

DEVELOPMENT PHASE AGREEMENT

BETWEEN

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION

AND

TRILLIUM HEALTH PARTNERS

AND

ED PCL TRILLIUM DEV CO LIMITED PARTNERSHIP

TABLE OF CONTENTS

	Page
1. DEFINITIONS	2
2. INTERPRETATION	2
2.1 General.....	2
2.2 Schedules and Appendices to this Agreement	4
2.3 Relationship to Draft Project Agreement.....	5
2.4 Priority, Conflicts and Identification of Ambiguities, Conflicts, Inconsistencies and Errors	6
2.5 Dev Co Proposal Extracts	8
3. JOINT AND SEVERAL LIABILITY AND NO IO CONTINGENT LIABILITIES.....	8
3.1 Joint and Several Liability of DPA Contracting Authority.....	8
3.2 No Contingent Liabilities of Infrastructure Ontario	8
4. PURPOSE AND INTENT OF DEVELOPMENT PHASE AGREEMENT.....	8
4.1 Purpose of this Agreement and Notice to Proceed to Commercial Close.....	8
4.2 No Renegotiation of Final Draft Project Agreement Provisions	10
4.3 Non-Exclusive Agreement.....	10
4.4 No Fettering DPA Contracting Authority or Government Entity Functions	11
5. COLLABORATION AND COOPERATION.....	11
5.1 Parties to Collaborate and Cooperate.....	11
6. TRANSPARENCY AND PRICING EFFICIENCY.....	12
6.1 Dev Co Transparency	12
6.2 Project Affordability Constraints	12
6.3 Estimate Information	12
6.4 Dev Co Public Tender of Costed Element.....	13
6.5 Non-Conformance of Cost and Pricing Information Included in Costed Elements.....	13
7. DEVELOPMENT PHASE AGREEMENT TERM.....	14
7.1 Commencement on Effective Date and Expiry and Termination	14
8. REPRESENTATIONS AND WARRANTIES	14
8.1 Dev Co Representations and Warranties	14
8.2 DPA Contracting Authority Representations and Warranties	16
9. APPOINTMENT OF REPRESENTATIVES	19

9.1	DPA Contracting Authority Representative	19
9.2	DPA Dev Co Representative	19
9.3	Communications to Representatives.....	20
10.	DEV CO DPA WORKS OBLIGATIONS	20
10.1	Performance of DPA Works	20
10.2	General DPA Works Requirements	21
10.3	DPA Works Schedules and DPA Works Schedules Requirements	22
10.4	Anti-Racism and Anti-Discrimination Processes, Policies and Procedures and Indigenous Engagement	22
10.5	Project Governance, Meetings and Progress Reporting.....	22
10.6	DPA Key Individuals.....	22
10.7	Dev Co Subcontracting	23
10.8	Access to Lands and Site	30
10.9	Additional Project Due Diligence	30
10.10	Business Opportunities	32
10.11	RFP Completion Documents	32
10.12	Enabling Works	32
10.13	MOH Approvals Support and Submissions.....	36
10.14	Online Collaborative Project Management.....	37
10.15	High Fidelity Room Mock-Ups and Mock-Up Space	37
10.16	Development and Finalization of Technical Specifications.....	39
11.	BACKGROUND INFORMATION	40
11.1	Review of DPA Background Information	40
11.2	No Warranty for Background Information	41
11.3	No Claims or Liability in Respect of Background Information.....	41
11.4	Exceptions.....	42
11.5	Additional Background Information.....	42
12.	DPA VARIATION PROCEDURE.....	42
12.1	DPA Variation Procedure	42
12.2	DPA Variation for DPA Contracting Authority Delay	44
13.	TOTAL DPA AND DESIGN WORKS FIXED PRICE AND PAYMENT	45
13.1	Total DPA and Design Works Fixed Price	45
13.2	Payment to Dev Co and Project Co of the Total DPA and Design Works Fixed Price....	46
13.3	Other Payment Obligations.....	47
13.4	Cash Allowance Items and Cash Allowance Amounts.....	47
13.5	Set-Off	50
13.6	Effect of Payment	50
13.7	No Other Entitlement.....	50
14.	LIENS ARISING FROM THE DPA WORKS	50

14.1	No Liens.....	50
15.	FORCE MAJEURE EVENTS.....	51
15.1	Force Majeure.....	51
15.2	Impacts of COVID-19 on DPA Works.....	52
16.	INSURANCE AND PERFORMANCE SECURITY	53
16.1	Insurance.....	53
16.2	Performance Guarantee of DPA Works Guarantor.....	53
16.3	DPA Closing Letter of Credit	53
16.4	No Required Bonds.....	56
17.	CONFLICT OF INTEREST.....	56
17.1	No Conflict of Interest	56
18.	DEFAULT	57
18.1	Dev Co Event of Default.....	57
18.2	DPA Contracting Authority Event of Default	60
19.	NON-EVENT OF DEFAULT TERMINATION	61
19.1	Termination for Convenience	61
19.2	Termination for Force Majeure Event	61
19.3	Automatic Termination and Expiry on Commercial Close.....	62
19.4	No Other Rights to Terminate.....	62
20.	EFFECTS OF TERMINATION	62
20.1	Dev Co’s Obligations on Termination.....	62
20.2	Payment Obligations on Termination	63
20.3	Other Termination Rights and Obligations of the Parties.....	63
20.4	Survival.....	64
21.	SUSPENSION OF DPA WORKS	64
21.1	Suspension of DPA Works by DPA Contracting Authority	64
22.	INDEMNITIES AND CONDUCT OF CLAIMS.....	65
22.1	Dev Co Indemnities to DPA Contracting Authority.....	65
22.2	Dev Co Indemnity for Dev Co Event of Default Termination	66
22.3	Hospital Indemnities to Dev Co.....	66
22.4	Conduct of Claims	67
23.	LIMITS OF LIABILITY	67

23.1	No Liability for Indirect Losses or in Tort.....	67
23.2	Maximum Liability.....	68
24.	DPA DISPUTE RESOLUTION PROCEDURE.....	69
24.1	General.....	69
24.2	Amicable Negotiations and Arbitration.....	69
24.3	Litigation.....	71
24.4	Adjudication.....	71
24.5	Continued Performance During DPA Disputes.....	72
25.	RECORDS, INFORMATION AND AUDIT.....	72
25.1	Records Provisions, Information and General Audit Rights.....	72
26.	CONFIDENTIALITY, PERSONAL INFORMATION AND COMMUNICATIONS.....	73
26.1	Confidentiality and Personal Information.....	73
26.2	Promotion Restrictions.....	73
26.3	DPA Communications Plan.....	73
27.	TITLE.....	74
27.1	Title.....	74
28.	INTELLECTUAL PROPERTY.....	74
28.1	Representation and Warranty.....	74
28.2	Delivery of DPA Data and DPA Intellectual Property Rights.....	75
28.3	Licence of Project Data and DPA Intellectual Property Rights.....	75
28.4	DPA Jointly Developed Materials.....	76
28.5	Maintenance of Data.....	76
28.6	Claims.....	77
28.7	Contracting Authority Trade-Marks.....	77
28.8	Government Use of Documents.....	77
28.9	Restrictions.....	77
29.	ASSIGNMENT AND CHANGE IN CONTROL.....	78
29.1	Assignment.....	78
29.2	Change in Control.....	78
30.	NOTICES.....	78
30.1	Notices to Parties.....	78
30.2	Notices to Representatives.....	79
30.3	Electronic Submission.....	79
30.4	Change of Address.....	79
30.5	Deemed Receipt of Notices.....	79
30.6	Service on DPA Contracting Authority.....	80

31.	AMENDMENTS	80
32.	WAIVER.....	80
33.	RELATIONSHIP BETWEEN THE PARTIES	81
34.	GENERAL DUTY TO MITIGATE.....	81
35.	ACTUAL KNOWLEDGE.....	81
36.	ENTIRE AGREEMENT	82
37.	NO RELIANCE	82
38.	SEVERABILITY	82
39.	ENUREMENT	82
40.	GOVERNING LAW AND JURISDICTION	82
41.	REMEDIES CUMULATIVE	83
42.	FURTHER ASSURANCES	83
43.	COSTS	83
44.	LANGUAGE OF THIS AGREEMENT	83
45.	PROOF OF AUTHORITY	83
46.	COUNTERPARTS	83
47.	GOVERNMENT ENTITIES AS THIRD PARTY BENEFICIARIES.....	84
48.	COPYRIGHT NOTICE	84

Schedule No. Description

- Schedule 1 – DPA Definitions
- Schedule 2 – DPA Scope of Work
- Schedule 3 – DPA Submissions and Project Development Process
- Schedule 4 – DPA Works PA Requirements
- Schedule 5 – DPA Key Individuals
- Schedule 6 – DPA Variation Procedure
- Schedule 7 – DPA Works Schedules Requirements
- Schedule 8 – DPA Payment
- Schedule 9 – DPA Insurance
- Schedule 10 – DPA Dev Co Proposal Extracts
- Schedule 11 – DPA Draft Project Agreement
- Schedule 12 – [Intentionally Deleted]
- Schedule 13 – Initial DPA Subcontracts

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- Schedule 14 – Form of Assignment of DPA Subcontract
- Schedule 15 – Form of Performance Guarantee of DPA Works Guarantor
- Schedule 16 – DPA Term Governance, Meetings and Progress Reporting
- Schedule 17 – Negotiable Draft Project Agreement Provisions
- Schedule 18 – Form of Enabling Works Contract
- Schedule 19 – Enabling Works Requirements

DEVELOPMENT PHASE AGREEMENT

THIS AGREEMENT is made and effective as of the 10th day of March, 2023 (the “**Effective Date**”)

BETWEEN:

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended (“**Infrastructure Ontario**” or “**IO**”)

AND:

TRILLIUM HEALTH PARTNERS, a non-share capital corporation incorporated under the laws of Ontario (the “**Hospital**”)

AND:

ED PCL TRILLIUM DEV CO LIMITED PARTNERSHIP, [REDACTED] (“**Dev Co**”)

RECITALS:

- A. The Hospital, with the assistance of Infrastructure Ontario, (collectively, “**DPA Contracting Authority**”) wishes to develop a new hospital facility in Mississauga, Ontario;
- B. DPA Contracting Authority and Dev Co have agreed to enter into this Agreement, which sets out the terms and conditions pursuant to which Dev Co will perform the DPA Works, including the performance of the Development Phase PA Works, the development and submission to DPA Contracting Authority of the DPA Project Deliverables, and the performance of the Enabling Works;
- C. One of the DPA Project Deliverables Dev Co is required to develop and submit pursuant to this Agreement is a Project Proposal for Project Co to design, construct, finance and maintain the Facility (the “**Project**”) under a Final Project Agreement with the Hospital;
- D. Dev Co’s performance of the DPA Works will allow DPA Contracting Authority to assess and determine if DPA Contracting Authority, in its sole discretion, will elect for the Hospital to proceed to enter into a Final Project Agreement with Project Co following, amongst other things, the negotiation and finalization by DPA Contracting Authority and Dev Co of the form of the Draft Project Agreement, DPA Contracting Authority’s review of, comment on and any subsequent negotiation of Dev Co’s Project Proposal, the Parties’ successful completion of the Financing Process, and DPA Contracting Authority’s issuance of a Notice to Proceed to Commercial Close, subject to and in accordance with the terms and conditions of this Agreement;
- E. In the event that the Hospital and Project Co enter into a Final Project Agreement, this Agreement will automatically expire and terminate and the Development Phase PA Works will, as set out in

the Final Project Agreement, be deemed to have been completed as part of the Works under the Final Project Agreement;

- F. In the event that this Agreement is terminated in accordance with its terms other than as a result of its expiry and termination upon the Hospital and Project Co entering into a Final Project Agreement or a DPA Contracting Authority Event of Default, then DPA Contracting Authority may exercise its rights under the Assignment of Project Documents and any Assignment of DPA Subcontracts, including to cause the completion of the Development Phase PA Works pursuant to the DPA Subcontracts in order to permit the Hospital to develop a new public hospital facility similar to the Facility by way of a development model that may be similar to or different from the development model contemplated by the Draft Project Agreement and by persons that exclude Dev Co and some or all of the Dev Co Parties; and
- G. With a view to ensuring that both Parties are able to properly and effectively discharge their respective duties, functions and responsibilities under this Agreement and Applicable Law, and as further described in DPA Section 5.1, it is the intent that DPA Contracting Authority and Dev Co work collaboratively, responsibly and cooperatively throughout the DPA Term.

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

1. DEFINITIONS

- (a) Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Agreement have the respective meanings given to them in Schedule 1 – DPA Definitions.

2. INTERPRETATION

2.1 General

- (a) This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:
- (i) The headings in this Agreement are for convenience of reference only, shall not constitute a part of this Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Agreement.
 - (ii) Unless the context otherwise requires, references to specific sections, paragraphs, subparagraphs, parts and other divisions are references to such sections, paragraphs, subparagraphs, parts or divisions of this Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous. References to “DPA Section” are to a Section of this main body of this Agreement and references to “Section” in a schedule, appendix or other attachment hereto or thereto are to a “Section” of such schedule, appendix or other attachment hereto or thereto.
 - (iii) 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.

- (iv) 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.
- (v) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (vi) Unless otherwise provided in this Agreement, all accounting and financial terms used in this Agreement shall be interpreted and applied in accordance with Canadian GAAP.
- (vii) 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.
- (viii) References to a statute shall include all regulations, by-laws, ordinances and orders made under or pursuant to the statute.
- (ix) The words in this Agreement shall bear their natural meaning.
- (x) 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 this Agreement taken as a whole;
 - 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”; and
 - C. a Party’s “sole discretion” means in the sole and absolute discretion of the Party exercising the discretion.
- (xi) In construing this Agreement, the rule known as the *ejusdem generis rule* shall not apply nor shall any similar rule or approach to the construction of this Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.

- (xii) Where this Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (xiii) Where this Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (xiv) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (xv) Unless otherwise indicated, time periods will be strictly construed.
- (xvi) Whenever the terms “will” or “shall” are used in this Agreement they shall be construed and interpreted as synonymous and to read “shall”.
- (xvii) Any direct or indirect reference in this Agreement to “the completion of the design of the Facility and all Design Data” in accordance with this Agreement or the DPA Subcontracts shall be interpreted to mean the point at which a comment of “No Comment” or “Minor Non-Conformance” with no additional comment of “Re-Submit” has been assigned to each and all of the Schematic Design Submittals, Design Development Submittals, Construction Document Submittals and other Design Data and items required to be submitted by Dev Co for design review under this Agreement or the DPA Subcontracts in order to complete the full design of the Facility and all Design Data, in accordance with the Draft PA Review Procedure or the equivalent provisions of the DPA Subcontracts, and no such reference shall be interpreted to limit any liability of Dev Co under this Agreement or of a DPA Subcontractor under any DPA Subcontract (including with respect to the remedying of any defects in the design of the Facility or the Design Data).
- (xviii) 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:

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

2.2 Schedules and Appendices to this Agreement

- (a) Except as set out in DPA Section 2.3, this Agreement is comprised of this executed agreement and the following schedules, including appendices, all of which are hereby incorporated by reference into and form part of this Agreement:

Schedule No. Description

Schedule 1 – DPA Definitions

Schedule 2 – DPA Scope of Work

Schedule 3 – DPA Submissions and Project Development Process

Schedule 4 – DPA Works PA Requirements

Schedule 5 – DPA Key Individuals
Schedule 6 – DPA Variation Procedure
Schedule 7 – DPA Works Schedules Requirements
Schedule 8 – DPA Payment
Schedule 9 – DPA Insurance
Schedule 10 – DPA Dev Co Proposal Extracts
Schedule 11 – DPA Draft Project Agreement
Schedule 12 – [Intentionally Deleted]
Schedule 13 – Initial DPA Subcontracts
Schedule 14 – Form of Assignment of DPA Subcontract
Schedule 15 – Form of Performance Guarantee of DPA Works Guarantor
Schedule 16 – DPA Term Governance, Meetings and Progress Reporting
Schedule 17 – Negotiable Draft Project Agreement Provisions
Schedule 18 – Form of Enabling Works Contract
Schedule 19 – Enabling Works Requirements

- (b) The recitals to this Agreement form part of this Agreement, provided that they are intended to be read as subordinate to the other provisions of this Agreement.
- (c) Subject to DPA Section 2.2(a), all terms defined in this Agreement shall have the same meanings in its schedules and appendices unless otherwise defined in such schedules or appendices.
- (d) The documents comprising this 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 DPA Section 2.4 shall apply.

