individual identified in Schedule 9 - Key Individuals be replaced, WCH 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 WCH with relevant information on the proposed replacement and shall consult with WCH 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 WCH, 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 IO from time to time;
  - (ii) the following 3 representatives appointed by WCH:
    - (A) the WCH Representative; and
    - (B) 2 other representatives appointed by WCH 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 Design Compliance Consultant shall be entitled to, 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 WCH 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 and the Equipment Steering Committee as and when required.
- (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;
  - (ii) the Works Schedule;
  - (iii) any issues arising from reports or documents provided by Project Co or the Independent Certifier;
  - (iv) any quality assurance and safety issues;
  - (v) the Works Reports;
  - (vi) the recommendations of the Transition Subcommittee;
  - (vii) any special matters referred to the Works Committee by WCH, IO or Project Co;
  - (viii) any community and media relations issues in accordance with Schedule 18 - Communications Protocol;
  - (ix) monitoring the Final Commissioning Program; and
  - (x) 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 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 Interim Completion Date, the Scheduled Substantial Completion Date or the Scheduled Final Completion Date;

- (iii) any Variation;
- (iv) any change that may materially adversely affect Project Co's ability to achieve Interim Completion by the Scheduled Interim Completion Date, 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 WCH has a right of consent or in respect of which WCH may exercise discretion pursuant to this Project Agreement.

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

- (a) Unless otherwise agreed, the Works Committee shall operate only until the Final Completion Date.

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

- (a) IO and WCH shall be entitled to replace any of their respective representatives on the Works Committee by written notice to Project Co. WCH 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 WCH, 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 (other than members of the Works Committee) 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 WCH 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 Toronto, 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) Two representatives of WCH (one of whom shall be the WCH Representative), two representatives of Project Co (one of whom shall be the Project Co Representative) and the representative of IO (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 WCH. WCH 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 WCH and IO within 5 Business Days of receipt of the minutes that Project Co disagrees with the contents of the minutes, Project Co, WCH and IO shall be deemed to have approved such minutes. WCH 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 later than the earlier of (i) 6 months prior to the commencement of the Existing Facilities Services, (ii) 18 months prior to the Scheduled Interim Completion Date, or, (iii) such earlier date as requested by WCH, acting reasonably, 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 IO from time to time;
  - (ii) 2 senior representatives of WCH, one of whom shall be the WCH Representative, appointed by WCH 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 WCH 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) the provision of the Existing Facilities Services;
  - (iii) any joint review of the Project Co Services and the Output Specifications;
  - (iv) the recommendations of the Utilities Management Subcommittee;
  - (v) any changes to Service Quality Plans;
  - (vi) any performance issues;
  - (vii) 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;
  - (viii) any interface issues between the Project Co Services and the Hospital FM Services;
  - (ix) any special matter referred to the Facilities Management Committee by WCH, IO 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 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 WCH's ability to perform the Hospital Services; or
  - (iv) any matter with respect to which WCH has a right of consent pursuant to this Project Agreement.

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

- (a) IO and WCH shall be entitled to replace any of their respective representatives on the Facilities Management Committee by written notice to Project Co. WCH 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 WCH, 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 Facilities Management Committee or the Parties.

- (c) Any member of the Facilities Management Committee 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 Toronto, 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) One representative of WCH, one representative of Project Co and, for the period from the establishment of the Facilities Management Committee until the Final Completion Date, the representative of IO (or a delegate thereof) 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 WCH. WCH 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 WCH within 5 Business Days of receipt of the minutes that Project Co disagrees with the contents of the minutes, Project Co, WCH and IO shall be deemed to have approved such minutes. WCH 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, which shall include the following:
- (i) a Design Quality Plan and a Construction Quality Plan, which may be incorporated into one document; 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 Output Specifications, the Interim Commissioning Program, 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 Design Quality Plan is attached as part of Schedule 11 - Design Quality Plan and Construction Quality Plan.
- (d) 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 - Design Quality Plan and Construction Quality Plan. Project Co shall submit its proposed Construction Quality Plan to WCH within 60 days following Financial Close.
- (e) 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 in respect to the Phase 1 Facility to WCH not less than 90 days prior to the Interim Completion Date for each Project Co Service in respect to the Phase 2 Facility to WCH not less than 90 days prior to the Substantial Completion Date.
- (f) All Quality Plans shall be subject to review by WCH 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.
- (g) 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 Design Quality Plan and the Construction Quality Plan; and
  - (ii) the Service Provider to implement the Service Quality Plans.
- (h) 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 Plans**

- (a) Project Co shall submit to WCH, 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 WCH 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 WCH's other rights pursuant to this Project Agreement, including Sections 29 and 34, WCH may, from time to time, directly or indirectly, perform periodic monitoring, spot checks and auditing of Project Co's quality management systems, including all relevant Quality Plans and any quality manuals and procedures. Project Co shall ensure that WCH 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 WCH in monitoring quality management systems and shall provide WCH with all information and documentation reasonably required in connection with WCH'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, WCH 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 in accordance with the Phasing Plan as are required by Project Co and such Project Co Parties sufficient (subject to Project Co performing any related obligations under the Project Co Permits, Licences, Approvals and Agreements) to allow Project Co and such Project Co Parties to perform the Project Operations.
- (b) In consideration for the licence granted pursuant to Section 14.1(a), Project Co shall provide the Project Operations subject to and in accordance with this Project Agreement.

- (c) Without derogating from any of WCH's rights hereunder, in particular, its rights of access to the Site prior to the Interim Completion Date and the Substantial Completion Date for purposes of the Interim Hospital Commissioning and the Hospital Commissioning respectively, WCH acknowledges that, in respect of the Project Operations, Project Co and the Project Co Parties require, and WCH shall provide, access to the Site in accordance with the Phasing Plan without material interference by WCH or any WCH Party from the date of Financial Close until the Termination Date.
- (d) Except as may be provided in the Permits, Licences, Approvals and Agreements, 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 WCH which benefit the Site, obtained after Commercial Close, 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 WCH and any person authorized by WCH may occupy and possess the Site and Facility, including for the purposes of the Hospital Services. In exercising such rights Project Co shall not, and shall require that the Project Co Parties shall not, compromise patient care and safety and, except as permitted under this Project Agreement, disrupt the performance of the Hospital Services.
- (b) Without limiting Section 14.2(a), Project Co acknowledges that WCH may from time to time use or develop (including by way of subdivision or expansion), or permit the use or development of, portions of the Site or the Facility. To the extent that such use or development materially adversely interferes with Project Co's licence rights hereunder or materially adversely interferes with Project Co's ability to perform the Project Operations, such use or development shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation.

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

- (a) For purposes related to the provision of Clinical Services or to patient safety WCH 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 WCH, which consent may be subject to such reasonable conditions as are imposed by WCH.

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

- (a) Project Co acknowledges that WCH 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 WCH, not to be unreasonably withheld or delayed and which may take into consideration any applicable governmental guidelines, including the guidelines set out in Schedule 18 – Communications Protocol, Project Co, the Construction Contractor, the Service Provider, the Equity Provider or any Lender 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, provided, that solely for the purposes of the obligation on Project Co to comply with the CLA, the licence granted to Project Co of use and access to, on and over the Site and Facility pursuant to Section 14.1 shall, for the duration of the performance of the Works, be an interest in the premises, and Project Co acknowledges and agrees that no disposition of an interest in the Site and Facility arises as a result of the aforesaid grant.

#### **14.6 Non-Disturbance Agreement**

- (a) If WCH mortgages, charges or otherwise encumbers the Site, WCH 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 WCH, other than:
- (i) obligations under any Title Encumbrance which Project Co is not legally capable of performing for or on behalf of WCH;
  - (ii) obligations under any Title Encumbrance added after the date of this Project Agreement unless such obligations are provided in the Output Specifications as obligations of Project Co or the Parties agree that such obligations are obligations of Project Co;



- (iii) obligations under any Title Encumbrance which the City of Toronto may formally relieve or waive, with the consent of WCH, with respect to any Development Approval; and
  - (iv) obligations under the Title Encumbrances that Appendix 1 – Permits, Licences, Approvals and Agreements of Schedule 1 – Definitions and Interpretation provide for WCH performing.
- (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 or any of the Development Approvals.
  - (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 due to an act or omission of Project Co or any Project Co Party and has not been consented to in writing by WCH, 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, WCH 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 (on a full indemnity basis), all of which shall be payable on demand.

### **15.3 Construction Lien Act (Ontario)**

- (a) The Parties acknowledge that the foregoing provisions of Section 15.2 shall apply to claims for lien made upon or against the Site pursuant to the CLA and shall also apply to claims made against WCH or the holdback under the CLA as though such a claim were an Encumbrance against the Site as referred to therein.
- (b) Project Co shall withhold from each Project Co Party the holdbacks required under the CLA and shall deal with such holdbacks in accordance with the CLA and for purposes of the CLA, the contracts entered into by and between Project Co and any Project Co Party in

relation to the performance of the Works shall be considered a "contract" as defined in the CLA.

- (c) In furtherance of Section 15.3(b), Project Co shall, as a condition of final payment under any Subcontract for which lien rights or rights in respect of the holdback may be claimed under the CLA, require that a certificate of completion under Section 33(1) of the CLA for such Subcontract be issued and the relevant Project Co Party provide statutory declarations or other assurances confirming that all those engaged by the Project Co Party have been paid in accordance with Applicable Law.
- (d) Project Co shall follow the requirements of the CLA and Good Industry Practice for posting and advertising certificates of completion when issued.
- (e) Pursuant to Section 20(2) of the CLA, the Parties agree that Section 20(1) of the CLA does not apply and no general lien arises under or in respect of the Works and that all liens shall arise and expire on a lot-by-lot basis, which, in the context of this Project Agreement, shall mean on a Facility-by-Facility basis.

**16. SITE CONDITION**

**16.1 Acceptance of Site Condition**

- (a) Subject to Sections 6.4, 16.2, 16.3, 16.4 and 16.5, Project Co acknowledges and agrees that it has investigated the Site in accordance with Good Industry Practice taking into account all matters relating to the Site, including the buildings, structures and works, on, over and under the Site existing on the date hereof and 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, 16.4 and 16.5, Project Co shall not be entitled to make any claim of any nature whatsoever against WCH or any WCH 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 WCH or a WCH Party, unless the relevant person has given Project Co an express written entitlement to rely on information relating to the Site provided by such person to Project Co.
- (b) Subject to Sections 6.4, 16.2, 16.3, 16.4 and 16.5, Project Co acknowledges and agrees that it has and shall be deemed to have:
  - (i) performed all necessary Site due diligence and investigations and investigated and examined the Site and its surroundings and any existing works on, over or under the Site in accordance with Good Industry Practice, taking into account all matters relating to the Site, including the buildings, structures and works, on, over and under the Site existing on the date hereof;

- (ii) in accordance with Good Industry Practice, taking into account all matters relating to the Site, including the buildings, structures and works, on, over and under the Site existing on the date hereof, 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 design, 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 in accordance with Good Industry Practice, taking into account all matters relating to the Site, including the buildings, structures and works, on, over and under the Site existing on the date hereof;
  - (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) WCH shall be responsible for Contamination on, in or under, or migrating to or from, the Site, except for any such Contamination:
  - (i) that was described in, or was properly inferable, readily apparent or readily discoverable from the Environmental Reports and Designated Substance Reports or the Geotechnical Reports;
  - (ii) that could have been properly inferable, readily apparent or readily discoverable on the basis of investigations, inspections or other due diligence in accordance with Good Industry Practice, including as referred to in Section 16.1, taking into account all matters relating to the Site, including the buildings, structures and works, on, over and under the Site existing on the date hereof; or
  - (iii) that is caused by Project Co or any Project Co Party.

If during Project Co's performance of the Works it becomes necessary for Project Co to work in the vicinity of the underground tank of undetermined type beneath the public lane running in a north/south direction along the easterly boundary of the Site (as described in the Background Information) (the "**Underground Tank**") and, as a result of such work, Project Co encounters Contamination caused by or contained in the Underground Tank, then, notwithstanding Sections 16.2(a)(i) and (ii), such Contamination shall be the responsibility of WCH.

- (b) Upon the discovery of any Contamination for which WCH is responsible pursuant to Section 16.2(a), Project Co shall immediately inform the WCH Representative and shall comply with Applicable Law in respect thereof at WCH's cost pursuant to Section 16.2(d).
- (c) In the event that WCH wishes Project Co to perform actions which are in addition to any required pursuant to Section 16.2(b), then WCH shall issue an instruction to Project Co specifying what action WCH requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at WCH'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 WCH 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 37, be treated as a Delay Event and, subject to and in accordance with Section 38, 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, artefacts 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 WCH.
- (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 WCH 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 WCH wishes Project Co to perform actions which are in addition to any required pursuant to Section 16.3(b), then WCH shall issue an instruction to Project Co specifying what action WCH 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 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event.

#### **16.4 Concealed or Unknown Geotechnical 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 ("**Geotechnical Conditions**"), Project Co shall promptly notify WCH and the Independent Certifier.
  - (ii) The Independent Certifier shall promptly investigate such Geotechnical Conditions and shall then report to WCH and Project Co with a finding as to whether such Geotechnical 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 Independent Certifier's finding under Section 16.4(a)(ii), the Independent Certifier shall, in consultation with the Works Committee, provide the resolution to such Geotechnical Condition and Project Co shall thereafter carry out the work required to effect such resolution.
- (b) If such Geotechnical 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 Geotechnical Conditions require Project Co to perform any alteration, addition, demolition,

extension or variation in the Works as a result of such Geotechnical 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 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event.

### **16.5 Underground Tank**

- (a) If during the progress of the Works it becomes necessary for Project Co to remove the Underground Tank and, as a result, Project Co must perform any alteration, addition, demolition, extension or variation in the Works 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 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event.

## **17. CITY OF TORONTO AND THIRD PARTY FINANCIAL OBLIGATIONS**

### **17.1 City of Toronto and Third Party Financial Obligations**

- (a) Subject to Section 17.2, Project Co shall be responsible for all Financial Obligations under or in respect of all Permits, Licences, Approvals and Agreements including to the City of Toronto, any Utility Company, any Governmental Authority or any other third party 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;
  - (iii) any security deposits and letters of credit required under any Permits, Licences, Approvals and Agreements; and
  - (iv) any other amounts payable under any Project Co Permits, Licences, Approvals and Agreements.
- (b) The Parties agree that any refund, partial rebate or credit granted by the City of Toronto, any applicable Utility Company, any applicable Governmental Authority or any other third party relating to the Financial Obligations referred to in Section 17.1(a) shall be for the benefit of WCH to the extent such Financial Obligations were paid by WCH and shall be for the benefit of Project Co to the extent such Financial Obligations were paid by Project Co.

### **17.2 WCH Financial Obligations**

- (a) WCH shall be responsible for all Financial Obligations required under the WCH Permits, Licences, Approvals and Agreements that are expressly described in Appendix 1 – Permits,

Licences, Approvals and Agreements to Schedule 1 – Definitions and Interpretation as being the responsibility of WCH.

**18. DESIGN AND CONSTRUCTION OBLIGATIONS**

**18.1 Overall Responsibility**

- (a) Project Co shall perform and complete the Works:
  - (i) so as to satisfy the Output Specifications;
  - (ii) in accordance with the Project Co Proposal Extracts;
  - (iii) in accordance with the Design Data;
  - (iv) in accordance with the Works Schedule; and
  - (v) in accordance with the other terms and conditions of this Project Agreement.
  
- (b) Without prejudice to Section 18.1(a), but subject to the provisions of Section 26, 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 Output Specifications 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 Output Specifications 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, be able to meet the structural, mechanical, electrical and other performance standards set out in the Output Specifications.

**18.2 Complete and Operational Facility**

- (a) Project Co shall design, engineer, construct and commission the Facility so as to provide WCH a complete and operational Facility in accordance with the Output Specifications 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 Development of Design**

- (a) Project Co shall, at its own cost, develop and complete the design of the Facility and all Design Data in accordance with the requirements of this Project Agreement, including Schedule 10 - Review Procedure and this Section 18.3.

- (b) The further development of the design and the process by which it is progressed must fully comply with the requirements of this Project Agreement.
- (c) The Parties agree that Appendix A to Schedule 10 - Review Procedure is an initial list of Design Data and other items that will require design review, which Design Data and other items shall include design, procurement and construction documentation (to a scale required by the WCH Representative) for each of the following:
  - (i) staged 50% and 100% design development documentation, being design development drawings, reports, schedules and specifications progressed from the date of this Project Agreement with extensive user group input, showing all architectural, engineering and landscape design information sufficient to allow for the development of working drawings (the “**Design Development Submittals**”);
  - (ii) 50% working drawing documentation, being construction drawings, reports, schedules and specifications progressed from the Design Development Submittals, showing all architectural, engineering and landscape design information in accordance with the requirements of this Project Agreement (the “**Construction Document Submittals**”);
  - (iii) Permit, Licence and Approval drawings (phased, if applicable); and
  - (iv) all other documentation required pursuant to Schedule 10 - Review Procedure.
- (d) Project Co shall submit to the WCH Representative for review in accordance with Schedule 10 - Review Procedure all Design Data and other items listed in Section 18.3(c).
- (e) The Design Data and other items listed in Section 18.3(c) must contain, at a minimum, the following additional information:
  - (i) identification of the stage of design or construction to which the documentation relates;
  - (ii) all design or construction drawings and specifications necessary to enable the WCH Representative to make an informed decision as to whether Project Co is permitted to proceed pursuant to Schedule 10 - Review Procedure;
  - (iii) for each stage of the design or construction documentation, a schedule identifying all changes to the relevant documentation that has occurred from the previous stage of design or construction documentation; and
  - (iv) where changes have been submitted, an indication of how the changes meet the requirements of this Project Agreement.
- (f) All design review meetings held by Project Co which WCH wishes to attend shall be held in Toronto, Ontario unless WCH otherwise agrees in writing.



- (g) If Project Co commences or permits the commencement of the next level of design or construction of any part or parts of the Facility prior to being entitled to proceed in accordance with Schedule 10 - Review Procedure and it is subsequently determined in accordance with Schedule 10 - Review Procedure or Schedule 27 - Dispute Resolution Procedure that the design or construction does not comply with this Project Agreement, then Project Co shall forthwith, at its own cost and risk, undo, remove from the Site, replace and restore, as applicable, any parts of the design or construction that do not comply with this Project Agreement.
- (h) Subject to Section 18.6, neither WCH nor any WCH Party will have any liability:
  - (i) if a document submitted by Project Co and reviewed by WCH or the WCH Representative results in non-compliance with this Project Agreement by Project Co or a breach by Project Co of Applicable Law; or
  - (ii) for any loss or claim arising due to some defect in any documents, drawings, specifications or certificates submitted by Project Co.
- (i) Project Co and WCH will cooperate with each other in the design review process. Notwithstanding such cooperation by WCH, such review shall not, except as provided in Section 18.6, constitute acceptance of the Works, and Project Co shall remain solely responsible for compliance in full with all requirements of this Project Agreement.
- (j) Project Co shall allow the WCH Representative, at any time, a reasonable opportunity to view any items of Design Data, which shall be made available to the WCH Representative as soon as practicable following receipt of a written request from the WCH Representative.
- (k) Project Co shall cause the Construction Contractor to establish and maintain a computerized design database which Project Co and the WCH Representative may access remotely by computer to view drawings comprised within the Design Data and to electronically store and print copies of such Design Data.

#### **18.4 Start-Up Meeting**

- (a) Within 10 Business Days of Financial Close, Project Co and the Design Team shall attend a start up meeting (the "**Start-Up Meeting**") with WCH to set out the design development process in greater detail.
- (b) The agenda for the Start-Up Meeting shall include the following:
  - (i) Project Co's plan to develop a successful long-term partnership with WCH for the purpose of supporting WCH in achieving its vision, mission and core values;
  - (ii) Project Co's plan to ensure that the Works are completed in accordance with the requirements set forth in this Project Agreement;

- (iii) Project Co's process to ensure optimum design quality;
- (iv) Project Co's approach to a fully integrated interior design process that includes every element of interior finishes, furniture, fixtures, equipment, occupant signage and wayfinding;
- (v) a proposed schedule of Works Submittals which is consistent with the Works Schedule and which provides for a progressive and orderly flow of Works Submittals from Project Co to the WCH Representative to allow sufficient time for review of each Works Submittal by the WCH Representative, taking into account both the resources available to the WCH Representative to conduct such review and whether delay in the review of the subject matter of the Works Submittal will have a material impact on Project Co's ability to progress future anticipated Works Submittals and the Works in accordance with the Works Schedule;
- (vi) Project Co's approach to timing, construction, adjustment and user feedback on required mock-ups; and
- (vii) a communication process that includes an electronic data room and the use of a computerized document tracking system that has the capacity to report, on request, the status of all design and construction documentation.

### **18.5 Design Workshops**

- (a) In order to obtain user input in the preparation of, and prior to submitting, the Design Development Submittals and the Construction Document Submittals, the Parties will hold user group design workshops (the "Design Workshops") upon the following terms:
  - (i) the Project Co Representative shall arrange the Design Workshops in consultation with the WCH Representative;
  - (ii) the Parties shall cooperate to develop a reasonable schedule for the Design Workshops respecting user availability issues inherent in an 24/7 operating health care facility and the scheduling parameters set out in Section 18.5(a)(iii) and shall incorporate such schedule into the Works Schedule;
  - (iii)
    - (A) Each WCH clinical user group shall require a minimum 3 rounds of meetings prior to the 50% Design Development Submittal; a minimum of 1 meeting between 50% and 100% Design Development Submittal, and a minimum of 1 meeting between 100% Design Development Submittal and 50% Construction Document Submittal;
    - (B) There shall be a minimum of ten (10) Business Days between Design Workshops involving the same WCH clinical user group.

- (C) No more than 3 WCH clinical user groups shall meet with Project Co in any given week;
- (D) The above criteria are for planning purposes only; actual user group availability shall be determined by WCH post Financial Close.
- (iv) Project Co shall circulate to the WCH Representative an agenda for each of the Design Workshops no later than 10 Business Days prior to the relevant Design Workshop;
- (v) the Design Workshops shall be held in person, except where otherwise agreed by the Parties, acting reasonably;
- (vi) Project Co shall maintain minutes of the Design Workshops, including possible design solutions and changes in design, and, within two Business Days after each Design Workshop, Project Co shall provide to the WCH Representative a copy of the minutes, together with a copy of any notes, comments, sketches, drawings, tracings, lay-outs, plans or diagrams prepared at the Design Workshop;
- (vii) WCH and Project Co agree that the subject matter of the Design Workshops shall not be regarded as Submittals to which Schedule 10 - Review Procedure applies, and that WCH shall not be bound by the input provided in connection with the Design Workshops;
- (viii) Project Co shall submit to WCH the Design Development Submittals or the Construction Document Submittals, as applicable, for review pursuant to Schedule 10 - Review Procedure; and
- (ix) the Parties agree that, with respect to the Design Development Submittals and the Construction Document Submittals, the period for review shall be 15 Business Days rather than the 10 Business Days prescribed in Section 2.2 of Schedule 10 - Review Procedure.
- (b) Prior to the 50% Design Development Submittals, the Parties will hold Design Workshops with respect to the following matters and any other Design Workshops required by Project Co, acting reasonably:
  - (i) departmental layouts;
  - (ii) cross-functional issues related to:
    - (A) vertical/horizontal circulation diagrams;
    - (B) elevator configuration; and
    - (C) materials management strategy;

- (iii) exterior elevations;
  - (iv) room layouts;
  - (v) millwork/modular systems furniture;
  - (vi) Equipment;
  - (vii) information/communication technology;
  - (viii) exterior colour/material presentation;
  - (ix) interior colour/material presentation; and
  - (x) Plant layouts and functionality.
- (c) Prior to the 100% Design Development Submittals, the Parties will hold Design Workshops with respect to the following matters and any other Design Workshops required by Project Co, acting reasonably:
- (i) physical mock-ups for WCH user review as outlined in Schedule 10 to the Project Agreement.
  - (ii) room and millwork/modular casework interior elevations;
  - (iii) door/hardware/security functionality;
  - (iv) Utilities and proposed Plant;
  - (v) In-Contract Equipment coordination;
  - (vi) interior and exterior materials/finishes; and
  - (vii) Plant layouts and functionality.
- (d) Prior to the 50% Construction Documents Submittals, the Parties will hold Design Workshops with respect to the following matters and any other Design Workshops required by Project Co, acting reasonably:
- (i) millwork details;
  - (ii) ceiling details; and
  - (iii) Equipment coordination details.

- (e) The purpose of the Design Workshops is to facilitate the incorporation of WCH input, involvement and feedback into the Design Data prior to submission of such Design Data in accordance with Schedule 10 - Review Procedure.

### 18.6 Clinical Functionality

- (a) WCH confirms that, as at the date of this Project Agreement, it has reviewed the Site master plan, and blocking and stacking diagrams and that, subject to any qualifications or comments noted thereon, such Submittals satisfy the Output Specifications in respect of Clinical Functionality, so far as can reasonably be determined given the level of detail in the Submittals.
- (b) With each of the Design Development Submittals, Project Co shall submit to WCH, for its review pursuant to Schedule 10 - Review Procedure, a draft report (each a “**Clinical Functionality Report**”) to specifically identify, with reference to the Output Specifications, such matters of Clinical Functionality that Project Co wishes WCH to review and consider as part of the Design Development Submittals. Each Clinical Functionality Report shall demonstrate how the Output Specifications are satisfied in respect of Clinical Functionality.
- (c) With the Construction Document Submittals, Project Co shall submit to WCH, for its review pursuant to Schedule 10 - Review Procedure, a final Clinical Functionality Report, and WCH shall confirm that, subject to any qualifications or comments noted thereon, such Construction Document Submittals satisfy the Output Specifications in respect of Clinical Functionality, so far as can reasonably be determined given the level of detail in the Construction Document Submittals.
- (d) Each Clinical Functionality Report must be prepared in accordance with the technical submission requirements set out in MOHLTC's Capital Planning Manual and must address the way in which the Design Data meets the following requirements of Clinical Functionality:
- (i) MOHLTC's “OASIS” requirements of operational efficiency, accessibility, safety and security, infection prevention and control, and sustainability;
  - (ii) expansion/ flexibility;
  - (iii) internal adjacencies;
  - (iv) internal zoning and material/staff flow;
  - (v) hours of operation; and
  - (vi) Plant.

### **18.7 Performance of Design Obligations**

- (a) In the design and engineering of the Facility, Project Co, its consultants and the Project Co Parties shall, at a minimum, exercise the standard of care normally exercised by licensed or registered professional architectural and engineering personnel having specialized knowledge and experience in performing design activities of a similar nature, scope and complexity.
- (b) Project Co shall ensure that all parts of the Works shall, as required by Applicable Law, be performed or reviewed by licensed or registered professional engineers and architects registered to practice in the Province of Ontario. Such architects and engineers shall certify and, if required by Applicable Law, sign and seal, all designs, drawings and technical reports confirming that they comply with all prevailing design standards and design practices for such work in the Province of Ontario, all other applicable standards, specifications and codes, and as otherwise required by Applicable Law.

### **18.8 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 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;
  - (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 Output Specifications;
    - (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 Output Specifications, have been substituted with WCH's prior written consent in accordance with Section 18.9.

- (c) Without limiting Project Co's obligations pursuant to Section 9.4 or Project Co's indemnity pursuant to Section 53.1, Project Co shall, at all times throughout the progress of the Works, be responsible for maintaining and securing those portions of the Site occupied by Project Co from time to time for construction of the Works in accordance with the Phasing Plan to prevent access onto such portions of the Site and the Facility of any persons not entitled to be there as determined by Project Co acting reasonably, and the licence granted to Project Co pursuant to Section 14.1 shall include rights for Project Co to do so.

### **18.9 Substitutions**

- (a) Whenever equipment, components, materials, supplies, tools, and other items are specified or otherwise described in this Project Agreement 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 WCH, in its sole discretion.

### **18.10 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 WCH of such change. If, after such notice, WCH 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 WCH 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 18.10 shall not apply where a change in a technical standard is also a Change in Law.

### **18.11 Works 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 WCH prior to Substantial Completion, including any and all subsequent revisions, amendments and changes thereto, shall be subject to review by WCH pursuant to Schedule 10 - Review Procedure.

### **18.12 Cash Allowance Items**

- (a) Project Co shall deposit the Cash Allowance Amount into the Cash Allowance Account on the dates and in the amounts set out in the Financial Model at Financial Close and shall manage the Cash Allowance Account in accordance with this Section 18.12.

- (b) The cash flow process applicable to the Cash Allowance Account will be as follows:
- (i) Project Co will deposit the Cash Allowance Amount into the Cash Allowance Account on the dates and in the amounts set out in the Financial Model at Financial Close;
  - (ii) Project Co will hold and manage all monies in the Cash Allowance Account in trust for, for the benefit of and as directed by WCH;
  - (iii) interest earned on the Cash Allowance Account will accrue in the Cash Allowance Account and will be for the benefit of WCH;
  - (iv) Project Co shall provide a reconciliation of the Cash Allowance Account to WCH on a monthly basis;
  - (v) Subject to Project Co's obligation to fund the Cash Allowance Account pursuant to Section 18.12(b)(i), WCH shall make deposits into the Cash Allowance Account in the event that the payment requirements for Cash Allowance Items, including applicable HST, for invoices approved by WCH that exceed the then balance of the Cash Allowance Account, for clarity, determined on an aggregate basis across all Cash Allowance Items, prior to approving any such invoices;
  - (vi) if, at Final Completion, there exists a positive balance in the Cash Allowance Account, such balance will be the property of WCH and will be paid by Project Co to WCH or as WCH directs; and
  - (vii) the Parties agree to mutually review the operation of the Cash Allowance Account on a regular basis and make any appropriate modifications to ensure its efficient operation.
- (c) Project Co shall provide monthly reports to the WCH Representative that include the following information:
- (i) itemized and aggregate amounts committed to date for all Cash Allowance Items;
  - (ii) itemized and aggregate amounts spent to date for all Cash Allowance Items; and
  - (iii) the projected cost of each remaining Cash Allowance Item and the projected effect of such costs on the Cash Allowance Account.
- (d) In addition to the monthly report described in Section 18.12, Project Co shall, on a monthly basis, provide to the WCH Representative a request for payment approval (each, a "**Request for Payment Approval**") that includes the following information:
- (i) details of all vendor or Project Co Party invoices that are due for payment that month, including relevant supporting documentation;



- (ii) evidence that the commitment by Project Co to purchase the Cash Allowance Items has been approved by WCH; and
  - (iii) any discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co in connection with the Cash Allowance Items.
- (e) WCH shall, within 10 Business Days of receipt of a Request for Payment Approval, advise Project Co, in writing, whether or not payment of the invoices set out in such Request for Payment Approval is approved. WCH shall only be permitted to withhold its approval if WCH determines that the Request for Payment Approval does not contain the information that WCH requires, acting reasonably, to discharge its obligations under this Section 18.12. If WCH withholds its approval pursuant to this Section 18.12(e) and subsequently receives the information that WCH requires, acting reasonably, to discharge its obligations under this Section 18.12, it shall, within 10 Business Days of its receipt of such information, provide to Project Co, in writing, WCH's approval of the invoices set out in the aforementioned Request for Payment Approval.
- (f) If WCH approves the payment of the invoices set out in a Request for Payment Approval, Project Co shall make payment to the relevant vendors or each Project Co Party from the Cash Allowance Account.
- (g) Project Co acknowledges and agrees that:
- (i) neither it, nor any Project Co Party, shall be entitled to any mark-ups for profit, overhead or other costs associated with the Cash Allowance Items;
  - (ii) all discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co in connection with the Cash Allowance Items shall be attributed solely to and shall benefit the pricing of the Cash Allowance Items;
  - (iii) all costs and expenses related to the administration of the Cash Allowance Account, including, without limitation, the preparation of Requests for Payment Approval and any required reporting, shall be borne by Project Co and shall not be charged to the Cash Allowance Account; and
  - (iv) the Cash Allowance Amount will be deposited and the Cash Allowance Account will be managed in accordance with the Works Schedule and any costs, expense or delays related to funding or managing the Cash Allowance Account are the responsibility of Project Co.

### **18.13 Protection of WCH Site Facilities**

- (a) Project Co shall protect the WCH Site Facilities from damage which may arise in the course of the performance by Project Co of the Works.

- (b) Should Project Co, in the performance of the Works, damage any WCH Site Facilities (other than as required or contemplated by the Output Specifications), Project Co shall be responsible to Make Good such damage at Project Co's expense without delay.
- (c) The Independent Certifier shall be provided with a copy of the building condition assessment of the east end of the existing WCH hospital building to be provided under the Output Specifications including any related ongoing monitoring documentation. Project Co shall advise WCH and the Independent Certifier upon becoming aware that any possible damage has occurred to any of the WCH Site Facilities (other than as required or contemplated by the Output Specifications). In such event the Independent Certifier shall investigate such damage and shall prepare a report and shall provide such report to the Works Committee, the Project Co Representative and the WCH Representative, all on an expeditious basis. The report shall include the determination of the Independent Certifier as to whether Project Co is responsible to Make Good such damage in accordance with Section 18.13(b).
- (d) Should damage occur to the WCH Site Facilities which has been determined not to be the responsibility of Project Co, WCH may direct Project Co to Make Good such damage under a Variation in accordance with Schedule 22 – Variation Procedure.

## 19. WCH ACCESS AND MONITORING

### 19.1 WCH Access During the Works Phase

- (a) Subject to Section 19.1(b) but without limiting any of WCH's rights in respect of the Site, Project Co acknowledges and agrees that WCH and the WCH 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 19.1(a), WCH and the WCH Parties shall:
  - (i) provide reasonable prior notice appropriate to the circumstances (other than for any offices or other facilities provided at the Site for WCH'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.

### 19.2 Increased Monitoring

- (a) If, at any stage, WCH 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 Output Specifications and the Project Co Proposal Extracts), WCH 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 WCH considers reasonable taking into account the nature of the relevant defect or failure until such time as Project Co shall have demonstrated, to WCH'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 WCH for any reasonable costs incurred as a result of such increased monitoring.

### **19.3 Right to Open Up**

- (a) WCH shall have the right, at any time prior to the Interim Completion Date in respect to the Phase 1 Facility and at any time prior to the Final Completion Date in respect to the Phase 2 Facility, to request Project Co to open up and inspect (or allow WCH to inspect) any part or parts of the Works, or to require testing of any part or parts of the Works, where WCH 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 Output Specifications, the Project Co Proposal Extracts and the Design Data) relevant to such part or parts of the Works, and Project Co shall comply with such request. When WCH makes such a request, WCH 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 Output Specifications, the Project Co Proposal Extracts and the Design Data) 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 WCH 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 Output Specifications, the Project Co Proposal Extracts and the Design Data) relevant to such part or parts of the Works, the exercise by WCH of its rights pursuant to this Section 19.3 shall, subject to and in accordance with Section 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event.

### **19.4 No Relief from Obligations**

- (a) The Parties acknowledge that the exercise by WCH or the WCH Representative of the rights under this Section 19 shall in no way affect the obligations of Project Co under this Project Agreement except as set out in this Section 19.

**20. WORKS SCHEDULE AND WORKS REPORT**

**20.1 Completion of Works**

- (a) Project Co shall complete the Works in accordance with this Project Agreement and achieve:
  - (i) Interim Completion by the Scheduled Interim Completion Date;
  - (ii) Substantial Completion by the Scheduled Substantial Completion Date; and
  - (iii) Final Completion by the Scheduled Final Completion Date.
- (b) Without limiting the generality of Section 20.1(a), Project Co shall complete the Works in accordance with the Works Schedule.

**20.2 The Works Schedule**

- (a) Within 45 days after the date of Financial Close, Project Co shall prepare and submit to WCH and the Independent Certifier a detailed, computerized draft schedule using Primavera 5.0 or other software compatible with Primavera 5.0 that supports the completion of the Works in accordance with Section 20.1.
- (b) WCH shall provide Project Co with comments on the draft schedule in accordance with Schedule 10 - Review Procedure, provided that the period for review of such draft schedule shall be 20 Business Days rather than the 10 Business Days prescribed in Section 2.2 of Schedule 10 - Review Procedure. 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 WCH.
- (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 WCH Representative 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 20.2(d), the Works Schedule shall, at a minimum, include:
  - (i) major milestone events;
  - (ii) the dates that key decisions must be made by WCH to support the progress of the Works;

- (iii) a detailed and editable procurement, delivery, installation, training and commissioning schedule for all Not-In-Contract Equipment and In-Contract Equipment;
- (iv) all design related activities, including the proposed date for each Design Workshops;
- (v) the proposed date for each Works Submittal;
- (vi) all construction activities, including subcontract work and cash allowance work, both on and off the Site;
- (vii) 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;
- (viii) all Interim Project Co Commissioning and Interim Hospital Commissioning activities;
- (ix) all Project Co Commissioning and Hospital Commissioning activities;
- (x) a detailed plan for the Transition;
- (xi) the manpower requirements for each activity, including subcontract work;
- (xii) a manpower histogram, both overall and by trade;
- (xiii) a cumulative "S"-curve showing planned percent completion for each month from the commencement of the Works until the Scheduled Final Completion Date; and
- (xiv) projected Construction Contract cash flows.

**20.3 Failure to Maintain Schedule**

- (a) Without limiting any other provision of this Project Agreement but subject to Section 37, if, at any time:
  - (i) the actual progress of the Works has significantly fallen behind the Works Schedule; or
  - (ii) WCH 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 WCH, to produce and deliver to each of the WCH 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 20.3(a)(iii)(B) and approved by the WCH Representative.
- (b) Project Co shall notify the WCH Representative if, at any time, the actual progress of the Works is significantly ahead of the Works Schedule.
- (c) Provided that Project Co has complied with this Section 20.3 and is not in default under Section 42.1(a)(iii), for greater certainty, the failure to achieve either Interim Completion by the Scheduled Interim Completion Date or Substantial Completion by the Scheduled Substantial Completion Date shall not be a Project Co Event of Default for the purposes of Section 42.1(a)(v).

**20A.4 Notification of Early Interim Completion**

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

**20.4 Notification of Early Substantial Completion**

- (a) Unless Project Co obtains the prior written consent of WCH, in WCH's 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 WCH that Project Co expects to be able to achieve Substantial Completion prior to the Scheduled Substantial Completion Date, the WCH Representative shall be entitled to require Project Co to produce and submit to the WCH 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 WCH 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.

**20.5 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 WCH Representative 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 22.2, a LEED progress report; and
  - (v) an update on those matters set out in Schedule 34 – Works Report Requirements;all in form and substance satisfactory to WCH, acting reasonably. For greater certainty, for all updates and revisions to the Works Schedule, Project Co must provide a revised critical path reflecting the updated/revised Works Schedule.
- (b) Project Co shall use, and shall ensure that the Construction Contractor uses, the project management software system specified by WCH.

21. EQUIPMENT

**21.1 Equipment Steering Committee**

- (a) The Parties shall, within 30 days following Financial Close, establish a committee (the “**Equipment Steering Committee**”) consisting of:
  - (i) 1 representative appointed by IO from time to time;
  - (ii) 4 representatives of WCH; and
  - (iii) 2 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 Equipment Steering 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 Equipment Steering Committee.
- (c) The Equipment Steering Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Not-In-Contract Equipment, including the interaction between Not-In-Contract Equipment commissioning and Plant commissioning.
- (d) The primary role of the Equipment Steering Committee shall be to oversee and coordinate the procurement and installation of all Not-In-Contract Equipment in a timely and efficient manner and in accordance with the Works Schedule and Equipment Procurement Sub-Plan. Project Co and the Equipment Steering Committee will work co-operatively with any equipment consultant retained by the Hospital.
- (e) 3 representatives of WCH (one of whom shall be either the chief planning and development officer or the senior project manager), one representative of Project Co and the representative of IO (or a delegate thereof) shall constitute a quorum at any meeting of the Equipment Steering Committee. A quorum of members may exercise all the powers of the Equipment Steering Committee. The members shall not transact business at a meeting of the Equipment Steering Committee unless a quorum is present.
- (f) The members of the Equipment Steering Committee may adopt such other procedures and practices for the conduct of the activities of the Equipment Steering Committee as they consider appropriate from time to time.

**21.2 WCH Equipment Responsibilities**

- (a) WCH shall be responsible for determining the method of procurement, quantity, make, model, vendor and any terms and conditions of financing for all Not-In-Contract Equipment based upon tenders, quotations or proposals obtained by Project Co.



- (b) WCH shall be responsible for any decontamination of Existing Equipment, as required under Applicable Law or at WCH's sole discretion, prior to the decommissioning of such Existing Equipment by Project Co.
- (c) WCH shall enter into all purchase orders and other contracts with respect to the Not-In-Contract Equipment, and shall approve the selection of, and the entering into of all purchase orders and other contracts with respect to, the In-Contract Equipment.
- (d) For greater certainty:
  - (i) WCH, and not Project Co, shall be liable as “purchaser” to the vendor under every purchase order, contract and manufacturer’s installation invoice related to the Not-In-Contract Equipment, and shall make all payments related thereto in accordance with the relevant invoice terms;
  - (ii) Project Co, and not WCH, shall be liable as “purchaser” to the vendor under every purchase order, contract and manufacturer’s installation invoice related to the In-Contract Equipment, and shall make all payments related thereto in accordance with the relevant invoice terms and the provisions of Section 18.12; and
  - (iii) WCH will assume the obligation to make any payments in respect of In-Contract Equipment that are payable to a vendor after the Interim Completion Date or the Substantial Completion Date, as applicable, under leases, managed equipment programs, usage based pricing and other such arrangements or for service agreements, provided that WCH has approved such arrangements.

**21.3 Project Co Equipment Responsibilities**

- (a) Project Co shall be responsible for:
  - (i) revising, coordinating and finalizing the plan to procure, transfer, install and commission, as applicable, all Equipment and Existing Equipment based on the development of Project Co’s Design Data and the latest information available from the WCH Representative, including, but not limited to, updating the lists of Not-In-Contract Equipment in Section B and Section C of Part 5 of Schedule 15 - Output Specifications;
  - (ii) all costs and expenses associated with the commissioning of Equipment save and except for the costs and expenses associated with the commissioning of certain In-Contract Equipment and Not-In-Contract Equipment designated as being the responsibility of WCH in Sections A, B and C of Part 5 of Schedule 15 – Output Specifications, as applicable;
  - (iii) procuring all new Equipment in accordance with Section 21.4;

- (iv) subject to Section 21.2(b), decommissioning (where applicable), deinstalling, disconnecting and transferring all Existing Equipment as designated in Section C of Part 5 of Schedule 15 – Output Specifications;
  - (v) providing all structural, mechanical, electrical and information and communications technology building system services to produce a complete working system for all Equipment and Existing Equipment, as applicable;
  - (vi) expediting, delivering, unpacking, offloading, handling and storing all Equipment; and
  - (vii) coordinating, scheduling and completing the installation or reinstallation, as applicable, of all Equipment and Existing Equipment in accordance with manufacturer's instructions and Schedule 15 – Output Specifications;
  - (viii) coordinating, scheduling and completing the commissioning of all Phase 1 Equipment and Existing Equipment, as applicable, in accordance with the Interim Commissioning Program; and
  - (ix) coordinating, scheduling and completing the commissioning of all Phase 2 Equipment and Phase 2 Existing Equipment, as applicable, in accordance with the Final Commissioning Program.
- (b) For the purpose of achieving Interim Completion, all Phase 1 Equipment and the following items of Phase 1 Existing Equipment, the MRI, the CT Scanner and the Central Sterilization equipment, must be successfully commissioned by Project Co in accordance with the Interim Commissioning Program. For the purpose of achieving Substantial Completion, all Phase 2 Equipment must be successfully commissioned by Project Co in accordance with the Final Commissioning Program. For clarity, no items of Phase 2 Existing Equipment require commissioning at Substantial Completion. Provided that in respect to either of the foregoing circumstances, in respect of any item of Phase 1 Equipment or Phase 2 Equipment as applicable, such requirements shall be waived by WCH if, despite having used commercially reasonable efforts to do so, Project Co is unable to complete the procurement, installation or commissioning of such item of equipment referred to in this Section 21.3(b) due to a delay in the performance of any of its obligations by an equipment vendor or manufacturer.
- (c) Whether or not Interim Completion has been achieved, until such time as Project Co has completed the procurement, installation and commissioning of all Phase 1 Equipment in accordance with this Section 21, WCH may withhold from any payment or payments due to Project Co a holdback amount equal to the greater of the Phase 1 Equipment Procurement Fee and \$[REDACTED].
- (d) Whether or not Substantial Completion has been achieved, until such time as Project Co has completed the procurement, installation and commissioning of all Phase 2 Equipment in accordance with this Section 21, WCH may withhold from any payment or payments due to

Project Co a holdback amount equal to the greater of the Phase 2 Equipment Procurement Fee and \$[REDACTED].

**21.4 Project Co Procurement Responsibilities**

- (a) Project Co shall act as purchasing and procurement manager for WCH and shall:
  - (i) in consultation with the Equipment Steering Committee, finalize the list of Not-In-Contract Equipment based on the development of Project Co's Design Data and the latest information available from the WCH Representative and update the budget for Not-In-Contract Equipment for approval by the Equipment Steering Committee;
  - (ii) in consultation with Equipment Steering Committee, review the building system requirements for the Equipment and the Existing Equipment, as applicable, and lay out the Equipment and the Existing Equipment, as applicable, onto the design drawings for reconciliation with the services and space designed prior to purchasing or moving any Equipment or Existing Equipment;
  - (iii) in consultation with the Equipment Steering Committee, establish procurement processes that are fair, open and competitive, all in accordance with any applicable WCH policies, WCH buying agreements, and good purchasing and procurement practices;
  - (iv) comply with such procurement processes;
  - (v) in consultation with the Equipment Steering Committee, prepare tenders, quotations or requests for proposal (the "**Equipment Procurement Documentation**"), which shall, subject to Section 21.2(a), be in form and substance satisfactory to WCH and Project Co;
  - (vi) manage the procurement of all Equipment (except for any WCH Early Procured In-Contract Equipment for which the procurement process has been completed by the date of this Project Agreement), including:
    - (A) providing advice to the Equipment Steering Committee in respect of the evaluation of tenders, quotations or proposals from Equipment vendors;
    - (B) assisting the Equipment Steering Committee in the review of the tenders, quotations or proposals from Equipment vendors by clearly delineating the costs and performance of the Equipment, the training methods and values, the testing and calibration protocols, the acceptable end results and the party responsible for such testing, be it the vendor, a third party or individuals engaged by Project Co;
    - (C) assisting the Equipment Steering Committee with the selection of tenders, quotations or proposals from Equipment vendors;

- (D) the entering into by Project Co of all purchase orders and other contracts with respect to the In-Contract Equipment (except for any WCH Early Procured In-Contract Equipment for which the procurement process has been completed by the date of this Project Agreement), as approved by WCH;
  - (E) the entry by WCH of all purchase orders and other contracts with respect to the Not-In-Contract Equipment; and
  - (F) providing such documentation as WCH requires, acting reasonably, to discharge its obligations under this Section 21;
- (vii) in accordance with the Equipment Procurement Documentation, act as a single point of contact for all Equipment vendors;
  - (viii) test and calibrate any Equipment not tested and calibrated by vendors and coordinate the acceptance testing of all Equipment as designated in Part 5 of Schedule 15 – Output Specifications.
  - (ix) for a one-year period following Interim Completion, coordinate and manage any warranty issues with the Phase 1 Equipment vendors; and
  - (x) for a one-year period following Substantial Completion, coordinate and manage any warranty issues with the Phase 2 Equipment vendors.
- (b) Based on the tenders, quotations and proposals received from Equipment vendors, Project Co shall make recommendations to the Equipment Steering Committee for the procurement of each item of Equipment. 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) an analysis and recommendation as to which make, model number and vendor of the item provides the overall best value for WCH, and any other benefits of the recommendation;
  - (iv) an analysis of the effect of the items on the overall design of the Facility and the relevant areas within the Facility;
  - (v) 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;
  - (vi) details of training for all applicable WCH staff;

- (vii) Equipment acceptance testing procedures (including, without limitation, the results and guidelines for acceptance) proposed by the relevant Equipment vendor;
  - (viii) the dates and times when the items shall be delivered to the Site;
  - (ix) all costs, with a breakdown of applicable HST and net of all direct or indirect discounts, rebates, refunds, charge-backs, credits, price adjustments or any other allowances obtained across all categories of Equipment 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) if so requested by the WCH Representative, a copy of each quote or proposal and all other relevant information in respect of the items and such other documentation as WCH may reasonably require, all of which shall be provided on a fully transparent and open basis to the WCH Representative; 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 21.4(b), WCH may do any of the following with respect of some or all of the items:
- (i) instruct Project Co to proceed with the procurement;
  - (ii) withdraw the requirement for Project Co to proceed with the procurement;
  - (iii) 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; or
  - (iv) reject any Equipment vendor or item.
- (d) Project Co shall provide to the WCH Representative, as soon as reasonably practicable following a request therefor, such additional information as WCH may require in respect of any recommendation made by Project Co in accordance with Section 21.4(b).

**21.5 Minimizing Disruptions**

- (a) Project Co shall perform all of its obligations under this Section 21 so as to minimize, to the greatest extent reasonably possible, any disruption of the Project Operations or the performance of the Hospital Services. 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.

**21.6 Equipment Training**

- (a) For and in respect of each item of Equipment procured by Project Co and operated by WCH, Project Co shall, in accordance with Schedule 14 - Outline Commissioning Program, provide or arrange for adequate, appropriate and timely training in the item's proper operation and maintenance for all applicable WCH staff.
- (b) WCH shall make its staff available for training purposes in accordance with the Works Schedule and the Interim Commissioning Program and the Final Commissioning Program, as applicable.

**21.7 Scheduling of Equipment Procurement and Installation**

- (a) Project Co shall, in consultation with WCH, prepare a schedule for the procurement or transfer, as applicable, installation and commissioning of all Equipment and Existing Equipment, as applicable, and shall incorporate the timing of procurement, transfer, installation and commissioning, as applicable, of all Equipment and Existing Equipment into the Works Schedule, the Interim Commissioning Program and the Final Commissioning Program, as applicable. Such schedule shall include the date by which WCH must make a final determination of the quantity, make, model and vendor of each piece of Equipment.
- (b) WCH shall determine the quantity, make, model and vendor of each piece of Not-In-Contract Equipment, and, as applicable, shall execute any purchase order, contract, manufacturer's installation invoice and/or other documentation related thereto, by the relevant date set out in the Works Schedule, provided that the WCH Representative shall have received such documentation as WCH requires, acting reasonably, to discharge its obligations under this Section 21 no later than 30 days prior to the relevant date set out in the Works Schedule.

**21.8 Maintenance of Equipment**

- (a) For greater certainty, Project Co is not responsible for the maintenance, repair, replacement, monitoring or refurbishment of any Equipment or Existing Equipment, except as set out in Schedule 15 – Output Specifications.

**21.9 WCH Early Procured In-Contract Equipment**

- (a) On the date of this Project Agreement, WCH shall assign to Project Co, and Project Co shall assume, (i) all purchase orders and other related contracts respecting the WCH Early

Procured In-Contract Equipment entered into by WCH, and (ii) any incomplete procurement of WCH Early Procured In-Contract Equipment (the “**WCH Early Procured In-Contract Equipment Assignment**”). Project Co shall complete any assigned procurement and shall enter into any and all future purchase orders and other related contracts respecting any WCH Early Procured In-Contract Equipment for which the procurement was initiated by WCH but was not completed by the date of this Project Agreement.

- (b) For greater clarity:
  - (i) after the WCH Early Procured In-Contract Equipment Assignment, Project Co has the same obligations in respect of WCH Early Procured In-Contract Equipment as it does for In-Contract Equipment and Project Co, not WCH, shall be liable as “purchaser” to the vendor under every purchase order and other related contract including manufacturer’s installation invoice related to the WCH Early Procured In-Contract Equipment; and
  - (ii) Project Co and not WCH shall make all payments in respect of WCH Early Procured In-Contract Equipment in accordance with this Project Agreement, including in respect of any WCH Early Procured In-Contract Equipment for which WCH has entered into purchase orders and other related contracts before Commercial Close.

## 22. LEADERSHIP IN ENERGY & ENVIRONMENTAL DESIGN

### 22.1 LEED Design and Construction Obligations

- (a) Project Co shall perform the Works so as to achieve the prerequisites and credits required to achieve the LEED Certification and in so doing, Project Co shall (i) at a minimum, endeavour to achieve the mandatory prerequisites and credits under the LEED Rating System provided for in Section 3.10.1.5(a) of Part 3 of Schedule 15 – Output Specifications, and (ii) achieve 2 points in respect of EA Credit 1 – Optimize Energy Performance under Performance Category: Energy & Atmosphere.

### 22.2 LEED Progress Reports

- (a) As part of each Works Report, Project Co shall submit a progress report comparing actual construction and procurement activities with LEED Certification requirements.

### 22.3 LEED Certification

- (a) WCH has caused the Project to be registered with CaGBC. Project Co shall verify that the Project is registered with CaGBC within 60 days following Financial Close and confirm to WCH that Project Co is satisfied that the registration is valid, and is effective as of the date that it was made.

- (b) If 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 WCH of such change and such change shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation.
- (c) Project Co shall apply to the CaGBC to obtain LEED Certification for the Facility as soon as possible.
- (d) In the event that:
  - (i) Project Co fails to obtain 2 points in respect of EA Credit 1 – Optimize Energy Performance under Performance Category: Energy & Atmosphere; or
  - (ii) LEED Certification is not obtained within 24 months after the Substantial Completion Date

other than as a direct result of any act or omission of WCH or any WCH Party, Project Co shall pay to WCH 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 WCH will suffer as a result of the happening of either of the specified events and would be difficult or impossible to quantify upon the happening of either of the specified events. Such payment shall constitute full and final settlement of any and all damages that may be claimed by WCH as a result of a failure by Project Co to obtain the minimum number of points required pursuant to Section 22.3(d)(i) or to achieve LEED Certification and, for greater certainty, a failure by Project Co to obtain any of the mandatory prerequisites or credits set out in Section 22.1(a) 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 WCH incurs or mitigates its damages, and that WCH shall not have any obligation to mitigate any such damages.

## **22.4 Greenhouse Gas Credits**

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

## **23. INDEPENDENT CERTIFIER**

### **23.1 Appointment**

- (a) On or prior to Financial Close, the Parties shall appoint an independent and 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. If the Parties are unable to agree upon the Independent Certifier within such period of time, then the determination of the



Independent Certifier shall be made in the same manner as the identification of a replacement Independent Certifier under Section 23.7(b).

- (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.

### **23.2 Role of Independent Certifier**

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

### **23.3 Changes to Terms of Appointment**

- (a) Neither WCH 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.

### **23.4 Right to Change Appointment**

- (a) The Parties acknowledge that the Independent Certifier shall 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 23.7, 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.

### **23.5 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.

**23.6 Payment of Independent Certifier**

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

**23.7 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.

**24A. INTERIM COMMISSIONING AND COMPLETION**

**24A.1 Interim Commissioning Activities**

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

**24A.2 Interim Commissioning Program**

- (a) Project Co shall prepare a draft of the Interim Commissioning Program in respect to the Interim Project Co Commissioning and the Interim Hospital Commissioning and shall

provide a copy thereof to the Independent Certifier, the WCH Commissioning Agent and the WCH Representative not less than 365 days prior to the Scheduled Interim Completion Date.

- (b) The Interim Commissioning Program shall:
- (i) describe the requirements, and the timing and sequence of such requirements, necessary in order that the Interim Project Co Commissioning shall be completed to achieve:
    - (A) Interim Completion on or before the Scheduled Interim Completion Date;
  - (ii) describe the requirements, and the timing and sequence of such requirements, of the Interim Hospital Commissioning activities;
  - (iii) comply with the requirements, and the timing and sequence of such requirements, of the Interim Transition (as set out in Schedule 36 – Redevelopment Transition Parameters);
  - (iv) comply with all requirements of the Outline Commissioning Program and include all details, including for all appendices, required to be completed in the Outline Commissioning Program;
  - (v) be consistent with the Outline Commissioning Program and impose no greater or more onerous obligations on WCH than those set out in the Outline Commissioning Program, unless otherwise agreed to by WCH;
  - (vi) include the names of the individuals or companies proposed to perform all Project Co Commissioning;
  - (vii) include a schedule of each of the Interim Project Co Commissioning Tests and the Interim Hospital Commissioning Tests proposed to be performed and the timeframe for completion, with start and end dates;
  - (viii) include a schedule of meetings to be held between the Parties to coordinate the performance of the Interim Project Co Commissioning and the Interim Hospital Commissioning;
  - (ix) provide for the re-verification of systems following the Interim Hospital Commissioning; and
  - (x) list the approvals required from any Governmental Authority, manufacturer or other person that are necessary to meet the requirements of the Interim Commissioning Program or Applicable Law.
- (c) WCH shall provide Project Co with comments on the draft Interim Commissioning Program in accordance with Schedule 10 - Review Procedure, and Project Co shall revise the draft

Interim Commissioning Program to the extent required by Schedule 10 - Review Procedure within 30 days of receipt of any comments from WCH.

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

**24A.3 Commencement of Interim Project Co Commissioning**

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

**24A.4 Interim Completion Certificate**

- (a) Project Co shall give the Independent Certifier and the WCH Representative at least 10 Business Days' notice prior to the date upon which Project Co anticipates all requirements for Interim Completion shall be satisfied.
- (b) Project Co shall give the Independent Certifier and the WCH Representative notice (the "**Interim Completion Notice**") upon the satisfaction of all requirements for Interim Completion, which Interim Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for Interim Completion, together with Project Co's opinion as to whether the conditions for issuance of the Interim Completion Certificate have been satisfied.
- (c) WCH shall, within 5 Business Days after receipt of the Interim Completion Notice, provide the Independent Certifier and Project Co with WCH's opinion as to whether the conditions for issuance of the Interim Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Interim Completion Certificate should not be issued.
- (d) Within 5 Business Days after Project Co's receipt of WCH's opinion pursuant to Section 24A.4(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Interim Completion Certificate have been satisfied, having

regard for the opinions of both Project Co and WCH, to determine whether any Minor Deficiencies exist, and to issue to WCH and to Project Co either:

- (i) the Interim Completion Certificate, setting out in such certificate the Interim Completion Date and the Interim Minor Deficiencies List (if applicable) in accordance with Section 24A.8; 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 Interim Completion Certificate.
- (e) Where the Independent Certifier has issued a report in accordance with Section 24A.4(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 WCH 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 Interim 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 Interim Project Co Commissioning in a timely manner. Upon completion thereof, Project Co may give a further Interim Completion Notice and Sections 24A.4(c) to (e), inclusive, shall be repeated until the Interim Completion Certificate has been issued.

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

#### **24A.5 Operation and Maintenance Manuals**

- (a) Project Co shall prepare and deliver to WCH all necessary operation and maintenance manuals for the Phase 1 Facility 30 days prior to the Interim Completion Date. 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 WCH, such operation and maintenance manuals and all other such manuals prepared from time to time for the Phase 1 Facility.

**24A.6 Interim Hospital Commissioning**

- (a) The Parties acknowledge that the Interim Hospital Commissioning shall be performed both before and after the Interim Completion Date. Prior to Interim Completion, Project Co shall give WCH full access to the Site, the Facility and all relevant parts thereof at such times as may be set out in the Interim Commissioning Program to enable WCH to undertake the Interim Hospital Commissioning in accordance with the Interim Commissioning Program. WCH shall comply, and shall ensure that all WCH 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 Interim Hospital Commissioning.
- (b) WCH acknowledges that, during the Interim Hospital Commissioning Period, Project Co and each Project Co Party will be active in the Facility in both the rectification of Interim Minor Deficiencies and the completion of Interim Project Co Commissioning, and WCH shall take commercially reasonable steps to allow such activities to proceed in accordance with the Interim Commissioning Program.
- (c) Project Co acknowledges that, prior to and during the Interim Hospital Commissioning Period, Project Co and each Project Co Party shall cooperate with WCH and all WCH Parties and use commercially reasonable efforts to ensure that all requirements, and the timing and sequence of such requirements, of the Interim Hospital Commissioning activities are able to be completed in the timeframe for completion set out in the Interim Commissioning Program.

**24A.7 Interim Countdown Notice**

- (a) Project Co shall deliver a notice (the “**Interim Countdown Notice**”) to WCH and the Independent Certifier specifying the date (which, for greater certainty, will be on or before the Scheduled Interim Completion Date) on which Project Co anticipates that Interim Completion will be achieved (the “**Anticipated Interim Completion Date**”).
- (b) The Interim Countdown Notice shall be delivered not less than 180 days prior to the Anticipated Interim Completion Date. If Project Co fails to deliver the Interim Countdown Notice not less than 180 days prior to the Scheduled Interim Completion Date, the Anticipated Interim Completion Date shall be deemed to be the same date as the Scheduled Interim Completion Date.
- (c) Project Co acknowledges and agrees that WCH requires a minimum of 180 days notice prior to the Anticipated Interim Completion Date to prepare for the Hospital Commissioning.
- (d) In accordance with Section 20.4(a), the Anticipated Interim Completion Date shall not be earlier than the Scheduled Interim Completion Date without the prior written consent of WCH, in its sole discretion.

**24A.8 Interim Minor Deficiencies**

- (a) In the event that Interim Minor Deficiencies exist when Project Co gives the Interim Completion Notice, the Independent Certifier, in consultation with Project Co and WCH, shall prepare a list of all Interim Minor Deficiencies (the “**Interim Minor Deficiencies List**”) identified at that time and an estimate of the cost and the time for rectifying such Interim Minor Deficiencies.
- (b) The Interim Minor Deficiencies List will contain the schedule for the completion and rectification of the Interim Minor Deficiencies. In determining the relevant time for rectifying Interim Minor Deficiencies, Project Co shall schedule the completion and rectification of Interim Minor Deficiencies so as to minimize, to the greatest extent reasonably possible, any impairment of WCH’s use and enjoyment of the Phase 1 Facility or disruption of the Project Operations or the performance of the Hospital Services in respect to the Phase 1 Facility.
- (c) The Independent Certifier must prepare the Interim Minor Deficiencies List before the Interim Completion Certificate is issued, but shall not withhold the Interim Completion Certificate by reason solely that there are Interim Minor Deficiencies.
- (d) WCH may, in its sole discretion, waive any requirement for Interim Completion, including with respect to Phase 1 Equipment or Existing Equipment, and the failure to meet any such requirement shall constitute an Interim Minor Deficiency.

**24A.9 Rectification of Interim Minor Deficiencies**

- (a) Project Co shall, in consultation with the WCH 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 in respect to the Phase 1 Facility, complete and rectify all Interim Minor Deficiencies within 45 days of the issuance of the Interim Minor Deficiencies List or such other period as the Independent Certifier may specify in the Interim Minor Deficiencies List.
- (b) Project Co acknowledges and agrees that the completion and rectification of Interim Minor Deficiencies may require work outside of normal working hours in order to accommodate the efficient operation of the Phase 1 Facility.

**24A.10 Failure to Rectify Interim Minor Deficiencies**

- (a) If Project Co has failed to complete and rectify any Interim Minor Deficiency specified in the Interim Minor Deficiencies List
  - (i) within 75 days of the issuance of the Interim Minor Deficiencies List for all Interim Minor Deficiencies where no time for rectification or completion has been specified by the Independent Certifier, or

- (ii) within 30 days after the time for completion and rectification of any Interim Minor Deficiency where such a time has been specified in the Interim Minor Deficiencies List by the Independent Certifier,

WCH may:

- (iii) withhold from the next payment or payments otherwise due to Project Co a holdback amount that is [REDACTED]% of the amount estimated by the Independent Certifier for WCH to complete and rectify all such Interim Minor Deficiencies (to the extent then outstanding), which holdback shall be held in an interest bearing account; and
  - (iv) engage others to perform the work necessary to complete and rectify any such Interim Minor Deficiency, at the risk and cost of Project Co, and WCH may deduct such cost from the holdback amount and interest earned thereon.
- (b) Upon completion and rectification of each Interim Minor Deficiency, WCH shall release to Project Co the amount of the holdback related to such Interim Minor Deficiency. Upon completion and rectification of all Interim Minor Deficiencies, WCH shall release to Project Co the then remaining amount of the holdback, together with all interest accrued thereon. Where WCH exercises its rights pursuant to Section 24A.10(a)(ii), if the cost of such completion and rectification exceeds the amount of such holdback and interest, then Project Co shall reimburse WCH for all such excess cost.

#### **24A.11 Effect of Certificates/Use in Respect of the Phase 1 Facility**

- (a) The issue of the Interim Completion Certificate, any taking over or use by WCH of any part of the Phase 1 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 Interim Minor Deficiencies List; or
  - (ii) be construed as an approval by WCH of the Works or the way in which they have been carried out.

#### **24A.12 Interim Transition**

- (a) Subject to Section 24A.12(b), Project Co shall, in cooperation with the Transition Subcommittee, plan, coordinate, manage and complete the physical transition to the Phase 1 Facility and within and between the Existing Facilities, including, without limitation, (i) the transfer and installation, as required, of Existing Equipment in accordance with the Interim Commissioning Program, and (ii) the physical transition of certain operations and activities of the Existing Facilities, including the associated contents of the Existing Facilities, in each



case as set out in Schedule 36 – Redevelopment Transition Parameters (collectively, the “**Interim Transition**”). For clarity, the Interim Transition shall be carried out by Project Co in accordance with the applicable requirements of Schedule 11 – Design Quality Plan and Construction Quality Plan.

- (b) WCH shall be responsible for transporting patients, and any Existing Equipment connected to patients, from the Existing Facilities to the Phase 1 Facility and within and between the Existing Facilities.

## 24. COMMISSIONING AND COMPLETION

### 24.1 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.

### 24.2 Final Commissioning Program

- (a) Project Co shall prepare a draft of the Final Commissioning Program in respect to the Project Co Commissioning and the Hospital Commissioning and shall provide a copy thereof to the Independent Certifier, the WCH Commissioning Agent and the WCH 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;
    - (B) Phase 2A Completion on or before the Scheduled Final Completion Date; and
    - (C) Final Completion on or before the Scheduled Final Completion Date;
  - (ii) describe the requirements, and the timing and sequence of such requirements, of the Hospital Commissioning activities;
  - (iii) comply with the requirements, and the timing and sequence of such requirements, of the Transition and the Phase 2A Transition (as set out in Schedule 36 – Redevelopment Transition Parameters);
  - (iv) comply with all requirements of the Outline Commissioning Program and include all details, including for all appendices, required to be completed in the Outline Commissioning Program;

- (v) be consistent with the Outline Commissioning Program and impose no greater or more onerous obligations on WCH than those set out in the Outline Commissioning Program, unless otherwise agreed to by WCH;
  - (vi) include the names of the individuals or companies proposed to perform all Project Co Commissioning;
  - (vii) 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;
  - (viii) include a schedule of meetings to be held between the Parties to coordinate the performance of the Project Co Commissioning and the Hospital Commissioning;
  - (ix) provide for the re-verification of systems following the Hospital Commissioning; and
  - (x) 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.
- (c) WCH 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 WCH.
- (d) When agreed by the Parties, the Final Commissioning Program shall replace the Outline Commissioning Program.

**24.3 Commencement of Project Co Commissioning**

- (a) Project Co shall give 30 days written notice to the Independent Certifier, the WCH Commissioning Agent and the WCH 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 WCH Commissioning Agent and the WCH 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 WCH Commissioning Agent and the WCH Representative may reasonably require in relation thereto, including:
  - (i) tests proposed;
  - (ii) test methodology; and
  - (iii) expected test results.

**24.4 Substantial Completion Certificate**

- (a) Project Co shall give the Independent Certifier and the WCH 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 WCH 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) WCH shall, within 5 Business Days after receipt of the Substantial Completion Notice, provide the Independent Certifier and Project Co with WCH'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 WCH's opinion pursuant to Section 24.4(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 WCH, to determine whether any Minor Deficiencies exist, and to issue to WCH and to Project Co either:
  - (i) the Substantial Completion Certificate, setting out in such certificate the Substantial Completion Date and the Minor Deficiencies List (if applicable) in accordance with Section 24.8; 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 24.4(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 WCH 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 (save and except for the Phase 2A Commissioning),

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 24.4(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.

#### **24.4B Phase 2A Completion Certificate**

- (a) Project Co shall give the Independent Certifier and the WCH Representative at least 10 Business Days' notice (each a "**Phase 2A Hand Over Notice**") prior to each date upon which Project Co anticipates a component of the Phase 2A Works will be completed and ready for hand over to WCH and for the Phase 2A Commissioning and the Phase 2A Transition.
- (b) Within 2 Business Days after receipt of the Phase 2A Hand Over Notice, the Independent Certifier shall proceed to determine whether the Phase 2A Works identified in the Phase 2A Hand Over Notice are completed and ready for hand over to WCH and for Phase 2A Commissioning to proceed. Where the Independent Certifier's report indicates that such Phase 2A Works are completed and ready for such Phase 2A Commissioning, the Parties shall proceed with the Phase 2A Commissioning and the Independent Certifier shall issue a further report confirming whether the Phase 2A Commissioning of such Phase 2A Works component was successfully completed, and setting out whether any Minor Deficiencies exist or detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the requirements of the Phase 2A Commissioning for such Phase 2A Works component. If the report of the Independent Certifier requires Project Co to satisfy additional requirements of Phase 2A Commissioning, Project Co shall proceed to satisfy such requirements and when completed the Independent Certifier shall confirm that such requirements have been successfully completed and shall issue a further report to such effect. The report of the Independent Certifier shall set out any Minor Deficiencies to be remedied by Project Co.
- (c) The process described in Sections 24.4B(a) and (b) shall be repeated with all of the remaining components of the Phase 2A Works.
- (d) Following the successful Phase 2A Commissioning of a Phase 2A Works component, Project Co shall proceed to complete the Phase 2A Transition with respect to such Phase 2A Works component. This process shall be repeated for all of the remaining components of the Phase 2A Works.

- (e) At such time as the Phase 2A Transition is completed for the last of the Phase 2A Works, Project Co shall give a notice to the Independent Certifier and to WCH that in its opinion all the requirements for Phase 2A Completion have been satisfied (the “**Phase 2A Completion Notice**”).
- (f) Upon receipt of the Phase 2A Completion Notice, the Independent Certifier shall determine whether to issue or not to issue the Phase 2A Completion Certificate. Any Dispute in relation to the Independent Certifier's decision to issue or not to issue the Phase 2A Completion Certificate may be referred for resolution pursuant to the Dispute Resolution Procedure.

#### **24.5 Operation and Maintenance Manuals**

- (a) Project Co shall prepare and deliver to WCH all necessary operation and maintenance manuals for the Facility 30 days prior to the Substantial Completion Date. 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 WCH, such operation and maintenance manuals and all other such manuals prepared from time to time for the Facility.

#### **24.6 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 WCH 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 WCH to undertake the Hospital Commissioning in accordance with the Final Commissioning Program. WCH shall comply, and shall ensure that all WCH 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) WCH acknowledges that, during the Hospital Commissioning Period, Project Co and each Project Co Party will be active in the Facility in both the rectification of Minor Deficiencies and the completion of Project Co Commissioning, and WCH 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 each Project Co Party shall cooperate with WCH and all WCH 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 timeframe for completion set out in the Final Commissioning Program.

**24.7 Countdown Notice**

- (a) Project Co shall deliver a notice (the “**Countdown Notice**”) to WCH 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 WCH 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 20.4(a), the Anticipated Substantial Completion Date shall not be earlier than the Scheduled Substantial Completion Date without the prior written consent of WCH, in its sole discretion.

**24.8 Minor Deficiencies**

- (a) In the event that Minor Deficiencies exist when Project Co gives the Substantial Completion Notice or the Phase 2A Completion Notice, the Independent Certifier, in consultation with Project Co and WCH, shall 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 or any supplementary Minor Deficiencies List in respect of the Phase 2A Works 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 WCH'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 in relation to the Substantial Completion Notice before the Substantial Completion Certificate is issued, but shall not withhold the Substantial Completion Certificate by reason solely that there are such Minor Deficiencies. The Independent Certifier must prepare a supplementary Minor Deficiencies List in respect of the Phase 2A Works in relation to the Phase 2A Completion Notice before the Phase 2A Completion Certificate is issued, but shall not withhold the Phase 2A Completion Certificate by reason solely that there are such Minor Deficiencies.
- (d) WCH may, in its sole discretion, waive any requirement for Substantial Completion or Phase 2A Completion, including with respect to relevant Equipment and Existing Equipment, and the failure to meet any such requirement shall constitute a Minor Deficiency.