2.3 Relationship to Draft Project Agreement

- (a) Except where the context otherwise requires, the Parties agree that each reference expressly set out in this Agreement (other than in Schedule 11 – Draft Project Agreement) to a specific section, paragraph, subparagraph, part or other division of the Draft Project Agreement (including in the DPA Works PA Requirements) that is expressly intended to bind the Parties under this Agreement is, to the extent applicable, incorporated into this Agreement by such reference as if such section, paragraph, subparagraph, part or other division of the Draft Project Agreement was expressly set out in this Agreement and shall be applicable *mutatis mutandis*, including as though, if and to the extent set out in such reference:
 - (i) the Draft Project Agreement was this Agreement;
 - (ii) Commercial Close, Financial Close or the date of the Project Agreement under the Draft Project Agreement, as the context requires, was the Effective Date under this Agreement;
 - (iii) Contracting Authority under the Draft Project Agreement was DPA Contracting Authority under this Agreement;
 - (iv) the Contracting Authority Representative under the Draft Project Agreement was the DPA Contracting Authority Representative under this Agreement;
 - (v) Project Co under the Draft Project Agreement was Dev Co under this Agreement;

- (vi) the applicable part of the Works or the other Project Operations under the Draft Project Agreement, as the context requires, was the applicable part of the DPA Works under this Agreement;
- (vii) the Project Works Schedules under the Draft Project Agreement was the DPA Works Schedules under this Agreement;
- (viii) the Project Co Proposal Extracts under the Draft Project Agreement was the DPA Dev Co Proposal Extracts under this Agreement;
- (ix) the Dispute Resolution Procedure under the Draft Project Agreement was the DPA Dispute Resolution Procedure under this Agreement; and
- (x) any Variation under the Draft Project Agreement was a DPA Variation under this Agreement,

and where the term *mutatis mutandis* is used in this Agreement, in reference to provisions of the Draft Project Agreement being applicable in this Agreement, the provisions of this DPA Section 2.3(a) shall apply.

- (b) Notwithstanding anything to the contrary in this Agreement and subject to the express terms of Schedule 4 – DPA Works PA Requirements, except as expressly set out in this Agreement, no provision of the Draft Project Agreement is incorporated into this Agreement and no such provision shall have any legal force or effect whatsoever, and the Draft Project Agreement may be revised or amended in accordance with the provisions of this Agreement, including DPA Section 4.2.

2.4 Priority, Conflicts and Identification of Ambiguities, Conflicts, Inconsistencies and Errors

- (a) In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this 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 Agreement and DPA Variation Confirmations signed by the Parties shall govern and take precedence only over those specific provisions of this 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 Agreement;
 - (iv) Schedule 1 – DPA Definitions;
 - (v) Schedule 8 – DPA Payment;
 - (vi) Schedule 2 – DPA Scope of Work;
 - (vii) Schedule 4 – DPA Works PA Requirements;

- (viii) Schedule 9 – DPA Insurance;
 - (ix) Schedule 6 – DPA Variation Procedure;
 - (x) Schedule 3 – DPA Submissions and Project Development Process;
 - (xi) Schedule 18 – Form of Enabling Works Contract;
 - (xii) Schedule 19 – Enabling Works Requirements;
 - (xiii) Schedule 17 – Negotiable Draft Project Agreement Provisions;
 - (xiv) the other Schedules in the order in which they are listed in DPA Section 2.2(a) other than Schedule 11 – DPA Draft Project Agreement; and
 - (xv) Schedule 10 – DPA Dev Co Proposal Extracts.
- (b) Subject to DPA Section 2.4(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 DPA Works, the provision that applies to the specific part of the DPA Works shall govern for that specific part of the DPA Works.
- (c) During the DPA Term, Dev Co shall promptly advise DPA Contracting Authority in writing of:
- (i) any ambiguity, conflict, inconsistency between or among any of the provisions of this Agreement;
 - (ii) any error, found or noted in this Agreement or in any of the portions of the Draft Project Agreement that are not included by reference in this Agreement pursuant to DPA Section 2.3;
 - (iii) supplementary details, instructions or directions that do not correspond with those contained in this Agreement; and
 - (iv) any other omission in or other fault with this Agreement or in any of the portions of the Draft Project Agreement that are not included by reference in this Agreement pursuant to DPA Section 2.3 that become evident to Dev Co and should be corrected respectively in order for:
 - A. Dev Co to properly perform the DPA Works in accordance with this Agreement, including in accordance with Applicable Law; and
 - B. Project Co to properly perform the Project Operations under the Final Project Agreement in the event that the Final Project Agreement were to be entered into by the Hospital and Project Co in accordance with this Agreement.
- (d) If any ambiguity, conflict or inconsistency between or among any of the provisions of this Agreement is not readily resolved by the foregoing provisions of this DPA Section 2.4, then the DPA Contracting Authority Representative shall, as soon as practicable in the circumstances, make a determination and give notice of such determination, in writing, to Dev Co.

- (e) DPA Contracting Authority and Dev Co shall comply with the determination of the DPA Contracting Authority Representative pursuant to DPA Section 2.4(d) unless DPA Contracting Authority or Dev Co disputes the decision of the DPA Contracting Authority Representative in which event such DPA Dispute may be referred for resolution in accordance with the DPA Dispute Resolution Procedure.

2.5 Dev Co Proposal Extracts

- (a) The Parties shall comply with Schedule 10 – DPA Dev Co Proposal Extracts.
- (b) Except for the Dev Co Proposal Extracts, on the Effective Date, the Request for Proposals and Dev Co’s proposal pursuant to the Request for Proposals shall be superseded entirely by this Agreement and rendered null and void, and shall not be relied upon or used by Dev Co, DPA Contracting Authority or anyone else (including anyone pursuant to the DPA Dispute Resolution Procedure or any court) in any way to interpret or qualify the scope of the DPA Works, any obligations or liabilities of Dev Co, or anything else contained in this Agreement.

3. JOINT AND SEVERAL LIABILITY AND NO IO CONTINGENT LIABILITIES

3.1 Joint and Several Liability of DPA Contracting Authority

- (a) DPA Contracting Authority shall be liable, on a joint and several basis, for all of the obligations of DPA Contracting Authority under this Agreement, provided that:
 - (i) where it is expressly set out that the Hospital is liable for an obligation, representation or warranty under this Agreement, Infrastructure Ontario shall not be liable for any such obligation, representation or warranty; and
 - (ii) where it is expressly set out that Infrastructure Ontario is liable for an obligation, representation or warranty under this Agreement, the Hospital shall not be liable for any such obligation, representation or warranty.

3.2 No Contingent Liabilities of Infrastructure Ontario

- (a) Notwithstanding anything else in this Agreement, any express or implied reference to Infrastructure Ontario providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the Province or Infrastructure Ontario, whether at the time of execution of this Agreement or at any time during the DPA Term, shall be void and of no legal effect with respect to Infrastructure Ontario but, for greater certainty, not to the Hospital if such reference is to DPA Contracting Authority.
- (b) Dev Co’s sole recourse to Infrastructure Ontario with respect to the subject matter of this Agreement shall be to Infrastructure Ontario in its capacity as agent for the Province.

4. PURPOSE AND INTENT OF DEVELOPMENT PHASE AGREEMENT

4.1 Purpose of this Agreement and Notice to Proceed to Commercial Close

- (a) The Parties acknowledge and agree that the purpose of this Agreement is:

- (i) for DPA Contracting Authority and Dev Co to collaboratively plan and for (A) Dev Co to perform the DPA Works, subject to and in accordance with this Agreement; and (B) Dev Co to cause the performance of the Enabling Works, subject to and in accordance with this Agreement and the Enabling Works Contract; and
- (ii) to allow DPA Contracting Authority to assess and determine, in its sole discretion, if the Hospital will elect to proceed to enter into the Final Project Agreement with Project Co, including after:
 - A. the Draft Project Agreement Negotiations Process pursuant to Schedule 3 – DPA Submissions and Project Development Process is undertaken and completed;
 - B. the Project Proposal submitted by Dev Co pursuant to Schedule 3 – DPA Submissions and Project Development Process has been reviewed and commented on by DPA Contracting Authority;
 - C. any Project Proposal Negotiations pursuant to Schedule 3 – DPA Submissions and Project Development Process are undertaken and completed;
 - D. the Financing Process pursuant to Schedule 3 – DPA Submissions and Project Development Process is undertaken and completed; and
 - E. DPA Contracting Authority has taken into account and considered any other factors identified by DPA Contracting Authority or any of its stakeholders (including the MOH), in its sole discretion, including any relevant affordability constraints of the Hospital or the Province and the performance of Dev Co and the Dev Co Parties under this Agreement.
- (b) In the event that DPA Contracting Authority makes an election for the Hospital to proceed to enter into a Final Project Agreement with Project Co following the completion of the process set out in DPA Section 4.1(a), then DPA Contracting Authority shall, before the expiry of the Project Proposal Validity Period, deliver a written notice to Dev Co directing Dev Co to proceed to achieve Commercial Close in accordance with the provisions of Schedule 3 – DPA Submissions and Project Development Process (a “**Notice to Proceed to Commercial Close**”).
- (c) Notwithstanding anything to the contrary in this Agreement, Dev Co acknowledges, confirms and agrees that:
 - (i) DPA Contracting Authority shall be under no obligation whatsoever, and shall not be liable under this Agreement or otherwise pursuant to any Applicable Law, to Dev Co or to any Dev Co Party to deliver any Notice to Proceed to Commercial Close to Dev Co;
 - (ii) nothing in this Agreement shall limit, prejudice or fetter DPA Contracting Authority’s right to terminate this Agreement pursuant to DPA Section 19.1, including after DPA Contracting Authority delivers a Notice to Proceed to Commercial Close to Dev Co; and
 - (iii) DPA Contracting Authority shall not be liable for any losses, damages or claims suffered by Dev Co or any Dev Co Party arising from or connected with the termination of this Agreement for any reason whatsoever, including following DPA Contracting Authority’s

review of and comment on the Project Proposal, except as expressly set out in DPA Section 20.

4.2 No Renegotiation of Final Draft Project Agreement Provisions

- (a) Each Party acknowledges and confirms that it is satisfied with the form of the Draft Project Agreement other than (only) with respect to the specific provisions (or parts thereof) or specific subject matters in the Draft Project Agreement that are expressly identified in Schedule 17 – Negotiable Draft Project Agreement Provisions as being subject to completion or revision and negotiation by the Parties prior to the Final Checkpoint and the Project Proposal Submission Deadline (the “**Negotiable Draft Project Agreement Provisions**”), and agrees that it shall not seek to amend, revise or renegotiate the provisions of the Draft Project Agreement during the DPA Term, save and except as follows:
- (i) in accordance with DPA Section 12;
 - (ii) in accordance with Schedule 3 – DPA Submissions and Project Development Process; or
 - (iii) as otherwise agreed by the Parties in writing.
- (b) Notwithstanding DPA Section 4.2(a), in the event that, before the Final Checkpoint, Dev Co is of the reasonable opinion that revisions to any of the provisions of the Draft Project Agreement that are not (i) Negotiable Draft Project Agreement Provisions and (ii) incorporated into this Agreement by reference, may be beneficial to DPA Contracting Authority, then Dev Co may propose such revisions to DPA Contracting Authority, which may be negotiated, accepted or rejected (in whole or in part) by DPA Contracting Authority in its sole discretion. Dev Co acknowledges that DPA Contracting Authority is under no obligation whatsoever to negotiate or accept such proposed revisions.

4.3 Non-Exclusive Agreement

- (a) Without limiting or prejudice to the provisions of DPA Section 12 and Schedule 6 – DPA Variation Procedure, Dev Co acknowledges and accepts that:
- (i) it is providing the DPA Works to DPA Contracting Authority on a non-exclusive basis, and that DPA Contracting Authority reserves the right to contract with other third parties for the same or similar works and services as those provided by Dev Co under this Agreement and reserves the right to obtain or perform the same or similar works and services internally; and
 - (ii) DPA Contracting Authority may, at any time and in its sole discretion, elect to deliver any part of the Project set out in the Draft Project Agreement by works or services provided either directly by any entity comprising DPA Contracting Authority or by way of separate arrangements with third parties.
- (b) The Parties agree that, without limiting or prejudice to the provisions of DPA Section 12 or Schedule 6 – DPA Variation Procedure, if DPA Contracting Authority exercises any of its rights set out in DPA Section 4.3(a) without first making any necessary adjustments to the DPA Scope of Work by way of a DPA Variation to (i) reduce the DPA Scope of Work to reflect the performance

of such works or services by such third parties or by such entity comprising DPA Contracting Authority instead of Dev Co or (ii) otherwise address any and all interfaces between the DPA Scope of Work and such works or services, then (A) Dev Co shall not be responsible for such works or services; and (B), if any such works or services materially adversely interferes with the performance of the DPA Works or requires the performance by Dev Co or any Dev Co Party of any material additional works or services that would not otherwise be required of Dev Co or the Dev Co Parties under this Agreement, then, subject to and in accordance with Schedule 6 – DPA Variation Procedure, Dev Co shall be entitled to a DPA Variation in respect, and to the extent, of such material adverse interference or material additional works or services by Dev Co or the Dev Co Parties. For greater certainty, this DPA Section 4.3(b) shall not be applicable in the event, and to the extent, that DPA Contracting Authority exercises its rights pursuant to DPA Section 18.1(d)(i).

4.4 No Fettering DPA Contracting Authority or Government Entity Functions

- (a) Nothing in this Agreement shall in any way fetter the right, authority and discretion of DPA Contracting Authority or any Government Entity in fulfilling its statutory or other functions under Applicable Law, and Dev Co understands and agrees that nothing in this Agreement shall preclude Infrastructure Ontario’s board of directors or the Hospital’s board of directors from performing, discharging or exercising its duties, responsibilities and powers under Applicable Law.

5. COLLABORATION AND COOPERATION

5.1 Parties to Collaborate and Cooperate

- (a) The Parties agree to:
- (i) at all times act cooperatively, reasonably and in good faith in the performance of their respective obligations and the exercise of their respective rights under this Agreement;
 - (ii) at all times act in accordance with the following principles, whereby the Parties shall:
 - A. establish and maintain a collaborative culture and act, at all times, in a manner that is consistent with a “best for project” approach;
 - B. follow “safety first and always” principles;
 - C. seek to create exceptional value for DPA Contracting Authority and the Project and mutual benefits for the Parties; and
 - D. establish and maintain a value for money approach to the Project,

provided that the foregoing shall not limit any right of a Party where in this Agreement it is set out that a Party may exercise any of its rights in its sole discretion.

- (b) Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of DPA Contracting Authority or the DPA Contracting Authority Representative, no consent, approval or satisfaction of DPA Contracting Authority or the DPA Contracting Authority Representative shall be unreasonably withheld or delayed.

- (c) Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of Dev Co or the DPA Dev Co Representative, no consent, approval or satisfaction of Dev Co or the DPA Dev Co Representative shall be unreasonably withheld or delayed.
- (d) Notwithstanding anything to the contrary in this Agreement, no Party shall be under any obligation to perform or shall be liable for any of the other Party's obligations under this Agreement or to amend this Agreement to assist the other Party in performing its obligations under this Agreement.

6. TRANSPARENCY AND PRICING EFFICIENCY

6.1 Dev Co Transparency

- (a) For the purposes of achieving value for money and transparency with respect to the Project, Dev Co agrees that it will:
 - (i) honestly and openly answer any questions DPA Contracting Authority, or its advisors, may ask in connection with the DPA Works, including in connection with the DPA Project Deliverables; and
 - (ii) promptly at the request of DPA Contracting Authority, provide information and documentation relating to, and all reasonable requested assistance to allow DPA Contracting Authority to understand, the DPA Project Deliverables in general, the contingencies and pricing included or to be included within the Costed Elements, the process used by Dev Co to solicit pricing for each scope of work, the range of prices received by Dev Co for each scope or work, and Dev Co's and the Dev Co Parties' ability to complete the Financing Process and their costs related thereto.
- (b) DPA Contracting Authority acknowledges that nothing in DPA Section 6.1(a) applies to information or documentation that may be subject to legal professional privilege or are confidential lawyer-client communications.

6.2 Project Affordability Constraints

- (a) DPA Contracting Authority may, in its sole discretion, elect to disclose to Dev Co in writing any affordability constraints in respect of the cost of the Project identified by DPA Contracting Authority. If DPA Contracting Authority elects to make such disclosure to Dev Co, then such disclosure shall be on a strictly confidential basis and shall be Background Information.

6.3 Estimate Information

- (a) With respect to each element of a DPA Schedule 3 Submittal and the Project Proposal (each a "**Costed Element**"), DPA Contracting Authority may require Dev Co to deliver evidence to DPA Contracting Authority demonstrating to DPA Contracting Authority's reasonable satisfaction that Dev Co has used commercially reasonable efforts to obtain the best value for money in respect of all work, services, supplies, materials and equipment required by the Costed Element, including to minimize any and all price contingencies and by applying, using and comparing applicable industry benchmarks or benchmarking data for such purposes, and complying with all Good Industry Practice in relation to any procurement of any work, services, supplies, materials or equipment required by the Costed Element, to a standard no less than Dev Co would apply if all costs and

expenses (including contingencies) were to be incurred on its own account without recourse to DPA Contracting Authority. Also, to the extent any such procurement resulted in costs or expenses that are in excess of those costs or expenses established by industry benchmarks or benchmarking data, Dev Co shall provide DPA Contracting Authority sufficient information and analysis to demonstrate to DPA Contracting Authority's satisfaction, acting reasonably, that such excess costs or expenses are reasonable and justified in the context of the subject Costed Element. For greater certainty, DPA Contracting Authority acknowledges that Dev Co and the DPA Subcontractors may include price contingencies in the Costed Elements.

- (b) Dev Co shall deliver all evidence required by DPA Section 6.3(a) to DPA Contracting Authority within 10 Business Days (or such longer time period agreed by the Parties in writing) of a request from DPA Contracting Authority in accordance with DPA Section 6.3(a). In the event that DPA Contracting Authority does not agree that Dev Co has provided evidence demonstrating the matters set out in DPA Section 6.3(a), DPA Contracting Authority may require Dev Co to take additional measures to ensure that it complies with the requirements of DPA Section 6.3(a). DPA Contracting Authority shall not have any right to require Dev Co to modify its price as provided in the Project Proposal, or otherwise, as a result of any review undertaken pursuant to this DPA Section 6.3, provided however, that disclosure made in connection with this DPA Section 6.3 and any failure of Dev Co to comply with the provisions of this DPA Section 6.3 may otherwise be considered by DPA Contracting Authority, in the context of DPA Contracting Authority's review of any of the DPA Schedule 3 Submittals and the Project Proposal.

6.4 Dev Co Public Tender of Costed Element

- (a) At the request of DPA Contracting Authority, Dev Co shall, in good faith, issue and evaluate a competitive procurement for any Costed Element. In the event that DPA Contracting Authority requests that Dev Co issue and evaluate a competitive procurement for any Costed Element, Dev Co shall, subject to and in accordance with Schedule 6 – DPA Variation Procedure, be entitled to a DPA Variation in respect of the payment of its costs for carrying out such competitive procurement. Dev Co is not required by the terms of this Agreement, for the purposes of any DPA Schedule 3 Submittal, its Project Proposal or any performance under a Final Project Agreement, to accept any particular, or any response to any, competitive procurement required pursuant to this DPA Section 6.4(a).
- (b) In the event Dev Co incorporates a price which is higher than the amount of the lowest priced proposal for a Costed Element that has been the subject of a competitive procurement pursuant to DPA Section 6.4(a), or otherwise, into its pricing included in a DPA Schedule 3 Submittal or the Project Proposal, Dev Co shall include with such DPA Schedule 3 Submittal or the Project Proposal detailed reasons for its decision to carry such higher price for such Costed Element.
- (c) In accordance with DPA Section 4.3, Dev Co acknowledges that DPA Contracting Authority may, at any time, elect to run a competitive public procurement in respect of a Costed Element and may, in accordance with DPA Section 12, amend the DPA Scope of Work or the scope of the Draft Project Agreement accordingly.

6.5 Non-Conformance of Cost and Pricing Information Included in Costed Elements

- (a) For greater certainty, and without limiting any right of DPA Contracting Authority under this Agreement, except for pricing that is inconsistent with the provisions of DPA Section 13.2(c), DPA

Contracting Authority shall not issue a comment of “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE” pursuant to this Agreement to any cost estimate or any pricing element included in a Costed Element submitted by Dev Co to DPA Contracting Authority pursuant to this Agreement solely on the basis that such cost estimate or pricing element (i) exceeds any affordability threshold of DPA Contracting Authority, (ii) is not in conformance with market prices, (iii) is different from any costs estimates or pricing elements previously submitted by Dev Co under this Agreement or (iv) is in a quantum otherwise not acceptable to DPA Contracting Authority.

7. DEVELOPMENT PHASE AGREEMENT TERM

7.1 Commencement on Effective Date and Expiry and Termination

- (a) This Agreement commences on the Effective Date, and shall expire and terminate upon the earlier of (i) Commercial Close if and when the Hospital and Project Co enter into the Final Project Agreement; or (ii) the date this Agreement is otherwise terminated in accordance with its terms (the “**DPA Term**”).

8. REPRESENTATIONS AND WARRANTIES

8.1 Dev Co Representations and Warranties

- (a) Dev Co represents and warrants to DPA Contracting Authority that as of the Effective Date:
- (i) Dev Co is a [REDACTED] 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 Agreement and to perform its obligations under this Agreement;
 - (ii) [REDACTED];
 - (iii) [REDACTED];
 - (iv) [REDACTED];
 - (v) Dev Co and the Dev Co Parties, collectively, have extensive experience and are knowledgeable in the design and construction of hospital facilities and have the required ability, experience, skill and capacity to perform the DPA Works in a timely and professional manner as set out in this Agreement;
 - (vi) Dev Co has the requisite power, authority and capacity to execute, deliver and perform this 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 Agreement to be done, executed, delivered or performed;
 - (vii) no steps or proceedings have been taken or are pending to supersede or amend the constating documents, articles or by-laws of Dev Co in a manner that would impair or limit its ability to perform the obligations of Dev Co under this Agreement;

- (viii) this Agreement has been duly authorized, executed, and delivered by Dev Co and constitutes a legal, valid, and binding obligation of Dev Co, enforceable against Dev 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;
- (ix) the execution, delivery, and performance by Dev Co of this 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. any Applicable Law; or
 - C. any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (x) no Dev Co Event of Default has occurred and is continuing;
- (xi) there are no actions, suits, proceedings, or investigations pending or threatened against Dev Co or, to Dev Co's knowledge, any Dev 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 Dev Co or any Dev Co Party or in any impairment of its ability to perform its obligations under this Agreement, and Dev 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) Dev Co has carefully reviewed the whole of this Agreement, and all other documents made available to Dev Co by or on behalf of DPA Contracting Authority, and, to Dev Co's knowledge, nothing contained herein or therein inhibits or prevents Dev Co from completing the DPA Works in accordance with this Agreement in a good manner so as to achieve and satisfy the requirements of this Agreement;
- (xiii) Dev Co is able to meet its obligations as they generally become due;
- (xiv) Dev Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada) and its HST registration number is [REDACTED];
- (xv) Dev Co is not a Non-Resident;

- (xvi) no Restricted Person has Direct or Indirect Power or Control over any member of the Dev Co Group in relation to the decisions, management, actions or policies of Dev Co, or in relation to the Project;
- (xvii) to the knowledge of Dev Co, no Restricted Person has directly or indirectly an Economic Interest in Dev Co or the Project;
- (xviii) the Initial DPA Subcontracts identified in Schedule 13 – Initial DPA Subcontracts have been entered into and are in full force and effect, and Dev Co has provided a true and complete copy of each of them to DPA Contracting Authority;
- (xix) the DPA Subcontractors whose Initial DPA Subcontracts are the subject of the Assignment of Project Documents have acknowledged and consented to the Assignment of Project Documents in accordance with its terms;
- (xx) Dev Co has obtained priority for DPA Contracting Authority’s security interest in the Assignment of Project Documents over all other security interests granted by Dev Co to any other person;
- (xxi) the Assignment of DPA Subcontract in respect of each applicable Initial DPA Subcontract is in full force and effect; and
- (xxii) Dev Co has not carried on any business activity of any kind except the performance of its obligations in connection with or under this Agreement.

8.2 DPA Contracting Authority Representations and Warranties

- (a) The Hospital represents and warrants to Dev Co that as of the Effective Date:
 - (i) the Hospital 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 Agreement and to perform its obligations hereunder;
 - (ii) the Hospital has the requisite power, authority and capacity to execute, deliver and perform this 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 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 Agreement;
 - (iv) this Agreement has been duly authorized, executed, and delivered by the Hospital and constitutes a legal, valid, and binding obligation of the Hospital, enforceable against the Hospital 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 the Hospital of this 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) to the knowledge of the Hospital, there are no actions, suits, proceedings, or investigations pending or threatened (in writing) against the Hospital or, to the Hospital's knowledge, any DPA Contracting Authority Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) of which the Hospital 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 the Hospital or in any impairment of its ability to perform its obligations under this Agreement, and the Hospital 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; and
- (vii) the Hospital is able to meet its obligations under this Agreement as they generally become due.
- (b) Infrastructure Ontario represents and warrants to Dev Co that as of the Effective Date:
- (i) Infrastructure Ontario is a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c.9, Schedule 32, as amended, 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 Agreement as agent for the Province;
 - (ii) subject to DPA Sections 8.2(b)(v)C), 8.2(b)(v)D), 8.2(b)(v)E) and 8.2(b)(v)F), Infrastructure Ontario is entering into this Agreement as agent for the Province and has the requisite power, authority and capacity to execute and deliver this Agreement and to bind the Province to this Agreement, and Dev Co is entitled to rely upon Infrastructure Ontario's authority to bind the Province in respect of all other agreements, instruments, undertakings and documents executed and delivered by Infrastructure Ontario as agent for the Province that are required by this Agreement to be executed and delivered by the Province;

- (iii) subject to DPA Sections 8.2(b)(v)C), 8.2(b)(v)D), 8.2(b)(v)E) and 8.2(b)(v)F), Infrastructure Ontario has the requisite power, authority and capacity to perform its obligations under this 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 Agreement to be done, executed, delivered or performed;
- (iv) subject to DPA Sections 8.2(b)(v)C), 8.2(b)(v)D) and 8.2(b)(v)E), Infrastructure Ontario has obtained all necessary approvals to enter into this Agreement as agent for the Province;
- (v) this Agreement has been duly authorized, executed, and delivered by Infrastructure Ontario and constitutes a legal, valid, and binding obligation of Infrastructure Ontario, enforceable against Infrastructure Ontario 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;
 - B. general equitable principles and the fact that the availability of equitable remedies such as specific performance and injunction are not available against the Province and that a court may stay proceedings or the execution of judgments;
 - C. statutory limitations of general application respecting the enforceability of claims against the Province or its property;
 - D. section 11.3 of the *Financial Administration Act* (Ontario);
 - E. any terms and conditions set out in the approval that has been provided in connection with this Agreement for the purposes of section 28 of the *Financial Administration Act* (Ontario); and
 - F. the powers of the Minister of Finance to effect set offs against amounts owing by Ontario pursuant to section 43 of the *Financial Administration Act* (Ontario); and
- (vi) the execution, delivery, and performance by Infrastructure Ontario of this Agreement does not and will not violate or conflict with, or constitute a default under:
 - A. the *Ontario Infrastructure and Lands Corporation Act, 2011* (Ontario);
 - B. the *Executive Council Act* (Ontario);
 - C. any Applicable Law; or
 - D. any covenant, contract, agreement, or understanding relating to the Project to which it is a party or by which it or any of its properties or assets is bound or affected.

9. APPOINTMENT OF REPRESENTATIVES

9.1 DPA Contracting Authority Representative

- (a) Subject to the limitations set out in DPA Section 9.1(d), the DPA Contracting Authority Representative shall exercise the functions and powers identified in this Agreement as functions or powers to be performed by the DPA Contracting Authority Representative and such other functions and powers of DPA Contracting Authority under this Agreement as DPA Contracting Authority may notify Dev Co from time to time.
- (b) DPA Contracting Authority may, from time to time by written Notice to Dev Co, change the DPA Contracting Authority 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 DPA Contracting Authority Representative has been appointed, or when the DPA Contracting Authority Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the DPA Contracting Authority Representative's functions under this Agreement, DPA Contracting Authority shall perform or may, by Notice to Dev Co, promptly appoint an alternative DPA Contracting Authority Representative to perform the functions which would otherwise be performed by the DPA Contracting Authority Representative. Upon receipt of such Notice, Dev Co and the DPA Dev Co Representative shall be entitled to treat any act of such alternative DPA Contracting Authority Representative which is permitted by this Agreement as being authorized by DPA Contracting Authority, and Dev Co and the DPA Dev Co Representative shall not be required to determine whether authority has in fact been given.
- (d) The DPA Contracting Authority Representative shall not, except as otherwise provided in this Agreement, be entitled to modify or waive any provision of this Agreement or to authorize a DPA Variation.
- (e) Subject to the limitations set out in DPA Sections 9.1(a) and 9.1(d), unless DPA Contracting Authority otherwise provides Notice to Dev Co, Dev Co and the DPA Dev Co Representative shall be entitled to treat any act of the DPA Contracting Authority Representative which is authorized by this Agreement as being authorized by DPA Contracting Authority, and Dev Co and the DPA Dev Co Representative shall not be required to determine whether authority has in fact been given.

9.2 DPA Dev Co Representative

- (a) Subject to the limitations set out in DPA Section 9.2(d), the DPA Dev Co Representative shall have full authority to act on behalf of Dev Co for all purposes of this Agreement.
- (b) Dev Co may change the DPA Dev Co Representative with the prior written consent of DPA Contracting Authority.
- (c) During any period when the DPA Dev Co Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the DPA Dev Co Representative's functions under this Agreement, Dev Co shall perform or may, by Notice to DPA Contracting Authority, promptly appoint an alternative DPA Dev Co Representative to perform the functions which would otherwise be performed by the DPA Dev Co Representative, provided that, Dev Co must seek DPA Contracting Authority's consent in accordance with DPA Section 9.2(b) if such alternative DPA

Dev Co Representative is in place for more than 20 Business Days. Upon receipt of such Notice, DPA Contracting Authority and the DPA Contracting Authority Representative shall be entitled to treat any act of such alternative DPA Dev Co Representative which is permitted by this Agreement as being authorized by Dev Co, and DPA Contracting Authority and the DPA Contracting Authority Representative shall not be required to determine whether authority has in fact been given.

- (d) The DPA Dev Co Representative shall not, except as otherwise provided in this Agreement, be entitled to modify or waive any provision of this Agreement.
- (e) Subject to the limitations set out in DPA Section 9.2(d), unless Dev Co otherwise provides Notice to DPA Contracting Authority, DPA Contracting Authority and the DPA Contracting Authority Representative shall be entitled to treat any act of the DPA Dev Co Representative which is authorized by this Agreement as being authorized by Dev Co, and DPA Contracting Authority and the DPA Contracting Authority Representative shall not be required to determine whether authority has in fact been given.

9.3 **Communications to Representatives**

- (a) At the time that a Party appoints or changes the appointment of the DPA Contracting Authority Representative or the DPA Dev 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. **DEV CO DPA WORKS OBLIGATIONS**

10.1 **Performance of DPA Works**

- (a) Dev Co shall, at its cost and expense, perform all work and provide all services necessary to complete the DPA Scope of Work in accordance with this Agreement (collectively, the “**DPA Works**”).
- (b) The Parties agree to comply with the provisions of Schedule 3 – DPA Submissions and Project Development Process, including with regards to:
 - (i) the performance of the activities to be carried out during the Initial Development Stage and Project Checkpoints processes;
 - (ii) Dev Co’s submission of the DPA Project Deliverables to DPA Contracting Authority for its review and comment; and
 - (iii) the process, terms and conditions in respect of the Parties negotiating, finalizing, executing and delivering a Final Project Agreement,

subject to and in accordance with the terms of this Agreement.

10.2 General DPA Works Requirements

- (a) Without limiting any other obligation of Dev Co in this Agreement, including the DPA Works PA Requirements:
- (i) Dev Co shall perform and shall cause the performance of the DPA Works:
 - A. at all times, fully, diligently and in a professional and competent manner;
 - B. to be undertaken by persons qualified and skilled in their occupations and with the care and skill reasonably to be expected of persons providing a scope of works and services similar to each aspect of the DPA Works, and on a project of similar size, scope, complexity, quality and prestige to the Project; and
 - C. in accordance with Good Industry Practice and Applicable Law; and
 - (ii) Dev Co shall:
 - A. communicate, attend meetings and consult regularly with and provide progress reporting to DPA Contracting Authority during the performance of the DPA Works, including at the request of DPA Contracting Authority or as otherwise required by Dev Co to perform and complete the DPA Works;
 - B. inform itself of DPA Contracting Authority's requirements for the Project and the DPA Works, including by familiarising itself and keeping itself familiarised with the Background Information; and
 - C. carefully examine any Background Information from time to time provided by DPA Contracting Authority to the extent necessary to properly perform Dev Co's obligations under this Agreement and perform the DPA Works and in order to conform and comply with Good Industry Practice; and
 - (iii) if any of the DPA Works fail to satisfy the requirements of this Agreement, Dev Co shall promptly correct and rectify such failure at its own cost and expense following the earlier to occur of the date Dev Co becomes aware of such failure or of DPA Contracting Authority's provision of Notice to Dev Co outlining such failure.
- (b) Dev Co acknowledges and agrees that notwithstanding anything to the contrary in this Agreement, no consultation, cooperation, inspection, testing, approval, comment, audit, certification or acknowledgement by DPA Contracting Authority pursuant to this Agreement, and no consent furnished by DPA Contracting Authority pursuant to this Agreement, shall relieve Project Co under the Final Project Agreement from its exclusive responsibility for ensuring that the Works and the Facility comply with the requirements of the Final Project Agreement, or estop the Hospital from asserting any non-compliance with any such requirements under the Final Project Agreement.
- (c) For greater certainty, the Parties acknowledge and agree that:
- (i) the Advance DPA Works forms part of the DPA Works; and

- (ii) the Advance DPA Works performed or completed by Dev Co and the Dev Co Parties prior to the Effective Date is subject to the provisions of this Agreement.

10.3 DPA Works Schedules and DPA Works Schedules Requirements

- (a) Without limiting any other obligation of Dev Co in this Agreement, including the DPA Works PA Requirements, Dev Co shall perform the DPA Works in accordance with the DPA Works Schedules, and the requirements of Schedule 7 – DPA Works Schedules Requirements.
- (b) Dev Co shall, promptly and within 10 Business Days after becoming aware of a matter which is likely to delay the DPA Works, give Notice to DPA Contracting Authority describing the circumstances and extent or likely extent of the delay.
- (c) The DPA Works Schedules may be amended from time to time by Dev Co with the written approval of DPA Contracting Authority. Subject to the terms of Schedule 6 – DPA Variation Procedure, any DPA Contracting Authority approval of such changes to the DPA Works Schedule does not entitle Dev Co to a DPA Variation, an extension of time or any additional compensation (including to any adjustment to the Total DPA and Design Works Fixed Price).
- (d) Where Dev Co proposes any change to a DPA Works Schedule, Dev Co shall, no later than two Business Days following the written request of DPA Contracting Authority, deliver to DPA Contracting Authority a copy of the most current version of the requested DPA Works Schedule and/or any past version of the requested DPA Works Schedule in its native software format.