**24.9 Rectification of Minor Deficiencies**

- (a) Project Co shall, in consultation with the WCH 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 any supplementary Minor Deficiencies List in respect of the Phase 2A Works or such other period as the Independent Certifier may specify in such 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.

**24.10 Failure to Rectify Minor Deficiencies**

- (a) If Project Co has failed to complete and rectify any Minor Deficiency specified in the Minor Deficiencies List or any supplementary Minor Deficiencies List in respect of the Phase 2A Works
  - (i) within 75 days of the issuance of such Minor Deficiencies List for all Minor Deficiencies where no time for rectification or completion has been specified by the Independent Certifier, or
  - (ii) within 30 days after the time for completion and rectification of any Minor Deficiency where such a time has been specified in such Minor Deficiencies List by the Independent Certifier,

WCH may:

- (iii) withhold from the next payment or payments otherwise due to Project Co a holdback amount that is [REDACTED]% of the amount estimated by the Independent Certifier for WCH to complete and rectify all such Minor Deficiencies (to the extent then outstanding), which holdback shall be held in an interest bearing account; and
  - (iv) engage others to perform the work necessary to complete and rectify any such Minor Deficiency, at the risk and cost of Project Co, and WCH may deduct such cost from the holdback amount and interest earned thereon.
- (b) Upon completion and rectification of each Minor Deficiency, WCH shall release to Project Co the amount of the holdback related to such Minor Deficiency. Upon completion and rectification of all Minor Deficiencies, WCH shall release to Project Co the then remaining amount of the holdback, together with all interest accrued thereon. Where WCH exercises its rights pursuant to Section 24.10(a)(iv), if the cost of such completion and rectification exceeds the amount of such holdback and interest, then Project Co shall reimburse WCH for all such excess cost.

**24.10B Phase 2A Works Standby Letter of Credit**

- (a) 2 Business Days prior to the Payment Commencement Date, Project Co shall deliver, or cause to be delivered, to WCH an irrevocable standby letter of credit in respect of the Phase 2A Works (the “**Phase 2A Works Standby Letter of Credit**”) substantially in the form of Schedule 29B – Phase 2A Works Standby Letter of Credit in the amount of **[REDACTED]**% of (i) the value of the cost of the Phase 2A Works plus (ii) the reasonable costs associated with the Phase 2A Commissioning and the Phase 2A Transition, all as determined by the Independent Certifier and provided to Project Co and WCH 5 Business Days prior to the Anticipated Substantial Completion Date. The Phase 2A Works Standby Letter of Credit shall secure Project Co’s performance of the Phase 2A Works (excluding the rectification of any Minor Deficiencies associated with the Phase 2A Works), the Phase 2A Commissioning and the Phase 2A Transition.
- (b) If Project Co fails to complete the Phase 2A Works (excluding the rectification of any Minor Deficiencies associated with the Phase 2A Works), the Phase 2A Commissioning and the Phase 2A Transition (collectively, the “**Phase 2A Secured Activities**”) by the Scheduled Final Completion Date and WCH does not waive such requirements, then (i) WCH may provide Notice to Project Co of Project Co’s failure to complete such Phase 2A Secured Activities and, if Project Co has not commenced the completion of all such Phase 2A Secured Activities within 5 Business Days after receipt of such Notice and is not continuing to diligently complete such Phase 2A Secured Activities at any time thereafter, then (ii) WCH may engage others to perform the work necessary to complete any such Phase 2A Secured Activities, at the risk and cost of Project Co, and draw on the Phase 2A Works Standby Letter of Credit, in full or in part, as reimbursement for such costs.
- (c) The Phase 2A Works Standby Letter of Credit (or such remainder portion thereof) shall be returned to Project Co within 5 Business Days following the date Phase 2A Completion is achieved.

**24.11 Final Completion Certificate**

- (a) Project Co shall give the Independent Certifier and the WCH 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 WCH 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 of the Phase 2A Works and the completion and rectification of all Interim Minor Deficiencies and all Minor Deficiencies and the time for completion of all seasonal work, together with Project Co’s opinion as to whether the conditions for issuance of the Final Completion Certificate have been satisfied.
- (c) WCH shall, within 5 Business Days after receipt of the Final Completion Notice, provide the Independent Certifier and Project Co with WCH’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 WCH's opinion pursuant to Section 24.11(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 WCH, and to issue to WCH 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 24.11(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 WCH 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 24.11(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.
- (g) If, within 30 days after the time specified in the Final Completion Notice for completion of seasonal work, Project Co has failed to complete such seasonal work, WCH may engage others to perform the work necessary to complete the seasonal work, at the risk and cost of Project Co. Project Co shall pay to WCH the costs incurred by WCH to complete such seasonal work within 10 Business Days of presentation of an invoice for such costs.

**24.12 Effect of Certificates/Use**

- (a) The issue of the Substantial Completion Certificate and the Final Completion Certificate, any taking over or use by WCH 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 any supplementary Minor Deficiencies List in respect of the Phase 2A Works; or
  - (ii) be construed as an approval by WCH of the Works or the way in which they have been carried out.

**24.13 Transition**

- (a) Subject to Section 24.13(b), Project Co shall, in cooperation with the Transition Subcommittee, plan, coordinate, manage and complete the physical transition to the Phase 2 Facility and within and between the Existing Facilities, including, without limitation, (i) the transfer and installation, as required, of Equipment and Existing Equipment in accordance with the Final Commissioning Program, and (ii) the physical transition of certain operations and activities of the Existing Facilities, including the associated contents of the Existing Facilities, in each case as set out in Schedule 36 – Redevelopment Transition Parameters (collectively, the “**Transition**”). For clarity, the Transition shall be carried out by Project Co in accordance with the applicable requirements of Schedule 11 – Design Quality Plan and Construction Quality Plan.
- (b) WCH shall be responsible for transporting patients, and any Equipment or Existing Equipment connected to patients, from the Existing Facilities to the Phase 2 Facility and within and between the Existing Facilities.
- (c) Project Co shall retain an experienced and reputable transition advisor with respect to the Interim Transition, the Transition and the Phase 2A Transition, whose appointment shall be approved by WCH, acting reasonably, with experience planning and completing no fewer than 3 hospital relocation assignments of similar size, scope and complexity (the “**Transition Advisor**”).

**24.13B Phase 2A Transition**

- (a) Subject to Section 24.13B(b), Project Co shall, in cooperation with the Transition Subcommittee, plan, coordinate, manage and complete the physical transition within and between the Existing Facilities, including, without limitation, (i) the transfer and installation, as required, of Equipment and Existing Equipment in accordance with the Final Commissioning Program, and (ii) the physical transition of certain operations and activities of the Existing Facilities within and between the Existing Facilities, including the associated

contents of the Existing Facilities, in each case as set out in Schedule 36 – Redevelopment Transition Parameters (collectively, the “**Phase 2A Transition**”). For clarity, the Phase 2A Transition shall be carried out by Project Co in accordance with the applicable requirements of Schedule 11 – Design Quality Plan and Construction Quality Plan.

- (b) WCH shall be responsible for transporting patients and any Equipment and Existing Equipment connected to patients within and between the Existing Facilities.

#### **24.14 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 Interim Transition, the Transition and the Phase 2A Transition in accordance with Sections 24A.12, 24.13 and 24.13B as applicable.
- (c) The primary role of the Transition Subcommittee shall be to oversee and coordinate the Interim Transition, the Transition and the Phase 2A Transition in a timely and efficient manner and in accordance with the Works Schedule, the Interim Commissioning Program and the Final Commissioning Program.
- (d) The Transition Subcommittee shall be responsible for receiving and reviewing all matters related to the Interim Transition, the Transition and the Phase 2A 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 Final Completion Date.

## **25. PROJECT CO SERVICE OBLIGATIONS**

### **25.1 Overall Responsibility**

- (a) Project Co shall, following the Interim 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.

## **25.2 Commencement of Services**

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

## **25.3 Coordination and No Disruption to WCH**

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

## **25.4 No Closure of Facility**

- (a) During the Operational Term, and notwithstanding any Relief Event or event of Force Majeure, Project Co shall not close all or any portion of the Facility in any circumstances other than as directed or approved by WCH in writing, acting reasonably.

## **25.5 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.

## **26. MAINTENANCE**

### **26.1 Maintenance Plans**

- (a) No later than 90 days prior to the Interim Completion Date, Project Co shall submit to the WCH Representative for review pursuant to Schedule 10 - Review Procedure, the Scheduled Maintenance Plan for the first Contract Year and the Five Year Maintenance Plan for the first 5 Contract Years, and shall update such plans as provided for in the Output Specifications annually thereafter.
- (b) Project Co shall perform the Maintenance Work as identified in the Scheduled 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 Scheduled Maintenance Plan.

**26.2 Revisions to Scheduled Maintenance Plan**

- (a) No later than 30 days prior to the commencement of any calendar quarter, Project Co may submit to the WCH Representative a revision to the applicable Scheduled Maintenance Plan for the Contract Year in which the relevant calendar quarter year 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 Scheduled Maintenance Plan as so amended shall become the Scheduled Maintenance Plan in respect of that calendar quarter year.
- (b) Without limiting the comments that may be made pursuant to Schedule 10 - Review Procedure in relation to the submission of any Scheduled Maintenance Plan, WCH, acting reasonably, may comment “**Reviewed as Noted**” or “**Rejected**” on any revision to any Scheduled Maintenance Plan pursuant to this Section 26.2 on the grounds that:
  - (i) performing the Scheduled 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 Scheduled Maintenance;
  - (ii) performing the Scheduled 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 Scheduled Maintenance; or
  - (iii) the period for performing the Scheduled Maintenance would (on the balance of probabilities) exceed the period reasonably required for the relevant work.

**26.3 WCH Change in Timing**

- (a) Notwithstanding the establishment of or entitlement to proceed with any Scheduled Maintenance Plan, the WCH Representative may, at any time and from time to time, require Project Co to accelerate or defer any Scheduled Maintenance by giving written notice to Project Co not less than 15 Business Days prior to the scheduled date for performing such Scheduled Maintenance, which notice shall set out the time and periods at or during which WCH requires the Scheduled Maintenance to be performed.
- (b) Within 5 Business Days after receipt by Project Co of a notice referred to in Section 26.3(a), Project Co shall notify WCH 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**”). WCH shall, within 5 Business Days after

receipt by WCH 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 Scheduled Maintenance. If WCH does not respond within 5 Business Days, the request shall be deemed to have been withdrawn. WCH 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.

#### **26.4 Unscheduled Maintenance Work**

- (a) If, in circumstances other than an Emergency, the need arises for Maintenance Work (excluding any work of a *de minimis* nature in respect of which this Section 26.4 does not apply) that is not scheduled to be carried out as part of the Scheduled Maintenance (“**Unscheduled Maintenance Work**”), Project Co shall promptly notify the WCH Representative of the proposed commencement date, the proposed hours of work and estimated duration of the Unscheduled Maintenance Work.
- (b) Project Co shall be entitled to perform the Unscheduled Maintenance Work at the time set out in its notice unless WCH, acting reasonably and for purposes related to the provision of Clinical Services or to patient safety, requires Project Co to defer or accelerate such Unscheduled Maintenance Work. For greater certainty, Project Co shall not be entitled to recover from WCH any costs or losses incurred by Project Co as a consequence of any deferral or acceleration of Unscheduled Maintenance Work, and nothing in this Section 26.4 shall prevent WCH from making any adjustments to the Monthly Service Payments in accordance with Schedule 20 - Payment Mechanism.

#### **26.5 Emergency Maintenance Work**

- (a) If, as a result of an Emergency, the need arises for Unscheduled Maintenance Work, Project Co may perform such Unscheduled Maintenance Work, provided that Project Co shall notify the WCH 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 Unscheduled Maintenance Work.
- (b) Project Co shall use commercially reasonable efforts to minimize the duration of such Unscheduled Maintenance Work and its impact upon the performance of the Hospital Services. Project Co acknowledges and agrees that Unscheduled 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 26.5 shall prevent WCH from making any adjustments to the Monthly Service Payments in accordance with Schedule 20 - Payment Mechanism.

#### **26.6 Other Maintenance Work**

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

**26.7 Plant Services Information Management System**

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

**26.8 Performance Audits**

- (a) If WCH reasonably believes that Project Co is in breach of its obligations with respect to Maintenance Work, including:
  - (i) under this Section 26;
  - (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 WCH may cause to be performed, by an arm's length consultant appointed by WCH, a performance audit, inspection and survey of the Facility 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) WCH shall notify Project Co in writing at least 10 Business Days prior to the date that WCH wishes to cause a Performance Audit to be undertaken. WCH 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 5 Business Days prior to the date originally requested by WCH, on the basis that performing the Performance Audit on the date originally requested by WCH would materially prejudice Project Co's ability to provide the Project Co Services.
- (c) When causing any Performance Audit to be undertaken, WCH 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 26.8(d) applies, shall be borne by WCH. Project Co shall provide WCH, at no additional cost or charge, with any reasonable assistance required by WCH 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, WCH shall:
  - (i) provide Project Co with a written notice of non-compliance;
  - (ii) 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 30.
- (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 WCH within a reasonable period of time specified by WCH, and be responsible for any costs incurred in performing such rectification or Maintenance Work; and
  - (ii) pay or reimburse WCH for the costs of the Performance Audit and any administrative costs incurred by WCH in relation to the Performance Audit.
- (f) Nothing in this Section 26.8 shall limit or restrict WCH's rights hereunder to perform any other performance audits, inspections and surveys at its own cost and expense.
- (g) WCH'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.

**27. HUMAN RESOURCES**

**27.1 Project Co Covenants with respect to Affected Hospital Employees**

- (a) Project Co agrees:
  - (i) to employ, or to cause a Project Co Party to employ, the Affected Unionized Employees from and after the Transfer Date;
  - (ii) 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 Agreements, and to enter into and execute, or to cause the relevant Project Co Party to enter into and execute, separate collective agreements with the bargaining agents of the Affected Unionized Employees to be effective from and after the Transfer Date, which agreements shall contain the terms and conditions of the Collective Agreements which are in effect and applicable to the Affected Unionized Employees, as amended; and
  - (iii) 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 27 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 27 and Schedule 17 - Employee Transition, Project Co will be in breach of this Project Agreement.

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

- (a) Subject to Sections 27.2(b), 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 seniority and all other entitlements under the terms of the Collective Agreements 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 no later than 90 Business Days prior to the Transfer Date.
- (c) 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 Agreements 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 WCH'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 27.2(c), any reference to a Transferred Employee shall include such Transferred Employee and his or her dependents under the relevant benefit plans.

- (d) Subject to Schedule 17 - Employee Transition, each Transferred Employee shall cease to participate in and accrue benefits under WCH'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.

**27.3 Transfer of Employees**

- (a) The mechanics of the transfer of the Affected Hospital Employees shall be governed by Schedule 17 - Employee Transition. The transfer of the Affected Hospital Employees shall occur on the Transfer Date.

**27.4 Admittance of Personnel**

- (a) WCH 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 WCH, is likely to have an adverse effect on the performance of the Hospital Services or who, in the reasonable opinion of WCH, 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 WCH to ensure the safety and well-being of persons at the Site and/or the Facility.

**27.5 Confirmation of Action**

- (a) Any action taken under Section 27.4 shall promptly be confirmed by WCH to Project Co and, for greater certainty, shall not relieve Project Co of any of its obligations under this Project Agreement.

**27.6 Notification of Personnel**

- (a) If and when so requested by WCH, 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 WCH, specifying the capacities in which those persons are concerned with this Project Agreement and, subject to Applicable Law or the terms of the Collective Agreements, giving such other particulars as WCH may reasonably require.

**27.7 Finality as to Admission**

- (a) Any decision of WCH made pursuant to Section 27.4 shall be final and conclusive.

**27.8 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 related to labour, employment and/or human resources.

**27.9 Change in Hospital HR Policy**

- (a) WCH 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 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 WCH, 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, WCH 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, WCH shall initiate the procedure set out in Schedule 22 - Variation Procedure as soon as reasonably practicable. If it does not agree, WCH 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.

**27.10 Waiver of Policies**

- (a) WCH may, in its sole discretion, notify Project Co that Project Co shall not be obliged, for any period of time specified by WCH 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 27.9) result in a Variation, such change shall not take effect as a Variation in accordance with Schedule 22 - Variation Procedure.

**27.11 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.

**27.12 Convictions**

- (a) Project Co (to the extent permitted by Applicable Law and the terms of the Collective Agreements) 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.

**27.13 Effect of Convictions**

- (a) Project Co (to the extent permitted by Applicable Law and the terms of the Collective Agreements) 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 WCH, in its sole discretion.

**27.14 Notification of Convictions**

- (a) To the extent permitted by Applicable Law and the terms of the Collective Agreements, Project Co shall ensure that WCH 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 terms of the Collective Agreements or otherwise authorizing the disclosure of such information to WCH as contemplated in this Section 27.

**27.15 Disciplinary Action**

- (a) WCH, 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 WCH 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 Agreements, and shall advise WCH in writing of the outcome of any disciplinary action taken in respect of such person.

**27.16 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 relating to the Project Operations (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 Agreements, 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 directly issued to WCH and all Project Co Parties.
- (b) If WCH provides any comments on, or requests any amendments, modifications or changes to, the policies or procedures maintained pursuant to Section 27.16(a), Project Co shall consider such comments and amendments, modifications and changes and discuss them with WCH. Project Co shall incorporate those comments, amendments, modifications and changes with which it agrees, acting reasonably, to the extent that such comments, amendments, modifications or changes comply with Applicable Laws.

**27.17 Management Organizations**

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

**27.18 Health Screening**

- (a) Project Co shall ensure (to the extent permitted by Applicable Law and the terms of the Collective Agreements) 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 the health of other persons.

- (b) Project Co shall also ensure (to the extent permitted by Applicable Law and the terms of the Collective Agreements) 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 WCH during the currency of this Project Agreement, when reasonably requested to do so by WCH, as required to ensure that WCH is able to comply with Applicable Law and in respect of the health and well-being of any WCH 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 WCH Party, patients, volunteers and visitors to the Facility.

**27.19 Retention of Screening Records**

- (a) Project Co agrees that (to the extent permitted by Applicable Law and the terms of the Collective Agreements) 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 27 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 Agreements) for inspection by WCH upon request by the WCH 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 Agreements).

**27.20 Report on Screening**

- (a) Project Co shall (to the extent permitted by Applicable Law and the terms of the Collective Agreements) inform WCH, or ensure that WCH is informed, upon reasonable request by the WCH Representative, of the outcome of each and every medical screening examination or treatment referred to in Section 27.18 with reference to the purpose of the screening, examination or treatment concerned and shall provide WCH, or ensure that WCH is provided, with all such other information referred to in Section 27.18, subject to requirements of Applicable Law and the terms of the Collective Agreements.

**27.21 Health Risks**

- (a) The WCH 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 27.20 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 WCH Party, patients, volunteers or visitors to the Facility, and such action, which shall forthwith be confirmed in writing by WCH, 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.

**27.22 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.

**27.23 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.

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

- (a) WCH represents that, prior to the Transfer Date and subject to the terms of the Collective Agreements, it will notify Project Co of any changes or pending changes to the terms and conditions of employment of the Affected Unionized Employees.

**28. GOODS, EQUIPMENT, CONSUMABLES AND MATERIALS**

**28.1 Standards**

- (a) Project Co shall cause the goods, equipment, consumables and materials used or supplied by it or any Project Co Party 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 Output Specifications and Good Industry Practice;
  - (ii) of the type specified in the Output Specifications, if applicable; and
  - (iii) in compliance with Applicable Law,

and shall, as soon as practicable after receiving a request from the WCH Representative, supply to the WCH Representative evidence to demonstrate its compliance with this Section 28.1(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.

**28.2 Hazardous Substances and Materials**

- (a) Except to the extent required pursuant to the Output Specifications, Project Co shall not bring, install, keep, maintain or use in or on the Facility, or cause, authorize or permit any Project Co Party 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 WCH 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 are 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 WCH and unless Project Co has complied with Applicable Law.
- (c) Where applicable, Project Co shall comply with any applicable WCH policies and 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 WCH, 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) WCH shall make available to Project Co, on request by Project Co, a list of Hazardous Substances prepared by WCH 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 Applicable Law, Good Industry Practice, properly and securely labelled 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 WCH 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 28.2 applies from and after Interim 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.

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

- (a) WCH shall notify Project Co of any proposed change in any applicable WCH 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 Section 35) 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 WCH, in writing, that a change in any applicable WCH 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 Section 35) 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, WCH 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, WCH shall initiate the procedure set out in Schedule 22 - Variation Procedure as soon as reasonably practicable. If it does not agree, WCH 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 WCH 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.

## 29. MONITORING

### 29.1 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 WCH, provide the WCH Representative with relevant particulars of any aspects of Project Co's performance which fail to meet the requirements of this Project Agreement.
- (b) WCH 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.

## 29.2 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.

## 29.3 Warning Notices

- (a) Without prejudice to WCH's rights under Section 42 and any other rights under this Project Agreement, if Project Co accrues, during the Interim Period, more than:

- (i) [REDACTED] Failure Points in respect of Plant Services, Help Desk/Central Dispatch Services, General Management Services, Sustainability Services and Utilities Management Services;
- (ii) [REDACTED] Failure Points in respect of Roads and Grounds Maintenance Services;
- (iii) [REDACTED] Failure Points in respect of Security and Surveillance Services; or
- (iv) [REDACTED] Failure Points in respect of Retail Property Management Services;

in any 1 Payment Period then WCH 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".

- (b) Without prejudice to WCH's rights under Section 42 and any other rights under this Project Agreement, if Project Co accrues, during the period post Substantial Completion, more than:

- (i) [REDACTED] Failure Points in respect of Plant Services, Help Desk/Central Dispatch Services, General Management Services, Sustainability Services and Utilities Management Services;
- (ii) [REDACTED] Failure Points in respect of Roads and Grounds Maintenance Services;
- (iii) [REDACTED] Failure Points in respect of Security and Surveillance Services;
- (iv) [REDACTED] Failure Points in respect of Retail Property Management Services; or
- (v) [REDACTED] Failure Points in respect of Parking Management Services;

in any 1 Payment Period then WCH may give 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".

**29.4 Monitoring Notices**

(a) Without prejudice to WCH's rights under Section 42 and any other rights under this Project Agreement, if Project Co accrues, during the Interim Period, more than:

- (i) [REDACTED] Failure Points in respect of Plant Services, Help Desk/Central Dispatch Services, General Management Services, Sustainability Services and Utilities Management Services;
- (ii) [REDACTED] Failure Points in respect of Roads and Grounds Maintenance Services;
- (iii) [REDACTED] Failure Points in respect of Security and Surveillance Services; or
- (iv) [REDACTED] Failure Points in respect of Retail Property Management Services;

in any rolling 3 Payment Periods, WCH 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 WCH 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) Without prejudice to WCH's rights under Section 42 and any other rights under this Project Agreement, if Project Co accrues, during the period Post Substantial Completion, more than:

- (i) [REDACTED] Failure Points in respect of Plant Services, Help Desk/Central Dispatch Services, General Management Services, Sustainability Services and Utilities Management Services;
- (ii) [REDACTED] Failure Points in respect of Roads and Grounds Maintenance Services;
- (iii) [REDACTED] Failure Points in respect of Security and Surveillance Services;
- (iv) [REDACTED] Failure Points in respect of Retail Property Management Services; or
- (v) [REDACTED] Failure Points in respect of Parking Management Services;

in any rolling 3 Payment Periods, WCH may, by 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 WCH 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.

- (c) WCH may give a Warning Notice pursuant to Section 29.3 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.
- (d) 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 WCH was not entitled to give the Monitoring Notice, Project Co shall, within 3 Business Days of the receipt of the Monitoring Notice, notify WCH 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 WCH a notice under Section 29.4(d)(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 WCH'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, WCH may perform such monitoring save where Project Co, acting in good faith, is pursuing a Dispute pursuant to Section 29.4(d)(iii);
  - (v) if it is determined in accordance with Schedule 27 - Dispute Resolution Procedure that WCH was entitled to give the applicable Monitoring Notice, Project Co shall bear its own costs and reimburse WCH for any reasonable costs and expenses incurred by or on behalf of WCH in relation to the giving of such Monitoring Notice; and
  - (vi) if it is determined in accordance with Schedule 27 - Dispute Resolution Procedure that WCH was not entitled to give the applicable Monitoring Notice, WCH 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.
- (e) In respect of any Monitoring Notice, if Project Co shall have demonstrated to the reasonable satisfaction of WCH 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 WCH 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.

- (f) If it is determined in accordance with Schedule 27 - Dispute Resolution Procedure that WCH was not entitled to give any Monitoring Notice, WCH 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.

### 30. WCH'S REMEDIAL RIGHTS

#### 30.1 Exercise of Remedial Rights

- (a) WCH may exercise all rights set out in this Section 30 at any time and from time to time if:

- (i) WCH, 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, safety or security 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 WCH's ability to provide the Hospital Services; or
- (D) may potentially compromise WCH'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 30.1(a)(i)(A), 30.1(a)(i)(B) or 30.1(a)(i)(C), WCH shall not exercise its rights under this Section 30 unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of notice from WCH 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 30.1(a)(i)(A), 30.1(a)(i)(B) and 30.1(a)(i)(C) actually occur; and

- (F) in respect of Section 30.1(a)(i)(D), WCH shall not exercise its rights under this Section 30 unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of notice from WCH 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 accrues, in any 1 Payment Period during the Interim Period, more than:
  - (A) **[REDACTED]** Failure Points in respect of Plant Services, Help Desk/Central Dispatch Services, General Management Services, Sustainability Services and Utilities Management Services;
  - (B) **[REDACTED]** Failure Points in respect of Roads and Grounds Maintenance Services;
  - (C) **[REDACTED]** Failure Points in respect of Security and Surveillance Services; or
  - (D) **[REDACTED]** Failure Points in respect of Retail Property Management Services;
- (iii) Project Co accrues, in any 1 Payment Period during the period post Substantial Completion, more than:
  - (A) **[REDACTED]** Failure Points in respect of Plant Services, Help Desk/Central Dispatch Services, General Management Services, Sustainability Services and Utilities Management Services;
  - (B) **[REDACTED]** Failure Points in respect of Roads and Grounds Maintenance Services;
  - (C) **[REDACTED]** Failure Points in respect of Security and Surveillance Services;
  - (D) **[REDACTED]** Failure Points in respect of Retail Property Management Services; or
  - (E) **[REDACTED]** Failure Points in respect of Parking Management Services;
- (iv) 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;

- (v) if, pursuant to Section 26.8, 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 26.8(e)(i);
- (vi) a labour dispute materially affects or can reasonably be expected to materially affect the Project Operations or the Hospital Services;
- (vii) WCH has received a notice under the Service Provider's Direct Agreement that entitles WCH to exercise step-in rights thereunder; or
- (viii) Project Co has failed to comply with any written direction issued by or on behalf of WCH's board of directors.

### **30.2 Emergency**

- (a) Notwithstanding that Project Co is not in breach of its obligations under this Project Agreement, WCH may exercise all of the rights set out in this Section 30 at any time and from time to time following Financial Close if WCH, acting reasonably, considers the circumstances to constitute an Emergency.

### **30.3 Rectification**

- (a) Without prejudice to WCH's rights under Section 42 and any other rights under this Project Agreement, in any of the circumstances set out in Sections 30.1 or 30.2, WCH may, by written notice, require Project Co to take such steps as WCH, acting reasonably, considers necessary or expedient to mitigate, rectify or protect against such circumstance, including, if applicable, the termination and replacement of each Project Co Party, and Project Co shall use commercially reasonable efforts to comply with WCH's requirements as soon as reasonably practicable.
- (b) If WCH gives notice to Project Co pursuant to Section 30.3(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 WCH 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 WCH to mitigate, rectify and protect against such circumstances that WCH 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 WCH, acting reasonably, shall think fit,

then WCH 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 each Project Co Party, 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 39, including Section 39.1(a)(v) and Section 39.2, shall apply.

- (c) Notwithstanding the foregoing provisions of this Section 30.3, in the event of an Emergency, the notice under Section 30.3(a) shall be given as promptly as possible having regard to the nature of the Emergency and WCH may, prior to Project Co's confirmation under Section 30.3(b)(i), take such steps as are appropriate having regard to the nature of the Emergency.
- (d) Where WCH considers it to be necessary to do so, the steps which WCH may take pursuant to this Section 30.3 subsequent to the provision of the notice under Section 30.3(a) unless the notice is given at a later time as provided in Section 30.3(c), may, at WCH'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 39, including Section 39.1(a)(v) and Section 39.2, shall apply, but such suspension shall be only for so long as, as applicable:
  - (i) the circumstances referred to in Section 30.1 or 30.2 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 WCH that, notwithstanding such circumstances, Project Co has taken such steps, including, if applicable, the termination and replacement of each Project Co Party, as are required pursuant to this Section 30.3 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.

#### **30.4 Costs and Expenses**

- (a) Subject to WCH's obligations pursuant to Sections 30.5 and 30.6:
  - (i) Project Co shall bear all costs and expenses incurred by Project Co in relation to the exercise of WCH's rights pursuant to this Section 30; and
  - (ii) Project Co shall reimburse WCH for all reasonable costs and expenses incurred by WCH in relation to the exercise of WCH's rights pursuant to this Section 30.

#### **30.5 Reimbursement Events**

- (a) In this Section 30.5, 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 WCH or a WCH Party;
  - (ii) a labour dispute involving employees of WCH or any WCH 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 WCH either takes steps itself or requires Project Co to take steps in accordance with this Section 30 as a result of a Reimbursement Event:
- (i) WCH shall reimburse Project Co for the reasonable costs and expenses incurred by Project Co in relation to the exercise of WCH's rights pursuant to this Section 30 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 30.5(c), WCH shall bear all costs and expenses incurred by WCH in relation to the exercise of WCH's rights pursuant to this Section 30.
- (c) If, in exercising its rights pursuant to this Section 30, WCH performs any part of the Project Co Services either itself or by engaging others, WCH shall be entitled to deduct from any Monthly Service Payment the reasonable cost of performing such Project Co Services. If WCH makes such a deduction, then Project Co shall be relieved of its reimbursement obligations under Section 30.4(a)(ii) up to the amount that is equal to that deduction.

**30.6 Reimbursement if Improper Exercise of Rights**

- (a) If WCH exercises its rights pursuant to this Section 30, but WCH was not entitled to do so, WCH 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 WCH issued as a result of WCH having exercised such rights.
- (b) Project Co acknowledges and agrees that Project Co has no right to require a determination of whether or not WCH is entitled to exercise its rights pursuant to this Section 30 before taking any such action that WCH may require and Project Co shall comply with all of WCH's requirements. Only concurrently with or after complying with WCH's requirements shall Project Co be entitled to refer any Dispute for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.

31A. BENCHMARKING AND MARKET TESTING

**31A.1 Benchmarking and Market Testing**

(a) [Intentionally Deleted]

31. PAYMENT

**31.1 Lump Sum Payments**

- (a) WCH shall pay to Project Co the Interim Completion Payment plus, for clarity, applicable HST on the Interim Payment Commencement Date.
- (b) Subject to the delivery by Project Co of the Phase 2A Works Standby Letter of Credit 2 Business Days prior to the Payment Commencement Date, WCH shall pay to Project Co the Substantial Completion Payment plus, for clarity, applicable HST on the Payment Commencement Date.
- (c) On the later of the Interim Payment Commencement Date and the date on which Project Co has completed the procurement, installation and commissioning of all Phase 1 Equipment in accordance with Section 21, WCH shall pay to Project Co the Phase 1 Equipment Procurement Fee.
- (d) On the later of the Payment Commencement Date and the date on which Project Co has completed the procurement, installation and commissioning of all Phase 2 Equipment in accordance with Section 21, WCH shall pay to Project Co the Phase 2 Equipment Procurement Fee.
- (e) On the later of the Interim Payment Commencement Date and the date on which Project Co has completed the Interim Transition in accordance with Section 24A, WCH shall pay to Project Co the Interim Transition Services Fee.
- (f) On the later of the Payment Commencement Date and the date on which Project Co has completed the Transition in accordance with Section 24.13, WCH shall pay to Project Co the Transition Services Fee.
- (g) On the date on which Project Co has completed the Phase 2A Transition in accordance with Section 24.13B, WCH shall pay to Project Co the Phase 2A Transition Services Fee.
- (h) On the Interim Payment Commencement Date and in accordance with the Existing Facilities Services Management Agreement, WCH shall pay to Project Co the Interim Management Services Fee for the provision of management services under the Existing Facilities Services Management Agreement by Project Co.

**31.2 Monthly Service Payments**

- (a) Subject to and in accordance with this Project Agreement, including this Section 31 and Schedule 20 - Payment Mechanism, WCH shall pay to Project Co the all-inclusive Interim Monthly Service Payments and the Monthly Service Payments, as applicable, for the performance of all of the Project Operations. It is a condition to the payment of the first Monthly Service Payment that Project Co delivers to WCH the Phase 2A Works Standby Letter of Credit 2 Business Days prior to the Payment Commencement Date to secure the completion by Project Co of the Phase 2A Works by the Scheduled Final Completion Date.

**31.3 Payment Adjustments**

- (a) Project Co acknowledges and agrees that:
  - (i) the amount of any Interim Monthly Service Payment or Monthly Service Payment, as applicable, 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 WCH 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.

**31.4 Payment Commencement**

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

**31.5 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.

**31.6 Invoicing and Payment Arrangements**

- (a) Within 5 Business Days following the end of each Payment Period, Project Co shall issue to WCH an invoice for the amount of the Interim Monthly Service Payment or the Monthly Service Payment, as applicable, owing by WCH 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 WCH 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 Interim Monthly Service Payment or the Monthly Service Payment, as applicable, 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 WCH;
  - (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 WCH under this Project Agreement;
  - (v) any amount owing to Project Co under this Project Agreement; and
  - (vi) the net amount owing by WCH to Project Co, or by Project Co to WCH, as applicable.
- (d) HST shall be shown separately on all invoices from Project Co, together with Project Co's HST registration number.
- (e) Each monthly invoice delivered during the period from the Interim Completion Date until 45 days following the Final Completion Date shall include up-to-date copies of the parcel registers for the Site.
- (f) Upon agreement of the Parties, the form of invoice may be changed from time to time.

- (g) The WCH Representative shall review each invoice submitted in accordance with this Section 31.6, and, within 5 Business Days of receiving such invoice, WCH shall pay the amount stated in such invoice. Any such payment shall be subject to adjustment pursuant to Section 31.6(k).
- (h) WCH 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, WCH shall not be obligated to pay an invoice delivered by Project Co after the second Payment Period following the Interim Payment Commencement Date until Project Co has delivered the Payment Adjustment Report referred to in Section 31.6(i) for the previous Payment Period. In the event that Project Co delivers any Payment Adjustment Report later than the stipulated date in Section 31.6(i), WCH'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 WCH.
- (i) Within 5 Business Days following the end of each Payment Period, Project Co shall also submit to WCH:
  - (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 Interim Monthly Service Payment or Monthly Service Payment, as applicable, determined by Project Co to be owing by WCH to Project Co in respect of the Payment Period just ended and the amount that was paid by WCH 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.
- (j) 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.
- (k) Within 10 Business Days of receipt by WCH of the Payment Adjustment Report, the WCH Representative shall:
  - (i) determine and advise Project Co that the Payment Adjustment Report is approved by WCH, 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 WCH 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 WCH is reasonably able to quantify it) which WCH disputes and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. In such event, WCH shall withhold payment of any disputed amount pending agreement or determination of Project Co's entitlement to the disputed amount in accordance with Section 31.9.
- (l) In respect of all invoices issued by Project Co for payment from and after the Interim Payment Commencement Date through to the Payment Period ending no less than 45 days following the date of the Final Completion Certificate, Project Co shall cause its solicitors to:
- (i) subsearch title to the Site as at noon of the day that each payment is due; and
  - (ii) promptly send to WCH
    - (A) a Notice, and
    - (B) a statutory declaration from an officer of Project Coconfirming no liens pursuant to the CLA have been registered against the Site in connection with the Works.

Project Co acknowledges that if a claim for lien has been registered against the Site, the provisions of Section 15.3 shall apply.

**31.7 Electronic Invoicing**

- (a) Project Co shall cooperate with the reasonable requirements of WCH'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 WCH's information systems.

**31.8 Final Payment Periods**

- (a) At the beginning of each of the final 3 Payment Periods immediately prior to the Expiry Date, WCH shall estimate, acting reasonably, the adjustments to the Monthly Service Payment for each such Payment Period. WCH 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 WCH of the applicable Payment Adjustment Report for each of the final 3 Payment Periods, the WCH Representative shall either:
  - (i) determine and advise Project Co that the Payment Adjustment Report is approved by WCH and perform a reconciliation between the amount payable based on such Payment Adjustment Report and the amount WCH previously paid in respect of the

applicable Payment Period. Based on such reconciliation, either WCH or Project Co shall pay to the other Party the amount properly owing in accordance with such reconciliation; or

- (ii) if WCH 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 WCH is reasonably able to quantify it) which WCH disputes and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. In such event, the WCH Representative shall perform a reconciliation between the undisputed amount payable based on such Payment Adjustment Report and the amount WCH previously paid in respect of the applicable Payment Period. Based on such reconciliation, either WCH or Project Co shall pay to the other Party the amount properly owing in accordance with such reconciliation, provided that WCH shall withhold payment of any disputed amount pending agreement or determination of Project Co's entitlement to the disputed amount in accordance with Section 31.9.

### **31.9 Disputes**

- (a) If WCH, 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 WCH is reasonably able to quantify it) which WCH 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 WCH that is determined not to have been payable shall be paid forthwith by Project Co to WCH, together with interest on such amount calculated in accordance with Section 31.12 on the basis that the due date was the date of the overpayment by WCH and any amount which has been withheld by WCH that is determined to have been payable shall be paid forthwith by WCH to Project Co, together with interest on such amount calculated in accordance with Section 31.12 on the basis that the due date was the date upon which such amount became payable to Project Co.

### **31.10 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, or cause to be maintained, all holdbacks required pursuant to the CLA 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.



**31.11 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.

**31.12 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.

**31.13 Set-Off**

- (a) The Parties agree that their rights of set-off at law or in equity are limited to the right of:
  - (i) WCH 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 53) which are due to WCH by Project Co pursuant to the terms of this Project Agreement; and
  - (ii) Project Co to set off against any amounts otherwise due to WCH pursuant to the terms of this Project Agreement, any amounts (including, without limitation, any amounts payable in accordance with Section 53) which are due to Project Co by WCH pursuant to the terms of this Project Agreement.

**31.14 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.

**31.15 Audit of Performance of Project Operations**

- (a) Without limiting WCH's rights and Project Co's obligations pursuant to Section 34.2, at any time and from time to time until 180 days after the Termination Date, WCH may give notice to Project Co requiring an audit of any matter relating to performance of the Project Operations and payments by or to WCH 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) WCH shall appoint an auditor to perform and complete such audit at WCH's cost and expense and pursuant to terms of reference determined by WCH.
- (c) Within a reasonable time following receipt of a notice referred to in Section 31.15(a), Project Co shall make available to WCH's auditor, any Payment Adjustment Reports, and any other records, reports, information, documents or data relating to performance and payments.
- (d) WCH shall notify Project Co of the results of the audit, and if WCH'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 WCH, reimburse WCH 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 WCH, Project Co shall reimburse WCH for the amount of such overpayment, together with interest thereon at the Default Interest Rate from the date of each such overpayment; and
  - (iii) where the inaccuracy, incompleteness or incorrectness has resulted in any underpayment, whether or not material, by WCH, WCH shall pay Project Co the amount of such underpayment, together with interest thereon at the Default Interest Rate from the date of each such underpayment.

### **31.16 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.

**32. TAXES****32.1 Taxes**

- (a) All amounts specified in this Project Agreement are expressed exclusive of HST but inclusive of all other Taxes. Except as specified in Section 32.1(c), applicable HST shall be paid simultaneously with any amount due hereunder, including, for clarity, any compensation on termination.
- (b) WCH 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 Interim Completion and Substantial Completion each occur, WCH shall pay to Project Co all HST payable in accordance with paragraph 168(3)(c) of the *Excise Tax Act* (Canada) in respect of the construction of the Phase 1 Facility and the Phase 2 Facility, as applicable, (if any) for remittance to the Canada Revenue Agency, which amount, if any, shall be set out in an invoice issued by Project Co to WCH upon the occurrence of Interim Completion and again upon the occurrence of Substantial Completion and shall reflect the capital cost of construction of the Phase 1 Facility and the Phase 2 Facility, as applicable, set out in the Financial Model, which shall serve as a reasonable estimate of the full consideration for such Interim Completion and Substantial Completion respectively. For clarity, the amount of each payment made by WCH to Project Co pursuant to paragraph 168(3)(c) of the *Excise Tax Act* (Canada) does not include any HST amounts already paid by WCH to Project Co on the Interim Completion Payment and the Substantial Completion Payment.
- (d) Subject to Section 32.1(e), in each Interim Monthly Service Payment and Monthly Service Payment invoice provided by Project Co to WCH, Project Co shall show on a distinct line of the invoice the Monthly Previously Paid HST Amount used to determine the amount of unpaid HST payable by WCH on such Interim Monthly Service Payment or Monthly Service Payment, as the case may be. For clarity, a Monthly Previously Paid HST Amount must be credited to WCH on each Interim Monthly Service Payment and Monthly Service Payment invoice.
- (e) WCH shall pay all applicable HST properly payable in accordance with the *Excise Tax Act* (Canada) by WCH upon and in connection with payments by WCH to Project Co under this Project Agreement.

**32.2 Changes in Scope of HST**

- (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 HST as at the date of this Project Agreement becomes subject to HST, WCH will pay to Project Co the amount of such HST as may be exigible from time to time thereafter in connection with the provision of such goods or services by Project Co.

**32.3 Intentionally Deleted**

**32.4 Changes in Recoverability of Tax Credits**

- (a) WCH 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 WCH 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.
- (b1) WCH 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 that such Irrecoverable Tax results from the application of Section 236.01 of the *Excise Tax Act* (Canada).
- (b) For the purposes of this Section 32.4, the term “**Irrecoverable Tax**” means HST or an irrecoverable sales tax levied by the Province in lieu of all or a portion of HST incurred by Project Co in respect of the supply of any good or service to WCH 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 HST.
- (c) For the purposes of this Section 32.4, the term “**Recoverable Tax**” means HST incurred by Project Co in respect of the supply of any good or service to WCH 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 HST.

**32.5 Information and Assistance Provided by Project Co**

- (a) Project Co shall, at WCH's request and cost, assist WCH in applying for and obtaining all remissions and credits of HST to which WCH is entitled.
- (b) WCH 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 WCH's cost, assist WCH in making any applications for such global or general exemption, waiver, remission or refund and shall provide WCH with such documentation as WCH may reasonably require to support such application and, in any event, shall provide such consent as WCH may require. Any exemption, waiver, remission, refund or other recovery of Taxes obtained by WCH through such application shall accrue to the sole benefit of WCH.
- (c) Project Co will provide WCH with any information reasonably requested by WCH from time to time in relation to the HST chargeable in accordance with this Project Agreement and payable by WCH to Project Co from time to time.

**32.6 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 WCH's prior written consent, which consent may be withheld in WCH's sole discretion.

**32.7 Taxes – General**

- (a) Project Co shall not, without the prior written consent of WCH (which consent may be withheld in its sole discretion), undertake any action or transaction that, if undertaken, would cause, WCH to have (or result in WCH 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.

**32.8 Taxes – Indemnity**

- (a) If (i) Project Co becomes a Non-Resident, or (ii) WCH 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 WCH under the Project Agreement or under any of the Project Documents, then WCH shall be entitled to make any applicable deductions or withholdings required by Applicable Law 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; or (B) WCH 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 WCH 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) WCH 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 WCH under the Project Agreement or under any of the Project Documents, Project Co shall, in each case, indemnify and hold harmless WCH for (A) the full amount of all Taxes (“**Indemnifiable Taxes**”) that arise, are imposed on or are required to be paid by WCH in respect of any amounts paid or credited by WCH 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 WCH 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 WCH 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 WCH shall be conclusive evidence, absent manifest error, of the amount due from Project Co to WCH. WCH shall be entitled to exercise its rights of set-off under Section 31.13 against any amounts owing under this indemnification.

### 33. FINANCIAL MODEL

#### 33.1 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 the purposes of this Project Agreement, and shall enter into an agreement with the Custodian substantially in the form of Schedule 3 - Custody Agreement.

#### 33.2 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) to WCH and the Custodian to be held in custody on terms to be agreed by the Parties.
- (b) Following the approval by WCH 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 WCH 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 WCH 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 WCH shall not be liable to Project Co for, and Project Co shall not seek to recover from WCH or any WCH 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.

### 34. RECORDS, INFORMATION AND AUDIT

#### 34.1 Records Provisions

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

**34.2 Information and General Audit Rights**

- (a) Project Co shall provide and shall cause the Project Co Parties to provide, to WCH 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 WCH 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 WCH, and shall require all of each Project Co Party, including the Construction Contractor and the Service Provider, to provide to WCH (at WCH's reasonable cost), all information, reports, documents, records and the like required to be provided pursuant to Section 34.2(a) which subsequently come into the possession of, or become available to, Project Co or each Project Co Party, as WCH may reasonably require from time to time to enable WCH to provide reports, notices, returns and the like pursuant to 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 WCH 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 WCH 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 WCH hereunder, shall be subject and open to inspection and audit by WCH 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 WCH and Project Co otherwise agree. WCH 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 each Project Co Party to cooperate with, and provide access to the representatives of WCH monitoring and auditing such parts of the

Works or Project Co Services, including providing them with access and copies (at WCH'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 WCH's costs for the inspections, audits and monitoring shall be borne by WCH.

- (f) In conducting an audit of Project Co under Section 34.2(e) or as otherwise provided under this Project Agreement, WCH shall have all rights necessary or incidental to conducting an audit, including the right to have access to and inspect and take copies (at WCH's reasonable cost) of all books and records of Project Co required to be provided to or available to WCH hereunder, upon reasonable notice and at reasonable times. Project Co shall fully cooperate with WCH 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 WCH all matters arising from such audits, including the refunding of monies to WCH where applicable. At the reasonable request of WCH's auditors, Project Co shall provide such information, reports, documents and records as WCH's auditors may reasonably require, other than Sensitive Information.
- (g) WCH's rights pursuant to this Section 34.2 shall be in addition to, and shall not limit, any other audit, information, inspection or similar rights under this Project Agreement.
- (h) WCH's rights pursuant to this Section 34.2 shall not limit or restrict any Governmental Authority's right of review, audit, information or inspection under Applicable Law.

### **34.3 Delivery of Reports to IO**

- (a) During the Operational Term, in addition to Project Co's obligations pursuant to this Section 34, Project Co shall provide IO with a copy of all reports required pursuant to the Project Agreement including, but not limited to, the Performance Monitoring Report, the Payment Adjustment Report, the Monthly Energy Report, the Joint Insurance Cost Report and any other reports which are required to be delivered to WCH pursuant to this Project Agreement and which are requested by IO.

## **35. CHANGES IN LAW**

### **35.1 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.

### **35.2 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) WCH 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, Approvals and Agreements required in respect of the Variation;
  - (C) WCH 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.

### **35.3 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 35.3.
- (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) WCH 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, Approvals and Agreements required in respect of the Variation;
  - (C) WCH 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 35.3, and any calculation of compensation shall take into consideration, inter alia:

- (I) any failure by a Party to comply with Section 35.3(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 37 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 35.3, and Section 38 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 35.3(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 \$[REDACTED] (index linked) in that Contract Year, neither WCH nor Project Co shall be entitled to any payment or compensation pursuant to this Section 35.3 or otherwise in respect of the cost impact of that Relevant Change in Law in that Contract Year, or, except as provided in Section 37 or otherwise in this Project Agreement, any other relief in respect of such Relevant Change in Law in that Contract Year.

## 36. VARIATIONS

### 36.1 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 WCH'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, or shall otherwise 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.

### **36.2 Innovation and Value Engineering**

- (a) Project Co acknowledges that WCH at all times desires to reduce the Monthly Service Payments and the overall cost to WCH of the Facility and the Project Co Services, and Project Co agrees to cooperate, explore and work with WCH 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 WCH.
- (c) The Parties agree that the subject of an Innovation Proposal shall not include:
  - (i) any Variation Enquiry initiated by WCH;
  - (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 WCH to evaluate the Innovation Proposal in full;
  - (ii) specify Project Co's reasons and justification for proposing the Innovation Proposal;
  - (iii) request WCH to consult with Project Co with a view to deciding whether to agree to the Innovation Proposal and, if so, what consequential changes WCH 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 WCH;
  - (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 WCH 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 WCH to fully evaluate and consider the Innovation Proposal.
- (e) WCH 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 WCH 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 will change the Lifecycle Payment;
  - (viii) the Innovation Proposal materially affects the risks or costs to which WCH is exposed; or
  - (ix) any other matter WCH considers relevant.
- (f) WCH may request clarification or additional information regarding the Innovation Proposal, and may request modifications to the Innovation Proposal.
- (g) WCH may, in its sole discretion, accept or reject any Innovation Proposal.
- (h) If WCH 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 WCH specifically agrees to an increase in the Monthly Service Payments in accepting an Innovation Proposal pursuant to Section 36.2(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 each Project Co Party to decrease, the net savings in the costs of Project Co and/or each Project Co Party will be shared equally by Project Co and WCH, and WCH'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 WCH to decrease, the net savings in the costs of WCH will be shared as follows:
  - (i) equally by Project Co and WCH for the first 5 years following the implementation of the Innovation Proposal; and
  - (ii) thereafter, WCH 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 WCH's sole option, be reflected in either a lump sum payment or in an increase in the Monthly Service Payments.

37. DELAY EVENTS

**37.1 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 either Interim Completion by the Scheduled Interim Completion Date or 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 WCH of any of WCH's obligations under this Project Agreement (including any delay by WCH in giving access to the Site pursuant to Section 14.1, any obstruction of the rights afforded to Project Co under Section 14.1, any delay by WCH in carrying out its obligations set forth in Section 21.7(b) or any delay by WCH 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 19.3 where such Works are not subsequently found to be defective or not in compliance with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data), unless such opening up of the Works was reasonable

in the light of other defects or non-compliance previously discovered by WCH 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, artefacts 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 Geotechnical 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) a requirement pursuant to Section 16.5 for Project Co to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, to remove the Underground Storage Tank, 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;
- (viii) subject to compliance by Project Co with the provisions of Section 9.6, the execution of Additional Works on the Site by Additional Contractors;
- (ix) a requirement pursuant to Section 11.1 of Schedule 27 - Dispute Resolution Procedure for Project Co to proceed in accordance with the direction of WCH during the pendency of a Dispute, which Dispute is subsequently determined in Project Co's favour;
- (x) an event of Force Majeure;
- (xi) a Relief Event; or
- (xii) a Relevant Change in Law.

**37.2 Consequences of a Delay Event**

- (a) Project Co shall provide written notice to the WCH Representative and the Independent Certifier within 5 Business Days of becoming aware of the occurrence of a Delay Event. Project Co shall, within 10 Business Days after such notification, provide further written details to the WCH 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 Interim Completion Date or the Scheduled Substantial Completion Date, as applicable; 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 WCH Representative and the Independent Certifier.
- (c) The WCH Representative shall, after receipt of written details under Section 37.2(a), or of further particulars under Section 37.2(b), be entitled by written notice to require Project Co to provide such further supporting particulars as the WCH Representative may reasonably consider necessary. Project Co shall afford the WCH 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 37, the WCH Representative shall allow Project Co an extension of time equal to the delay caused by the Delay Event and shall fix a revised Scheduled Interim Completion Date, a revised Scheduled Substantial Completion Date, or a revised Scheduled Final Completion Date, as applicable, as soon as reasonably practicable and in any event within 10 Business Days of the later of:
  - (i) the date of receipt by the WCH Representative of Project Co's notice given in accordance with Section 37.2(a) and the date of receipt of any further particulars (if such are required under Section 37.2(c)), whichever is later; and
  - (ii) the date of receipt by the WCH Representative of any supplemental information supplied by Project Co in accordance with Section 37.2(b) and the date of receipt of



any further particulars (if such are required under Section 37.2(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 WCH Representative declines to fix a revised Scheduled Interim Completion Date, a revised Scheduled Substantial Completion Date or a revised Scheduled Final Completion Date, as applicable;
  - (ii) Project Co considers that a different Scheduled Interim Completion Date, Scheduled Substantial Completion Date or Final 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.

### **37.3 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 37.3, such failure shall be taken into account in determining Project Co's entitlement to an extension of time pursuant to this Section 37.

## **38. COMPENSATION EVENTS**

### **38.1 Definition**

- (a) For the purposes of this Project Agreement, "**Compensation Event**" means any event referred to in Sections 37.1(a)(ii), 37.1(a)(iii), 37.1(a)(iv), 37.1(a)(v), 37.1(a)(vi),

37.1(a)(vii), 37.1(a)(viii), and 37.1(a)(ix) 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.

### **38.2 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 38. 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 37.1(a)(i);
  - (ii) Section 41, in the case of a Delay Event referred to in Section 37.1(a)(x);
  - (iii) Section 40, in the case of a Delay Event referred to in Section 37.1(a)(xi); and
  - (iv) Section 35, in the case of a Delay Event referred to in Section 37.1(a)(xii).
- (b) Subject to Sections 38.3 and 38.4, 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 WCH to Project Co. Project Co shall promptly provide the WCH Representative with any information the WCH Representative may require in order to determine the amount of such compensation.
- (c) If WCH is required to compensate Project Co pursuant to this Section 38.2, then WCH 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, WCH 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.

### **38.3 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 38 in relation to any Compensation Event.
- (b) To the extent that Project Co does not comply with its obligations under this Section 38.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 38.

**38.4 Insured Exposure**

- (a) The compensation payable to Project Co pursuant to this Section 38 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.

**39. EXCUSING CAUSES**

**39.1 Definition**

- (a) For the purposes of this Project Agreement, “**Excusing Cause**” means any of the following events or circumstances if it occurs after the Interim 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:
  - (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 WCH of any of WCH’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 WCH or any WCH Party or any failure by WCH or any WCH Party (having regard to the interactive nature of the activities of WCH 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) WCH or the WCH 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 WCH, 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 WCH, in each case in the circumstances referred to in Section 30;
- (vi) the performance of any Small Works in accordance with the terms of this Project Agreement during the period of time agreed between WCH and Project Co;
- (vii) any official or unofficial strike, lockout, work to rule or other labour-related action involving employees of WCH or any WCH Party;
- (viii) any breach by WCH 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 Scheduled Maintenance in accordance with the Scheduled Maintenance Plan and any acceleration of Scheduled Maintenance pursuant to Section 26.3, provided that:
  - (A) improperly performed Scheduled Maintenance and the effects thereof shall not constitute an Excusing Cause; and
  - (B) where the Scheduled Maintenance continues beyond the period set out in the Scheduled Maintenance Plan or beyond the period required for its accelerated performance pursuant to Section 26.3 (except where the continuation was due to an Excusing Cause other than as set out in this Section 39.1(a)(ix)), Failure Points may accrue from the time the Scheduled Maintenance was due to have been completed in accordance with the Scheduled Maintenance Plan or Section 26.3, as applicable; or

- (x) the occurrence of any Contamination for which WCH is responsible pursuant to Section 16.2.

### **39.2 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 39.3 and 39.4):
  - (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 39.2 shall not limit WCH's entitlement to reimbursement pursuant to Section 30.4;
  - (v) WCH shall reimburse Project Co for all incremental Direct Costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) incurred by Project Co as a result of any Excusing Cause referred to in Section 39.1(a)(ii), 39.1(a)(iii), 39.1(a)(vii), 39.1(a)(viii) or 39.1(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 WCH 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.

**39.3 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 39.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 39.

**39.4 Insured Exposure**

- (a) The compensation payable to Project Co pursuant to this Section 39 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.

**40. RELIEF EVENTS**

**40.1 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 WCH claiming relief, as a result of any act or omission of any WCH Party.

#### **40.2 Consequences of a Relief Event**

- (a) Subject to Section 40.3:
  - (i) no right of termination, other than either Party's right to terminate this Project Agreement pursuant to Section 44.1, 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, WCH shall be entitled to make Deductions in accordance with Schedule 20 - Payment Mechanism notwithstanding the cancellation of Failure Points pursuant to Section 40.2(a)(ii).

- (b) In respect of a Relief Event that is also a Delay Event pursuant to Section 37.1(a)(xi):
  - (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 37;

- (ii) in respect of a Relief Event occurring prior to the Interim Completion Date and referred to in Section 40.1(a)(v), 40.1(a)(vi) or 40.1(a)(vii), on the earlier of (A) the Interim Completion Date and (B) the date of payment of the WCH 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, WCH 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 WCH to Project Co; and
  - (iii) in respect of a Relief Event occurring following the Interim Completion Date and prior to the Substantial Completion Date and referred to in Section 40.1(a)(v), 40.1(a)(vi) or 40.1(a)(vii), on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the WCH 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, WCH 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 WCH 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 40.2(b)(ii) or (iii), as applicable, and 46.
  - (d) Notwithstanding Sections 40.2(b)(ii) and (iii) and 40.2(c), during a Relief Event which occurs on or after the Interim Completion Date and prior to the Substantial Completion Date, the provisions of Schedule 20 - Payment Mechanism as they relate to the Interim Monthly Service Payment will continue to be in full force and effect.
  - (e) 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.
  - (f) Subject to Section 46, 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 40.

### **40.3 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 40.3, such failure shall preclude such Party's entitlement to relief pursuant to this Section 40.
- (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 40.3(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 40.3(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.

#### 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. FORCE MAJEURE

#### 41.1 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 41.1(a)(i);
- (iv) pressure waves caused by devices traveling at supersonic speeds; or
- (v) the discovery of any fossils, artefacts 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.

#### **41.2 Consequences of Force Majeure**

- (a) Subject to Section 41.3, 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 37.1(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 37;
  - (ii) where such Delay Event causes a delay in achieving Interim Completion by the Scheduled Interim Completion Date, on the earlier of (A) the Interim Completion Date and (B) the date of payment of the WCH 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, WCH 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 Lending Agreements, which, but for the Delay Event, would have been paid by WCH to Project Co; and
  - (iii) where such Delay Event causes a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date, on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the WCH 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, WCH 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 Lending Agreements, which, but for the Delay Event, would have been paid by WCH 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 41.2(b)(ii) or (iii), as applicable, 41.2(d) and 46.
- (d) Notwithstanding Sections 41.2(b)(ii) and (iii) and 41.2(c), during an event of Force Majeure which occurs on or after the Interim Completion Date and prior to the Substantial Completion Date and which affects the provisions of the Project Co Services, the provisions of Schedule 20 - Payment Mechanism as they relate to the Interim Monthly Service Payment will be suspended, and WCH 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 WCH, provided that, during such Payment Period, the amount paid to Project Co pursuant to this Section 41.2(d) shall never be more than the Maximum Service Payment.
- (e) 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 WCH 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 WCH, provided that, during such Payment Period, the amount paid to Project Co pursuant to this Section 41.2(d) shall never be more than the Maximum Service Payment.
- (f) Subject to Section 46, 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 41.

### **41.3 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 Section 41.3(a), such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Section 41.
- (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 41.3(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 41.3(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.

#### **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.

#### **41.5 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 WCH and Project Co to reach agreement pursuant to this Section 41.5.

### **42. PROJECT CO DEFAULT**

#### **42.1 Project Co Events of Default**

- (a) Subject to Section 42.1(b) of this Project Agreement, 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 WCH 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, WCH, a WCH 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 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 42.1(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 42.1(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 42.1(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 20.3(a)(iii)(B);
  - (B) delivering a rectification plan under Section 20.3(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 20.3(a)(iii)(B) that is not acceptable to the Independent Certifier, acting reasonably, as to the matters set out in Section 20.3(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 WCH'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 WCH;
- (v) Project Co committing a breach of Sections 49 or 50 or a breach of its obligations under this Project Agreement (other than a breach that is otherwise referred to in Sections 42.1(a)(i) to (iv) inclusive or 42.1(a)(vi) to (xxiii) 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 WCH 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 WCH and the performance of the Hospital Services;
    - (II) put forward, within 5 Business Days of receipt of notice of such breach from WCH, 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 42.1(a)(v)(A):
  - (I) Project Co shall continue to diligently remedy the breach and to mitigate any adverse effects on WCH and the performance of the Hospital Services;
  - (II) Project Co shall, within 3 Business Days after notice from WCH, submit a plan and schedule, which WCH shall have no obligation to accept, for remedying the breach and mitigating its effect within such period, if any, acceptable to WCH, 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
  - (III) for greater certainty, Project Co failing to comply with any of the provisions of this Section 42.1(a)(v)(B), or WCH, 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 WCH 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 WCH of its obligations under this Project Agreement;
- (viii) Project Co failing to comply with Sections 56.1 or 56.3;
- (ix) the occurrence of any Change in Ownership or Change in Control which is prohibited by Section 56.4;
- (x) Project Co being awarded a total of [REDACTED] or more Failure Points in any rolling 3 Payment Periods during the Interim Period;
- (xi) Project Co being awarded a total of [REDACTED] or more Failure Points in any rolling 6 Payment Periods during the Interim Period;
- (xii) Project Co being awarded a total of [REDACTED] or more Failure Points in any rolling 12 Payment Periods during the Interim Period;

- (xiii) Project Co being awarded a total of [REDACTED] or more Failure Points in any rolling 3 Payment Periods during the period post Substantial Completion;
- (xiv) Project Co being awarded a total of [REDACTED] or more Failure Points in any rolling 6 Payment Periods during the period post Substantial Completion;
- (xv) Project Co being awarded a total of [REDACTED] or more Failure Points in any rolling 12 Payment Periods during the period post Substantial Completion;
- (xvi) 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 Encumbrance derived through WCH) 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;
- (xvii) Project Co failing to pay any sum or sums due to WCH 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) \$[REDACTED] (index linked), and such failure continues for 30 days from receipt by Project Co of a notice of non-payment from WCH;
- (xviii) Project Co failing to comply with Section 57;
- (xix) Project Co failing to comply with Section 7.3 or Schedule 28 - Refinancing;
- (xx) 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 WCH 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;
- (xxi) Project Co failing to comply with any determination, order or award made against Project Co in accordance with Schedule 27 - Dispute Resolution Procedure;



(xxii) at any time after the Interim Completion Date, Project Co committing a breach of its obligations under this Project Agreement (other than as a consequence of a breach by WCH 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 WCH (an “**H&S Conviction**”) provided however that:

- (A) an H&S Conviction of Project Co, a Project Co Party or WCH 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 56.3 or Project Co takes such other disciplinary action against each such Project Co Party as is acceptable to WCH, 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 42.1(a)(xxii), WCH 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

(xxiii) Project Co failing to comply with Sections 27.1, 27.2, 27.3, 27.8, 27.11 or 27.23.

(b) WCH shall not exercise any rights under this Section 42 (except its rights under Section 42.5(a)(i)) as a result of a Project Co Event of Default referred to in Sections 42.1(a)(vii), 42.1(a)(x), 42.1(a)(xi), and 42.1(a)(xii) until the day following the Payment Commencement Date.

#### **42.2 Notification of Occurrence**

(a) Project Co shall, promptly upon Project Co becoming aware of the occurrence, notify WCH 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.

#### **42.3 Right to Termination**

(a) On the occurrence of a Project Co Event of Default, or at any time after WCH 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, WCH may, subject to Section 42.4, 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.

#### **42.4 Remedy Provisions**

- (a) In the case of a Project Co Event of Default referred to in Sections 42.1(a)(i)(B), 42.1(a)(i)(C), 42.1(a)(i)(D) (where the Project Co Event of Default referred to in Section 42.1(a)(i)(D) is analogous to a Project Co Event of Default referred to in Section 42.1(a)(i)(B) or 42.1(a)(i)(C)), 42.1(a)(iii), 42.1(a)(iv), 42.1(a)(vi), 42.1(a)(vii), 42.1(a)(viii), 42.1(a)(ix) (where the Project Co Event of Default referred to in Section 42.1(a)(ix) is capable of being remedied), 42.1(a)(xvi), 42.1(a)(xvii), 42.1(a)(xix), 42.1(a)(xx) (where the Project Co Event of Default referred to in Section 42.1(a)(xx) is not in respect of insurance), 42.1(a)(xxi), 42.1(a)(xxii) or 42.1(a)(xxiii), WCH 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 WCH, 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 42.4(a)(i) that has a date for the Event of Default to be remedied that is beyond 30 days from the notice of default, WCH shall have 5 Business Days from receipt of the same within which to notify Project Co that WCH does not accept such longer period in the plan and schedule and that the 30 day limit will apply, failing which WCH 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 42.4(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 WCH and the performance of the Hospital Services; or
  - (ii) Project Co fails to put forward a plan and schedule pursuant to Section 42.4(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 42.4(a) and (b); or
- (iv) where Project Co puts forward a plan and schedule pursuant to Section 42.4(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 WCH 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 WCH may give the notice referred to in Section 42.4(a), and without prejudice to the other rights of WCH in this Section 42.4, at any time during which a Project Co Event of Default is continuing, WCH may, at Project Co's risk and expense, take such steps as WCH 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 42.4, such occurrence of a Project Co Event of Default shall thereafter cease to be a Project Co Event of Default and WCH shall not be entitled to terminate this Project Agreement for that occurrence of a Project Co Event of Default.

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

- (a) WCH may, acting reasonably, require Project Co to terminate the Service Contract and ensure that a replacement Service Provider is appointed in accordance with Section 56.3 to provide the Project Co Services within 60 days:
  - (i) as an alternative to termination of this Project Agreement pursuant to Sections 42.3 or 42.4, in any circumstance in which WCH 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 accrues, in any rolling 6 Payment Periods during the Interim Period, more than:
    - (A) **[REDACTED]** Failure Points in respect of Roads and Grounds Maintenance Services;
    - (B) **[REDACTED]** Failure Points in respect of Security and Surveillance Services; or

- (C) [REDACTED] Failure Points in respect of Retail Property Management Services; or
- (iii) if Project Co accrues, in any rolling 6 Payment Periods during the period post Substantial Completion, more than:
  - (A) [REDACTED] Failure Points in respect of Roads and Grounds Maintenance Services;
  - (B) [REDACTED] Failure Points in respect of Security and Surveillance Services;
  - (C) [REDACTED] Failure Points in respect of Retail Property Management Services; or
  - (D) [REDACTED] Failure Points in respect of Parking Management Services;

provided that this Section 42.5 shall not give rise to partial termination of either the obligation to provide the Project Operations or this Project Agreement.

- (b) If WCH exercises its rights under this Section 42.5, 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 WCH in this Section 42.5, WCH 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 42.5, WCH shall be entitled to exercise its termination rights in accordance with Sections 42.3 and 42.4, as applicable.
- (d) Where a replacement Service Provider is appointed in accordance with this Section 42.5, [REDACTED]% of the Failure Points accrued by Project Co prior to such replacement shall be cancelled.

#### **42.6 WCH's Costs**

- (a) Project Co shall reimburse WCH for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by WCH in exercising its rights under this Section 42, including any relevant

increased administrative expenses. WCH shall take commercially reasonable steps to mitigate such costs.

**42.7 No other Rights to Terminate**

- (a) WCH 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 42 and 44.

**43. WCH DEFAULT**

**43.1 WCH Events of Default**

- (a) For the purposes of this Project Agreement, “**WCH Event of Default**” means any one or more of the following events or circumstances:

- (i) WCH failing to pay any sum or sums due to Project Co under this Project Agreement, which sum or sums are not being disputed by WCH in accordance with Schedule 27 - Dispute Resolution Procedure and which sum or sums, either singly or in aggregate, exceed(s) \$[REDACTED] (index linked), and:
  - (A) in respect of the Interim Completion Payment or the Substantial Completion Payment, such failure continues for 10 Business Days;
  - (B) subject to Section 43.1(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 WCH to Project Co under this Project Agreement, such failure continues for 90 days,

in any such case, from receipt by WCH of a notice of non-payment from or on behalf of Project Co;

- (ii) WCH 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.

**43.2 Project Co's Options**

- (a) On the occurrence of an WCH Event of Default and while the same is continuing, Project Co may give notice to WCH of the occurrence of such WCH 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 WCH has remedied such WCH Event of Default; or
  - (ii) if such WCH Event of Default has not been remedied within 30 days of receipt by WCH of notice of the occurrence of such WCH Event of Default, terminate this Project Agreement in its entirety by notice in writing having immediate effect.

**43.3 Project Co's Costs**

- (a) WCH shall reimburse Project Co for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by Project Co in exercising its rights under this Section 43, including any relevant increased administrative expenses. Project Co shall take commercially reasonable steps to mitigate such costs.

**43.4 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.

**44. RELIEF EVENT AND NON-DEFAULT TERMINATION**

**44.1 Termination for Relief Event**

- (a) Subject to Section 44.1(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 40.3(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 44.1(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 the 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 [REDACTED]% of the Maximum Service Payment for the relevant Payment Period.

**44.2 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 41.5 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.

**44.3 Termination for Convenience**

- (a) WCH 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 WCH has, in respect of such termination, obtained the prior written consent of MOHLTC.
- (b) In the event of notice being given by WCH in accordance with this Section 44.3, WCH 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.

**44.4 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.

**45. EFFECT OF TERMINATION**

**45.1 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 44.4, this Section 45 shall apply in respect of such termination.

**45.2 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.

### **45.3 Continuing Performance**

- (a) Subject to any exercise by WCH 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 45.

### **45.4 Effect of Notice of Termination**

- (a) On the service of a notice of termination, or termination on the Expiry Date pursuant to Section 44.4:
- (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 WCH as shall not already have been transferred to WCH pursuant to Section 52.1, Project Co shall transfer to, and there shall vest in, WCH, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through WCH), 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 WCH so elects:
- (A) all plant, equipment and materials (other than those referred to in Section 45.4(a)(i)(B)) on or near to the Site shall remain available to WCH for the purposes of completing the Works; and
- (B) all construction plant and equipment shall remain available to WCH for the purposes of completing the Works, subject to payment by WCH of the Construction Contractor's reasonable charges;
- (ii) if termination is prior to the Substantial Completion Date, Project Co shall deliver to WCH (to the extent such items have not already been delivered to WCH) 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 WCH pursuant to Section 52.1 or Section 45.4(a)(i), Project Co shall hand over to, and there shall vest in, WCH, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through WCH), 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 WCH, Project Co shall enter into agreements or make other arrangements in order to permit the use of the assets or rights by WCH 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 WCH so elects, Project Co shall ensure that any of the Subcontracts between Project Co and each Project Co Party (including the Construction Contract and the Service Contract), any other instrument entered into between any such Project Co Party and Project Co for securing the performance by such Project Co Party of its obligations in respect of the Project Operations or to protect the interests of Project Co, shall be novated or assigned to WCH 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 Project Co Party 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 WCH 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 WCH so elects, execute such sale) to WCH 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 WCH), 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 WCH in connection with the operation of the Facility or the provision of the Project Co Services;
- (vi) Project Co shall deliver to WCH (to the extent such items have not already been delivered to WCH) one complete set of:
  - (A) the most recent As Built Drawings in the format that WCH, acting reasonably, considers most appropriate at the time showing all alterations made to the Facility since the Interim Completion Date;
  - (B) the most recent maintenance, operation and training manuals for the Facility; and
  - (C) the Plant Services Information Management System, fully updated;
- (vii) Project Co shall use commercially reasonable efforts to assign, or otherwise transfer, to WCH, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through WCH), 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 WCH all information, reports, documents, records and the like referred to in Section 34, 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 WCH);
- (ix) Project Co shall ensure that the Transferred Employees are made available to be employed by WCH to enable WCH 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 44.4, the Facility and elements of the Facility shall be in the condition required in accordance with Section 47 and Schedule 24 - Expiry Transition Procedure.

#### **45.5 Ownership of Information**

- (a) Subject to Section 48, all information obtained by Project Co, including 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 WCH and upon termination of this Project Agreement shall be provided or returned to WCH, as applicable, in electronic format acceptable to WCH, acting reasonably, where it exists in electronic format, and in its original format, when not in electronic format.

#### **45.6 Provision in Subcontracts**

- (a) Project Co shall make provision in all Subcontracts to which it is a party (including requiring the relevant Project Co Parties to make such provision and to require other Project Co Parties to make such provision) to ensure that WCH shall be in a position to exercise its rights, and Project Co shall be in a position to perform its obligations, under this Section 45.

#### **45.7 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 WCH and any successors providing to WCH 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 WCH 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 WCH pursuant to Section 45.4 or otherwise, and, if Project Co has not done so within 60 days after any notice from WCH requiring it to do so, WCH 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 WCH 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 WCH's rights pursuant to Section 48, 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 WCH 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 WCH fully in such competition process, including by:
- (i) providing any information which WCH may reasonably require to conduct such competition, including all information contained in the Plant Services Information Management System, other than Sensitive Information; and
  - (ii) assisting WCH by allowing any or all participants in such competition process unrestricted access to the Site and the Facility.