10.4 Anti-Racism and Anti-Discrimination Processes, Policies and Procedures and Indigenous Engagement

- (a) Without limiting DPA Section 2.3, the Parties agree to comply with the provisions of Section 9.14 (Anti-Racism, Anti-Discrimination and Anti-Harassment Governance Requirements) of the Draft Project Agreement, which shall be applicable *mutatis mutandis*.
- (b) Dev Co shall implement and comply with the Indigenous Communities Engagement Plan.

10.5 Project Governance, Meetings and Progress Reporting

- (a) The Parties shall comply with the provisions of Schedule 16 – DPA Term Governance, Meetings and Progress Reporting.

10.6 DPA Key Individuals

- (a) The individuals who are critical to the performance of the DPA Works are identified in Schedule 5 – DPA Key Individuals (“**DPA Key Individuals**”). Dev Co shall use and shall cause the Dev Co Parties to use best efforts to ensure that all of the DPA Key Individuals remain involved in the DPA Works and, if applicable following Commercial Close in the Works under the Final Project Agreement, and in any event in the capacity set out in Schedule 5 – DPA Key Individuals.
- (b) Dev Co shall not, and shall cause the Dev Co Parties not to during the DPA Term, require or request any DPA Key Individual to be involved in any other project on behalf of Dev Co or any Dev Co Party if, in the opinion of DPA Contracting Authority acting reasonably, such involvement would have a material adverse effect on the DPA Works.

- (c) Dev Co shall cause all DPA Key Individuals to devote all such time to DPA Works as is reasonable, necessary and prudent.
- (d) If Dev Co considers it necessary to replace any DPA Key Individual, Dev Co shall promptly provide DPA Contracting Authority with relevant information on the proposed replacement and shall consult with DPA Contracting Authority before finalizing the appointment of such replacement. Dev Co shall not replace any DPA Key Individual without the prior written consent of DPA Contracting Authority, which consent shall not be withheld or delayed where the proposed replacement is suitably qualified and experienced.
- (e) If DPA Contracting Authority determines, acting reasonably, that it is in the best interests of DPA Contracting Authority or the Project that any DPA Key Individual be replaced, DPA Contracting Authority shall provide Notice to Dev Co (including a detailed explanation of the reasons for such determination), and, within 30 days after receipt by Dev Co of such Notice, Dev Co shall, subject to DPA Section 10.6(f), provide DPA Contracting Authority with relevant information on the proposed replacement and shall consult with DPA Contracting Authority before finalizing the appointment of such replacement. Dev Co shall not replace any DPA Key Individual in such a circumstance without the prior written consent of DPA Contracting Authority, which consent shall not be withheld or delayed where the proposed replacement is suitably qualified and experienced.
- (f) Dev Co shall, and shall cause each Dev Co Party to, use best efforts to ensure that any replacement of a DPA Key Individual pursuant to this DPA Section 10.6, possess similar or greater expertise, qualifications, experience, and ability than the DPA Key Individual named in this Agreement. Each such replacement shall be made at Dev Co's cost and expense.

10.7 Dev Co Subcontracting

- (a) Subject to DPA Section 10.12, all subcontracting of any tier of DPA Subcontractor by Dev Co or a DPA Subcontractor of the performance of the DPA Works during the DPA Term shall satisfy the requirements of this Agreement, including this DPA Section 10.7.
- (b) All Material DPA Subcontracts executed and delivered after the Effective Date shall be subject to the prior written approval of DPA Contracting Authority, acting reasonably. Subject to DPA Section 10.7(g), each such approval by DPA Contracting Authority may be subject to the execution and delivery of an Assignment of DPA Subcontract in the form set out in Schedule 14 – Form of Assignment of DPA Subcontract together with any revisions required by DPA Contracting Authority to permit such execution and delivery. Notwithstanding anything to the contrary in this Agreement or in any DPA Subcontract, no such approval by DPA Contracting Authority shall constitute or be deemed to constitute a waiver of any right of DPA Contracting Authority under this Agreement, a release by DPA Contracting Authority of Dev Co from any obligation or liability under this Agreement, or an amendment to this Agreement.
- (c) Without limiting any other provision of this Agreement, the DPA Subcontracts taken as a whole shall provide for the performance of all DPA Design Works and, subject to the applicable provisions of this Agreement, any other design work forming part of the Development Phase PA Works.
- (d) DPA Contracting Authority acknowledges and agrees that, without prejudice to any of its rights in this Agreement, DPA Contracting Authority has approved the Initial DPA Subcontracts, including

the DPA Subcontractors who are party to the Initial DPA Subcontracts. All Initial DPA Subcontracts are indicated in Schedule 13 – Initial DPA Subcontracts. Without limiting DPA Section 10.7(b), Dev Co agrees to update the list of Initial DPA Subcontractors and provide it to DPA Contracting Authority from time to time as additional DPA Subcontractors are engaged by Dev Co or any DPA Subcontractor, in accordance with this Agreement.

- (e) Dev Co agrees that it shall not, and it shall not permit any DPA Subcontractor to, seek to engage a DPA Subcontractor where such DPA Subcontractor or any of its Affiliates was listed as an “Ineligible Person” in the Request for Proposals, without the consent of DPA Contracting Authority, which may be withheld in DPA Contracting Authority’s sole discretion.
- (f) Without limiting any right of DPA Contracting Authority in this Agreement or the generality of any conditions of approval of a Material DPA Subcontract which DPA Contracting Authority may require before approving Dev Co’s or a DPA Subcontractor’s engagement of a DPA Subcontractor pursuant to DPA Section 10.7(b), each DPA Subcontract shall:
 - (i) with respect to;
 - A. each DPA Subcontract with the Construction Contractor and the Service Provider, adopt and drop-down all of the requirements of this Agreement to the extent applicable to the performance of those parts of the DPA Works to be performed by the DPA Subcontractor and all other relevant terms and conditions of this Agreement, including, for greater certainty, terms and conditions (I) related to payments, intellectual property, termination, Background Information, Liens, suspension of the DPA Works, confidentiality, DPA Key Individuals, insurance, DPA Variations and Force Majeure Events (II) necessary for Dev Co to comply with DPA Section 6.1; and (III) providing for the performance of the Development Phase PA Works in the event that DPA Contracting Authority exercises its rights under the Assignment of Project Documents, or if applicable, an Assignment of DPA Subcontract;
 - B. each Material DPA Subcontract other than as set out in DPA Section 10.7(f)(i)A, adopt or exceed the requirements of this Agreement to the extent applicable to the performance of those parts of the DPA Works to be performed by the DPA Subcontractor, and, at a minimum, adopt in all material respects or exceed the terms and conditions of this Agreement (I) related to payments, intellectual property, termination, Background Information, Liens, suspension of the DPA Works, confidentiality, DPA Key Individuals, insurance, DPA Variations and Force Majeure Events; (II) necessary for Dev Co to comply with DPA Section 6.1; and (III) providing for the performance of the Development Phase PA Works in the event that DPA Contracting Authority exercises its rights under the Assignment of Project Documents, or if applicable, an Assignment of DPA Subcontract; and
 - C. each of the DPA Subcontracts other than as described in DPA Sections 10.7(f)(i)A and 10.7(f)(i)B, adopt or exceed the requirements of this Agreement to the extent applicable to the performance of those parts of the DPA Works to be performed by the DPA Subcontractor, and, at a minimum, adopt in all material respects or exceed all of the terms and conditions of this Agreement (I) related to payments, intellectual property, termination, insurance, DPA Variations and Force Majeure

Events; (II) necessary for Dev Co to comply with DPA Section 6.1; and (III) providing for the performance of the Development Phase PA Works in the event that DPA Contracting Authority exercises its rights under the Assignment of Project Documents, or if applicable, an Assignment of DPA Subcontract;

- (ii) except as otherwise expressly permitted by DPA Section 20.2(a)(ii), not permit or require the payment of any break fee, penalty or payment of any additional costs or profits in the event this Agreement is terminated other than in accordance with DPA Section 19.3 if DPA Contracting Authority may, directly or indirectly, be required to pay all or any part of any such break fee, penalty or additional costs or profits (A) to Dev Co under this Agreement or (B), in the event that DPA Contracting Authority exercises its rights under the Assignment of Project Documents, or if applicable, an Assignment of DPA Subcontract, to a DPA Subcontractor pursuant to a DPA Subcontract. Dev Co acknowledges and shall cause the DPA Subcontractors to acknowledge in their DPA Subcontracts that, subject to DPA Section 20.2(a)(ii), DPA Contracting Authority shall not be required to, directly or indirectly, pay any such break fee, penalty or additional costs or profits under any circumstance under this Agreement or under any DPA Subcontract in the event that DPA Contracting Authority exercises its rights under the Assignment of Project Documents, or if applicable, an Assignment of DPA Subcontract;
- (iii) in the case of DPA Subcontracts entered into by Dev Co, be assignable to DPA Contracting Authority pursuant to the Assignment of Project Documents;
- (iv) if required by DPA Contracting Authority pursuant to DPA Section 10.7(b), be assignable to DPA Contracting Authority pursuant an Assignment of DPA Subcontract;
- (v) not include any provision that would have the effect of materially increasing any obligation or liability of DPA Contracting Authority, whether actual or potential, relative to DPA Contracting Authority's obligations or liabilities under this Agreement, were DPA Contracting Authority to exercise its rights under the Assignment of Project Documents or any Assignment of DPA Subcontract in respect of such DPA Subcontract;
- (vi) not include any provision that would have the effect of materially lessening or limiting any obligation or liability of the DPA Subcontractor under such DPA Subcontract or materially increasing any obligation or liability of DPA Contracting Authority under such DPA Subcontract, in each case, whether actual or potential and relative to such DPA Subcontractor's obligation to its counterparty under the relevant DPA Subcontract, were DPA Contracting Authority to exercise its rights under the Assignment of Project Documents or any Assignment of DPA Subcontract in respect of such DPA Subcontract;
- (vii) include in any DPA Subcontract that could be assigned to DPA Contracting Authority pursuant to the Assignment of Project Documents or which is subject to an Assignment of DPA Subcontract, the following provision:

“Notwithstanding anything else in this agreement, any express or implied reference to Infrastructure Ontario (as an assignee to this agreement) providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of Infrastructure Ontario (as an assignee to this

agreement), whether at the time of execution of this agreement or at any time during the term, shall be void and of no legal effect.”;

- (viii) not permit Dev Co or the DPA Subcontractor to amend, modify or depart from the terms of the agreement other than in accordance with the provisions of DPA Sections 10.7(p)(ii), 10.7(p)(iii) or 10.7(p)(iv);
 - (ix) not permit the DPA Subcontractor to terminate the DPA Subcontract or to suspend or to discontinue its performance thereunder for convenience, or for any default by Dev Co (or by DPA Contracting Authority as an assignee of such agreement), without first giving Dev Co and DPA Contracting Authority prior written notice, and without permitting Dev Co (or DPA Contracting Authority as an assignee of such agreement) the right to cure such default within a reasonable amount of time;
 - (x) in respect of each Material DPA Subcontract, include a provision that provides that, in the event that DPA Contracting Authority were to exercise its rights under the Assignment of Project Documents or any Assignment of DPA Subcontract in respect of such DPA Subcontract, any provisions of the DPA Subcontract that would or could be interpreted to require DPA Contracting Authority to pursue a claim (including any claim for payment, other compensation or schedule relief) against or resolve any other dispute with itself pursuant to this Agreement would no longer be of any force or effect as of the date DPA Contracting Authority exercises such rights, provided that such new provision may allow the DPA Subcontractor to pursue any such claim against or resolve any such dispute directly with DPA Contracting Authority in accordance with the applicable provisions of this Agreement; and
 - (xi) in respect of each Material DPA Subcontract, be on such additional terms and conditions as DPA Contracting Authority approves, acting reasonably.
- (g) If required by DPA Contracting Authority pursuant to DPA Section 10.7(b), Dev Co shall cause each DPA Subcontractor counterparty to a Material DPA Subcontract to enter into an Assignment of DPA Subcontract concurrently with it entering into the applicable DPA Subcontract, provided that no such DPA Subcontractor shall be obligated to enter into an Assignment of DPA Subcontract if the DPA Subcontract has been assigned to DPA Contracting Authority pursuant to the Assignment of Project Documents.
- (h) In addition to the provisions of DPA Section 10.7(f), unless otherwise agreed by DPA Contracting Authority in writing, Dev Co shall, and shall cause each DPA Subcontractor to, ensure that all DPA Subcontracts that are subject to the *Construction Act* contain provisions:
- (i) in each case, requiring Dev Co or the relevant DPA Subcontractor to make all payments within the timeframes set forth in the *Construction Act*, except for amounts withheld by reason of legitimate dispute which have been identified to the relevant DPA Subcontractor from whom payment has been withheld in accordance with the *Construction Act*;
 - (ii) which provide that each person making payments under the contract retain any required holdbacks in compliance with the *Construction Act*; and

- (iii) requiring each DPA Subcontractor to include a section to the same effect as this DPA Section 10.7(h) in any contract it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of the DPA Subcontract.
- (i) Dev Co shall not subcontract any interest in this Agreement, and shall not permit any DPA Subcontractor to subcontract any interest in any DPA Subcontract, to a Restricted Person, or any Affiliate thereof, or a person whose standing or activities are inconsistent with the Hospital's role as a hospital, or may compromise DPA Contracting Authority's reputation or integrity or the nature of the Province's health care system, so as to affect public confidence in that system.
- (j) Unless otherwise agreed by DPA Contracting Authority, Dev Co shall, and shall cause each DPA Subcontractor to, provide DPA Contracting Authority with the draft execution form of each DPA Subcontract that will be entered into following the Effective Date a minimum of 15 Business Days in advance of the proposed date of execution of the DPA Subcontract, and shall indicate at the time such draft execution form of DPA Subcontract is provided to DPA Contracting Authority, whether or not such draft execution form of DPA Subcontract requires DPA Contracting Authority's approval in accordance with DPA Section 10.7(b).
- (k) Dev Co agrees that it shall, and shall cause each DPA Subcontractor to, on the date any DPA Subcontract is entered into following the Effective Date:
 - (i) provide a true and complete copy of the DPA Subcontract to DPA Contracting Authority;
 - (ii) if the DPA Subcontract is the subject of the Assignment of Project Documents, provide, for DPA Contracting Authority's execution, an executed acknowledgement and consent agreement, in the form required by the Assignment of Project Documents; and
 - (iii) if the DPA Subcontract is the subject of an Assignment of DPA Subcontract, provide an executed copy of the Assignment of DPA Subcontract to DPA Contracting Authority for DPA Contracting Authority's execution.
- (l) With regards to each DPA Subcontract, Dev Co shall preserve and protect the rights of the Parties under this Agreement and ensure the work performed by the DPA Subcontractor meets the requirements of this Agreement.
- (m) Dev Co shall not be relieved of any liability or obligation under this Agreement by the engagement of any Dev Co Party, and Dev Co shall cause each Dev Co Party, to the extent such Dev Co Party performs or is specified hereunder to perform the DPA Works, to comply with the obligations of Dev Co hereunder in the same manner and to the same extent as Dev Co.
- (n) Dev Co shall comply with and cause each DPA Subcontractor to comply with each of its obligations under the applicable DPA Subcontract.
- (o) Dev Co shall (i) enforce and cause the enforcement of the obligations of each DPA Subcontractor counterparty to a Material DPA Subcontract under the applicable DPA Subcontract, including all entitlements, rights, remedies and relief in favour of Dev Co that relate to any obligations of Dev Co under this Agreement; and (ii) enforce and cause the enforcement of the obligations of each DPA Subcontractor under the applicable DPA Subcontract that are related to the terms of DPA

Section 10.7, including all entitlements, rights, remedies and relief in favour of Dev Co that relate to any obligations of Dev Co under this Agreement.