#### **45.8 Termination upon Aforesaid Transfer**

- (a) On completion of Project Co's obligations pursuant to this Section 45, this Project Agreement shall terminate and, except as provided in Section 45.9, all rights and obligations

of WCH and Project Co under this Project Agreement shall cease and be of no further force and effect.

**45.9 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, 16.2(a), 16.3(a), 23.6, 24.12, 26.8, 29.4, 30, 31.6, 31.8, 31.13, 31.14, 31.15, 32, 33, 34, 42.6, 43.3, 44.4, 45, 46, 47, 48, 49, 50, 52, 53, 54, 55, 57.3, 58.1, 59.4, 59.8, 59.9, 59.10, 59.11, 59.12 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 44.4.

**46. COMPENSATION ON TERMINATION**

**46.1 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 WCH shall pay Project Co any applicable compensation on termination.

**46.2 Full and Final Settlement**

(a) Except as otherwise provided in Section 46.2(b), any compensation paid pursuant to this Section 46, 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 WCH, 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 WCH 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 46.2(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 31.13 or taken into account pursuant to Schedule 23 - Compensation on Termination in determining or agreeing upon the WCH 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;
- (ii) any liabilities arising under or in respect of any breach by either Party of their obligations under Section 45.9 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; and
- (iii) any amount owing to WCH in relation to:
  - (A) taxes or tax withholdings, including all workers' compensation levies;
  - (B) fines, penalties or restitution orders by a court under any Federal or Provincial statute;
  - (C) any order made by court under the *Civil Remedies Act*, S.O. 2001, c. 28; and
  - (D) any fraud or other criminal offence committed against WCH.

## 47. EXPIRY TRANSITION PROCEDURE

### 47.1 Expiry Transition

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

## 48. INTELLECTUAL PROPERTY

### 48.1 Representation and Warranty

- (a) Project Co represents, warrants and covenants to WCH 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 WCH herein;
  - (ii) Project Co has and shall have the right to provide the assignments granted to WCH herein; and

- (iii) the Project Data and the Intellectual Property Rights and their use by the WCH Parties 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.

#### **48.2 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, WCH 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 WCH on the aforesaid terms of this Section 48.2, for any and all of the Approved Purposes.

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

- (a) Project Co:
  - (i) hereby grants to WCH 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 48.3(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 48.3(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 48.3 and Section 48.5(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.

#### **48.4 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 WCH 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 WCH 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 WCH, 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) WCH hereby grants Project Co a royalty free, non-exclusive and non-transferable licence, with a right to grant sub-licences to each Project Co Party, to use the Jointly Developed Materials during the Project Term for the sole purposes of Project Co or any Project Co Party 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 WCH.

#### **48.5 Maintenance of Data**

- (a) To the extent that any of the data, materials and documents referred to in this Section 48 are generated by, or maintained on, a computer or similar system, Project Co shall procure for the benefit of WCH, either at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable WCH or its nominee to access and otherwise use (as such term is defined in Section 48.3(b)), subject to the payment by WCH of any relevant fee, such data, materials and documents for the Approved Purposes.
- (b) Without limiting the obligations of Project Co under Section 48.5(a), Project Co shall ensure the back up and storage in safe custody of the data, materials and documents referred to in this Section 48 in accordance with Good Industry Practice. Project Co shall submit to the WCH Representative Project Co's proposals for the back up and storage in safe custody of such data, materials and documents and WCH 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 WCH 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 WCH Representative, who shall be entitled to object on the basis set out above. Any Disputes in connection with the provisions of this Section 48.5(b) may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure with reference to Good Industry Practice.

#### **48.6 Claims**

- (a) Where a demand, claim, action or proceeding is made or brought against WCH or a WCH Party which arises out of the alleged infringement or misappropriation of any rights in or to any Project Data or Intellectual Property Rights or the use thereof by WCH or any WCH party 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 WCH otherwise than in accordance with the terms of this Project Agreement, Project Co shall indemnify, defend and hold harmless WCH from and against all such demands, claims, actions and proceedings and Section 53.3 shall apply.

**48.7 WCH Trade-Marks**

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

**48.8 Confidential Information**

- (a) It is expressly acknowledged and agreed that nothing in this Section 48 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.

**48.9 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, IO's, MOHLTC's or the Province's ability to use this Project Agreement in any manner desired by MEI, IO, MOHLTC or the Province.
- (b) Each of the Parties hereby consents to the use by MEI, IO, MOHLTC and/or the Province of this Project Agreement, and any portion thereof, subject to compliance with FIPPA and to the removal by WCH (in consultation with Project Co) of any information supplied in confidence to MEI, IO, MOHLTC and/or the Province by either Party in circumstances where disclosure may be refused under section 17(1) of FIPPA.

**49. CONFIDENTIALITY / COMMUNICATIONS****49.1 Disclosure**

- (a) Subject to Sections 49.1(b), 49.1(c) and 49.2, 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, WCH 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 WCH, in its sole discretion, may consider appropriate. In exercising its discretion, WCH will be guided by the principles set out in Sections 49.1(b) and 49.1(c).



- (b) WCH 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 FIPPA if WCH was bound thereby.
- (c) Notwithstanding Section 49.1(b), but subject to Section 49.2, 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), WCH may disclose such information.

#### **49.2 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), WCH 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 49.1(b). The Parties acknowledge and agree that the Annual Service Payment, but not the breakdown thereof, may be disclosed.
- (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 49.1(b) and, accordingly, would be exempt from disclosure under FIPPA, the dispute may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure, and WCH 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 FIPPA, notwithstanding that such Act does not apply directly to WCH.

#### **49.3 Disclosure to Government**

- (a) Project Co acknowledges and agrees that WCH will be free to disclose any information, including Confidential Information, to MEI, IO, MOHLTC and/or the Province, and, subject to compliance with FIPPA, MEI, IO, 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, IO, 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 FIPPA, 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, IO, MOHLTC and/or the Province.

**49.4 Freedom of Information and Protection of Privacy Act**

- (a) The Parties acknowledge and agree that FIPPA applies to MEI, IO, MOHLTC and the Province, and that MEI, IO, MOHLTC and the Province are required to fully comply with FIPPA.

**49.5 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 49 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, including any trustee of the Lenders, and their respective 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, IO, 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, IO, 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.

**49.6 Exceptions**

- (a) Information of a Party (the “**Proprietor**”) other than Personal Information 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 and the Confidant came into possession of such information without being in breach of this Project Agreement;
  - (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 WCH upon a termination of this Project Agreement, pursuant to Section 45 or is otherwise required by WCH 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 FIPPA.

**49.7 Survival of Confidentiality**

- (a) The obligations in Section 49.1 to Section 49.6 will cease on the date that is 3 years after the Termination Date and accordingly shall survive the termination of this Project Agreement.

**49.8 Communications Protocol**

- (a) The Parties shall comply with the provisions of Schedule 18 – Communications Protocol.

**50. PERSONAL INFORMATION**

**50.1 General**

- (a) Project Co acknowledges the importance of maintaining the confidentiality and privacy of Personal Information.
- (b) Project Co shall, and shall require each Project Co Party to, only collect, hold, process, use, store and disclose Personal Information with the prior consent of WCH and only to the extent necessary to perform Project Co's obligations under this Project Agreement.
- (c) Project Co shall, and shall require each Project Co Party 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 FIPPA and the *Personal Health Information Protection Act, 2004* (Ontario).
- (d) Project Co shall take all necessary and appropriate action, and shall require each Project Co Party to take all necessary and appropriate action, against any person who fails to comply with this Section 50.
- (e) Project Co shall allow WCH on reasonable notice to inspect the measures of Project Co and each Project Co Party to protect Personal Information.

**50.2 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 each Project Co Party to take all necessary steps and to include provisions in Subcontracts to require each Project Co Party 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 each Project Co Party to keep confidential and to include provisions in all Subcontracts to require all Project Co Parties to keep confidential, all Patient Information that any of them may encounter or obtain during the course of their duties.
- (c) WCH may from time to time require that Project Co and any Project Co Party or members of its or their staff execute and deliver within 2 Business Days of such request an agreement satisfactory to WCH, acting reasonably, requiring such person to keep Patient Information confidential.

(d) This Section 50.2 shall not limit Section 50.1.

### **50.3 Survival**

(a) The obligations in this Section 50 shall survive the termination of this Project Agreement.

## **51. INSURANCE AND PERFORMANCE SECURITY**

### **51.1 General Requirements**

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

### **51.2 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 WCH of their respective liabilities and obligations under this Project Agreement.

## **52. TITLE**

### **52.1 Title**

(a) 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 WCH (or as WCH may direct) upon the receipt of such item on the Site, provided however that title to items of tangible personal property (personal property that can be seen, weighed, measured, felt or touched or that is in any way perceptible to the senses and includes computer programs, natural gas and manufactured gas) that comprise the Facility or are to be affixed or attached to the Facility prior to Substantial Completion shall pass to WCH (or as WCH may direct) at the time that such items are included in the Facility or affixed or attached to the Facility.

## **53. INDEMNITIES**

### **53.1 Project Co Indemnities to WCH**

(a) Project Co shall indemnify and save harmless WCH 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 any one or more of the following:

(i) a failure by Project Co to achieve Interim Completion by the Scheduled Interim Completion Date;

- (ii) a failure by Project Co to achieve Substantial Completion by the Scheduled Substantial Completion Date;
- (iii) 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;
- (iv) the death or personal injury of any person;
- (v) any physical loss of or damage to property or assets of any third party; or
- (vi) 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:

- (vii) the breach of this Project Agreement by WCH; or
  - (viii) in respect of Section 53.1(a)(i) and 53.1(a)(ii), any deliberate or negligent act or omission of WCH or any WCH Party; or
  - (ix) in respect of Sections 53.1(a)(iii), 53.1(a)(iv), 53.1(a)(v) or 53.1(a)(vi), any act or omission of WCH or any WCH Party; or
  - (x) 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 WCH or an appropriate WCH 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 WCH 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 any breach of a representation or warranty by Project Co herein.
- (c) Project Co shall indemnify and save harmless WCH 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, 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, Approvals and Agreements, Applicable Law or requirements of Governmental Authorities, or the failure of Project Co to obtain all necessary Project Co Permits, Licences, Approvals and Agreements in accordance with this Project Agreement; or
- (ii) any Contamination on, in or under, or migrating to or from, the Site, except for Contamination for which WCH is responsible pursuant to Section 16.2(a);

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

- (d) Without prejudice to WCH's rights under Section 42 and any other rights under this Project Agreement, if WCH exercises its step-in rights under the Construction Contractor's Direct Agreement or the Service Provider's Direct Agreement, Project Co shall indemnify WCH for all obligations of Project Co assumed by WCH under the Construction Contract or the Service Contract, as the case may be, and for all reasonable costs and expenses incurred by WCH in relation to the exercise of WCH's rights.

### **53.2 WCH Indemnities to Project Co**

- (a) WCH 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 suffered, sustained, incurred or brought against them 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 or breach of this Project Agreement by WCH or any act or omission of WCH or any WCH 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 WCH or any deliberate or negligent act or omission of WCH or any WCH 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 WCH or any deliberate or negligent act or omission of WCH or any WCH 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 WCH 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) WCH 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 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 WCH herein.

### **53.3 Conduct of Claims**

- (a) This Section 53.3 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 53, 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 53.3(d), 53.3(e) and 53.3(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 53.3 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 53.3(c);
  - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days of the notice from the Beneficiary under Section 53.3(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 53.3(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 53.3(c) applies. For greater certainty, Project Co acknowledges and agrees that where WCH is the Beneficiary, WCH 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 53.3(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 53.3 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.

#### **53.4 Mitigation - Indemnity Claims**

- (a) For greater certainty, Section 59.4 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.

### **54. LIMITS ON LIABILITY**

#### **54.1 Indirect Losses**

- (a) Subject to Section 54.1(b), without prejudice to WCH'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 Sections 53.1(a)(i) and 53.1(a)(ii) only, the exceptions in Sections 54.1(a)(ii) and 54.1(a)(iii) shall not apply as a result of, or in relation to, WCH's loss of use of the Facility or a portion thereof, which for the purposes of Sections 53.1(a)(i) and 53.1(a)(ii), shall be Direct Losses.

**54.2 No Liability in Tort**

- (a) Subject to the indemnities provided herein, WCH and the WCH 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 WCH or any WCH 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.

**54.3 Sole Remedy**

- (a) Subject to:
  - (i) any other rights of WCH expressly provided for in this Project Agreement; and
  - (ii) WCH'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 WCH pursuant to this Project Agreement or has been taken into account to reduce any compensation payable by WCH pursuant to Section 46,

the sole remedy of WCH 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 54.3(a) shall prevent or restrict the right of WCH 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.

**54.4 Maximum Liability**

- (a) Subject to Section 54.4(b), the maximum aggregate liability of each Party in respect of all claims under Section 53 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 performance security or 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 Sections 53.1(a)(i) and 53.1(a)(ii) 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 performance security or 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 54.4 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.

**55. DISPUTE RESOLUTION PROCEDURE**

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

**56. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL**

**56.1 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 WCH, 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 WCH's role as a hospital, or may compromise WCH'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 56.1(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 WCH so requires.

**56.2 WCH Assignment**

- (a) WCH 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 WCH 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 WCH, 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 sale, assignment, transfer, disposition or other alienation and agrees in writing with Project Co to perform, all the obligations of WCH hereunder and under any agreement in connection with this Project Agreement to which Project Co and WCH 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 WCH Development Accountability Agreement.
- (b) WCH 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 56.2.

### **56.3 Subcontractors**

- (a) Project Co shall not subcontract any interest in this Project Agreement, the Construction Contract or the Service Contract, and shall not permit the Construction Contractor or the Service Provider to subcontract any interest in the Construction Contract or Service Contract, to a Restricted Person, or any Affiliate thereof, or a person whose standing or activities are inconsistent with WCH's role as a hospital, or may compromise WCH'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), 56.3(c) and 56.3(d) or received the prior written consent of WCH, not to be unreasonably withheld or delayed.
- (c) Subject to Section 56.3(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 WCH'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 WCH, acting reasonably.

#### 56.4 Changes in Ownership and Control

- (a) No Change in Ownership of Project Co, or any person owning, directly or indirectly, beneficially or otherwise, any of the shares or units of or any other ownership interest in Project Co or any such person, 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 WCH's role as a hospital, or may compromise WCH'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 following the Substantial Completion Date, WCH shall be entitled to receive a [REDACTED] per cent share of any Excess Equity Gain arising from a Change in Ownership of Project Co.
- (c) Subject to Sections 56.4(a) and (b), no Change in Control of Project Co, or any person owning, directly or indirectly, beneficially or otherwise, any of the shares or units or any other ownership interest in Project Co or any such person, shall be permitted without the prior written consent of WCH, not to be unreasonably withheld or delayed. Subject at all times to Section 56.4(e), for the purposes of this Section 56.4(c), a Change in Control is deemed not to have occurred upon a transfer of any ownership interest by [REDACTED] (so long as such person is Controlled by [REDACTED]) or another person Controlled by [REDACTED], provided that:
- (i) [REDACTED] or another person Controlled by [REDACTED] shall at all times hold directly or indirectly, at least [REDACTED]% of the voting ownership interests in Project Co; and
  - (ii) [REDACTED] or another person Controlled by [REDACTED] shall at all times remain the asset manager of Project Co.
- (d) This Section 56.4 shall not apply to a Change in Ownership or Change in Control of persons whose equity securities or ownership units or any other ownership interests are listed on a recognized stock exchange.
- (e) Whether or not Project Co is required to obtain WCH's consent to a Change in Ownership or Change in Control pursuant to this Section 56.4, Project Co shall provide timely notice to

WCH of any proposed Change in Ownership or Change in Control of Project Co, or any person owning, directly or indirectly, beneficially or otherwise, any of the shares or units or any other ownership interest in Project Co or any such person, 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 all such owners and their respective holdings of such ownership interests of Project Co, prior to and following any such Change in Ownership or Change in Control any person with an ownership interest, as the case may be.

**56.5 WCH Due Diligence**

- (a) Project Co shall promptly reimburse WCH for WCH's reasonable due diligence costs (including fees of professional advisors) in connection with any consent required of WCH pursuant to, or WCH determination of Project Co's compliance with, Section 56.1, 56.3 or 56.4 whether or not such consent is granted.

**57. PROHIBITED ACTS**

**57.1 Definition**

- (a) The term "**Prohibited Act**" means:
  - (i) offering, giving or agreeing to give to WCH 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 WCH 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 WCH or any public body in connection with the Project;

provided that this Section 57.1(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 WCH 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 WCH or any public body in connection with the Project;

- (ii) entering into this Project Agreement or any other agreement with WCH 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, WCH 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 WCH, provided that this Section 57.1(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 WCH 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 WCH or any public body in connection with the Project without contravening the intent of this Section 57;

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

## **57.2 Remedies**

- (a) If Project Co or any Project Co Party (or anyone employed by or acting on their behalf) commits any Prohibited Act, then WCH 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 WCH may give written notice to Project Co and Section 42 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 WCH may give written notice to Project Co and Section 42 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 WCH may give written notice to Project Co and Section 42 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 56.3;
  - (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 WCH may give notice to Project Co and Section 42 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 57.2(a)(i) to 57.2(a)(iv), then WCH may give notice to Project Co and Section 42 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 57.2 shall specify:
- (i) the nature of the Prohibited Act;
  - (ii) the identity of the person whom WCH 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 57.2, WCH shall be entitled to recover from Project Co any Direct Loss sustained in consequence of any breach of this Section 57.

**57.3 Permitted Payments**

- (a) Nothing contained in this Section 57 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.

**57.4 Notification**

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

**57.5 Replacement of Project Co Party**

- (a) Where Project Co is required to replace any Project Co Party pursuant to this Section 57, 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.

58. NOTICES

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

with a copy to: **[REDACTED]**  
Fax No.: **[REDACTED]**  
Attn: **[REDACTED]**

If to WCH: 76 Grenville Street, E143  
Toronto, Ontario M5S 1B2  
Fax No.: **[REDACTED]**  
Attn.: **[REDACTED]**

**58.2 Notices to Representatives**

- (a) In addition to the notice requirements set out in Section 58.1, where any Notice is to be provided or submitted to the WCH 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: **[REDACTED]**  
Fax No.: **[REDACTED]**  
Attn.: **[REDACTED]**

If to WCH Representative: **[REDACTED]**  
Fax No.: **[REDACTED]**

Attn.: [REDACTED]

**58.3 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 58.3.

**58.4 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 58.1 or 58.2 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.

**58.5 Deemed Receipt of Notices**

- (a) Subject to Sections 58.5(b), 58.5(c) and 58.5(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 58.
- (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.

**58.6 Service on WCH**

- (a) Where any Notice is required to be served on WCH, the obligation to serve such Notice shall be fulfilled by serving it on WCH in accordance with the provisions of this Section 58.

**59. GENERAL**

**59.1 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.

**59.2 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.

**59.3 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 WCH 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 WCH 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.

**59.4 General Duty to Mitigate**

- (a) WCH 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.

**59.5 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 WCH 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, officers, senior management and their respective Representatives. For clarity, except as expressly set out to the contrary, a reference in this Project Agreement to the "knowledge" of Project Co or of WCH, shall be construed in a manner consistent with the foregoing sentence.

**59.6 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.

**59.7 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 59.7 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.

**59.8 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.

**59.9 Enurement**

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

**59.10 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.

**59.11 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.

**59.12 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.

**59.13 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.

**59.14 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.

**59.15 Proof of Authority**

- (a) WCH 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 WCH or Project Co, as applicable, that they have the requisite authority to execute this Project Agreement on behalf of and to bind WCH or Project Co, as applicable.

**59.16 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.

**59.17 Government Entities as Third Party Beneficiaries**

- (a) The provisions of Sections 2.4(c), 3.1(b), 6.1, 6.2(a), 6.3(a), 8.1(d), 9.2(a)(ii), 48.9, and 49 and each other provision of the Project Agreement which is to the benefit of a Government Entity are:
  - (i) intended for the benefit of each Government Entity and, if set out in the relevant Section, each Government Entity's directors, officers, employees, board appointees, agents and representatives, and shall be enforceable by each of such persons and his or her heirs, executors, administrators and other legal representatives (collectively, the "**Third Party Beneficiaries**"); and

- (ii) are in addition to, and not in substitution for, any other rights that the Third Party Beneficiaries may have by contract or otherwise.
- (b) WCH shall hold the rights and benefits of Sections 2.4(c), 3.1(b), 6.1, 6.2(a), 6.3(a), 8.1(d), 9.2(a)(ii), 48.9, and 49 and each other provision of the Project Agreement which is to the benefit of a Government Entity in trust for and on behalf of the Third Party Beneficiaries and WCH hereby accepts such trust and agrees to hold the benefit of and enforce performance of such covenants on behalf of the Third Party Beneficiaries.

**[SIGNATURE PAGES IMMEDIATELY FOLLOW]**



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

**WOMEN'S COLLEGE HOSPITAL**

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

We have authority to bind the corporation.

**WOMEN'S COLLEGE PARTNERSHIP,  
[REDACTED]**

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

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

I/We have authority to bind the corporation.

**WOMEN'S COLLEGE PARTNERSHIP,  
[REDACTED]**

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

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

I/We have authority to bind the corporation.

**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 “**Actual Relevant Insurance Cost**” has the meaning given in Section 7.1 of Schedule 25 - Insurance and Performance Security Requirements.
  - 1.4 “**Ad-Hoc Services**” has the meaning given in Schedule 20 - Payment Mechanism.
  - 1.5 “**Ad-Hoc Services Request**” has the meaning given in Schedule 20 - Payment Mechanism.
  - 1.6 “**Additional Contractors**” means any independent contractor (not being, for the avoidance of doubt, the Construction Contractor, the Service Provider or Project Co) or WCH’s own forces, engaged by WCH to carry out the Additional Works.
  - 1.7 “**Additional Works**” means those works in relation to the Facility which are not Works or Project Co Services and which are to be carried out by an Additional Contractor, including works or services to be performed either before or after Substantial Completion.
  - 1.8 “**Adjusted Annual Energy Target**” has the meaning given in Schedule 20 - Payment Mechanism.
  - 1.9 “**Adjusted Estimated Fair Value**” has the meaning given in Schedule 23 - Compensation on Termination.
  - 1.10 “**Adjusted Highest Qualifying Tender Price**” has the meaning given in Schedule 23 - Compensation on Termination.
  - 1.11 “**Affected Hospital Employees**” and “**Affected Unionized Employees**” means those unionized employees performing security and building maintenance services whom Project Co is required to employ.
  - 1.12 “**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 its unitholders, shareholders, partners or owners, as the case may be.
  - 1.13 “**Ancillary Documents**” means the Construction Contract, the Service Contract, [REDACTED], the Interface Agreement, and the Performance Security.
  - 1.14 “**Annual Energy Target**” has the meaning given in Schedule 20 - Payment Mechanism.

- 1.15 “**Annual Review Date**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.16 “**Annual Service Payment**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.17 “**Anticipated Interim Completion Date**” has the meaning given in Section 24A.7(a) of the Project Agreement.
- 1.18 “**Anticipated Substantial Completion Date**” has the meaning given in Section 24.7(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, WCH or any WCH Party and, in particular, shall include the *Public Hospitals Act* (Ontario).
- 1.20 “**Appointed Representative**” has the meaning given in Schedule 4 – Lenders' Direct Agreement.
- 1.21 “**Appointed Representative Notice**” has the meaning given in Schedule 4 – Lenders' Direct Agreement.
- 1.22 “**Approved Purposes**” means:
- (a) WCH and the WCH 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.
- 1.23 “**As Built Drawings**” means drawings prepared by Project Co in a format and with content and details that WCH, acting reasonably, considers appropriate.

- 1.24 “**Area Weighting Percentage**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.25 “**Associated Liabilities**” has the meaning given in Section 32.8(b) of the Project Agreement.
- 1.26 “**ASHRAE**” has the meaning given in Schedule 20 - Payment Mechanism.
- 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 Designated Substance Reports and the Geotechnical Reports), studies, data, documents, or other information, given or made available to Project Co or any Project Co Party by WCH or any WCH Party, or which was obtained from or through any other sources to the date of the Project Agreement.
- 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 “**Base Relevant Insurance Cost**” has the meaning given in Section 7.1 of Schedule 25 - Insurance and Performance Security Requirements.
- 1.39 “**Bedding-In Period**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.40 “**Beneficiary**” has the meaning given in Section 53.3(a) of the Project Agreement.
- 1.41 “**Building Code**” means the regulations made under Section 34 of the *Building Code Act, 1992* (Ontario), as amended or replaced from time to time.

- 1.42 “**Building Permit**” means the building permit issued by the City of Toronto with respect to the construction of the Facility on the Site.
- 1.43 “**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 Toronto, Ontario.
- 1.44 “**Business Opportunities**” has the meaning given in Section 4.1(a) of the Project Agreement.
- 1.45 “**CaGBC**” means the Canadian Green Building Council.
- 1.46 “**Canadian and Industry Standards**” means, at the applicable time, those standards, practices, methods and procedures applicable to Good Industry Practice.
- 1.47 “**Canadian GAAP**” shall be deemed to be the generally accepted accounting principles, from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable as at the date on which such calculation is made or required to be made in accordance with generally accepted accounting principles, as such principles may be amended or varied by International Financial Reporting Standards then in effect in Canada, in any case consistently applied from one period to the next.
- 1.48 “**Capital Expenditure**” means capital expenditure as interpreted in accordance with Canadian GAAP.
- 1.49 “**Cash Allowance Account**” means [REDACTED].
- 1.50 “**Cash Allowance Amount**” means [REDACTED].
- 1.51 “**Cash Allowance Items**” means the Independent Certifier, In-Contract Equipment, Toronto Hydro and communication services, millwork and modular casework, and signage.
- 1.52 “**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.
- 1.53 “**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.

- 1.54 “**Change in Ownership**” means, with respect to a person, any change in ownership, whether beneficial or otherwise, of any of the shares or units or any other ownership interest of such person, or in the direct or indirect power to vote or transfer any of the shares or units or any other ownership interest of such person.
- 1.55 “**CLA**” means the *Construction Lien Act* (Ontario).
- 1.56 “**Clinical Functionality**” means the ability of the Facility to enable WCH to carry out the Clinical Services in a manner that meets WCH’s operating requirements as set out in the functional program represented in the Output Specifications approved by MOHLTC.
- 1.57 “**Clinical Functionality Report**” has the meaning given in Section 18.6(b) of the Project Agreement.
- 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 Agreements**” means, for the Affected Hospital Employees, the collective agreements (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, Equipment, or Existing Equipment (as set out in Part 5 of Schedule 15 – Output Specifications);
  - (d) required to be included in the Interim Commissioning Program by the Independent Certifier, the WCH Commissioning Agent or the WCH Representative during its development pursuant to Section 24A.2 of the Project Agreement; and
  - (e) required to be included in the Final Commissioning Program by the Independent Certifier, the WCH Commissioning Agent or the WCH Representative during its development pursuant to Section 24.2 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 38.1(a) of the Project Agreement.
- 1.64 “**Confidant**” has the meaning given in Section 49.6(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 Walsh Construction/Bondfield Partnership, a general partnership formed under the laws of the Province of Ontario by its general partners Walsh Construction Company Canada, a corporation incorporated under the laws of the State of Illinois, and Bondfield Construction Company Limited, a corporation incorporated under the laws of the Province of Ontario, 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 WCH, Project Co, the Construction Contractor and the Construction Guarantor in the form set out in Schedule 5-1 - Construction Contractor’s Direct Agreement.
- 1.69 “**Construction Document Submittals**” has the meaning given in Section 18.3(c)(ii) of the Project Agreement.
- 1.70 “**Construction Guarantor**” means The Walsh Group, Ltd., a corporation incorporated under the laws of the State of Illinois.
- 1.71 “**Construction Quality Plan**” means such document included in Schedule 11 - Design Quality Plan and Construction Quality Plan.
- 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 calendar year and ends on the next ensuing March 31<sup>st</sup>, provided that:



- (a) the first Contract Year shall be such period that commences on the Interim 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 the 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 “**Control**” means with respect to any person:

- (a) the control of the decisions made by or on behalf of such person;
- (b) 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) the direct or indirect power to direct or cause the direction of the management, actions or policies of such person;

and a person is Controlled (within the meaning of paragraphs (a) to (c) of this definition) by a person when such first-mentioned person is directly or indirectly Controlled (within the meaning of paragraphs (a) to (c) of this definition) by the second-mentioned person, and the term “Controlled by” shall have a corresponding meaning.

- 1.77 “**Cooling Degree Days**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.78 “**Countdown Notice**” has the meaning given in Section 24.7(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 “**Credit Agreement**” means the credit agreement between Project Co, [REDACTED], [REDACTED], [REDACTED], [REDACTED], the Lenders’ Agent and the Lenders dated on or about the date of this Project Agreement.
- 1.83 “**CSA Standard**” means, at the applicable time, the Canadian Standards Association standards.
- 1.84 “**Custodian**” means the person appointed as the Custodian pursuant to the Custody Agreement and as may be permitted pursuant to the Project Agreement.

- 1.85 “**Custody Agreement**” means the custody agreement between Project Co, WCH, the Custodian and the Lenders’ Agent in the form set out in Schedule 3 - Custody Agreement.
- 1.86 “**Deduction**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.87 “**Default Interest Rate**” means simple interest at an annual rate equal to [REDACTED]% 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.
- 1.88 “**Delay Events**” has the meaning given in Section 37.1(a) of the Project Agreement.
- 1.89 “**Demand Maintenance**” means all ad hoc, unscheduled or first response maintenance (other than Scheduled Maintenance) to the Site, the Facility, the Equipment and any Existing Equipment as designated in Part 5 of Schedule 15 – Output Specifications, which includes the response to malfunctions and provision of minor repairs, adjustments and general maintenance as follows:
- (a) first response to equipment malfunctions and assessment of the problem (e.g., operator error, utility problem, minor or major failure), and required response;
  - (b) performance of minor repairs and general maintenance, including filter changes, topping-up fluids, adjustments, resets, clearing blockages, minor carpentry and replacing minor parts such as rollers, wheels, pulley and hoses; and
  - (c) in the case of repairs that cannot be resolved under the immediately preceding subsection, arranging for and overseeing third party service representatives to make necessary repairs provided that Project Co has obtained approval from WCH, acting reasonably, for such third party repairs.
- 1.90 “**Demand Requisition**” means a requisition for Demand Maintenance.
- 1.91 “**Design and Bid Fee**” has the meaning given in the Request for Proposals.
- 1.92 “**Design Compliance Consultant**” means Cannon Design Ltd.
- 1.93 “**Design Data**” means all drawings, reports, documents, plans, software, formulae, calculations and other data prepared by Project Co relating to the design, construction or testing of the Facility, but excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction.
- 1.94 “**Design Development Submittals**” has the meaning given in Section 18.3(c)(i) of the Project Agreement.
- 1.95 “**Design Quality Plan**” means such document included in Schedule 11 - Design Quality Plan and Construction Quality Plan.

- 1.96 “**Design Team**” means Perkins Eastman Black/IBI Group Architects in joint venture, engaged by Project Co to design the Facility and any substitute design team engaged by Project Co as may be permitted by the Project Agreement.
- 1.97 “**Design Workshops**” has the meaning given in Section 18.5(a) of the Project Agreement.
- 1.98 “**Development Agreements**” means, collectively, NOAC and the Site Plan Agreement.
- 1.99 “**Development Approval**” means development permits, building permits, zoning approvals and any other planning or development permit, consent or applicable Permits, Licences, Approvals and Agreements required from time to time for construction of the Facility.
- 1.100 “**Dietician**” means a professional, registered dietician suitably qualified to understand nutrition and dietetic needs.
- 1.101 “**Direct Agreements**” means the Construction Contractor’s Direct Agreement and the Service Provider’s Direct Agreement.
- 1.102 “**Direct Cost**” has the meaning given in Schedule 22 -Variation Procedure.
- 1.103 “**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.
- 1.104 “**Discount Rate**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.105 “**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.
- 1.106 “**Dispute**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.107 “**Dispute Resolution Procedure**” means the procedure set out in Schedule 27 - Dispute Resolution Procedure.
- 1.108 “**Distribution**” has the meaning given in Schedule 28 - Refinancing.
- 1.109 “**Elevator Availability Failure**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.110 “**Elevator Availability Failure Deduction**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.111 “**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 WCH, requires immediate action to prevent and/or mitigate the occurrence (or risk of the occurrence) of the foregoing.
- 1.112 “**Employee Termination Payments**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.113 “**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.
- 1.114 “**Energy**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.115 “**Energy Consumption**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.116 “**Energy Year**” has the meaning given in Schedule 20 - Payment Mechanism.

- 1.117 “**Environmental Reports and Designated Substance Reports**” means the following reports:
- (a) Report No. 08-1113-0219 entitled “Phase I Environmental Site Assessment Women’s College Hospital and Kenson Apartments 60 & 76 Grenville St. and 51 Grosvenor St., Toronto, Ontario M5S 1B2”, dated March 2009 and prepared by Golder Associates Ltd.;
  - (b) Maple Project No. 11157 entitled “Report of Hazardous Building Materials – Kenson Apartment 51 Grosvenor St., Toronto – Women’s Collage Hospital”, dated November, 2008 and prepared by Maple Environmental Inc.;
  - (c) Maple Project No. 11157 entitled “Report of Hazardous Building Materials – Parking Garage 76 Grenville St., Toronto – Women’s College Hospital”, dated November 2008 and prepared by Maple Environmental Inc.; and
  - (d) Maple Project No. 11157 entitled “Report of Hazardous Building Materials – Women’s College Hospital 76 Grenville St., Toronto”, dated November 2008 and prepared by Maple Environmental Inc.
- 1.118 “**Equipment**” means the Not-In-Contract Equipment (including furniture) and the In-Contract Equipment and for clarity does not include the Existing Equipment.
- 1.119 “**Equipment List**” means the equipment list set out in Part 5 of Schedule 15 – Output Specifications.
- 1.120 “**Equipment Procurement Documentation**” has the meaning given in Section 21.4(a)(v) of the Project Agreement.
- 1.121 “**Equipment Steering Committee**” has the meaning given in Section 21.1(a) of the Project Agreement.
- 1.122 “**Equity Agreements**” means [REDACTED].
- 1.123 “**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 [REDACTED]% of the coupon payable to the Senior Lenders.
- 1.124 “**Equity IRR**” has the meaning given in Schedule 28 - Refinancing.
- 1.125 “**Equity Provider**” means [REDACTED].
- 1.126 “**Equity Sale IRR**” means the Equity IRR calculated 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.

- 1.127 “**Escalation Factor**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.128 “**Escrow Account**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.129 “**Estimate**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.130 “**Estimated Fair Value**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.131 “**Estimated Increased Maintenance Costs**” has the meaning given in Section 26.3(b) of the Project Agreement.
- 1.132 “**Event**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.133 “**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.
- 1.134 “**Excusing Cause**” has the meaning given in Section 39.1(a) of the Project Agreement.
- 1.135 “**Exempt Refinancing**” has the meaning given in Schedule 28 - Refinancing.
- 1.136 “**Exercise Date**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.137 “**Existing Facilities**” means (i) the facilities located at 76 Grenville Street, 77 Grenville Street and 790 Bay Street, Toronto, Ontario before Interim Completion, (ii) the Phase 1 Facility and the facilities located at 77 Grenville Street and 790 Bay Street, Toronto, Ontario between Interim Completion and Substantial Completion, and (iii) the Phase 1 Facility, the Phase 2 Facility and the facilities located at 77 Grenville Street and 790 Bay Street, Toronto, Ontario following Substantial Completion.
- 1.138 “**Existing Facilities Services Management Agreement**” has the meaning given in Section 3.2(a) of the Project Agreement.
- 1.139 “**Existing Facilities Services**” has the meaning given to it in the Existing Facilities Management Services Agreement.
- 1.140 “**Existing Equipment**” means the equipment designated as “transferrable equipment” in Part 5 of Schedule 15 – Output Specifications.

- 1.141 “**Expert**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.142 “**Expiry Date**” means the 30<sup>th</sup> anniversary of the original Scheduled Interim Completion Date, without taking into account any extensions to such date pursuant to Section 37 of the Project Agreement.
- 1.143 “**Expiry Lifecycle Costs**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.144 “**Expiry Transition Amount**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.145 “**Expiry Transition Procedure**” means the procedure for Expiry Transition described in Schedule 24 - Expiry Transition Procedure.
- 1.146 “**Expiry Transition Requirements**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.147 “**Expiry Transition Security**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.148 “**Expiry Transition Works**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.149 “**Expiry Transition Works Costs**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.150 “**Facilities Management Committee**” has the meaning given in Section 12.1(a) of the Project Agreement.
- 1.151 “**Facility**” means:
- (a) all buildings, facilities and other structures;
  - (b) the Plant;
  - (c) all site services, utilities, roadways and parking areas required to support such buildings, facilities and structures;
  - (d) all supporting systems, infrastructure and improvements; and
  - (e) all other works, improvements, and demolitions to occur on the Site,

in each case required to meet the Output Specifications and the requirements under the Permits, Licences, Approvals and Agreements and whether or not in the course of construction, installation or completion.

- 1.152 “**Facility Condition Report**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.153 “**Failure Event**” means a Quality Failure, an Availability Failure, or a Service Failure.
- 1.154 “**Failure Points**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.155 “**Failure Type**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.156 “**Final Commissioning Program**” means the program to be jointly developed and agreed by WCH and Project Co in accordance with Section 24.2 of the Project Agreement.
- 1.157 “**Final Completion**” means the completion of the Works in accordance with the Project Agreement, including the completion of all Interim Minor Deficiencies and all Minor Deficiencies and the achievement of Phase 2A Completion, but excluding the completion of any minor work which is seasonal in nature and cannot be completed by the Final Completion Date.
- 1.158 “**Final Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 24.11(d) of the Project Agreement.
- 1.159 “**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.
- 1.160 “**Final Completion Notice**” has the meaning given in Section 24.11(b) of the Project Agreement.
- 1.161 “**Final Facility Condition Report**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.162 “**Financial Close**” means the first date that funding is available under the Lending Agreements.
- 1.163 “**Financial Close Target Date**” means July 13, 2010, as such date may be extended in accordance with the provisions of the Project Agreement.
- 1.164 “**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.
- 1.165 “**Financial Obligations**” means the obligation to pay any application fees, third party fees, costs or charges (including all applicable Taxes thereon), the provision of any letters of credit, instruments of guarantee, bonds or security deposits, or any other financial security obligations save and except for the WCH Security Deposits.



- 1.166 “**FIPPA**” means the *Freedom of Information and Protection of Privacy Act* (Ontario).
- 1.167 “**First Amendment to the Project Agreement**” means the first amendment to the project agreement described in Recital C dated the date of Financial Close.
- 1.168 “**Five Year Maintenance Plan**” means the rolling plan to be prepared by or on behalf of Project Co for the maintenance of the Facility in accordance with Part 5 of Schedule 15 - Output Specifications and the other provisions of the Project Agreement during each five year period.
- 1.169 “**Force Majeure**” has the meaning given in Section 41.1(a) of the Project Agreement.
- 1.170 “**Functional Area**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.171 “**Functional Part**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.172 “**Functional Unit**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.173 “**Gainshare Adjustment**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.174 “**General Management Services**” means those general management services to be carried out pursuant to the General Management Services Specification.
- 1.175 “**General Management Services Specification**” means Section 2 of Part 4 of Schedule 15 - Output Specifications.
- 1.176 [REDACTED].
- 1.177 “**Geotechnical Conditions**” has the meaning given in Section 16.4(a)(i) of the Project Agreement.
- 1.178 “**Geotechnical Reports**” means the following geotechnical reports:
- (a) “Geotechnical Investigation – Proposed Building Addition Women’s College Hospital, Project SP6965”, dated November 8, 2006 and prepared by Shaheen & Peaker Limited (A Division of Coffey Geotechnics Inc.); and
  - (b) E-mail from F. Zhu (Shaheen & Peaker Limited (A Division of Coffey Geotechnics Inc.)) to R. Mazza (Read Jones Christoffersen Ltd.) Commenting on Two Level of Basement, dated November 7, 2008.
- 1.179 “**Gigajoule**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.180 “**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.

- 1.181 “**Government Entity**” means any one or more of the Province, IO, MEI, and the MOHLTC.
- 1.182 “**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 WCH, 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.
- 1.183 “**Grounds**” means all external elements of the Facility.
- 1.184 “**H&S Conviction**” has the meaning given in Section 42.1(a)(xvii) of the Project Agreement.
- 1.185 “**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.
- 1.186 “**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.
- 1.187 “**Heating Degree Days**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.188 “**Help Desk/Central Dispatch**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.189 “**Help Desk/Central Dispatch Services**” means those help desk services to be carried out pursuant to the Help Desk Services Specification.
- 1.190 “**Help Desk/Central Dispatch Services Specification**” means Section 5 of Part 4 of Schedule 15 - Output Specifications.
- 1.191 “**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.
- 1.192 “**Hospital Commissioning**” means the commissioning activities to be carried out by WCH in accordance with the Final Commissioning Program.
- 1.193 “**Hospital Commissioning Period**” means the period during which WCH is performing the Hospital Commissioning.

- 1.194 “**Hospital Commissioning Tests**” means all commissioning tests required to be performed by WCH pursuant to the Final Commissioning Program.
- 1.195 “**Hospital FM Services**” means all services and activities, other than the Clinical Services, provided or performed at the Facility by WCH from time to time, including select general management services, select helpdesk services, food services (patient), clinical engineering services, environmental services (including housekeeping, waste management and laundry/linen), materials management services (including purchasing, stores, distribution, portering, transportation and central processing), protection services, parking services, information management services, learning centre services, main public facilities services, site administration services, staff facilities services and volunteer/auxiliary services.
- 1.196 “**Hospital HR Policy**” means WCH’s human resources policies and guidelines, as they may be amended from time to time and provided to Project Co in writing.
- 1.197 “**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 WCH 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).
- 1.198 “**Hospital Services**” means the Clinical Services and the Hospital FM Services.
- 1.199 “**HST**” means the value-added tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.
- 1.200 “**HVAC**” means heating, ventilation and air conditioning.
- 1.201 “**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.
- 1.202 “**Improvements**” means structures, buildings, installations, fixtures, services and other such improvements.
- 1.203 “**In-Contract Equipment**” means all equipment in respect to which Project Co is to be the purchaser as specified in Part 5 of Schedule 15 – Output Specifications, and for clarity includes the WCH Early Procured In-Contract Equipment but does not include the Not-In-Contract Equipment and the Existing Equipment.
- 1.204 “**Indemnifier**” has the meaning given in Section 53.3(a) of the Project Agreement.
- 1.205 “**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.

- 1.206 “**Independent Certifier Agreement**” means the contract entered into between Project Co, WCH and the Independent Certifier in substantially the form attached hereto as Schedule 6 - Independent Certifier Agreement.
- 1.207 “**Independent Inspector**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.208 “**Indirect Losses**” has the meaning given in Section 54.1(a) of the Project Agreement.
- 1.209 “**Initial Labour Adjustment**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.210 “**Initial Period**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.211 “**Innovation Submissions Letter Agreement**” means the Innovations Submissions Letter Agreement between WCH and Project Co dated on or about the date of this Project Agreement.
- 1.212 “**Innovation Proposal**” has the meaning given in Section 36.2(b) of the Project Agreement.
- 1.213 “**Insurance Adjustment**” has the meaning given in Section 7.3 of Schedule 25 - Insurance and Performance Security Requirements.
- 1.214 “**Insurance Cost Differential**” has the meaning given in Section 7.1 of Schedule 25 - Insurance and Performance Security Requirements.
- 1.215 “**Insurance Review Date**” has the meaning given in Section 7.1 of Schedule 25 - Insurance and Performance Security Requirements.
- 1.216 “**Insurance Review Period**” has the meaning given in Section 7.1 of Schedule 25 - Insurance and Performance Security Requirements.
- 1.217 “**Insurance Trust Agreement**” means the insurance trust agreement to be entered into between WCH, the Lenders’ Agent, Project Co and the Account Trustee in the form set out in Schedule 30 - Insurance Trust Agreement.
- 1.218 “**Integration Period**” means the period during which a portion of Project Co Services in the Phase 1 Facility is interrupted while the Phase 2 Facility is being completed.
- 1.219 “**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.

- 1.220 **“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.
- 1.221 **“Interface Agreement”** means the interface agreement between Project Co, the Construction Contractor and the Service Provider.
- 1.222 **“Interim Bedding-In Period”** has the meaning given in Schedule 20 – Payment Mechanism.
- 1.223 **“Interim Commissioning Program”** means the program to be jointly developed and agreed by WCH and Project Co. in accordance with Section 24A.2 of the Project Agreement.
- 1.224 **“Interim Completion”** means the point at which the Phase 1 Facility has been completed in accordance with the Project Agreement; the Phase 1 Occupancy Permit has been issued; a certificate of substantial performance of the Works is published pursuant to Section 32(1) of the *Construction Lien Act* (Ontario); and all requirements for Interim Completion described in the Interim Commissioning Program, other than in respect of Interim Minor Deficiencies, have been satisfied.
- 1.225 **“Interim Completion Certificate”** means the certificate to be issued by the Independent Certifier in accordance with Section 24A.4(d) of the Project Agreement.
- 1.226 **“Interim Completion Date”** means the date on which Interim Completion is achieved as evidenced by the Interim Completion Certificate, as such date shall be stated therein.
- 1.227 **“Interim Completion Notice”** has the meaning given in Section 24A.4(b) of the Project Agreement.
- 1.228 **“Interim Completion Payment”** means eighty million dollars (\$80,000,000).

- 1.229 “**Interim Contract Month**” has the meaning given to it in Schedule 20 – Payment Mechanism.
- 1.230 “**Interim Countdown Notice**” has the meaning given in Section 24A.7(a) of the Project Agreement.
- 1.231 “**Interim Hospital Commissioning**” means the commissioning activities to be carried out by WCH in accordance with the Interim Commissioning Program.
- 1.232 “**Interim Hospital Commissioning Period**” means the period which WCH is performing the Interim Hospital Commissioning.
- 1.233 “**Interim Hospital Commissioning Tests**” means all commissioning tests required to be performed by WCH pursuant to the Interim Commissioning Program.
- 1.234 “**Interim Management Services Fee**” has the meaning given in Schedule 8 – Existing Facilities Services Management Agreement.
- 1.235 “**Interim Minor Deficiencies**” means any defects, deficiencies and items of outstanding work (including in relation to seasonal work) arising from or related to the work required to achieve Interim Completion and which would not materially impair WCH’s use and enjoyment of the Phase 1 Facility (including the Interim Hospital Commissioning) or the performance of the Hospital Services by WCH or the performance of the Project Co Services by Project Co.
- 1.236 “**Interim Minor Deficiencies List**” has the meaning given in Section 24A.8(a) of the Project Agreement.
- 1.237 “**Interim Monthly Service Payment**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.238 “**Interim Payment Commencement Date**” means the date that is 2 Business Days after the Interim Completion Date.
- 1.239 “**Interim Period**” means the period between the Interim Completion Date and the Substantial Completion Date.
- 1.240 “**Interim Project Co Commissioning**” means the commissioning activities to be carried out by Project Co prior to the issuance of the Interim Completion Certificate in accordance with the Interim Commissioning Program.
- 1.241 “**Interim Project Co Commissioning Tests**” means all Commissioning Tests required to be performed by Project Co pursuant to the Interim Commissioning Program.
- 1.242 “**Interim Seasonal Bedding-In Period**” has the meaning given in Schedule 20 – Payment Mechanism.

- 1.243 “**Interim Transition**” has the meaning given in Section 24A.12(a) of the Project Agreement.
- 1.244 “**Interim Transition Services Fee**” means [REDACTED], as such amount may be increased or decreased by Variation, subject to and in accordance with Schedule 22 - Variation Procedure, as a result of a material increase or decrease in the amount of Existing Equipment.
- 1.245 “**Invoice Date**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.246 “**IO**” or “**Infrastructure Ontario**” means the non-share capital corporation continued under the *Ontario Infrastructure Projects Corporation Act*, S.O. 2006, c. 9, Schedule I, as amended and includes any successors to IO or persons exercising delegated power and the Minister's authority, as agent for Her Majesty the Queen in Right of Ontario, as represented by the Minister of Energy and Infrastructure.
- 1.247 “**IPFP Framework**” has the meaning given in Recital E of the Project Agreement.
- 1.248 “**Irrecoverable Tax**” has the meaning given in Section 32.4(b) of the Project Agreement.
- 1.249 “**Joint Insurance Cost Report**” has the meaning given in Section 7.2 of Schedule 25 - Insurance and Performance Security Requirements.
- 1.250 “**Joint Technical Review**” means an assessment conducted by the Parties 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 Part 4 of Schedule 15 - Output Specifications.
- 1.251 “**Jointly Developed Materials**” has the meaning given in Section 48.4(a) of the Project Agreement.
- 1.252 “**Junior Debt Amount**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.253 “**Junior Debt Makewhole**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.254 “**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.
- 1.255 “**Junior Lenders**” – there are no Junior Lenders under the Project Agreement and any reference to “Junior Lenders” in the Project Agreement shall have no force or effect.
- 1.256 “**LEED**” means Leadership in Energy & Environmental Design.

- 1.257 “**LEED Certification**” means LEED Certified certification under LEED-NC Version 1.0 by the CaGBC, including any addenda or updates thereto issued prior to the date of the Project Agreement.
- 1.258 “**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.
- 1.259 “**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.
- 1.260 “**Lenders’ Agent**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.261 “**Lenders’ Direct Agreement**” means the direct agreement to be entered into between WCH, the Lenders’ Agent and Project Co in the form set out in Schedule 4 - Lenders’ Direct Agreement.
- 1.262 “**Lending Agreements**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.263 “**Lifecycle Maintenance**” means maintenance of furnishings and equipment over its lifetime.
- 1.264 “**Lifecycle Payment**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.265 “**Lifecycle Replacement Schedule**” means a program for the planned or scheduled replacement, refreshment and/or refurbishment of building systems, 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.
- 1.266 “**Liquid Market**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.267 “**Local Health Integration Network**” means Toronto Central Health Integration Network.
- 1.268 “**Longstop Date**” has the meaning given in Section 42.1(a)(ii) of the Project Agreement.
- 1.269 “**Maintenance Work**” means any work performed or required to be performed after Interim Completion for maintenance or repair of the Facility in accordance with the requirements of the Project Agreement.
- 1.270 “**Major Quality Failure**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.271 “**Major Quality Failure Deduction**” has the meaning given in Schedule 20 - Payment Mechanism.



- 1.272 “**Major Service Failure**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.273 “**Major Service Failure Deduction**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.274 “**Make Good**” means repairing, restoring refurbishing rehabilitating or replacing any WCH Site Facilities as required in order to ensure that any such WCH Site Facility can be safely occupied and operated materially in the same manner and extent as it was prior to such damage occurring.
- 1.275 “**Mandatory Refinancing**” has the meaning given in Schedule 28 – Refinancing.
- 1.276 “**Market Value Availability Deduction Amount**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.277 “**Maximum Service Payment**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.278 “**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.
- 1.279 “**Medium Quality Failure**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.280 “**Medium Quality Failure Deduction**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.281 “**Medium Service Failure**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.282 “**Medium Service Failure Deduction**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.283 “**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.
- 1.284 “**Minimum Agreed Availability Conditions**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.285 “**Minimum Unavailability Deduction**” has the meaning given in Schedule 20 - Payment Mechanism.

- 1.286 “**Mini-Perm Financing**” has the meaning given in Schedule 28 - Refinancing.
- 1.287 “**Minor Deficiencies**” means any defects, deficiencies and items of outstanding work (including in relation to seasonal work) arising from or related to the work required to achieve Substantial Completion and Phase 2A Completion and which would not materially impair WCH’s use and enjoyment of the Facility (including the Hospital Commissioning) or the performance of the Hospital Services by WCH or the performance of the Project Co Services by Project Co.
- 1.288 “**Minor Deficiencies List**” has the meaning given in Section 24.8(a) of the Project Agreement.
- 1.289 “**Minor Quality Failure**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.290 “**Minor Quality Failure Deduction**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.291 “**Minor Service Failure**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.292 “**Minor Service Failure Deduction**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.293 “**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.
- 1.294 “**Monitoring Notice**” has the meaning given in Section 29.4(a) of the Project Agreement.
- 1.295 “**Monitoring Period**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.296 “**Monthly Energy Report**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.297 “**Monthly Previously Paid HST Amount**” means a monthly HST amount to be determined as provided for below which in the aggregate is equal to the amount of the Section 32.1(c) Payment. The amount of each Monthly Previously Paid HST Amount shall be:
- (a) the amount of the Section 32.1(c) Payment amortized on a straight line basis over the Interim Monthly Service Payments and the Monthly Service Payments, as applicable, due over the remainder of the Operational Term following the payment of a Section 32.1(c) Payment subject to an alternative basis on which to amortize the remaining unapplied Section 32.1(c) Payment as provided for by Applicable Law in which case WCH shall determine the Monthly Previously Paid HST Amount in accordance with such Applicable Law, provided that WCH may, at any time, proceed to obtain an advance ruling under the *Excise Tax Act* (Canada) (or rely upon an existing advance ruling under the *Excise Tax Act* (Canada)) in respect to some other basis for amortizing the remaining unapplied Section 32.1(c) Payment over the Interim

Monthly Service Payments and the Monthly Service Payments, as applicable, due over the remainder of the Operational Term, and in such event, the remaining unapplied Section 32.1(c) Payment may be amortized over the Interim Monthly Service Payments and the Monthly Service Payments, as applicable, in a manner provided for in the advance ruling if WCH so determines in its sole discretion;

- (b) communicated by WCH to Project Co in writing at the same time that WCH pays Project Co the Section 32.1(c) Payment; and
- (c) credited to WCH in each Interim Monthly Service Payment invoice or Monthly Service Payment invoice, as the case may be, sent by Project Co to WCH following the first payment of the Section 32.1(c) Payment.

1.298 “**Monthly Service Payment**” has the meaning given in Schedule 20 - Payment Mechanism.

1.299 “**MSDS**” means the material safety data sheets prescribed by the applicable WHMIS legislation.

1.300 “**New Agreement**” has the meaning given in Schedule 23 - Compensation on Termination.

1.301 “**New Project Co**” has the meaning given in Schedule 23 - Compensation on Termination.

1.302 “**NOAC**” means the Notice of Approval Conditions issued by the City of Toronto with respect to WCH’s application for Site Plan Approval.

1.303 “**No Cost Measures**” means energy saving measures, including those related to good housekeeping, involving no material additional expenditure and/or no Capital Expenditure.

1.304 “**No Default Interest Rate**” means 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.

1.305 “**Non-Default Termination Sum**” has the meaning given in Schedule 23 - Compensation on Termination.

1.306 “**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).

1.307 “**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.

- 1.308 “**Notice**” has the meaning given in Section 58.1(a) of the Project Agreement
- 1.309 “**Notice of Dispute**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.310 “**Not-In-Contract Equipment**” means all equipment in respect to which WCH is to be the purchaser as specified in Part 5 of Schedule 15 – Output Specifications.
- 1.311 “**Occupancy Permit**” means all Permits, Licences, Approvals and Agreements required for the occupancy of the Facility as a health care facility in compliance with Applicable Law.
- 1.312 “**Operational Term**” means the period from the Interim Completion Date until the end of the Project Term.
- 1.313 “**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.
- 1.314 “**Output Specifications**” means Schedule 15 - Output Specifications.
- 1.315 “**Painshare Adjustment**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.316 “**Parking Management Services**” means those parking management services to be carried out pursuant to the Parking Management Services Specification.
- 1.317 “**Parking Management Services Specification**” means Section 8 of Part 4 of Schedule 15 – Output Specifications.
- 1.318 “**Party**” means either WCH or Project Co, and “**Parties**” means both WCH and Project Co, but, for greater certainty, such definitions do not include IO, MOHLTC or MEI.
- 1.319 “**Party Representative**” and “**Party Representatives**” have the meanings given in Schedule 27 - Dispute Resolution Procedure.
- 1.320 “**Pass-Through Adjusted Service Payment**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.321 “**Pass-Through Adjustment**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.322 “**Patient Information**” means Personal Information of patients, clients, and other users and recipients of the Hospital Services.

- 1.323 **“Payment Adjustment Report”** has the meaning given in Section 31.6(j)(ii) of the Project Agreement.
- 1.324 **“Payment Commencement Date”** means the date that is 2 Business Days after the Substantial Completion Date.
- 1.325 **“Payment Mechanism”** means Schedule 20 – Payment Mechanism.
- 1.326 **“Payment Periods”** means the payment periods of one calendar month (as adjusted in this definition) established by WCH 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.
- 1.327 **“Pension Plan”** means the Hospitals of Ontario Pension Plan and any successors thereof.
- 1.328 **“Performance Audit”** has the meaning given in Section 26.8(a) of the Project Agreement.
- 1.329 **“Performance Guarantee”** means the guarantee to Project Co in respect of the Construction Contract provided by the Construction Guarantor.
- 1.330 **“Performance Indicator”** has the meaning given in Schedule 20 - Payment Mechanism.
- 1.331 **“Performance Monitoring”** means those performance monitoring services to be carried out pursuant to Part 4 of Schedule 15 - Output Specifications.
- 1.332 **“Performance Monitoring Period”** has the meaning given in Schedule 20 - Payment Mechanism.
- 1.333 **“Performance Monitoring Program”** has the meaning given in Part 4 of Schedule 15 - Output Specifications.
- 1.334 **“Performance Monitoring Report”** has the meaning given in Schedule 20 - Payment Mechanism.
- 1.335 **“Performance Security”** means the performance security required pursuant to Section 19.1 of Schedule 25 - Insurance and Performance Security Requirements.
- 1.336 **“Periodic Labour Adjustment”** has the meaning given in Schedule 20 - Payment Mechanism.
- 1.337 **“Permanent Repair”** has the meaning given in Schedule 20 - Payment Mechanism.
- 1.338 **“Permanent Repair Deadline”** has the meaning given in Schedule 20 - Payment Mechanism.

- 1.339 “**Permits, Licences, Approvals and Agreements**” means the WCH Permits, Licences, Approvals and Agreements and the Project Co Permits, Licences, Approvals and Agreements.
- 1.340 “**Permitted Borrowing**” means:
- (a) any advance to Project Co under the Lending Agreements;
  - (b) any additional financing approved by WCH 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 WCH’s liabilities under the Project Agreement whether actual or contingent, present or future, known or unknown.
- 1.341 “**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 Project Co Partys other than personal information of the employees of Project Co or its Project Co Partys and other than personal information that is wholly unrelated to the Project Operations and not derived directly or indirectly from WCH in respect of the Project.
- 1.342 “**Phase 1 Equipment**” means the Equipment to be located in the Phase 1 Facility.
- 1.343 “**Phase 1 Equipment Procurement Fee**” means [REDACTED].
- 1.344 “**Phase 1 Facility**” means that portion of the Facility described in Section 1.5.4 of Part 1 of Schedule 15 – Output Specifications.
- 1.345 “**Phase 1 Occupancy Permit**” means all Permits, Licences, Approvals and Agreements required for the occupancy of the Phase 1 Facility as a health care facility in compliance with Applicable Law.
- 1.346 “**Phase 2 Equipment**” means the Equipment to be located in the Phase 2 Facility.
- 1.347 “**Phase 2 Equipment Procurement Fee**” means [REDACTED].
- 1.348 “**Phase 2 Existing Equipment**” means the Existing Equipment designated as “Phase 2 Existing Equipment” in Part 5 of Schedule 15 – Output Specifications.
- 1.349 “**Phase 2A Commissioning**” means the commissioning activities to be carried out in respect of the Phase 2A Works in accordance with the Final Commissioning Program, which, for clarity, are anticipated to proceed on a rolling basis as the different components of the Phase 2A Works are ready for hand over to WCH.
- 1.350 “**Phase 2A Completion**” means the point at which the Phase 2A Works have been completed in accordance with the Project Agreement; all requirements for Phase 2A

Completion described in the Final Commissioning Program, other than in respect of Minor Deficiencies, have been satisfied; and all requirements for the completion of the Phase 2A Transition have been satisfied.

- 1.351 “**Phase 2A Completion Certificate**” means a certificate to be issued by the Independent Certifier in accordance with Section 24.4B(f) of the Project Agreement.
- 1.352 “**Phase 2A Completion Notice**” has the meaning given in Section 24.4B(e) of the Project Agreement.
- 1.353 “**Phase 2 Facility**” means that portion of the Facility described in Section 1.5.4 of Part 1 of Schedule 15 – Output Specifications.
- 1.354 “**Phase 2A Hand Over Notice**” has the meaning given in 24.4B(a).
- 1.355 “**Phase 2A Secured Activities**” has the meaning given in Section 24.10B(b).
- 1.356 “**Phase 2A Transition**” has the meaning given in Section 24.13B(a) of the Project Agreement.
- 1.357 “**Phase 2A Transition Services Fee**” means [REDACTED].
- 1.358 “**Phase 2A Works**” means any alterations, renovations, retrofitting or fit-up work executed after Substantial Completion so as to achieve completion of the Facility in accordance with the Output Specifications, which, for clarity, are as revised by Project Co’s proposed design and schedule for the Phase 2A Works and accepted and approved by WCH.
- 1.359 “**Phase 2A Works Standby Letter of Credit**” has the meaning given in Section 24.10B(a).
- 1.360 “**Phasing Plan**” means the phasing plans to be agreed upon between WCH and Project Co in conformance with the Construction Phasing Drawings and Phasing Requirements set out in Section 1.5.4 of Part 1 of Schedule 15 - Output Specifications.
- 1.361 “**Plant**” means all buildings, building services, infrastructure, building fabric, and mechanical and electrical services, which are required to meet the operational needs of WCH as defined in Schedule 15 - Output Specifications.
- 1.362 “**Plant Services**” means those plant services to be carried out pursuant to the Plant Services Specification.
- 1.363 “**Plant Services Specification**” means Section 5 of Part 4 of Schedule 15 – Output Specifications.
- 1.364 “**Post Termination Service Amount**” has the meaning given in Schedule 23 - Compensation on Termination.

- 1.365 “**Pre-Existing Environmental Site Conditions**” means the environmental condition of the Site as set out in the Environmental Reports and Designated Substance Reports.
- 1.366 “**Preventive Maintenance**” is a planned, scheduled and/or frequency-based maintenance regime designed to ensure that building components, equipment and fixtures will achieve their expected design or service life, and will provide reliable functionality within the defined performance parameters.
- 1.367 “**Prohibited Act**” has the meaning given in Section 57.1(a) of the Project Agreement.
- 1.368 “**Prohibited Acts Termination Sum**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.369 “**Project**” has the meaning given in Recital B of the Project Agreement.
- 1.370 “**Project Agreement**” has the meaning given in Recital C of the Project Agreement.
- 1.371 “**Project Agreement Arbitration**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.372 “**Project Co**” means Women’s College Partnership.
- 1.373 “**Project Co Commissioning**” means the commissioning activities to be carried out by Project Co prior to the issuance of the Substantial Completion Certificate and the Final Completion Certificate in accordance with the Final Commissioning Program.
- 1.374 “**Project Co Commissioning Coordinator**” means the person appointed by Project Co as its commissioning agent.
- 1.375 “**Project Co Commissioning Tests**” means all Commissioning Tests required to be performed by Project Co pursuant to the Final Commissioning Program.
- 1.376 “**Project Co Event of Default**” has the meaning given in Section 42.1(a) of the Project Agreement.
- 1.377 “**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);
  - (d) any Supplier or consultant of Project Co engaged by or through Project Co to perform any of the Project Operations; and



(e) 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.

1.378 “**Project Co Party Losses**” has the meaning given in Schedule 23 - Compensation on Termination.

1.379 “**Project Co Permits, Licences, Approvals and Agreements**” means all permissions, consents, approvals, certificates, permits, licences, agreements and authorizations to be obtained and/or performed by Project Co in accordance with the Project Agreement and as required by Applicable Law, and all necessary consents and agreements from and with any third parties (including all Development Approvals and Development Agreements and the approval of the Fire Marshal of Ontario), needed to perform the Project Operations in accordance with the Project Agreement, including those permits, licences, approvals and agreements which are the responsibility of Project Co to obtain and/or perform as set out in Appendix 1 – Permits, Licences, Approvals and Agreements but other than any WCH Permits, Licences, Approvals and Agreements.

1.380 “**Project Co Proposal Extracts**” means the documents attached as Schedule 13 - Project Co Proposal Extracts.

1.381 “**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.

1.382 “**Project Co Services**” means the services to be performed by Project Co and referred to in Part 4 of 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.

1.383 “**Project Co Variation Notice**” has the meaning given in Schedule 22 - Variation Procedure.

1.384 “**Project Data**” means:

- (a) all Design Data;
- (b) all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the provision of the Project Co Services; and
- (c) 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 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.

1.385 “**Project Documents**” means the Ancillary Documents and the Lending Agreements.

- 1.386 “**Project Insurance Change**” has the meaning given in Section 7.1 of Schedule 25 - Insurance and Performance Security Requirements.
- 1.387 “**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.
- 1.388 “**Project Term**” means the period commencing on the date of the Project Agreement and expiring at midnight on the Termination Date.
- 1.389 “**Proprietor**” has the meaning given in Section 49.6(a) of the Project Agreement.
- 1.390 “**Province**” means Her Majesty the Queen in Right of Ontario.
- 1.391 “**Qualification Criteria**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.392 “**Qualifying Bank**” has the meaning in Schedule 28 - Refinancing.
- 1.393 “**Qualifying Bank Transaction**” has the meaning in Schedule 28 - Refinancing.
- 1.394 “**Qualifying Refinancing**” has the meaning given in Schedule 28 - Refinancing.
- 1.395 “**Qualifying Tender**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.396 “**Qualifying Tenderer**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.397 “**Quality Failure**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.398 “**Quality Failure Deduction**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.399 “**Quality Plans**” has the meaning given in Section 13.1(a) of the Project Agreement.
- 1.400 “**Recoverable Tax**” has the meaning given in Section 32.4(c) of the Project Agreement
- 1.401 “**Recovery Amount**” has the meaning given in Section 53.3(g) of the Project Agreement.
- 1.402 “**Rectification**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.403 “**Rectification Costs**” has the meaning given in Schedule 23 - Compensation on Termination.

- 1.404 “**Rectification Time**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.405 “**Refinancing**” has the meaning given in Schedule 28 - Refinancing.
- 1.406 “**Refinancing Financial Model**” has the meaning given in Schedule 28 - Refinancing.
- 1.407 “**Refinancing Gain**” has the meaning given in Schedule 28 - Refinancing.
- 1.408 “**Reimbursement Event**” has the meaning given in Section 30.5(a) of the Project Agreement.
- 1.409 “**Relevant Change in Law**” means a Discriminatory Change in Law or a Health Specific Change in Law.
- 1.410 “**Relevant Conviction**” means a conviction under the *Criminal Code* (Canada) for which no pardon has been granted.
- 1.411 “**Relevant Insurance**” has the meaning given in Section 7.1 of Schedule 25 - Insurance and Performance Security Requirements.
- 1.412 “**Relevant Insurance Inception Date**” has the meaning given in Section 7.1 of Schedule 25 - Insurance and Performance Security Requirements.
- 1.413 “**Relief Events**” has the meaning given in Section 40.1(a) of the Project Agreement.
- 1.414 “**Remedial Period**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.415 “**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.
- 1.416 “**Request for Payment Approval**” has the meaning given in Section 18.12(d) of the Project Agreement.
- 1.417 “**Request for Proposals**” means the request for proposals issued in respect of the Project on July 10, 2009.
- 1.418 “**Rescue Refinancing**” has the meaning given in Schedule 28 - Refinancing.
- 1.419 “**Response Time**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.420 “**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 or Ontario;

- (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 or for any offence under any Provincial statute, other than offences under the *Highway Traffic Act* or corresponding legislation in any other jurisdiction, or under any municipal laws, 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 WCH 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 WCH’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.
- 1.421 “**Retail Property Management Services**” means those retail property management services to be carried out pursuant to the Retail Property Management Services Specification.
- 1.422 “**Retail Property Management Services Specification**” means Section 10 of Part 4 of Schedule 15 – Output Specifications.
- 1.423 “**Return Date**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.424 “**Review Procedure**” means the procedure set out in Schedule 10 - Review Procedure.
- 1.425 “**Revised Facility Condition Report**” has the meaning given in Schedule 24 - Expiry Transition Procedure.
- 1.426 “**Roads and Grounds Maintenance Services**” means those roads and grounds maintenance services to be carried out pursuant to the Roads and Grounds Maintenance Services Specification.
- 1.427 “**Roads and Grounds Maintenance Services Specification**” means Section 7 of Part 4 of Schedule 15 - Output Specifications.

- 1.428 “**Safety Condition**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.429 “**Safety Plan**” means the safety plan included in the Project Co Proposal Extracts.
- 1.430 “**Schedule**” means a schedule to the Project Agreement.
- 1.431 “**Scheduled Final Completion Date**” means March 8, 2016, 5 months and 29 days following Substantial Completion.
- 1.432 “**Scheduled Interim Completion Date**” means April 29, 2013, as such date may be extended pursuant to Section 37 of the Project Agreement.
- 1.433 “**Scheduled Maintenance**” means, where that term is specifically defined for all or any Section of Part 4 of Schedule 15 - Output Specifications, the meaning it is given therein, but only in respect of that Section of Part 4 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 Scheduled Maintenance Plan, and the performance of any replacement, refreshment and/or refurbishment of building systems, equipment and fixtures in accordance with the Lifecycle Replacement Schedule.
- 1.434 “**Scheduled Maintenance Plan**” means the plan to be prepared by or on behalf of Project Co for the maintenance of the Facility in accordance with Part 4 of 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.
- 1.435 “**Scheduled Substantial Completion Date**” means September 9, 2015, as such date may be extended pursuant to Section 37 of the Project Agreement.
- 1.436 “**Seasonal Bedding-In Period**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.437 “**Section 32.1(c) Payment**” means payment of the HST payable by WCH to Project Co under Section 32.1(c) of the Project Agreement (pursuant to paragraph 168(3)(c) of the *Excise Tax Act* (Canada)).
- 1.438 “**Security**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.439 “**Security and Surveillance Services**” means those security and surveillance services to be carried out pursuant to the Security and Surveillance Services Specification.
- 1.440 “**Security and Surveillance Services Specification**” means Section 9 of Part 4 of Schedule 15 – Output Specifications.
- 1.441 “**Security Documents**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.

- 1.442 “**Senior Debt Amount**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.443 “**Senior Debt Makewhole**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.444 “**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.
- 1.445 “**Senior Lenders**” means Banco Espirito Santo de Investimento, S.A. New York Branch, Crédit Agricole Corporate and Investment Bank, ING Capital LLC, and Société Générale (Canada Branch), together with their successors and permitted assigns.
- 1.446 “**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.
- 1.447 “**Service Contract**” means the service contract between Project Co and the Service Provider dated on or about the date of Financial Close.
- 1.448 “**Service Failure**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.449 “**Service Failure Deduction**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.450 “**Service Failure Performance Indicator**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.451 “**Service Provider**” means Black & McDonald Limited, a corporation incorporated under the laws of the Province of Ontario, 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.
- 1.452 “**Service Provider’s Direct Agreement**” means the direct agreement between WCH, Project Co and the Service Provider, in the form set out in Schedule 5-2 - Service Provider’s Direct Agreement.
- 1.453 “**Service Quality Plan**” means such plan to be developed pursuant to the Output Specifications and the Final Commissioning Program.
- 1.454 “**Service Standards**” means the performance standards ascribed to each Project Co Service in Part 4 of Schedule 15 - Output Specifications.
- 1.455 “**Service Submittal**” has the meaning given in Section 11.1 of Schedule 10 - Review Procedure.