- (p) Dev Co shall not, except with the written consent of DPA Contracting Authority, acting reasonably and without any unreasonable delay:
- (i) terminate, or agree to or permit the termination of, all or any material part of any Material DPA Subcontract, which written consent of DPA Contracting Authority shall not be withheld if such termination will not:
 - A. materially and adversely affect the ability of Dev Co to perform its obligations under this Agreement; and
 - B. have the effect of increasing the liability of DPA Contracting Authority under this Agreement, whether actual or potential;
 - (ii) make, or agree to or permit the making of, any material amendment or modification to any Material DPA Subcontract, which written consent of DPA Contracting Authority shall not be withheld if such amendment or modification does not:
 - A. depart from any of the requirements related to the provisions of this DPA Section 10.7;
 - B. materially and adversely affect the ability of Dev Co to perform its obligations under this Agreement; and
 - C. have the effect of increasing the liability of DPA Contracting Authority under this Agreement, whether actual or potential,

provided that, notwithstanding the foregoing, no written consent of DPA Contracting Authority shall be required in the event that an amendment to a Material DPA Subcontract is the direct and reasonable consequence of a DPA Variation;
 - (iii) make, or agree to or permit the making of, any amendment or modification to any DPA Subcontract that is not a Material DPA Subcontract if such amendment or modification will:
 - A. depart in any material respects from any provision of a DPA Subcontract related to the requirements of this DPA Section 10.7;
 - B. materially and adversely affect the ability of Dev Co to perform its obligations under this Agreement; or
 - C. have the effect of increasing the liability of DPA Contracting Authority under this Agreement, whether actual or potential;
 - (iv) permit any departure by a DPA Subcontractor from any material provision of a Material DPA Subcontract or permit any departure by a DPA Subcontractor from any material provision of a DPA Subcontract that relate to the requirements of DPA Section 10.7;

- (v) permit the DPA Subcontractor to assign or transfer to any person any of the DPA Subcontractor's rights or obligations under any of the Material DPA Subcontracts; and
- (vi) permit the DPA Subcontractors to subcontract any of the works or services under the DPA Subcontract except to the extent provided for under the DPA Subcontract, and in all cases, in compliance with the terms of this Agreement, including DPA Section 10.7.
- (q) During the DPA Term, Dev Co shall:
 - (i) within 15 Business Days of receiving a written request from DPA Contracting Authority, cause the execution and delivery to DPA Contracting Authority of a statement or certificate stating (if such is the case, or stating the manner in which such may not be the case):
 - A. that any particular DPA Subcontract is unmodified and in full force and effect;
 - B. the date of commencement and expiry of the term of such DPA Subcontract and the dates to which all payments payable thereunder have been paid;
 - C. whether or not there is any existing default by a party to such DPA Subcontract, and, if so, specifying such default;
 - D. that there are no defences, counterclaims or rights of set-off in respect of the obligations thereunder of a party to such DPA Subcontract; and
 - E. such other matters as DPA Contracting Authority may reasonably request;
 - (ii) within two Business Days of receiving a notice of default from a DPA Subcontractor in respect of a DPA Subcontract, provide a copy of such notice of default to DPA Contracting Authority;
 - (iii) if it issues a notice of default to a DPA Subcontractor in respect of a DPA Subcontract, provide a copy of such notice of default to DPA Contracting Authority at the same time as such notice of default is issued to such DPA Subcontractor; and
 - (iv) promptly after it is executed and delivered or otherwise finally agreed to in writing, provide to DPA Contracting Authority a copy of any amendment, restatement supplement or other modification to any DPA Subcontract between Dev Co and any DPA Subcontractor or between any DPA Subcontractors.
- (r) When requested by DPA Contracting Authority, Dev Co shall promptly provide reasonable documentary evidence to DPA Contracting Authority of compliance with Dev Co's obligations set out in this DPA Section 10.7.
- (s) For clarity, DPA Contracting Authority's rights under any applicable DPA Subcontract only arise if, when and to the extent that DPA Contracting Authority exercises its rights pursuant to and in accordance with the Assignment of Project Documents or any Assignment of DPA Subcontract.

10.8 Access to Lands and Site

- (a) Dev Co and the Dev Co Parties shall not be permitted to use, access or conduct due diligence or other investigations at the Lands or the Site (including the Existing Facilities) for the purposes of the Project without the written consent of DPA Contracting Authority, which may be withheld, granted or granted with conditions by DPA Contracting Authority, acting reasonably and without any unreasonable delay.
- (b) Notwithstanding DPA Section 10.8(a), DPA Contracting Authority shall use reasonable commercial efforts to permit and facilitate any reasonable due diligence and other investigations at the Lands and the Site (including the Existing Facilities) that Dev Co or any Dev Co Party desires to perform for the purposes of the DPA Works, including for developing the Project Proposal.

10.9 Additional Project Due Diligence

- (a) Without limiting any of the provisions of DPA Sections 11.1(a), 11.2 and 11.3 whatsoever, in the event that a Party is of the opinion that additional investigations or other technical due diligence in respect of the Lands, including for clarity the Existing Facilities, may be beneficial for the purposes of the proper performance of the DPA Works (including to facilitate Dev Co's development of the Project Proposal) or the Project or to effectively or efficiently mitigate risks with respect to the DPA Works or the Project ("**Additional Project Due Diligence**"), then, following consultation with the other Party:
 - (i) Dev Co may, acting reasonably, request in writing that DPA Contracting Authority:
 - A. perform or direct Dev Co to perform such Additional Project Due Diligence at DPA Contracting Authority's cost and expense, in accordance with DPA Section 10.9(a)(ii); or
 - B. provide its written approval for Dev Co to perform such Additional Project Due Diligence, at Dev Co's cost and expense, which approval by DPA Contracting Authority may be provided or refused by DPA Contracting Authority in its sole discretion.
 - (ii) DPA Contracting Authority may:
 - A. at its own cost and expense, perform or cause the performance of Additional Project Due Diligence; or
 - B. by way of Notice to the DPA Dev Co Representative, direct Dev Co to perform such Additional Project Due Diligence, and, in such an event, the provisions of DPA Section 13.4 shall apply to the performance of such DPA Works.
- (b) In the event that DPA Contracting Authority receives any written request from Dev Co in respect of the performance of Additional Project Due Diligence in accordance with DPA Section 10.9(a)(i)A, then DPA Contracting Authority may, in its sole discretion:
 - (i) perform such Additional Project Due Diligence pursuant to DPA Section 10.9(a)(ii)A;

- (ii) direct Dev Co to perform any such Additional Project Due Diligence in accordance with DPA Section 10.9(a)(ii)B; or
- (iii) refuse to perform or direct Dev Co to perform such Additional Project Due Diligence for any reason whatsoever.

Any such refusal by DPA Contracting Authority shall not limit any right of Dev Co to subsequently request in writing that DPA Contracting Authority provide its written approval for Dev Co to perform such Additional Project Due Diligence in accordance with DPA Section 10.9(a)(i)B, provided that, for greater certainty, DPA Contracting Authority shall not have any obligation under this Agreement whatsoever to approve any such request.

- (c) Notwithstanding anything to the contrary in this DPA Section 10.9, Dev Co acknowledges and agrees that:
 - (i) DPA Contracting Authority may not, in certain circumstances, have a right to use, access or permit any Additional Project Due Diligence at the Lands, including at any lands comprising part of the Lands that are not owned by the Hospital or are subject to an Encumbrance, or at lands that are beyond the boundaries of the Lands;
 - (ii) DPA Contracting Authority shall, in its sole discretion, be entitled to limit any Additional Project Due Diligence, including any Additional Project Due Diligence which, as determined by DPA Contracting Authority in its sole discretion, could be detrimental to or interfere with the use or operation of any part of the Lands;
 - (iii) the performance of any Additional Project Due Diligence by Dev Co may, in DPA Contracting Authority's sole discretion, be subject to any instructions, conditions, rules and other requirements provided by DPA Contracting Authority to Dev Co from time to time (including in respect of security, safety, privacy and dates and hours of use and access), and Dev Co agrees to comply with all such instructions, conditions, rules and other requirements;
 - (iv) Dev Co and the Dev Co Parties shall only be permitted to use and access those specific areas of the Lands to which they have been granted use and access by DPA Contracting Authority for the purpose of performing any Additional Project Due Diligence in accordance with this Agreement; and
 - (v) the Existing Facilities are being used by the Hospital, including for public hospital purposes, and, DPA Contracting Authority, may, in its sole discretion, cancel or reschedule any such use and access, change such areas of use and access or modify any instructions, conditions, rules or other requirements provided by DPA Contracting Authority to Dev Co pursuant to DPA Section 10.9(c)(iii).
- (d) All reports produced by Dev Co or any Dev Co Party as a result of any Additional Project Due Diligence shall be addressed to DPA Contracting Authority in addition to Dev Co.

10.10 Business Opportunities

- (a) Without limiting DPA Section 2.3, the Parties agree to comply with the provisions of Section 4 (Business Opportunities) of the Draft Project Agreement, which shall be applicable *mutatis mutandis*.

10.11 RFP Completion Documents

- (a) Within 15 Business Days following the Effective Date, Dev Co shall deliver to DPA Contracting Authority two USB keys, each containing electronic copies of all of the documents described in Schedule 11 – Preferred Proponent Completion Documents of the Request for Proposals. One of the USB keys shall be delivered to Infrastructure Ontario at its address for Notices and one of the USB keys shall be delivered to the Hospital at its address for Notices.

10.12 Enabling Works

- (a) The Parties agree that, at the request of DPA Contracting Authority and in any event by no later than 15 Business Days following the Effective Date, the Parties shall meet to plan and coordinate the performance of the DPA Works described in this DPA Section 10.12 and the performance of the Enabling Works under the Enabling Works Contract.
- (b) The Parties acknowledge that, subject to the terms and conditions of this Agreement, it is intended that the Enabling Works are performed under the Enabling Works Contract such that they achieve “Substantial Completion of the Work” as defined in and under the Enabling Works Contract before Commercial Close or as soon as practicable after Commercial Close.
- (c) Following the completion of the meeting described in DPA Section 10.12(a), Dev Co shall, with the input of DPA Contracting Authority and by no later than a date agreed by the Parties develop and submit for DPA Contracting Authority’s review and approval:
- (i) an indicative estimate of the cost of the performance and completion of the Enabling Works under the Enabling Works Contract; and
 - (ii) a detailed plan for the performance of the DPA Works under this DPA Section 10.12 and the Enabling Works under the Enabling Works Contract (the “**Enabling Works Plan**”), including:
 - A. a list of all of the Enabling Works Subcontractors who may be procured and engaged by Dev Co pursuant to DPA Section 10.12(g); and
 - B. Dev Co’s plan to procure and engage such Enabling Works Subcontractors in accordance with DPA Section 10.12(g).
- (d) Dev Co shall, in accordance with the Enabling Works Plan and the DPA Works Schedules:
- (i) develop and provide all design and construction documentation and specifications necessary for the performance of the Enabling Works (including the Drawings and the Specifications and all amendments and revisions thereto, including in respect of any and all “Change Orders” and “Change Directives”, as defined in and as required under the Enabling Works Contract), which shall:

- A. comply with Schedule 19 – Enabling Works Requirements, other applicable requirements of this Agreement (including the Output Specifications), and any other reasonable requirements of DPA Contracting Authority;
 - B. take into account and reflect the DPA Background Information and all other Background Information; and
 - C. in each case, be subject to the approval of DPA Contracting Authority;
- (ii) provide to DPA Contracting Authority (A) costs estimates in respect of the performance of the Enabling Works under the Enabling Works Contract, to a level of detail required and in a form approved by DPA Contracting Authority; and (B) a proposed “Scheduled Substantial Completion Date” (as such term is defined in the Form of Enabling Works Contract), which shall be subject to the approval of DPA Contracting Authority and subsequently set out in the Enabling Works Contract;
 - (iii) prior to the execution and delivery of the Enabling Works Contract, at the request of and subject to the prior approval of DPA Contracting Authority, (A) commence the obtainment of and, if practicable, obtain any permissions, consents, approvals, certificates, permits, licences, agreements and authorizations to be obtained by the Construction Manager under the Enabling Works Contract; and (B) provide assistance to the Hospital in commencing the obtainment of and, if practicable, obtaining any permissions, consents, approvals, certificates, permits, licences, agreements and authorizations to be obtained by the Owner, under the Enabling Works Contract or otherwise in connection with the Enabling Works; and
 - (iv) without limiting the generality of the foregoing provisions of this DPA Section 10.12(d), at the request of DPA Contracting Authority from time to time, perform the services described in and assigned to Dev Co in Schedule A1 of Schedule 18 – Form of Enabling Works Contract and subsequently in Schedule A1 of the Enabling Works Contract, which services shall be DPA Works under this Agreement.
- (e) Dev Co shall, promptly following the request of DPA Contracting Authority, provide DPA Contracting Authority any additional assistance and information in respect of the Enabling Works reasonably requested by DPA Contracting Authority from time to time, including in order to obtain all approvals of the MOH as set out in DPA Section 10.13 and DPA Section 10.12(k).
 - (f) The Parties agree that the provisions of DPA Section 10.7 shall not apply to the subcontracting of the Enabling Works described in this DPA Section 10.12.
 - (g) Dev Co shall, promptly following the written request of DPA Contracting Authority, procure the Enabling Works Subcontracts in accordance with the following:
 - (i) unless otherwise approved by DPA Contracting Authority in writing, each Enabling Works Subcontract shall be competitively procured by Dev Co on a fixed price basis and in accordance with the Enabling Works Plan and any other reasonable requirements of DPA Contracting Authority;

- (ii) Dev Co shall deliver drafts and all final versions of all procurement documents to DPA Contracting Authority (including all requests for proposals, tenders, draft contracts and purchase orders, and evaluation handbooks) for its review and approval at least 15 Business Days before the scheduled commencement of any procurement of an Enabling Works Subcontract, and, unless otherwise agreed by DPA Contracting Authority, it shall be a term of each such procurement that the prices provided by each of the potential Enabling Works Subcontractors in its proposal be binding and irrevocable for a minimum period of three months (or, if that period is not practicable, for any other shorter minimum period approved in writing by the DPA Contracting Authority);
- (iii) Dev Co shall consult with, provide status updates to DPA Contracting Authority in respect of, and, on an open book basis, provide the results of, each procurement of an Enabling Works Subcontract, including all proposals received (including prices and terms) and the evaluation outcomes;
- (iv) Dev Co shall:
 - A. not and shall not permit any Dev Co Party to award any Enabling Works Subcontract;
 - B. not permit the Construction Manager to enter into any Enabling Works Subcontract; and
 - C. not self-perform and shall not permit the self-performance of any Enabling Works, without the written approval of DPA Contracting Authority; and
- (v) Dev Co shall not permit the Construction Manager or any Enabling Works Subcontractor to subcontract any interest in any Enabling Works Subcontract to (A) a person who was listed as an “Ineligible Person” in the Request for Proposals, a Restricted Person, or any Affiliate thereof; or (B) a person whose standing or activities are inconsistent with the Hospital’s role as a hospital, or may compromise DPA Contracting Authority’s reputation or integrity or the nature of the Province’s health care system, so as to affect public confidence in that system.
- (h) Subject to DPA Section 10.12(k), after the completion of the activities described in DPA Sections 10.12(d) (if and to the extent that such activities are to be performed before the execution and delivery of the Enabling Works Contract) and 10.12(g) and before the Construction Manager enters into any Enabling Works Subcontract:
 - (i) DPA Contracting Authority shall give Notice to the DPA Dev Co Representative that the Owner and the Construction Manager will enter into the Enabling Works Contract within 10 Business Days of the date of such Notice, and attach the final form of Enabling Works Contract to such Notice in accordance with the requirements of DPA Section 10.12(i);
 - (ii) DPA Contracting Authority shall, before the expiry of such 10 Business Day period, deliver a copy of the Enabling Works Contract signed by the Owner to be held in escrow subject only to the execution and delivery of the Enabling Works Contract by the Construction Manager; and

- (iii) Dev Co shall, within two Business Days of its receipt of the copy of the Enabling Works Contract signed by the Owner, cause the Construction Manager to (A) execute and deliver the Enabling Works Contract without conditions; and (B) deliver the executed surety bonds required by the Enabling Works Contract for final execution by the Owner.
- (i) Unless otherwise agreed by the Parties, the Owner and the Construction Manager shall enter into the Enabling Works Contract in the form described in Schedule 18 – Form of Enabling Works Contract:
 - (i) whereby:
 - A. the Construction Manager shall be paid an all-inclusive percentage fee of **[REDACTED]**% of the “Cost of the Work” under the Enabling Works Contract as set out in Article A-5.3 of the Form of Enabling Works Contract for the performance of the “Work” under the Enabling Works Contract;
 - B. the “CM Design Consultant” described in the Enabling Works Contract shall be one or more members of the Design Team identified by Dev Co and approved by DPA Contracting Authority (the “**CM Design Consultant**”); and
 - C. the Specifications and Drawings shall be the Specifications and Drawings approved by DPA Contracting Authority pursuant to DPA Section 10.12(d)(i); and
 - (ii) subject only to minor changes, additions and modifications, and additional scope documents necessary to create a legally complete and binding agreement.
- (j) Without limiting the generality of DPA Section 10.12(d)(iv), Dev Co shall cause the CM Design Consultant to perform the role and duties of the “CM Design Consultant” under the Enabling Works Contract in accordance with Good Industry Practice, and to the extent provided in the Enabling Works Contract or as otherwise required for the proper performance and completion of the Enabling Works. For clarity, such services by the CM Design Consultant shall be DPA Works under this Agreement.
- (k) Dev Co acknowledges and agrees that the entering into of the Enabling Works Contract by the Hospital is conditional on and subject to DPA Contracting Authority obtaining any necessary authorizations and approvals required in connection with the Enabling Works Contract, including all approvals required by the MOH.
- (l) Notwithstanding anything to the contrary in this Agreement:
 - (i) except as expressly set out in this Agreement or in any Final Project Agreement to the contrary, this Agreement and any Final Project Agreement shall not apply to the performance by the Owner and the Construction Manager of their respective obligations under the Enabling Works Contract;
 - (ii) Dev Co shall not be entitled to any payment, other compensation, extension to a DPA Works Schedule or other relief under this Agreement, and DPA Contracting Authority shall not be liable under this Agreement, for any failure by the Construction Manager to perform its obligations in accordance with the Enabling Works Contract or for any failure

of the CM Design Consultant to perform the services described in DPA Section 10.12(j);
and

- (iii) without limiting or prejudice to DPA Section 18.1 or any other provision of this Agreement, Dev Co shall, at the request of DPA Contracting Authority, promptly take all steps necessary to, as applicable, cause the Construction Manager to cure any breaches by the Construction Manager of its obligations under the Enabling Works Contract and to cause the CM Design Consultant to cure any breaches by the CM Design Consultant of its obligations set out in DPA Section 10.12(j).
- (m) In the event that the Construction Manager terminates the Enabling Works Contract in accordance with its terms as a result of a default of the Owner, then, without limiting any right of a Party under this Agreement or of the Owner or the Construction Manager under the Enabling Works Contract, Dev Co shall, subject to and in accordance with Schedule 6 – DPA Variation Procedure, be entitled to a DPA Variation in respect of the addition of the scope of the Enabling Works into the DPA Scope of Work and the Works under any Final Project Agreement.
- (n) Dev Co acknowledges and agrees, and shall cause the Construction Manager and each Enabling Works Subcontractor to acknowledge and agree, that Infrastructure Ontario shall not have any liability or obligation under the Enabling Works Contract whatsoever, including in respect of the performance by the Owner of its obligations and the satisfaction by the Owner of its liabilities under the Enabling Works Contract.

10.13 **MOH Approvals Support and Submissions**

- (a) Dev Co shall assist and support DPA Contracting Authority in obtaining, and provide all submissions required by DPA Contracting Authority or the MOH to allow DPA Contracting Authority to obtain, all necessary approvals from the MOH in respect of the Project during the DPA Term, including:
 - (i) assisting and supporting (including providing documents in support of) and, if required, participating in, DPA Contracting Authority’s meetings and presentations to the MOH;
 - (ii) providing support and submissions in respect of the Enabling Works and the “MOH stage 3B.2 Submission(s)” and the “MOH stage 4 Submission(s)” to be made by the Hospital to the MOH; and
 - (iii) providing any other submissions, support and documents required by DPA Contracting Authority or the MOH in respect of the Project from time to time(collectively, the “**MOH Hospital Submissions**”).
- (b) Dev Co acknowledges that the MOH Hospital Submissions may include:
 - (i) if applicable, feedback on and submissions in respect of the affordability constraints in respect of the cost of the Project identified by DPA Contracting Authority pursuant to DPA Section 6.2;
 - (ii) Project cost estimates in respect of each level of design;

- (iii) Project risk submissions;
- (iv) design document submissions in respect of each level of design, including descriptions of any and all design assumptions made by Dev Co and the Dev Co Parties and other documents in support of the design document submissions;
- (v) feedback on or support for the Output Specifications, the Project’s functional program and other technical aspects of the Project, including as may be or have been modified by any potential or actual DPA Variations or other changes to the scope of the Project;
- (vi) the identification of opportunities for the improvement and optimization of the Output Specifications, other provisions of the Draft Project Agreement, and other aspects of the Project; and
- (vii) submissions in support of any desired or required DPA Variations or other changes to the scope of the Project.

10.14 Online Collaborative Project Management

- (a) During the DPA Term, Dev Co shall obtain and use, and ensure that all of the Dev Co Parties use, an interactive on-line (web-based) project management software system for the Project (“**OCPM**”), which must:
 - (i) automate certain aspects of the processes identified in the Review Procedures, the Design Quality Plan, Schedule 6 – DPA Variation Procedure, the DPA Works Report and other processes identified by DPA Contracting Authority in its sole discretion; and
 - (ii) be useable by DPA Contracting Authority and the DPA Contracting Authority Parties for the purposes of the Project.
- (b) Dev Co shall propose the OCPM to DPA Contracting Authority before the Effective Date, which shall be approved by DPA Contracting Authority, acting reasonably, by no later than such date.
- (c) Dev Co agrees to obtain, at a minimum, 15 licences for DPA Contracting Authority and the DPA Contracting Authority Parties to use the OCPM for the purposes of the Project at no cost or expense to DPA Contracting Authority and the DPA Contracting Authority Parties.

10.15 High Fidelity Room Mock-Ups and Mock-Up Space

- (a) Dev Co acknowledges that:
 - (i) part of the DPA Design Works includes the development and maintenance in good working order of the high fidelity mock-ups of the rooms of the Facility described in the Draft PA Review Procedure (the “**High Fidelity Room Mock-Ups**”), which shall be designed, constructed, adjusted and maintained by Dev Co and reviewed by DPA Contracting Authority during the DPA Term in accordance with the Draft PA Review Procedure and the DPA Works Schedules;
 - (ii) without limiting Section 10.15(a), the construction of and subsequent adjustments to the High Fidelity Room Mock-Ups shall, in accordance with the applicable provisions of

Schedule 3 – DPA Submissions and Project Development Process, be completed before the Third Checkpoint and the Final Checkpoint respectively; and

- (iii) unless otherwise agreed by DPA Contracting Authority prior to the Final Checkpoint, the High Fidelity Room Mock-Ups shall be dismantled by Project Co following the DPA Term in accordance with any Final Project Agreement.
- (b) The Parties agree that the Hospital shall, at its cost and expense, enter into a lease or licence agreement with a landlord in respect of the facilities (the “**Mock-Up Space Facilities**”) within which the High Fidelity Room Mock-Ups are to be constructed and maintained by Dev Co and the Dev Co Parties during the DPA Term and as required by any Final Project Agreement during the Project Term (the “**Mock-Up Space Agreement**”).
- (c) The Hospital shall:
 - (i) use reasonable commercial efforts to provide a draft copy of the Mock-Up Space Agreement to Dev Co in advance of its execution and delivery;
 - (ii) provide a copy of the Mock-Up Space Agreement to Dev Co following its execution and delivery; and
 - (iii) without limiting any liability of Dev Co under this Agreement, make all rent, additional rent and other payments to the landlord required by the Mock-Up Space Agreement.
- (d) The Parties acknowledge that (i) the DPA Works in respect of one of the Cash Allowance Items are in respect of some (but not all) of the DPA Works related to the High Fidelity Room Mock-Ups; and (ii) the provisions of DPA Section 13.4 shall apply to the DPA Works in respect of such Cash Allowance Item.
- (e) With respect to the Mock-Up Space Agreement, Dev Co agrees that it shall and shall cause the Dev Co Parties to:
 - (i) comply with all obligations of the Hospital and its contractors and subcontractors under the Mock-Up Space Agreement in connection with the use of and access to the Mock-Up Space Facilities (on a non-exclusive basis) for the purposes of performing the DPA Works with respect to the High Fidelity Room Mock-Ups;
 - (ii) ensure that Dev Co and the Dev Co Parties do not cause the Hospital to contravene the Mock-Up Space Agreement;
 - (iii) cooperate and assist the Hospital in any dispute between the landlord and the Hospital relating to Dev Co’s or the Dev Co Parties’ use of and access to the Mock-Up Space Facilities, including attending at hearings, providing information, and doing such other things as the Hospital may reasonably require to resolve the dispute;
 - (iv) if required, obtain and maintain any additional insurance specified in the Mock-Up Space Agreement that is not otherwise required by this Agreement; and
 - (v) enter into and comply with any consent or other agreement reasonably required by the landlord in connection with the Mock-Up Space Agreement,

provided that, that, in the event the Mock-Up Space Agreement or any such other consent or agreement contains terms or conditions which will result in a material (A) change or other variation to the DPA Scope of Work and would not otherwise be required of Dev Co or the Dev Co Parties under this Agreement; or (B) delay to the performance of the DPA Works, then, subject to and in accordance with Schedule 6 – DPA Variation Procedure, Dev Co shall be entitled to a DPA Variation in respect of such material change, other variation or delay.

10.16 Development and Finalization of Technical Specifications

- (a) Dev Co shall, following consultation with DPA Contracting Authority and the Design Conformance Consultant, develop and submit to DPA Contracting Authority for DPA Contracting Authority’s review and approval, progressive iterations of the Technical Specifications:
 - (i) in accordance with and subject to this DPA Section 10.16 and the applicable technical and other requirements of this Agreement; and
 - (ii) in coordination and alignment with the performance of the DPA Works in accordance with this Agreement, including the performance of the DPA Design Works and the development of the Design Data and the other DPA Submittals.
- (b) Without limiting the generality of DPA Section 10.16(a), Dev Co shall progressively develop and submit the Technical Specifications to DPA Contracting Authority, together with the associated DPA Works Submittals, as follows:
 - (i) during the 30% Design Development Stage, Dev Co shall prepare a table of contents for the Technical Specifications in the format and based on the document titled “PGMH-Tech Spec-3-Part_Masterformat TOC”, which forms part of the DPA Background Information;
 - (ii) during the 60% Design Development Stage, Dev Co shall develop an outline of the Technical Specifications to cover the broad scope description of all proposed products to be used in the construction of the Facility. DPA Contracting Authority may require that Dev Co submit to DPA Contracting Authority a competence analysis, in the format and based on the document titled “PGMH-Tech Spec A - Outline Spec” included within the DPA Background Information, (A) in respect of any element of the Technical Specifications, as deemed necessary by DPA Contracting Authority; and (B) for any product or system proposed by Dev Co that, in DPA Contracting Authority’s reasonable opinion, deviates from Good Industry Practice; and
 - (iii) during the 90% Design Development Stage, Dev Co shall complete the development of the Technical Specifications, which shall be MasterFormat three-part specifications based on the structure of the precedent documents titled “PGMH-Tech Spec B - 07 26 16 - Below-Grade Vapour Barrier” and “PGMH-Tech Spec B - 07 42 63 - Ceramic Cladding System”, each of which forms part of the DPA Background Information.
- (c) Dev Co shall, with each submission of the Technical Specifications documentation described in DPA Sections 10.16(b)(ii) and 10.16(b)(iii), submit a narrative describing any and all departures in such documentation from the standards identified in the Output Specifications and a rationale for each such departure.

- (d) During the development of the Technical Specifications and without creating any obligation or liability of DPA Contracting Authority, Dev Co shall promptly advise DPA Contracting Authority in writing if it is of the opinion that any alteration, addition or variation to this Agreement or the Draft Project Agreement ancillary and related to the development of the Technical Specifications or inclusion of the Technical Specifications in the Output Specifications in accordance with this DPA Section 10.16 would be necessary or beneficial to DPA Contracting Authority or the Project.
- (e) Without limiting any right of DPA Contracting Authority in this Agreement and subject to DPA Section 12.1(c), DPA Contracting Authority shall, as applicable:
 - (i) alter, add to or vary this Agreement by way of DPA Variations, subject to and in accordance with Schedule 6 – DPA Variations; and
 - (ii) revise the Draft Project Agreement pursuant to Section 4.1 of Schedule 3 – DPA Submissions and Project Development Process,

to reflect the development and finalization of the Technical Specifications.

- (f) The Parties agree that, for the purposes of this Agreement, the Technical Specifications shall be completed and finalized by the Parties when:
 - (i) the final Technical Specifications have been approved by DPA Contracting Authority pursuant to DPA Section 10.16(a); and
 - (ii) such final Technical Specifications have been included in the Output Specifications and any other associated alteration, addition or variation to this Agreement and the Draft Project Agreement determined by DPA Contracting Authority to be necessary to properly include the Technical Specifications in the Output Specifications has been made pursuant to the process outlined in DPA Section 10.16(e),

(collectively, “**Technical Specifications Completion**”).

- (g) The Parties acknowledge that Technical Specifications Completion shall occur prior to the Final Checkpoint.

11. BACKGROUND INFORMATION

11.1 Review of DPA Background Information

- (a) Without limiting any of Dev Co’s rights under DPA Section 11.4, Dev Co acknowledges and agrees that it has and shall be deemed to have:
 - (i) conducted its own review, due diligence and analysis of the DPA Background Information in accordance with Good Industry Practice;
 - (ii) satisfied itself as to the accuracy, completeness and fitness for purpose of any such DPA Background Information upon which it places reliance; and

- (iii) identified and raised, prior to the last date for the issuance of addenda under the Request for Proposals, any and all ambiguities or issues requiring clarification associated with the DPA Background Information.
- (b) Dev Co acknowledges and agrees that, with respect to any DPA Background Information provided to it or obtained by it following the Effective Date, it shall and shall be deemed to have:
 - (i) conducted its own review, due diligence and analysis of the DPA Background Information in accordance with Good Industry Practice as soon as practicable during the DPA Term and without any unreasonable delay;
 - (ii) during and as a result of such review, due diligence and analysis, satisfied itself as to the accuracy, completeness and fitness for purpose of any such DPA Background Information upon which it places reliance; and
 - (iii) identified and raised, prior to placing any reliance upon the DPA Background Information, any and all ambiguities or issues requiring clarification associated with the DPA Background Information.

11.2 No Warranty for Background Information

- (a) Except as expressly provided in DPA Section 11.4, none of DPA Contracting Authority, any DPA Contracting Authority Party or any Government Entity gives any warranty or undertaking of whatever nature in respect of the Background Information, and, specifically (but without limitation), none of DPA Contracting Authority, any DPA Contracting Authority Party or any Government Entity warrants that the Background Information represents all of the information in its possession or control (including during the conduct of the Request for Proposals and as of the Effective Date) relevant or material to or in connection with the Project or the obligations of Dev Co under this Agreement.

11.3 No Claims or Liability in Respect of Background Information

- (a) Except as expressly provided in DPA Section 11.4, none of DPA Contracting Authority, any DPA Contracting Authority Party or any Government Entity shall be liable to Dev Co or any Dev Co Party for, and Dev Co or any Dev Co Party shall not claim for, or seek to recover from DPA Contracting Authority, any DPA Contracting Authority Party or any Government Entity, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise, including any claim for extensions of time or for additional payments under this Agreement):
 - (i) from the adoption, use or application of the Background Information by, or on behalf of, Dev Co or any Dev Co Party;
 - (ii) as a result of any claim that the Background Information was incorrect, inaccurate, incomplete, insufficient or unfit for purpose;
 - (iii) as a result of any misunderstanding or misapprehension in respect of the use of the Background Information by Dev Co or any Dev Co Party; or

- (iv) from any failure (whether before, on, or after the Effective Date) by DPA Contracting Authority, any DPA Contracting Authority Party or Government Entity to:
 - A. disclose or make available to Dev Co or any Dev Co Party any information, documents or data; or
 - B. review or update the Background Information.

11.4 Exceptions

- (a) DPA Contracting Authority agrees that if, at the Effective Date, except as:
 - (i) described in any DPA Background Information;
 - (ii) as otherwise expressly disclosed by DPA Contracting Authority, any DPA Contracting Authority Party or any Government Entity; or
 - (iii) known by Dev Co or any Dev Co Party,

any of the information in the Technical Reports is incorrect or there is relevant information in the possession or control of DPA Contracting Authority that would make any of the information in the Technical Reports incorrect, then, to the extent that such incorrect information materially adversely interferes with Dev Co's ability to perform the DPA Works or materially adversely affects Dev Co's cost of performing the DPA Works, such incorrect information shall, subject to and in accordance with DPA Schedule 6 – DPA Variation Procedure, result in a DPA Variation.

- (b) DPA Sections 11.2 and 11.3 are not intended to and shall not prohibit Dev Co from relying upon information that has been provided by a person who has given Dev Co an express written entitlement to rely on that information, provided however, except as set out in this DPA Section 11.4, Dev Co shall not be entitled to make any claim of any nature whatsoever against DPA Contracting Authority, any DPA Contracting Authority Party or any Government Entity on any grounds relating to the information provided by that person. For clarity, except as set out in DPA Sections 11.4, Dev Co's legal recourse with respect to the information provided by the person who provided the express written entitlement to rely on the information shall be against that person and not DPA Contracting Authority or any DPA Contracting Authority Party.

11.5 Additional Background Information

- (a) Any reports, documents and other information obtained by Dev Co pursuant to any Additional Project Due Diligence performed by DPA Contracting Authority or Dev Co pursuant to DPA Section 10.9 shall be deemed to be DPA Background Information hereunder provided to or obtained by Dev Co on the same basis as set out in DPA Sections 11.1 to 11.4.

12. DPA VARIATION PROCEDURE

12.1 DPA Variation Procedure

- (a) Schedule 6 – DPA Variation Procedure shall apply in respect of DPA Variations.