- 1.456 “**Severe Market Disruption**” means any occurrence of exceptional circumstances in financial markets in Europe, the United States of America and/or Canada, which:
- (a) result in the suspension or cessation of all or substantially all lending activity in national or relevant international capital or interbank markets; and
  - (b) adversely affect access by Project Co to such markets.
- 1.457 “**Shop Drawings**” means drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are to be provided by Project Co to illustrate details of a portion of the Works, indicating materials, methods of construction and attachment or anchorage, erection diagrams, connections, explanatory notes and other information necessary for completion of the Works.
- 1.458 “**Site**” means the lands, including all Improvements thereon or therein, which are identified as follows:
- (a) **FIRSTLY**  
**PIN 21415-0013 (LT)**: Parcel 142-1, Section A159, described as being Lots 142, 145, 146 and 149, all on S/S of Grosvenor Street, on Plan 159; S/T E298997, assigned by E298998; City of Toronto.
  - (b) **SECONDLY**  
**PIN 21415-0092 (LT)**: Lots 125-141, 143-144 and 147-148 (all inclusive) on Plan 159; part of Lane on Plan 159, lying to the east of the easterly limits of Lots 125 to 129 (inclusive), on Plan 159; part of Lane on Plan 159, lying to the south of the southerly limits of Lots 130, 133, 134, 137, 138 and 141 on Plan 159, closed by EP126840, as in EP139342; S/T CA642570 and CA642571; City of Toronto.
  - (c) **THIRDLY**  
**PIN 21415-0144 (LT)**: Part of Lane on Plan 159, stopped up and closed by By-Law 367-2009 registered as AT2049477, designated as Part 1 on 66R-24219; City of Toronto
- [Note: To the extent that Project Co has obligations in respect of the existing utilities conduit beneath Grosvenor Street connecting the Site with the property municipally known as 60 Grosvenor Street, the Site shall also be considered to include such conduit].**
- 1.459 “**Site Conditions**” means the condition of the Site, including the physical, geophysical, climatic, ecological, environmental, geotechnical and archaeological conditions.
- 1.460 “**Site Plan Agreement**” means the Site Plan Agreement between WCH and the City of Toronto to be registered against title to the Site in favour of the City of Toronto.

- 1.461 “**Site Plan Approval**” means the approval of plans and drawings by the applicable Governmental Authority in accordance with Section 114 of the *City of Toronto Act, 2006* and/or Section 41 of the *Planning Act*, as the case may be.
- 1.462 “**Slope**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.463 “**Small Works**” means any works, including facilities and equipment, of a minor nature that are requested by WCH to be performed having an individual cost or aggregate cost with other linked works, including facilities and equipment, of a minor nature, not exceeding \$[REDACTED] (index linked), or as otherwise agreed from time to time, but excluding any works, including facilities and equipment, which will increase the likelihood of a Failure Event occurring, 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.
- 1.464 “**Specific Services Specification**” means any one of the General Management Services Specification, the Plant Services Specification, the Sustainability Services Specification, the Roads and Grounds Maintenance Services Specification, the Help Desk/Central Dispatch Services Specification, the Utilities Management Services Specification, the Parking Management Services Specification, the Security and Surveillance Services Specification and the Retail Property Management Services Specification.
- 1.465 “**Standby Letter of Credit**” has the meaning given in Section 2.2(a) of the Project Agreement.
- 1.466 “**Start-Up Meeting**” has the meaning given in Section 18.4(a) of the Project Agreement.
- 1.467 “**Step-In Period**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.468 “**Subcontracts**” means the contracts entered into by or between Project Co and any Project Co Party or between any Project Co Party at any tier, including the Construction Contractor and the Service Provider, and any other Project Co Party at any tier in relation to any aspect of the Project Operations.
- 1.469 “**Submittal**” means either a Works Submittal or a Service Submittal.
- 1.470 “**Substantial Completion**” means the point at which the Phase 2 Facility, other than the Phase 2A Works, the Phase 2A Commissioning and the Phase 2A Transition, has been completed in accordance with the Project Agreement; the Occupancy Permit has been issued; a certificate of substantial performance of the Works is published pursuant to 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 and the Phase 2A Commissioning, have been satisfied.
- 1.471 “**Substantial Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 24.4(d) of the Project Agreement.



- 1.472 “**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.
- 1.473 “**Substantial Completion Notice**” has the meaning given in Section 24.4(b) of the Project Agreement.
- 1.474 “**Substantial Completion Payment**” means eighty million dollars (\$80,000,000).
- 1.475 “**Suitable Substitute**” has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.476 “**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.
- 1.477 “**Supplier**” means a person who supplies to Project Co, or to any Project Co Party, any equipment, materials, supplies or services as part of, or for, the Project Operations.
- 1.478 “**Sustainability Services**” means those sustainability services to be carried out pursuant to the Sustainability Services Specification.
- 1.479 “**Sustainability Services Specification**” means Section 4 of Part 4 of Schedule 15 - Output Specifications.
- 1.480 “**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 HST except where stated to the contrary, provided however that “Taxes” shall not include the WCH Taxes.
- 1.481 “**Technical Reports**” means the Environmental Reports and Designated Substance Reports and the Geotechnical Reports.
- 1.482 “**Temporary Alternative Accommodation**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.483 “**Temporary Repair**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.484 “**Tender Costs**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.485 “**Tender Process**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.486 “**Tender Process Monitor**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.487 “**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.

- 1.488 “**Third Party Arbitration**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.489 “**Third Party Beneficiaries**” has the meaning given in Section 59.17(a)(i) of the Project Agreement.
- 1.490 “**Third Party Litigation**” has the meaning given in Schedule 27 - Dispute Resolution Procedure.
- 1.491 “**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.
- 1.492 “**Threshold Equity Sale IRR**” means [REDACTED]%.
- 1.493 “**Title Encumbrances**” means the Encumbrances listed in Schedule 16 - Title Encumbrances and any other Encumbrance consented to by WCH and reasonably required in connection with the development of the Facility and the Project Operations.
- 1.494 “**Trade-Marks**” means any registered or unregistered mark, trade-mark, service mark, distinguishing guise, logo, insignia, seal, design or symbol.
- 1.495 “**Transfer Date**” means the date on which the Affected Hospital Employees are transferred to Project Co or any Project Co Party pursuant to Section 27 of the Project Agreement, which date shall, unless otherwise agreed by the Parties or as provided in Schedule 17 - Employee Transition, be the Interim Completion Date.
- 1.496 “**Transferred Employees**” and “**Transferred Unionized Employees**” means all Affected Unionized Employees who are transferred to Project Co or the relevant Project Co Party pursuant to Section 27 of the Project Agreement.
- 1.497 “**Transition**” has the meaning given in Section 24.13(a) of the Project Agreement.
- 1.498 “**Transition Advisor**” has the meaning given in Section 24.13(c) of the Project Agreement.
- 1.499 “**Transition Services Fee**” means [REDACTED], as such amount may be increased or decreased by Variation, subject to and in accordance with Schedule 22 - Variation Procedure, as a result of a material increase or decrease in the amount of Phase 2 Existing Equipment.
- 1.500 “**Transition Subcommittee**” has the meaning given in Section 24.14(a) of the Project Agreement.

- 1.501 “**Trust Account Agreement**” means the trust account agreement to be entered into between WCH, Project Co and the Trustee in the form set out in Schedule 33 - Trust Account Agreement.
- 1.502 “**Trustee**” has the meaning given in Schedule 33 - Trust Account Agreement.
- 1.503 “**Unavailable**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.504 “**Underground Tank**” has the meaning given in Section 16.2(a).
- 1.505 “**Uninsurable Event**” means any event which arises directly and solely from an Uninsurable Risk.
- 1.506 “**Uninsurable Risk**” has the meaning given in Section 8.1 of Schedule 25 - Insurance and Performance Security Requirements to the Project Agreement.
- 1.507 “**Unit of Energy**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.508 “**Unit Weighting Percentage**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.509 “**Unoccupied Functional Area**” has the meaning given to it in Schedule 20 - Payment Mechanism.
- 1.510 “**Unoccupied Functional Unit**” has the meaning given to it in Schedule 20 - Payment Mechanism.
- 1.511 “**Unscheduled Maintenance Work**” has the meaning given in Section 26.4(a) of the Project Agreement.
- 1.512 “**Use Condition**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.513 “**Use Parameters**” has the meaning given in Schedule 20 - Payment Mechanism.
- 1.514 “**Utilities**” means energy/power supplies and waste recovery, including electricity, natural gas/fuel oil, water, sanitary waste, storm water, heat, steam, and bulk medical gas compounds.
- 1.515 “**Utilities Management Services**” means those utilities management services to be carried out pursuant to the Utilities Management Services Specification.
- 1.516 “**Utilities Management Services Specification**” means Section 6 of Part 4 of Schedule 15 - Output Specifications.
- 1.517 “**Utilities Management Subcommittee**” has the meaning given in Schedule 20 - Payment Mechanism.

- 1.518 “**Utility Company**” means any company or companies designated by Project Co to provide Utilities.
- 1.519 “**Utility User(s)**” means those persons using Utilities at the Facility or on the Site.
- 1.520 “**Variation**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.521 “**Variation Confirmation**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.522 “**Variation Directive**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.523 “**Variation Enquiry**” has the meaning given in Schedule 22 - Variation Procedure.
- 1.524 “**Variation Procedure**” means the procedure set out in Schedule 22 - Variation Procedure.
- 1.525 “**Warning Notice**” has the meaning given in Section 29.3(a) of the Project Agreement.
- 1.526 “**WCH**” means Women's College Hospital.
- 1.527 “**WCH Commissioning Agent**” means the person appointed by WCH as its commissioning agent.
- 1.528 “**WCH Default Termination Sum**” has the meaning given in Schedule 23 - Compensation on Termination.
- 1.529 “**WCH Development Accountability Agreement**” means the development accountability agreement between MOHLTC and WCH dated on or about the date of Financial Close with respect to, among other things, the terms and conditions of funding for WCH's obligations related to the Project.
- 1.530 “**WCH Early Procured In-Contract Equipment**” means the In-Contract Equipment designated as “WCH Early Procured In-Contract Equipment” in Part 5 of Schedule 15 – Output Specifications that WCH has either (i) procured and for which WCH has entered into purchase orders and other related contracts (as purchaser), or (ii) has initiated the procurement of by the date of this Project Agreement.
- 1.531 “**WCH Early Procured In-Contract Equipment Assignment**” has the meaning given in Section 29.9(a).
- 1.532 “**WCH Event of Default**” has the meaning given in Section 43.1(a) of the Project Agreement.
- 1.533 “**WCH Funding and Approval Letter**” means the funding and approval letter from MOHLTC to WCH 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 WCH's obligations related to the Project and MOHLTC's approval of the Project.

- 1.534 **“WCH Party”** means any of WCH’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 **“WCH Parties”** shall be construed accordingly.
- 1.535 **“WCH Permits, Licences, Approvals and Agreements”** means those WCH permits, licences, approvals and agreements including those Development Approvals and Development Agreements which are the responsibility of WCH to obtain as set out in Appendix 1 – Permits, Licences, Approvals and Agreements to this Schedule 1 – Definitions and Interpretation.
- 1.536 **“WCH Quality Framework”** means the quality reporting framework that serves to coordinate quality monitoring and reporting of information to enhance patient care, meet Canadian Council on Health Services Accreditation and MOHLTC reporting requirements, streamline communication and allow for timely access to information on quality data and indicators within the WCH.
- 1.537 **“WCH Representative”** means the person designated as such by WCH on or prior to the date of the Project Agreement and any permitted replacement.
- 1.538 **“WCH Security Deposits”** means any and all letters of credit, securities, prepaid fees, deposits and similar instruments paid or posted by, or on behalf of, WCH in connection with the Project Operations including, but not limited to, those instruments listed in Appendix 2 – WCH Security Deposits of this Schedule 1 – Definitions and Interpretation.
- 1.539 **“WCH Site Facilities”** means any of the buildings, facilities and other structures and improvements of WCH existing on, in or under the Site.
- 1.540 **“WCH Taxes”** means taxes, or payments in lieu of taxes, imposed on WCH based on or measured by income or profit of WCH or capital taxes based on or measured by the capital of WCH and HST and property taxes for which WCH is responsible pursuant to Section 32 of the Project Agreement.
- 1.541 **“WCH Trade-Marks”** means any and all Trade-Marks used by WCH in any manner whatsoever.
- 1.542 **“WCH Work”** has the meaning given in Schedule 22 - Variation Procedure.
- 1.543 **“WHMIS”** means the system for the labelling 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.
- 1.544 **“Works”** means the design, construction, installation, testing, commissioning and completion of the Facility, including the Phase 2A Works and rectification of any Interim Minor Deficiencies and Minor Deficiencies, and any other activities required to enable or

facilitate the commencement of the Project Co Services, including all work under the Permits, Licences, Approvals and Agreements, save and except for (i) all work which is expressly described in Appendix 1 – Permits, Licences, Approvals and Agreements to this Schedule 1 – Definitions and Interpretation as being the responsibility of WCH and (ii) the Hospital Commissioning.

1.545 “**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.

1.546 “**Works Committee**” has the meaning given in Section 11.1(a) of the Project Agreement.

1.547 “**Works Report**” has the meaning given in Section 20.5(a) of the Project Agreement.

1.548 “**Works Schedule**” has the meaning given in Section 20.2(c) of the Project Agreement.

1.549 “**Works Submittal**” has the meaning given in Section 1.1 of Schedule 10 - Review Procedure.

1.550 “**WSIB**” means the Ontario Workplace Safety and Insurance Board that is responsible for administering the *Workplace Safety and Insurance Act, 1997* (Ontario).

1.551 “**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, limited liability company, joint stock company, 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 WCH or any WCH Party shall be construed having regard to the interactive nature of the activities of WCH, the WCH 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 WCH'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 Toronto, 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 WCH they shall be construed and interpreted as synonymous and to read “Project Co shall” or “WCH 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 WCH 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:

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

- 2.32 Save where expressly stated otherwise, any determination of IRR pursuant to the Project Agreement shall be calculated in accordance with the Financial Model.
- 2.33 The terms “properly inferable”, “readily apparent” and “readily discoverable” as used in this Project Agreement, shall be interpreted by taking into consideration Project Co’s and any Project Co Party’s experience and the investigations, inspections and examinations of the Background Information and of the Site carried out by Project Co or by any Project Co Party during the Request for Proposals process or other due diligence including as referred to in Section 16.1 of the Project Agreement; and by taking into consideration reasonable, normal course and industry standard investigations, inspections or other due diligence; in each case in accordance with Good Industry Practice.

APPENDIX 1

PERMITS, LICENCES, APPROVALS AND AGREEMENTS (“PLAA”)

WCH AND PROJECT CO PLAA RESPONSIBILITY TABLE

[Note: Where both WCH & Project Co are identified as having the same responsibility, please refer to the Comment column for an explanation]

Permits, Licences, Approvals and Agreements		WCH Obligation to Obtain or Execute Identified by an X	WCH Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
<b>I Development Agreements (terms as defined in the Project Agreement)</b>						
1.	Pre-Approval Conditions to Site Plan Approval (SPA)	X	X		X	WCH and Project Co to respectively satisfy pre-approval conditions to execution of the Site Plan Agreement as set out in the SPA Pre-Approval Conditions Responsibility Table attached hereto as Schedule A.  Project Co to satisfy all post approval conditions to the Site Plan Agreement as set out in Section B of Schedule A.
2.	Site Plan Agreement	X		X	X	WCH’s obligation is only to execute the Site Plan Agreement. Project Co to obtain the Site Plan Agreement and perform all obligations under the Site Plan Agreement. Please note that WCH has paid the fee to apply for Site Plan Approval.
3.	Joint Cooperation Agreement with 832 Bay Properties Limited dated November 27, 2008	X			X	Pursuant to a joint cooperation agreement dated November 27, 2008 between WCH and Burano, the two parties have agreed to share the use of the

	Permits, Licences, Approvals and Agreements	WCH Obligation to Obtain or Execute Identified by an X	WCH Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
						<p>north/south lane during the term of Burano’s existing lane use permit (which expires May 30, 2012) on a phased basis. At present, Burano has the use of the entire lane, but there is provision for future sharing depending on the stage of construction of the parties’ respective developments. The City of Toronto confirmed that it had no objection to this arrangement in a letter dated January 22, 2009.</p> <p>If WCH/Project Co requires the use of the public lane beyond May 30, 2012, Project Co will be required to obtain such approval from the City and perform all obligations under such approvals, as the existing lane permit will expire then.</p>
4.	Burano Tie-Back Agreement dated May 8, 2009	X			X	<p>Pursuant to a tie-back agreement dated May 8, 2009 between WCH and Burano, Burano was permitted to install tie-backs for a temporary period under the easterly area of the Site (and under the north/south public lane separating WCH’s land from the Burano site) to support shoring and excavation work on the latter. The tie-back agreement required Burano to de-stress the tie-backs under WCH’s land not later than May 21, 2010 (which has been done). Burano’s obligations under the agreement were secured by a letter of credit in the amount of \$[REDACTED] held by WCH, which has since been returned to Burano for cancellation. The tie-back agreement also required Burano to install and attach “Dywidag” (or equivalent) anchor bars, complying with the specifications attached to the agreement, to the caisson wall constructed by Burano adjacent to the westerly face of its project.</p>

	Permits, Licences, Approvals and Agreements	WCH Obligation to Obtain or Execute Identified by an X	WCH Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
						WCH is entitled to attach couplers to the westerly ends of such pre-engineered anchor bars and extend them to the boundary of the WCH Land for the purpose of (a) attaching them to WCH’s shoring system along the easterly face of the WCH redevelopment and (b) providing sufficient support for the lateral loads on such shoring system during excavation of the Site until construction of the WCH redevelopment has progressed to the point where they are no longer required. These rights will be available to Project Co to be used by it at its sole risk (without any liability to WCH) and in its sole discretion.
5.	Section 37 Agreement	X	X		X	<p>WCH has executed the Section 37 Agreement and is obligated to perform the requirements set out in Sections 4, 5, 6, 8 and 10 of the Agreement, with two qualifications:</p> <p>(i) Section 5 (Site Plan Agreement) - WCH will execute the Site Plan Agreement but Project Co. will obtain and perform the obligations within such Agreement; and</p> <p>(ii) Section 10 (Parking) – WCH will arrange/provide temporary off-site parking in accordance with the Temporary Parking Study prepared by BA Consulting Group Ltd., dated June 18, 2009, with the exception of the following parking activities that will be Project Co.’s responsibility to accommodate:</p> <ul style="list-style-type: none"> <li>● removal of on-street parking to permit construction and re-allocation of some remaining on-street parking for passenger</li> </ul>

Permits, Licences, Approvals and Agreements		WCH Obligation to Obtain or Execute Identified by an X	WCH Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
						<p>drop-off, barrier free parking and taxi staging, if appropriate;</p> <ul style="list-style-type: none"> <li>• maintenance of areas near the temporary public entrances to the hospital to adequately accommodate passenger drop-off, valet staging, Wheel Trans, taxi, ambulance/patient transfer and shuttle service; and</li> <li>• permanent parking facilities on the WCH site.</li> </ul> <p>Project Co is to perform all other obligations under the Section 37 Agreement.</p> <p><b>[Note: Full details of the obligations of the Section 37 Agreement for Project Co. will be determined prior to issuance of each foundation permit for any portion of the Site. For example, s.9.1.2 of the Section 37 Agreement speaks to the potential need for improvements to municipal infrastructure but that the details will not be known until a Functional Servicing Report is conducted prior to the issuance of each foundation permit.]</b></p>
<b>II Other Permits, Licences, Approvals and Agreements [Note: Expand list as necessary.]</b>						
1.	Permits to destroy or injure public trees			X	X	Permit requires significant lead time. DSAI will make the initial application but Project Co. will assume responsibility for obtaining the permit on execution of the Project Agreement.
2.	Permits to destroy or injure private trees			X	X	Permit requires significant lead time. DSAI will make the initial application but Project Co. will assume responsibility for obtaining the permit on

	Permits, Licences, Approvals and Agreements	WCH Obligation to Obtain or Execute Identified by an X	WCH Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
						execution of the Project Agreement.
3.	Environmental Clearances/Approvals/RSC	X		X	X	<p>WCH has undertaken a Phase II ESA for the Site.</p> <p>All required remediation work and costs in connection with the Phase II ESA, will be the responsibility of Project Co.</p> <p>Project Co. shall obtain a Record of Site Condition for the Site.</p>
4.	Rental Housing Demolition Permit pursuant to Section 111 under Municipal Code Chapter 667 and a permit under section 33 of the Planning Act	X	X	X	X	<p>City Council authorized the Chief Building Official, at its meeting of February 23, 24 and 25, 2009, to issue a Section 111 and Section 33 permit after the Chief Planner has given the required preliminary approval to the application (when conditions imposed under Chapter 667 have been satisfied).</p> <p>The outstanding conditions of approval being:</p> <p>a) payment of \$[REDACTED] to the City in lieu of replacement rental housing; [WCH]</p> <p>b) maintenance of existing rental housing units until January 31, 2010; [WCH]</p> <p>c) meeting requirements of tenant assistance plan; [WCH]</p> <p>d) closure and completion of the sale of the east/west public lane; [WCH]</p> <p>e) issuance of site plan approval for a public hospital for Phase 1 (as defined in the zoning by-law amendment) of the redevelopment; [Project Co] and</p>

	Permits, Licences, Approvals and Agreements	WCH Obligation to Obtain or Execute Identified by an X	WCH Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
						f) issuance of a first foundation permit for Phase 1 (as defined in the zoning by-law amendment) of the redevelopment. [Project Co]
5.	Caisson and Piling and Shoring System Agreement dated May 8, 2009 between Burano and the City of Toronto granting Burano a temporary working easement to permit the installation of tie-backs and anchor bars in accordance with three drawings (SH1, SH2 and SH3) under the public lane between the Site and the Burano site.	X		X	X	
6.	Encroachment agreements (tie-backs, crane swing, etc.) into public streets abutting the Site to the north, south and west:  (i) Encroachment or similar agreement with the City to permit WCH to install tie-backs under Grenville and Grosvenor Streets, and possibly Surrey Place, and to leave them in place after they have been de-stressed.  (ii) Encroachment or similar agreement with the City to permit WCH’s cranes to swing out over Grenville and Grosvenor Streets, and possibly Surrey Place. (Depending on the length of the arc of the crane’s movements, analogous agreements with the owners of property across Grosvenor and/or Grenville Streets may also be required.)			X	X	



Permits, Licences, Approvals and Agreements	WCH Obligation to Obtain or Execute Identified by an X	WCH Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
The approval of all proposed encroachments must be received from the Right-of-Way Management section of Transportation Services.					
<p>7. Temporary public road closures and/or occupancy permits to permit construction staging and other construction related use of such roads:</p> <p>(i) Permit to occupy from the City of Toronto with respect to parts of Grenville and Grosvenor Streets, and possibly Surrey Place.</p> <p>Approval must be obtained from the Transportation Services Division for any work or occupancy, within the abutting public right-of-ways. For further information, please contact Right-of-Way Management Section, Toronto and East York District at [REDACTED].</p>			(i) X	(i) X	
<p>8. Temporary public lane closures and/or occupancy permits to permit construction staging and other construction related use of such lanes</p> <p>(i) Joint Cooperation Agreement with Burano dated November 27, 2009.</p> <p>(ii) Permit to use north/south public lane between the Site and Burano condominium project after May 30, 2012.</p> <p>Approval must be obtained from the Transportation Services Division for any work</p>	(i) X		(ii) X	(i) X (ii) X	(i) Pursuant to a joint cooperation agreement dated November 27, 2008 between WCH and Burano, the two parties have agreed to share the use of the north/south lane during the term of Burano’s existing lane use permit (which expires May 30, 2009) on a phased basis. At present, Burano has the use of the entire lane, but there is provision for future sharing depending on the stage of construction of the parties’ respective developments. The City of Toronto confirmed that it had no objection to this arrangement in a letter dated January 22, 2009.

Permits, Licences, Approvals and Agreements	WCH Obligation to Obtain or Execute Identified by an X	WCH Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
or occupancy, within the abutting public right-of-ways. For further information, please contact Right-of-Way Management Section, Toronto and East York District at [REDACTED].					(ii) If WCH/Project Co requires the use of the public lane beyond May 30, 2012, Project Co will be required to obtain such approval from the City and perform all obligations under such approvals, as the existing lane permit will expire then.
9. Temporary Parking for Hospital Staff and Patients	X	X	X	X	<p>As required under Section 10.1 of the Section 37 Agreement, WCH will arrange/provide temporary off-site parking in accordance with the Temporary Parking Study prepared by BA Consulting Group Ltd., dated June 18, 2009, with the exception of the following parking activities that will be Project Co.’s responsibility to accommodate:</p> <ul style="list-style-type: none"> <li>• permits for the removal of on-street parking to permit construction and the re-allocation of some remaining on-street parking for passenger drop-off, barrier free parking and taxi staging, if appropriate; and</li> <li>• maintenance of areas near the temporary public entrances to the hospital to adequately accommodate passenger drop-off, valet staging, Wheel Trans, taxi, ambulance/Ontario patient transfer and shuttle service.</li> </ul>
10. Enwave Agreements	X		X	X	A portion of the Site is subject to an easement in perpetuity in favour of Toronto District Heating Corporation (Enwave Energy Corporation) in, on, over, along, upon, under and through part of the lands designated as Parts 1, 2 and 3 on Reference Plan 64R-16482. The easement was originally granted by Instrument Nos. CA642570 and E298997 to the City of Toronto and then transferred to Toronto District Heating Corporation by

Permits, Licences, Approvals and Agreements		WCH Obligation to Obtain or Execute Identified by an X	WCH Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
						<p>Instrument Nos. CA642571 and E298998. Although the easement contemplates WCH relocating Enwave’s facilities, there are procedures applicable to doing so that will have to be complied with. It is necessary to make arrangements with Enwave to enable it to continue to supply steam to other customers during the redevelopment process which shall be clarified in the future and such negotiations are underway.</p> <p>Enwave and WCH have entered into a supply line relocation agreement dated October 13, 2009. Project Co will perform all of WCH’s obligations, whether they be financial or otherwise, under such agreement.</p>
11.	Rogers Agreement	X		X	X	<p>Rogers Wireless Inc. has a lease (a telecommunications site agreement) dated February 7, 2003, notice of which was registered as Instrument No. CA800949, that affects portions of the Site and pursuant to which, among other things, Rogers Wireless Inc. has been granted a lease of certain building interior space, space required for cables and wires and rooftop space together with the non-exclusive right of unrestricted access thereto and connections to the appropriate utilities, fibre optic and telephone facilities. The original term was for 1 year commencing on February 1, 2003 and the lease provides that unless either party gives notice of non-renewal to the other at least 60 days prior to the expiry of the applicable term, the lease will renew automatically for successive one year terms on the same terms and conditions. The agreement provides, amongst other things, that the use of the</p>

	Permits, Licences, Approvals and Agreements	WCH Obligation to Obtain or Execute Identified by an X	WCH Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
						<p>premises and access rights by the tenant shall be for the purpose of installing, removing, replacing, relocating, maintaining, supplementing and operating telecommunications facilities and equipment and the provision of telecommunication services, and where applicable, the tenant may connect its equipment and provide telecommunications services by cables and wires to the equipment of other occupants at the Site. The tenant's facilities and equipment presently located on the Site will have to be relocated and/or replaced at one or more different locations within the Site over the course of its redevelopment. WCH will remain responsible for its obligations under this agreement, including any amendments thereto or replacements thereof necessitated by the relocation and or replacement of such facilities and equipment. However, Project Co will be responsible for co-ordinating the timing and logistics of such relocation and/or replacement at the appropriate stage or stages of redevelopment and for the protection of such facilities and equipment for the duration of construction, all at no additional cost to WCH.</p>
12.	<p>Prior to the issuance of each foundation Building Permit for any portion of the site, a site servicing review shall be prepared and submitted to the City’s Executive Director of Technical Services, for acceptance, a site servicing review to demonstrate how the proposed building can be serviced and whether the municipal infrastructure is adequate.</p>			X	X	<p>An obligation of Section 9.1.1 of the Section 37 Agreement.</p> <p>This servicing review will also likely be an obligation of NOAC.</p>

Permits, Licences, Approvals and Agreements		WCH Obligation to Obtain or Execute Identified by an X	WCH Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
13.	Payment of Specific Financial Requirements					WCH and Project Co to respectively satisfy Specific Financial Requirements as set out in the Specific Financial Requirements Table attached hereto as Schedule B.
14.	All building permits, including demolition, shoring, excavation, hoarding, and signage, including the preparation and submission of all supporting materials required for any such permits as required by the City.			X	X	
15.	Application to the Toronto Water Division is required for the installation of any proposed services within the City’s right-of-way after acceptance of the stormwater management report and site servicing plan. For further information, please contact District Operations, Toronto Water at [REDACTED].			X	X	
16.	Approval from Toronto Hydro Street Lighting Incorporation, THSLI, is required for removing and/or relocating any utility with attached municipal street lighting and for any upgrades. Contact THSLI ([REDACTED]) or <a href="http://www.torontohydro.com/streetlighting">www.torontohydro.com/ streetlighting</a> for comment and cost estimates for required fieldwork.			X	X	
17.	Permission for all service installations not mentioned above.			X	X	
18.	Contact [REDACTED], Municipal Numbering Supervisor, Survey and Mapping at [REDACTED] to obtain or verify new municipal addresses prior to submitting a			X	X	

Permits, Licences, Approvals and Agreements		WCH Obligation to Obtain or Execute Identified by an X	WCH Obligation to Perform Identified by an X	Project Co Obligation to Obtain or Execute Identified by an X	Project Co Obligation to Perform Identified by an X	Comment
	building permit application. It should be noted that all addressed parcels and structures must have the correct municipal addresses posted. Please see <a href="http://www.toronto.ca/mapping/numbers/index.htm">www.toronto.ca/mapping/numbers/index.htm</a> for details.					
19.	This development is not eligible for City refuse collection and as a result, arrangements for the collection of refuse to be done by a private refuse collection firm.	X	X			
20.	As established by Toronto By-law, Chapter 880, it is required that an approved fire access route be provided (Application shall be submitted to Toronto Fire Services prior to occupancy).			X	X	
21.	Landscape Permit from Transportation Services, Right-of-Way Management.			X	X	
22.	Supply Line Relocation Agreement dated October 13, 2009 between WCH and Enwave Energy Corporation  Note: Capitalized terms used in the “Comment” column that are not defined in Schedule 1 of this Project Agreement shall have the meaning given to them in the Supply Line Relocation Agreement.	X	X		X	Under the Supply Line Relocation Agreement, Enwave Energy Corporation has prepared design, plans and specifications for the extension of the Existing Works under Section 2(3)(a), and Project Co shall under Section 3(3) and in accordance with Section 3(4) be responsible to complete the extension of such Works as part of the Works under the Project Agreement.
23.	All other Permits, Licences, Approvals and Agreements			X	X	

**SCHEDULE A**

**PERMITS, LICENCES, APPROVALS AND AGREEMENTS (“PLAA”)**

**WCH AND PROJECT CO SPA PRE-APPROVAL CONDITIONS RESPONSIBILITY TABLE**

<b>A. List of SPA Pre-Approval Conditions set out in the Notice of Approval Conditions (“NOAC”) letter from the City of Toronto dated November 24, 2009.</b>		<b>WCH Obligation to Obtain Identified by an X</b>	<b>WCH Obligation to Perform Identified by an X</b>	<b>Project Co Obligation to Obtain Identified by an X</b>	<b>Project Co Obligation to Perform Identified by an X</b>	<b>Comment</b>
1.	[Note: the NOAC, dated November 24, 2009, is based on preliminary plans and will be further updated by Project Co. This means that such pre-approval conditions should be addressed by Project Co. and revised drawings/studies/reports should be submitted to the City for a revised and final NOAC to be issued.]					
<b>PHASE 1A – Pre-approval Conditions</b>						
2.	Enter into the City’s standard site plan agreement and register the site plan agreement on title to the subject lands (at the cost of the Owner) to the satisfaction of the City Solicitor.	X		X	X	WCH as owner of Site to sign Site Plan Agreement. Project Co to obtain the Site Plan Agreement and to perform all obligations under the Site Plan Agreement.
3.	Show the fire access route with a width of at least 6 metres wide throughout.			X	X	
4.	Revise the site plan to satisfactorily address the Fire Access Route requirements of the Ontario Building Code, as follows: <ul style="list-style-type: none"> <li>• Fire Access Routes shall have a centreline radius of not less than 12 metres;</li> <li>• Fire Access Route load support shall be sufficient to support the expected loads imposed by fire fighting equipment and shall be surfaced in order to be accessible under all climatic conditions (36,288kg (80,000 lbs));</li> <li>• Fire hydrant(s) shall be located no more than 45 metres from a fire department</li> </ul>			X	X	

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	<ul style="list-style-type: none"> <li>Siamese connection;</li> <li>Fire hydrant(s) must be located no more than 90 metres horizontally from all points along the perimeter of the building face(s) required to face a street;</li> <li>A Central Alarm and Control Facility shall be provided on the storey containing the entrance for fighter access and shall be readily accessible to fire fighters entering the building taking into account background noise; and</li> <li>As established by Toronto By-law, Chapter 880, it is required that an approved Fire Access Route be provided (an application shall be submitted to Toronto Fire Services prior to occupancy for the entry court).</li> </ul>					
5.	<p>Revise the Municipal Servicing and Stormwater Management report to incorporated the following:</p> <ul style="list-style-type: none"> <li>Provide a water demand analysis based on the Fire underwriters Survey for the development site and provide the hydrant testing.</li> <li>Orifice plates are not permitted; the report should be revised using a short tube orifice.</li> <li>Show that the city boulevard has a minimum [REDACTED]% to a maximum [REDACTED]% towards the roadway.</li> <li>Clarify how the phased construction will affect the storm water and servicing of the site.</li> <li>The driveway within the City property shall consist of 180mm concrete (32 Mpa) with a 150 mm Granular A bedding.</li> <li>Provided more grading information along the proposed driveway on Grosvenor Street.</li> </ul>			X	X	
6.	Provide for any infrastructure improvements should it be required as determined by the water demand analysis.			X	X	
7.	Submit grading/landscape plans showing locations and dimensions of all existing and proposed development related underground and above ground utility services and structures within the City rights-of-way.			X	X	
8.	Review the location of the proposed curb cuts with Toronto Hydro.			X	X	
9.	Prior to commencing any work within the Plan, confirm that sufficient wire-line communication/telecommunication infrastructure is currently available within the proposed development to provide communication/telecommunication service to the proposed development. In the event that such infrastructure is not available, the applicant is hereby advised that the applicant may be required to pay for the connection to and/or extension of the existing communication/ telecommunication infrastructure. If the applicant elects not to pay for such connection to and/or extension of the existing communication/			X	X	



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	telecommunication infrastructure, the applicant shall be required demonstrate to the municipality that sufficient alternative communication/telecommunication facilities are available within the proposed development to enable, at a minimum, the effective delivery of communication/telecommunication services for emergency management services (i.e., 911 Emergency Services).					
10.	Agree in the Agreement, in words satisfactory to Bell Canada, to grant to Bell Canada any easements that may be required for telecommunication services. Easements may be required subject to final servicing decisions. In the event of any conflict with existing Bell Canada facilities or easements, the applicant shall be responsible for the relocation of such facilities or easements.			X	X	
11.	Provide a tree protection security deposit in the form of an irrevocable Letter of Credit or certified cheque payable to the Treasurer, City of Toronto, in the amount of \$[REDACTED] to cover the appraised tree value, removal and replacement costs of three (3) City owned trees. This deposit shall be drawn upon to cover all costs incurred by the City of Toronto if the City owned trees require maintenance or removal and replacement as a result of construction activities associated with the project.			X	X	
12.	<p>The trees inventoried as tree nos. 7, 9, 10, 14 and 18 to 24 inclusive, indicated on Tree Inventory &amp; Preservation Plan, Drawing No. L-100, prepared by Vertechs Design Inc., date stamped as received by City Planning on November 16, 2009, as City owned street trees which are protected under the provisions of the City’s Street Tree By-law. The applicant proposes the removal of tree nos. 7, 9, 10, 14 and 18 to 24 inclusive.</p> <p>Where it is not possible to retain a tree on a City road allowance that qualifies for protection under the City of Toronto’s Street Tree By-law, it will be necessary for the applicant to submit an application requesting permission to remove the tree in question to Urban Forestry. There is a fee of \$[REDACTED] for each tree included in an application. Payment may be made by certified cheque or money order, and must be submitted with the application. Urban Forestry requires the approval of the Ward Councillor to permit the removal of the existing City owned trees. If approved, the applicant will be responsible for removing the trees and for the value and replacement costs associated with the trees.</p>			X	X	
13.	Provide tree removal payment in the form of a certified cheque or money order payable to the Treasurer, City of Toronto, in the amount of \$[REDACTED] to cover the appraised tree value, and set fees of City owned trees to be removed as part of this project. This tree removal payment must be submitted to the attention of the Supervisor of Urban Forestry, Tree Protection & Plan Review.			X	X	
14.	Conduct an investigation of underground utilities prior to new tree planting within the City			X	X	

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	road allowance. If planting is not possible due to a utility conflict, a utility locate information sheet from the respective utility company must be provided to the Supervisor of Urban Forestry, Tree Protection & Plan Review.				
15.	Prior to any construction or grading activities taking place, tree protection barriers shall be installed as indicated on Tree Inventory & Preservation Plan, Drawing No. L-100, prepared by Vertechs Design Inc., date stamped as received by City Planning on November 16, 2009. Such barriers must be installed to the satisfaction of Urban Forestry, Tree Protection & Plan Review on behalf of the General Manager of Parks, Forestry & Recreation.			X	X
16.	Once the tree protection barriers have been installed, and other tree protection measures undertaken, the applicant/owner shall notify Urban Forestry at [REDACTED] to arrange for an inspection of the site and approval of aforementioned tree protection requirements. The applicant must not proceed with any construction related or grading activities until clearance has been received from Urban Forestry that the tree protection barriers have been installed in accordance with the above noted plan.  Tree protection barriers must remain in place and in good condition during construction and must not be altered or moved. Established tree protection zones must not be used as construction access, storage or staging areas. Grade changes are not permitted within established tree protection zones. Tree protection barriers may be removed once development and all site activities are complete and only when Urban Forestry has approved its removal.			X	X
17.	Indicate on the drawings all mechanical air intake & exhaust locations. All exhausting should be directed away from the pedestrian thoroughfare. Provide acoustical treatment for mechanical exhausts.			X	X
18.	Provide for additional fritted glazing along the east building façade either at the second floor level or near grade along the length of the service ramp. The percentage of fritting for the proposed glazing should also be indicated.			X	X
19.	Replace the fritted glazing (grid lines 3 & 4) for the south facing retail space with clear vision glass to maintain pedestrian interest and vitality along the streetscape.			X	X
20.	Provide four Phase 1A 1:50 coloured building elevations to clarify design intent.			X	X
21.	Have regard for the City’s Vibrant Streets design guidelines when preparing the landscape drawings for the site. For information, these guidelines may be accessed on the City’s website at: <a href="http://www.toronto.ca/involved/projects/streetfurniture/pdf/vibrant_streets.pdf">http://www.toronto.ca/involved/projects/streetfurniture/pdf/vibrant_streets.pdf</a>				
22.	To maintain the quality of the pedestrian experience the sidewalk should be continuous across the access to vehicular parking, the exit to the loading facility crossing as well as the				

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	urgent care drop-off area.					
<b>PHASE 1B – Pre-Approval Conditions</b>						
23.	Enter into the City’s standard site plan agreement and register the site plan agreement on title to the subject lands (at the cost of the Owner) to the satisfaction of the City Solicitor.	X		X	X	WCH as owner of Site to sign Site Plan Agreement. Project Co to obtain the Site Plan Agreement and to perform all obligations under the Site Plan Agreement.
24.	Show the fire access route with a width of at least 6 metres wide throughout.			X	X	
25.	Revise the site plan to satisfactorily address the Fire Access Route requirements of the Ontario Building Code, as follows: <ul style="list-style-type: none"> <li>• Fire Access Routes shall have a centreline radius of not less than 12 metres;</li> <li>• Fire Access Route load support shall be sufficient to support the expected loads imposed by fire fighting equipment and shall be surfaced in order to be accessible under all climatic conditions (36,288kg (80,000 lbs));</li> <li>• Fire hydrant(s) shall be located no more than 45 metres from a fire department Siamese connection;</li> <li>• Fire hydrant(s) must be located no more than 90 metres horizontally from all points along the perimeter of the building face(s) required to face a street;</li> <li>• A Central Alarm and Control Facility shall be provided on the storey containing the entrance for fighter access and shall be readily accessible to fire fighters entering the building taking into account background noise; and</li> <li>• As established by Toronto By-law, Chapter 880, it is required that an approved Fire Access Route be provided (an application shall be submitted to Toronto Fire Services prior to occupancy for the entry court).</li> </ul>			X	X	
26.	Revise the Municipal Servicing and Stormwater Management report to incorporated the following: <ul style="list-style-type: none"> <li>• Provide a water demand analysis based on the Fire underwriters Survey for the development site and provide the hydrant testing.</li> <li>• Orifice plates are not permitted; the report should be revised using a short tube orifice.</li> </ul>			X	X	

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	<ul style="list-style-type: none"> <li>Show that the city boulevard has a minimum [REDACTED]% to a maximum [REDACTED]% towards the roadway.</li> <li>Clarify how the phased construction will affect the storm water and servicing of the site.</li> <li>The driveway within the City property shall consist of 180mm concrete (32 Mpa) with a 150 mm Granular A bedding.</li> <li>Provided more grading information along the proposed driveway on Grosvenor Street.</li> </ul>					
27.	Provide for any infrastructure improvements should it be required as determined by the water demand analysis.			X	X	
28.	Submit grading/landscape plans showing locations and dimensions of all existing and proposed development related underground and above ground utility services and structures within the City rights-of-way.			X	X	
29.	Review the location of the proposed curb cuts with Toronto Hydro.			X	X	
30.	Prior to commencing any work within the Plan, confirm that sufficient wire-line communication/telecommunication infrastructure is currently available within the proposed development to provide communication/telecommunication service to the proposed development. In the event that such infrastructure is not available, the applicant is hereby advised that the applicant may be required to pay for the connection to and/or extension of the existing communication/ telecommunication infrastructure. If the applicant elects not to pay for such connection to and/or extension of the existing communication/ telecommunication infrastructure, the applicant shall be required demonstrate to the municipality that sufficient alternative communication/telecommunication facilities are available within the proposed development to enable, at a minimum, the effective delivery of communication/telecommunication services for emergency management services (i.e., 911 Emergency Services).			X	X	
31.	Agree in the Agreement, in words satisfactory to Bell Canada, to grant to Bell Canada any easements that may be required for telecommunication services. Easements may be required subject to final servicing decisions. In the event of any conflict with existing Bell Canada facilities or easements, the applicant shall be responsible for the relocation of such facilities or easements.			X	X	
32.	Provide a tree protection security deposit in the form of an irrevocable Letter of Credit or certified cheque payable to the Treasurer, City of Toronto, in the amount of \$[REDACTED] to cover the appraised tree value, removal and replacement costs of six (6) City owned trees. This deposit shall be drawn upon to cover all costs incurred by the City			X	X	

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	of Toronto if the City owned trees require maintenance or removal and replacement as a result of construction activities associated with the project.				
33.	<p>The trees inventoried as tree nos. 7, 9, 10, 14 and 18 to 24 inclusive, indicated on Tree Inventory &amp; Preservation Plan, Drawing No. L-100, prepared by Vertechs Design Inc., date stamped as received by City Planning on November 16, 2009, as City owned street trees which are protected under the provisions of the City’s Street Tree By-law. The applicant proposes the removal of tree nos. 7, 9, 10, 14 and 18 to 24 inclusive.</p> <p>Where it is not possible to retain a tree on a City road allowance that qualifies for protection under the City of Toronto’s Street Tree By-law, it will be necessary for the applicant to submit an application requesting permission to remove the tree in question to Urban Forestry. There is a fee of \$[REDACTED] for each tree included in an application. Payment may be made by certified cheque or money order, and must be submitted with the application. Urban Forestry requires the approval of the Ward Councillor to permit the removal of the existing City owned trees. If approved, the applicant will be responsible for removing the trees and for the value and replacement costs associated with the trees.</p>			X	X
34.	Provide tree removal payment in the form of a certified cheque or money order payable to the Treasurer, City of Toronto, in the amount of \$[REDACTED] to cover the appraised tree value, and set fees of City owned trees to be removed as part of this project. This tree removal payment must be submitted to the attention of the Supervisor of Urban Forestry, Tree Protection & Plan Review.			X	X
35.	Conduct an investigation of underground utilities prior to new tree planting within the City road allowance. If planting is not possible due to a utility conflict, a utility locate information sheet from the respective utility company must be provided to the Supervisor of Urban Forestry, Tree Protection & Plan Review.			X	X
36.	Prior to any construction or grading activities taking place, tree protection barriers shall be installed as indicated on Tree Inventory & Preservation Plan, Drawing No. L-100, prepared by Vertechs Design Inc., date stamped as received by City Planning on November 16, 2009. Such barriers must be installed to the satisfaction of Urban Forestry, Tree Protection & Plan Review on behalf of the General Manager of Parks, Forestry & Recreation.			X	X
37.	Once the tree protection barriers have been installed, and other tree protection measures undertaken, the applicant/owner shall notify Urban Forestry at [REDACTED] to arrange for an inspection of the site and approval of aforementioned tree protection requirements. The applicant must not proceed with any construction related or grading activities until clearance has been received from Urban Forestry that the tree protection barriers have been installed in accordance with the above noted plan.			X	X

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	Tree protection barriers must remain in place and in good condition during construction and must not be altered or moved. Established tree protection zones must not be used as construction access, storage or staging areas. Grade changes are not permitted within established tree protection zones. Tree protection barriers may be removed once development and all site activities are complete and only when Urban Forestry has approved its removal.					
38.	<p>Provide for a high measure of safety &amp; security for the parking levels of the proposed development including the following:</p> <ul style="list-style-type: none"> <li>• All parking levels should be noted as utilizing true colour rendition lighting. Light fixtures should be indicated in a dashed line located over the rear third of parking stalls for safety reasons. Drawings should be provided for review.</li> <li>• All parking level exit doors &amp; vestibules should be glazed to the maximum allowable by code to increase natural surveillance and enhance safety and security. This should be noted on the drawings submitted for review. In addition the glazing of the elevator lobby walls and vestibules should be indicated for clarification.</li> <li>• Drawings should indicate locations for exterior night lighting and be noted as true colour rendition.</li> </ul>			X	X	
39.	Indicate all mechanical air intake & exhaust locations. All exhausting should be directed away from the pedestrian thoroughfare. Provide acoustical treatment for mechanical exhausts.			X	X	
40.	Provide four 1:50 coloured building elevations for the newer Phase 1B portions of the proposal to clarify design intent.			X	X	
41.	Have regard for the City’s Vibrant Streets design guidelines when preparing the landscape drawings for the site. For information, these guidelines may be accessed on the City’s website at: <a href="http://www.toronto.ca/involved/projects/streetfurniture/pdf/vibrant_streets.pdf">http://www.toronto.ca/involved/projects/streetfurniture/pdf/vibrant_streets.pdf</a>					

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42.	A large extent of the temporary landscaped open space provided on the northwest corner of the property appears to be inaccessible to persons using mobility aids. Provide an accessible route from the principal entrance and/or hospital building lobby to the Grosvenor Street sidewalk, providing access to the landscaped open space in the northwest corner of the property, by ramps or other means.				
43.	To maintain the quality of the pedestrian experience the sidewalk should be continuous across the access to vehicular parking, the exit to the loading facility crossing as well as the urgent care drop-off area.				
44.	With respect to the landscape drawings, reconsider the wood screens proposed for the open landscaped space since it’s likely that this element of Phase 1B will be in place for a considerable length of time. Wood as materials for the screens tends to warp and weather poorly and require maintenance.				

<b>B. List of Post Approval Conditions Set Out in Letter from the Municipality, Dated November 24, 2009:</b>		
All Post Approval Conditions will be carried forward into Site Plan Agreement and will be the responsibility of Project Co to perform unless otherwise noted. [Note: the NOAC, dated November 24, 2009, is based on preliminary plans and will be further updated by Project Co., which means that such post approval conditions may be subject to change.]		
	<b>Project Co Obligation</b>	<b>Comment</b>
<b>PHASE 1A – Post Approval Conditions</b>		
1. The proposed development shall be carried out and maintained in accordance with the plans and drawings referred to herein, to the satisfaction of the City of Toronto.	X	
2. Removal all existing accesses, curb cuts, traffic control signs, etc. along the development site frontage that are no longer required and reinstate the curb, gutter and boulevard within the City’s right-of-way, in accordance with City standards and to the satisfaction of the Executive Director, Technical Services.	X	
3. Provide and maintain off-street vehicular loading and parking facilities and access driveways in accordance with the approved plans and drawings, to the satisfaction of the Executive Director, Technical Services.	X	
4. Provide and maintain signs which individually designate all small-car parking spaces for the use of compact vehicles only.	X	
5. Provide and maintain directional arrow and “Do Not Enter” signs which help designate the intended one-way system of drive aisles within the parking garage.	X	
6. Provide and maintain convex mirrors at all turns within the parking garage and position them in such a manner as to provide motorists with clear views of oncoming traffic.	X	
7. Provide and maintain, on private property, signs which designate the intended operation of the access driveways and drive aisle associated with the proposed loading spaces at the eastern end of the site.	X	
8. Provide and designate a fully trained building maintenance person to assist trucks backing in/out of the Type B loading space at the northwest corner of the site by controlling pedestrian and vehicular traffic in the area.	X	



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<b>B. List of Post Approval Conditions Set Out in Letter from the Municipality, Dated November 24, 2009:</b>		
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	<b>Project Co Obligation</b>	<b>Comment</b>
9. Construct and maintain stormwater management measures/facilities and site grading as in the Stormwater Management Report and grading plan as accepted by the Executive Director, Technical Services.	X	
10. Construct and maintain the site servicing indicated on the plan as accepted by the Executive Director, Technical Services.	X	
11. Provide certification to the Executive Director, Technical Services by the Professional Engineer who designed and supervised the construction, that the stormwater management facilities and site grading have been constructed in accordance with the stormwater management report and site grading as accepted by the Executive Director, Technical Services.	X	
12. Provide certification to the Executive Director, Technical Services by the Professional Engineer who designed and supervised the construction, that the site servicing facilities have been constructed in accordance with the drawings as accepted by the Executive Director, Technical Services.	X	
13. Have a qualified company implement the approved Landscape Plan and all approved tree preservation and maintenance strategies to the satisfaction of Urban Forestry. As well, prior to construction or grading activities, where necessary to ensure the health and vigour of trees to be preserved, tree maintenance measures must be undertaken by a certified arborist or other qualified expert and according to currently accepted sound arboricultural practices.	X	
14. Agree to notify all builders, contractors and agents of all tree protection requirements where any part of the development will be carried out by them.	X	
15. Protect at all times the nine (9) City owned tree(s) identified on Tree Inventory & Preservation Plan, Drawing No. L-100, prepared by Vertechs Design Inc., date stamped as received by City Planning on November 16, 2009, in accordance with the City of Toronto’s “Tree Protection Policy and Specifications for Construction Near Trees” and to the satisfaction of the General Manager of Parks, Forestry & Recreation.	X	

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<b>B. List of Post Approval Conditions Set Out in Letter from the Municipality, Dated November 24, 2009:</b>		
All Post Approval Conditions will be carried forward into Site Plan Agreement and will be the responsibility of Project Co to perform unless otherwise noted. [Note: the NOAC, dated November 24, 2009, is based on preliminary plans and will be further updated by Project Co., which means that such post approval conditions may be subject to change.]		
	<b>Project Co Obligation</b>	<b>Comment</b>
16. Remove City owned trees only upon the agreement of the local Councillor and receipt of the required tree removal payment by the Supervisor of Urban Forestry, Tree Protection & Plan Review and the building and/or demolition permits have been obtained and the permitted construction and/or demolition related activities associated with this project warrant the removal of the trees.	X	
17. Provide a two-year renewable guarantee for all new tree plantings within the City road allowance and notify the Supervisor of Urban Forestry, Tree Protection & Plan Review in writing, of the planting date prior to planting. This date is used to establish the anniversary date of the required two-year renewable guarantee.	X	
18. Maintain all new tree plantings within the City road allowance in good condition. Trees will be inspected during and prior to the end of the renewable guarantee period. If the trees are in good condition at the end of the renewable guarantee period, the City will assume the maintenance and ownership of the trees.	X	
19. Responsible for the maintenance or replacement of all new tree plantings within the City road allowance if during or at the end of the renewable guarantee period the trees are not in good condition, require maintenance or require replacement. Responsible for rectifying the problem as determined by and to the satisfaction of the General Manager of Parks, Forestry & Recreation.	X	
20. Maintain all newly planted trees within the City road allowance in good condition and shall provide an additional two-year renewable guarantee.	X	
21. Prior to the issuance of a Landscape Permit (by Transportation Services, Right-of-Way Management), provide a tree planting security deposit in the form of an irrevocable Letter of Credit or certified cheque payable to the Treasurer, City of Toronto, in the amount of \$[REDACTED] (\$[REDACTED] per tree subject to change) for new tree planting within the City road allowance. The tree planting security deposit must be submitted to the attention of the Supervisor of Urban Forestry, Tree Protection & Plan Review. The deposit will be drawn upon to cover all costs incurred by the City of Toronto in enforcing and ensuring that	X	

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<b>B. List of Post Approval Conditions Set Out in Letter from the Municipality, Dated November 24, 2009:</b>		
All Post Approval Conditions will be carried forward into Site Plan Agreement and will be the responsibility of Project Co to perform unless otherwise noted. [Note: the NOAC, dated November 24, 2009, is based on preliminary plans and will be further updated by Project Co., which means that such post approval conditions may be subject to change.]		
	<b>Project Co Obligation</b>	<b>Comment</b>
the trees are planted and kept in a healthy and vigorous state during the two-year guarantee period.		
22. The site shall be developed and maintained in accordance with the approved plans and conditions of approval associated with the Site Plan, Grading Plan, Site Servicing Plan, Landscape Plan, Building Permit and Tree Permit(s)/Approvals. Any proposed revisions/alterations to the approved plans or permits that affect trees must be approved by Urban Forestry, on behalf of the General Manager of Parks, Forestry & Recreation.	X	
23. In the event that deeply buried archaeological remains are encountered on the property during construction activities, the Heritage Operations Units of the Ministry of Culture be notified immediately at [REDACTED] as well as the City of Toronto, Heritage Preservation Services Unit at [REDACTED].	X	
24. In the event that human remains are encountered during construction, immediately contact both the Ministry of Culture, and the Registrar or Deputy Registrar of Cemeteries at the Cemeteries Regulation Unit, Ministry of Government Services at [REDACTED].	X	
<b>PHASE 1B – Post Approval Conditions</b>		
25. The proposed development shall be carried out and maintained in accordance with the plans and drawings referred to herein, to the satisfaction of the City of Toronto.	X	
26. Removal all existing accesses, curb cuts, traffic control signs, etc. along the development site frontage that are no longer required and reinstate the curb, gutter and boulevard within the City’s right-of-way, in accordance with City standards and to the satisfaction of the Executive Director, Technical Services.	X	
27. Provide and maintain off-street vehicular loading and parking facilities and access driveways in accordance with the approved plans and drawings, to the satisfaction of the Executive Director, Technical Services.	X	
28. Provide and maintain signs which individually designate all small-car parking spaces	X	

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<b>B. List of Post Approval Conditions Set Out in Letter from the Municipality, Dated November 24, 2009:</b>		
All Post Approval Conditions will be carried forward into Site Plan Agreement and will be the responsibility of Project Co to perform unless otherwise noted. [Note: the NOAC, dated November 24, 2009, is based on preliminary plans and will be further updated by Project Co., which means that such post approval conditions may be subject to change.]		
	<b>Project Co Obligation</b>	<b>Comment</b>
for the use of compact vehicles only.		
29. Provide and maintain directional arrow and “Do Not Enter” signs which help designate the intended one-way system of drive aisles within the parking garage.	X	
30. Provide and maintain convex mirrors at all turns within the parking garage and position them in such a manner as to provide motorists with clear views of oncoming traffic.	X	
31. Provide and maintain, on private property, signs which designate the intended operation of the access driveways and drive aisle associated with the proposed loading spaces at the eastern end of the site.	X	
32. Provide and designate a fully trained building maintenance person to assist trucks backing in/out of the Type B loading space at the northwest corner of the site by controlling pedestrian and vehicular traffic in the area.	X	
33. Construct and maintain stormwater management measures/facilities and site grading as in the Stormwater Management Report and grading plan as accepted by the Executive Director, Technical Services.	X	
34. Construct and maintain the site servicing indicated on the plan as accepted by the Executive Director, Technical Services.	X	
35. Provide certification to the Executive Director, Technical Services by the Professional Engineer who designed and supervised the construction, that the stormwater management facilities and site grading have been constructed in accordance with the stormwater management report and site grading as accepted by the Executive Director, Technical Services.	X	
36. Provide certification to the Executive Director, Technical Services by the Professional Engineer who designed and supervised the construction, that the site servicing facilities have been constructed in accordance with the drawings as accepted by the Executive Director, Technical Services.	X	

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<b>B. List of Post Approval Conditions Set Out in Letter from the Municipality, Dated November 24, 2009:</b>		
All Post Approval Conditions will be carried forward into Site Plan Agreement and will be the responsibility of Project Co to perform unless otherwise noted. [Note: the NOAC, dated November 24, 2009, is based on preliminary plans and will be further updated by Project Co., which means that such post approval conditions may be subject to change.]		
	<b>Project Co Obligation</b>	<b>Comment</b>
37. Have a qualified company implement the approved Landscape Plan and all approved tree preservation and maintenance strategies to the satisfaction of Urban Forestry. As well, prior to construction or grading activities, where necessary to ensure the health and vigour of trees to be preserved, tree maintenance measures must be undertaken by a certified arborist or other qualified expert and according to currently accepted sound arboricultural practices.	X	
38. Agree to notify all builders, contractors and agents of all tree protection requirements where any part of the development will be carried out by them.	X	
39. Protect at all times the nine (9) City owned tree(s) indentified on Tree Inventory & Preservation Plan, Drawing No. L-100, prepared by Vertechs Design Inc., date stamped as received by City Planning on November 16, 2009, in accordance with the City of Toronto’s “Tree Protection Policy and Specifications for Construction Near Trees” and to the satisfaction of the General Manager of Parks, Forestry & Recreation.	X	
40. Remove City owned trees only upon the agreement of the local Councillor and receipt of the required tree removal payment by the Supervisor of Urban Forestry, Tree Protection & Plan Review and the building and/or demolition permits have been obtained and the permitted construction and/or demolition related activities associated with this project warrant the removal of the trees.	X	
41. Provide a two-year renewable guarantee for all new tree plantings within the City road allowance and notify the Supervisor of Urban Forestry, Tree Protection & Plan Review in writing, of the planting date prior to planting. This date is used to establish the anniversary date of the required two-year renewable guarantee.	X	
42. Maintain all new tree plantings within the City road allowance in good condition. Trees will be inspected during and prior to the end of the renewable guarantee period. If the trees are in good condition at the end of the renewable guarantee period, the City will assume the maintenance and ownership of the trees.	X	
43. Responsible for the maintenance or replacement of all new tree plantings within the City road allowance if during or at the end of the renewable guarantee period the trees are not	X	

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<b>B. List of Post Approval Conditions Set Out in Letter from the Municipality, Dated November 24, 2009:</b>		
All Post Approval Conditions will be carried forward into Site Plan Agreement and will be the responsibility of Project Co to perform unless otherwise noted. [Note: the NOAC, dated November 24, 2009, is based on preliminary plans and will be further updated by Project Co., which means that such post approval conditions may be subject to change.]		
	<b>Project Co Obligation</b>	<b>Comment</b>
in good condition, require maintenance or require replacement. Responsible for rectifying the problem as determined by and to the satisfaction of the General Manager of Parks, Forestry & Recreation.		
44. Maintain all newly planted trees within the City road allowance in good condition and shall provide an additional two-year renewable guarantee.	X	
45. Prior to the issuance of a Landscape Permit (by Transportation Services, Right-of-Way Management), provide a tree planting security deposit in the form of an irrevocable Letter of Credit or certified cheque payable to the Treasurer, City of Toronto, in the amount of \$[REDACTED] (\$[REDACTED] per tree subject to change) for new tree planting within the City road allowance. The tree planting security deposit must be submitted to the attention of the Supervisor of Urban Forestry, Tree Protection & Plan Review. The deposit will be drawn upon to cover all costs incurred by the City of Toronto in enforcing and ensuring that the trees are planted and kept in a healthy and vigorous state during the two-year guarantee period.	X	
46. The site shall be developed and maintained in accordance with the approved plans and conditions of approval associated with the Site Plan, Grading Plan, Site Servicing Plan, Landscape Plan, Building Permit and Tree Permit(s)/Approvals. Any proposed revisions/alterations to the approved plans or permits that affect trees must be approved by Urban Forestry, on behalf of the General Manager of Parks, Forestry & Recreation.	X	
47. In the event that deeply buried archaeological remains are encountered on the property during construction activities, the Heritage Operations Units of the Ministry of Culture be notified immediately at [REDACTED] as well as the City of Toronto, Heritage Preservation Services Unit at [REDACTED].	X	
48. In the event that human remains are encountered during construction, immediately contact both the Ministry of Culture, and the Registrar or Deputy Registrar of Cemeteries at the Cemeteries Regulation Unit, Ministry of Government Services at [REDACTED].	X	

**SCHEDULE B**

**PERMITS, LICENCES, APPROVALS AND AGREEMENTS (“PLAA”)**

**WCH AND PROJECT CO SPECIFIC FINANCIAL REQUIREMENTS TABLE**

WCH or Project Co shall post or pay the Financial Security for the purpose, the amount and at the times specified in the following chart:

Purpose	Reference	Amount of Financial Security	Timing for Submission of Security	Responsibility
<b>Services:</b>				
Improvements to Municipal Infrastructure	Section 9.1.2 of the Section 37 Agreement	Amount to be determined to the satisfaction of Technical Services ([REDACTED]% of cost) – cost estimates to be based on accepted Functional Servicing Report	If required, prior to issuance of each foundation permit for any portion of the Site	Project Co
<b>Landscaping Related:</b>				
Tree Preservation Plan	Requirement to become known through the process of finalizing the Site Plan Agreement.	Amount to be determined to the satisfaction of Parks, Forestry and Recreation – cost estimates to be based on final landscape plan drawings as listed in the NOAC.	Prior to the issuance of Site Plan Approval	Project Co
Street Tree Planting	Requirement to become known through the process of finalizing the Site Plan Agreement.	Amount to be determined to the satisfaction of Parks, Forestry and Recreation based on the applicable Current Development Tree Planting Value.	Prior to the issuance of Site Plan Approval	Project Co
On-site Landscaping Works	Requirement to become known through the process of finalizing the Site Plan Agreement.	Amount to be determined to the satisfaction of Director of Planning – cost estimates to be based on final site plan drawings as listed in the NOAC.	Prior to the issuance of Site Plan Approval	Project Co
<b>Rental Housing</b>				

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<b>Purpose</b>	<b>Reference</b>	<b>Amount of Financial Security</b>	<b>Timing for Submission of Security</b>	<b>Responsibility</b>
Cash-in-Lieu	Section 4.1 of the Section 37 Agreement	Payment of \$[REDACTED] to the City, subject to the indexing provision set out in section 4.1.1 of the Section 37 Agreement.	Prior to the earlier of January 1, 2011 or demolition permit issuance for 51 Grosvenor Street, whichever comes first.	WCH
Tenant Assistance Plan	Section 4.3 of the Section 37 Agreement	<p>Basic Amount - each tenant to be given three (3) months equivalent cash pay out, return of last month’s rent, \$[REDACTED] moving expenses and all applicable interest on deposit together with:</p> <p>Additional Compensation – based on number of years of occupancy:</p> <p>1-4 years: one additional month free;</p> <p>5-10 years: two additional months free;</p> <p>Greater than 10 years: 9 months free, a payment equal to the difference in the current monthly market rent of such unit within the building minus the actual amount of monthly rent paid by the tenant multiplied by 12 months (or by a lesser amount of months if the tenant vacates their unit after Sept. 1, 2009 but before January 31, 2010).</p>	<p>Basic Amount is payable at the time of notice of termination. Additional Compensation is given on date of tenant vacating the unit.</p> <p>Notice of Termination of Tenancy is to be given in accordance with Section 4.3.1. of the Section 37 Agreement. Long-term tenants have already been given informal notice. It is anticipated that the Notice of Termination will be given in or about September 2009.</p>	WCH
<b>Site Plan Approval</b>				
Site Plan Approval Application Fee	Fee paid by WCH – Application has been submitted to the City.	Paid in full.	Prior to submission of Application to the City of Toronto.	WCH
Site Plan Pre-Approval Condition Obligations	Requirement to become known through the process of finalizing	Amount to be determined.	Prior to issuance of Site Plan Approval	Project Co.



**Women’s College Hospital**

<b>Purpose</b>	<b>Reference</b>	<b>Amount of Financial Security</b>	<b>Timing for Submission of Security</b>	<b>Responsibility</b>
	the Site Plan drawings and Agreement.			
Site Plan Agreement Obligations	Requirement to become known through the process of finalizing the Site Plan Agreement.	Amount to be determined.		Project Co.
<b>Section 37 Agreement</b>				
Section 37 Agreement Obligations	<p>WCH – in addition to Sections 4.1 and 4.3 of the Section 37 Agreement noted above, the following are obligations of WCH:</p> <p>Section 6.1 – Acquisition of the Public Lane (completed).</p> <p>Section 8.2 – Provide and maintain public art on a publicly accessible portion of the site located west of Phase 1 within 10 years of the first occupancy of any portion of the new public hospital.</p> <p>Section 10.1 – Provide and maintain parking in accordance with the Temporary Parking Study (BA, June 18, 2009) with three caveats (see Project Co.’s responsibilities below).</p>	Amount to be determined.	Prior to Building Permit issuance	WCH

**Women’s College Hospital**

Purpose	Reference	Amount of Financial Security	Timing for Submission of Security	Responsibility
	<p>Project Co. - in addition to Section 9.1.2 of the Section 37 Agreement noted above, the following are obligations of Project Co:</p> <p>Section 10.1 – Obtain the required permissions and approvals to accommodate:</p> <ul style="list-style-type: none"> <li>• removal of on-street parking to permit construction and re-allocation of some remaining on-street parking for passenger drop-off, barrier free parking and taxi staging, if appropriate;</li> <li>• maintenance of areas near the temporary public entrances to the hospital to adequately accommodate passenger drop-off, valet staging, Wheel Trans, taxi, ambulance/patient transfer and shuttle service; and</li> <li>• permanent parking facilities on the WCH site.</li> </ul> <p>Section 11.1 – Provide, at its expense, and maintain, an irrigation system for all street trees in the public right-of-way adjacent to the Site.</p> <p>Project Co is to perform all other obligations of the Agreement not listed as WCH’s</p>	<p>Amount to be determined.</p>		<p>Project Co.</p>

**Women’s College Hospital**

Purpose	Reference	Amount of Financial Security	Timing for Submission of Security	Responsibility
	responsibility above.			
<b>Permits</b>				
All Permit, Licences, Approvals, Agreements, Application Fees and Related Securities	To be determined.	Amount to be determined.	Prior to Permit issuance	Project Co.

**APPENDIX 2**

**WCH SECURITY DEPOSITS**

<b><u>No.</u></b>	<b><u>Name</u></b>	<b><u>Amount</u></b>	<b><u>Date</u></b>	<b><u>Description/Notes</u></b>
1.	[Note: As of Financial Close, no WCH Security Deposits have been made.]			

**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 WCH and in form and substance satisfactory to WCH, acting reasonably) is to be delivered by Project Co to WCH on or prior to the Financial Close Target Date:

- 1.1 an original of this Project Agreement;
- 1.2 an original of the First Amendment to the Project Agreement;
- 1.3 an original of the Custody Agreement;
- 1.4 an original of the Lenders' Direct Agreement;
- 1.5 an original of the Existing Facilities Services Management Agreement;
- 1.6 an original of the Construction Contractor's Direct Agreement;
- 1.7 an original of the Service Provider's Direct Agreement;
- 1.8 an original of the Independent Certifier Agreement;
- 1.9 an original of the Insurance Trust Agreement;
- 1.10 an original of the Trust Account Agreement;
- 1.11 an original notice of appointment of the Project Co Representative;
- 1.12 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;
- 1.13 an original of the acknowledgement and undertaking in the form attached as Appendix B to this Schedule 2;
- 1.14 an original of the Lending Agreements;
- 1.15 an original of the Construction Contract;
- 1.16 an original of the Service Contract;

- 1.17 an original of the Innovation Submissions Letter Agreement;
- 1.18 a copy of each of the Equity Agreements;
- 1.19 **[REDACTED]**;
- 1.20 an original of the Interface Agreement;
- 1.21 a copy of each of the documents and agreements comprising the Performance Security;
- 1.22 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 in accordance with this Project Agreement;
- 1.23 one (1) printed copy of the Financial Model (as revised pursuant to Section 2.3(d) of the Project Agreement, if applicable) and two (2) copies on CD-Rom;
- 1.24 a certificate of an officer of Project Co certifying:
  - (a) a true copy of the Financial Model audit report dated March 11, 2010, as updated on Financial Close, prepared by Mercer Australia PTY Ltd.; and
  - (b) that the Financial Model algorithms have not changed from the audit report referred to in (a) above;
- 1.25 a certificate of an officer of Project Co certifying the corporate structure of Project Co;
- 1.26 a certificate of an officer of Project Co substantially in the form attached as Appendix C to this Schedule 2;
- 1.27 a certificate of an officer of the Construction Contractor substantially in the form attached as Appendix C to this Schedule 2;
- 1.28 a certificate of an officer of the Service Provider substantially in the form attached as Appendix C to this Schedule 2;
- 1.29 a certificate of an officer of the Construction Guarantor substantially in the form attached as Appendix C to this Schedule 2;
- 1.30 an original of the opinion from counsel to Project Co, the Construction Contractor, the Service Provider, the Construction Guarantor and such other Project Co Parties as WCH may reasonably require substantially in the form attached as Appendix D to this Schedule 2 and otherwise acceptable to WCH and its counsel;
- 1.31 an original of the undertaking from Project Co respecting the delivery of confirmation in writing from the administrator of the Pension Plan indicating that Project Co, or the relevant

Project Co Party, is either a participating employer under the Pension Plan or satisfies the requirements to become a participating employer under the Pension Plan;

- 1.32 an original assignment of all documents in respect of WCH Early Procured In-Contract Equipment; and
- 1.33 such other documents as the parties may agree, each acting reasonably.

**2. DOCUMENTS TO BE DELIVERED BY WCH**

Unless an original document is specifically required, a certified copy of each of the following documents (in each case, where WCH is a party to such document, executed by WCH and, if applicable, any WCH Party or Governmental Authority) is to be delivered by WCH 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 First Amendment to the Project Agreement;
- 2.3 an original of the Custody Agreement;
- 2.4 an original of the Lenders' Direct Agreement;
- 2.5 an original of the Existing Facilities Services Management Agreement;
- 2.6 original of the Construction Contractor's Direct Agreement;
- 2.7 an original of the Service Provider's Direct Agreement;
- 2.8 an original of the Independent Certifier Agreement;
- 2.9 an original of the Insurance Trust Agreement;
- 2.10 an original of the Trust Account Agreement;
- 2.11 an original notice of appointment of the WCH Representative;
- 2.12 an original of the Innovation Submissions Letter Agreement;
- 2.13 a copy of the WCH Development Accountability Agreement;
- 2.14 a copy of the WCH Funding and Approval Letter;
- 2.15 a certificate of an officer of WCH substantially in the form attached as Appendix E to this Schedule 2;
- 2.16 an original of the opinion from counsel to WCH substantially in the form attached as Appendix F to this Schedule 2;

- 2.17 an original assignment of all documents in respect of WCH Early Procured In-Contract Equipment;
- 2.18 an original of the acknowledgement from WCH to Project Co in respect of the term “Geotechnical Conditions”; and
- 2.19 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 ●, 2010 between Women's College Hospital ("**WCH**") and Women's College Partnership ("**Project Co**")

In consideration of WCH 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 WCH 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 WCH, its employees, officers, directors or agents.

**DATED** this \_\_\_\_ day of \_\_\_\_\_, 2010.

**WOMEN'S COLLEGE PARTNERSHIP,  
[REDACTED]**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

**WOMEN'S COLLEGE PARTNERSHIP,  
[REDACTED]**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

**APPENDIX B**

**FORM OF UNDERTAKING AND ACKNOWLEDGEMENT**

**TO:** Women's College Hospital ("WCH")

**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 [●], 2010 between WCH and Women's College 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 WCH 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 \_\_\_\_\_, 2010.

**WOMEN’S COLLEGE PARTNERSHIP,  
[REDACTED]**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

**WOMEN’S COLLEGE PARTNERSHIP,  
[REDACTED]**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

**APPENDIX C**

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

**Certificate of an Officer of**

**[•]**

**(the "Corporation")**

**TO: WOMEN'S COLLEGE HOSPITAL ("WCH")**  
**AND TO: ONTARIO INFRASTRUCTURE PROJECTS CORPORATION**  
**AND TO: McCARTHY TÉTRAULT LLP**  
**AND TO: [COUNSEL TO PROJECT CO]**  
**AND TO: [LENDERS' AGENT]**  
**AND TO: [COUNSEL TO LENDERS]**

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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 WCH made as of [●], 2010 (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Project Agreement**") pursuant to which the Corporation will design, build, finance and maintain a new hospital facility;

- (2) a lenders' direct agreement between the Corporation, WCH and the Lenders' Agent;
- (3) a direct agreement between [●] (the "**Construction Contractor**"), the Corporation, the Construction Guarantor and WCH;
- (4) a direct agreement between [●] (the "**Service Provider**"), the Corporation and WCH; 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:

<u>NAME</u>	<u>POSITION</u>	<u>SIGNATURE</u>

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:

<u>ISSUED SHARES</u>	<u>REGISTERED OWNER</u>

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)



**Amended and Restated Project Agreement – Schedule 2**  
**Women's College Hospital** **Execution Version**

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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 \_\_\_\_\_, 2010.

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

APPENDIX D

FORM OF PROJECT CO/PROJECT CO PARTY OPINION

[INSERT DATE]

Women's College Hospital  
76 Grenville Street  
Toronto ON M5S 1B2

Ontario Infrastructure Projects Corporation  
777 Bay Street, 9th Floor  
Toronto, Ontario  
M5G 2E5

McCarthy Tétrault LLP LLP  
Box 48, Suite 4700  
Toronto Dominion Bank Tower  
Toronto, ON M5K 1E6

Dear Sirs/Mesdames:

**Re: Women's College Hospital Redevelopment Project**

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We have acted as counsel to [●] ("**Project Co**"), [●] (the "**Construction Contractor**") and [●] (the "**Service Provider**") in connection with the alternative financing and procurement transaction whereby Project Co has agreed to enter into a design, build, finance and maintain agreement for a new hospital facility in Toronto, Ontario. [NTD: **Additional parties to be added depending on consortium structure and/or the financing package.**]

This opinion is being delivered to Women's College Hospital ("**WCH**"), Ontario Infrastructure Projects Corporation and their counsel pursuant to Section 1.25 of Schedule 2 to the project agreement made as of [●], 2010 between WCH 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, 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 [●], 2010):

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;
- (e) the Service Provider's Direct Agreement;
- (f) the Lending Agreements; and
- (g) the Performance Guarantee.

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, 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 [•], 2010 (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 [•], 2010 (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, 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, 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, the Construction Contractor and the Service Provider) to Project Co, 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.
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.
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.

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.
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.
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.
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.
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 WCH for which it would be contrary to public policy to require Project Co to indemnify WCH or to the extent that they constitute the indirect enforcement of a foreign revenue or penal law.

16. We express no opinion as to the enforceability by any person who is not a party to the Documents of any provision therein that purports to bind or affect or confer a benefit on such person.

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 WCH OFFICER'S CERTIFICATE

Certificate of an Officer of  
Women's College Hospital  
(the "Corporation")

TO: McCARTHY TÉTRAULT LLP  
AND TO: [●] ("Project Co")  
AND TO: [COUNSEL TO PROJECT CO]  
AND TO: [●] (the "Lenders' Agent")  
AND TO: [LENDERS' COUNSEL]

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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. Constatting Documents

- (a) The Corporation is a non-share capital corporation formed under the *Corporations Act* (Ontario) (Corporation No. ●).
- (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 [●] 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 [●], 2010 (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Project Agreement**") pursuant to which Project Co will design, 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 [●] (the "**Construction Contractor**"), Project Co, the Construction Guarantor and the Corporation;
      - (4) a direct agreement between [●] (the "**Service Provider**"), Project Co 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 \_\_\_\_\_, 2010.

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

APPENDIX F  
FORM OF WCH OPINION

[INSERT DATE]

[PROJECT CO]

[LENDERS' AGENT]

[LENDERS]

[COUNSEL TO LENDERS]

[COUNSEL TO PROJECT CO]

Dear Sirs/Mesdames:

**Re: Women's College Hospital Redevelopment Project**

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We have acted as project counsel to Women's College Hospital ("WCH") in connection with the alternative financing and procurement transaction whereby WCH and [●] ("Project Co") have agreed to enter into a design, build, finance and maintain agreement for a new hospital facility in Toronto, Ontario.

This opinion is being delivered to Project Co, [●] (as agent for and on behalf of the Lenders, the "Lenders' Agent"), each of the Lenders from time to time party to the Lending Agreements, and their respective counsel pursuant to Section 2.18 of Schedule 2 to the project agreement made as of [●], 2010 between WCH 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 WCH, 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 [●], 2010):

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 WCH 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**".

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 WCH, 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 WCH 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 WCH (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 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 WCH) 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 WCH) 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 WCH) to WCH.
7. WCH has obtained or will obtain all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorizations to be obtained by WCH in connection with the entering into and performance by WCH 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. WCH is a non-share capital corporation formed under the *Corporations Act* (Ontario) (Corporation No. ●) and has not been dissolved.

#### *Corporate Power and Capacity*

2. WCH 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 its properties and assets, and to enter into and perform its obligations under each of the Documents to which it is a party.

*Corporate Authorization*

3. WCH 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*

4. WCH has duly executed and delivered each of the Documents to which it is a party.

*Enforceability*

5. Each of the Documents to which WCH is a party constitutes a legal, valid and binding obligation of WCH, enforceable against it in accordance with its terms.

*No Breach or Default*

6. The execution and delivery by WCH of the Documents to which it is a party does not, and the performance by WCH 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 to which WCH 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. Any requirement in any of the Documents that interest be paid at a higher rate after than before default may not be enforceable.
10. 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.
11. 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.
12. 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.
13. Any award of costs is in the discretion of a Court of competent jurisdiction.
14. 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 WCH to indemnify Project Co or to the extent that they constitute the indirect enforcement of a foreign revenue or penal law.
15. The enforceability of each of the Documents, and any of the obligations of WCH 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 WCH 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.

16. 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,

**McCARTHY TÉTRAULT LLP**

**SCHEDULE 3**

**CUSTODY AGREEMENT**

**THIS AGREEMENT** is made as of the • day of •, 2010

**BETWEEN:**

**WOMEN'S COLLEGE HOSPITAL**, a non-share capital corporation incorporated under the laws of the Province of Ontario

(“WCH”)

**AND:**

**WOMEN'S COLLEGE PARTNERSHIP, [REDACTED]**

(“Project Co”)

**AND:**

**BNY TRUST COMPANY OF CANADA**, a trust company incorporated under the laws of Canada

(the “Custodian”)

**AND:**

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, a bank established under the laws of France, acting as agent for and on behalf of the Lenders

(the “Lenders' Agent”)

**WHEREAS:**

- A. WCH 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 Crédit Agricole Corporate and Investment Bank, acting as agent for and on behalf of the Lenders.
- (b) **“Material”** means hard and electronic copies of the Financial Model.
- (c) **“PA Parties”** means both WCH and Project Co, and **“PA Party”** means either WCH or Project Co, as the context requires.
- (d) **“Party”** means WCH, the Custodian, Project Co or the Lenders’ Agent, and **“Parties”** means WCH, the Custodian, Project Co and the Lenders’ Agent.
- (e) **“Project Agreement”** means the project agreement made on or about [●], 2010 between WCH and Project Co.
- (f) **“Project Co”** means Women’s College 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) **“WCH”** means Women’s College Hospital.
- (j) **“WCH 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 Toronto, 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) WCH 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 WCH 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 WCH 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 WCH 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 WCH 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, the Lenders' Agent, and the auditor retained by the Lenders' Agent 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.

## 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 WCH or such other person nominated by it and notified to the Custodian and Project Co in writing (the "**WCH 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 WCH in writing (the "**Project Co Signatory**");

and shall, subject to Section 6(b), upon receiving signed joint instructions from the WCH 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 WCH 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 WCH on any termination of the Project Agreement prior to the Expiry Date.



**7. Records**

- (a) The PA Parties shall be entitled, at reasonable hours 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 WCH, WCH 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, WCH shall:
  - (i) use the Material only for the purpose of understanding, maintaining and correcting the Financial Model exclusively on behalf of WCH;
  - (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 WCH;
  - (iii) hold all media containing the Material in a safe and secure environment when not in use; and
  - (iv) forthwith destroy the same should WCH cease to be entitled to use the Financial Model.

**9. Intellectual Property Rights**

- (a) The release of the Material to WCH 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, at reasonable hours 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 WCH 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(b), 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 shall not be liable for any loss or damage caused to Project Co or WCH either jointly or severally except to the extent that such loss or damage is caused by the negligent acts or omissions of or a breach of any contractual duty by 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 (except in the case of claims for personal injury or death) exceed the sum of \$[REDACTED] (index-linked).
- (b) The Custodian shall in no circumstances be liable to Project Co or WCH 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 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 WCH, in writing, of such process and the Custodian's intended action in order to provide Project Co and WCH 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 WCH as to any matter relating to this Custody Agreement, and the Custodian shall not incur any liability in 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 WCH 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, unless the Custodian receives written instructions, signed by Project Co and WCH, 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 WCH of its intention to do so. In such circumstances, the Custodian shall not be or become liable in any way to Project Co or WCH 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 WCH.

- (k) Each of Project Co and WCH 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 WCH, on a joint and several basis, shall be liable for and shall indemnify and hold harmless the Custodian, and its officers, directors and employees, 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 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 negligence or willful misconduct.

## **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 120 days prior written notice to Project Co and WCH. In that event, Project Co and WCH 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) WCH 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 WCH, terminate this Custody Agreement by giving 30 days prior written notice to the Custodian and WCH.

- (f) This Custody Agreement shall terminate upon release of the Material to WCH 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 WCH of Project Co's request and, failing receipt of any notice of objection from WCH within 30 days of the receipt of the notice by WCH, 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. Step-In Rights**

- (a) The Custodian shall, from time to time:
  - (i) permit WCH 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 WCH under this Custody Agreement, where WCH 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 Women's College Hospital), 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 WCH pursuant to Section 14(a)(i).
- (c) WCH consent to the performance or discharge of their obligations by Project Co pursuant to Section 14(a)(ii).
- (d) The PA Parties consent to the performance or discharge of Project Co’s obligations by the Lenders’ Agent pursuant to Section 14(a)(iii).
- (e) WCH or the Lenders’ Agent shall be entitled to terminate the Lenders’ Agent’s obligations pursuant to Section 14(a)(iii) on giving the Custodian prior notice (WCH or the Lenders’ Agent at the same time shall provide a copy of any such notification to WCH) 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 Section 4(c) of this Custody Agreement and this Section 14 and shall have no rights or obligations or liabilities hereunder, except pursuant to the operation of Section 4(c) of this Custody Agreement and this Section 14.

**15. Assignment**

- (a) This Custody Agreement shall be binding on, and enure to the benefit of, the Custodian, Project Co and WCH 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 56.1 of the Project Agreement.
- (c) WCH may assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person to whom WCH assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 56.2 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.
- (e) The Custodian acknowledges that Project Co has granted a security interest over its rights under this Custody Agreement to the Lenders’ Agent.

**16. 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 WCH: 76 Grenville Street, E143  
Toronto, Ontario M5S 1B2

Fax: [REDACTED]  
Attn.: [REDACTED]

If to Project Co: [REDACTED]

Fax: [REDACTED]  
Attn.: [REDACTED]

with a copy to: [REDACTED]

Fax: [REDACTED]  
Attention: [REDACTED]

If to the Custodian: [REDACTED]

Fax: [REDACTED]  
Attn.: [REDACTED]

If to the Lenders’ Agent: [REDACTED]

Fax: [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 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.

**17. 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.

**18. 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.

**19. 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.

**20. 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.

**21. 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.

**22. 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.

**23. 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.

**24. 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.

**25. 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 déclare satisfaite.

**26. Proof of Authority**

- (a) WCH reserves the right to require any person executing this Custody Agreement on behalf of Project Co or the Lenders' Agent to provide proof, in a form acceptable to WCH, that such person has the requisite authority to execute this Custody Agreement on behalf of and to bind Project Co or the Lenders' Agent, respectively.

**27. 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.

**[SIGNATURE PAGES IMMEDIATELY FOLLOW]**

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

**WOMEN’S COLLEGE HOSPITAL**

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

We have authority to bind the corporation.

**WOMEN’S COLLEGE PARTNERSHIP,  
[REDACTED]**

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

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

I/We have authority to bind the corporation.

**WOMEN'S COLLEGE PARTNERSHIP,  
[REDACTED]**

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

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

I/We have authority to bind the corporation.

**BNY TRUST COMPANY OF CANADA**

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

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

I/We have authority to bind the corporation.

**CRÉDIT AGRICOLE CORPORATE AND  
INVESTMENT BANK**

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

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

I/We have authority to bind the bank.

SCHEDULE 4

LENDERS' DIRECT AGREEMENT

**THIS AGREEMENT** is made as of the ● day of ●, 2010

**BETWEEN:**

**WOMEN'S COLLEGE HOSPITAL**, a non-share capital corporation  
incorporated under the laws of the Province of Ontario

(“**WCH**”)

- **AND** -

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, a bank  
established under the laws of France, acting as agent for and on behalf of the  
Lenders

(the “**Lenders' Agent**”)

- **AND** -

**WOMEN'S COLLEGE PARTNERSHIP, [REDACTED]**

(“**Project Co**”)

**WHEREAS:**

- A. WCH and Project Co have entered into the Project Agreement.
- B. The overriding priorities of WCH 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 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 WCH 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 Lenders recognize and understand that WCH 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 WCH is able to properly and effectively discharge its duties, functions and responsibilities under Applicable Law, Project Co, the Lenders' Agent and the Lenders commit to working collaboratively, responsibly and cooperatively with WCH 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 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 Lenders; or
  - (vi) any other person approved by WCH (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) “**Construction Contract**” has the meaning given in the Project Agreement.
- (f) “**Construction Contractor**” has the meaning given in the Project Agreement.
- (g) “**Default Notice**” has the meaning given in Section 7(b)(i).

- (h) “**Direct Agreements**” has the meaning given in the Project Agreement.
- (i) “**Enforcement Action**” means any acceleration of amounts due and owing to the Lenders under any of the Lending Agreements and/or any enforcement proceeding or enforcement action commenced or taken under any of the Security Documents.
- (j) “**Enforcement Event**” means an event of default as defined in the Lending Agreements, or any other event which permits an Enforcement Action.
- (k) “**Exercise Date**” has the meaning given in Section 12(b).
- (l) “**Facility**” has the meaning given in the Project Agreement.
- (m) “**Failure Points**” has the meaning given in the Project Agreement.
- (n) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (o) “**Indebtedness Notice**” has the meaning given in Section 7(b)(ii).
- (p) “**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.
- (q) “**Lenders**” has the meaning given in the Project Agreement.
- (r) “**Lenders’ Agent**” means Crédit Agricole Corporate and Investment Bank, acting as agent for and on behalf of the Lenders.
- (s) “**Lenders’ Direct Agreement**” means this lenders’ direct agreement.
- (t) “**Lending Agreements**” has the meaning given in the Project Agreement.
- (u) “**Longstop Date**” has the meaning given in the Project Agreement.
- (v) “**Monitoring Notice**” has the meaning given in the Project Agreement.
- (w) “**Notice Period**” means the period starting on the date of delivery of a Default Notice and ending 120 days later.
- (x) “**Novation Date**” has the meaning given in Section 10(a).
- (y) “**Novation Notice**” has the meaning given in Section 10(a).
- (z) “**Party**” means any of WCH, Project Co or the Lenders’ Agent, and “**Parties**” means all of WCH, Project Co and the Lenders’ Agent.

- (aa) “**person**” has the meaning given in the Project Agreement.
- (bb) “**Project**” has the meaning given in the Project Agreement.
- (cc) “**Project Agreement**” means the project agreement made on or about [•], 2010 between WCH and Project Co.
- (dd) “**Project Co**” means Women’s College Partnership.
- (ee) “**Project Co Event of Default**” has the meaning given in the Project Agreement.
- (ff) “**Project Co Party**” 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 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) the general security agreement made on or about the date hereof between Project Co and the Lenders’ Agent;
  - (ii) the Direct Agreements; and
  - (iii) all other Security Documents (as defined in the Credit Agreement) to which Project Co is a party.
- (oo) “**Service Contract**” has the meaning given in the Project Agreement.
- (pp) “**Service Provider**” has the meaning given in the Project Agreement.
- (qq) “**Step-In Date**” means the date on which WCH receives a Step-In Notice from the Lenders’ Agent.



- (rr) **“Step-In Notice”** means the notice given by the Lenders’ Agent to WCH pursuant to Section 8(a) stating that the Lenders’ Agent is exercising its step-in rights under this Lenders’ Direct Agreement.
- (ss) **“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 WCH 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 WCH 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.
- (tt) **“Step-Out Date”** means the date falling 30 days after the date on which WCH receives a Step-Out Notice.
- (uu) **“Step-Out Notice”** has the meaning given in Section 9(a).
- (vv) **“Subsequent Indebtedness Notice”** has the meaning given in Section 7(c).
- (ww) **“Substantial Completion Date”** has the meaning given in the Project Agreement.
- (xx) **“Suitable Substitute”** means a person, approved in writing by WCH 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 WCH 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 WCH Project Documents.
- (yy) **“Termination Date”** has the meaning given in the Project Agreement.

- (zz) “**Warning Notice**” has the meaning given in the Project Agreement.
- (aaa) “**WCH**” means Women’s College Hospital.
- (bbb) “**WCH Project Documents**” means the Project Agreement and all other documents to which both WCH and Project Co are parties pursuant to or in connection with the Project Agreement.
- (ccc) “**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 Toronto, 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 Lenders under the Lending Agreements have been irrevocably paid in full;
  - (ii) the Termination Date (provided that WCH 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 WCH 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 WCH 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 WCH shall not amend or modify the WCH 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 Lenders to exercise their rights under the Security, (ii) materially adversely affect the value of the Security, or (iii) increase the liability of the 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) WCH acknowledges having received copies of the Lending Agreements, and confirms that they are in form and substance satisfactory to WCH as at the date of Financial Close.

- (f) WCH 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 WCH Project Documents.
- (g) WCH agrees that any enforcement by the Lenders’ Agent of a security interest in the Equity Capital of Project Co granted 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 WCH (and WCH agrees) to pay all sums payable to Project Co under the Project Agreement to the Proceeds Account (as defined in the Lending Agreements), and Project Co and WCH agree that upon the occurrence of an Enforcement Event, if so directed in writing by the Lenders’ Agent upon giving reasonable notice, WCH 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) WCH 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 Lenders under the Lending Agreements, WCH 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 WCH of any Enforcement Event, any Enforcement Action, any notice from the Lenders to Project Co to accelerate the maturity of any amounts owing by Project Co to the Lenders under the Lending Agreements or any notice from the Lenders to Project Co to demand repayment of any amounts owing by Project Co to the 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 WCH's role as a hospital, or may compromise WCH'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 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 WCH**

- (a) Subject only to the rights expressly afforded to the Lenders' Agent pursuant to, and the restrictions set forth in, this Section 7, WCH 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)), WCH 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) WCH 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, WCH delivers written notice (an "**Indebtedness Notice**") to the Lenders' Agent setting out:
    - A. all amounts owed by Project Co to WCH and any other existing liabilities and unperformed obligations of Project Co to WCH of which WCH is aware (having made reasonable enquiry), in each case, as of the date on which WCH sent the Default Notice; and
    - B. all amounts which will become owing by Project Co to WCH and any other liabilities and obligations of Project Co to WCH of which WCH 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 WCH sends an Indebtedness Notice but before WCH receives a Step-In Notice, if WCH discovers amounts that have become owing by Project Co

to WCH or any other liabilities or obligations of Project Co to WCH that have come due but which were not included in the Indebtedness Notice, WCH 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, WCH 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 WCH 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 WCH 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) WCH 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 WCH 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 Lender’s 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 WCH 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 WCH 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 WCH Project Documents.
- (d) During the Step-In Period, WCH shall deal with the Appointed Representative instead of Project Co in connection with all matters related to the WCH Project Documents. Project Co agrees to be bound by all such dealings between WCH and the Appointed Representative to the same extent as if they had been between WCH 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 WCH 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 WCH under the WCH 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) WCH will no longer deal with the Appointed Representative and will deal with Project Co in connection with all matters related to the WCH Project Documents; and
  - (iii) the Appointed Representative and WCH shall be and hereby are released from all obligations and liabilities to one another under the WCH Project Documents.
- (c) There will not be more than one Step-In Period in respect 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 WCH and any Appointed Representative written notice (a “**Novation Notice**”) that it wishes to transfer Project Co's rights and obligations under the WCH Project Documents to a proposed transferee, together with all information reasonably necessary for WCH 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 WCH receives the Novation Notice (“**Novation Date**”) for the transfer of Project Co's rights and obligations under the WCH Project Documents to the proposed transferee in accordance with the provisions of Section 10(e).

- (b) WCH shall promptly notify the Lenders' Agent of any additional information it requires in order to assess whether the proposed transferee is a Suitable Substitute. WCH 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 WCH Project Documents is approved by WCH as a Suitable Substitute, on or before the date falling 30 days after the later of the date of receipt by WCH of the Novation Notice and the date of receipt of any additional information requested by WCH. For greater certainty, if WCH fails to respond within such period, WCH shall be deemed not to have approved the proposed transferee.

- (c) WCH shall not unreasonably withhold or delay its approval of a proposed transferee as a Suitable Substitute, but it shall, without limitation, be reasonable for WCH 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 WCH, 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 Project Co Party 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 WCH Project Documents or have the effect of increasing any liability of WCH, whether actual or potential.
- (d) If WCH 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 WCH, acting reasonably, provided that only one Novation Notice may be outstanding at any one time.
- (e) On the Novation Date:
  - (i) Project Co and WCH will be released from their obligations under the WCH Project Documents to each other, and the Suitable Substitute and WCH will assume those same obligations towards each other;
  - (ii) each of the rights of Project Co against WCH under the WCH Project Documents and the rights of WCH against Project Co under the WCH Project Documents will be cancelled, and the Suitable Substitute and WCH will acquire those same rights against each other;

- (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 WCH and the Suitable Substitute, on substantially the same terms as the Project Agreement; and
  - B. an agreement among WCH, 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 WCH 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 WCH of the Project Agreement will be deemed to have no effect and any subsisting Default Notice will be automatically revoked.

#### 11. TRANSFERS

WCH 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, WCH 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 12(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, WCH 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, WCH 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 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 WCH 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 12(e) inclusive, WCH 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.

WCH 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 56.1 of the Project Agreement and the provisions of the Lending Agreements, and shall provide written notice to WCH 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, WCH and the Lenders' Agent, each acting reasonably. WCH 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) WCH may assign, transfer or otherwise dispose of the benefit of this Lenders' Direct Agreement to any person to whom WCH assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 56.2 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 WCH 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 WCH'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 WCH of such assignment, transfer or other disposition; provided that, notwithstanding any provision to the contrary in the Lending Agreements, the Lender's 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 WCH on substantially the same terms as this Lenders' Direct Agreement and Project Co and WCH shall enter into such new agreement with the assignee. Project Co and WCH 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 WCH:

76 Grenville Street, E143  
Toronto, Ontario M5S 1B2

Attn.: [REDACTED]

If to the Lenders' Agent:

[REDACTED]

Attn.: [REDACTED]

If to Project Co:

[REDACTED]

Attn.: [REDACTED]

With a copy to:

[REDACTED]

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 49 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.

**[SIGNATURE PAGES IMMEDIATELY FOLLOW]**

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

**WOMEN’S COLLEGE HOSPITAL**

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: **[REDACTED]**

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: **[REDACTED]**

We have authority to bind the corporation.

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**

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

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

I/We have authority to bind the bank.

**WOMEN'S COLLEGE PARTNERSHIP,  
[REDACTED]**

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

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

I/We have authority to bind the corporation.

**WOMEN'S COLLEGE PARTNERSHIP,  
[REDACTED]**

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

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

I/We have authority to bind the corporation.

SCHEDULE 5-1

CONSTRUCTION CONTRACTOR'S DIRECT AGREEMENT

**THIS AGREEMENT** is made as of the • day of •, 2010

**BETWEEN:**

**WOMEN'S COLLEGE HOSPITAL**, a non-share capital corporation  
incorporated under the laws of the Province of Ontario

(“WCH”)

- AND -

**WOMEN'S COLLEGE PARTNERSHIP, [REDACTED]**

(“Project Co”)

- AND -

**WALSH CONSTRUCTION/BONDFIELD PARTNERSHIP**, a general  
partnership formed under the laws of the Province of Ontario by its general  
partners Walsh Construction Company Canada, a corporation incorporated under  
the laws of the State of Illinois, and Bondfield Construction Company Limited, a  
corporation incorporated under the laws of the Province of Ontario

(the “Construction Contractor”)

- AND -

**THE WALSH GROUP, LTD.**, a corporation incorporated under the laws of the  
State of Illinois

(the “Construction Guarantor”)

**WHEREAS:**

- A. WCH and Project Co have entered into the Project Agreement, which requires Project Co to enter into, and to cause the Construction Contractor and the Construction Guarantor to enter into, this Construction Contractor's Direct Agreement with WCH.
- B. Project Co and the Construction Contractor have entered into the Construction Contract, which requires the Construction Contractor and the Construction Guarantor to enter into this Construction Contractor's Direct Agreement with WCH.

**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 Walsh Construction/Bondfield Partnership.
- (e) **"Construction Guarantor"** means The Walsh Group, Ltd.
- (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 WCH, the Construction Contractor, the Construction Guarantor or Project Co, and **"Parties"** means WCH, the Construction Contractor, the Construction Guarantor and Project Co.
- (k) **"Project"** has the meaning given in the Project Agreement.
- (l) **"Project Agreement"** means the project agreement made on or about [•], 2010 between WCH and Project Co.
- (m) **"Project Co"** means Women's College Partnership.
- (n) **"Step-In Notice"** has the meaning given in Section 6(a).
- (o) **"Substitute"** has the meaning given in Section 6(a).
- (p) **"WCH"** means Women's College Hospital.
- (q) **"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 Toronto, 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 WCH, 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 WCH, whether actual or potential. Project Co and the Construction Contractor shall provide to WCH 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 WCH 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 WCH 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 WCH 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 WCH,



provided that if, within such period of 5 Business Days, WCH 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) WCH may at any time:

- (i) within 5 Business Days or, if such period has been extended in accordance with Section 5, 45 days of WCH receiving a Default Notice; or
- (ii) if WCH has not received a Default Notice and if WCH'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 WCH or a third party designated by WCH in the Step-In Notice (the "**Substitute**"), provided that WCH 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 WCH 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 WCH 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 WCH if WCH 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 WCH or the Substitute, as applicable, each acting reasonably, to WCH 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 WCH 's request, the Construction Contractor shall enter into, and shall cause the Construction Guarantor and any other guarantor, covenantor or surety under any guarantee, bond or covenant referred to in Section 6(b)(iii) to enter into, and WCH 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 WCH or the Substitute, as applicable, and the Construction Contractor, acceptable to WCH 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 WCH and the Substitute in order to achieve a smooth transfer of the Construction Contract to WCH 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 6(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 WCH 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 WCH 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 WCH, or by any failure or omission to carry out any such inspection, investigation or enquiry; or
  - (ii) the appointment by WCH of any other person to review the progress of or otherwise report to WCH 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 WCH,

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 WCH delivers a Step-In Notice, the Construction Contractor shall have no greater liability to WCH 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 WCH 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. CONSTRUCTION GUARANTOR AS PARTY**

The Construction Guarantor agrees with WCH that the Construction Guarantor has entered into a guarantee or covenant referred to in Section 6(b)(iii), hereby consents to the

assignment, novation or grant (including any conditional assignment, novation or grant) as provided herein immediately upon receipt by the Construction Contractor of a Step-In Notice and without the requirement of any further action on the part of WCH, and agrees that the Construction Guarantor shall in accordance with Section 6 enter into all such agreements or other documents as reasonably necessary to give effect to the foregoing. The Construction Guarantor enters into this Construction Contractor’s Direct Agreement solely for the purposes of this Section 9.

10. ASSIGNMENT

- (a) Project Co shall not, without the prior written consent of WCH, 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) WCH 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 WCH may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 56.2 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.
- (c) The Construction Contractor shall not, without the prior written consent of WCH and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Construction Contractor’s Direct Agreement except as may be permitted under the Construction Contract.

11. NOTICES

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Construction Contractor’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 Construction Contractor’s Direct Agreement) and served by sending the same by registered mail, facsimile or by hand, as follows:

If to WCH:

76 Grenville Street , E143  
Toronto, Ontario M5S 1B2  
Fax No.: [REDACTED]  
Attn.: [REDACTED]

If to Project Co:

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

With a copy to:

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

If to the Construction Contractor:

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

With a copy to:

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

If to the Construction Guarantor:

**[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 declare 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.

**[The remainder of this page has been intentionally left blank]**



**IN WITNESS WHEREOF** the Parties have executed this Construction Contractor's Direct Agreement as of the date first above written.

**WOMEN'S COLLEGE HOSPITAL**

Per:

\_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per:

\_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

We have authority to bind the corporation.

**WOMEN'S COLLEGE PARTNERSHIP,  
[REDACTED]**

Per:

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

Per:

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

I/We have authority to bind the corporation.

**WOMEN'S COLLEGE PARTNERSHIP,  
[REDACTED]**

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the corporation.

**WALSH CONSTRUCTION/BONDFIELD  
PARTNERSHIP,  
by its general partner,  
WALSH CONSTRUCTION COMPANY  
CANADA**

Per: \_\_\_\_\_

Name:

Title:

Per: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the corporation.

**WALSH CONSTRUCTION/BONDFIELD  
PARTNERSHIP,  
by its general partner,  
BONDFIELD CONSTRUCTION COMPANY  
LIMITED**

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

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

I/We have authority to bind the corporation.

**THE WALSH GROUP, LTD.**

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 •, 2010

**BETWEEN:**

**WOMEN'S COLLEGE HOSPITAL**, a non-share capital corporation  
incorporated under the laws of the Province of Ontario

(“**WCH**”)

- **AND** -

**WOMEN'S COLLEGE PARTNERSHIP, [REDACTED]**

(“**Project Co**”)

- **AND** -

**BLACK & MCDONALD LIMITED**, a corporation incorporated under the laws  
of the Province of Ontario

(the “**Service Provider**”)

**WHEREAS:**

- A. WCH and Project Co have entered into the Project Agreement, which requires Project Co to enter into, and to cause the Service Provider to enter into, this Service Provider's Direct Agreement with WCH.
- B. Project Co and the Service Provider have entered into the Service Contract, which requires the Service Provider to enter into this Service Provider's Direct Agreement with WCH.

**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 WCH, the Service Provider or Project Co, and “**Parties**” means WCH, the Service Provider and Project Co.
- (h) “**Project**” has the meaning given in the Project Agreement.
- (i) “**Project Agreement**” means the project agreement made on or about [•], 2010 between WCH and Project Co.
- (j) “**Project Co**” means Women’s College Partnership.
- (k) “**Project Co Services**” has the meaning given in the Project Agreement.
- (l) “**Service Contract**” has the meaning given in the Project Agreement.
- (m) “**Service Provider**” means Black & McDonald Limited.
- (n) “**Step-In Notice**” has the meaning given in Section 6(a).
- (o) “**Substitute**” has the meaning given in Section 6(a).

## 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 Toronto, 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 WCH, 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 WCH, whether actual or potential. Project Co and the Service Provider shall provide 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 WCH 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 WCH 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 WCH 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 WCH 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 WCH,

provided that, until such time as WCH gives the Service Provider a notice that WCH will not be exercising its step-in rights, WCH shall pay the Service Provider’s reasonable costs of continued performance.

**6. STEP-IN RIGHTS**

(a) WCH may at any time:

(i) within the period referred to in Section 5(b); or

(ii) if WCH has not received a Default Notice and if WCH’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 WCH or a third party designated by WCH in the Step-In Notice (the “**Substitute**”), provided that WCH 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 WCH 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 WCH 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 WCH if WCH 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 WCH or the Substitute, as applicable, each acting reasonably, to WCH 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 WCH's request, the Service Provider shall enter into, and shall cause any guarantor, covenantor or surety under any guarantee, bond or covenant referred to in Section 6(b)(iii) to enter into, and WCH 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 WCH or the Substitute, as applicable, and the Service Provider, acceptable to WCH 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 WCH and the Substitute in order to achieve a smooth transfer of the Service Contract to WCH 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 6(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 WCH 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 WCH 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 WCH, or by any failure or omission to carry out any such inspection, investigation or enquiry;
  - (ii) the appointment by WCH of any other person to review the progress of or otherwise report to WCH 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 WCH,

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 WCH delivers a Step-In Notice, the Service Provider shall have no greater liability to WCH 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 WCH 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. [INTENTIONALLY DELETED]**

**10. ASSIGNMENT**

- (a) Project Co shall not, without the prior written consent of WCH, 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) WCH 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 WCH may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 56.2 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 WCH 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.

**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 WCH:

76 Grenville Street, E143  
Toronto, Ontario M5S 1B2  
Fax No.: [REDACTED]  
Attn.: [REDACTED]

If to Project Co:

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

With a copy to:

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

If to the Service Provider:

[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 déclare 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.

**[SIGNATURE PAGES IMMEDIATELY FOLLOW]**

**IN WITNESS WHEREOF** the Parties have executed this Service Provider’s Direct Agreement as of the date first above written.

**WOMEN’S COLLEGE HOSPITAL**

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: **[REDACTED]**

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: **[REDACTED]**

We have authority to bind the corporation.

**WOMEN’S COLLEGE PARTNERSHIP,  
[REDACTED]**

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

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

I/We have authority to bind the corporation.



**WOMEN'S COLLEGE PARTNERSHIP,  
[REDACTED]**

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

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

I/We have authority to bind the corporation.

**BLACK & McDONALD LIMITED**

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 •, 2010

**BETWEEN:**

**WOMEN'S COLLEGE HOSPITAL**, a non-share capital corporation incorporated under the laws of the Province of Ontario

(“**WCH**”)

**AND:**

**WOMEN'S COLLEGE PARTNERSHIP, [REDACTED]**

(“**Project Co**”)

**AND:**

**ALTUS GROUP COST CONSULTING**, a division of Altus Group Limited, a corporation incorporated under the laws of the Province of Ontario

(the “**Independent Certifier**”)

**WHEREAS:**

- A. WCH 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 WCH 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 WCH and Project Co, and **“PA Party”** means either WCH or Project Co, as the context requires.

- (vii) **“Project Agreement”** means that certain project agreement made on or about the date hereof between WCH and Project Co with respect to the design, 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.
- (d) The Independent Certifier shall make such observations and evaluations of any Works pursuant to a Variation in order to certify any monthly progress payment to Project Co of the value of work performed, provided the Independent Certifier shall be entitled to a Certification Services Variation Order pursuant to Section 9.4 and 9.5 of this Schedule 6.

**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.

### **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.
- (b) The Independent Certifier shall ensure that its personnel providing the Certification Services in respect of the Commissioning Tests, the Outline Commissioning Program and the Final Commissioning Program shall:
  - (i) possess a current professional designation of not less than membership in Professional Engineers Ontario, the Ontario Association of Certified Engineering Technicians and Technologists or such similar professional designation recognized in North America;
  - (ii) have demonstrated competence in the commissioning of healthcare facilities and in having completed or monitored the commissioning for an acute health care facility of more than 50,000 sq. ft.;
  - (iii) have an understanding of the appropriate CSA standards, including CSA Standard Z318.0-05 – Commissioning of Health Care Facilities, commissioning for healthcare facilities as well as other applicable standards such as ASHRAE and NACBB; and
  - (iv) have an understanding of the commissioning process and the reports to be provided pursuant to this Agreement and the Project Agreement, including not only the start-up procedures but the pre-commissioning and post-commissioning activities.
- (c) The Independent Certifier shall furnish WCH with evidence satisfactory to WCH of any such personnel's compliance with the foregoing requirements within a reasonable time prior to the proposed commencement of the Certification Services in respect of the Commissioning Tests, the Outline Commissioning Program and the Final Commissioning Program.

### **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 Interim Completion, 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 WCH 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 WCH, 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 WCH 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 WCH Representative and the Project Co Representative;
  - (iii) if satisfactory to each of the WCH Representative and the Project Co Representative, implement such certification quality plan; and
  - (iv) if not satisfactory to each of the WCH 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 WCH Representative and the Project Co Representative, and implement it if satisfactory to each of the WCH 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 WCH 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 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 and on terms satisfactory to each of the PA Parties; and
    - (B) covering liability which the Independent Certifier might incur as a result of a breach by it 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) comprehensive general liability insurance in the amount of \$[REDACTED] per claim and in the aggregate, no deductible for personal injury or bodily injury, a deductible of not more than \$[REDACTED] per occurrence for property damage and from an insurer and on terms satisfactory to each of the PA Parties.
- (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 HST), 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 \$[REDACTED] 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 WCH 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) 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 WCH 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 WCH 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 WCH 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 WCH 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 completion of the Works and the performance of the Certification Services set forth herein; or
  - (ii) such other 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.

**12.2 Negation of Employment**

- (a) The Independent Certifier, its officers, directors, members, employees, servants and agents and any other persons engaged by the Independent Certifier in the performance of the Certification Services will not by virtue of this Independent Certifier Agreement or the performance of the Certification Services become in the service or employment of the PA Parties for any purpose.
- (b) The Independent Certifier will be responsible for all matters requisite as employer or otherwise in relation to such officers, directors, members, employees, servants and agents and other persons who are engaged by the Independent Certifier.

**12.3 Waiver**

- (a) No waiver made or given by a party under or in connection with this Independent Certifier 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.

**12.4 Notices**

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

If to WCH: 76 Grenville Street, E143  
Toronto, Ontario M5S 1B2

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to Project Co: [REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

with a copy to: [REDACTED]

Fax No: [REDACTED]

Attention: [REDACTED]

If to Independent Certifier: [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 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.

**[SIGNATURE PAGES IMMEDIATELY FOLLOW]**

IN WITNESS WHEREOF the parties have executed this Independent Certifier Agreement as of the date first above written.

**WOMEN’S COLLEGE HOSPITAL**

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

We have authority to bind the corporation.

**WOMEN’S COLLEGE PARTNERSHIP,  
[REDACTED]**

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

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

I/We have authority to bind the corporation.

**WOMEN’S COLLEGE PARTNERSHIP,  
[REDACTED]**

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

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

I/We have authority to bind the corporation.

**ALTUS GROUP COST CONSULTING,  
a division of Altus Group Limited**

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: **[REDACTED]**

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: **[REDACTED]**

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 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 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) Review information relating to Variation Enquiries, Project Co Variation Notices, Variations, Estimates, claims for extension of time and compensation and consultation with the relevant party.
- (e) In accordance with Section 11.1(b) of the Project Agreement, attend meetings and participate, as necessary, in the activities of the Works Committee.
- (f) 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.
- (g) 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 Interim Completion, Substantial Completion and Final Completion.
- (h) Prior to any certification, consider the views and comments of both Project Co and WCH in relation to the satisfaction of the conditions for certification.
- (i) 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.
- (j) Review relevant documentation, including floor area schedules, certificates and approvals, Permits, Licences, Approvals and Agreements, 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.
- (k) Monitor the requirements, progress and results of all Project Co Commissioning and Hospital Commissioning.

- (l) Upon receipt of notice from Project Co requesting the issuance of the Interim Completion Certificate, 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.
- (m) 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.
- (n) Prepare, in consultation with Project Co and WCH, as soon as reasonably practicable and, in any event within, the applicable time period specified in Sections 24A.8(a) and 24.8(a) of the Project Agreement, the Interim Minor Deficiencies List, the Minor Deficiencies List and any supplementary Minor Deficiencies List in respect of the Phase 2A Works, as the case may be, which shall each include an estimate of the cost and the time for rectifying the Interim Minor Deficiencies or Minor Deficiencies, as applicable, and a schedule for the completion and rectification of such Interim Minor Deficiencies or Minor Deficiencies, as applicable.
- (o) Prior to Substantial Completion, review Project Co cash allowances expenditures against the installations in respect of the Cash Allowance Items and the Cash Allowance Amount.
- (p) After Substantial Completion, reconcile Project Co invoices for expenditure recovery against WCH budgets and the Cash Allowance Amount.
- (q) Review and observe installation of all FF&E, equipment, furniture, fixtures, information technology, communication equipment, telephone equipment and anything similar to the foregoing (together, the “**Equipment**”) into the Facility by WCH or any agent or contractor of WCH either before or after Substantial Completion and provide a report to WCH and Project Co identifying any damage to the Facility which has been caused as a result of the installation of such Equipment into the Facility by WCH, its contractors and/or agents.
- (r) 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.
- (s) 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.
- (t) Provide advice on other matters that may arise that both PA Parties may jointly require.

- (u) Determine the value of the cost of the Phase 2A Works and the reasonable costs associated with the Phase 2A Commissioning and the Phase 2A Transition and provide WCH and Project Co with such valuation 5 Business Days prior to the Anticipated Substantial Completion Date.

**APPENDIX B**

**INDEPENDENT CERTIFIER FEE**

1. Base Fee for Certification Services

[\$[REDACTED] plus HST

2. [REDACTED]

3. Disbursements

All disbursements (including document reproduction, mileage, courier charges, photograph processing and travel costs) are included in the Base Fee set out above and do not exceed [REDACTED]% of the Base Fee.

**APPENDIX C**

**INDEPENDENT CERTIFIER PERSONNEL**

The following personnel shall be involved in the performance of the Certification Services:

<b>Name</b>	<b>Qualifications</b>	<b>Role</b>
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

SCHEDULE 7

[INTENTIONALLY DELETED]

**SCHEDULE 8**

**EXISTING FACILITIES SERVICES MANAGEMENT  
AGREEMENT**

**THIS AGREEMENT** (this “**Agreement**”) is made as of the • day of •, 2010

**BETWEEN:**

**WOMEN'S COLLEGE HOSPITAL**, a non-share capital corporation incorporated under the laws of the Province of Ontario

(“**WCH**”)

**AND:**

**WOMEN'S COLLEGE PARTNERSHIP, [REDACTED]**

(“**Project Co**”)

**WHEREAS:**

- A. WCH, with the assistance of Infrastructure Ontario, wishes to procure a new hospital in Toronto, Ontario.
- B. WCH will provide Hospital Services at the Facility and Project Co will provide the Project Operations, which include the design, construction, financing and maintenance of the Facility (the “Project”).
- C. WCH and Project Co have entered into the project agreement (the “Project Agreement”), which sets out the terms and conditions upon which Project Co shall perform the Project Operations and which requires Project Co to manage the Existing Facilities Services.
- D. Project Co agreed in the Project Agreement to enter into this Agreement to manage Existing Facilities Services at the Existing Facilities Services Sites prior to the Interim Completion Date to facilitate an orderly and efficient transition to the arrangements under the Project Agreement.
- E. WCH agrees that Project Co may assign this Agreement to the Service Provider on notice to WCH.

- F. WCH and Project Co have agreed in the Project Agreement and Schedule 17 to the Project Agreement that on the Transfer Date, former Hospital employees who provided Existing Facilities Services at the Existing Facilities Services Sites will be transferred to, and become employees of, Project Co.

**NOW THEREFORE** in consideration of the mutual covenants and agreements of each other herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, WCH and Project Co hereby covenant and agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

- 1.1 “Approved Hospital Budget” means the budget developed by WCH for the provision of the Existing Facilities Services including for the Existing Facilities Services Employees for the Term of this Agreement.
- 1.2 “Default Event” has the meaning given to it in Section 11.2.
- 1.3 “Effective Date” has the meaning given to it in Section 9.1.
- 1.4 “Existing Facilities Management Services” has the meaning given in Section 3.1.
- 1.5 “Existing Facilities Services” means the provision of all security and surveillance, and plant and engineering services at the Existing Facilities Services Sites as at the Effective Date as contemplated by the Approved Hospital Budget.
- 1.6 “Existing Facilities Services Employees” means all those employees of WCH who provide Existing Facilities Services at the Existing Facilities Services Sites.
- 1.7 “Existing Facilities Services Sites” has the meaning given in Section 2.1.
- 1.8 “Interim Management Services Fee” means the amount of **[REDACTED]** for the performance by Project Co of the Existing Facilities Management Services.
- 1.9 “Parties” means WCH and Project Co and “Party” means either of them without specificity.
- 1.10 “Project” has the meaning given in Recital B.
- 1.11 “Project Agreement” has the meaning given in Recital C.
- 1.12 “Term” has the meaning given in Section 9.1.
- 1.13 “Third Party Contracts” has the meaning given in Section 3.5(b).



- 1.14 All other initially capitalized terms not otherwise defined shall have the meanings given in the Project Agreement.

**ARTICLE 2  
EXISTING FACILITIES SERVICES SITES**

- 2.1 The Existing Facilities Services will be provided at the buildings, roads and grounds related to 76 Grenville Street, Toronto, Ontario and the premises occupied by WCH at 77 Grenville Street, Toronto, Ontario and 790 Bay Street, Toronto, Ontario (the “Existing Facilities Services Sites”).
- 2.2 The Existing Facilities Services provided at the premises occupied by WCH at 77 Grenville Street, Toronto, Ontario and 790 Bay Street, Toronto, Ontario shall be limited to the provision of such security and surveillance services at the aforesaid premises as at the Effective Date as are contemplated by the Approved Hospital Budget and shall not include the provision of any plant and engineering services. For greater certainty, the Existing Facilities Services to be provided at the buildings, roads and grounds related to 76 Grenville Street, Toronto, Ontario shall include such security and surveillance services, and such plant and engineering services as at the Effective Date as are contemplated by the Approved Hospital Budget.

**ARTICLE 3  
PROJECT CO MANAGEMENT SERVICES**

- 3.1 WCH hereby grants to Project Co the right to manage the Existing Facilities Services and to manage the Existing Facilities Services Employees in respect thereto (collectively the “Existing Facilities Management Services”) for and on behalf of WCH during the Term on the terms and conditions set forth herein.
- 3.2 Project Co agrees to provide the Existing Facilities Management Services on behalf of WCH in a faithful, diligent and honest manner in accordance with the provisions of this Agreement and at all times in a manner that is consistent with and in furtherance of WCH’s values and mission, including the highest standard of equity in employment, and its unique issues as a hospital for women. Project Co shall supervise, train (as required) and direct the Existing Facilities Services Employees in the completion of their duties in providing the Existing Facilities Services in a manner that is consistent with WCH’s human resources, administrative and other policies and applicable collective agreements, and all on the terms and conditions as herein set out. The Parties further acknowledge and agree that Project Co will perform the Existing Facilities Management Services within the Approved Hospital Budget, and that all costs and expenses associated with the Existing Facilities Services including the Existing Facilities Services Employees shall be paid by WCH out of the Approved Hospital Budget. WCH will review the Approved Hospital Budget with Project Co. Project Co acknowledges and agrees that such management shall be subject always to the direction and oversight of WCH.

- 3.3 Project Co agrees that it will familiarize itself, by the Effective Date, with the Existing Facilities Services, the Existing Facilities Services Employees, and WCH’s applicable practices and policies, including its human resources practices and policies and applicable collective agreements, and agrees to abide therewith.
- 3.4 Project Co shall use all commercially reasonable efforts to perform the Existing Facilities Management Services to a standard and level of performance which is equal to or greater than the standard and level of performance by WCH prior to the coming into force of this Agreement.
- 3.5 In addition to the above, the Existing Facilities Management Services shall include the following:
- (a) supervise, train and direct all Existing Facilities Services Employees in the discharge of their duties in providing the Existing Facilities Services, in a manner that is consistent with WCH human resources, administrative and other policies and applicable collective agreements, on terms and conditions as may be agreed to by the Parties;
  - (b) manage any contracts between WCH and third parties for the provision of Existing Facilities Services (“Third Party Contracts”) including, without limiting the foregoing, the contracts set out in Schedule 1 – Third Party Contracts. Subject to WCH’s approval and, for greater certainty, compliance with the Approved Hospital Budget, Project Co may both terminate any such Third Party Contracts and enter into replacement Third Party Contracts.
  - (c) have adequately trained staff on duty as WCH shall require and when staff are not on duty, maintain a formal on-call system;
  - (d) manage the Approved Hospital Budget for the Existing Facilities Services;
  - (e) provide competent Existing Facilities Services management personnel who will be responsible for interacting with, directing, training, communicating, evaluating and supervising Existing Facilities Services Employees;
  - (f) manage all employees on Project Co’s payroll with respect to all aspects of their employment;
  - (g) with respect to the Existing Facilities Services Employees, make recommendations to WCH with respect to recruitment, transfer, promotion, discipline and employment;
  - (h) provide competent technical, operational and corporate support for the Existing Facilities Services;

- (i) provide on-site management of the Existing Facilities Services including twenty-four (24) hour emergency contact information to immediately access Project Co management;
- (j) provide other management and support staff as required to deliver the mandated responsibilities, for clarity, all at the expense of Project Co;
- (k) recommend, implement and maintain the existing software deemed necessary by Project Co to fulfil its obligations;
- (l) maintain the existing computerized maintenance management system for Existing Facilities Services (CMMS) or an alternative maintenance management system that will enable appropriate recording, tracking, and reporting of Existing Facilities Services;
- (m) maintain an accurate inventory of Hospital equipment and supplies related to Existing Facilities Services;
- (n) manage WCH-approved operating plan for the Existing Facilities Services;
- (o) provide WCH with written monthly operating reports;
- (p) provide human resource support to the Existing Facilities Services Employees in accordance with applicable collective agreements, Hospital policies and Existing Facilities Services policies approved by WCH;
- (q) operate in compliance with the recommendations of the Canadian Council on Health Facilities Accreditation;
- (r) comply with laws regarding sanitation, recycling, waste management, waste reduction, health and safety, Workplace Hazardous Materials Information System (WHMIS), labour and employment, employment standards, workers' compensation, non-discrimination and pay equity, including any reporting and record keeping requirements and any other applicable laws and regulations;
- (s) obtain and maintain, at the cost of Project Co, all licenses and permits Project Co requires to enable it to perform the Existing Facilities Management Services;
- (t) maintain a satisfactory quality assurance program for the Existing Facilities Services, which may, if appropriate and at WCH's option, include customer satisfaction surveys;
- (u) continue the central dispatch services in effect at the commencement of this Agreement; and
- (v) comply with the requirements of this Agreement.

**ARTICLE 4  
PROJECT AGREEMENT**

- 4.1 Project Co acknowledges its responsibilities under the Project Agreement in relation to the Interim Commissioning Program and the Final Commissioning Program including: the Project Co Commissioning; the Interim Transition and Transition; and, the provision of the Project Co Services. Project Co further acknowledges the mutual intent of WCH and Project Co that the opportunity for Project Co to perform the Existing Facilities Management Services under the terms of this Agreement, will, on a practical basis, facilitate the performance by Project Co of such responsibilities under the Project Agreement. In addition, the experience Project Co has in providing the Existing Facilities Management Services will facilitate the continued performance as required, of the Existing Facilities Services at the Existing Facilities Services Sites during the Interim Transition including through the period that patients, and any Existing Equipment connected to patients will be transported from the Existing Facilities to the Facility as contemplated in Section 24.13(b) of the Project Agreement notwithstanding that such activities may occur following Interim Completion. For clarity, the Parties agree that any costs associated with Project Co fulfilling its obligations under the Project Agreement described in this Section 4.1 are included in the Monthly Service Payment under the Project Agreement.

**ARTICLE 5  
HOSPITAL AGREEMENTS REGARDING  
THE EXISTING FACILITIES SERVICES**

- 5.1 WCH hereby agrees to:
- (a) provide Project Co with the Existing Facilities Services equipment and office space which exists on the Effective Date;
  - (b) maintain, repair and/or replace equipment at WCH's expense, in accordance with WCH-approved operating plan; and
  - (c) promptly give to Project Co all such other directions, instructions and information as shall be necessary to enable Project Co to perform its duties under this Agreement.

**ARTICLE 6  
INSURANCE, INDEMNITY AND LIMITS ON LIABILITY**

- 6.1 WCH shall during the Term of this Agreement obtain and maintain such insurances as a prudent owner of the Existing Facilities Services Sites would carry.

- 6.2 WCH agrees to add Project Co as an additional insured to WCH’s existing property damage insurance.
- 6.3 During the Term of this Agreement Project Co shall maintain general third party liability coverage which insurance shall (i) be in a minimum amount of \$[REDACTED]; (ii) name WCH as an additional insured; (iii) contain a cross-liability clause and a severability of interests clause; and (iv) the coverage shall provide for a limit of liability as to any one occurrence of not less than \$[REDACTED]. WCH shall be entitled to pursue such claim under such insurance in priority to and without regard to any insurance that is otherwise available to WCH to respond to such claim.
- 6.4 Project Co shall indemnify and hold harmless WCH from and against all losses, liabilities, claims, damages and expenses arising out of the negligence of Project Co or its employees, agents or representatives.
- 6.5 WCH shall indemnify and hold harmless Project Co from and against all losses, liabilities, claims, damages and expenses arising out of the negligence of WCH, or its employees, agents or representatives.
- 6.6 The maximum liability of each Party under this Agreement including under the indemnity provisions will be \$[REDACTED] per occurrence and in the aggregate, provided such limitation shall not apply to any claim that is an insured claim under the insurance that Project Co is required to maintain under Section 6.3.
- 6.7 Neither Party shall be entitled to claim damages for breach of this Agreement, in tort or on any other basis whatsoever, to the extent that any loss claimed by either Party is for punitive, exemplary or aggravated damages; for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity; or is a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by either Party, provided such limitation shall not apply to any claim that is an insured claim under the insurance that Project Co is required to maintain under Section 6.3.

**ARTICLE 7**  
**EMPLOYEES**

- 7.1 During the Term of this Agreement, Existing Facilities Services Employees of WCH shall remain employees of WCH and be on the payroll of WCH, but shall perform their respective duties under Project Co’s supervision and direction. Supported by Project Co’s recommendations, but in WCH’s sole discretion, WCH shall hire such individuals to perform work in connection with the Existing Facilities Services and shall terminate or relocate such individuals. Any severance, notice of termination or termination pay and related costs of termination of WCH’s employees shall be the responsibility of WCH.
- 7.2 On the Transfer Date, WCH and Project Co hereby acknowledge that in accordance with the terms and conditions of the Project Agreement, all Existing Facilities Services

Employees of WCH on the Transfer Date shall become employees of Project Co, be on the payroll of Project Co and shall continue to perform their respective duties pursuant to the terms and conditions of the Project Agreement.

**ARTICLE 8**  
**PAYMENT OF SERVICE FEE**

- 8.1 The Parties acknowledge that, subject to the provisions of this Agreement, notably Section 11, the Interim Management Services Fee is payable by WCH to Project Co on the Interim Payment Commencement Date.

**ARTICLE 9**  
**TERM**

- 9.1 The term (the “Term”) of this Agreement commences on the date which is 180 days prior to the Anticipated Interim Completion Date as defined in Section 24.7 of the Project Agreement (the “Effective Date”), and continues until the Interim Completion Date.

**ARTICLE 10**  
**ASSIGNMENT**

- 10.1 The Parties agree that the provisions of Project Agreement Section 56 – Assignment, Subcontracting and Changes in Control shall apply to this Agreement *mutatis mutandis*.

**ARTICLE 11**  
**DEFAULT, DISPUTE RESOLUTION**

- 11.1 If Project Co either fails to or is not performing any of its obligations under or in accordance with this Agreement, WCH may refer the matter to the Facilities Management Committee for review. The Facilities Management Committee shall within 5 Business Days of such referral provide a report setting out an appropriate resolution to such matters. If the Facilities Management Committee is unable to come to an appropriate resolution of the matter within 5 Business Days, the Parties shall refer the matter to the Dispute Resolution Procedure in accordance with Section 11.5 of this Agreement.
- 11.2 For the purposes of this Agreement, a “Default Event” means any one or more of the following events or circumstances:
- (a) the occurrence of any of the events outlined under Sections 42.1(a)(i)(A) to (D) of the Project Agreement;
  - (b) Project Co committing a breach of its obligations under this Agreement, other than where such breach is a consequence of a breach by WCH of its obligations

under this Agreement, and upon becoming aware of such breach Project Co failing to remedy such breach in accordance with all of the following:

- (i) Project Co shall:
  - A. immediately commence and thereafter diligently continue to remedy the breach and to mitigate any adverse effects on WCH;
  - B. put forward within 5 Business Days of receipt of notice of such breach of WCH, 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 10 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,
  - C. thereafter perform its obligations to achieve all such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; and,
- (c) Project Co failing to comply with any determination, order or award made against Project Co in accordance with Section 11.5 of this Agreement.

11.3 A Default Event under this Agreement (other than a Default Event under Section 11.2(a) of this Agreement) shall not constitute a Project Co Event of Default under the Project Agreement.

11.4 If Project Co commits a Default Event under Section 11.2 of this Agreement, WCH may at its option terminate this Agreement and as a consequence of such termination, the Interim Management Services Fee shall cease to be payable by WCH to Project Co and Project Co shall have no entitlement to any fee for any of the services which it may have provided under this Agreement.

11.5 Disputes arising from this Agreement which are not otherwise resolved in accordance with Section 11.1 of this Agreement shall be resolved in accordance with, and the Parties shall comply with, Project Agreement Schedule 27 - Dispute Resolution Procedure.

## **ARTICLE 12 GENERAL PROVISIONS**

12.1 This Agreement shall bind and enure to the benefit of the parties hereto and their respective legal successors and permitted assigns, provided that neither party shall assign this Agreement or any right hereunder or interest herein without the prior written consent of the other party.

- 12.2 If any provision in this Agreement shall, to any extent, be invalid or unenforceable, that part of the provision that is invalid or unenforceable shall be severed and the remainder of the provision and this Agreement shall not be affected, and each provision of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.
- 12.3 Each notice required or permitted to be given under this Agreement shall be given in accordance with the notice provisions in the Project Agreement.
- 12.4 No provision of this Agreement may be modified or deleted, nor may any provision be added to this Agreement, except by a writing duly executed on behalf of each of the parties hereto.
- 12.5 The waiver of, or failure of either party to exercise in any respect, any right or election provided for in this Agreement shall not be deemed a waiver of any further or future right or election under this Agreement.
- 12.6 The headings of the Articles of this Agreement are for convenience of reference only and are not to be used in its interpretation.
- 12.7 This Agreement shall be governed by, subject to, and construed according to the laws of the Province of Ontario and the laws of Canada applicable therein.
- 12.8 WCH and Project Co will cooperate with each other in good faith and in a commercially reasonable manner in the performance and satisfaction of their respective obligations hereunder in a timely and efficient manner.
- 12.9 Unless otherwise provided herein, where the approval of either Party is required by the provisions of this Agreement, such approval will not be unreasonably withheld or delayed.

**[SIGNATURE PAGES IMMEDIATELY FOLLOW]**



**IN WITNESS WHEREOF** the Parties have executed this Existing Facilities Services Management Agreement as of the date first above written.

**WOMEN'S COLLEGE HOSPITAL**

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

Per: \_\_\_\_\_  
Name: [REDACTED]  
Title: [REDACTED]

We have authority to bind the corporation.

**WOMEN'S COLLEGE PARTNERSHIP,  
[REDACTED]**

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

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

I/We have authority to bind the corporation.

**WOMEN'S COLLEGE PARTNERSHIP,  
[REDACTED]**

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

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

I/We have authority to bind the corporation.

**Schedule 1**

**Third Party Contracts**

The Third Party Contracts defined in Section 3.5 of Schedule 8 may include Third Party Contracts for the following services:

1. snow clearing and salting of both roadways and walkways;
2. preventative maintenance of chiller;
3. preventative maintenance for building controls, including related software and hardware;
4. maintenance management software and support;
5. preventative maintenance of all non-fixed patient lifts;
6. preventative maintenance and lift testing of all fixed patient lifts;
7. maintenance and verification of fire system including but not limited to maintenance and verification of related hardware and software, fire hydrants, fire hoses, booster pumps, and sprinkler systems;
8. service and verification of special fire extinguishing and fire suppression systems;
9. service, verification and preventative maintenance of medical gas systems, including related panels and wall units;
10. chemical water treatment;
11. preventative maintenance of high voltage equipment, including vibration analysis, thermography, HV feeders, automatic transfer switches, cleaning, and torquing on emergency and regular power systems;
12. pest control;
13. preventative maintenance and service for all ceiling and roof top air conditioning units, including the telecommunications room unit and the computer server room unit;
14. service and preventative maintenance for all overhead doors and dock levelers;
15. elevator service;
16. preventative maintenance and service for both CCTV and access control;
17. contracts for the supply of natural gas, steam, electricity and fuel oil;
18. preventative maintenance, service and verification of emergency generator;

19. such additional contracts which WCH may have with third parties for the provision of Existing Facilities Services.

**SCHEDULE 9**

**KEY INDIVIDUALS**

**A. Key Individuals - Works**

<b>Project Co Party</b>	<b>Position/Function</b>	<b>Name and Contact Information</b>
Design Team	Lead Architect	[REDACTED]
Design Team	Lead Mechanical Engineer	[REDACTED]
Design Team	Lead Electrical Engineer	[REDACTED]
Design Team	Lead Structural Engineer	[REDACTED]
Construction Contractor	Design Manager	[REDACTED]
Construction Contractor	Site Superintendent	[REDACTED]
Construction Contractor	Construction Manager	[REDACTED]
Construction Contractor	Health and Safety Officer	[REDACTED]
Project Co	Project Co Representative	[REDACTED]
Construction Contractor	Equipment Coordinator	[REDACTED]
Construction Contractor	Transition Advisor	[REDACTED]

**B. Key Individuals – Services**

<b>Project Co Party</b>	<b>Position/Function</b>	<b>Name and Contact Information</b>
Service Provider	Health and Safety Officer	[REDACTED]
Service Provider	Building Services Manager	[REDACTED]
Service Provider	Quality Assurance Manager	[REDACTED]

<b>Project Co Party</b>	<b>Position/Function</b>	<b>Name and Contact Information</b>
Project Co	Project Co Representative	[REDACTED]

SCHEDULE 10

**REVIEW PROCEDURE**

**PART A – WORKS PHASE**

1. WORKS SUBMITTALS

1.1. The provisions of Part A of this Schedule 10 shall apply to the Design Development Submittals, the Construction Document Submittals, the Design Data and any and all items, documents and anything else required or specified by this Project Agreement, including all Works Submittals listed in Appendix A to this Schedule 10, in respect of the Works to be submitted to, reviewed or otherwise processed by WCH in accordance with the Review Procedure prior to Interim Completion or Substantial Completion or after Interim Completion or Substantial Completion in respect of the completion of Interim Minor Deficiencies or Minor Deficiencies respectively, 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. SCHEDULE FOR WORKS SUBMITTALS

2.1. The Works Schedule shall provide for a progressive and orderly flow of Works Submittals from Project Co to the WCH Representative to allow sufficient time for review of each Works Submittal by the WCH Representative, taking into account both the resources necessary to be available to the WCH Representative to conduct such review 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.

2.2. The Works Schedule and any amendment to the Works 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 2.1 of this Schedule 10.

2.3. 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.

2.4. If the Works Schedule indicates that a large number of Works Submittals will be made at one time, the WCH Representative may, at the WCH Representative’s discretion, request a longer period for review or a staggering of the Works Submittals, and Project Co shall

review and revise the Works Schedule accordingly, taking into account both the resources necessary to be available to the WCH Representative to conduct such review 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.

2.5. Project Co shall submit all Works Submittals to WCH in accordance with the current Works Schedule.

### 3. GENERAL REQUIREMENTS FOR WORKS SUBMITTALS

3.1. Unless otherwise specified by the WCH Representative, Project Co shall issue 3 printed copies of all Works Submittals to WCH, 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.

3.2. 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.

3.3. All Works Submittals shall be in English.

3.4. 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.

3.5. 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.

3.6. All Works Submittals shall, where applicable, refer to the relevant provisions of the Output Specifications, and to any Design Data that has previously been subject to review.

3.7. When Project Co submits a Clinical Functionality Report, Project Co shall specifically identify all elements of Clinical Functionality, including where applicable, references to the Output Specifications.

3.8. 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.

4. COMMENTS

4.1. The WCH Representative shall review and respond to each Works Submittal in accordance with the time periods specified in Section 2.2 of this Schedule 10. The WCH Representative shall return Works Submittals to Project Co with a copy to the Independent Certifier and assign one of the following 3 comments:

- (a) “REVIEWED”;
- (b) “REVIEWED AS NOTED”; or
- (c) “REJECTED”.

4.2. The comment “REVIEWED” will be assigned to those Works Submittals that, in the opinion of the WCH Representative, conform to the requirements of this Project Agreement. Project Co shall comply with and implement such Works Submittals.

4.3. The comment “REVIEWED AS NOTED” will be assigned to those Works Submittals that, in the opinion of the WCH Representative, generally conform to the requirements of this Project Agreement, but in which immaterial deficiencies have been found by the WCH Representative’s review. Project Co shall correct these Works Submittals and provide a copy of the corrected Works Submittals to the WCH 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 WCH Representative’s discretion, to resubmit relevant Works Submittals. In such circumstances the WCH Representative shall act promptly in considering whether such deficiencies have been corrected. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.

4.4. The comment “REJECTED” will be assigned to those Works Submittals that, in the opinion of the WCH 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 WCH Representative not less than 5 Business Days' notice of when the Works Submittals shall be resubmitted. The WCH 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. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.

- 4.5. Where the WCH Representative issues the comment "REVIEWED AS NOTED" or "REJECTED", the WCH Representative shall provide reasons for the comment, referencing the particulars of the Section(s) of this Project Agreement that the Works Submittal fails to satisfy, and, if requested by the Project Co Representative, the WCH Representative shall meet with the Project Co Representative to discuss the reasons for the comment.
- 4.6. If, at any time after assigning any comment to a Works Submittal, the WCH Representative or Project Co discovers any significant deficiencies or any failure to conform to the requirements of this Project Agreement, the WCH Representative may revise the comment assigned to any Works Submittal. If the Parties agree or it is determined in accordance with Section 5 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.
- 4.7. For the purpose of facilitating and expediting the review and correction of Works Submittals, the WCH 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.
- 4.8. Where a Works Submittal is voluminous, the WCH 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 WCH.
- 4.9. In lieu of returning a Works Submittal, the WCH 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.

5. DISPUTES

- 5.1. If Project Co disputes any act of WCH or the WCH Representative in respect of a Works Submittal under this Part A, Project Co shall promptly notify the WCH 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 WCH 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 WCH 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.
- 5.2. If either Party is not satisfied, acting reasonably, with the resolution of the Independent Certifier, subject to Section 10.2 either Party may refer the matter for determination in accordance with Schedule 27 - Dispute Resolution Procedure.
- 5.3. Notwithstanding the provisions of Sections 5.1 and 5.2, the WCH Representative may direct that Project Co revise the Works Submittal in accordance with the comment of the WCH Representative and proceed to perform and complete the Works on the basis of such revised Works Submittal. For clarity, such direction shall be considered a Dispute and Project Co may proceed in accordance with Section 55 and Schedule 27 - Dispute Resolution Procedure of the Project Agreement.

6. EFFECT OF REVIEW

- 6.1. Subject to Section 18.6 of this Project Agreement, any review and comment by WCH or the WCH 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 WCH. 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 WCH's rights in respect of the Works under this Project Agreement.

7. WORKS SUBMITTAL EXPLANATION

- 7.1. At any time, the WCH Representative may, acting reasonably, require Project Co, the Project Parties and any other relevant personnel, at no additional cost to WCH, to explain to the WCH Representative and WCH'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 Output Specifications.

8. REVISIONS

- 8.1. Project Co shall ensure that Works Submittals keep the same, unique reference number throughout the review process, and that 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.
- 8.2. 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.
- 8.3. 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.
- 8.4. Project Co shall keep all Design Data current. If any Design Data is revised as part of a Works Submittal, all other Design Data relying on or based on that Design Data shall also be revised accordingly. All such revised Design Data shall also be submitted with the Works Submittal to which it relates.

9. AUDIT BY THE WCH REPRESENTATIVE

- 9.1. Without limiting any other right under this Project Agreement, the WCH Representative shall have the right to audit all Works Submittals, including comparing all Works Submittals to previous Works Submittals.
- 9.2. If during an audit or at any other time it is discovered by WCH or Project Co (or resolved pursuant to Section 9.3 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 WCH Representative of all such corrections and modifications.
- 9.3. Any Dispute concerning the implementation of a Works Submittal, subject to Section 5.1 above, shall be referred in the first instance to the Independent Certifier for resolution.

10. VARIATIONS

- 10.1. 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.
- 10.2. If, having received comments from the WCH 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 WCH of the same and, if it is agreed by the Parties that a Variation would arise if the comments were complied with, WCH 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. If the Parties do not agree that a Variation would arise if the comments were complied with, either party may proceed to resolve the matter in accordance with Section 5 including for clarity, the exercise by the WCH Representative of its right under Section 5.3. Subject to the foregoing sentence, any failure by Project Co to notify WCH in accordance with this Section 10.2 that Project Co considers compliance with any comments of the WCH Representative would amount to a Variation shall constitute an irrevocable acceptance by Project Co that any compliance with the WCH Representative’s comments shall be without cost to WCH and without any extension of time.

SCHEDULE 10

**REVIEW PROCEDURE**

**PART B – SERVICES PHASE**

11. SERVICE SUBMITTALS

- 11.1. 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 the Design Development Submittals, the Construction Document Submittals and the Design Data, to be submitted to, reviewed or otherwise processed by WCH in accordance with the Review Procedure after Interim Completion or 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).
- 11.2. 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.
- 11.3. 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.

12. GENERAL REQUIREMENTS FOR SERVICE SUBMITTALS

- 12.1. Unless otherwise specified by the WCH Representative, Project Co shall issue 3 printed copies of all Service Submittals to WCH, together with an electronic copy in a format agreed by the Parties acting reasonably.
- 12.2. 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.
- 12.3. All Service Submittals shall be in English.
- 12.4. 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.
- 12.5. 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.

- 12.6. All Service Submittals shall, where applicable, refer to the relevant provisions of the Output Specifications.
- 12.7. 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.

13. COMMENTS

- 13.1. The WCH Representative shall review and respond to each Service Submittal in accordance with the time periods specified in Section 11.2 of this Schedule 10. The WCH 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”.
- 13.2. The comment “REVIEWED” will be assigned to those Service Submittals that, in the opinion of the WCH Representative, conform to the requirements of this Project Agreement. Project Co shall comply with and implement such Service Submittals.
- 13.3. The comment “REVIEWED AS NOTED” will be assigned to those Service Submittals that, in the opinion of the WCH Representative, generally conform to the requirements of this Project Agreement, but in which immaterial deficiencies have been found by the WCH Representative’s review. Project Co shall correct these Service Submittals and provide a copy of the corrected Service Submittals to the WCH 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 WCH Representative’s discretion, to resubmit relevant Service Submittals. In such circumstances the WCH Representative shall act promptly in considering whether such deficiencies have been corrected. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 13.4. The comment “REJECTED” will be assigned to those Service Submittals that, in the opinion of the WCH 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 WCH Representative not less than 5 Business Days’ notice of when the Service Submittals shall be resubmitted. The WCH 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. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 13.5. Where the WCH Representative issues the comment “REVIEWED AS NOTED” or “REJECTED”, the WCH Representative shall provide reasons for the comment, referencing the particulars of the Section(s) of this Project Agreement that the Service Submittal fails to satisfy, and, if requested by the Project Co Representative, the WCH Representative shall meet with the Project Co Representative to discuss the reasons for the comment.
- 13.6. If, at any time after assigning any comment to a Service Submittal, the WCH Representative or Project Co discovers any significant deficiencies or any failure to conform to the requirements of this Project Agreement, the WCH Representative may revise the comment assigned to any Service Submittal. If the Parties agree or it is determined in accordance with Section 14 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.
- 13.7. For the purpose of facilitating and expediting the review and correction of Service Submittals, the WCH 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.

- 13.8. Where a Service Submittal is voluminous, the WCH 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 returned without such an explanation as to their status shall be deemed to be “REVIEWED” by WCH.
- 13.9. In lieu of returning a Service Submittal, the WCH 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.

14. DISPUTES

- 14.1. If Project Co disputes any act of WCH or the WCH Representative in respect of a Service Submittal under this Part B, Project Co shall promptly notify the WCH 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 WCH 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.
- 14.2. If after such review by the WCH Representative Project Co disputes the comment on a Service Submittal, subject to Section 19.1, Project Co may refer the matter for determination in accordance with Schedule 27 - Dispute Resolution Procedure.