- (b) Dev Co shall, subject to and in accordance with Schedule 6 – DPA Variation Procedure, be entitled to a DPA Variation if a written direction to Dev Co issued by Infrastructure Ontario’s board of directors, the Hospital’s board of directors or both of them results in a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the DPA Works.
- (c) Notwithstanding anything to the contrary in this Agreement, the Parties agree that during the DPA Term:
- (i) subject to DPA Section 4.2, any alteration, addition or variation to any Attachment to Schedule 3 – DPA Submissions and Project Development Process shall be effected by way of a DPA Variation, subject to and in accordance with Schedule 6 – DPA Variation Procedure, provided that Dev Co shall only be entitled to any additional compensation and schedule relief under this Agreement if and to the extent that such DPA Variation directly results in a material increase in Dev Co’s costs or materially impacts the schedule to perform the DPA Works;
 - (ii) DPA Contracting Authority may revise and reissue in whole or in part the Draft Project Agreement pursuant to Schedule 3 – DPA Submissions and Project Development Process, and, except as set out in DPA Section 12.1(c)(iii), no such amendment, revision or reissuance to the Draft Project Agreement shall require (A) a DPA Variation; (B) an amendment to this Agreement; (C) DPA Contracting Authority to pay Dev Co any additional compensation under this Agreement; or (D) DPA Contracting Authority to provide any schedule or other relief to Dev Co under this Agreement, and this Agreement shall remain in full force and effect notwithstanding any such revision or reissuance;
 - (iii) any proposed alteration, addition or variation to any provision of the Draft Project Agreement that is expressly incorporated into this Agreement by reference that directly impacts or will impact (I) the performance of the DPA Works (including the DPA Works PA Requirements); (II) other obligations or liabilities of Dev Co under this Agreement; or (III) the performance of the Remaining PA Design Works under a Final Project Agreement, shall, subject to and in accordance with Schedule 6 – DPA Variation Procedure, require and be effected by a DPA Variation, provided that:
 - A. Dev Co shall not be entitled to any additional compensation or schedule relief in accordance with Schedule 6 – DPA Variation Procedure or otherwise under this Agreement if such proposed alteration, addition or variation to the Draft Project Agreement constitutes reasonable revisions arising out of the development and progression of the design for the Project in accordance with normal design development practices, including any such reasonable revisions made after DPA Contracting Authority’s review of and comment on the DPA Works Submittals under this Agreement at any previous stage of the design development process;
 - B. Dev Co shall not be entitled to any additional compensation or schedule relief in accordance with Schedule 6 – DPA Variation Procedure or otherwise under this Agreement if such proposed alteration, addition or variation to the Draft Project Agreement reflects elements of a DPA Submittal or is made to include or reflects elements of the Technical Specifications; and

- C. Dev Co shall otherwise only be entitled to additional compensation and schedule relief under this Agreement in respect of such proposed alteration, addition or variation to the Draft Project Agreement in accordance with Schedule 6 – DPA Variation Procedure if and to the extent that such DPA Variation directly results in a material increase in (1) Dev Co’s costs and materially impacts the schedule to perform the DPA Works or (2) the cost to Project Co of performing the Remaining PA Design Works under any Final Project Agreement (other than with respect to any Remaining PA Design Works Overhead and Profit); and
- (iv) subject to DPA Section 10.12(m), any DPA Variation which incorporates the Remaining DPA Design Works, or any part thereof, into the DPA Works or which removes any DPA Design Works from the DPA Works and adds such DPA Design Works to the Remaining PA Design Works shall not result in any adjustment to the Total DPA and Design Works Fixed Price.
- (d) Dev Co shall promptly advise DPA Contracting Authority as to any circumstances or events arising pursuant to this Agreement that, in its reasonable opinion, comprise or require a DPA Variation.
- (e) For greater certainty, Dev Co may and is encouraged to propose DPA Variations pursuant to Schedule 6 – DPA Variation Procedure for value engineering, cost reduction, schedule acceleration and efficiency enhancing purposes, provided that DPA Contracting Authority shall be under no obligation whatsoever to accept any such proposals.

12.2 DPA Variation for DPA Contracting Authority Delay

- (a) Except to the extent caused or contributed to by Dev Co or a Dev Co Party:
- (i) if DPA Contracting Authority materially delays Dev Co’s performance of the DPA Works as a result of any failure of DPA Contracting Authority to comply, or delay of DPA Contracting Authority in complying with, its obligations to comment on DPA Submittals in accordance with the provisions of the Review Procedures; or
- (ii) without limiting the provisions of this DPA Section 12.2(a) but subject to Dev Co’s compliance with DPA Section 10.13, if Dev Co is materially delayed in the performance of the DPA Works as a result of any failure of DPA Contracting Authority to obtain, or delay of DPA Contracting Authority obtaining, any required approval from the MOH in accordance with the deadlines set out in the DPA Works Schedules,

then, subject to and in accordance with Schedule 6 – DPA Variation Procedure, Dev Co shall be entitled to a DPA Variation whereby Dev Co shall be provided with:

- A. an extension of time to the DPA Works Schedules to the extent of the necessary extension of the Critical Path as a result of such material delay (each a “**DPA Contracting Authority Delay Period**”); and
- B. additional payment from the Hospital to the extent necessary to compensate Dev Co for such material delay.

13. TOTAL DPA AND DESIGN WORKS FIXED PRICE AND PAYMENT

13.1 Total DPA and Design Works Fixed Price

- (a) Dev Co represents and warrants that the all-inclusive “**Total DPA and Design Works Fixed Price**”, exclusive of HST, for the performance of:
- (i) the DPA Works under this Agreement; and
 - (ii) without limiting or prejudice to any right of DPA Contracting Authority under this Agreement (including under DPA Section 4.1(a)(ii)), the Remaining PA Design Works under a Final Project Agreement,
- is, subject to DPA Section 13.1(d), an amount equal to \$[REDACTED].
- (b) The Parties agree that the Total DPA and Design Works Fixed Price will not be subject to adjustment despite changes in the DPA Works or to the Draft Project Agreement, except in accordance with DPA Section 12 and Schedule 6 – DPA Variation Procedure. The Parties further agree that the Total DPA and Design Works Fixed Price will only be adjusted where this Agreement specifically and expressly refers to an adjustment to the Total DPA and Design Works Fixed Price, and no claim for an adjustment to the Total DPA and Design Works Fixed Price on any legal or equitable basis outside of the specific and express rights to an adjustment of the Total DPA and Design Works Fixed Price set out in this Agreement will be allowed. In order to be effective, any permitted adjustment to the Total DPA and Design Works Fixed Price must be provided in a DPA Variation Confirmation in accordance with Schedule 6 – DPA Variation Procedure.
- (c) Dev Co acknowledges and agrees that, subject to DPA Section 13.1(d):
- (i) Dev Co has satisfied itself as to the correctness and sufficiency of the Total DPA and Design Works Fixed Price, and has based the Total DPA and Design Works Fixed Price on the data, interpretations, necessary information, examinations and satisfaction as to all relevant matters related to this Agreement (including the Draft Project Agreement);
 - (ii) the Total DPA and Design Works Fixed Price covers all of Dev Co’s obligations under this Agreement and all of Project Co’s obligations set out in the Draft Project Agreement with respect to the Remaining PA Design Works, and all things necessary for the proper performance and completion of the DPA Works under this Agreement and the Remaining PA Design Works under a Final Project Agreement, and the remedying of any defects;
 - (iii) the Total DPA and Design Works Fixed Price includes all premium time and overtime that may be required to perform the DPA Works in accordance with this Agreement and Good Industry Practice and the Remaining PA Design Works in accordance with any Final Project Agreement and Good Industry Practice; and
 - (iv) except as otherwise expressly provided in this Agreement or under any Final Project Agreement, there shall be no other amounts payable to Dev Co under this Agreement or to Project Co under any Final Project Agreement other than the Total DPA and Design Works Fixed Price, in respect of the DPA Works and the Remaining PA Design Works.

- (d) The Parties acknowledge and confirm that, notwithstanding anything to the contrary in this Agreement, the Total DPA and Design Works Fixed Price:
- (i) does not include any Remaining PA Design Works Overhead and Profit; and
 - (ii) only includes amounts associated with the performance of the DPA Works that are to be performed following Dev Co's submission of the Project Proposal pursuant to this Agreement that are necessary to achieve Commercial Close in accordance with this Agreement by no later than the date that is 90 days following the date of such submission. The Parties accordingly agree that:
 - A. Dev Co shall include in the Project Proposal an amount (the "**Closing Allowance**") that will be payable by the Hospital to Project Co under any Final Project Agreement that specifically relates to and is directly attributable to the aggregate of Dev Co's reasonable and direct incremental costs associated with the performance of the DPA Works following Dev Co's submission of the Project Proposal pursuant to this Agreement that are necessary to achieve Commercial Close by no later than the date of the expiry of the subsequent 55 day period occurring after the expiry of such 90 day period. For clarity, such subsequent 55 day period ends on the date of the expiry of the Project Proposal Validity Period; and
 - B. the Closing Allowance shall be without duplication of any amount included in the Total DPA and Design Works Fixed Price, and shall not include any amount that was otherwise required to be included in the Total DPA and Design Works Fixed Price in accordance with the Request for Proposals.

13.2 Payment to Dev Co and Project Co of the Total DPA and Design Works Fixed Price

- (a) Subject to the provisions of this Agreement (including DPA Sections 13.2(b) and 13.5) and in accordance with and subject to Applicable Law respecting holdbacks, the Hospital shall, on a monthly and earned value basis, pay Dev Co a portion of the Total DPA and Design Works Fixed Price attributable to the performance of the DPA Works plus applicable HST in accordance with Schedule 8 – DPA Payment.
- (b) Notwithstanding anything to the contrary in this Agreement, the Parties agree:
- (i) in the event that DPA Contracting Authority delivers a Notice to Proceed to Commercial Close to Dev Co pursuant to DPA Section 4.1(b), except as otherwise set out in DPA Section 13.2(d) and Section 1.9(a)(ii) of Schedule 6 – DPA Variation Procedure, the Hospital shall not be obligated to pay Dev Co, and neither Dev Co nor any Dev Co Party shall be entitled to be paid by the Hospital, any amount whatsoever pursuant to DPA Section 13.2(a) for or in respect of the performance of the DPA Works during the DPA Term performed after the Final EV Payment DPA Works;
 - (ii) Dev Co shall include an amount equal to (A) the Total DPA and Design Works Fixed Price minus (B) all amounts that were paid, are payable and are estimated to be payable by the Hospital to Dev Co pursuant to DPA Section 13.2(a) in respect of all DPA Works performed up to and including the Final EV Payment DPA Works and any Cash Allowance

Amounts that have not been paid, are not payable and are not estimated to be payable by the Hospital to Dev Co pursuant to DPA Section 13.4 (the “**Remaining Total DPA and Design Works Fixed Price**”) as part of the Project Proposal in accordance with the requirements of Appendix 3 – Project Proposal Content and Requirements of Schedule 3 – DPA Submissions and Project Development Process, which shall be adjusted during the Commercial Closing Stage in accordance with Section 6.3(c) of Schedule 3 – DPA Submissions and Project Development Process; and

- (iii) Dev Co shall not be permitted to include any additional amount in the Project Proposal whatsoever in respect of the performance of the DPA Works or the Remaining PA Design Works other than the Remaining Total DPA and Design Works Fixed Price and Remaining PA Design Works Overhead and Profit.
- (c) The Parties acknowledge that, in accordance with Appendix 3 – Project Proposal Content and Requirements of Schedule 3 – DPA Submissions and Project Development Process, the Remaining Total DPA and Design Works Fixed Price (as adjusted during the Commercial Closing Stage in accordance with Section 6.3(c) of Schedule 3 – DPA Submissions and Project Development Process) shall be included in the payments to be made by Contracting Authority to Project Co under, and shall be payable by Contracting Authority to Project Co pursuant to, any Final Project Agreement as consideration for Project Co’s performance of the Remaining PA Design Works.
- (d) In the event this Agreement is terminated by a Party in accordance with any of DPA Section 18.1, 18.2, 19.1 or 19.2 after the date Contracting Authority delivers a Notice to Proceed to Commercial Close to Dev Co pursuant to DPA Section 4.1(b), then, without limiting any other right, obligation or liability of a Party under this Agreement (including the rights of the Hospital pursuant to DPA Section 13.5), the Hospital shall be obligated to pay Dev Co a portion of the Total DPA and Design Works Fixed Price attributable to the performance of the DPA Works after the performance of the Final EV Payment DPA Works in accordance with DPA Section 13.2 and DPA Section 20.2.

13.3 Other Payment Obligations

- (a) Without limiting or prejudice to DPA Section 13.2, the Parties shall comply with the provisions of Schedule 8 – DPA Payment.

13.4 Cash Allowance Items and Cash Allowance Amounts

- (a) The Parties acknowledge and agree that:
 - (i) the Cash Allowance Amounts form part of the Total DPA and Design Works Fixed Price;
 - (ii) the DPA Works in respect of each Cash Allowance Amount are the works and services required to perform and complete the Cash Allowance Item;
 - (iii) unless otherwise directed by DPA Contracting Authority in writing, each Cash Allowance Amount is only for the corresponding Cash Allowance Item and not for other Cash Allowance Items;
 - (iv) unless otherwise agreed by DPA Contracting Authority in writing, the DPA Works associated with a Cash Allowance Item may only be performed by Dev Co and a Cash

Allowance Amount may only be expended by Dev Co and reimbursed by the Hospital if Dev Co satisfies the requirements of this DPA Section 13.4; and

- (v) if Dev Co commences the performance of the DPA Works associated with a Cash Allowance Item or makes any expenditure of a Cash Allowance Amount in respect of a Cash Allowance Item and Dev Co fails to comply with the requirements of this DPA Section 13.4 (including if Dev Co makes any such expenditure before receiving a Cash Allowance Disbursement Authorization or fails to comply with any Cash Allowance Disbursement Authorization), then, without limiting any other right of DPA Contracting Authority or obligation of Dev Co under this Agreement, such expenditure may (A) be the subject of a DPA Dispute under this Agreement; (B) form the basis of a notice of non-payment by the Hospital in accordance with the *Construction Act*; (C) not be reimbursed by the Hospital; and (D) be deducted from the Total DPA and Design Works Fixed Price by way of a DPA Variation.
- (b) Prior to Dev Co performing any DPA Works associated with a Cash Allowance Item:
 - (i) Dev Co shall, on its own volition or at the written request of DPA Contracting Authority, submit a written proposal to DPA Contracting Authority for DPA Contracting Authority's review (A) detailing its projected expenditures for the Cash Allowance Item, any relevant terms of the expenditures, the methods of accounting for such expenditures, and when Dev Co anticipates making such expenditures; and (B) that satisfies the requirements of DPA Section 13.4(g)(ii) (each is a "**Cash Allowance Expenditure Proposal**"); and
 - (ii) following the receipt of a Cash Allowance Expenditure Proposal, DPA Contracting Authority may, without unreasonable delay, require Dev Co to revise and resubmit the Cash Allowance Expenditure Proposal to reflect DPA Contracting Authority's requirements related to the expenditures for the Cash Allowance Item, including to obtain a more satisfactory proposal to DPA Contracting Authority that reflects any one or more of the following:
 - A. the renegotiation of any third party pricing or other terms;
 - B. two or more competitive quotes from third parties;
 - C. a quote from any particular third party identified by DPA Contracting Authority;
 - D. a different method of accounting for such expenditure; or
 - E. any other requirement of DPA Contracting Authority related to the expenditure,and Dev Co shall, as soon as practicable, comply with such requirements and subsequently revise and resubmit the Cash Allowance Expenditure Proposal to DPA Contracting Authority for DPA Contracting Authority's review and approval.
- (c) If DPA Contracting Authority approves of the Cash Allowance Expenditure Proposal, as may be revised and resubmitted pursuant to DPA Section 13.4(b)(ii), then DPA Contracting Authority shall provide a written authorization to Dev Co authorizing Dev Co to proceed with the DPA Works in respect of the Cash Allowance Item and the expenditures in respect of the Cash Allowance Item

set out in the Cash Allowance Expenditure Proposal (each a “**Cash Allowance Disbursement Authorization**”).

- (d) Dev Co shall carry out the DPA Works in respect of each Cash Allowance Item in accordance with the applicable Cash Allowance Disbursement Authorization provided by DPA Contracting Authority.
- (e) Any expenditure by Dev Co in respect of a Cash Allowance Item in excess of the pricing set out in a Cash Allowance Disbursement Authorization, must receive the prior approval in writing of DPA Contracting Authority.
- (f) Dev Co shall seek reimbursement for any expenditures reasonably and properly incurred by Dev Co in respect of a Cash Allowance Item plus any applicable HST pursuant to Schedule 8 – DPA Payment.
- (g) Dev Co acknowledges and agrees that:
 - (i) no Cash Allowance Amount is a cap or a maximum expenditure on the cost to Dev Co or a Dev Co Party in respect of the performance of the DPA Works in respect of the corresponding Cash Allowance Item, provided that Dev Co shall promptly advise DPA Contracting Authority if at any time it is of the reasonable opinion that any expenditure of the Cash Allowance Amount required to perform the DPA Works in respect of a Cash Allowance Item will or is reasonably likely to be in excess of the Cash Allowance Amount for such Cash Allowance Item;
 - (ii) Dev Co shall use commercially reasonable efforts to obtain fixed pricing for all expenditures for each Cash Allowance Item and to include such fixed pricing in its Cash Allowance Expenditure Proposal for such Cash Allowance Item;
 - (iii) the expenditure of the Cash Allowance Amount in respect of a Cash Allowance Item set out in a Cash Allowance Disbursement Authorization shall cover the total and all-inclusive cost to Dev Co of works and services and other authorized expenses incurred in performing the DPA Works in respect of the Cash Allowance Item, plus any applicable HST;
 - (iv) neither Dev Co, nor any Dev Co Party, shall be entitled to any mark-ups for profit, overhead or other costs associated with any of the Cash Allowance Items;
 - (v) all discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Dev Co in connection with the Cash Allowance Items shall be attributed solely to and shall benefit the pricing of the Cash Allowance Items;
 - (vi) any of the Cash Allowance Amounts that are not expended in accordance with this Agreement shall reduce the Total DPA and Design Works Fixed Price payable to Dev Co under this Agreement by way of a DPA Variation, and Dev Co shall not be entitled to any payment under this Agreement on account of any such Cash Allowance Amounts; and
 - (vii) Dev Co shall include within the DPA Works Schedules a schedule when Dev Co anticipates making such expenditures and providing a Cash Allowance Expenditure

Proposal and when any associated Cash Allowance Disbursement Authorization will be required.

13.5 Set-Off

- (a) The Parties agree that their rights of set-off at law or in equity are limited to the right of:
 - (i) the Hospital to set off against any amounts otherwise due to Dev Co pursuant to the terms of this Agreement, any amounts (including any amounts payable in accordance with DPA Sections 18.1(f) and 22) that (A) are due to DPA Contracting Authority by Dev Co pursuant to the terms of this Agreement or (B) are being disputed in accordance with the DPA Dispute Resolution Procedure; and
 - (ii) Dev Co to set off against any amounts otherwise due to DPA Contracting Authority pursuant to the terms of this Agreement, any amounts (including, without limitation, any amounts payable in accordance with DPA Section 22) that (A) are due to Dev Co by the Hospital pursuant to the terms of this Agreement or (B) are being disputed in accordance with the DPA Dispute Resolution Procedure.
- (b) Where a set-off, deduction or withholding is being exercised against amounts payable under a Proper Invoice, the Hospital shall deliver a notice of non-payment in the prescribed form and manner no later than 14 days after receiving the Proper Invoice.