15. EFFECT OF REVIEW

- 15.1. Any review and comment by WCH or the WCH 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 WCH. 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 WCH’s rights under this Project Agreement in respect of matters related to the Service Submittal.

16. SERVICE SUBMITTAL EXPLANATION

- 16.1. At any time, the WCH Representative may, acting reasonably, require Project Co, the Project Co Parties and any other relevant personnel, at no additional cost to WCH, to explain to the WCH Representative and WCH’s advisors the intent of Project Co’s Service Submittals, including as to its satisfaction of the Output Specifications.



17. REVISIONS

- 17.1. Project Co shall ensure that Service Submittals keep the same, unique reference number throughout the review process, and that 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.
- 17.2. 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.
- 17.3. 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.

18. AUDIT BY THE WCH REPRESENTATIVE

- 18.1. Without limiting any other right under this Project Agreement, the WCH Representative shall have the right to audit all Service Submittals, including comparing all Service Submittals to previous Service Submittals.
- 18.2. If during an audit or at any other time it is discovered by WCH 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 WCH Representative of all such corrections and modifications.

19. VARIATIONS

- 19.1. If, having received comments from the WCH 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 WCH 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, WCH 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 WCH in accordance with this Section 19.1 that Project Co considers compliance with any comments of the WCH Representative would amount to a Variation shall

constitute an irrevocable acceptance by Project Co that any compliance with the WCH Representative’s comments shall be without cost to WCH and without any extension of time.

APPENDIX A

**MINIMUM DESIGN AND CONSTRUCTION**

**SUBMITTAL REQUIREMENTS**

1. **MINIMUM SUBMITTAL REQUIREMENTS FOR THE 50% DESIGN DEVELOPMENT STAGE**

Project Co shall provide the following Design Development Submittals to WCH for review and comment in accordance with this Schedule 10:

1.1. Design development documents in accordance with the requirements set forth in Section 18.3 of this Project Agreement, including:

- (a) Phase 1 and Phase 2 Site plans (prepared at 1:500 scale) showing:
  - (i) Full ground floor plan (see description below for Floor/Roof Plans);
  - (ii) Full hard/soft landscape plan showing integration of landscaping features/areas with floor plan elements and entrances;
  - (iii) Treatment of main approach to public entrance, including treatment of safety features, lighting, etc.;
  - (iv) Vehicular drop-off and street right-of-way improvements;
  - (v) Additional Site features, including natural features, storm water management structures and design of outdoor spaces for patient, staff or visitor use; and
  - (vi) Vehicle access/egress driveways to and from Site, including parking entrance ramp, loading dock access and location, and service vehicle parking.
- (b) Site servicing plan (prepared at 1:500) showing:
  - (i) Storm water management/storm sewer;
  - (ii) Sanitary sewer system;
  - (iii) Water mains - domestic use;
  - (iv) Water mains - fire fighting;
  - (v) Gas utilities;
  - (vi) Medical gases;

- (vii) Hydro utilities;
  - (viii) Steam servicing (Enwave); and
  - (ix) Main communication trunk entrance points.
- (c) Typical Site and landscape details (prepared at 1:10 scale).
- (d) Architectural floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), for the Phase 1 Facility and complete Phase 2 Facility, showing:
- (i) All walls and partitions in actual thicknesses;
  - (ii) All program and non-program rooms/areas, colour-coded by component and numbered using the alphanumeric Room Codes used in the Space Allocation Tables and Room Data Sheets in Part 2 of the Output Specifications;
  - (iii) List of additional rooms not previously identified with additional sequential Room Codes as required;
  - (iv) Doors, screens, glazing and windows;
  - (v) Location of all millwork/systems furniture and workstation layouts (including filing storage units, shelving) for the clinical departments for which Enhanced Block Schematic Diagrams have been prepared;
  - (vi) All major equipment for the clinical areas for which architectural plan details have been prepared, coordinated with the updated Equipment List; and
  - (vii) Integration of structural, mechanical and electrical systems in terms of columns, service shafts, risers, etc., in sufficient detail to demonstrate that functional and net area requirements are compliant.
- (e) Preliminary Space Development (prepared at 1:50 scale):
- For key clinical areas listed below:
- A. Ambulatory Care – typical Primary Care clinic and a typical Specialized Medical Services clinic;
  - B. Ambulatory Acute Care (Urgent Care and Clinical Decision Unit);
  - C. Peri-Operative Services – Surgical Suite;
  - D. Medical Imaging;

- E. Clinical Support Services – Laboratory and Pharmacy;
  - F. Central Sterile Reprocessing.
- (f) Structural floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:
- (i) Foundation plan showing preliminary locations and elevations of footings;
  - (ii) Structural system and framing;
  - (iii) Provisions for adaptability, flexibility and expandability, removal and replacement of building and medical systems and equipment;
  - (iv) Provisions for any major equipment requirements in the clinical areas for which architectural plan details have been prepared; and
  - (v) Summary of preliminary structural loads.
- (g) Mechanical floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:
- (i) Location and basic layout of major equipment;
  - (ii) Routing of main feeds and associated shafts and risers;
  - (iii) Single-line drawings for all services;
  - (iv) Preliminary sizing of equipment;
  - (v) Provisions for adaptability, flexibility and expandability, removal and replacement of building and medical systems and equipment;
  - (vi) Provisions for any major equipment requirements in the clinical areas for which architectural plan details have been prepared;
  - (vii) Preliminary load estimates for storm and sanitary sewers, potable water supply, heating and cooling plants;
  - (viii) Preliminary flow estimates for heating and cooling systems, air supply, return and exhaust systems;
  - (ix) Preliminary plumbing fixture schedules; and
  - (x) Preliminary estimate of annual energy use.
- (h) Electrical floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:

- (i) Location and basic layout of major equipment;
  - (ii) Routing of main feeds and associated shafts and risers;
  - (iii) Single-line drawings for all services;
  - (iv) Preliminary sizing of equipment;
  - (v) Preliminary electrical room layouts;
  - (vi) Preliminary lighting layouts; and
  - (vii) Preliminary load estimates.
- (i) Typical building sections (prepared at 1:100 scale) showing:
- (i) Relative thickness of floors/walls, including differentiation between opaque and transparent walls;
  - (ii) Major floor elevations, including those below grade;
  - (iii) Finish grades, dotted lines through building section;
  - (iv) Relationship to Site contours and other important Site elements as shown in building elevation drawings; and
  - (v) Major room names.
- (j) Stair and elevator plans, sections and details (scales as appropriate).
- (k) Exterior elevations (prepared at 1:100) showing:
- (i) Indication of surface materials for all areas, with legend and notations identifying extent and type of all proposed glazing and cladding materials;
  - (ii) Different vertical planes differentiated with line weights or shadows;
  - (iii) Finish grades;
  - (iv) Major floor elevations, including those below grade;
  - (v) Sections when elevation is shown by taking vertical cut-through another space;
  - (vi) Significant plantings/Site elements when important in defining space and volume, such as bodies of water, hills, earth berms; and
  - (vii) Identification of locations for exterior building signage.

- (l) Exterior design drawings – (prepared at 1:50 scale)  

Provide plans, sections and elevations of selected site and exterior elements, indicating development of exterior design intent and showing architectural features and construction assemblies of exterior spaces such as entries, waiting areas, canopies and landscape elements.
  - (m) Exterior wall sections (prepared at 1:50 scale)  

Describe typical wall assemblies and indicate relationship of materials. Include annotation describing proposed wall assembly types.
  - (n) Preliminary typical envelope / cladding details (prepared at 1:10 scale), provided with a building science report reviewing envelope design and details.  

Provide representative section and plan details of exterior wall, roof and floor slab assemblies. Show features such as atrium skylight, sun shading, etc. Details will indicate proposed components of assemblies and will be referenced to other drawings.
  - (o) Interior elevations (prepared at 1:100) for public entrances and all other major public spaces.
  - (p) Preliminary door, window/glazing schedules.
  - (q) Preliminary lighting design submittals.
  - (r) Preliminary security systems floor plan layouts.
  - (s) Preliminary drawings of all millwork/systems furniture elements identified in the Room Data Sheets and shown in the Room Templates in the Output Specifications, including all dimensions and key elevations.
  - (t) Preliminary single line audio/visual distribution diagrams.
  - (u) Preliminary single line information technology distribution diagrams.
- 1.2. Construction specifications related to exterior building envelope identifying all systems, materials, and construction execution methods proposed to be used in the Project.
- 1.3. Design packages for proposed full scale mock-ups with all specified finishes and equipment, in accordance with the WCH design requirements, including fully resolved construction details and methods, for:
- (a) Patient Encounter/ Exam room;
  - (b) Surgical PACU Patient Care Station;

- (c) Clinical Decision Unit Patient Care Station (room); and
- 1.4. Clinical Functionality Report, providing detail level appropriate to the documentation provided in this submission stage, and addressing all issues of Clinical Functionality found in Part 2 of the Output Specifications, in particular, the Clinical Functionality requirements of the key clinical areas listed in Section 1.1(e) of this Appendix A.
- 1.5. Updated Construction Quality Plan.
- 1.6. Updated Phasing Plan (phasing and construction implementation analysis), including demolition, construction, decanting and occupancy.
- 1.7. Updated Approvals Strategy coordinated with the Phasing Plan.
- 1.8. Comprehensive acoustical and vibration control report reviewing all proposed assemblies, acoustical conditions, and noise and vibration control measures.
- 1.9. Environmental services design report.
- 1.10. Vertical transportation analysis, reviewing vertical transportation strategy with reference to service volumes, flow, and security considerations.
- 1.11. Ontario Building Code and Ontarians with Disabilities Act analysis and compliance strategy and accessibility measures report.
- 1.12. Updated Space Program which:
  - (a) Identifies net area of each room and department, listed by floor levels;
  - (b) Lists line by line area variance, departmental area variance and grossing factor, and building area and grossing factor in comparison with Output Specification Space Program;
  - (c) Lists mechanical and electrical spaces outside of departmental areas;
  - (d) Utilizes the alphanumeric Room Codes used in the Space Allocation Tables and Room Data Sheets in Part 2 of the Output Specifications; and
  - (e) Lists additional rooms not previously identified with additional sequential Room Codes as required.
- 1.13. Preliminary micro-climate report to confirm that the findings and anticipated conditions are consistent with the micro-climate studies based on the Illustrative Design scheme included in the Output Specifications. The report will address exhaust re-entrainment, pedestrian level wind and snow studies using water flume and wind tunnel testing to provide a visual indication of snow accumulation, wind patterns, wind flows and emission paths on and around the building(s) to demonstrate that the development will not create unacceptable wind forces, noise levels, air quality concerns, or snow fall and



accumulation conditions at building entrances, exits, landscaped open spaces and street sidewalks.

1.14. Follow-up to LEED registration with CaGBC, and LEED credits tracking documentation.

2. **MINIMUM SUBMITTAL REQUIREMENTS FOR THE 100% DESIGN DEVELOPMENT STAGE**

Project Co shall provide the following updated Design Development Submittals to WCH for review and comment in accordance with this Schedule 10:

2.1. Updated design development documents in accordance with the requirements set forth in Section 18.3 of this Project Agreement including:

- (a) Updated Site plan (prepared at 1:500 scale) showing all previously listed requirements.
- (b) Updated Site servicing plan (prepared at 1:500 or as appropriate) showing all previously listed requirements.
- (c) Updated and augmented Site and landscape details (prepared at 1:10 scale).
- (d) Updated architectural floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
  - (i) Overall dimensions;
  - (ii) Indication of fire areas, fire walls, and smoke zones;
  - (iii) All millwork/systems furniture and workstation layouts;
  - (iv) All equipment;
  - (v) Floor finishes;
  - (vi) Floor elevations; and
  - (vii) Capacity information (number of beds, seating, etc.).
- (e) Updated enlarged architectural plan, details (prepared at 1:50 scale) for key clinical and other areas including all previously listed areas at 1.1 (e) public entrances and all other major public spaces.
- (f) Interior Design – (prepared at 1: 50 scale)

Provide sections and elevations, indicating development of interior design intent and showing architectural features and construction assemblies, including:

- (i) Ground level Lobby and public areas; public elevator lobby and stair; and clinical floor Reception and Waiting areas.
- (ii) Auditorium; one (1) Conference/meeting Room; Marion Powell Library; Heritage Display; typical Physician office; typical WCRI Researcher Office and Workroom; typical Administrative department; Boardroom and Boardroom Kitchen; PACU area in surgery

(g) Interior Plan and Section Details – (prepared at 1:10 scale)

Provide detail plans, sections and elevations of feature elements, including:

- (i) typical Patient Encounter/ Exam Room
  - (ii) Lobby; typical Reception and Waiting areas.
  - (iii) Representative wall sections at spaces adjacent to the atrium; guardrails; atrium skylight.
- (h) Stair and elevator plans, sections and details (scales as appropriate).
- (i) Updated structural floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
- (i) Foundation plan showing finalized locations and elevations of footings;
  - (ii) Column schedules;
  - (iii) Foundation details;
  - (iv) Typical framing details;
  - (v) Provisions for any equipment requirements; and
  - (vi) Updated structural loads.
- (j) Updated mechanical floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
- (i) Detailed floor layouts showing locations of all major mechanical equipment items, pipe mains, risers and branch mains, duct mains including supply return and exhaust;
  - (ii) Preliminary interior building section details coordinating and confirming preliminary fit of structural/electrical/mechanical;

- (iii) Updated provisions for any equipment requirements;
  - (iv) Updated load estimates for storm and sanitary sewers, potable water supply, heating and cooling plants;
  - (v) Updated flow estimates for heating and cooling systems, air supply, return and exhaust systems;
  - (vi) Updated plumbing fixture schedules; and
  - (vii) Updated estimate of annual energy use.
- (k) Updated electrical floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
- (i) Floor layouts showing locations of electrical equipment items, normal and emergency, major feeders and branch feeders, and locations of major pathways for all systems;
  - (ii) Preliminary interior building section details coordinating and confirming preliminary fit of structural/electrical/mechanical;
  - (iii) Provisions for adaptability, flexibility and expandability, removal and replacement of building and medical systems and equipment;
  - (iv) Provisions for any equipment requirements in the clinical areas for which architectural plan details have been prepared; and
  - (v) Finalized load estimates.
- (l) Reflected ceiling plans (prepared at 1:100 scale) for all levels except parking, loading and mechanical penthouse, showing all typical rooms and special interest areas with location of major components shown.
- (m) Updated building sections (prepared at 1:100 scale) showing all previously listed requirements and preliminary ceiling space coordination diagram(s).
- (n) Updated and augmented exterior design drawings and wall sections (prepared at 1:50 scale) and envelope cladding details (prepared at 1:10 scale), with updated building science report reviewing envelope design and details.
- (o) Updated stair, elevator and escalator plans, sections and details (scales as appropriate).
- (p) Updated exterior elevations (prepared at 1:100) showing all previously listed requirements and significant mechanical and electrical equipment such as roof-top units, chimneys, louvers, transformers, pole lines, etc.

- (q) Updated interior elevations (prepared at 1:50) for all previously listed areas and:
  - (i) Ground floor Lobby and public areas; including Information desk, Security desk and Foundation kiosk;
  - (ii) Typical Ambulatory Care Neighbourhood unit corridor;
  - (iii) Typical Ambulatory Care Neighbourhood Reception, Waiting, and work areas (Workstations and Team Workroom);
  - (iv) Peri-Operative Services Reception and Waiting areas;
  - (v) Typical Surgery Operating Room;
  - (vi) Typical Surgery Patient Care Station;
  - (vii) UCC/ CDU Reception and Waiting;
  - (viii) Typical CDU Patient Care Station;
  - (ix) Typical Isolation waiting area and Isolation Exam Room (APR);
  - (x) Typical Endoscopy Room and Decontamination/Scope washing;
  - (xi) Typical Minor Procedure Room;
  - (xii) Gymnasia (Specialized Medical Services);
  - (xiii) Typical suites for each Medical Imaging modality;
  - (xiv) Phototherapy Rooms (PERC);
  - (xv) Mental Health – Reception and Waiting areas;
  - (xvi) Mental Health – Day Treatment room;
  - (xvii) Medical Library;
  - (xviii) Labyrinth/ Quiet Room;
  - (xix) Typical Telemedicine Room;
  - (xx) Security Central Command Post and work areas;
  - (xxi) Typical Professional Staff Office;
  - (xxii) Typical Administration office suite including Offices and open workstations;

- (xxiii) Typical Staff Lounge;
  - (xxiv) Typical Public and Patient Washrooms;
  - (xxv) Typical Clean and Soiled Utility rooms; and
  - (xxvi) Typical service corridor.
- (r) Interior Design – 1:10 scale
- Updated detail plans, sections and elevations of feature elements, including all items previously listed.
- (s) Preliminary interior finishes colour and materials selection boards and preliminary room finishes schedule.
- (t) Updated door, window/glazing and hardware schedules and preliminary hardware cut sheets.
- (u) Updated lighting design submittals, including fixture cut sheets and illumination level analysis.
- (v) Updated security systems floor plans and equipment details, locations of all security systems equipment, connection points and control points.
- (w) Updated drawings of all millwork/systems furniture elements identified in the Room Data Sheets and shown in the Room Templates in the Output Specifications, including all dimensions, key elevations, and all fixed and moving elements (1:50 scale) and details as appropriate (1:10 or 1:20 scale, as appropriate).
- (x) Updated and augmented audio/visual drawings and details.
- (y) Updated and augmented information technology drawings and details.
- 2.2. Updated construction specifications, identifying all systems, materials, and construction execution methods proposed to be used in the Project.
- 2.3. Report on review and adjustments of proposed mock-ups.
- 2.4. Updated Clinical Functionality Report, if there are any changes to the previous version, providing detail level appropriate to the documentation provided in this submission stage, and addressing all issues of Clinical Functionality found in Part 2 of the Output Specifications, in particular, the Clinical Functionality requirements of the key clinical areas listed in Section 1.1(e) of this Appendix A.

- 2.5. Updated building vibration analysis as it relates to relevant medical equipment, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by WCH.
- 2.6. Preliminary medical equipment procurement and coordination plan and equipment list.
- 2.7. Updated Construction Quality Plan, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by WCH.
- 2.8. Updated Phasing Plan (phasing and construction implementation analysis), including demolition, construction, decanting and occupancy.
- 2.9. Updated Approvals Strategy coordinated with the Phasing Plan.
- 2.10. Updated acoustical report, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by WCH.
- 2.11. Wayfinding and signage standards proposal, describing wayfinding strategy and its integration with the overall architecture. Illustrating proposed signage standards, including approach to graphics and text, hierarchy of signage, proposed specifications for materials and installation, and maintenance and updating of information.
- 2.12. Updated environmental services design report, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by WCH.
- 2.13. Updated vertical transportation analysis, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by WCH.
- 2.14. Updated Ontario Building Code and Ontarians with Disabilities Act analysis, and report from an independent Building Code Consultant providing detailed review of the drawings and documentation and confirming compliance with the above regulatory documents including Fire Code.
- 2.15. Updated Space Program, including all previously listed requirements.
- 2.16. Report on review and adjustments of micro-climate report.
- 2.17. Progress report on LEED credits tracking documentation.
- 2.18. Outline Commissioning Program.
- 2.19. Any other Submittals required or requested by WCH, acting reasonably, in order to understand the Works.

3. MINIMUM SUBMITTAL REQUIREMENTS FOR THE 50% CONSTRUCTION DOCUMENTS STAGE

Project Co shall provide the following Construction Document Submittals to WCH for review and comment in accordance with this Schedule 10:

3.1. Updated construction documents in accordance with the requirements set forth in Section 18.3 of this Project Agreement including:

- (a) Updated Site plan (prepared at 1:500 scale) showing all previously listed requirements and planting schedule.
- (b) Updated Site expansion plan (prepared at 1:500) showing all previously listed requirements.
- (c) Updated Site servicing plan (prepared at 1:500) showing all previously listed requirements.
- (d) Updated and augmented Site and landscape details (prepared at 1:10 scale).
- (e) Architectural floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
  - (i) Layout of all spaces;
  - (ii) Fire and Life safety plans;
  - (iii) Preliminary material symbols;
  - (iv) Door symbols;
  - (v) Glazed sidelight symbols;
  - (vi) Window types and numbers;
  - (vii) Floor material changes;
  - (viii) Pits, trenches, etc.;
  - (ix) Depressed floor for terrazzo, tile, etc.;
  - (x) Lead and other shielding indications;
  - (xi) Curbs for mechanical room penetrations;
  - (xii) Sump pits, gratings;
  - (xiii) Recessed mats;

- (xiv) Expansion joints;
  - (xv) Pipe trench;
  - (xvi) Convectors;
  - (xvii) Low partitions; and
  - (xviii) Folding partitions.
- (f) Updated and augmented enlarged architectural plan details (prepared at 1:50 scale) for all areas required to explain the design intent.
- (g) Updated structural floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
- (i) Sections/elevations showing all structural elements;
  - (ii) All legends and schedules; and
  - (iii) Finalized structural loads.
- (h) Updated mechanical floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and “in progress” drawings or reports, as applicable, illustrating:
- (i) Interior building section details coordinating and confirming finalized fit of structural/electrical/mechanical;
  - (ii) All legends and schedules;
  - (iii) HVAC, plumbing and medical gas details;
  - (iv) Enlarged equipment room and toilet plans;
  - (v) Mechanical room plans;
  - (vi) Control schematics; and
  - (vii) Finalized estimate of annual energy use.
- (i) Updated electrical floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
- (i) Interior building section details coordinating and confirming finalized fit of structural/electrical/mechanical;
  - (ii) All legends and schedules;



- (iii) Grounding details;
  - (iv) Fire alarm riser diagram;
  - (v) Nurse call riser diagram;
  - (vi) Telephone riser diagram;
  - (vii) Paging riser diagram;
  - (viii) Television riser diagram;
  - (ix) Preliminary control schematics; and
  - (x) Electrical details.
- (j) Updated reflected ceiling plans (prepared at 1:100 scale) for all areas, showing:
- (i) Light fixtures;
  - (ii) Grilles;
  - (iii) Diffusers;
  - (iv) Soffits (dotted);
  - (v) Folding partitions;
  - (vi) Cubicle tracks;
  - (vii) Curtain tracks;
  - (viii) Skylights;
  - (ix) Major structural members (if sight exposed);
  - (x) Surgical lights (dotted);
  - (xi) Patient lifts;
  - (xii) Other ceiling-mounted equipment;
  - (xiii) Hoods;
  - (xiv) Gas columns; and
  - (xv) Room numbers.

- (k) Updated building sections (prepared at 1:100 scale) showing all previously listed requirements and:
  - (i) Completed ceiling space coordination diagram(s);
  - (ii) Vertical dimensions;
  - (iii) Floor elevations;
  - (iv) Column lines;
  - (v) Room numbers/names;
  - (vi) Rooftop equipment; and
  - (vii) Wall section designations.
- (l) Updated and augmented exterior wall sections (prepared at 1:50 scale) and envelope/ cladding details (prepared at 1:10 scale), with updated building science report reviewing envelope design and details as appropriate.
- (m) Updated and augmented stair and elevator plans, sections and details (scales as required).
- (n) Updated exterior elevations (prepared at 1:100) showing all previously listed requirements and:
  - (i) Window types and numbers;
  - (ii) Entrance types and numbers;
  - (iii) Door types and numbers;
  - (iv) Wall material indication;
  - (v) Coping materials;
  - (vi) Overhead fascia materials;
  - (vii) Top of foundation wall line;
  - (viii) Footing and foundation line;
  - (ix) Floor lines;
  - (x) Vertical dimensions;
  - (xi) Signage;

- (xii) Section lines;
  - (xiii) Column centerlines;
  - (xiv) Louvers;
  - (xv) Stairs and ramps;
  - (xvi) Chimneys;
  - (xvii) Stacks;
  - (xviii) Light fixtures; and
  - (xix) Other mechanical or electrical equipment.
- (o) Updated interior elevations (prepared at 1:50) for all previously listed areas and showing:
- (i) Hospital casework indications;
  - (ii) Millwork and detail designations;
  - (iii) Shelving;
  - (iv) Tack board;
  - (v) Whiteboard;
  - (vi) Interior glazed panels (dimensions and details);
  - (vii) Base indication;
  - (viii) Mechanical grilles, thermostats, gas outlets, etc.;
  - (ix) Wall handrails;
  - (x) Graphics;
  - (xi) Interior finishes;
  - (xii) Wall-mounted accessories;
  - (xiii) Plumbing fixture foot controls, etc.; and
  - (xiv) Locker designation.
- (p) Interior details (scaled as appropriate) showing:

- (i) Base types;
- (ii) Soffits;
- (iii) Curbs for mechanical penetrations;
- (iv) Door details;
- (v) Hollow metal glazed panels;
- (vi) Expansion joints;
- (vii) Fireproofing at beams and columns;
- (viii) Low walls;
- (ix) Folding partitions
- (x) Rolling doors;
- (xi) Dressing compartments;
- (xii) Automatic sliding/swing door details;
- (xiii) Expansion joint details;
- (xiv) Typical partition construction;
- (xv) Exhaust hood details; and
- (xvi) Corner guard details.
  
- (q) Preliminary room finish schedule.
- (r) Updated door, window/glazing and hardware schedules and preliminary hardware cut sheets.
- (s) Updated lighting design submittals, including fixture cut sheets.
- (t) Updated and augmented security systems floor plans and equipment details.
- (u) Updated drawings of all millwork/systems furniture elements identified in the Room Data Sheets and shown in the Room Templates in the Output Specifications, including all dimensions, key elevations, and all fixed and moving elements (1:50 scale) and details (1:10 or 1:20 scale, as appropriate).
- (v) Updated and augmented audio/visual drawings and details.
- (w) Updated and augmented information technology drawings and details.

- 3.2. Updated construction specifications, including all previously listed requirements.
- 3.3. Report on review and adjustments of mock-ups.
- 3.4. Updated Clinical Functionality Report as appropriate, providing detail level appropriate to the documentation provided in this submission stage, and addressing all issues of Clinical Functionality found in Part 2 of the Output Specifications, in particular, the Clinical Functionality requirements of the key clinical areas listed in Section 1.1(h) of this Appendix A.
- 3.5. Updated building vibration analysis as it relates to relevant medical equipment, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by WCH.
- 3.6. Updated medical equipment procurement and coordination plan and equipment list.
- 3.7. Updated Construction Quality Plan, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by WCH.
- 3.8. Updated Phasing Plan (phasing and construction implementation analysis), including demolition, construction, decanting and occupancy.
- 3.9. Updated Approvals Strategy coordinated with the Phasing Plan.
- 3.10. Updated acoustical report, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by WCH.
- 3.11. Updated environmental services design report, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by WCH.
- 3.12. Updated vertical transportation analysis, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by WCH.
- 3.13. Updated Ontario Building Code and Ontarians with Disabilities Act analysis and compliance strategy.
- 3.14. Updated wayfinding and signage standards, design, layout and specifications for materials and installation, including detail drawings of typical conditions.
- 3.15. Updated Space Program, including all previously listed requirements.
- 3.16. Report on review and adjustments of micro-climate report.
- 3.17. Progress report on LEED credits tracking documentation.

- 3.18. Updated Outline Commissioning Program.
- 3.19. Any other Submittals required or requested by WCH, acting reasonably, in order to understand the Works.
- 4. MINIMUM SUBMITTAL REQUIREMENTS FOR THE 100% CONSTRUCTION DOCUMENTS STAGE

Project Co shall provide the following Construction Document Submittals to WCH for review and comment in accordance with this Schedule 10:

- 4.1. Updated construction documents in accordance with the requirements set forth in Section 18.3 of this Project Agreement including all previously listed requirements and:
  - (a) Architectural floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
    - (i) Full dimensions;
    - (ii) Material symbols;
    - (iii) Furring notes;
    - (iv) Hatch walls and partitions;
  - (b) Updated and augmented enlarged architectural plan details (prepared at 1:50 scale) for all areas required to explain the design intent.
  - (c) Updated structural floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements.
  - (d) Updated mechanical floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements.
  - (e) Updated electrical floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements.
  - (f) Updated reflected ceiling plans (prepared at 1:100 scale) for all areas, showing all previously listed requirements and:
    - (i) Heat detectors;
    - (ii) Smoke detectors;
    - (iii) Exit signs.
    - (iv) Access panels;
    - (v) Hatches;

- (g) Updated building sections (prepared at 1:100 scale) showing all previously listed requirements.
  - (h) Updated and augmented exterior wall sections (prepared at 1:50 scale) and envelope/ cladding details (prepared at 1:10 scale), with updated building science report reviewing envelope design and details as appropriate.
  - (i) Updated and augmented stair and elevator plans, sections and details (scales as required).
  - (j) Updated exterior elevations (prepared at 1:100) showing all previously listed requirements.
  - (k) Updated interior elevations (prepared at 1:50) for all previously listed areas and showing all previously listed requirements and:
    - (i) Equipment;
    - (ii) Electrical receptacles, speakers, clocks, light fixtures, etc.;
  - (l) Interior details (scaled as appropriate) showing all previously listed requirements and:
    - (i) Pass-windows;
    - (ii) Supports – patient lifts;
    - (iii) Hanger details for x-ray equipment;
  - (m) Updated room finish schedule.
  - (n) Updated door, window/glazing and hardware schedules and hardware cut sheets.
  - (o) Updated drawings of all millwork/systems furniture elements identified in the Room Data Sheets and shown in the Room Templates in the Output Specifications, including all dimensions, key elevations, and all fixed and moving elements (1:50 scale) and details (1:10 or 1:20 scale, as appropriate).
  - (p) Updated and augmented audio/visual drawings and details.
  - (q) Updated and augmented information technology drawings and details.
- 4.2. Updated construction specifications, including all previously listed requirements.
- 4.3. Updated building vibration analysis as it relates to relevant medical equipment, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by WCH.

- 4.4. Updated medical equipment procurement and coordination plan and equipment list.
- 4.5. Updated Construction Quality Plan, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by WCH.
- 4.6. Updated Phasing Plan (phasing and construction implementation analysis), including demolition, construction, decanting and occupancy.
- 4.7. Updated Approvals Strategy coordinated with the Phasing Plan.
- 4.8. Updated acoustical report, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by WCH.
- 4.9. Updated environmental services design report, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by WCH.
- 4.10. Updated vertical transportation analysis, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by WCH.
- 4.11. Updated Ontario Building Code and Ontarians with Disabilities Act analysis and compliance strategy.
- 4.12. Updated wayfinding and signage standards, design, layout and specifications for materials and installation, including detail drawings of typical conditions.
- 4.13. Updated Space Program, including all previously listed requirements.
- 4.14. Report on review and adjustments of micro-climate report.
- 4.15. Progress report on LEED credits tracking documentation.
- 4.16. Updated Outline Commissioning Program.
- 4.17. Any other Submittals required or requested by WCH, acting reasonably, in order to understand the Works.
5. **MINIMUM SUBMITTAL REQUIREMENTS FOR THE CONSTRUCTION STAGE**

Project Co shall provide the following Construction Document Submittals to WCH for review and comment in accordance with this Schedule 10:



- 5.1. Works Schedule, updated monthly, showing complete sequence of construction by activity, identifying Works of separate stages and other logically grouped activities and indicating:
- (a) dates for submission, review time, resubmission time and last date for meeting fabrication schedule of all required Shop Drawings and samples;
  - (b) the early and late start, early and late finish, float dates and duration of all activities;
  - (c) estimated percentage of completion for each item of the Works at each submission of schedule;
  - (d) changes occurring since previous submission of schedule; and
  - (e) a narrative report defining:
    - (i) problem areas, anticipated delays, and impact on schedule;
    - (ii) corrective action recommended and its effect; and
    - (iii) effect of changes on schedules of the Project Co Parties.
- 5.2. Shop Drawings and samples which will be processed by WCH include:
- (a) Coordination drawings of all millwork, casework and modular systems furniture will be reviewed for harmonization of ergonomics, equipment layout and mechanical/electrical outlet locations;
  - (b) All in-contract medical equipment;
  - (c) Security systems;
  - (d) Signage and wayfinding systems;
  - (e) Architectural feature elements and assemblies such as handrails, guardrails, feature stairs, canopies, etc.
  - (f) Pharmacy medication systems;
  - (g) All major mechanical equipment and systems; and
  - (h) All major electrical equipment and systems, electrical coordination study and arc flash study.
- 5.3. All review comments from submissions to building authorities, insurance authorities and inspection authorities.

- 5.4. Progress photographs, updated monthly, from four vantage points, locations to be determined by WCH and/or the WCH Representative.
- 5.5. Material and finish samples (all exterior and interior finishes) and mock-ups, as noted in the construction specifications, including (but not limited to) mock-ups of the following:
  - (a) Typical exterior glazing (curtain wall, structural glazing);
  - (b) Typical cladding module, including curtain wall/glazing integrated with stone or other cladding components;
  - (c) Sunshading devices (fins, louvers etc.);
  - (d) Handrails or guardrails in public spaces;
  - (e) Significant feature elements, such as convenience stairs.
- 5.6. Full scale room Mock-ups, including:
  - (a) Patient Encounter Exam room;
  - (b) Surgery PACU Patient Care Station;
  - (c) Clinical Decision Unit Patient Care Station (room); and
- 5.7. Mock ups must be full scale using materials that conform to materials specified, including work of all trades required to finish work and placement of all medical equipment and furniture, unless otherwise specified, supplied by owner. Testing and inspection reports.
- 5.8. Construction Contractor proposed substitutions.
- 5.9. Deficiency reports, updated monthly.
- 5.10. Draft of Interim Commissioning Program.
- 5.11. Draft of Final Commissioning Program.
- 5.12. Draft Scheduled Maintenance Plan.
- 5.13. Revised Lifecycle Replacement Schedule.
- 5.14. Draft Five Year Maintenance Plan.
- 5.15. Interim Commissioning Program.
- 5.16. Final Commissioning Plan.
- 5.17. Interim Completion Certificate.

- 5.18. Substantial Completion Certificate.
- 5.19. Any other Submittals required or requested by WCH, acting reasonably, in order to understand the Works.
  
- 6. **OTHER WORKS DOCUMENTS OR SUBMITTALS**
  
- 6.1. If Project Co provides WCH with a document or submittal in respect of the Works that is not listed in this Appendix A (except as Project Co is otherwise required to provide pursuant to the Project Agreement or at the request of WCH), then such document or submittal shall not constitute a “Works Submittal” as defined in Section 1 of this Schedule 10 – Review Procedure. WCH may in its discretion, in respect of such document or submittal, respond to or review all or any part of such document or submittal, including pursuant to the procedure set out in Schedule 10 – Review Procedure.

**SCHEDULE 11**

**DESIGN QUALITY PLAN AND CONSTRUCTION QUALITY PLAN**

**PART A – DESIGN QUALITY PLAN OUTLINE**

**[REDACTED]**

**SCHEDULE 11**

**DESIGN QUALITY PLAN AND CONSTRUCTION QUALITY PLAN**

**PART B – CONSTRUCTION QUALITY PLAN OUTLINE**

**[REDACTED]**

**SCHEDULE 12  
SERVICE QUALITY PLAN OUTLINE**

**[REDACTED]**

**SCHEDULE 13**

**PROJECT CO PROPOSAL EXTRACTS**

[REDACTED]

SCHEDULE 14

**OUTLINE COMMISSIONING PROGRAM**

[REDACTED]



SCHEDULE 15

OUTPUT SPECIFICATIONS

[REDACTED]

## SCHEDULE 16

## TITLE ENCUMBRANCES

“Title Encumbrances” means:

1. ENCUMBRANCES AGAINST PIN 21415-0013 (LT) LEGALLY DESCRIBED AS BEING PCL 142-1 SEC A159; LT 142 S/S GROSVENOR ST PL 159 TORONTO; LT 145 S/S GROSVENOR ST PL 159 TORONTO; LT 146 S/S GROSVENOR ST PL 159 TORONTO; LT 149 S/S GROSVENOR ST PL 159 TORONTO; S/T E298997 ASSIGNED BY E298998; TORONTO, CITY OF TORONTO
  - (a) Instrument No. E298997 registered on December 15, 1999 is a transfer of easement in perpetuity from Sunnybrook and Women's College Health Sciences Centre in favour of City of Toronto in, on, over, along, upon, under and through part of the lands now comprising PIN 21415-0092 (LT) designated as Parts 1, 2 and 3 on Reference Plan 64R-16482 for the purposes (generally) of supplying water, steam and condensate return and for examining, testing, inspecting, altering, repairing, replacing, reconstructing, removing, operating, using and maintaining certain works (including, *inter alia*, pipes, pumps, cables, wires and ancillary facilities and works) together with an easement in, on, over, across, along, upon, under and through such portions of the lands now comprising PIN 21415-0013 (LT) and PIN 21415-0092 (LT) as are reasonably required to exercise the rights set out above and to provide access to the works.
  - (b) Instrument No. E298998 registered on December 15, 1999 is a transfer of easement pursuant to which the City of Toronto transferred to Toronto District Heating Corporation all its right, title and interest in and to the lands and all its right, title and interest in and to or arising out of No. E298997.
  - (c) Instrument No. AT2317473 registered on March 1, 2010 is an agreement pursuant to Section 37 of the *Planning Act* (Ontario) between Women's College Hospital and City of Toronto.
2. ENCUMBRANCES AGAINST PIN 21415-0092 (LT) LEGALLY DESCRIBED AS BEING LT 125-141, 143-144, 147-148 PL 159 TORONTO; PT LANE PL 159 TORONTO LYING TO THE E OF THE ELY LIMITS OF LTS 125 TO 129 INCL; PT LANE PL 159 TORONTO LYING TO THE S OF THE SLY LIMITS OF LTS 130, 133, 134, 137, 138, 141 CLOSED BY EP126840 AS IN EP139342; S/T CA642570, CA642571; CITY OF TORONTO
  - (a) Instrument No. EP126840 registered on May 14, 1964 is City of Toronto By-law No. 22134 dated April 28, 1964 pursuant to which certain public lanes lying within the lands now comprising PIN 21415-0092 (LT) were stopped up and closed as public lanes.

- (b) Instrument No. EP139342Z registered on May 17, 1968 is a deed dated the \_\_\_ day of \_\_\_, 1964 from The Corporation of the City of Toronto, as grantor, in favour of Women’s College Hospital, as grantee, affecting the lanes referred to in Item 2 above which contains the following restriction:
- “The Grantee for itself, its successors and assigns, and with the intent that the burden of this covenant shall run with the said lands, covenants and agrees with the Grantor its successors and assigns, that the said lands shall be used for public hospital purposes only, and that if for any reason whatever the same shall cease to be used for such purposes, the Grantee will grant and reconvey the said lands to the Grantor absolutely free of all encumbrances and without payment of compensation by the Grantor.”
- (c) Instrument No. CA642570 registered on December 15, 1999 is a transfer of easement in perpetuity from Sunnybrook and Women’s College Health Sciences Centre in favour of City of Toronto in, on, over, along, upon, under and through part of the lands now comprising PIN 21415-0092 (LT) designated as Parts 1, 2 and 3 on Reference Plan 64R-16482 for the purposes (generally) of supplying water, steam and condensate return and for examining, testing, inspecting, altering, repairing, replacing, reconstructing, removing, operating, using and maintaining certain works (including, *inter alia*, pipes, pumps, cables, wires and ancillary facilities and works) together with an easement in, on, over, across, along, upon, under and through such portions of the lands now comprising PIN 21415-0013 (LT) and PIN 21415-0092 (LT) as are reasonably required to exercise the rights set out above and to provide access to the works.
- (d) Instrument No. CA642571 registered on December 15, 1999 is a transfer of easement pursuant to which the City of Toronto transferred to Toronto District Heating Corporation all its right, title and interest in and to the lands and all its right, title and interest in and to or arising out of No. CA642570.
- (e) Instrument No. CA800949 registered on April 4, 2003 is a notice of a lease dated February, 2003 from Sunnybrook and Women’s College Health Sciences Centre, as landlord, to Rogers Wireless Inc., as tenant. The notice indicates that the demised premises consist of a portion of the lands comprising PIN 21415-0092 (LT) but does not contain a more particular legal description of the demised premises. The lease has a term of 1 year commencing on February 1, 2003 and provides that unless either party gives notice of non-renewal to the other at least 60 days prior to the expiry of the term, the lease shall renew automatically for successive 1-year terms on the same terms and conditions as set out in the lease. The tenant has easements for unrestricted access to the demised premises and for connections to the appropriate utilities, fibre optic and telephone facilities. The use of the demised premises and access rights of the tenant are for the erection, replacement, maintenance and operation of telecommunications facilities and equipment and the provision of telecommunications services.

- (f) Instrument No. AT2317473 registered on March 1, 2010 is an agreement pursuant to Section 37 of the *Planning Act* (Ontario) between Women’s College Hospital and City of Toronto.
  - (g) PIN 21415-0092 (LT) was subject on first registration under the *Land Titles Act* (September 22, 2003) to:
    - (i) subsection 44(1) of the *Land Titles Act*, except paragraph 11, paragraph 14, Provincial Succession Duties and escheats or forfeiture to the Crown;
    - (ii) the rights of any person who would, but for the *Land Titles Act*, be entitled to the land or any part of it through length of adverse possession, prescription, misdescription or boundaries settled by convention; and
    - (iii) any lease to which subsection 70(2) of the *Registry Act* applies.
3. ENCUMBRANCES AGAINST PIN 21415-0144 (LT) LEGALLY DESCRIBED AS BEING PT LANE PL 159 TORONTO STOPPED UP AND CLOSED BY BY-LAW 367-2009 REGISTERED AS AT2049477, DESIGNATED AS PART 1 ON REFERENCE PLAN 66R-24219; CITY OF TORONTO
- (a) Instrument No. AT2049477 registered on April 17, 2009 is City of Toronto By-law No. 367-2009 dated April 6, 2009 pursuant to which Part of Lane on Plan 159 designated as Part 1 on Reference Plan 66R-24219 was closed as a public highway.
  - (b) Section 3.1 of an unregistered grant agreement dated March 13, 2009 between Women’s College Hospital and City of Toronto provides that in the event that the Site is not redeveloped for hospital purposes within ten (10) years of the date of the agreement and/or if within ten (10) years of the date of the agreement, the Site is sold for a use other than hospital purposes, Women’s College Hospital shall pay to City of Toronto upon demand the then current market value of the portion of the Site consisting of Part 1 on Reference Plan 66R-24219, as determined by a qualified independent appraiser retained by City of Toronto.
  - (c) Instrument No. AT2317473 registered on March 1, 2010 is an agreement pursuant to Section 37 of the *Planning Act* (Ontario) between Women’s College Hospital and City of Toronto.
  - (d) PIN 21415-0144 (LT) was subject on first registration under the *Land Titles Act* (September 22, 2003) to:
    - (i) subsection 44(1) of the *Land Titles Act*, except paragraph 11, paragraph 14, Provincial Succession Duties and escheats or forfeiture to the Crown;
    - (ii) the rights of any person who would, but for the *Land Titles Act*, be entitled to the land or any part of it through length of adverse possession, prescription, misdescription or boundaries settled by convention; and

(iii) any lease to which subsection 70(2) of the *Registry Act* applies.

4. General Encumbrances include:

- (a) 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 WCH.
- (b) 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 WCH 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, WCH 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.
- (c) The rights reserved to or vested in any municipality or governmental or other public authority by any statutory provision.
- (d) 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.
- (e) 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 of the Project.
- (f) 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, WCH 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 the following information or, where WCH has previously provided such information to Project Co or the relevant Project Co party, as the case may be, an update to the following information in respect of a material change to such information:

- (a) a list of all Affected Unionized Employees to be transferred pursuant to Section 27.1 of the Project Agreement;
- (b) a copy of the Collective Agreements, including any amendments thereto, applicable to any of the Affected Unionized Employees, together with a copy of any arbitral decision under the Collective Agreements or applicable to any of the Affected Unionized Employees that WCH 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 Affected Unionized Employee;
- (d) a description of the benefits to which the 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 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 Affected Unionized Employees will be entitled on the Transfer Date that are not specified in the Collective Agreements, including Canada Savings Bonds, group registered retirement savings plan programs and employee assistance programs;
- (g) a list of any outstanding grievances or litigation, including claims under the *Human Rights Code* (Ontario), the *Occupational Health and Safety Act* (Ontario),

the *Workplace Safety and Insurance Act, 1997* (Ontario) and other provincial employment statutes, related to the Affected Unionized Employees;

- (h) a list of any outstanding grievances or litigation related to the Affected Hospital Employees and a list of all grievances filed within the active period of the present Collective Agreements and a description of the agreed upon settlement; and
  - (i) a copy of any documentation relating to current accommodation of a disability of any Affected Hospital Employee.
- 1.2. WCH 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.
- 1.3. 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. BENEFIT PLAN

- 2.1. 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 27 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 WCH, in writing, of the establishment or designation of such benefit plans. WCH will notify the applicable insurer(s) that the Transferred Employees will cease to participate in WCH's benefit plans effective as of the Transfer Date.

## 3. PENSION PLAN

- 3.1. No later than 90 Business Days prior to the Transfer Date, Project Co shall, or shall cause the relevant Project Co Party to provide confirmation, in writing, to WCH that Project Co, or the relevant Project Co Party, is currently a participating employer under the terms of the Pension Plan.
- 3.2. No later than 20 Business Days prior to the Transfer Date, WCH shall notify the administrator of the Pension Plan that the Transferred Employees will cease to be its employees effective as of the Transfer Date and, accordingly, that WCH will cease to be responsible for contributions on behalf of the Transferred Employees on and after the Transfer Date.

## 4. LEAVES OF ABSENCE

- 4.1. 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.

5. LIST OF EMPLOYEES

- 5.1. On Financial Close, WCH shall provide to Project Co a list of the names of the Affected Hospital Employees.
- 5.2. On or before the Transfer Date, WCH shall provide to Project Co an updated list of the names of the Affected Hospital Employees.

6. EMPLOYEE FILES

- 6.1. WCH shall (to the extent permitted by Applicable Law and the Collective Agreements) 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 WCH, which Personal Information shall not be transferred.

7. VACATION AND OVERTIME ACCRUAL

- 7.1. Notwithstanding Section 27.2(a) of the Project Agreement, WCH 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 WCH as at the Transfer Date.
- 7.2. WCH 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.
- 7.3. Project Co shall, following its receipt of such monies from WCH, transfer such monies to the Project Co Party that is the employer of the Transferred Employees, if applicable. For greater certainty, WCH’s obligations under this Section 7 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.

8. SICK BANKS

- 8.1. WCH’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. WCH shall provide Project Co with the calculation of the value of the accumulated sick banks up to and including the Transfer Date, no later than 2 Business Days after the Transfer Date and shall thereafter transfer such monies to Project Co if and when Project Co incurs such costs up to a maximum of the value of the sick bank calculated as of the Transfer Date. Project Co shall, upon receipt of instructions, and following its receipt of such monies from WCH, transfer such monies to the Project Co Party that is the employer of the Transferred Employees, if applicable. For greater certainty, WCH’s obligations under



this Section 8.1 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. EMPLOYEE TRAINING AND DEVELOPMENT

9.1. Project Co shall, or shall cause the relevant Project Co Party to, provide all Transferred Employees with a comprehensive employee orientation and induction training program which will commence within 10 days of their employment with Project Co or the relevant Project Co Party. Transferred Employees will have the same status, training and career opportunities as similarly experienced employees of WCH. Project Co shall, or shall cause the relevant Project Co Party to, implement substantially the same training and development opportunities and strategies for the Transferred Employees that apply to WCH employees.

10. LABOUR MANAGEMENT SYSTEM

10.1. Project Co shall implement prior to the Transfer Date a labour management system reasonably acceptable to WCH pursuant to which Project Co shall schedule and control labour costs (within the parameters of any collective bargaining agreements existing from time to time with respect to the Project Co Services) and which shall include, at a minimum:

- A. a short term business forecasting module;
- B. department labour standards and occupational health and safety standards;
- C. an employee scheduling system;
- D. a labour management and performance reporting system, including a system for ensuring that labour disruptions do not disrupt the provision of services; and
- E. a labour dispute resolution system.

10.2. In all events, Project Co shall use its best efforts to design employment practices to emphasize continuity of management, reduce employee turnover and minimize training, moving and relocation costs.

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 WCH and Infrastructure Ontario communications requirements. This plan will support effective communications between Project Co and WCH, and with WCH stakeholders and the WCH community.

2. WCH RESPONSIBILITIES

**2.1. Lead Communications Role**

WCH will assume the lead communications role for its local community. WCH 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. WCH Communications Responsibilities During the Works Phase**

In the period up to the Interim Completion Date, WCH 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 WCH 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. WCH Communications Responsibilities During the Operational Term**

No later than 30 days prior to the Scheduled Interim 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 WCH for website content;
- (d) updating, in collaboration with WCH, 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 WCH's lead communications contact;
- (g) maintaining a written record of all material public enquiries, complaints and communications and providing copies to WCH's lead communications contact on a weekly basis (or immediately if urgent);

- (h) reporting to WCH on communications matters on an agreed upon basis;
- (i) participating in WCH communications meetings, as required; and
- (j) during a crisis situation, ensuring and making available sufficient resources to work effectively with WCH and proactively manage and perform its communications responsibilities.

**3.2. Project Co Communications Responsibilities During the Works Phase**

In the period up to the Interim Completion Date, Project Co will:

- (a) within 30 days following Financial Close and in collaboration with WCH, 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 Project Co Parties 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 WCH;
- (c) coordinate with WCH in the implementation of the construction liaison and communications plan;
- (d) attend regular meetings with WCH 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 WCH, 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 WCH related to the management of local traffic during the Works;
- (h) develop, in collaboration with WCH, 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 WCH related to signage or advertising at the Site.

**3.3. Project Co Communications Responsibilities During the Operational Term**

No later than 30 days prior to the Scheduled Interim 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 WCH, 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 WCH’s media release and publicity protocols or guidelines, as such protocols and/or guidelines are updated by WCH from time to time.

**5. CONSTRUCTION SIGNAGE**

**5.1. Construction Signage Guidelines**

With respect to any signage that may be erected and maintained at or on the Site or Project, Project Co, Project Co Parties and/or the Lender, as applicable, shall:

- (a) include the hospital logo and the Infrastructure Ontario logo on the sign;
- (b) ensure that the signage is no larger than the larger of: (i) an existing government project sign on the site; or (ii) 16 feet by 8 feet;

- (c) notwithstanding, s.5.1(b) of Schedule 21, adhere to local by-laws including by-laws regarding placement and size;
- (d) consider signage material suitable for long-term outdoor exposure;
- (e) provide a mock-up of the signage to the Owner with a copy to Infrastructure Ontario for approval prior to printing; and
- (f) be responsible for installation, maintenance and removal of the signage.

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 artefacts 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 artefacts 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 artefacts 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 die 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 die 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 Archaeological 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 WCH’s access to Levels P3 to 10 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, WCH 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 WCH.

1.3 “**Ad-Hoc Services Request**” means a request for the provision of Ad-Hoc Services made by WCH 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 3 of Part H of this Schedule 20.

1.5 “**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 and 2.1, as applicable, of Part B of this Schedule 20 without deducting the sums represented by the symbol  $\Sigma D$ .

1.6 “**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 1.7 of Part H of this Schedule 20, as adjusted in accordance with Section 2 of Part H of this Schedule 20.

1.7 “**Annual Review Date**” means the third and every subsequent anniversary of the commencement of the Initial Period.

1.8 “**Annual Service Payment**” means the sum in Canadian dollars calculated in accordance with the provisions set out in Section 3 of Part B of this Schedule 20.

1.9 “**ASHRAE**” means the American Society for Heating Refrigeration and Air-Conditioning Engineers.

1.10 “**Associated Space**” means, for the purposes of calculating a Deduction, a Functional Unit that is considered to be linked with another Functional Unit, either physically or through joint purpose, such that Unavailability of any part of the Associated Space means that all Functional Units

within that Associated space are considered Unavailable, but only triggers a single Deduction for all Functional units within the Associated Space.

1.11 “**Availability Condition**” means any of (i) the Accessibility Condition, (ii) the Safety Condition or (iii) the Use Condition.

1.12 “**Availability Failure**” means an Event which has not been Rectified within the relevant Rectification Time and which causes a Functional Part to be Unavailable.

1.13 “**Availability Failure Deduction**” means a Deduction which may be made in respect of an Availability Failure.

1.14 “**Average Unit Cost**” means the average cost to WCH of each Unit of Energy purchased by WCH during the relevant Energy Year, calculated in accordance with Section 6 of Part H of this Schedule 20.

1.15 “**Base Date**” means April 1, 2010.

1.16 “**Baseload**” has in respect of the Facility the meaning set out in Section 1.5 of Part H of this Schedule 20.

1.17 “**Baseload and Slope Review Date**” means a date on which the Baseload and Slope are to be reviewed pursuant to Section 2.2(b) 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.

1.18 “**Baseload and Slope Review Period**” means the 60 calendar months ending on a Baseload and Slope Review Date.

1.19 “**Bedding-In**” means the integration of Project Co services as defined by Schedule 15.

1.20 “**Bedding-In Period**” means the one-month period following the Payment Commencement Date.

1.21 “**Collective Agreement Rates**” has the meaning given in Section 3.4 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 Interim Payment Commencement Date until the end of the calendar month in which the Interim 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 “**Contract Year**” means the period of 12 calendar months that commences on April 1st of each calendar year and ends on the next ensuing March 31st, provided that:

- (a) the first Contract Year shall be such period that commences on the Payment Commencement Date and ends on the next ensuing March 31st; and
- (b) the final Contract Year shall be such period that commences on April 1st 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.

1.25 “**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 Toronto Pearson Airport was greater than a mean temperature of +18 degrees Celsius.

1.26 “**Deduction**” means a deduction made from an Interim Monthly Service Payment or a Monthly Service Payment in accordance with this Schedule 20.

1.27 “**Elevator Availability Failure**” means an Event which has not been Rectified in the Rectification Time and which impacts on WCH’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 WCH’s access to levels 2 through 10 of the Facility is impaired.

1.28 “**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 14 of Part C of this Schedule 20.

1.29 “**Energy**” means electricity, gas, oil, coal (any other fossil-based fuel) and water.

1.30 “**Energy Consumption**” means the total number of Units of Energy actually consumed at the Facility during a relevant period.

1.31 “**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.

1.32 “**Escalation Factor**” means the escalation factor calculated in accordance with Section 4.1 of Part B of this Schedule 20.

1.33 “**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.

1.34 “**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.

1.35 “**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).

1.36 “**Functional Area**” means an area of the Facility specified as such in Appendix D to this Schedule 20 comprising one or more Functional Units.

1.37 “**Functional Part**” means a Functional Unit or a Functional Area according to the context in which it is used.

1.38 “**Functional Unit**” means a room or space within a Functional Area which is specified as such in Appendix D to this Schedule 20.

1.39 “**Gainshare Adjustment**” means the adjustment calculated in accordance with Section 4 of Part H of this Schedule 20.

1.40 “**Gigajoule**” means the international unit of energy being 1 Joule multiplied by a factor of 10 to the power 9.

1.41 “**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 Toronto Pearson Airport was less than a mean temperature of +18 degrees Celsius.

1.42 “**Helpdesk**” means the contact point to be established by Project Co pursuant to Schedule 15 - Output Specifications in respect of the Helpdesk Service for the notification of Events and other day to day matters arising in relation to the provision of Services.

1.43 “**Initial Labour Adjustment**” has the meaning given in Section 3.2 of Part B of this Schedule 20.

1.44 “**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.

1.45 “**Interim Bedding-In Period**” means the three-month period following the Interim Payment Commencement Date.

1.46 “**Interim Monthly Service Payment**” means the sum in Canadian Dollars payable by WCH to Project Co for the provision of the Project Co Services in accordance with the Project Agreement, as calculated in Section 1.1 of Part B of this Schedule 20.

1.47 “**Interim Seasonal Bedding-In Period**” means a calendar month during the first 12 calendar months following the Initial Payment Commencement Date which is not contemporaneous with the Interim Bedding-In Period.

1.48 “**Lifecycle Payment**” Lifecycle payments as represented in the Financial Model and the Price Submission form should include no additional costs other than anticipated costs (and directly related contingencies and reserves) in respect of the replacement, refreshment and/or refurbishment of building systems, equipment and fixtures that have reached or are expected to reach the end of their useful service life during the Project term.

1.49 “**Major Quality Failure**” means a Quality Failure which has been designated in the Output Specifications or in this Schedule 20 as a Major Quality Failure.

1.50 “**Major Quality Failure Deduction**” means a Deduction which may be made in respect of a Major Quality Failure.

1.51 “**Major Service Failure**” means a Service Failure which has been designated in the Output Specifications or in this Schedule 20 as a Major Service Failure.

1.52 “**Major Service Failure Deduction**” means a Deduction which may be made in respect of a Major Service Failure.

1.53 “**Medium Quality Failure**” means a Quality Failure which has been designated in the Output Specifications or in this Schedule 20 as a Medium Quality Failure.

1.54 “**Medium Quality Failure Deduction**” means a Deduction which may be made in respect of a Medium Quality Failure.

1.55 “**Medium Service Failure**” means a Service Failure which has been designated in the Output Specifications or in this Schedule 20 as a Medium Service Failure.

1.56 “**Medium Service Failure Deduction**” means a Deduction which may be made in respect of a Medium Service Failure.

1.57 “**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 10 of Part C of this Schedule 20 for the purposes of a Temporary Repair.

1.58 “**Minimum Unavailability Deduction**” means the sum of \$[REDACTED] which shall be index linked, by the Escalation Factor in Section 4.1 of Part B in this Schedule 20, from the Base Date.

1.59 “**Minor Quality Failure**” means a Quality Failure which has been designated in the Output Specifications or in this Schedule 20 as a Minor Quality Failure.

1.60 “**Minor Quality Failure Deduction**” means a Deduction which may be made in respect of a Minor Quality Failure.

1.61 “**Minor Service Failure**” means a Service Failure which has been designated in the Output Specifications or in this Schedule 20 as a Minor Service Failure.

1.62 “**Minor Service Failure Deduction**” means a Deduction which may be made in respect of a Minor Service Failure.

1.63 “**Monitoring Period**” shall have the meaning given to it in Section 3.1 of Appendix B to Part H of this Schedule 20.

1.64 “**Monthly Energy Report**” shall have the meaning given to it in Section 4.1 of Appendix B to Part H of this Schedule 20.

1.65 “**Monthly Service Payment**” means the sum in Canadian Dollars payable by WCH to Project Co for the provision of the Project Co Services in accordance with the Project Agreement, as calculated in Section 2.1 of Part B of this Schedule 20.

1.66 “**Painshare Adjustment**” means the adjustment calculated in accordance with Section 5 of Part H of this Schedule 20.

1.67 “**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.

1.68 “**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.

1.69 “**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 WCH in respect of its performance of that Service or the relevant part of it during a specified period.

1.70 “**Periodic Labour Adjustment**” has the meaning given in Section 3.4 of Part B of this Schedule 20.

1.71 “**Permanent Repair**” means Rectification where a Temporary Repair has been permitted and carried out pursuant to Section 10 of Part C of this Schedule 20.

1.72 “**Permanent Repair Deadline**” has the meaning given in Section 10.1(b) of Part C of this Schedule 20.

1.73 “**Phase 1 Affected Functional Area**” means a Functional Area that is identified in the Scheduled Maintenance Plan as being affected by the Works in relation to the Phase 2 Facility.

1.74 “**Phase 1 Affected Functional Unit**” means a Functional Unit that is identified in the Scheduled Maintenance Plan as being affected by the Works in relation to the Phase 2 Facility.

1.75 “**Phase 2A Works Affected Functional Area**” means a Functional Area that is identified in the Phasing Plan as being affected by the Phase 2A Works.

1.76 “**Phase 2A Works Affected Functional Unit**” means a Functional Unit that is identified in the Phasing Plan as being affected by the Phase 2A Works.

1.77 “**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.

1.78 “**Quality Failure Deduction**” means a Deduction which may be made in respect of a Quality Failure.

1.79 “**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**” or “**Rectified**” shall be construed accordingly.

1.80 “**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 Helpdesk. 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.

1.81 “**Remedial Period**” means the period allowed for remedying a Quality Failure in accordance with Section 4.3 of Part C.

1.82 “**Response Time**” means the time that Project Co has, from a call to the Helpdesk, 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 WCH 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.

1.83 **“Return Date”** has the meaning given in Section 13.3(d) of Part C of this Schedule 20.

1.84 **“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 WCH policies and MOHLTC requirements related to fire safety or health or workplace safety.

1.85 **“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.

1.86 **“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).

1.87 **“Service Failure Deduction”** means a Deduction which may be made in respect of a Service Failure.

1.88 **“Service Failure Performance Indicator”** means a Performance Indicator designated as “SF” (Service Failure) in Schedule 15 - Output Specifications.

1.89 **“Slope”** shall have the meaning given to it in Section 1.6 of Part H of this Schedule 20.

1.90 **“Temporary Alternative Accommodation”** means accommodation offered to WCH by Project Co as a substitute for any Unavailable Functional Part pursuant to Section 13 of Part C of this Schedule 20.

1.91 **“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.

1.92 **“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.

1.93 **“Unit Deduction Amounts”** means the Deduction associated with the unavailability of a Functional Unit, which is specified as such in Appendix D to this Schedule 20.

1.94 “**Unit of Energy**” means one Gigajoule.

1.95 “**Use Condition**” means a state or condition of the relevant Functional Part which satisfies the Use Parameters for that Functional Part.

1.96 “**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, Table 6 of Part 4 and Table 6 of Part 4a.

1.97 “**Utilities Management Subcommittee**” shall have the meaning given to it in Section 2.3 of Appendix B to Part H of this Schedule 20.

1.98 “**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 Toronto Pearson Airport calculated as an average over the immediately preceding 20 years.

**PART B:  
CALCULATION OF SERVICE PAYMENTS**

**1. INTERIM MONTHLY SERVICE PAYMENT**

1.1 The Interim Monthly Service Payment payable in respect of any Contract Month shall be calculated in accordance with the following formula:

$$\text{IMSP} = (\text{ASPn}/12) - \Sigma\text{D}$$

where

IMSP is the Interim 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; and

$\Sigma\text{D}$  is the sum of Deductions in respect of the relevant Contract Month in relation to Quality Failures, Service Failures and Availability Failures calculated in accordance with the provisions set out in Part C of this Schedule 20.

1.2 In the Contract Month in which the Interim Payment Commencement Date falls and in the last Contract Month of the Interim Period, a pro rata adjustment shall be made to reflect the actual number of days in the relevant Contract Month from and including the Interim Payment Commencement Date (for the first month) and up to and including the last day of the Interim Period (for the last month).

1.3 WCH shall pay to Project Co the Interim Monthly Service Payment in accordance with the provisions of this Schedule 20 and Section 31.2 of the Project Agreement.

**2. MONTHLY SERVICE PAYMENT**

2.1 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 Quality Failures, Service Failures and Availability Failures calculated in accordance with the provisions set out in Part C of this Schedule 20;

GS means any Gainshare Adjustment arising pursuant to Section 4 of Part H of this Schedule 20; and

PS means any Painshare Adjustment arising pursuant to Section 5 of Part H of this Schedule 20.

2.2 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).

2.3 WCH shall pay to Project Co the Monthly Service Payment in accordance with the provisions of this Schedule 20 and Section 31 of the Project Agreement.

### **3. ANNUAL SERVICE PAYMENT**

3.1 The Annual Service Payment for any Contract Year shall be calculated in accordance with the following formula:

$$\mathbf{ASPn = (ASPXo \times (1 - PESC - PCAR)) + (ASPXo \times PESC \times ESCn) + (ASPXo \times PCAR \times PLAy) + (LCPn \times ESCn) + IA}$$

Where:

ASPn is the Annual Service Payment for the relevant Contract Year;

ASPXo 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 applicable Contract Year;

PESC is [REDACTED]%;

PCAR is [REDACTED]%;

PLAy is the Periodic Labour Adjustment calculated pursuant to Sections 3.4, 3.5 and 3.6 of this Part B;

LCPn 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 3.7 and 3.8 of this Part B; and

ESCn is the Escalation Factor for the relevant Contract Year as calculated in accordance with Section 4.1 of this Part B.

3.2 For the first Contract Year and in the year in which the Substantial Completion Date is achieved, ASPXo 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 Adjustments**”).

3.3 No later than 60 days prior to the Initial Payment Commencement Date and the Payment Commencement Date, Project Co will prepare and submit to WCH an analysis indicating the amount of the Initial Labour Adjustments. WCH and Project Co, both acting reasonably, will agree on the Initial Labour Adjustments to be applied to the Annual Service Payment as of the Initial Payment Commencement Date and the Payment Commencement Date.

3.4 The Annual Service Payment shall be adjusted from time to time to take account of changes in the negotiated labour rates and benefit rates applicable to the Transferred Employees under the Collective Agreement (the “**Collective Agreement Rates**”), as these changes in labour rates and benefit rates affect Project Co’s actual cost of discharging its obligations under the Project Agreement (the “**Periodic Labour Adjustment**”). WCH 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.

3.5 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 3.1 of this Part B.

3.6 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 3.1 of this Part B, shall be adjusted accordingly.

3.7 No later than 60 days prior to each Insurance Review Date, Project Co will require its insurance broker to prepare and submit to WCH the Joint Insurance Cost Report. WCH 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.

3.8 The Insurance Adjustment will constitute an adjustment to the Annual Service Payment on the Initial Payment Commencement Date and the Payment Commencement Date, as applicable. On each Insurance Review Date thereafter, the Insurance Adjustment will be applied in accordance with Section 3.1 of this Part B.

#### **4. ESCALATION FACTOR**

4.1 The Escalation Factor shall be calculated in accordance with the following formula:

$$\text{ESC}_n = \text{CPI}_n / \text{CPI}_o$$

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 of February most recently preceding the indexation date; and

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 of February most recently preceding the Base Date.

**PART C:  
DEDUCTIONS FROM SERVICE PAYMENTS**

**1. ENTITLEMENT TO MAKE DEDUCTIONS**

1.1 If at any time during the Operational Term a Quality Failure, a Service Failure or an Availability Failure shall occur, WCH shall, subject to Sections 1, 2, 3 and 6 of this Part C, be entitled to make a Deduction from the relevant Interim Monthly Service Payment or Monthly Service Payment in respect of that Quality Failure, Service Failure or Availability Failure.

1.2 The maximum aggregate of all Deductions that WCH can make from an Interim Monthly Service Payment in respect of any Contract Month shall be the Adjusted Service Payment relating to that Contract Month.

1.3 The maximum aggregate of all Deductions that WCH can make from a Monthly Service Payment in respect of any Contract Month shall be the Adjusted Service Payment relating to that Contract Month.

1.4 The classification of an Event as a potential Quality Failure, Service Failure or Availability Failure shall be made at the time at which the occurrence of the Event is reported to the Helpdesk. An Event which is incorrectly classified may be re-classified with the approval of the WCH Representative and the Project Co Representative, acting reasonably, in which case the applicable Performance Monitoring Report will be revised accordingly.

1.5 There shall be no Deductions made in respect of a Phase 2A Works Affected Functional Area, a Phase 2A Works Affected Functional Unit, a Phase 1 Affected Functional Area and a Phase 1 Affected Functional Unit.

**2. INTERIM BEDDING-IN PERIOD AND INTERIM SEASONAL BEDDING-IN PERIOD**

2.1 During the Interim Bedding-In Period, the following provisions shall apply:

- (a) during the first month of the Interim 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 Interim 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 **[REDACTED]**%.

2.2 For the avoidance of doubt, there shall be no relief from Failure Points or Deductions relating to Availability Failures during the Interim Bedding-In Period.

2.3 Project Co shall be entitled to two Interim Seasonal Bedding-In Periods. Project Co shall, by written notice to the WCH Representative, identify each Interim Seasonal Bedding-In Period at least 30 days prior to the first day of such Interim Seasonal Bedding-In Period.

2.4 During the Interim Seasonal Bedding-In Periods, the revised environmental parameters identified in Table 6 of Part 4 and Table 6 of Part 4a 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 Availability Failures, Quality Failures or Service Failures during the Interim Seasonal Bedding-In Periods.

### **3. BEDDING-IN PERIOD AND SEASONAL BEDDING-IN PERIOD**

3.1 During the Bedding-In Period, the following provisions shall apply:

- (a) during the one month 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.

3.2 For the avoidance of doubt, there shall be no relief from Failure Points or Deductions relating to Availability Failures during the Bedding-In Period.

3.3 Project Co shall be entitled to two Seasonal Bedding-In Periods. Project Co shall, by written notice to the WCH Representative, identify each Seasonal Bedding-In Period at least 30 days prior to the first day of such Seasonal Bedding-In Period.

3.4 During the Seasonal Bedding-In Periods, the revised environmental parameters identified in Table 6 of Part 4 and Table 6 of Part 4a of Schedule 15 - Output Specifications will be in effect.

3.5 For the avoidance of doubt, there shall be no relief from Failure Points or Deductions relating to Availability Failures, Quality Failures or Service Failures during the Seasonal Bedding-In Periods.

### **4. AMOUNT OF DEDUCTIONS FOR QUALITY FAILURES**

4.1 Subject to Sections 1, 2, 3 and 6 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 \$[REDACTED], index-linked by the Escalation Factor in Section 4.1 of Part B in this Schedule 20;
- (b) in the case of a Medium Quality Failure, the sum of \$[REDACTED], index-linked by the Escalation Factor in Section 4.1 of Part B in this Schedule 20; and
- (c) in the case of a Major Quality Failure, the sum of \$[REDACTED], index-linked by the Escalation Factor in Section 4.1 of Part B in this Schedule 20.



4.2 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.

4.3 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 WCH 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 4.1 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 WCH Representative, that it has remedied the Quality Failure.

## **5. AMOUNT OF DEDUCTIONS FOR SERVICE FAILURES**

5.1 Subject to Sections 1, 2, 3 and 6 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 \$[REDACTED], index-linked by the Escalation Factor in Section 4.1 of Part B in this Schedule 20;
- (b) in the case of a Medium Service Failure, the sum of \$[REDACTED], index-linked by the Escalation Factor in Section 4.1 of Part B in this Schedule 20; and
- (c) in the case of a Major Service Failure, the sum of \$[REDACTED], index-linked by the Escalation Factor in Section 4.1 of Part B in this Schedule 20.

5.2 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.

5.3 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 WCH 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 5.1 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 WCH Representative, that it has remedied the Service Failure.

5.4 The provisions of Section 5.3 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 WCH Representative notifies the Project Co Representative that WCH no longer requires the relevant Project Co Service.

5.5 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 5.1 of this Part C.

5.6 For the purposes of Section 5.1 of this Part C, if the Service Failure affects one or more Functional Units, the Service Failure Deduction shall be applied to each Functional Unit affected.

**6. TOLERANCES FOR QUALITY FAILURES AND SERVICE FAILURES**

6.1 No Deduction may be made to the Interim Monthly Service Payment or 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 Service; and

MSP is the monthly cost of providing the relevant Project Co Service, being either the Interim Monthly Service Payment or the Monthly Service Payment as applicable, subject to indexation from the Base Date.

6.2 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.

**7. DEDUCTIONS FOR AVAILABILITY FAILURES**

7.1 Subject to Sections 1, 2 and 3 of this Part C, the amount to be deducted from the Interim Monthly Service Payment or 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 the Unit Deduction Amounts for all Functional Units made Unavailable as a result of the Availability Failure. However if any of the Functional Units are rendered *Unavailable but WCH continues to use it (or any part thereof)*, the Deduction for that Functional Unit will be multiplied by **[REDACTED]**%..

The Deductions for Availability Failures will be index-linked by the Escalation Factor in Section 4.1 of Part B in this Schedule 20, per Functional Unit affected.

7.2 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.

7.3 In the event of an Elevator Availability Failure, Section 14 of this Part C explains the calculation of the corresponding Elevator Availability Failure Deduction.

## **8. RECTIFICATION**

8.1 This Section applies where, in Schedule 15 - Output Specifications, a Rectification Time is specified in respect of an Event.

8.2 Subject to Sections 10 and 11 (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.

8.3 When carrying out a Rectification, or a Temporary Repair pursuant to Section 10 of this Part C, Project Co shall act in accordance with Applicable Law, Good Industry Practice, relevant WCH 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.

## **9. RE-COMMISSIONING**

9.1 Where a Functional Unit needs to be re-commissioned by WCH following Rectification, the WCH Representative shall determine, prior to commencement of any re-commissioning activities, that the Rectification has been properly carried out. The WCH 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.

9.2 Section 9.1 of this Part C shall not affect the right of WCH 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 WCH.

## **10. TEMPORARY REPAIRS**

10.1 If Project Co informs WCH 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) WCH shall permit Project Co to carry out the Temporary Repair proposed by Project Co unless WCH, 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**”).

10.2 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.

10.3 Subject to Section 8.3 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.

10.4 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 10.4(a);
- (c) if the Temporary Repair is not successfully carried out prior to the expiry of the additional period referred to in Section 10.4(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 10.4(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 10 shall cease and Section 10.5 of this Part C shall apply.

10.5 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 5, 6 and 7 of this Part C shall apply.

## **11. REPEATED RECTIFICATION**

11.1 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:

- (c) 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
- (d) 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.

11.2 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).

## **12. EFFECT OF UNAVAILABILITY ON OTHER DEDUCTIONS**

12.1 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 WCH 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, WCH shall be entitled to award Failure Points in accordance with Part G of this Schedule 20 where appropriate.

12.2 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 levels P3 through 10 of the Facility shall continue to apply.

**13. TEMPORARY ALTERNATIVE ACCOMMODATION**

13.1 If an Availability Failure occurs Project Co may offer WCH Temporary Alternative Accommodation by written notice to WCH within 10 Business Days from the commencement of the relevant Event.

13.2 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 WCH occupied the affected Functional Part;
- (d) unless WCH otherwise agrees, be accommodation for which WCH 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 Part 4 of Schedule 15 - Output Specifications for the Interim Period and Part 4a of Schedule 15 - Output Specifications which Project Co would under normal circumstances be providing within the Unavailable Functional Part;
- (f) not involve WCH 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.

13.3 The written notice sent by Project Co to WCH pursuant to Section 13.1 of this Part C shall:

- (a) describe the Temporary Alternative Accommodation;

- (b) invite WCH to inspect the Temporary Alternative Accommodation and shall give WCH 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 WCH before the submission of the written notice) by which Project Co reasonably expects WCH to be able to relocate back to the relevant Functional Part (the “**Return Date**”); and
- (e) describe the terms upon which WCH 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.

13.4 If it requires an inspection of the Temporary Alternative Accommodation, WCH shall do so within 5 Business Days of receipt of the notice referred to in Section 13.1 above. WCH 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 WCH has elected not to carry out an inspection, within 5 Business Days of receipt of the notice referred to in Section 13.1 of this Part C. WCH shall act reasonably when deciding to accept or refuse any proposed Temporary Alternative Accommodation.

13.5 WCH accepts the offer of Temporary Alternative Accommodation then, without affecting WCH’s remedial rights under Section 30 of the Project Agreement, WCH shall not be entitled to vacate the Temporary Alternative Accommodation until the earlier of the Return Date and the date on which WCH 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 13.9 of this Part C.

13.6 For the avoidance of doubt, WCH’s rights under Section 30 of the Project Agreement shall not be affected by the acceptance by WCH of the Temporary Alternative Accommodation.

13.7 If WCH 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 WCH while the Temporary Alternative Accommodation replacing that Functional Part is being used by WCH.

13.8 WCH shall be entitled to award Failure Points and make Deductions in respect of any Service Failure or Availability 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.

13.9 When Project Co has completed the required works to enable WCH to return to the Functional Part, the WCH Representative shall confirm that the Availability Conditions for the

Functional Part are met and the WCH Representative and Project Co shall agree a relocation program to return to the Functional Part and any necessary period for re-commissioning.

13.10 Where WCH has accepted the proposed Temporary Alternative Accommodation pursuant to Section 13.4 of this Part C, in the event that Project Co fails to complete the works to enable WCH to return to the relevant Functional Part on the Return Date WCH 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 WCH, 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 WCH shall levy [REDACTED]% of the Deduction which would have been levied in respect of that Availability Failure for each Contract Day on which WCH occupies the Temporary Alternative Accommodation thereafter until the date on which the Availability Failure referred to in Section 13.1 of this Part C has been rectified and WCH is able to resume its use of the Functional Part; and
- (b) where WCH, 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 WCH is not in occupation of the Temporary Alternative Accommodation until the date on which the Availability Failure referred to in Section 13.1 of this Part C has been rectified and WCH is able to resume its use of the Functional Part.

13.11 WCH 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) WCH may (without prejudice to its rights under Section 42 of the Project Agreement or any other express rights of WCH 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 WCH for all reasonable costs, losses, expenses or damages incurred by WCH in relation to taking the steps, or engaging others to take the steps, referred to in 13.11(a) of this Part C and WCH shall be entitled to deduct any such amount from any amounts payable to Project Co under the provisions of the Project Agreement.



**14. DEDUCTIONS FOR ELEVATOR AVAILABILITY FAILURES**

14.1 In the event of an Elevator Availability Failure, the level of Availability Failure Deduction shall be based on the following formula:

$$D = UDA(\sum F2:F10) \times 50\% \times DP(EAF)$$

where:

D means the amount (in Canadian dollars) of the Deduction in respect of the Availability Failure;

UDA( $\sum F2:F10$ ) means the sum of the Unit Deduction Amounts attributable to the Functional Areas on Floor 2 to Floor 10 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 during the Interim Period and post Substantial Completion at any one time.

**PART D:  
REVIEW OF DEDUCTIONS**

**1. ANNUAL REVIEW**

1.1 The identification of Functional Areas, Functional Units, Rectification Times and the amount of Deductions for each category of Quality Failure, Service Failure and Availability Failure shall be reviewed by WCH 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 WCH 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 WCH and Project Co may in respect of each matter 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 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 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 WCH shall agree 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, 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 Quality Failure, Service Failure or Availability Failure (if any), the failure to monitor or report the Event, 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 WCH 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 WCH shall, in addition, be entitled to make Deductions in respect of any 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 Interim Monthly Service Payment or the Monthly Service Payment, as applicable, payable in respect of the Contract Month in which the relevant matters were revealed by WCH's investigations or, to the extent that WCH is unable to make any further deductions from the Interim Monthly Service Payment or the Monthly Service Payment in respect of that Contract Month by virtue of Section 1.2 and 2.2 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 WCH pursuant to Sections 29, 42 and 57 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, 3 or 6 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 4, 5 and 7 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 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 during the Interim Period is **[REDACTED]**.

The maximum number of Failure Points that can be allocated to a single Availability Failure after the Interim Period is **[REDACTED]**.

**PART H:  
ENERGY**

**1. CALCULATION OF ANNUAL ENERGY TARGET**

1.1 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 9 of this Part H.

1.2 In respect of each Energy Year following the expiry of the Initial Period, the remaining provisions of this Section 1 shall apply for the purposes of calculating the Annual Energy Target applicable to the Facility.

1.3 By no later than 1 month after the expiry of the Initial Period, Project Co shall provide to WCH a certificate showing:

- (a) 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 9 of this Part H;
- (b) the number of Heating Degree Days in respect of each of those calendar months; and
- (c) the number of Cooling Degree Days in respect to each of those calendar months.

1.4 The Parties shall, in respect of the Facility, plot individual graphs for heating energy and electrical energy using the information referred to in Section 1.3 in the following manner:

- (a) 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;
- (b) 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;
- (c) 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;
- (d) for each graph, when all points on the graph have been plotted in accordance with Section 1.4(c), 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.

1.5 The straight line referred to in Section 1.4(d) 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.

1.6 The Parties shall calculate the slope of the straight line on each graph referred to in Section 1.4(d), 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 2.2(b).

1.7 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 1.6 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 1.5 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 1.6 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 1.5 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.

1.8 The Annual Energy Target calculated in accordance with the provisions of this Section 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.

1.9 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.

## **2. ADJUSTMENTS TO THE ANNUAL ENERGY TARGET**

### **2.1 Adjustments at Annual Review Date**

- (a) Subject to Section 2.1(b), with effect from each Annual Review Date the Annual Energy Target shall be recalculated using the formula set out in Section 1.7, 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 2.1(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 2.

### **2.2 Adjustments of Baseload and Slope**

- (a) 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 WCH 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 9.1; and
  - (ii) the number of Heating Degree Days or Cooling Degree Days, as applicable, in respect of each of those calendar months.
- (b) Using the data referred to in Section 2.2(a) 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 1.4 to 1.6 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.

- (c) Project Co or WCH 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 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 WCH 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 2.1(a) and such recalculated Baseload and Slope shall apply until the next Baseload and Slope Review Date.

2.3 Adjustments for Variations

- (a) The Annual Energy Target shall also be adjusted, if appropriate, as a result of a Variation.

2.4 Adjustments for a Material Breach of the Energy Protocol

- (a) In the event that either WCH 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.

**3. COMPARING ACTUAL CONSUMPTION OF ENERGY WITH TARGET**

3.1 By no later than 10 Business Days after either the submission by Project Co of a certificate referred to in Section 9.2, 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:

- (a) 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
- (b) 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 3.1(a) of this Part H.

3.2 If Energy Consumption is not less than **[REDACTED]**% and not greater than **[REDACTED]**% of the Adjusted Annual Energy Target, no adjustment to Monthly Service Payments shall be made.

3.3 Subject to Section 7, if Energy Consumption is less than [REDACTED]% of the Adjusted Annual Energy Target, a Gainshare Adjustment shall become due to Monthly Service Payments, calculated in accordance with Sections 4 and 6.

3.4 Subject to Section 7, if Energy Consumption is greater than [REDACTED]% of the Adjusted Annual Energy Target, a Painshare Adjustment shall become due to Monthly Service Payments, calculated in accordance with Sections 5 and 6.

3.5 If Energy Consumption is identified at any time as less than [REDACTED]% or greater than [REDACTED]% 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 WCH and Project Co to assess and report on the cause of the variance and assess the responsibility of Project Co and WCH for that element of the energy consumption which is less than [REDACTED]% or greater than [REDACTED]% of the Adjusted Annual Energy Target and to apportion (as between WCH 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 [REDACTED]% or greater than [REDACTED]% 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. WCH 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.

#### 4. CALCULATION OF GAINSHARE ADJUSTMENT

A Gainshare Adjustment shall be calculated in accordance with the following formula:

$$GS = 0.5S \times AUC$$

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 [REDACTED]% of the Adjusted Annual Energy Target; and

AUC is the Average Unit Cost.

#### 5. CALCULATION OF PAINSHARE ADJUSTMENT

A Painshare Adjustment shall be calculated in accordance with the following formula:

$$PS = 0.5E \times AUC$$

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 [REDACTED]% of the Adjusted Annual Energy Target; and

AUC is the Average Unit Cost.

**6. CALCULATION OF AVERAGE UNIT COST**

The Average Unit Cost shall be calculated in accordance with the following formula:

$$\text{AUC} = (\text{SC} + \text{US})/\text{U}$$

Where:

AUC is the Average Unit Cost;

SC is the aggregate of all standing charges, levies, taxes and all other sums invoiced to WCH 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 WCH 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 is the aggregate number of Units of Energy actually consumed in respect of the Facility in the course of the relevant Energy Year.

**7. APPLICATION OF GAINSHARE OR PAINSHARE ADJUSTMENT**

7.1 Where it is established in accordance with Section 3 that a Gainshare Adjustment or a Painshare Adjustment arises pursuant to Section 4 and 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.

7.2 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.

7.3 The Parties confirm that the Financial Model contains no provision for the cost of purchasing Energy.

## **8. SUPPLY OF ENERGY**

8.1 WCH 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.

8.2 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. The Parties will agree on the proportions of different types of Energy to be consumed on a quarterly basis in accordance with the Energy Protocol-Appendix B. In managing the usage of Energy at the Facility Project Co shall wherever practicable ensure that these agreed proportions are followed.

8.3 Subject to Section 8.4 below, if the proportions of different types of Energy actually consumed at the Facility differ by more than [REDACTED]% 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 8.2 above without the agreement of the WCH Representative, any resultant increase in the cost to WCH of purchasing Energy and/or to Project Co or the Designated Operator in purchasing Allowances shall be for Project Co's account and shall take effect by way of a reduction to Monthly Service Payments.

8.4 Section 8.2 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 WCH'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.

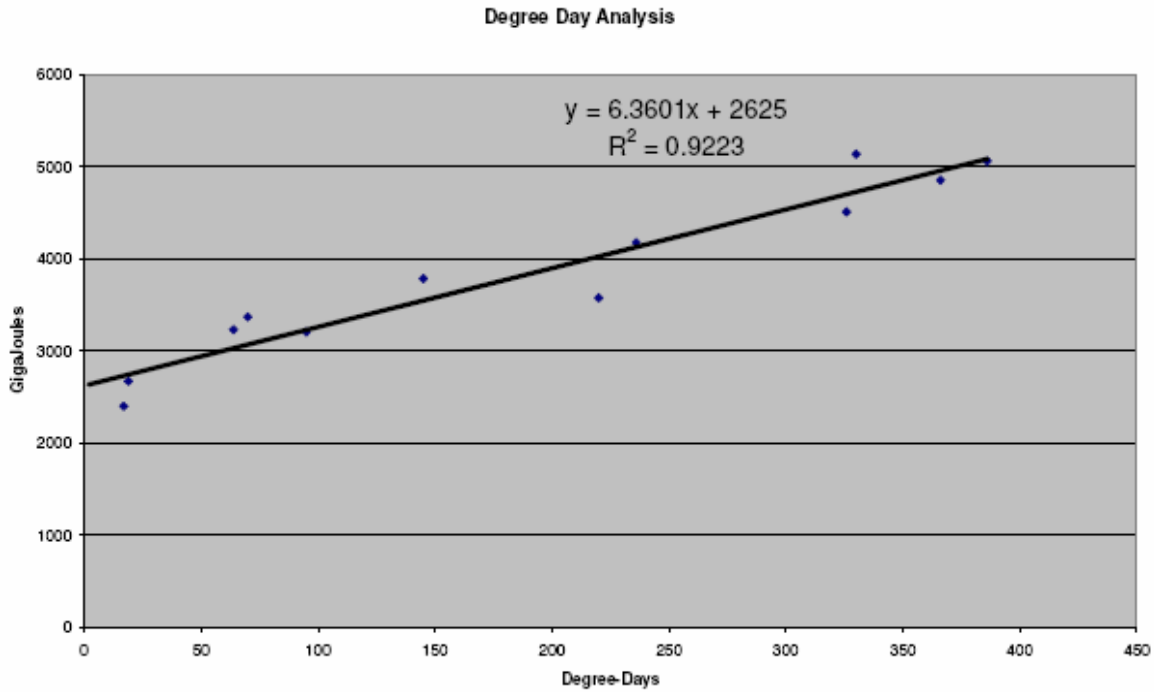
## **9. MEASUREMENT**

9.1 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.

9.2 Without prejudice to Schedule 15 or Section 2.2(a) of this Part H, Project Co shall provide to WCH 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 1.9 of Part H of this Schedule 20:



**APPENDIX B  
ENERGY PROTOCOL**

**1. PROTOCOL OBJECTIVES**

1.1 WCH 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 WCH 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 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 WCH (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. 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 WCH 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 WCH 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. WCH 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 WCH in relation to the following measures which it will expect WCH and WCH 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 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 WCH'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 WCH.



#### **4. REPORTING SERVICES**

4.1 From the commencement of the Operational Period, Project Co shall provide to WCH 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 WCH.

#### **6. COMPLIANCE**

6.1 WCH 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 co-operate 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. WCH AND PROJECT CO'S UNDERTAKINGS**

7.1 WCH shall assist, and shall encourage the WCH Parties to assist, Project Co to achieve the energy consumption targets through the adoption of good house keeping measures to be determined by the Utilities Management Subcommittee in respect of lighting, water, office equipment and space heating and air conditioning to be achieved through management and involvement of WCH staff. WCH will ensure that WCH Parties involve management, clinical and non-clinical staff in energy efficiency focus in order to incorporate good practice as part of WCH and WCH Parties' overall activities.

7.2 WCH 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 WCH 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 WCH, WCH 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;
- (h) appointing departmental/unit managers, and energy monitors to implement good housekeeping measures as set out in Section 7.1 hereof; and
- (i) 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 WCH 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 WCH 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) third parties.

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 referred to in Section 4.1 of Appendix B in this Schedule 20.

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 WCH; 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.

## **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 referred to in Section 4.1 of Appendix B to this Schedule 20. 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.

**QUARTERLY MONITORING MEETING AGENDA**

- Meeting Title:** Quarterly Monitoring Meeting of the Utilities Management Subcommittee For The Period \_\_\_\_\_
- Date of Meeting:** \_\_\_\_\_
- Venue:** \_\_\_\_\_
- Those Present:** Project Co Representatives WCH Representatives Representative of the Service Provider
- Item 1** Apologies for absence
- Item 2** Recorded energy consumption for the quarter
- Gas: \_\_\_\_\_
- Electric: \_\_\_\_\_
- Oil: \_\_\_\_\_
- Water: \_\_\_\_\_
- Item 3** Report on Heating Degree Day and Cooling Degree Day data for corresponding period
- Item 4** WCH Variations under Schedule 22
- Item 5** Actual energy consumption compared against target
- Item 6** Review Painshare and Gainshare mechanisms
- Item 7** Report on Procedures
- Item 8** Report on plant and systems performance and review of future planned maintenance program
- Item 9** Review of energy trends and recommendations for improved energy efficiency and training
- Item 10** Asset management and lifecycle issues
- Item 11** New technologies and issues for consideration under ongoing value engineering
- Item 12** Rolling 12 month annual energy totals

**Item 13** Disputes subject to Schedule 27

**Item 14** AOB and date of next meeting

**APPENDIX C  
FAILURE POINTS**

<b>Category</b>	<b>FPs</b>	<b>Application</b>
Minor Quality Failure	[REDACTED]	Per Quality Failure
Medium Quality Failure	[REDACTED]	
Major Quality Failure	[REDACTED]	
Minor Service Failure	[REDACTED]	Per Service Failure and if applicable, per Functional Unit affected by the Service Failure
Medium Service Failure	[REDACTED]	
Major Service Failure	[REDACTED]	
Availability Failure (for the avoidance of doubt, this applies whether or not WCH continues to make use of the relevant Functional Part)	[REDACTED]	Per Functional Unit affected by the Availability Failure

**APPENDIX D  
Deductions for Availability Failures:**

**[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>
1	[REDACTED]%
2	[REDACTED]%

**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]

**SCHEDULE 21**

**[The Equipment List has been intentionally deleted from this Schedule. Please see Part 5 – Equipment List of Schedule 15 – Output Specifications.]**

## 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 WCH 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) “**WCH Work**” has the meaning given in Section 1.7(a) of this Schedule 22.

##### 1.2 General

- (a) WCH 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 provided that WCH shall not be permitted to withdraw a Variation Enquiry (nor will a Variation Enquiry be deemed to have been withdrawn) with respect to those circumstances specified in the Project Agreement for which WCH is obligated to proceed with a Variation.
- (b) WCH 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 WCH 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 WCH 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 Output Specifications 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 Output Specifications 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 WCH’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 Applicable Law;

- (B) cause to be revoked any of the existing Permits, Licences, Approvals or Agreements required by Project Co to perform the Project Operations, and any such Permit, Licence, Approval or Agreement is not, using commercially reasonable efforts, capable of amendment or renewal; or
  - (C) require any new Permits, Licences, Approvals or Agreements for Project Co to perform the Project Operations, any of which will not, using commercially reasonable efforts by Project Co or WCH, 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) WCH 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 WCH a written notice specifying the grounds upon which Project Co rejects the Variation and the details thereof.

## **1.6 Estimate Requirements**

- (a) Unless WCH in a Variation Enquiry requires only specified limited information, each Estimate shall include the following information, sufficient to demonstrate to WCH’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 Interim Completion Date or 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 WCH 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 the Project Co Parties, 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 WCH); 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, Approvals and Agreements 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, Approvals and Agreements 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 WCH’s satisfaction, acting reasonably, that:
  - (i) Project Co has used or has obliged the Project Co Parties (or will oblige any Project Co Parties 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 the Project Co Parties 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 WCH, 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 WCH receives an Estimate, Project Co and WCH shall discuss and seek to agree on the Estimate, including any amendments to the Estimate agreed to by the Parties.
  - (e) If WCH would be required by Applicable Law or any policy applicable to WCH to competitively tender any contract in relation to the proposed Variation, WCH may require Project Co to seek and evaluate competitive tenders for the proposed Variation in accordance with such Applicable Law or policy.
  - (f) WCH 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 WCH 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 WCH's Right to Perform**

- (a) After Interim Completion with respect to the Phase 1 Facility, and after Substantial Completion with respect to the entire Facility, WCH shall have the right to perform the subject matter of a proposed Variation (“**WCH Work**”) itself, or through others contracting directly with WCH, without compensation to Project Co, except as specifically stated herein.
- (b) WCH 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 WCH, or any third party, of WCH 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, WCH shall either:
  - (i) subject to Sections 1.2(b) and 1.8(e), 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 WCH does not issue a Variation Confirmation within such 15 Business Days, then, subject to Sections 1.2(b) and 1.8(e), 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 WCH in its sole discretion; or
  - (ii) WCH 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 WCH’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) WCH may at any time withdraw a Variation Enquiry and, subject to Section 1.8(f), WCH shall not be obligated to Project Co in respect of a Variation until such time as WCH in its sole discretion issues a Variation Confirmation and, if applicable, Project Co has obtained the financing requested by WCH or WCH has waived such requirement,

provided that WCH may not withdraw (or be deemed to have withdrawn) a Variation Enquiry in circumstances where WCH 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, WCH 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 WCH 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 WCH, 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 WCH within 60 days of the date that WCH 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 WCH, in its sole discretion, waives the requirement for financing or unless WCH 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 WCH with details of such financing, and WCH shall, in its sole discretion, determine whether Project Co should proceed with such financing. If WCH 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 WCH, in its sole

discretion, waives the requirement for financing or unless WCH is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.

- (d) WCH 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 WCH in its sole discretion waives the requirement for financing or unless WCH is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (e) If WCH 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 WCH 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 WCH, 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) WCH shall pay such Capital Expenditures in lump sum payments based on a payment schedule agreed by WCH 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 WCH; 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 WCH 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 WCH (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 WCH in time to make payments to that third party in accordance with its contract with Project Co.

- (b) WCH shall make payment to Project Co within 20 Business Days of receipt by WCH of invoices presented to WCH 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 WCH 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, WCH shall provide to Project Co copies of any consent or approval issued by MOHLTC or WCH'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 WCH by way of a reduction in the Monthly Service Payments.

### **1.12 Variation Directive**

- (a) If an Estimate is not promptly agreed upon by WCH and Project Co or if there is a Dispute in relation thereto or if WCH, in its sole discretion, requires a Variation to be implemented prior to issuing a Variation Confirmation, then WCH 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 WCH 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, WCH 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 WCH 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 WCH 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 WCH, 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 WCH, in its sole discretion, elects to consider the Variation proposed by Project Co, WCH 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 Interim Completion Date with respect to the Phase 1 Facility and after the Substantial Completion Date with respect to the entire Facility, Project Co shall carry out all Small Works requested by WCH.
- (b) If Small Works are requested by WCH, Project Co shall, within 10 Business Days of each such request and prior to carrying out the Small Works, provide WCH with a price for carrying out the Small Works.
- (c) If Project Co’s price is accepted by WCH, in its sole discretion, Project Co shall carry out the Small Works for such price.
- (d) WCH may at any time, in its sole discretion, including if WCH 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.

**3.2 Project Co to Minimize Inconvenience**

- (a) Project Co shall notify WCH of the estimated duration of any Small Works so that WCH and Project Co can agree upon a convenient time for carrying out the same, so as to minimize and mitigate inconvenience and disruption to WCH. 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 the Project Co Parties, 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 the Project Co Parties while performing that part of the Project Operations on Site;
- (ii) salaries, wages and benefits of Project Co's or the Project Co Parties' 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 the Project Co Parties' 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 the Project Co Parties' 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 \$[REDACTED] or less), products, supplies, equipment, temporary services and facilities, including transportation and maintenance thereof, which are consumed in the performance of the Variation;
- (vii) the rental costs of all tools (excluding hand tools which have a retail value of \$[REDACTED] 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;
- (viii) deposits lost;



- (ix) the amount of all Subcontracts with Project Co Parties;
- (x) the amount paid for any design services;
- (xi) the cost of third party quality assurance required by WCH, such as independent inspection and testing services;
- (xii) charges levied by Governmental Authorities, but excluding fines or penalties not related to the implementation of the Variation;
- (xiii) subject to Section 1.1(iv) of this Appendix A and without limiting the obligation of WCH to pay HST under this Project Agreement, Taxes, but excluding:
  - (A) HST;
  - (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;
- (xiv) 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;
- (xv) 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;
- (xvi) the cost of financing, including additional financing costs related to any delay caused by the implementation of the Variation;
- (xvii) the cost of competitively tendering any contract in relation to the proposed Variation which is required by Applicable Law or any policy applicable to WCH;
- (xviii) the cost of any additional insurance or performance security required or approved by WCH;

- (xix) the cost of obtaining all Permits, Licences, Approvals and Agreements; and
- (xx) 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 Toronto, 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**

Party	Total Overhead and Profit Margin (as % of Direct Cost)		
	<i>For projects under \$[REDACTED]</i>	<i>For projects between \$[REDACTED] and \$[REDACTED]</i>	<i>For projects over \$[REDACTED]</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 WCH 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 WCH to Project Co prior to the Compensation Date;
    - (B) the Tender Costs; and
    - (C) amounts that WCH 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) WCH 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 WCH 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 WCH to Project Co prior to the Compensation Date;
    - (B) the Tender Costs; and
    - (C) amounts that WCH 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) WCH 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 WCH 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 WCH receives an invoice from Project Co for the relevant termination sum; and
  - (ii) the date on which WCH 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 [REDACTED]% 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 Parts which were unavailable at the Termination Date but which have subsequently become available, whether as a result of WCH incurring Rectification Costs or otherwise.

- (m) **“Maximum Service Payment”** means the Interim Monthly Service Payments or the Monthly Service Payments, whichever is then in effect, 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 WCH.
- (p) **“WCH Default Termination Sum”** has the meaning given in Section 2.1(b) of this Schedule 23.
- (q) **“Non-Default Termination Sum”** has the meaning given in Section 4.1(b) of this Schedule 23.
- (r) **“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 WCH in that Payment Period.
- (s) **“Prohibited Acts Termination Sum”** has the meaning given to it in Section 5.1(b) of this Schedule 23.
- (t) **“Project Co Party Losses”** means, subject to Project Co’s obligations under this Project Agreement to limit any compensation to Project Co Parties:



- (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 any Project Co Parties 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 the Project Co Parties 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 Project Co Parties arising out of:

- (iii) any loss of overhead or profit of such Project Co Party 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 Project Co Parties 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 Project Co Parties 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.
- (u) **“Qualification Criteria”** means the criteria that WCH 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 WCH, acting reasonably.
- (v) **“Qualifying Tender”** means a tender that meets all of the Qualification Criteria.
- (w) **“Qualifying Tenderer”** means a tenderer who submits a Qualifying Tender.
- (x) **“Rectification Costs”** means, for the purposes of any Termination Date that occurs after the Interim Completion Date, an amount equal to the reasonable and proper costs incurred by WCH in a particular Payment Period or part of a Payment Period in ensuring that the Project Co Services are carried out.
- (y) **“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.
- (z) **“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.
- (aa) **“Tender Costs”** means the reasonable and proper costs of WCH incurred in carrying out the Tender Process or in connection with any calculation of the Estimated Fair Value.
- (bb) **“Tender Process”** means the process by which WCH 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.
- (cc) **“Tender Process Monitor”** has the meaning given in Section 3.3(g) of this Schedule 23.

## 2. COMPENSATION ON TERMINATION FOR WCH DEFAULT OR CONVENIENCE

### 2.1 Compensation

- (a) If Project Co terminates this Project Agreement pursuant to Section 43 of this Project Agreement or WCH terminates this Project Agreement pursuant to Section 44.3 of this Project Agreement, WCH shall pay to Project Co the WCH Default Termination Sum.
- (b) The **“WCH 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 WCH to Project Co in accordance with Sections 40.2(b) and 41.2(b) of this Project Agreement;
- (iv) the Employee Termination Payments and Project Co Party 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 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 WCH 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 WCH and, at no additional cost to Project Co, give WCH 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 WCH 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 WCH is entitled to set off pursuant to Section 31.13(a)(i) of this Project Agreement,

provided that the WCH 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)(iii) are not realized and applied pursuant thereto, Project Co shall, on payment of the WCH Default Termination Sum, assign such assets and rights to WCH.
- (d) WCH shall pay the WCH 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 WCH terminates this Project Agreement pursuant to Section 42 of this Project Agreement, WCH 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) WCH 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) WCH notifies Project Co on or before the date falling 30 days after the Termination Date; and
  - (ii) there is a Liquid Market,

but, otherwise, WCH 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 WCH 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) WCH 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) WCH 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 WCH under the Tender Process which would otherwise be prevented under Section 49 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, WCH 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 WCH’s compliance with the Tender Process. The Tender Process Monitor shall enter into a confidentiality agreement with WCH in a form acceptable to WCH 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 WCH as to

compliance with the Tender Process. WCH 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 WCH 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, WCH 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, WCH shall, irrespective of such Dispute, be entitled to enter into a New Agreement.
- (j) WCH shall pay the Adjusted Highest Qualifying Tender Price in accordance with Section 8 of this Schedule 23.
- (k) WCH may elect, by notice to Project Co at any time prior to WCH 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, WCH 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 WCH 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 WCH is in agreement with such notice, the provisions of Section 3.4 of this Schedule 23 shall apply. If WCH 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 WCH 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 WCH 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 WCH 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 [REDACTED]% 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 (i) the Interim Completion Payment and the Substantial Completion Payment, if any, remaining to be paid at the Termination Date, and (ii) 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 in each case 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 WCH 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 WCH 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 WCH 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) WCH 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 WCH FOR RELIEF EVENT**

**4.1 Consequences**

- (a) If WCH terminates this Project Agreement pursuant to Section 44.1 of this Project Agreement or if either Party terminates this Project Agreement pursuant to Section 44.2 of this Project Agreement, WCH 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 WCH to Project Co in accordance with Sections 40.2(b) and 41.2(b) of this Project Agreement;
  - (iv) the Employee Termination Payments and Project Co Party 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 WCH 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 WCH and, at no additional cost to Project Co, give WCH 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 WCH 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 WCH is entitled to set off pursuant to Section 31.13(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 WCH.
- (d) WCH 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 WCH terminates this Project Agreement as a result of a Project Co Event of Default for failing to comply with Section 57 of this Project Agreement, WCH 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 WCH to Project Co in accordance with Sections 40.2(b) and 41.2(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 WCH 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 WCH and, at no additional cost to Project Co, give WCH 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 WCH 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 WCH is entitled to set off pursuant to Section 31.13(a)(i) of this Project Agreement, provided that WCH shall only set off amounts which are due to WCH by Project Co pursuant to the terms of this Project Agreement if and to the extent the Prohibited Acts Termination Sum exceeds the Senior Debt Amount.
- (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 WCH.
- (d) WCH 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 WCH 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, WCH shall pay to Project Co a termination sum equivalent to, and calculated in accordance with Sections 5.1(b)(i), (ii), (iii), (iv) and (v) of this Schedule 23, less amounts which WCH is entitled to set off pursuant to Section 31.13(a)(i) of this Project Agreement.

- (b) WCH 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 44.1 of this Project Agreement, WCH 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) WCH 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 WCH an invoice for the relevant termination sum and sufficient supporting evidence, reasonably satisfactory to WCH, justifying the amount of the relevant termination sum including a detailed breakdown of each of the individual items comprising such sum.
- (b) WCH 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, 6 or 7 of this Schedule 23, if the applicable termination sum is negative, WCH shall have no obligation to make any payment to Project Co and Project Co shall, within 60 days after

the Invoice Date, pay to WCH 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, WCH 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 WCH 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 WCH 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 WCH 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, WCH shall have no obligation to make any payment to Project Co and Project Co shall, on the date of the New Agreement, pay WCH 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 WCH follows the no retendering procedure set out in Section 3.4 of this Schedule 23, WCH 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, WCH shall have no obligation to make any payment to Project Co and Project Co shall, on the Compensation Date, pay WCH 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) WCH 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 WCH’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 WCH 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 WCH 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) 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 having been maintained in accordance with the Scheduled 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 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 shall be in a condition which ensures that such element of the Facility 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, this Schedule 24 shall not apply to any Equipment to be maintained by WCH 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 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 and each element of the Facility (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 and each element of the Facility (subject to the exceptions specified in Section 2.2) will meet the Expiry Transition Requirements on the Expiry Date (the “**Expiry Transition Works**”), and specifying the Contract Year in which each of those Expiry Transition Works would be required;
- (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 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 Scheduled Maintenance Plan, the Five Year Maintenance 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 Scheduled Maintenance Plan, Five Year Maintenance Plan or Lifecycle Replacement Schedule.
- 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 Scheduled Maintenance Plan, Five Year Maintenance 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, WCH 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, WCH 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 WCH 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. WCH 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 WCH 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 WCH 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 WCH 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 WCH 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 WCH, provide a bond or letter of credit (the “**Expiry Transition Security**”) in favour of WCH in an amount equal to the amounts which WCH 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 WCH.

**5. Project Co Not Relieved of Obligations**

- 5.1 Notwithstanding:
- (a) any agreement of WCH to any Expiry Transition Works, Expiry Transition Works Costs or Expiry Transition Security;
  - (b) any participation of WCH 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 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 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, WCH may withdraw from the Escrow Account or call upon the Expiry Transition Security an amount equivalent to such Expiry Transition Works Costs, and WCH 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, WCH shall, within 20 Business Days of receipt by WCH 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 WCH 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**

No later than 90 days prior to the Interim Completion Date, Project Co shall revise this Appendix A – Lifecycle Replacement Schedule to Schedule 24 – Expiry Transition Procedure such that it complies with and is in accordance with the requirements of Section 5.15 (Lifecycle Replacement/ Refurbishment Schedule) of Part B of Part 1 of Schedule 3 of the RFP.

Project Co shall submit to the WCH Representative for review pursuant to Schedule 10 – Review Procedure the revised Appendix A – Lifecycle Replacement Schedule to Schedule 24 – Expiry Transition Procedure concurrently with the submission of the Scheduled Maintenance Plan under Section 26.1 of the Project Agreement.

**[REDACTED]**

**SCHEDULE 25**

**INSURANCE AND PERFORMANCE  
SECURITY REQUIREMENTS**

**ARTICLE 1  
WORKS PHASE INSURANCE COVERAGE**

- 1.1 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, exclusively through the Infrastructure Ontario Construction Insurance Program (IOCIP) the following insurances as further described in Appendix A to this Schedule 25:
- (a) “All Risks” Course of Construction Property, including Boiler and Machinery;
  - (b) “Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability;
  - (c) Project Specific Professional Liability; and
  - (d) Project Specific Pollution Liability (combined Contractors’ Pollution Liability and Pollution Legal Liability).
- 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) Automobile Liability;
  - (b) Commercial General Liability and Non-Owned Automobile Liability (to be maintained by the Construction Contractor and each of the Project Co Parties involved in the Works) with respect to off-site operations and activities;
  - (c) Aircraft and Watercraft Liability (if any exposure);
  - (d) “All Risks” Marine Cargo (if any exposure);
  - (e) “All Risks” Contractors’ Equipment;
  - (f) Comprehensive Crime; and
  - (g) WSIB.

**ARTICLE 2  
SERVICES PHASE INSURANCE COVERAGE**

- 2.1 Subject to Section 8, from and after the Interim Completion Date with respect to the Phase 1 Facility and after the Substantial Completion Date with respect to the entire Facility and until the Termination 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) “All Risks” Property;
- (b) Boiler and Machinery;
- (c) Commercial General Liability and Non-Owned Automobile Liability;
- (d) Environmental Impairment (Pollution) Liability;
- (e) Automobile Liability;
- (f) Comprehensive Crime; and
- (g) WSIB.

ARTICLE 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 WCH or by Project Co, shall in no way limit Project Co’s liability or obligations to WCH or WCH’s liability or obligations to Project Co, as applicable.

ARTICLE 4  
ADDITIONAL COVER

- 4.1 Without prejudice to the other provisions of this Schedule 25, WCH and Project Co shall, at all relevant times and at their own expense, obtain and maintain those insurances which they are required to obtain and maintain by Applicable Law, or that they consider necessary.
- 4.2 WCH reserves the right to require Project Co to purchase such additional insurance coverage as WCH may reasonably require. WCH 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 WCH may reasonably require from time to time. Any additional costs of such additional and/or amended insurance shall be borne by WCH and any cost savings resulting from the implementation of such additional and/or amended insurance shall be for the account of WCH.

ARTICLE 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 Project Co 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.

ARTICLE 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 WCH and Project Co shall, and shall require the WCH 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 WCH (or, as applicable, and if reasonably required by the insurer, between Project Co and those engaged by or through Project Co).

ARTICLE 7  
BENCHMARKING OF INSURANCE COSTS

- 7.1 For purposes of this Section 7, the following terms shall have the following meanings:
- (a) **"Actual Relevant Insurance Cost"** means the aggregate of (i) the annual insurance premiums reasonably incurred by Project Co to maintain the Relevant Insurance during the Insurance Review Period, but excluding Taxes and all broker's fees and commissions.
  - (b) **"Base Relevant Insurance Cost"** means \$[REDACTED] for the first Insurance Review Period and, thereafter, means the aggregate of the annual insurance premiums which were projected (as set out in the Financial Model) to be incurred by Project Co to maintain the Relevant Insurance during the Insurance Review Period, which amounts exclude Taxes and all broker's fees and commissions.
  - (c) **"Insurance Cost Differential"** means an amount, based on the Joint Insurance Cost Report, equal to  $(ARIC - BRIC) \pm PIC$  where:

ARIC is the Actual Relevant Insurance Cost;

BRIC is the Base Relevant Insurance Cost; and

PIC is any Project Insurance Change.

For the purpose of determining the Insurance Cost Differential, in the event that there is a net increase in the ARIC relative to the BRIC, the Project Insurance Change shall have a negative value and, in the event that there is a net decrease in the ARIC relative to the BRIC, the Project Insurance Change shall have a positive value.

- (d) **“Insurance Review Date”** means each anniversary of the Relevant Insurance Inception Date, except where such date lies beyond the end of the Project Term, in which case the Insurance Review Date shall be the last renewal date of the Relevant Insurance and prior to the Expiry Date.
- (e) **“Insurance Review Period”** means a one year period from the Relevant Insurance Inception Date and each subsequent one year period commencing on the first anniversary of the Relevant Insurance Inception Date, except where the end of such period lies beyond the end of the Project Term, in which case the Insurance Review Period shall be the period from the end of the penultimate Insurance Review Period to the last day of the Project Term.
- (f) **“Project Insurance Change”** means any net increase or net decrease in the Actual Relevant Insurance Cost relative to the Base Relevant Insurance Cost, arising from:
- (i) other than in respect of claims or re-ratings arising out of acts or omissions of WCH, a WCH Party or a WCH Service User, the claims history or re-rating of Project Co or any Project Co Party;
  - (ii) the effect of any change in deductible unless:
    - (1) such change is attributable to circumstances generally prevailing in the Ontario insurance market; and
    - (2) the deductible, further to such change, is either greater than or equal to the maximum deductibles set out in this Schedule 25; and
    - (3) in respect of the Relevant Insurance, such change is not attributable to claims made as the result of acts or omissions of Project Co or any Project Co Party; and
  - (iii) any other issue or factor other than circumstances generally prevailing in the Ontario insurance market.
- (g) **“Relevant Insurance”** means all policies of insurance to be obtained by Project Co in accordance with Section 2 of this Schedule 25.
- (h) **“Relevant Insurance Inception Date”** means the date on which the Relevant Insurance is first providing active insurance cover to Project Co and WCH, respectively, being a date no earlier than the Interim Completion Date.

7.2 No later than 60 days prior to each Insurance Review Date, Project Co’s insurance broker shall, at Project Co’s sole cost and expense, prepare a report on behalf of both Project Co and WCH (the **“Joint Insurance Cost Report”**), which contains the following information for the relevant Insurance Review Period:

- (a) a full breakdown of the Actual Relevant Insurance Cost;



- (b) a full breakdown of the Base Relevant Insurance Cost;
- (c) an assessment and quantification of each Project Insurance Change, together with the reasons therefor;
- (d) the opinion of Project Co's insurance broker as to the reasons why the Actual Relevant Insurance Cost has varied from the Base Relevant Insurance Cost, specifying the impact of each of the factors and quantifying the amount attributable to each factor;
- (e) the calculation of the Insurance Cost Differential; and
- (f) evidence satisfactory to WCH, acting reasonably, of any changes to circumstances generally prevailing in the Ontario insurance market that are claimed to account for the Insurance Cost Differential.

7.3 The Annual Service Payment will be subject to an adjustment in the amount of the Insurance Cost Differential (the "**Insurance Adjustment**") in accordance with Schedule 20 – Payment Mechanism

#### ARTICLE 8 UNINSURABLE RISKS

- 8.1 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 licensed 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 WCH's reasonable satisfaction that the foregoing definition applies to a particular risk.

- 8.2 Project Co shall notify WCH 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 WCH with all relevant details in relation to such risk, including a copy of the relevant insurance policy.
- 8.3 Project Co and WCH 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 WCH are able to agree to alternative arrangements, the Uninsurable Risk shall be managed in accordance with such alternative arrangements.

- 8.4 In the event that Project Co and WCH, 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, WCH 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 instalments 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 44.2 as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 44.2 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.
- 8.5 On the occurrence of an Uninsurable Risk, WCH 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 Risk 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 44.2 of the Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 44.2 of the Project Agreement 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.
- 8.6 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) Subject to Section 8.6(a), Project Co shall be relieved of its obligation to maintain insurance in respect of the Uninsurable Risk.
- 8.7 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.

- 8.8 From and after the Interim 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.

ARTICLE 9  
TOTAL OR SUBSTANTIAL DESTRUCTION

- 9.1 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.

ARTICLE 10  
SUBCONTRACTORS

- 10.1 Project Co shall require that all Project Co Parties 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 WCH may suffer as a direct result of Project Co's failure to comply with the foregoing.
- 10.2 If Project Co receives notice that any Project Co Party 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 Project Co Party from the Site and ensure that such Project Co Party does not perform any further part of the Project Operations until after such insurance coverage is put in place; or
  - (c) if the Project Co Party cannot be covered by a particular policy as required by this Schedule 25, replace the Project Co Party with a new Project Co Party 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 Project Co Parties shall be complied with.

ARTICLE 11  
RENEWAL

- 11.1 Project Co shall provide to WCH, 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 each such policy satisfactory to WCH, acting reasonably.

ARTICLE 12  
NAMED AND ADDITIONAL INSUREDS AND WAIVER OF SUBROGATION

- 12.1 All insurance provided by Project Co, shall:
- (a) include Project Co, WCH and Infrastructure Ontario as Named Insureds to the extent specified in Appendix A of this Schedule 25;
  - (b) include WCH, Infrastructure Ontario, MOHLTC, the Lenders 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) except with respect to the Project Specific Professional Liability specified in Part 1 of Appendix A to this Section 25 and Automobile Liability, Comprehensive Crime and WSIB specified in Parts 1 and 2 of Appendix A to this Schedule 25, contain a waiver of subrogation as against WCH, WCH Parties and their respective shareholders, officials, directors, officers, employees, servants, consultants (other than Design Consultants) and agents;
  - (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 WCH, without any right of contribution of any insurance carried by WCH.

ARTICLE 13  
CERTIFICATES OF INSURANCE AND CERTIFIED COPIES OF POLICIES

- 13.1 Prior to the commencement of any part of the Works, Project Co will provide WCH with certified copies of policies, confirming that the insurances specified in Section 1.1 have been obtained and are in full force and effect.
- 13.2 Prior to the commencement of any part of the Works, Project Co will provide WCH with certificates of insurance or certified copies of policies, confirming that the insurances specified in Section 1.2 have been obtained and are in full force and effect. If certificates of insurance are provided, certified copies of the entire contents of all relevant insurance policies will be subsequently provided to WCH no later than 90 days after execution of this Project Agreement.
- 13.3 Prior to the commencement of any part of the Project Co Services, Project Co will provide WCH with certificates of insurance or certified copies of policies, confirming that the insurances specified in Section 2.1 have been obtained and are in full force and effect. If certificates of insurance are provided, certified copies of the entire contents of all relevant insurance policies will subsequently be provided to WCH no later than 90 days after the Interim Completion Date with respect to insurance policies for the Phase 1 Facility and no later than 90 days after the Substantial Completion Date with respect to the entire Facility; however specimen wordings of all such insurance policies, along with the corresponding summary of coverage, limits and deductibles,

must be provided to WCH no later than 90 days prior to the Interim Completion Date with respect to the Phase 1 Facility and no later than 90 days prior to the Substantial Completion Date with respect to the entire Facility.

ARTICLE 14

FAILURE TO MEET INSURANCE REQUIREMENTS

- 14.1 If Project Co fails to obtain or maintain the insurance required by this Schedule 25, fails to furnish to WCH 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 WCH 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 WCH’s option, be payable by Project Co to WCH on demand or be deducted by WCH from the next payment or payments otherwise due to Project Co.
- 14.2 If coverage under any insurance policy required to be obtained by Project Co should lapse, be terminated or be cancelled, then, if directed by WCH, all work by Project Co shall immediately cease until satisfactory evidence of renewal is produced.

ARTICLE 15

MODIFICATION OR CANCELLATION OF POLICIES

- 15.1 Except as noted in Appendix A to this Schedule 25, all insurance provided by Project Co shall contain endorsements confirming that the policy will not be cancelled, adversely reduced, adversely materially altered or adversely materially amended without the insurer(s) giving at least ninety (90) days prior written notice by registered mail, at the address specified, to WCH, MOHLTC, the Lenders’ Agent and Infrastructure Ontario. For greater certainty, the terms “adversely reduced”, “adversely materially altered” and “adversely materially amended” as used in this provision shall mean any decrease or reduction in policy limits, aggregate limits or sub-limits (other than as a result of claims under the policy), any increase in any policy deductible or self-insured retention, any reduction in the policy coverage period, cancellation or suspension of coverage with respect to any insured parties from the time the policy was issued for that policy period, addition of any exclusions or restrictions from the time the policy was issued for that policy period and any reduction or restriction in the scope of coverage provided under the policy, in all cases when such adverse reduction, adverse material alteration or adverse material amendment is initiated by the insurer.
- 15.2 All insurance provided by Project Co shall contain endorsements confirming that, in the event of cancellation for non-payment of premium, the insurer(s) will give at least fifteen (15) days prior written notice by registered mail, at the address specified, to WCH, MOHLTC, the Lenders’ Agent and Infrastructure Ontario.
- 15.3 With respect to Services Phase insurances, only notice of cancellation will be required for the Automobile Liability and Comprehensive Crime described in Part 2 of Appendix A to this Schedule 25.

15.4 With respect to insurances described in Section 1.1 (a), (b) and (d), Section 1.2 (d) and Section 2.1(a), (b), (c) and (d), breach of any of the terms or conditions of the policies required to be provided by Project Co, or any negligence or wilful act or omission or false representation by an Insured under these policies, shall not invalidate the insurance with respect to WCH, Infrastructure Ontario, the Lenders or any other Insured, but only to the extent that such breach is not known to these parties.

ARTICLE 16  
INSURERS

16.1 All policies of insurance to be obtained by Project Co in accordance with this Schedule 25 shall be issued by financially sound Insurers acceptable to WCH and Lenders, acting reasonably, and, where required by statute, be licensed to insure such risk in the Province of Ontario.

16.2 To be eligible to provide insurance, an Insurer must have the capacity to provide the particular insurance and shall have current ratings from time to time of either:

- (a) a Financial Strength Rating of not lower than “A-” for three out of the previous five years but not lower than “B” at any time during those five years, and a Financial Size Category not lower than VII, such ratings being those established by A.M. Best Company (**Best**); or
- (b) a Long-Term Financial strength Rating of not lower than “A-” for three out of the past five years but not less than “BBB” at any time during those five years, a Short-Term Financial Strength Rating of not lower than “A-3” for three out of the previous five years and a Financial Enhancement Rating of not lower than “A-” for three out of the previous five years but not less than “BB+” at any time during those five years, such ratings being those established by Standard and Poor’s (**S&P**); or
- (c) if the Insurer is not rated by Best or S&P, an Insurer that is acceptable to WCH and Lenders, acting reasonably, with respect to the insurances required by this Schedule 25.

ARTICLE 17  
POLICY TERMS AND CONDITIONS

17.1 All policies of insurance to be obtained by Project Co in accordance with this Schedule 25 shall be in form and substance satisfactory to WCH and its insurance advisors, acting reasonably.

17.2 To achieve the minimum limits for any type of insurance required under Appendix A, it is permissible to arrange the insurance under a single policy, or by a combination of primary, umbrella and/or excess policies.

ARTICLE 18  
FAILURE TO COMPLY

18.1 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.

ARTICLE 19  
PERFORMANCE SECURITY REQUIREMENTS

19.1 [REDACTED]

19.2 [REDACTED]

ARTICLE 20  
INSURANCE TRUST AGREEMENT

20.1 All losses under (i) the “All Risks” Course of Construction Property Insurance policy, including Boiler & Machinery Insurance carried by Project Co prior to Substantial Completion; (ii) the Property Insurance carried by Project Co after Interim Completion; and (iii) the Boiler and Machinery Insurance carried by Project Co after Interim Completion, which, in each case relate to Equipment purchased by WCH, shall be payable solely to WCH and shall not be payable to the Account Trustee or distributed pursuant to the Insurance Trust Agreement.

**Appendix A – Insurance Requirements**



Works Phase Insurance – Part 1 Women’s College Hospital Redevelopment Project

**From First Access to Site until Substantial Completion Date (Insurance for Works Phase)**

**Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program**

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<p><b>"All Risks" Course of Construction Property Including Boiler and Machinery</b></p>	<p>Value declared to be equal to the estimated completed Project value of the Facility, including Property of Every Description, all Medical Equipment and all other property supplied by WCH or WCH Parties for incorporation into the Facility.</p> <p>All Existing Equipment from the start of decommissioning or removal from its original location , by or on behalf of Project Co, until such existing equipment has been relocated to the Facility and has become WCH's responsibility.</p> <p>All other Medical Equipment, other than Existing Equipment, until the later of the date such Medical Equipment has been commissioned or the date on which WCH becomes responsible for it.</p> <p>Delay in Start-up \$[REDACTED], covering a 24 month indemnity period, including Contingent Delayed Start-Up re losses at Suppliers' or Manufacturers' premises, or other temporary storage locations (\$[REDACTED] sub-limit)</p> <p>Soft Costs \$[REDACTED] (representing [REDACTED]% of Recurring / Continuing Soft Costs)</p>	<p>[REDACTED]% of loss value / \$[REDACTED] minimum Earthquake</p> <p>\$[REDACTED] Flood</p> <p>\$[REDACTED] Testing and Commissioning</p> <p>\$[REDACTED] All other losses</p> <p>30 days waiting period applicable to time element coverages</p> <p>48 hour waiting period applicable to Off Premises Services Service Interruption</p>	<p>"All Risks" Course of Construction Property Insurance covering the full insurable replacement cost of the Works including cold and hot testing / commissioning, of Boiler &amp; Machinery equipment, including HVAC, Delay in Start-Up, Soft Costs, with no early occupancy restriction.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by WCH, Infrastructure Ontario or the Lenders.</p>	<p>TBD</p>

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<p>Extra and Expediting Expense (minimum \$[REDACTED] sub-limit)</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>• Replacement Cost Valuation (Property)</li> <li>• Most Recent Technology Replacement Cost Valuation (Equipment or Machinery)</li> <li>• Flood (to policy limit with annual aggregate)</li> <li>• Natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with annual aggregate)</li> <li>• Electronic Data Processing equipment and media, including data restoration and re-creation costs</li> <li>• Transit</li> <li>• Unnamed locations</li> <li>• By-laws including Demolition, Increased Cost of Repairs and Replacement (subject to a \$[REDACTED] sub-limit only with respect to existing or renovated buildings)</li> <li>• Debris Removal (minimum \$[REDACTED] sub-limit)</li> <li>• Off Premises Services (\$[REDACTED] sub-limit)</li> <li>• Professional Fees (minimum \$[REDACTED] sub-limit)</li> <li>• Fire Fighting Expenses (minimum \$[REDACTED] sub-limit)</li> <li>• Radioactive contamination caused by sudden and accidental release of</li> </ul>			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> <li>radioactive isotopes (resulting from an accident to measuring, testing or medical equipment and subject to a \$[REDACTED] sub-limit)</li> <li>• Valuable Papers (minimum \$[REDACTED] sub-limit)</li> <li>• Accounts Receivable (minimum \$[REDACTED] sub-limit)</li> <li>• Green Building and LEED Upgrades (subject to a \$[REDACTED] sub-limit)</li> <li>• Defence Costs (subject to a \$[REDACTED] sub-limit)</li> <li>• Contamination Clean-up or Removal (minimum \$[REDACTED] sub-limit)</li> <li>• Ammonia Contamination (minimum \$[REDACTED] sub-limit)</li> <li>• LEED Recertification, Commissioning and Testing Expenses (subject to a \$[REDACTED] sub-limit)</li> <li>• Civil Authority Access Interruption (8 weeks)</li> <li>• Prevention of Ingress/Egress (8 weeks)</li> <li>• By-Laws including demolition and increased replacement / repair costs</li> <li>• Permission for Partial Occupancy prior to Substantial Completion</li> <li>• Off Premises Services Interruption</li> <li>• Cost of Carrying Project Financing (24 months), included in Delayed Start-Up or Soft Costs coverage</li> <li>• Margin of Profit Extension for</li> </ul>			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	Contractors			
	Permitted Exclusions:			
	<ul style="list-style-type: none"> <li>• Cyber risk</li> </ul>			
	<ul style="list-style-type: none"> <li>• Mould, fungi and fungal derivatives</li> </ul>			
	<ul style="list-style-type: none"> <li>• Faulty workmanship, materials construction, or design but resultant damage to be insured to a minimum DE4 standard</li> </ul>			
	<ul style="list-style-type: none"> <li>• War risk</li> </ul>			
	<ul style="list-style-type: none"> <li>• Terrorism</li> </ul>			
	<ul style="list-style-type: none"> <li>• Nuclear or radioactive contamination, except re radioactive isotopes intended for scientific, medical, industrial or commercial use</li> </ul>			
	<ul style="list-style-type: none"> <li>• Contractors’ Equipment</li> </ul>			
<i>Comments</i>	<ul style="list-style-type: none"> <li>• Named Insured includes Project Co, Lenders, Lender’s Agent, the Construction Contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, Infrastructure Ontario and WCH, as their respective interests may appear.</li> <li>• No provision permitted allowing a coinsurance penalty</li> <li>• Insurance shall be primary without right of contribution of any other insurance carried by any Named Insured</li> <li>• Additional key extensions of coverage: <ul style="list-style-type: none"> <li>– Underground services, temporary works involved in the Project such as scaffolding, hoarding, etc., Site preparation, including excavation and associated improvements, landscaping and property of others used in the construction Project</li> <li>– All loss proceeds payable in accordance with the Insurance Trust Agreement</li> <li>– Upon Interim Completion, coverage will cease with respect to the Phase 1 Facility and be replaced by Property and Boiler &amp; Machinery insurance – Services Phase for the Phase 1 Facility</li> <li>– Upon Substantial Completion, coverage will cease with respect to the Phase 2 Facility and be replaced by Property and Boiler &amp; Machinery insurance – Services Phase for the entire Facility</li> <li>– Waiver of Subrogation against all Named and Unnamed Insureds, including but not limited to Project Co, Infrastructure Ontario, WCH, contractors, subcontractors, professional consultants (other than for their Professional Liability), Lenders, Lenders’ Agent, as well as officers, directors and employees, servants, and agents of the foregoing</li> <li>– Frost or freezing to concrete – but only resultant damage from a peril not otherwise excluded</li> <li>– Liberalization Clause</li> <li>– Errors and Omissions</li> <li>– Breach of Conditions</li> <li>– Interims Payments Clause</li> </ul> </li> </ul>			

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<b>Underwriters</b>	Principal underwriters in compliance with Clause 16 of this Schedule.
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**Works Phase Insurance – Part 1 Women’s College Hospital Redevelopment Project  
From First Access to Site until Substantial Completion Date (Insurance for Works Phase)**

**Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program**

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<p><b>Wrap-Up Commercial General Liability and Non-Owned Automobile Liability</b></p>	<p>\$(REDACTED) each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations</p> <p>Sub-limits:</p> <ul style="list-style-type: none"> <li>• \$(REDACTED) Non-Owned Automobile Liability</li> <li>• \$(REDACTED) Sudden and Accidental Pollution and Hostile Fire Pollution Liability</li> <li>• \$(REDACTED) “All Risks” Tenants’ Legal Liability</li> <li>• \$(REDACTED) Prairie or Forest Fire Fighting Expenses</li> <li>• \$(REDACTED) Employee Benefits Administrative Errors and Omissions</li> <li>• \$(REDACTED) Contractors Rework</li> <li>• \$(REDACTED) Legal Liability for Damages To Non-owned Automobiles (SEF 94)</li> <li>• \$(REDACTED) Medical Payments</li> </ul> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>• Owner’s and Contractor’s Protective</li> <li>• Blanket Contractual (written and oral)</li> <li>• Direct and Contingent Employers Liability</li> <li>• Employee Benefits Administrative Errors and Omissions</li> <li>• Personal Injury (nil participation)</li> <li>• Cross Liability and Severability of Interest with respect to each insured party</li> <li>• Blasting/Demolition/Excavating/Under-</li> </ul>	<p>\$(REDACTED) per occurrence</p> <p>\$(REDACTED) per claim with respect to Contractors Rework</p> <p>\$(REDACTED) per claim with respect to each of SEF 94, Tenants’ Legal Liability, Prairie or Forest Fire Fighting Expenses and Employee Benefits Administrative Errors and Omissions</p>	<p>Wrap-Up Commercial General Liability and Non-Owned Automobile Liability insurance covering all construction operations on an occurrence basis against claims for Bodily Injury (including Death), Personal Injury, Property Damage (including Loss of Use), and including Products and Completed Operations Liability extension for a period of not less than 24 months, effective from the date of Substantial Completion.</p> <p>Coverage shall be maintained continuously from the date of the first activities at the Site, until the Substantial Completion Date, at which time the Products and Completed Operations extension will take effect.</p> <p>Pollution Liability – Sudden and Accidental Pollution coverage to be not less than IBC 2313 form (240 hours detection/240 hours notice coverage structure). To include Hostile Fire extension.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by WCH, MOHLTC, Infrastructure Ontario or the Lenders.</p>	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<p>Pinning/Pile Driving/Shoring/Caisson Work/Work below ground surface/tunnelling/grading, and similar operations associated with the Works, as applicable</p> <ul style="list-style-type: none"> <li>• Elevator and Hoist Collision Liability</li> <li>• Liberalized Notice of Claim Requirement, i.e., requirement to report will commence when knowledge is held by a designated Project person(s) – to be identified by Project Co</li> <li>• Non-Owned Automobile Liability</li> <li>• Tenants' Legal Liability (All Risks) – subject to sub-limit</li> <li>• Medical Expenses – subject to sub-limit</li> <li>• Prairie or Forest Fire Fighting Expenses – subject to sub-limit</li> <li>• Sudden and Accidental Pollution – subject to sub-limit</li> <li>• Permission for Unlicensed Vehicles (partial road use)</li> <li>• Unlicensed Equipment</li> <li>• Loss of Use Without Property Damage</li> <li>• Loading and Unloading of Automobiles</li> <li>• Broad Form Property Damage</li> <li>• Broad Form Completed Operations</li> <li>• Intentional Injury, committed to Protect Persons or Property</li> <li>• Accident Benefits</li> <li>• Worldwide Territory, subject to suits being brought in Canada or the US</li> <li>• Aggregate Reinstatement (in the event that the Products and Completed Operations aggregate is eroded between Interim Completion and Substantial Completion</li> </ul>			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>• Injury to employees, where WSIB provides valid coverage</li> <li>• Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations extension period</li> <li>• Operation of licensed motor vehicles, other than attached machinery while used for its purpose, or at the Project Site</li> <li>• Physical damage to the Project, except during Broad Form Products and Completed Operations extension period</li> <li>• Cyber risk</li> <li>• Mould, fungi and fungal derivatives</li> <li>• Professional liability of engineers, architects, and other professional consultants</li> <li>• Nuclear or radioactive contamination, except release radioactive isotopes intended for scientific, medical, industrial or commercial use</li> </ul>				
<p><i>Comments</i></p>	<ul style="list-style-type: none"> <li>• Named Insured includes Project Co and its Affiliates, WCH, Infrastructure Ontario, the Lenders, Project Co parties involved in the Works, including all other contractors, subcontractors, sub-subcontractors, suppliers while working on Site, tradesmen while working on Site; engineers, architects, consultants and sub-consultants, (other than for Professional Liability); others as Additional Insureds, as may be required from time to time, arising from all operations and activities pertaining to the Works and the control and use of the Site</li> <li>• Directors, officers, shareholders, employees of the insured parties involved in the Works covered as Additional Insureds</li> <li>• MOHLTC as Additional Insureds</li> <li>• Insurance primary without right of contribution of any other insurance carried by any Named Insured</li> <li>• Aggregate limits will be permitted for Products and Completed Operations, Prairie and Forest Fire Fighting Expenses, Sudden and Accidental Pollution and Hostile Fire Liability and Employee Benefits Administrative Errors &amp; Omissions Liability; no policy general aggregate will be permitted</li> <li>• Professional service activities integral to the Project, but not covering engineers, architects or other professional consultants, i.e., incidental professional liability risk of a Named Insured and their employed professionals is to be covered, but not the professional liability of independent fee-for-service professional consultants, architects or engineers</li> </ul>			



**Women’s College Hospital**

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- Waiver of Subrogation or insurers’ rights of recovery, against all Named and/or Additional Insureds, including Project Co, WCH, Infrastructure Ontario, contractors, subcontractors or sub-subcontractors; professional consultants, engineers and architects (other than for their Professional Liability); Lenders, Lenders’ Agent, as well as officers, directors, employees, servants and agents of the foregoing

**Underwriters**      Principal underwriters in compliance with Clause 16 of this Schedule.

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**Works Phase Insurance – Part 1 Women’s College Hospital Redevelopment Project**

**From First Access to Site until Substantial Completion Date (Insurance for Works Phase)**

**Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program**

Type	Amount	Maximum Self-Insured Retention	Principal Cover	Estimated Premium
<b>Project Specific Professional Liability</b>	<p> <b>[\$[REDACTED]]</b> minimum per claim / <b>[\$[REDACTED]]</b> in the aggregate (inclusive of defense and related costs and supplementary payments).                 </p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>• Primary Insurance extension</li> <li>• Automatic addition of firms (120 day notice provision)</li> <li>• Present, former partner, executive officer, director or shareholder of Named Insureds while acting within their scope of duties for the Named Insured</li> <li>• Any individuals or personal corporations retained by the Named Insured under a personal services contract</li> <li>• Claim defined as a written or oral demand for money or a written or oral allegation in breach in the rendering or failure to render professional services received by the Insured or Named Insured and resulting from a single error, omission or negligent act</li> <li>• Lawyer fees and associated expenses incurred in the investigation, defence, settlement, arbitration or litigation of claims</li> </ul>	<p><b>[\$[REDACTED]]</b> per claim</p>	<p>Project Specific Professional Liability Insurance in connection with the design and construction of the Project from beginning of first design, through the entire construction period, to Substantial Completion plus coverage for an extended reporting period of not less than 36 months.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by WCH, Infrastructure Ontario or the Lenders.</p>	

Type	Amount	Maximum Self-Insured Retention	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> <li>• Duty to defend, even if the allegations are groundless, false or fraudulent</li> <li>• Worldwide Territory, subject to suits brought in Canada</li> <li>• Aggregate Reinstatement (in the event that the policy aggregate is eroded between Interim Completion and Substantial Completion)</li> </ul> <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>• Express warranties or guarantees</li> <li>• Estimates on profit, return</li> <li>• Faulty workmanship, construction or work which is alleged or in fact not constructed in accordance with the design of the Project or the construction documents</li> <li>• Design or manufacture of any good or products sold or supplied by the Named Insured</li> <li>• Terrorism</li> <li>• Nuclear Liability</li> <li>• Judgments and awards deemed uninsurable by law</li> <li>• Liability assumed under design contract, unless such liability would have attached to the Named Insured by law in the absence of such agreement</li> <li>• Punitive or exemplary damages, fines, penalties or interest or liquidated punitive or exemplary damages or fees</li> <li>• Refusal to employ, termination</li> </ul>			

Type	Amount	Maximum Self-Insured Retention	Principal Cover	Estimated Premium
	of employment, humiliation or discrimination on any basis or other employment related practices or policies			
<i>Comments</i>	<ul style="list-style-type: none"> <li>• Named Insured: Project Co (as appropriate), all engineers, architects, and other professional consultants that provide professional design services in connection with the Project</li> <li>• Professional Services covered: Including but not limited to all Architectural, Engineering, Land Surveying, Environmental, Landscape Architectural, Interior Design/Space Planning, Soil and Material Testing Services, Geotechnical Services, and Procurement Services, including their replacements and/or sub-consultants of any tier</li> <li>• Retroactive Date: Full retroactive coverage from date of first design activity</li> <li>• Policy to be non-cancellable except for premium non-payment, material misrepresentation or concealment of facts, or a material breach of any condition of the policy</li> </ul>			
<b>Underwriters</b>	Principal underwriters in compliance with Clause 16 of this Schedule.			

**Works Phase Insurance – Part 1 Women’s College Hospital Redevelopment Project**

**From First Access to Site until Substantial Completion Date (Insurance for Works Phase)**

**Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program**

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<p><b>Project Specific Pollution Liability (combined Contractors’ Pollution Liability and Pollution Legal Liability):</b></p> <ul style="list-style-type: none"> <li>• Contractors Pollution Liability (Claims Made)</li> <li>• Commercial Pollution Legal Liability (Claims Made)</li> </ul> <p>Combined Limit subject to Commercial Pollution Legal Liability with a minimum \$[REDACTED] sub-limit</p>	<p>\$[REDACTED] per claim and in the aggregate for all claims, inclusive of defense and all costs and expenses</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>• Hazardous Substances occurring at or emanating from the Facility or Site during the Policy Period</li> <li>• Microbial Matter (including Fungus/Mould)</li> <li>• Underground / above ground storage tanks</li> <li>• First Party Restoration and Clean-up Costs</li> <li>• Disposal Site Extension, including Transportation (reporting required)</li> <li>• Duty to Defend</li> <li>• Canada and US Territory</li> <li>• Contractual Liability</li> <li>• Emergency Response Costs</li> <li>• Aggregate Reinstatement (in the event that the policy aggregate is eroded between Interim Completion and Substantial Completion)</li> </ul> <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>• Terrorism</li> <li>• War</li> <li>• Intentional Non-compliance</li> <li>• Prior Knowledge</li> </ul>	<p>\$[REDACTED] per claim inclusive of defense and all costs and expenses</p>	<p>Pollution Liability insurance covering third party bodily injury, property damage consequential loss or damage, including clean-up and restoration costs, both at the Site and Off-Site, as required.</p> <p>Extended Reporting Period: Minimum of 36 months after Substantial Completion Date.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by WCH, MOHLTC, Infrastructure Ontario or the Lenders.</p>	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> <li>• WSIB</li> <li>• Employers' Liability</li> <li>• Professional Liability</li> <li>• Nuclear Liability</li> <li>• Property Damage to Motor Vehicles during Transportation</li> </ul>			
<i>Comments</i>	<ul style="list-style-type: none"> <li>• Named Insured will include Project Co, its Affiliates, Project Co parties and all other parties engaged in the Works, including contractors, subcontractors, sub-subcontractors, consultants and sub-consultants</li> <li>• WCH, MOHLTC, Infrastructure Ontario, and the Lenders will be identified as additional insureds, or insured clients of Project Co and its Affiliates</li> <li>• The directors, officers, shareholders, and employees of the foregoing shall be additional insureds</li> </ul>			
<b>Underwriters</b>	Principal underwriters in compliance with Clause 16 of this Schedule.			

**Works Phase Insurance – Part 1 Women’s College Hospital Redevelopment Project  
From First Access to Site until Substantial Completion Date (Insurance for Works Phase)  
Insurances to be provided, or caused to be provided, by Project Co**

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<b>Automobile Liability</b>	<p>[\$REDACTED] (Minimum) for Project Co and Project Co’s Construction Contractor vehicles</p> <p>[\$REDACTED] (Minimum) for vehicles of any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons working on or at the Site</p>		<p>Standard Ontario Owners Form For all vehicles operated by Project Co, Contractor, all subcontractors, sub-subcontractors, consultants, and sub-consultants, operated in connection with the Project.</p> <p>Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle.</p> <p>Policies shall be endorsed to preclude cancellation, except upon 60 days prior written notice provided to WCH, MOHLTC, the Lenders and Infrastructure Ontario.</p>	
<p><b>Commercial General Liability and Non-Owned Automobile Liability</b></p> <p>For Project Co, the Construction Contractor, all subcontractors, sub-subcontractors, consultants and sub-consultants, including Direct and Contingent Employers Liability, Products and Completed Operations</p>	<p>[\$REDACTED] each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations for Project Co and Project Co’s Construction Contractor</p> <p>[\$REDACTED] each occurrence, and in the annual aggregate with respect to Broad Form Completed Operations for any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons involved in the Works</p> <p>In both instances, limits of liability may be structured as any combination of Primary plus supplementary layers and Umbrella and/or Excess, or Primary plus Umbrella and/or Excess</p> <p>Sub-limits (Project Co and Project Co’s</p>		<p>Commercial General Liability insurance covering all operations on an occurrence basis against claims for Bodily Injury (including Death), Broad Form Property Damage (including Loss of Use), and including Broad Form Products and Completed Operations Liability.</p> <p>This Commercial General Liability Insurance will cover Off-Site activities connected to the Project and Products and Completed Operations Liability beyond the "Wrap-Up" Commercial General Liability Insurance policy’s Products and Completed Operations extension period.</p> <p>This insurance shall be maintained in effect, during the Works phase until twelve (12) months following the earlier of the termination of the insured’s person’s involvement in the Works and the date of issuance of the Substantial Completion Certificate for the Works.</p>	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
Liability, and Owner’s and Contractor’s Protective extensions	Construction Contractor): <ul style="list-style-type: none"> <li>• Full policy limits with respect to Non-Owned Automobile Liability</li> <li>• <b>\$(REDACTED)</b> Prairie or Forest Fire Fighting Expenses</li> </ul> <p>Principal Extensions (required to be provided by the Project Co. and its Construction Contractor; shall be endeavoured to be provided by any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons involved in the Works):</p> <ul style="list-style-type: none"> <li>• Owner’s and Contractor’s Protective</li> <li>• Blanket Contractual (written)</li> <li>• Direct and Contingent Employers Liability</li> <li>• Personal Injury (nil participation)</li> <li>• Cross Liability and Severability of Interest with respect to each insured party</li> <li>• Blasting/Demolition/Excavating/Under-Pinning/Pile Driving/Shoring/Caisson Work/Work below ground surface/tunnelling/grading, and similar operations associated with the Works as applicable</li> <li>• Elevator and Hoist Collision Liability</li> <li>• Non-Owned Automobile Liability</li> <li>• Prairie or Forest Fire Fighting Expenses – subject to sub-limit</li> <li>• Permission for Unlicensed Vehicles’ (partial road use)</li> <li>• Unlicensed Equipment</li> <li>• Loss of Use Without Property Damage</li> <li>• Loading and Unloading of Automobiles</li> <li>• Broad Form Property Damage</li> </ul>		Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to WCH, MOHLTC, the Lenders and Infrastructure Ontario.	



Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> <li>• Broad Form Completed Operations</li> <li>• Intentional Injury, committed to Protect Persons or Property</li> <li>• Worldwide Territory, subject to suits being brought in Canada or the US</li> </ul> <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>• Injury to employees, where WSIB provides valid coverage</li> <li>• Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations extension period</li> <li>• Operation of licensed motor vehicles, other than attached machinery while used for its purpose, or at the Project Site</li> <li>• Physical damage to the Project, except during Broad Form Products and Completed Operations extension period</li> <li>• Cyber risk</li> <li>• Mould, fungi and fungal derivatives</li> <li>• Professional liability of engineers, architects, and other professional consultants</li> <li>• Nuclear or radioactive contamination, except release of radioactive isotopes intended for scientific, medical, industrial or commercial use</li> </ul>			
<i>Comments</i>	<ul style="list-style-type: none"> <li>• WCH, MOHLTC, Infrastructure Ontario and the Lenders will be identified as additional insureds, or insured clients of Project Co and its Affiliates</li> </ul>			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<b>Aircraft and Watercraft Liability</b>  (If any exposure)	Minimum \$[REDACTED] inclusive, including \$[REDACTED] passenger hazard – Owned Aircraft  Minimum \$[REDACTED] inclusive – Non-Owned Aircraft  Minimum \$[REDACTED] inclusive Owned or Non-Owned Watercraft	To be determined	Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to WCH, MOHLTC, the Lenders and Infrastructure Ontario.	
<i>Comments</i>				
	<ul style="list-style-type: none"> <li>WCH, Infrastructure Ontario and the Lenders will be identified as additional insureds, or insured clients of Project Co and its Affiliates</li> </ul>			
<b>“All Risks” Ocean Marine Cargo</b>  (If any exposure)	[REDACTED]% Replacement Cost Valuation basis	[\$REDACTED]	Property of Every description destined for incorporation into the Facility, during marine transit, on a full replacement value basis, with no co-insurance provision.  This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by WCH, Infrastructure Ontario or the Lenders.	
<i>Comments</i>				
	<ul style="list-style-type: none"> <li>Named Insured includes Project Co, Lenders, Lender’s Agent, the Construction Contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, Infrastructure Ontario, and WCH, as their respective interests may appear.</li> </ul>			
<b>“All Risks” Contractors’ Equipment</b>  To cover Project Co, contractors, subcontractors, sub-subcontractors, consultants and	If Site equipment is three years old or less the sum insured shall be equal to [REDACTED]% of the replacement value of all contractors’ equipment used at the Project. If Site equipment is more than three years old, actual cash value basis of loss settlement is acceptable		All Risks coverage on all owned, rented, leased or borrowed contractors’ equipment, used at the Project Site.	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
sub-consultants				
<i>Comments</i>	<ul style="list-style-type: none"> <li>Waiver of Subrogation rights against Project Co, WCH, Infrastructure Ontario, Construction Contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, Lenders, Lenders’ Agent, as well as officers, directors, shareholders and employees of the foregoing</li> </ul>			
<b>Comprehensive Crime</b>	<p>[\$REDACTED] per loss with respect to Employee Dishonesty</p>		<p>Comprehensive Crime insurance, including coverage for Employee Dishonesty insurance against the fraudulent/dishonest acts of employees of Project Co and Project Co Parties, 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.</p> <p>Custodial endorsement extending protection to third parties.</p> <p>Insurance primary without right of contribution of any other insurance carried by WCH, Infrastructure Ontario or the Lenders.</p>	
<b>Underwriters (All non-IOCIP Works Phase insurances that are to be provided or caused to be provided by Project Co)</b>	Principal underwriters in compliance with Clause 16 of this Schedule.			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<b>WSIB</b>	In accordance with Ontario Act's established benefits and schedules	Not Applicable	<p>(i) Project Co and its Affiliates shall obtain and maintain at Project Co's expense, WSIB Insurance, in accordance with the Province of Ontario requirements.</p> <p>(ii) Project Co shall ensure that satisfactory evidence of WSIB Insurance is provided by all Project Co Parties, including all other consultants, sub consultants, contractors, subcontractors, suppliers and tradesmen working at the Site.</p> <p>Prior to commencement of the work, each of the foregoing shall provide satisfactory written confirmation of compliance, from the appropriate authority, including confirmation that all required assessments have been paid to date.</p> <p>Upon Substantial Completion of the Facility, Project Co shall be provided with satisfactory written confirmation that all required assessments have been paid to date.</p> <p>On request, within 30 days of such request, Project Co shall deliver to WCH evidence of the WSIB coverage maintained by any person involved in the Works, or confirmation of that person's exemption from WSIB coverage.</p>	

Services Phase Insurance – Part 2 Women’s College Hospital Redevelopment Project

**Insurance to be provided, or caused to be provided, by Project Co from Interim Completion Date with respect to the Phase 1 Facility and from Substantial Completion Date with respect to the entire Facility until Termination Date (Insurance for Services Phase)**

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<p><b>“All Risk” Property</b></p>	<p>Full Replacement Cost of all property associated with the Facility, while on the Site or while in transit, including material and supplies destined for incorporation into the Facility or intended to be used in the performance of Project Co services and all In-Contract Equipment</p> <p>For certainty, Project Co is not required to insure Medical Equipment</p> <p>Business Interruption (Gross Revenue or Gross Profits Form), – 24 months period of indemnity – including interdependency and contingent coverage re losses at key supplier premises, property in transit or in storage off-Site</p> <p>Extra and Expediting Expenses (minimum \$[REDACTED] sub-limit)</p> <p>If commercially available, such business interruption insurance should be extended to include infectious disease as a peril that triggers the business interruption coverage</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>• Replacement Cost Valuation</li> </ul>	<p>[REDACTED]% of loss value / \$[REDACTED] minimum Earthquake</p> <p>\$[REDACTED] Flood</p> <p>\$[REDACTED] All other losses</p> <p>30 days waiting period applicable to time element coverages</p>	<p>All Risks Property insurance covering all property to be insured with a sum insured equivalent to the full replacement cost value of the property insured, and including necessary business interruption and expediting expenses.</p> <p>Such insurance will include Inland Transportation, By-Laws and Off Premises coverage.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by WCH, Infrastructure Ontario or the Lenders.</p>	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> <li>• (Property)</li> <li>• Most Recent Technology Replacement Cost Valuation (Equipment or Machinery)</li> <li>• Flood (to policy limit with annual aggregate)</li> <li>• Natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with annual aggregate)</li> <li>• Electronic Data Processing equipment and media, including data restoration and re-creation costs</li> <li>• Debris Removal (minimum \$[REDACTED] sub-limit)</li> <li>• Transit (minimum \$[REDACTED] sub-limit)</li> <li>• Unnamed locations (minimum \$[REDACTED] sub-limit)</li> <li>• Professional Fees (minimum \$[REDACTED] sub-limit)</li> <li>• Fire Fighting Expenses (minimum \$[REDACTED] sub-limit)</li> <li>• Valuable Papers (minimum \$[REDACTED] sub-limit)</li> <li>• Accounts Receivable (minimum \$[REDACTED] sub-limit)</li> <li>• Contamination Clean-up or Removal (minimum \$[REDACTED] sub-limit)</li> <li>• Civil Authority Access Interruption (minimum 8 weeks)</li> <li>• Prevention of Ingress/Egress (minimum 8 weeks)</li> <li>• Automatic Coverage for Newly Acquired Locations (90 day reporting period acceptable)</li> </ul>			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> <li>• By-Laws including demolition and increased replacement / repair costs</li> <li>• Permission for Partial Occupancy prior to Substantial Completion</li> <li>• Off premises services interruption</li> <li>• By-laws including demolition, increased cost of repairs and replacement</li> <li>• Margin of profit extension for contractors</li> <li>• Radioactive contamination caused by sudden and accidental release of radioactive isotopes resulting from an accident to medical equipment)</li> <li>• Joint Loss Agreement (if separate “All Risk” Property and Boiler and Machinery policies are arranged)</li> </ul> <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>• Cyber risk</li> <li>• Mould, fungi and fungal derivatives</li> <li>• Faulty workmanship, materials construction, or design but resultant damage to be insured</li> <li>• War risk</li> <li>• Terrorism</li> <li>• Nuclear or radioactive contamination, except re radioactive isotopes intended for scientific, medical, industrial or commercial use</li> </ul>			

**Women’s College Hospital**

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<i>Comments</i>	<ul style="list-style-type: none"><li>• Named Insured will include Project Co, WCH and the Lenders - Lenders will be covered as Loss Payee and Mortgagee</li><li>• All loss proceeds payable to the Insurance Trustee in accordance with the Insurance Trust Agreement</li><li>• No provision allowing a coinsurance penalty</li><li>• Waiver of Subrogation against all Insureds, including but not limited to Project Co, the Lenders, Lenders’ Agent, as well as officers, directors and employees, servants, and agents of the foregoing</li></ul>
<b>Underwriters</b>	Principal underwriters in compliance with Clause 16 of this Schedule.

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Services Phase Insurance – Part 2 Women’s College Hospital Redevelopment Project

**Insurance to be provided, or caused to be provided, by Project Co from Interim Completion Date with respect to the Phase 1 Facility and from Substantial Completion Date with respect to the entire Facility until Termination Date (Insurance for Services Phase)**

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<b>Boiler &amp; Machinery</b>	<p>Limit of \$[REDACTED] each Accident to an Insured Object</p> <p>\$[REDACTED] Business Interruption Insurance included, subject to a 24 month period of indemnity</p> <p>If a covered accident to insured objects(s) causes an interruption to WCH services or WCH services, the Business Interruption loss will include the costs of carrying the Project financing, during the affected period</p> <p>Sub-limits (\$[REDACTED] each):</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>• Extra Expense</li> <li>• Hazardous Substances</li> <li>• Professional Fees</li> <li>• Water Damage</li> </ul>	<p>\$[REDACTED] per claim, Direct Damage</p> <p>Business Interruption – Maximum 30 day Waiting Period</p>	<p>From the date of Substantial Performance, or activation, whichever shall first occur, Boiler &amp; Machinery insurance on a Comprehensive Policy Form basis including HVAC, but not medical equipment, on a full replacement cost basis, including all appropriate endorsements and extensions as well as necessary business interruption and Expediting and Extra Expense coverage.</p> <p>Boiler and Machinery Insurance may be arranged on a combined Property/Boiler and Machinery basis, subject to the Boiler and Machinery section of such a policy being arranged on a Comprehensive Form basis.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by WCH, Infrastructure Ontario or the Lenders.</p>	
<i>Comments</i>	<ul style="list-style-type: none"> <li>• Named Insured will include Project Co, WCH, and the Lenders - Lenders will be covered as Loss Payee and Mortgagee</li> <li>• All loss proceeds payable to the Insurance Trustee in accordance with the Insurance Trust Agreement</li> <li>• As nearly as possible, coverage will be structured to dovetail with the Property Insurance</li> </ul>			
<b>Underwriters</b>	Principal underwriters in compliance with Clause 16 of this Schedule.			

**Women’s College Hospital**

Services Phase Insurance – Part 2 Women’s College Hospital Redevelopment Project

**Insurance to be provided, or caused to be provided, by Project Co from Interim Completion Date with respect to the Phase 1 Facility and from Substantial Completion Date with respect to the entire Facility until Termination Date (Insurance for Services Phase)**

Type	Amount	Maximum Deductible	Principal Cover	Estimated Annual Premium
<b>Commercial General Liability and Non-Owned Automobile Liability</b>	\$[REDACTED] each accident or occurrence and in the aggregate with respect to Products and Completed Operations	\$[REDACTED] per occurrence	Commercial General Liability insurance covering all operations on an occurrence basis against claims for personal injury (including bodily injury and death), Broad Form Property Damage (including Loss of Use), and including Broad Form Products and Completed Operation Liability insurance.	
	Sub-limits:		Coverage shall be maintained continuously from the date of Interim Completion Date until Termination Date.	
	<ul style="list-style-type: none"> <li>• \$[REDACTED] Non-Owned Automobile Liability, unless coverage provided under automobile liability insurance</li> <li>• \$[REDACTED] Sudden and Accidental Pollution, and Hostile Fire Pollution</li> <li>• \$[REDACTED] “All Risks” Tenants’ Legal Liability, if any exposure</li> <li>• \$[REDACTED] Prairie or Forest Fire Fighting Expense</li> <li>• \$[REDACTED] Employee Benefits Administrative Errors and Omission Liability</li> <li>• \$[REDACTED] Legal Liability for Damages To Non-owned Automobiles (SEF 94), unless coverage provided under automobile liability insurance</li> <li>• \$[REDACTED] Medical Payments</li> </ul>		Pollution Liability – Sudden and Accidental Pollution coverage to be not less than IBC 2313 form (120 hours detection/120 hours notice coverage structure). To include Hostile Fire extension.	
	Principal Extensions:		This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by WCH, MOHLTC, Infrastructure Ontario or the Lenders.	
	<ul style="list-style-type: none"> <li>• Owner’s and Contractor’s Protective</li> <li>• Blanket Contractual (written</li> </ul>			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Annual Premium
	<ul style="list-style-type: none"> <li>and oral)</li> <li>• Direct and Contingent Employers Liability</li> <li>• Employee Benefits</li> <li>• Administrative Errors and Omissions</li> <li>• Personal Injury (nil participation)</li> <li>• Cross Liability and Severability of Interest with respect to each insured party</li> <li>• Blasting/Demolition/Excavating / Under-Pinning/Pile Driving/Shoring/Caisson Work/Work below ground surface/tunnelling/grading, and similar operations as applicable</li> <li>• Elevator and Hoist Collision Liability</li> <li>• Liberalized Notice of Claim Requirement, i.e., requirement to report will commence when knowledge is held by a designated Project person(s) – to be identified by Project Co</li> <li>• Non-owned Automobile Tenants' Legal Liability (All Risks) – subject to sub-limit</li> <li>• Medical Expenses – subject to sub limit</li> <li>• Prairie or Forest Fire Fighting Expenses – subject to sub-limit</li> <li>• Sudden and Accidental Pollution – subject to sub-limit</li> <li>• Permission for unlicensed vehicles' partial road use</li> <li>• Unlicensed Equipment</li> <li>• Loss of Use Without Property Damage</li> <li>• Loading and Unloading of</li> </ul>			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Annual Premium
	<ul style="list-style-type: none"> <li>Automobiles</li> <li>• Broad Form Property Damage</li> <li>• Broad Form Completed Operations</li> <li>• Intentional Injury, committed to Protect Persons or Property</li> <li>• Voluntary Compensation</li> <li>• Worldwide Territory, subject to suits being brought in Canada or the US</li> </ul> <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>• Injury to employees, where WSIB provides valid coverage</li> <li>• Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations extension period</li> <li>• Operation of licensed motor vehicles, other than attached machinery while used for its purpose, or at the Project Site</li> <li>• Cyber risk</li> <li>• Mould, fungi and fungal derivatives</li> <li>• Professional liability of engineers, architects, and other professional consultants</li> <li>• Asbestos</li> <li>• Nuclear or radioactive contamination, except radioactive isotopes intended for scientific, medical, industrial or commercial use</li> <li>• The direct or indirect provision of professional medical services and malpractice liability in connection with or resulting from the Clinical</li> </ul>			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Annual Premium
	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			
<i>Comments</i>	<ul style="list-style-type: none"> <li>• Named Insured includes Project Co and its Affiliates, WCH, Infrastructure Ontario, the Lenders, Project Co parties involved in the Project Co Services, including all other contractors, subcontractors, sub-subcontractors, suppliers while working on Site, tradesmen while working on Site; engineers, architects, consultants and sub-consultants, (other than for Professional Liability); and others as additional insureds, as may be required from time to time, arising from all operations and activities pertaining to the Project Co Services and the control and use of the Site</li> <li>• Directors, officers, shareholders, employees of the insured parties involved in the Project Co Services are covered as Additional Insureds</li> <li>• MOHLTC as Additional Insureds</li> <li>• Insurance primary without right of contribution of any other insurance carried by any Named Insured</li> <li>• Aggregate limits will be permitted for Products and Completed Operations, Prairie and Forest Fire Fighting Expenses and Employee Benefits Administrative Errors &amp; Omissions Liability; no policy general aggregate will be permitted</li> <li>• Professional service activities integral to the Project Co Services, but not covering engineers, architects or other professional consultants, i.e., incidental professional liability risk of a Named Insured and their employed professionals is to be covered, but not the professional liability of independent fee-for-service professional consultants, architects or engineers</li> <li>• Waiver of Subrogation or insurers’ rights of recovery, against all Named and/or Additional Insureds, including Project Co, WCH, MOHLTC, Infrastructure Ontario, contractors, subcontractors and sub-subcontractors; professional consultants, engineers and architects (other than for their Professional Liability); Lenders, Lenders’ Agent, as well as officers, directors, employees, servants and agents of the foregoing</li> </ul>			
<b>Underwriters</b>	Principal underwriters in compliance with Clause 16 of this Schedule.			

Services Phase Insurance – Part 2 Women’s College Hospital Redevelopment Project

**Insurance to be provided, or caused to be provided, by Project Co from Interim Completion Date with respect to the Phase 1 Facility and from Substantial Completion Date with respect to the entire Facility until Termination Date (Insurance for Services Phase)**

Type	Amount	Maximum Deductible	Principal Cover	Estimated Annual Premium
<b>Environmental Impairment (Pollution) Liability</b>	Minimum \$[REDACTED] per claim and in the aggregate for all claims, inclusive of defense and all costs and expenses  Principal Extensions: <ul style="list-style-type: none"> <li>• Hazardous Substances occurring at or emanating from the Facility or Site during the Policy Period</li> <li>• Microbial Matter (including Fungus/Mould)</li> <li>• Biological Agents</li> <li>• Underground / above ground storage tanks</li> <li>• First Party Restoration and Clean-up</li> <li>• Duty to Defend</li> <li>• Contractual Liability</li> </ul> Permitted Exclusions: <ul style="list-style-type: none"> <li>• Terrorism</li> <li>• Intentional Non-Compliance</li> <li>• WSIB</li> <li>• War</li> <li>• Employers Liability</li> <li>• Nuclear Liability</li> <li>• Professional Liability</li> </ul>	\$[REDACTED] per claim inclusive of defense and all costs and expenses	Pollution Liability insurance covering third party bodily injury and property damage liability, consequential loss or damage, including necessary on-Site and off-Site clean-up costs, both at the Site and Off-Site, as required. Coverage is extended to include underground and above ground storage tanks.  Coverage shall be maintained continuously, from and after the Interim Completion Date and at all times thereafter until the Termination Date.  This insurance shall include a twelve (12) month extended discovery period and reporting period provision in the event of termination of the Policy or in the event termination of the Project Agreement for any reason, including its expiration.  This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by WCH, MOHLTC, Infrastructure Ontario or the Lenders.	
<i>Comments</i>	<ul style="list-style-type: none"> <li>• It is permissible for Project Co to extend the construction pollution policy to include pollution events occurring during the Services phase, on an annual basis throughout the term.</li> </ul>			

**Underwriters**      Principal underwriters in compliance with Clause 16 of this Schedule.

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Services Phase Insurance – Part 2 Women’s College Hospital Redevelopment Project

**Services Phase Insurance to be provided, or caused to be provided, by Project Co from Interim Completion Date with respect to the Phase 1 Facility and from Substantial Completion Date with respect to the entire Facility until Termination Date (Insurance for Services Phase)**

Type	Amount	Maximum Deductible	Principal Cover	Estimated Annual Premium
<b>Automobile Liability</b>	<p>[\$[REDACTED]] (Minimum) Project Co's vehicles</p> <p>[\$[REDACTED]] (Minimum) for vehicles of any contractors, subcontractors, sub-subcontractors, consultants, and sub-consultants, workmen, tradesmen or other persons working on or at the Site in connection with the Project Co Services</p>		<p>Standard Ontario Owners Form For all vehicles operated by Project Co, Contractors, subcontractors, sub-subcontractors, consultants, sub-consultants, workmen, tradesmen or other working on or at the Site in connection with the Project Co Services.</p> <p>Coverage shall be maintained continuously, from and after the Interim Completion Date and at all times thereafter until the Termination Date.</p> <p>Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle.</p> <p>Policies shall be endorsed to preclude cancellation, except upon 60 days prior written notice provided to WCH, MOHLTC, the Lenders and Infrastructure Ontario.</p>	
<i>Comments</i>				
<b>Underwriters</b>	Principal underwriters in compliance with Clause 16 of this Schedule.			



**Women's College Hospital****Services Phase Insurance – Part 2 Women's College Hospital Redevelopment Project****Services Phase Insurance to be provided, or caused to be provided, by Project Co. from Substantial Completion Date with respect to the entire Facility until Termination Date (Insurance for Services Phase)**

Type	Amount	Maximum Deductible	Principal Cover	Estimated Annual Premium
<b>Comprehensive Crime</b>	[\$REDACTED] per extension		<p>Comprehensive Crime insurance including coverage for Employee Dishonesty against the fraudulent/dishonest acts of employees of Project Co and its Affiliates, 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.</p> <p>Custodial endorsement extending protection to third parties.</p> <p>Coverage shall be maintained continuously, from and after the Interim Completion Date and at all times thereafter until the Termination Date.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by WCH, Infrastructure Ontario or the Lenders.</p>	
<i>Comments</i>				
<b>Underwriters</b>	Principal underwriters in compliance with Clause 16 of this Schedule.			
<b>WSIB</b>	In accordance with Ontario Act's established benefits and schedules	Not Applicable	<p>(i) Project Co and its Affiliates shall obtain and maintain at Project Co's expense, WSIB Insurance, in accordance with the Province of Ontario requirements.</p> <p>(ii) Project Co shall ensure that satisfactory evidence of WSIB Insurance is provided by all Project Co Parties, including all other consultants, sub consultants, contractors, subcontractors, suppliers and tradesmen working at the Site.</p>	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Annual Premium
			<p>Prior to commencement of the work, each of the foregoing shall provide satisfactory written confirmation of compliance, from the appropriate authority, including confirmation that all required assessments have been paid to date.</p>	
			<p>Upon Interim Completion of the Facility, Project Co shall be provided with satisfactory written confirmation that all required assessments have been paid to date.</p>	
			<p>On request, within 30 days of such request, Project Co shall deliver to WCH evidence of the WSIB coverage maintained by any person involved in the Works, or confirmation of that person's exemption from WSIB coverage.</p>	

**SCHEDULE 26**

**RECORD PROVISIONS**

**1. General Requirements**

- 1.1 Project Co shall prepare, retain and maintain, at its own expense, all the records (including superseded 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 34 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 WCH, and shall conform to the Output Specifications and Good Industry Practice. Where by prior agreement WCH 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 WCH, not to be unreasonably withheld or delayed, be stored in electronic form if WCH has access thereto and will continue to have access thereto, such that WCH 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 WCH 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, WCH may elect to require Project Co to deliver such records to WCH, in which case Project Co shall, at the expense of WCH, deliver such records (with the exception of Sensitive Information) to WCH in the manner and to the location as WCH shall specify; or
  - (b) if WCH 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 WCH in the manner and to the location that WCH shall reasonably specify. WCH 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 original records required by:
- (a) statute to remain with Project Co;
  - (b) Project Co in connection with its fulfilment of any outstanding obligations under this Project Agreement; or
  - (c) Project Co in connection with its fulfilment of any outstanding obligations under the Lending Agreements.
- 1.9 Where the termination of this Project Agreement arises:
- (a) as a result of a WCH Event of Default or pursuant to Section 44.3 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 WCH; 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 WCH a report, as reasonably requested by WCH in connection with WCH'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 WCH or that may be owing by WCH 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 WCH not later than 30 days after the end of each fiscal quarter and 120 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 49 of this Project Agreement, shall be treated by WCH 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 WCH 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, Approvals and Agreements, 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 Interim Completion, 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 WCH 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 HST 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) 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;
- (s) any documents relating to insurance and insurance claims;
- (t) the Plant Services Information Management System;
- (u) all Jointly Developed Materials; and
- (v) 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 on a without prejudice basis; and
  - (b) have all Disputes resolved at the lowest level of management before engaging the dispute resolution processes described in Sections 2 to 9 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) of this Schedule 27, either Party may deliver to the WCH Representative or the Project Co Representative, as applicable, a written notice of dispute (the “**Notice of Dispute**”), which Notice of Dispute shall, subject to the terms of this Schedule 27 requiring resolution of a Dispute pursuant to a specific dispute resolution process set forth in this Schedule 27, initiate the dispute resolution process described in Sections 2 to 9 of this Schedule 27, as applicable, as more particularly described in this Schedule 27. 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 WCH Representative, if given by WCH, or by the Project Co Representative, if given by Project Co.
- 1.4 In the event of a Dispute in respect of any Critical Item set out in Section 12 of this Schedule 27, the provisions of that Section 12 shall solely govern the resolution of such Dispute and, except as set forth in Section 12.3 of this Schedule 27, the provisions of Sections 1.2 and 2 to 9 of this Schedule 27 shall not apply.

**2. Amicable Resolution by Party Representatives**

- 2.1 On receipt of a Notice of Dispute, the WCH 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.

**3. Amicable Resolution by Senior Officers of each Party**

3.1 If, following the process referred to in Section 2 (or as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27) of this Schedule 27, 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 WCH 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.

3.2 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.

**4. Independent Certifier**

4.1 This Section 4 applies to all Disputes that fall within the description of Section 4.2 of this Schedule 27 that cannot be resolved as provided in Sections 2 and 3 of this Schedule 27 or as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27.

4.2 All Disputes related to the Works and that:

- (a) arise prior to, or otherwise in relation to, Interim Completion or Substantial Completion;
- (b) relate to completion of Interim Minor Deficiencies or Minor Deficiencies;
- (c) relate to whether any proposed work constitutes a Variation;
- (d) relate to a review of Estimates or any other matters relating to Variations as the Independent Certifier is entitled to review and determine pursuant to Section 36 of the Project Agreement;
- (e) are referred to in this Project Agreement for determination by the Independent Certifier; or

- (f) relate to the Certification Services or any Certification Service Variations (as those terms are defined in the Independent Certifier Agreement);

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.

- 4.3 Without limiting any obligations of the Parties under the Independent Certifier Agreement, 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 4.2 of this Schedule 27.
- 4.4 The Independent Certifier’s decision to issue or not to issue the Interim Completion Certificate or the Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Interim Payment Commencement Date and the Payment Commencement Date respectively, and a Dispute in relation to the Interim Payment Commencement Date or 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 5 and 6 of this Schedule 27 shall not apply unless otherwise agreed by the Parties on terms acceptable to the Parties.

**5. Expert Determination**

- 5.1 If, following the process referred to in Section 2 and 3 (or as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27) of this Schedule 27, any Dispute as to:
  - (a) whether a Liquid Market exists;
  - (b) whether amendments proposed by potentially Qualifying Tenders to this Project Agreement or other Project Documents are material;
  - (c) the Adjusted Highest Qualifying Tender Price;
  - (d) the determination of the Estimated Fair Value in accordance with Schedule 23 – Compensation on Termination of this Project Agreement; or
  - (e) whether Project Co has achieved all necessary prerequisites, credits and points under the LEED Rating System in accordance with the specific requirements under this Project Agreement to achieve the LEED Certification;

has not been resolved within 10 Business Days after the date the Dispute was 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 of 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**”).

5.2 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.

5.3 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 WCH, Project Co, or any consultant, subconsultant or subcontractor of any of them.

5.4 Subject to the matters the Expert is authorized to determine pursuant to Section 5.1 of this Schedule 27, 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.

5.5 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.
- 5.6 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 shall give reasons or a summary of reasons for the Expert’s decision.
- 5.7 The Expert shall keep all information about the Dispute confidential and shall not disclose such information to anyone other than the Parties.
- 5.8 Each Party shall bear its own costs of the process for resolution of the Dispute by the Expert. In addition, the costs of the Expert shall be borne equally by the Parties.
- 5.9 Subject to a right to require the Dispute to be arbitrated or litigated pursuant to Sections 7, 8 and 9 of this Schedule 27 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, adjudication, arbitration, litigation or any other dispute resolution process, and both Parties expressly waive all rights of appeal in connection with the Expert’s determination. For greater certainty, the final determination by the Expert shall not be referred to an Adjudicator (as defined below) for determination under Section 6 of this Schedule 27.

## **6. Adjudication**

- 6.1 If the Parties fail to resolve any Dispute through the process referred to in Section 2 and 3 of this Schedule 27 within 15 Business Days following referral of the Dispute to an executive in accordance with Section 3.1 (or such other period as may be agreed or expressly stipulated in respect of the relevant matter) and it is not a Dispute referred to in Sections 4.2 and 5.1 of this Schedule 27 or a Dispute referred to arbitration or litigation pursuant to Sections 4.4 or 5.9 of this Schedule 27 (except as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27), either Party may refer the Dispute to an adjudicator selected in accordance with Section 6.2 of this Schedule 27 (the “**Adjudicator**”).
- 6.2 The Adjudicator nominated by the Party issuing the Notice of Dispute shall be agreed between the Parties or, failing agreement, shall be determined by the Ontario Superior Court of Justice (following an application thereto by the Party issuing the Notice of Dispute) and shall:

- (a) be independent of and at arm’s length to Project Co, WCH, any Government Entity, the Lenders and any other person having an interest in the Facility or any of the Project Documents;
- (b) if the Dispute arises during the Project Term, be familiar with building operations and management and hospital activities; and
- (c) be a person who has qualifications and experience with respect to the particular issues in Dispute, including, 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.

6.3 The Adjudicator shall resolve the Dispute in accordance with the United Kingdom Construction Industry Council’s *Model Adjudication Procedure* the terms of which are incorporated herein by reference, subject to the following modifications:

- (a) within 7 Business Days of appointment in relation to a particular Dispute, the Adjudicator shall require the Parties to submit in writing their respective arguments; provided that, where necessary, the onus of proving that the Facility is operating in accordance with all relevant specifications and requirements set forth in the Project Agreement is on Project Co. The Adjudicator shall, in his absolute discretion, determine the procedure of the adjudication proceedings including without limitation, whether a hearing is necessary in order to resolve the Dispute;
- (b) in any event, and subject to Section 6.4 of this Schedule 27, the Adjudicator shall provide to both Parties his written decision on the Dispute, within 10 Business Days of appointment (or within such other period as the Parties may agree after the reference). The Adjudicator shall give detailed reasons for the Adjudicator’s decision. The Adjudicator shall be entitled to award compensation to a Party and shall be entitled to state the relief for such Party, which may include deeming the occurrence of any Relief Event, Delay Event, Compensation Event and/or Excusing Cause. Unless otherwise provided for in this Schedule 27, the Adjudicator’s decision shall be binding on the Parties, but not final.
- (c) the Adjudicator’s costs, including any legal fees, of any reference shall be borne as the Adjudicator shall specify or in default, equally by the Parties. In no circumstances shall the Adjudicator be entitled to order a successful or partially successful Party in an adjudication to pay more than one half of the Adjudicator’s fees. Each Party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.
- (d) the Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the *Arbitration Act* (Ontario) and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination;

- (e) the Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. Unless otherwise expressly provided in this Project Agreement, the Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given under this Project Agreement. For greater certainty, the Independent Certifier's decision to issue or not to issue the Interim Completion Certificate or the Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Interim Payment Commencement Date and the Payment Commencement Date respectively, and a Dispute in relation to the Interim Payment Commencement Date or the Payment Commencement Date shall not be subject to resolution pursuant to this Schedule 27;
- (f) the Adjudicator shall execute a non-disclosure agreement (the "**Non-Disclosure Agreement**") in a form satisfactory to the Parties, providing that, among other things, all information, data and documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment as the Adjudicator shall be treated as confidential and without prejudice to any potential litigation proceedings. The Adjudicator shall not, save except as expressly permitted by the Non-Disclosure Agreement, disclose to any person any such information, data or documentation, and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Adjudicator's mandate with respect to the Dispute; and
- (g) the Adjudicator shall not be liable for anything done or omitted to be done in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

6.4 Where it is determined by the Adjudicator that:

- (a) corrective measures must be taken by Project Co to resolve a Dispute, those measures must be implemented by Project Co as soon as reasonably practical, without payment by WCH unless (i) the Adjudicator determines otherwise; or (ii) that determination is subsequently reversed by a binding and final determination made in a court proceeding;
- (b) corrective measures are not required to be taken by Project Co to resolve a Dispute, WCH may, at its option, require corrective measures to be taken forthwith by Project Co, in which case those measures must be implemented by Project Co as soon as reasonably practical provided that WCH undertakes to pay Project Co for Direct Costs, plus reasonable overhead and profit incurred by Project Co as such costs are so incurred; provided that no such costs should exceed the amount Project Co is entitled to receive pursuant to Schedule 22 – Variation Procedure thereby incurred upon completion of those corrective measures, but any such undertaking and payment shall be without prejudice to WCH's right to contest the determination

made by the Adjudicator in a subsequent proceeding. WCH shall provide Project Co such reasonable extensions of time in respect of Project Co's obligations under this Agreement necessary to allow Project Co to effect the corrective measures and such extension of time may be treated as a Delay Event or an Excusing Cause, as applicable, if so determined by the Adjudicator.

6.5 Subject to a right to require the Dispute to be arbitrated or litigated pursuant to Sections 7, 8 and 9 of this Schedule 27 by giving the required notices to arbitrate or litigate within the time periods specified therein, the Parties agree that the Adjudicator's determination is final and binding 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 Adjudicator's determination.

**7. Referral of Disputes to Arbitration or Litigation**

7.1 If:

- (a) the amount awarded by the Expert to a Party pursuant to Section 5 of this Schedule 27 or by the Adjudicator pursuant to Section 6 of this Schedule 27 is more than \$[REDACTED] (index linked) in the aggregate or \$[REDACTED] (index linked) in any one year,
- (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 4.4 of this Schedule 27 provides that Sections 5 and 6 of this Schedule 27 shall not apply to resolve such Dispute,

then, subject to the right of a Party to require litigation of the Dispute pursuant to Section 9.1 of this Schedule 27 or a consolidation of proceedings pursuant to Section 11 of this Schedule 27, either Party may, by written notice signed by their Party Representative, request that the Dispute be resolved by arbitration pursuant to Section 8 of this Schedule 27 upon the written consent of the other Party. 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, the Adjudicator's decision or the Notice of Dispute referred to in Section 7.1(c) of this Schedule 27, as applicable, and provided further that such notice expressly identifies the specific Dispute and determination of the Expert, decision of the Adjudicator or the Independent Certifier, as applicable, that is to be the subject of the arbitration.

7.2 If a Party is entitled to refer a Dispute to which Sections 5 or 6 of this Schedule 27 apply to arbitration or litigation pursuant to Sections 7.1 or 9.1 of this Schedule 27 then, unless the Parties otherwise expressly agree in writing, all information, documents and submissions prepared by a Party for the Expert or the Adjudicator 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 or the Adjudicator, shall be confidential and inadmissible in any arbitration or litigation proceeding. For greater certainty, neither the Expert or the Adjudicator shall be called as a witness by either party in any arbitration or litigation proceeding.

**8. Resolution by Arbitration**

8.1 Upon the mutual written consent of the parties,

- (a) where the Parties fail to resolve a Dispute through the process set out in Sections 2, 3, 4, 5 and 6 (to the extent required) of this Schedule 27, and
- (b) all other requirements set out in this Schedule 27 have been satisfied.

such Dispute may be referred to arbitration in accordance with the *Arbitration Act, 1991* (Ontario) and this Section.

8.2 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 7.1 of this Schedule 27 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.

8.3 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 7 of this Schedule 27; 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.

8.4 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 7 of this Schedule 27;
  - (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 8.3(b) of this Schedule 27;
  - (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 8.3(b) of this Schedule 27; 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.

8.5 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.

8.6 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 WCH, Project Co, or any consultant, subconsultant or subcontractor of any of them.

8.7 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.
- 8.8 The place of arbitration shall be Toronto, Ontario. The language of the arbitration shall be English.
- 8.9 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.

- 8.10 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.
- 8.11 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.
- 8.12 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.
- 8.13 This Project Agreement, including this Schedule 27, constitutes an agreement to arbitrate that shall be specifically enforceable.
- 8.14 Any arbitrator appointed pursuant to this Section 8 of this Schedule 27 shall keep all information about the Dispute confidential and shall not disclose such information to anyone other than the Parties.

**9. Litigation**

- 9.1 Notwithstanding that a notice to arbitrate has been delivered pursuant to Section 7.1 of this Schedule 27, following receipt of the Expert’s award or determination pursuant to Section 5 of this Schedule 27, or of the Adjudicator’s award or determination pursuant to Section 6 of this Schedule 27, 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 4.4 of this Schedule 27 provides that Sections 5 and 6 of this Schedule 27 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 more than \$[REDACTED] (index linked) in the aggregate or \$[REDACTED] (index linked) in any one year; or
  - (b) if the Dispute is considered by WCH 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, the Adjudicator's determination, or the Notice of Dispute referred to in Section 7.1(c) of this Schedule 27, as applicable, and provided further that such notice expressly identifies the specific Dispute and determination of the Adjudicator, Expert or Independent Certifier, as applicable, that is to be the subject of the litigation.

- 9.2 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 9.1 of this Schedule 27, then:
- (a) provided that one Party has, in the manner and within the time period specified in Section 7.1 of this Schedule 27, given notice to the other Party of election to resolve that Dispute by arbitration, and subject to a consolidation of proceedings pursuant to Section 11 of this Schedule 27, that Dispute shall be resolved only by arbitration pursuant to Section 8.2 to 8.14 of this Schedule 27; and
  - (b) subject to Section 9.2(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.

**10. Consolidation of Project Agreement Adjudication, Arbitration and Litigation**

- 10.1 For all Disputes in respect of the Phase 1 Facility that arise prior to Interim 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 Interim 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 Interim Completion; or
  - (e) in respect to a particular Dispute, the Dispute is consolidated with Third Party Disputes (as hereinafter defined) pursuant to Section 11 of this Schedule 27;

all adjudication, arbitral and litigation proceedings between the Parties prior to Interim Completion shall be stayed and consolidated into, as applicable, a single adjudication, arbitration and a single litigation proceeding, with the adjudication, arbitration and, if applicable, litigation, proceeding promptly and expeditiously after Interim Completion.

- 10.2 For all Disputes in respect of the Phase 2 Facility 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 Third Party Disputes (as hereinafter defined) pursuant to Section 11 of this Schedule 27;

all adjudication, arbitral and litigation proceedings between the Parties prior to Substantial Completion shall be stayed and consolidated into, as applicable, a single adjudication, arbitration and a single litigation proceeding, with the adjudication, arbitration and, if applicable, litigation, proceeding promptly and expeditiously after Substantial Completion.

## **11. Consolidation with Third Party Disputes**

- 11.1 Subject to Section 11.4 of this Schedule 27, 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 WCH, 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.
- 11.2 Subject to Section 11.4 of this Schedule 27, 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.

11.3 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.

11.4 Sections 11.1 and 11.2 of this Schedule 27 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.

## **12. Critical Items**

12.1 After the Interim Completion Date in respect of the Phase 1 Facility and after the Substantial Completion Date in respect of the Facility, in the event that a Dispute relates to one or more of the following elements, features or aspects of the Facility (the "**Critical Items**"):

- (a) the Surgery Department,
- (b) the Central Sterile Processing Department,
- (c) the MRI and CT Scanner rooms,
- (d) the Urgent Care Centre and the Critical Decision Unit, and
- (e) the server and telecommunications rooms,

the effect of which materially impedes the functioning of the Facility or materially impedes the Clinical Services where the health and safety of WCH’s patients or staff may be at risk, such Dispute shall be resolved in accordance with Section 12.2 of this Schedule 27.

12.2 Any Dispute with respect to any Critical Item shall be resolved in an expeditious manner and shall not be subject to the Dispute Resolution Procedure set forth in this Schedule 27 and must be resolved to the satisfaction of WCH and Project Co within two hours of being reported by Project Co or otherwise identified by WCH. For the purposes of this Section 12, “resolved” means a proposed solution must be agreed between the WCH Representative and Project Co within that two hour period, including a time frame for implementing a proposed solution. For greater certainty, it is understood that in some cases the nature or extent of a Critical Item may not permit that Critical Item to be solved or otherwise resolved within two hours.

12.3 In the event that:

- (a) there is a Dispute related to a Critical Item that cannot be resolved within the two hours set forth in Section 12.2 of this Schedule 27,
  - (i) as to the existence of a problem or its extent, or
  - (ii) with respect to the proposed solution, or
- (b) there is a Dispute concerning the effectiveness of any solution proposed in respect of a Critical Item

then that Dispute must be resolved by an Adjudicator in accordance with Section 6 of this Schedule 27 within one Business Day of such Adjudicator being asked to undertake such an adjudication. Decisions of the Adjudicator with respect to Disputes relating to Critical Items are final and binding with respect to the action being taken, but not with respect to fault or the cost or timing implications of the matter in dispute. Decisions of the Adjudicator with respect to fault or the cost or timing implications shall be treated as a Dispute and determined in accordance with the provisions of this Schedule 27.

### **13. Miscellaneous**

13.1 Project Co and WCH shall diligently carry out their respective obligations under this Project Agreement during the pendency of any Disputes, including, without limitation, adjudication proceedings, 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 WCH, and in the event the matter in dispute is determined in favour of Project Co, proceeding in accordance with WCH’s position shall: (i) subject to and in accordance with Section 38 of this Project Agreement, be treated as a Delay Event; (ii) subject to and in accordance with Section 39 of this Project Agreement, be treated as a

- Compensation Event; and (iii) subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation. For greater certainty, in respect of any Dispute relating to the Works referred to in Section 4.2 of this Schedule 27, the Independent Certifier shall be the decision maker of first instance and the Parties shall comply with the initial decision of the Independent Certifier unless and until it is overturned in a subsequent arbitration or litigation proceeding.
- 13.2 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.
- 13.3 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 2 and 3 of this Schedule 27, and interest on an award or judgment, shall be payable at the Default Interest Rate, accruing:
- (a) for amounts payable by Project Co to WCH, 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 WCH; or
  - (b) for amounts payable by WCH to Project Co, from the date on which payment was due under this Project Agreement to Project Co.
- 13.4 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 2 and 3 of this Schedule 27, or by an expert, an adjudicator, an arbitrator or court of competent jurisdiction, are made available in a timely manner to WCH and the WCH Representative.
- 13.5 WCH shall ensure that any and all documents and other information in the possession or control of any WCH Party that are available to WCH 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 2 and 3 of this Schedule 27, or by an adjudicator, an arbitrator or court of competent jurisdiction, are made available in a timely manner to Project Co and the Project Co Representative.
- 13.6 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 2, 3, 4, 5, and 6 of this Schedule 27 and, instead, proceed directly to resolution of the Dispute by arbitration or litigation pursuant to Sections 7, 8 and 9 of this Schedule 27;



- (c) agree to (i) resolve a Dispute by litigation rather than adjudication or arbitration notwithstanding the requirements of Section 6 and Section 8 of this Schedule 27, or (ii) agree to resolve a Dispute by arbitration rather than adjudication or litigation notwithstanding the requirements of Section 6 and Section 9 of this Schedule 27, or (iii) agree to resolve a Dispute by adjudication rather than arbitration or litigation notwithstanding the requirements of Section 8 and Section 9 of this Schedule 27;
- (d) agree to resolve a Dispute relating to the decision of an Expert by adjudication, arbitration or litigation, notwithstanding the provisions of Section 6 of this Schedule 27; and
- (e) agree to resolve a Dispute relating to Critical Items by adjudication, arbitration or litigation notwithstanding the requirements of Section 12 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 Provider 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 has the effect of replacing or extending any Mini-Perm Financing, provided that:
    - (1) Project Co shall assume any and all risks and benefits associated with such Refinancing without adjustment to the Monthly Service Payments or any other form of compensation to Project Co under the Project Agreement, including any risk that such Refinancing results in higher financing costs than the financing costs assumed by Project Co in its Financial Model as of the date of this Project Agreement for the Refinancing of any Mini-Perm Financing; and
    - (2) such Refinancing occurs on or before the Planned Mini-Perm Refinancing Date.
  - (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 the 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 WCH 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 WCH as part of any Variation under this Project Agreement; or
  - (ix) any Permitted Borrowing.
- (d) **“Mandatory Refinancing”** means an Exempt Refinancing described in Section 1.1(c)(i).
- (e) **“Mini-Perm Financing”** means a financing facility under any Lending Agreement that, pursuant to the applicable Lending Agreement, is scheduled to be repaid in whole or in part from the proceeds of a new financing on or before the Planned Mini-Perm Refinancing Date.
- (f) **“Planned Mini-Perm Refinancing Date”** means the date(s) in which a Refinancing, in whole or in part, of the Mini-Perm Financing takes place, and with respect to the first Planned Mini-Perm Refinancing Date such date is [REDACTED], and in respect of other such dates, if any, shall be as scheduled pursuant to the applicable Lending Agreements and as consented to by WCH.
- (g) **“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 \$[REDACTED],
- provided such institution is not a Restricted Person or a person whose standing or activities are inconsistent with WCH’s role as a hospital, or may compromise WCH’s

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

- (h) **“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.
  
- (i) **“Qualifying Refinancing”** means any Refinancing that will give rise to a Refinancing Gain that is not an Exempt Refinancing.
  
- (j) **“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.
  
- (k) **“Refinancing Financial Model”** means a comprehensive and detailed financial model satisfactory to WCH, 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.
- (l) **“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.
- (m) **“Refinancing Notice”** has the meaning given in Section 2.9.
- (n) **“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 WCH, 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 WCH, which consent, subject to Section 2.2, shall not be unreasonably withheld or delayed.
- 2.2 WCH 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 WCH, whether actual or contingent, present or future, known or unknown.

- 2.3 WCH shall be entitled to receive:
- (a) a [REDACTED]% share of any Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of \$[REDACTED];
  - (b) a [REDACTED]% share of any further Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain in excess of \$[REDACTED] and up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of \$[REDACTED]; and
  - (c) a [REDACTED]% share of any further Refinancing Gain arising from a Qualifying Refinancing.
- 2.4 Project Co shall promptly provide WCH 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. WCH 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 WCH, provide any information in relation to a proposed Refinancing as WCH may reasonably require. Project Co shall keep WCH informed as to any changes to the material terms of the Refinancing.
- 2.5 Subject to Section 2.6, WCH 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 WCH’s share of the Refinancing Gain.
- 2.6 WCH and Project Co will negotiate in good faith to agree upon the basis and method of calculation of the Refinancing Gain and payment of WCH’s share of the Refinancing Gain (taking into account how WCH 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 WCH’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 WCH for all such reasonable out-of-pocket costs incurred by WCH.

- 2.8 If Project Co must, at a future date, undertake a Mandatory Refinancing, then WCH may at any time request that Project Co provide to WCH full and complete details and information with respect to the Mandatory Refinancing and its plan for the Mandatory Refinancing, including in respect to all relevant assumptions regarding the Mandatory Refinancing set out in the Financial Model (the “**Refinancing Information**”). For clarity, if Project Co must, at a future date, undertake a Mandatory Refinancing, WCH must request Project Co to provide the Refinancing Information before it can issue a Refinancing Notice pursuant to Section 2.9. If WCH and Project Co mutually agree, acting reasonably, that based on the Refinancing Information, a Refinancing prior to the Mandatory Refinancing would not have a negative material financial impact on the Mandatory Refinancing, then WCH may provide Project Co with a Refinancing Notice pursuant to Section 2.9.
- 2.9 If WCH considers the funding terms generally available in the market to be more favourable than those reflected in the Lending Agreements, WCH may, by notice in writing to Project Co (a “**Refinancing Notice**”), require Project Co to request potential funders to provide terms for a potential Refinancing.
- 2.10 The Refinancing Notice shall set out in reasonable detail the grounds upon which WCH believes such funding terms to be available. Project Co and WCH shall meet to discuss the Refinancing Notice within 20 Business Days. Such a meeting will consider the evidence available to both parties about the availability of funding terms for a potential Refinancing. WCH shall be entitled to withdraw the Refinancing Notice at or before such a meeting, or within 7 Business Days following the meeting.
- 2.11 If WCH serves a Refinancing Notice which is not withdrawn pursuant to Section 2.10, then Project Co shall:
- (a) act promptly, diligently and in good faith with respect to the potential Refinancing;
  - (b) use all reasonable endeavours to obtain the most favourable available terms from existing and/or new lenders for any potential Refinancing (provided that Project Co shall not be required to propose refinancing in a manner which a prudent board of directors of a company operating the same business in Canada to that operated by Project Co, in similar circumstances, would not approve), for the avoidance of doubt also being terms which are likely to generate a positive Refinancing Gain after the deduction of costs in accordance with the provisions of Section 2.7; and
  - (c) either:
    - (i) as soon as reasonably practicable after receipt of the Refinancing Notice, provide to WCH (I) full details of the proposed Refinancing, including a financial model and the basis for the assumptions used in the financial model and evidence to the reasonable satisfaction of WCH that these assumptions

represent the most favourable available terms for the potential Refinancing on the basis set out in Section 2.11(b) and (II) initial drafts of any changes to the Project Agreement including in relation to potential compensation on termination which might be required to give effect to the proposed Refinancing; or

- (ii) if Project Co (acting reasonably) believes that it is not possible to obtain funding terms which are more favourable than those reflected in the Financing Agreements in accordance with the requirements of Section 2.11(b), provide evidence to the reasonable satisfaction of WCH for such belief and evidence to the reasonable satisfaction of WCH that Project Co has complied with its obligations in Sections 2.11(a) and (b) above.

2.12 Following receipt of the information referred to in Section 2.11(c)(i), WCH shall, acting reasonably, either:

- (a) instruct Project Co to implement the proposed Refinancing; or
- (b) instruct Project Co to discontinue the proposed Refinancing

provided that if WCH reasonably considers that the requirements of Sections 2.11(c)(i) or (ii) have not been satisfied, WCH may require Project Co to satisfy its obligations under Sections 2.11(c)(i) or (ii). If Project Co must, at a future date, undertake a Mandatory Refinancing, WCH shall not instruct Project Co to implement the proposed Refinancing unless both WCH and Project Co, acting reasonably, agree that such Refinancing will be likely to generate a positive Refinancing Gain after the deduction of costs in accordance with the provisions of Section 2.7 and will not have a negative material financial impact on the Mandatory Refinancing.

2.13 If WCH instructs Project Co to implement the proposed Refinancing:

- (a) Project Co shall, as soon as reasonably practicable, use all reasonable endeavours to ensure that such proposed Refinancing is implemented;
- (b) such proposed Refinancing shall be deemed to be a Qualifying Refinancing; and
- (c) the provisions of Sections 2.1 to 2.7 shall apply.

2.14 If:

- (a) WCH instructs Project Co to discontinue the potential Refinancing pursuant to Section 2.12(b); or
- (b) the requirements of Section 2.11(c)(ii) are satisfied

then, WCH shall reimburse Project Co for the reasonable and proper professional costs incurred by Project Co in relation to the potential Refinancing, such costs to be paid to



Project Co by WCH within 20 Business Days after receipt of a valid invoice in respect of such amount. Such costs shall not include any internal management costs incurred by Project Co except insofar as (i) it can be demonstrated to the reasonable satisfaction of WCH that such costs have been incurred in place of professional costs which would in the normal course of such business have been paid to third parties and (ii) WCH has, by prior written agreement, approved the use of such internal management resource.

- 2.15 WCH shall be entitled to issue a Refinancing Notice under Section 2.9 at any time but not more than once in any two-year period. For the avoidance of doubt, a Refinancing Notice that has been withdrawn under Section 2.10 has been issued for the purpose of this Section 2.15.

SCHEDULE 29A

STANDBY LETTER OF CREDIT

[NTD: The Standby Letter of Credit must be issued by a bank acceptable to WCH, acting reasonably, and must be callable at the bank's counters in Toronto, Ontario.]

Letter of Credit: #[●]

Date: [●]

Women's College Hospital  
76 Grenville Street  
Toronto ON M5S 1B2

Attn: •

Dear Sir/Madam:

**RE: Women's College Hospital**

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At the request of our client, [●] (“**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] (\$[REDACTED]).

The amount available under this Letter of Credit is payable to Women's College Hospital (“**WCH**”), 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 WCH certifying that WCH 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 [insert the date that is 180 days after the **Financial Close Target Date**] (the “**Expiry Date**”), and WCH 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 (2007 Revision) of the International Chamber of Commerce (ICC Publication No. 600) (the “UCP”) with the exception of Articles 18-30 inclusive (other than Article 29a, which shall apply) and Articles 31b, 31c and 32 except to the extent, if any, inconsistent with the express terms of this Letter of Credit. Notwithstanding Article 36 of the UCP, if this Letter of Credit expires during an interruption of business as contemplated in such Article 36, we shall honour any demand made under this Letter of Credit prior to the Expiry Date, within 30 days after the date on which such interruption of business ends (and we shall notify you promptly when it does so end). For matters not covered by such publication, this Letter of Credit 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 29B

PHASE 2A WORKS STANDBY LETTER OF CREDIT

[NTD: The Phase 2A Works Standby Letter of Credit must be issued by a bank acceptable to WCH, acting reasonably, and must be callable at the bank's counters in Toronto, Ontario.]

Letter of Credit: #[●]

Date: [●]

Women's College Hospital  
76 Grenville Street  
Toronto ON M5S 1B2

Attn: •

Dear Sir/Madam:

**RE: Women's College Hospital**

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At the request of our client, [●] (“**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 [●] (\$●). [NTD: Insert value that represents [REDACTED]% of (i) the value of the cost of the Phase 2A Works plus (ii) the reasonable costs associated with the Phase 2A Commissioning and the Phase 2A Transition.]

The amount available under this Letter of Credit is payable to Women's College Hospital (“**WCH**”), 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 WCH certifying that WCH is entitled to draw on this Letter of Credit pursuant to Section 24.10B(b) 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 [insert the date that is 180 days after the **Financial Close Target Date**] (the “**Expiry Date**”), and WCH 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 (2007 Revision) of the International Chamber of Commerce (ICC Publication No. 600) (the “UCP”) with the exception of Articles 18-30 inclusive (other than Article 29a, which shall apply) and Articles 31b, 31c and 32 except to the extent, if any, inconsistent with the express terms of this Letter of Credit. Notwithstanding Article 36 of the UCP, if this Letter of Credit expires during an interruption of business as contemplated in such Article 36, we shall honour any demand made under this Letter of Credit prior to the Expiry Date, within 30 days after the date on which such interruption of business ends (and we shall notify you promptly when it does so end). For matters not covered by such publication, this Letter of Credit 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 •, 2010

**BETWEEN:**

WOMEN'S COLLEGE HOSPITAL, a non-share capital corporation incorporated under the laws of the Province of Ontario

(“**WCH**”)

**AND:**

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**, a bank established under the laws of France, acting as agent for and on behalf of the Lenders

(the “**Lenders' Agent**”)

**AND:**

WOMEN'S COLLEGE PARTNERSHIP, [REDACTED]

(“**Project Co**”)

**AND:**

BNY TRUST COMPANY OF CANADA, a trust company incorporated under the laws of Canada

(the “**Account Trustee**”)

**WHEREAS:**

- A. WCH and Project Co have entered into the Project Agreement.
- B. WCH, the Lenders' Agent and Project Co have entered into the Lenders' Direct Agreement.
- C. WCH, 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.

**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 BNY Trust Company of Canada.
- (b) “**Bank**” means Citibank Canada.
- (c) “**Business Day**” has the meaning given in the Project Agreement.
- (d) “**Change of Authorization Event**” has the meaning given in Section 7(a) of this Insurance Trust Agreement.
- (e) “**Change of Authorization Notice**” has the meaning given in Section 7(b)(ii) of this Insurance Trust Agreement.
- (f) “**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.
- (g) “**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.
- (h) “**Facility**” has the meaning given in the Project Agreement.
- (i) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (j) “**Insurance Policies**” has the meaning given in Section 4(a) of this Insurance Trust Agreement.
- (k) “**Insurance Proceeds**” has the meaning given in Section 4(b) of this Insurance Trust Agreement.
- (l) “**Insurance Trust Account**” means [REDACTED].
- (m) “**Insurance Trust Agreement**” means this insurance trust agreement.
- (n) “**Lenders**” has the meaning given in the Project Agreement.
- (o) “**Lenders’ Agent**” means Crédit Agricole Corporate and Investment Bank, acting as agent for and on behalf of the Lenders.
- (p) “**Lenders’ Direct Agreement**” means the lenders’ direct agreement made on or about the date hereof between WCH, Project Co and the Lenders’ Agent.
- (q) “**Lending Agreements**” has the meaning given in the Project Agreement.

- (r) “**Order**” has the meaning given in Section 6(k) of this Insurance Trust Account.
- (s) “**Party**” means any of WCH, Project Co, the Lenders’ Agent or the Account Trustee, and “**Parties**” means all of WCH, Project Co, the Lenders’ Agent and the Account Trustee.
- (t) “**person**” has the meaning given in the Project Agreement.
- (u) “**Project**” has the meaning given in the Project Agreement.
- (v) “**Project Agreement**” means the project agreement made on or about [•], 2010 between WCH and Project Co.
- (w) “**Project Co**” means Women’s College Partnership.
- (x) “**Project Co Event of Default**” has the meaning given in the Project Agreement.
- (y) “**Project Operations**” has the meaning given in the Project Agreement.
- (z) “**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 and the Insurance Proceeds.
- (aa) “**WCH**” means Women’s College Hospital.

## 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 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 Toronto, 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) Prior to the commencement of a Default Period, 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 Lenders, provided that, upon receipt by the Account Trustee of a Change of Authorization Notice, 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 WCH.
- (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 and subject to Section 3(d), the Lenders’ Agent, WCH, and Project Co 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;
  - (ii) the completion of the Project; or
  - (i) indemnification for any WCH loss for which the subject Insurance Proceeds were paid under the Insurance Policies (as defined below).

For greater certainty, use of any Insurance Proceeds received in respect of a claim by Project Co for delay in start-up, soft costs or business interruption may be applied in accordance with the terms of the Lending Agreements so as to enable Project Co to carry out the Project Operations.

- (d) Notwithstanding anything in this Insurance Trust Agreement, if WCH is entitled to indemnification under the Insurance Policies in respect of any loss incurred by WCH, such related insurance proceeds are to be paid directly to WCH by the insurer or the Account Trustee and shall not be Insurance Proceeds subject to Section 3(c)(i) or (ii) of this Insurance Trust Agreement. For greater certainty, it is understood and agreed that WCH shall be required to use such proceeds for carrying out the purposes referred to in Sections 3(c)(i) and (ii) in respect of which such proceeds have been paid.

**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 (collectively, 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) 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 WCH (the “**Insurance Proceeds**”) as follows:
- (i) subject to Section 4(c), in the case of the all risks course of construction (builders' risk), boiler and machinery insurance or property insurance policies that Project Co is required to maintain under the Project Agreement:
- (A) if the Account Trustee has not received a Default Notice and:
- (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 WCH 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; and
- (ii) in the case of any other Insurance Policies, to the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, to WCH, to be distributed to the parties entitled thereto.
- (c) All losses under (i) all risks course of construction (builder's risk) including boiler and machinery insurance carried by Project Co prior to Substantial Completion; (ii) property insurance carried by Project Co with respect to the Phase 1 Facility after Interim Completion and with respect to the entire Facility after Substantial Completion; and (iii) the boiler and machinery insurance carried by Project Co with respect to the Phase 1 Facility after Interim

Completion and with respect to the entire Facility after Substantial Completion, which in each case related to Equipment purchased by WCH, shall be payable solely to WCH, as applicable, and shall not be payable to the Account Trustee or distributed pursuant to this Insurance Trust Agreement.

- (d) The Account Trustee shall distribute any excess Insurance Proceeds remaining after the distributions contemplated in Section 4(b)(ii) have been made, including, without limitation, any Insurance Proceeds held in the Insurance Trust Account:
  - (i) if the Account Trustee has not received a Default Notice, to Project Co; and
  - (ii) if the Account Trustee has received a Default Notice, to such persons as the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, WCH, may at any time or from time to time direct in writing.

**5. 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 WCH 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 WCH may from time to time request in writing.

**6. 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, WCH 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 instruction, advice or direction from the Lenders' Agent, WCH 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 dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (c) The Account Trustee 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 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, negligence or reckless disregard of duty 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 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 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 dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder by the Account Trustee or any of its directors, officers or employees, or the failure to comply with the standard of care referred to in Section 6(b).

- (f) Except as otherwise provided in Sections 6(c), 6(d) and 6(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 dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (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).
- (i) The Account Trustee agrees to look solely to Project Co, and not, except as expressly set forth herein, to the Lenders' Agent, the Lenders or WCH 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 validly 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, WCH 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, WCH, 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, 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, WCH, 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, WCH, 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 WCH 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 WCH.
- (o) Each of the Lenders' Agent and WCH 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 WCH, as applicable. The Account Trustee shall refuse to act upon any instruction given by the Lenders' Agent or

WCH 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 WCH, 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 WCH, as applicable, pursuant to Section 6(o).

**7. LENDERS’ AGENT AND WCH 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 to the extent that the value of such Insurance Proceeds was deducted from the amounts payable to Project Co by WCH (a “**Change of Authorization Event**”), the Lenders’ Agent shall, subject to Sections 3 and 4 of this Insurance Trust Agreement, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.

- (b) Upon the occurrence of a Change of Authorization Event:

- (i) the Lenders’ Agent shall cease to be entitled, and WCH shall thenceforth be entitled, to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds; and
- (ii) the Lenders’ Agent and WCH shall jointly provide notice to the Account Trustee (a “**Change of Authorization Notice**”) that WCH 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 and the Insurance 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 an WCH Event of Default has occurred. Where an WCH Event of Default has occurred, upon receipt by the Lenders’ Agent and Lenders of all amounts owing by WCH to the Lenders’ Agent and Lenders under the Lenders’ Direct Agreement, the Account Trustee shall release all amounts in the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds to Project Co or as Project Co may otherwise direct from time to time.

**8. TERMINATION**

- (a) Subject to the provisions of Section 8(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 Lenders under the Lending Agreements have been paid and performed in full and the 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 WCH 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 termination of this Insurance Trust Agreement by the Account Trustee shall be effective until such time as the Lender’s Agent, WCH, and Project Co have entered into a replacement insurance trust agreement on the same terms and conditions as this Insurance Trust Agreement with a replacement account trustee satisfactory the Lenders’ Agent, the Lenders and WCH.

**9. ASSIGNMENT**

- (a) The Account Trustee shall not assign, transfer or otherwise dispose of any of its rights or obligations under this Insurance Trust Agreement without the prior written consent of the Lenders’ Agent, WCH and Project Co.

**10. 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 Insurance Trust Agreement) and served by sending the same by registered mail, facsimile or by hand, as follows:

If to WCH: 76 Grenville Street, E143  
Toronto, Ontario M5S 1B2

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

If to the Lenders’ Agent: [REDACTED]

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

If to Project Co: [REDACTED]

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

with a copy to: [REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to the Account Trustee: [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 10(b).
- (c) Any Party to this Insurance Trust Agreement may, from time to time, change any of its contact information set forth in Section 10(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 10(e), 10(f) and 10(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 10.
- (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.

## 11. 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.

**12. 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.

**13. 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.

**14. 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.

**15. 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.

**16. 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.

**17. 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.

**18. 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.

**19. 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.

**20. 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.

**[SIGNATURE PAGES IMMEDIATELY FOLLOW]**

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

**WOMEN’S COLLEGE HOSPITAL**

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: **[REDACTED]**

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: **[REDACTED]**

We have authority to bind the corporation.

**CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK**

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

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

I/We have authority to bind the bank.

**WOMEN'S COLLEGE PARTNERSHIP,  
[REDACTED]**

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

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

I/We have authority to bind the corporation.

**WOMEN'S COLLEGE PARTNERSHIP,  
[REDACTED]**

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

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

I/We have authority to bind the corporation.

**BNY TRUST COMPANY OF CANADA**

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

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

I/We have authority to bind the corporation.

**SCHEDULE 31**

**PROJECT CO INFORMATION**

Project Co represents and warrants that the following information is true and correct as of the date of this Project Agreement:

**Women's College Partnership**

1. Name: Women's College Partnership
2. Jurisdiction of Formation: **[REDACTED]**
3. **[REDACTED]** **[REDACTED]**
4. Loans:

**Name of registered holder**

**Nominal value of loan**

**[REDACTED]**

**[REDACTED]**

**[REDACTED]**

**[REDACTED]**

**[REDACTED]**

**[REDACTED]**

**[REDACTED]**

**[REDACTED]**

5. Other outstanding securities (including description of type of securities, name and address of holder and amount): **[REDACTED]**
6. Summary of any constitutional, contractual or other special voting rights, restrictions on powers of directors or similar matters relevant to the control of Women's College Partnership: **[REDACTED]**

**[REDACTED]**

**SCHEDULE 32**

**FINANCIAL MODEL EXTRACTS**

**[REDACTED]**



**SCHEDULE 33**

**TRUST ACCOUNT AGREEMENT**

**THIS TRUST ACCOUNT AGREEMENT** is made as of the • day of •, 2010

**BETWEEN:**

**WOMEN'S COLLEGE HOSPITAL**, a non-share capital corporation  
incorporated under the laws of the Province of Ontario

(“**WCH**”)

**AND:**

**WOMEN'S COLLEGE PARTNERSHIP, [REDACTED]**

(“**Project Co**”)

**AND:**

**BNY TRUST COMPANY OF CANADA**, a trust company incorporated under  
the laws of Canada

(the “**Trustee**”)

**WHEREAS:**

- A. WCH 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. WCH 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, WCH 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 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. WCH has irrevocably designated the Trust Account as the “Bank Account” under the WCH Funding and Approval Letter 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 WCH to Project Co under the Project Agreement pursuant to the WCH Funding and Approval Letter will be made.

G. The foregoing recitals are made as statements and representations of fact by WCH 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 WCH 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 WCH 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”** has the meaning given in the Project Agreement.
- (h) **“Lenders’ Agent”** means Crédit Agricole Corporate and Investment Bank, acting as agent for and on behalf of the Lenders.
- (i) **“Lenders’ Direct Agreement”** means the lenders’ direct agreement made on or about the date hereof between WCH, Project Co and the Lenders’ Agent.
- (j) **“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.
- (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 WCH, Project Co or the Trustee, and **“Parties”** means all of WCH, Project Co and the Trustee.

- (o) **“Payment Instruction”** means a written instruction to the Trustee from:
- (i) WCH in accordance with Section 4(b)(i) or 4(b)(iv) and in the form attached as Appendix A hereto; or
  - (ii) WCH 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 [REDACTED].
- (s) **“Project”** has the meaning given in the Project Agreement.
- (t) **“Project Agreement”** means the project agreement made on or about [•], 2010 between WCH and Project Co.
- (u) **“Termination Date”** has the meaning given in the Project Agreement.
- (v) **“Trust Account”** means [REDACTED].
- (w) **“Trust Account Agreement”** means this trust account agreement.
- (x) **“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.

- (y) “Trustee” means BNY Trust Company of Canada.
- (z) “WCH 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 Toronto, 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”.

### 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 WCH (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) 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 WCH 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 WCH 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 WCH;
  - (ii) for a Compensation Payment to Project Co, in accordance with a Payment Instruction signed by both WCH and Project Co;
  - (iii) for any other amounts that may from time to time be payable by WCH to Project Co under the Project Agreement, in accordance with a Payment Instruction signed by both WCH and Project Co; or
  - (iv) in accordance with a Payment Instruction signed only by WCH 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 WCH to Project Co under the Project Agreement;
    - (B) the monies are to reimburse WCH for any monies expended by WCH in respect of which WCH 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 WCH interest earned in accordance with Section 8(b),and WCH certifies as to (A) and/or (B), as applicable. A Payment Instruction given by WCH 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 WCH 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 WCH 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 WCH under Section 43.1(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 WCH, such dispute shall be resolved in accordance with the Dispute Resolution Procedure and, to the extent that such resolution confirms the entitlement of WCH to a withdrawal of disputed Trust Funds, the Trustee shall distribute such Trust Funds pursuant to a supplementary Payment Instruction signed only by WCH.

**5. PAYMENT OF TRUST PROPERTY**

- (a) Subject to Sections 4(c) to 4(g), the Trustee will comply with Payment Instructions from WCH under Sections 4(b)(i) and 4(b)(iv) and from WCH and Project Co under Sections 4(b)(ii) and 4(b)(iii) from time to time given to the Trustee. WCH 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, WCH 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 dishonesty, bad faith, wilful misconduct, fraud, negligence or reckless disregard of any duty 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, WCH 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 WCH 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 WCH against any amounts that may from time to time be payable by WCH 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 WCH 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 WCH 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 WCH and Project Co may accept. WCH and Project Co may, by instrument in writing, jointly appoint a successor trustee that is acceptable to replace the Trustee. If WCH 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, WCH and Project Co may, by instrument in writing, jointly appoint a trustee to replace the Trustee. If WCH 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 WCH 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 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 dishonesty, bad faith, wilful misconduct, fraud, negligence or reckless disregard of a duty 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 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 dishonesty, bad faith, wilful misconduct, fraud, negligence or reckless disregard of a duty 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 WCH 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 WCH against any amounts that may from time to time be payable by WCH 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 WCH 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 WCH, or any shorter period of time as agreed to by Project Co and WCH, 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 WCH 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 WCH 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 WCH 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) The Trustee agrees to provide prompt written notice of all payments to or withdrawals from the Trust Funds and any amendments to this Trust Account Agreement to each of the Parties hereto and Infrastructure Ontario and MOHLTC.

**8. 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 WCH. 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 8(b). All interest (and interest on interest) earned shall be the property of WCH.

**9. TERMINATION OF THIS 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.

**10. 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 WCH and Project Co.

**11. 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 WCH: 76 Grenville Street, E143  
Toronto, Ontario M5S 1B2

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to Project Co: [REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

with a copy to: [REDACTED]

Fax No.: [REDACTED]

Attention: [REDACTED]

If to the Trustee: [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 Trust Account 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 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.

**13. 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.

**14. 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.

**15. 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.

**16. 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.

**17. 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.

**18. 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.

**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 Trust Account Agreement.

20. **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 déclare satisfaite.

21. **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.

22. **COSTS**

Each of Project Co and WCH 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 FOLLOW]**

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

**WOMEN'S COLLEGE HOSPITAL**

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: **[REDACTED]**

Per: \_\_\_\_\_  
Name: **[REDACTED]**  
Title: **[REDACTED]**

We have authority to bind the corporation.



**WOMEN'S COLLEGE PARTNERSHIP,  
[REDACTED]**

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

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

I/We have authority to bind the corporation.

**WOMEN'S COLLEGE PARTNERSHIP,  
[REDACTED]**

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

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

I/We have authority to bind the corporation.

**BNY TRUST COMPANY OF CANADA**

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

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

I/We have authority to bind the corporation.

APPENDIX A

FORM OF PAYMENT INSTRUCTION BY WCH ONLY

BNY Trust Company of Canada  
[REDACTED]

Dear Sir or Madam,

**Re: Instruction for Payment**

We refer to the Trust Account Agreement made as of [●], 2010 (the “**Trust Account Agreement**”), between Women’s College Hospital, Women’s College Partnership and BNY 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 WCH pursuant to Section 4(b)(i) or 4(b)(iv), WCH 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.]**

**WOMEN’S COLLEGE HOSPITAL**

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

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

I/We have authority to bind the corporation.

**APPENDIX B**

**FORM OF PAYMENT INSTRUCTION BY WCH AND PROJECT CO**

**BNY Trust Company of Canada**  
**[REDACTED]**

Dear Sir or Madam,

**Re: Instruction for Payment**

We refer to the Trust Account Agreement made as of [●], 2010 (the “**Trust Account Agreement**”), between Women’s College Hospital, Women’s College Partnership and BNY 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 [●].

**WOMEN’S COLLEGE HOSPITAL**

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

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

I/We have authority to bind the corporation.

**WOMEN'S COLLEGE PARTNERSHIP,  
[REDACTED]**

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

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

I/We have authority to bind the corporation.

**WOMEN'S COLLEGE PARTNERSHIP,  
[REDACTED]**

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

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

I/We have authority to bind the corporation.

**SCHEDULE 34**

**WORKS REPORT REQUIREMENTS**

1. The Works Report shall include the following:
  - (a) an executive summary;
  - (b) design status;
  - (c) Works Schedule summary, including:
    - (i) permits;
    - (ii) construction progress;
    - (iii) progress photos;
    - (iv) construction milestones; and
    - (v) submissions schedule;
  - (d) contractual outstanding decisions;
  - (e) LEED status;
  - (f) quality assurance and quality control;
  - (g) organization / staffing changes and additions for Project Co and Construction Contractor;
  - (h) health and safety, including:
    - (i) lost time injuries; and
    - (ii) accidents with no lost time;
  - (i) Subcontract status, including:
    - (i) consultants;
    - (ii) Subcontracts awarded;
    - (iii) tenders;
    - (iv) shop drawing submittals status; and
    - (v) labour report (average workforce);

- (j) financial status, including:
  - (i) progress and Variations;
  - (ii) insurance summary;
  - (iii) Construction Contractor default status; and
  - (iv) cash flow projection (capital cost components);
- (k) risk management, including:
  - (i) claims;
  - (ii) liens;
  - (iii) environmental issues;
  - (iv) labour;
  - (v) market conditions;
  - (vi) outstanding disputes;
  - (vii) operational risks;
  - (viii) other risks;
- (l) cash allowances, including:
  - (i) for the Independent Certifier;
  - (ii) for In-Contract Equipment;
  - (iii) for Toronto Hydro and communication services;
  - (iv) for millwork and modular casework; and
  - (v) for signage;
- (m) Equipment delivery dates;
- (n) commissioning, occupancy and completion; and
- (o) status and progress of work related to re-routing of Enwave steam and condensate piping services.

**SCHEDULE 35**

**[INTENTIONALLY DELETED]**

**SCHEDULE 36**

**REDEVELOPMENT TRANSITION PARAMETERS**

**[REDACTED]**