13.6 Effect of Payment

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

13.7 No Other Entitlement

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

14. LIENS ARISING FROM THE DPA WORKS

14.1 No Liens

- (a) Dev Co shall not suffer or permit any construction lien or other lien for work, labour, services or materials ordered or supplied or claimed to have been ordered or supplied by or on behalf of Dev Co arising from the DPA Works and Applicable Law (“**Lien**”) to be to be filed or registered against the Lands or any part thereof. Whenever any Lien is registered or shall attach or claims therefore shall be filed or if notice of any Lien is provided to the Hospital, Dev Co shall forthwith, and in any event no longer than 10 Business Days after Dev Co has notice and/or knowledge of such Lien, cause such Lien to be discharged or vacated from title to the Lands by payment or by giving security or in such other manner as is or may be required or permitted by Applicable Law or to cause such notice of Lien to be withdrawn by the Lien claimant.

- (b) Dev Co further agrees that whenever a certificate of action is registered relating to any Lien, Dev Co shall forthwith, and in any event no longer than 10 Business Days after Dev Co has notice and/or knowledge of the registration of such certificate of action have it vacated.
- (c) If Dev Co fails to so discharge or vacate any such Lien or certificate of action or to have such notice of Lien withdrawn by the Lien claimant, within such 10 Business Day period, the Hospital may (but shall not be obligated to) and without prejudice to any of its other rights or remedies under this Agreement or otherwise pursuant to Applicable Law, discharge or vacate the Lien or certificate of action or to have such notice of Lien withdrawn. Any amounts paid and any cost and expenses incurred in respect of the foregoing by or on behalf of the Hospital (including, without limitation, all legal fees on a full indemnity basis and disbursements) shall be paid by Dev Co to the Hospital upon demand.
- (d) This DPA Section 14.1 shall not apply to any Lien claimed by Dev Co as a result of any default of the Hospital to make any payments to Dev Co in accordance with this Agreement.

15. FORCE MAJEURE EVENTS

15.1 Force Majeure

- (a) For the purposes of this Agreement, “**Force Majeure Event**” means an event or circumstance arising after the Effective Date that is beyond the affected Party’s reasonable control, including fire, flood, earthquake, elements of nature or acts of God, epidemics, pandemics, acts of war, states of belligerency, acts of the public enemy, power or utility failures that extend beyond one day, orders issued by public authorities, labour disputes, strikes, lock-outs, abnormally adverse weather conditions, terrorism, riots, or civil disorders, save and except if and to the extent any such event or circumstance was caused by or contributed to by a breach of this Agreement by the affected Party or any act omission by or on behalf of the affected Party. This definition shall not include and the Party seeking relief shall not be entitled to relief on the grounds of a Force Majeure Event for any of the following:
 - (i) late or incomplete performance of an obligation of Dev Co under this Agreement, including as a result of late or incomplete performance of such obligation by a Dev Co Party under this Agreement, unless any such late or incomplete performance is itself caused by a Force Majeure Event;
 - (ii) late or incomplete performance by DPA Contracting Authority under this Agreement, unless such late or incomplete performance is itself caused by a Force Majeure Event;
 - (iii) economic hardship suffered by a Party or any Party’s inability to pay moneys under this Agreement;
 - (iv) the late payment of moneys due and payable under this Agreement;
 - (v) any infringement by a Party of any intellectual property right by a party; and
 - (vi) any event for which a reasonable business person applying due diligence in the same or similar circumstance under the same or similar obligations as those contained in this

Agreement would have put in place contingency plans to either materially mitigate or negate the effects of such event.

- (b) No Party shall be liable for any failure to perform or delay in the performance of any of its obligations under this Agreement if the Party affected by a Force Majeure Event submits satisfactory evidence to the other Party that such failure or delay was the result of a Force Majeure Event, and the DPA Works Schedules shall be revised in accordance with the provisions of Schedule 6 – DPA Variation Procedure, provided that, for greater certainty, Dev Co shall not be entitled to any additional payment in respect of any DPA Variation required in accordance with this DPA Section 15.1(b) and in no circumstance shall any extension of time be more than the necessary extension of the Critical Path as a result of such Force Majeure Event.
- (c) Without limiting DPA Section 15.1(b), DPA Contracting Authority shall not be required to provide to Dev Co, and Dev Co shall not be entitled to, any additional compensation pursuant to this Agreement as a result of or in connection with a Force Majeure Event.
- (d) Any Party affected by a Force Majeure Event shall:
 - (i) give Notice to the other Party within 5 Business Days of the date it becomes aware of the commencement of the Force Majeure Event. Such Notice shall give sufficient details to identify the particular event claimed to be a Force Majeure Event;
 - (ii) take commercially reasonable steps to mitigate the consequences of the Force Majeure Event upon the performance of its obligations under this Agreement;
 - (iii) resume performance of its obligations affected by the Force Majeure Event as soon as possible and use commercially reasonable efforts to remedy its failure to perform;
 - (iv) advise the other Party in writing on a weekly basis of its efforts to overcome and/or mitigate the Force Majeure Event; and
 - (v) give Notice to the other Party promptly when the Force Majeure Event has ceased, and when the performance of its affected obligations can be resumed.
- (e) To the extent that the Party claiming relief does not comply with its obligations under DPA Section 15.1(d), such failure shall be taken into account in determining such Party's entitlement to relief pursuant to DPA Section 15.1(b).

15.2 **Impacts of COVID-19 on DPA Works**

- (a) Notwithstanding anything to the contrary in this Agreement:
 - (i) Dev Co acknowledges the impact of COVID-19 (including the impact of Applicable Law related to COVID-19) generally on the provision of design, construction, consulting and financial services in the Province of Ontario and on the specific DPA Works to be performed by Dev Co under this Agreement;
 - (ii) Dev Co confirms that it has taken into account all such impacts on the performance of the DPA Works, including in the Total DPA and Design Works Fixed Price and the DPA Works Schedules; and

- (iii) the Parties agree that, notwithstanding anything to the contrary in this Agreement, the effects of COVID-19 on Dev Co's performance of the DPA Works and its other obligations hereunder as of the Effective Date shall not constitute a Force Majeure Event, and that the provisions of DPA Section 15.1 shall not apply to the effects of COVID-19 on Dev Co's performance of the DPA Works and its other obligations hereunder after the Effective Date, except to the extent of a material change to the effects of COVID-19 on Dev Co's performance of the DPA Works and its other obligations under this Agreement which arise after the Effective Date.

16. INSURANCE AND PERFORMANCE SECURITY

16.1 Insurance

- (a) Dev Co shall and shall cause all relevant Dev Co Parties to obtain and maintain during the DPA Term the insurance set out in Schedule 9 – DPA Insurance.
- (b) Neither compliance nor failure to comply with the insurance provisions of this Agreement shall relieve Dev Co or DPA Contracting Authority of their respective liabilities and obligations under this Agreement.

16.2 Performance Guarantee of DPA Works Guarantor

- (a) At all times during the DPA Term and, in respect of the provisions described in DPA Section 20.4 following the DPA Term, Dev Co shall ensure that a valid and binding Performance Guarantee of DPA Works Guarantor in favour of DPA Contracting Authority from the DPA Works Guarantor (or a party of comparable financial strength, capacity and stability, as determined by DPA Contracting Authority acting in its sole discretion) and in the form of guarantee attached as Schedule 15 – Form of Performance Guarantee of DPA Works Guarantor, is in place and enforceable by DPA Contracting Authority.
- (b) The Parties agree that any demands made and amounts paid by the DPA Works Guarantor to DPA Contracting Authority under the Performance Guarantee of DPA Works Guarantor is without prejudice to DPA Contracting Authority's right to make continuing claims against Dev Co under this Agreement in relation to matters for which the Performance Guarantee of DPA Works Guarantor is provided.

16.3 DPA Closing Letter of Credit

- (a) On the date that is five Business Days following the date DPA Contracting Authority delivers a Notice to Proceed to Commercial Close to Dev Co pursuant to DPA Section 4.1(b), Dev Co shall deliver or cause one or more Dev Co Parties or members of the Dev Co Group (each a "**DPA Letter of Credit Client**") to deliver to DPA Contracting Authority one or more unconditional and irrevocable letters of credit, which shall be:
 - (i) in the amount of **\$(REDACTED)**;
 - (ii) from any one or more of the Schedule I Canadian chartered banks or any other financial institutions approved by DPA Contracting Authority, in each case, whose current long-term issuer rating is at least "A" by Standard & Poor's and "A2" by Moody's Investor

- Services or an equivalent rating by another party acceptable to DPA Contracting Authority, in its sole discretion;
- (iii) in favour and for the direct and exclusive benefit of DPA Contracting Authority;
 - (iv) in the form set out in Appendix 6 – Form of DPA Closing Letter of Credit to Schedule 3 – DPA Submissions and Project Development Process; and
 - (v) maintained, without reduction or step-down, by Dev Co until the Security Release Date, (the “**DPA Closing Letter of Credit**”).
- (b) DPA Contracting Authority shall be entitled to draw on the DPA Closing Letter of Credit in accordance with Section 6.2(b) of Schedule 3 – DPA Submissions and Project Development Process. On and following Commercial Close, the Hospital may draw on the DPA Closing Letter of Credit in accordance with Section 2.3(b) of the Final Project Agreement.
- (c) DPA Contracting Authority shall further be entitled to draw on the DPA Closing Letter of Credit if any one or more of the following occurs:
- (i) upon the failure of Dev Co to renew or to cause the renewal of the DPA Closing Letter of Credit in accordance with its terms and to provide or cause the provision of written proof of such renewal to DPA Contracting Authority, before the date that is 20 Business Days before the expiry date of the DPA Closing Letter of Credit;
 - (ii) upon the bankruptcy or insolvency of Dev Co or the applicable DPA Letter of Credit Client; and
 - (iii) upon the downgrading of any issuer of a DPA Closing Letter of Credit below any of the applicable thresholds set out in DPA Section 16.3(a)(ii) where the DPA Closing Letter of Credit has not been replaced by Dev Co or the applicable DPA Letter of Credit Client, as the case may be, with a replacement DPA Closing Letter of Credit in the form set out in Appendix 6 – Form of DPA Closing Letter of Credit to Schedule 3 – DPA Submissions and Project Development Process or such other form acceptable to DPA Contracting Authority, acting reasonably, and issued by one or more banks or other financial institutions that satisfy the requirements set out in DPA Section 16.3(a)(ii), within 20 Business Days following such downgrading,

provided that DPA Contracting Authority shall give Dev Co at least two Business Days prior written notice before drawing on the DPA Closing Letter of Credit pursuant to this DPA Section 16.3(c).

(d) In the event that the DPA Closing Letter of Credit is drawn upon in accordance with DPA Section 16.3(c), DPA Contracting Authority shall hold the cash proceeds thereof in a segregated bank account at a bank selected by DPA Contracting Authority that meets the thresholds described in DPA Section 16.3(a)(ii), and, until Dev Co delivers or causes the delivery of a new DPA Closing Letter of Credit to DPA Contracting Authority, such cash proceeds and interest earned on such cash proceeds shall thereupon stand in place of the DPA Closing Letter of Credit, with the provisions of this Agreement being interpreted such that all references to the DPA Closing Letter of Credit shall

be deemed to be references to such cash proceeds and interest earned on such cash proceeds, applicable *mutatis mutandis*. All interest earned on such cash proceeds shall be for the benefit of Dev Co. DPA Contracting Authority shall be entitled to withdraw such cash proceeds and interest earned on such cash proceeds in the same manner that it is permitted to draw upon the DPA Closing Letter of Credit pursuant to this Agreement. Upon the replacement of the DPA Closing Letter of Credit by Dev Co or a DPA Letter of Credit Client, as the case may be, DPA Contracting Authority shall return all remaining cash proceeds and all interest earned on such cash proceeds from such segregated bank account to Dev Co or as Dev Co may direct within five Business Days.

- (e) DPA Contracting Authority may make multiple and partial draws on the DPA Closing Letter of Credit pursuant to DPA Section 16.3(b).
- (f) Unless the DPA Closing Letter of Credit is fully drawn by DPA Contracting Authority in accordance with the provisions of this Agreement, DPA Contracting Authority shall release and deliver the DPA Closing Letter of Credit to Dev Co or the DPA Letter of Credit Clients, (i) if DPA Contracting Authority terminates this Agreement in accordance with DPA Section 19.1 prior to Commercial Close being achieved; or (ii) if the Hospital has entered into the Final Project Agreement with Project Co, on the date set out in Section 2.2(b) of the Final Project Agreement (the “**Security Release Date**”).
- (g) If Dev Co delivers multiple letters of credit comprising the DPA Closing Letter of Credit from multiple DPA Letter of Credit Clients in accordance with DPA Section 16.3(a), Dev Co acknowledges and agrees that:
 - (i) DPA Contracting Authority may draw upon any such letter of credit provided by any DPA Letter of Credit Client in any specified ratable amount;
 - (ii) DPA Contracting Authority may draw on any such letter of credit provided by any DPA Letter of Credit Client in a disproportionate amount to such DPA Letter of Credit Client’s contribution to security;
 - (iii) DPA Contracting Authority may draw upon any such letter of credit provided by any DPA Letter of Credit Client even in the event that such DPA Letter of Credit Client is no longer a Dev Co Party; and
 - (iv) the provision of multiple letters of credit shall not in any way prejudice or adversely affect the rights of DPA Contracting Authority to draw on any such letter of credit in accordance with this Agreement, including in the event that DPA Contracting Authority is entitled to draw on the DPA Closing Letter of Credit in accordance with this Agreement and such circumstance is not the result of any act or omission of the particular DPA Letter of Credit Client whose letter of credit is drawn upon.
- (h) In the event that the DPA Closing Letter of Credit is drawn upon in accordance with DPA Section 16.3(c), Dev Co shall pay to DPA Contracting Authority all of DPA Contracting Authority’s reasonable costs and expenses resulting from or arising in connection with such draw, and DPA Contracting Authority shall have the right to withhold such amounts from the amounts drawn in accordance with DPA Section 16.3(c) unless paid by Dev Co within five Business Days of a written request from DPA Contracting Authority to Dev Co.

16.4 No Required Bonds

- (a) The Parties agree that, except as otherwise required under the Enabling Works Contract, a DPA Variation or as a result of a judicial determination made under the *Construction Act*, neither Dev Co nor any DPA Subcontractor shall be required to furnish DPA Contracting Authority with a performance bond or a labour and material payment bond in connection with the DPA Works. In the event that, following the Effective Date, a final judicial determination is made under the *Construction Act* that a performance bond or a labour and material payment bond is required or both of them are required in connection with the DPA Works, then, subject to and in accordance with Schedule 6 – DPA Variation Procedure, Dev Co shall be entitled to a DPA Variation for the additional costs incurred as a result of Dev Co or any DPA Subcontractor obtaining such required bond or bonds.

17. CONFLICT OF INTEREST

17.1 No Conflict of Interest

- (a) Dev Co shall and shall cause the Dev Co Parties to:
- (i) avoid any Conflict of Interest in the performance of Dev Co’s obligations under this Agreement;
 - (ii) promptly disclose in writing to DPA Contracting Authority without delay any actual, potential or perceived Conflict of Interest that arises during the performance of Dev Co’s obligations under this Agreement; and
 - (iii) comply with any requirements prescribed by DPA Contracting Authority to resolve any actual, potential or perceived Conflict of Interest that arises during the performance of Dev Co’s obligations under this Agreement.
- (b) At the request of DPA Contracting Authority, Dev Co shall provide DPA Contracting Authority with Dev Co’s proposed means to mitigate and minimize to the greatest extent practicable any actual, potential or perceived Conflict of Interest.
- (c) Dev Co shall submit any additional information to DPA Contracting Authority that DPA Contracting Authority considers necessary to properly assess any actual, potential or perceived Conflict of Interest.
- (d) DPA Contracting Authority may, in its sole discretion, exclude any potential DPA Subcontractor on the grounds of an actual, potential or perceived Conflict of Interest.
- (e) DPA Contracting Authority may, in its sole discretion, waive in writing any actual, potential or perceived Conflict of Interest of Dev Co or a Dev Co Party. A waiver may be upon such terms and conditions as DPA Contracting Authority, in its sole discretion, requires to satisfy itself that the Conflict of Interest has been appropriately managed, mitigated and minimized, including requiring Dev Co to put into place such policies, procedures, measures and other safeguards as may be required by and be acceptable to DPA Contracting Authority, in its sole discretion, to manage, mitigate and minimize the impact of such actual, potential or perceived Conflict of Interest.

18. DEFAULT

18.1 Dev Co Event of Default

- (a) For the purposes of this Agreement, a “**Dev Co Event of Default**” means any one or more of the following events or circumstances:
- (i) Dev Co is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of Dev Co’s insolvency;
 - (ii) Dev Co wholly suspends or abandons the DPA Works for a period which exceeds five Business Days, including as described in Section 6.2(b)(ii)C of Schedule 3 – DPA Submissions and Project Development Process but excluding any suspension undertaken in accordance with DPA Section 18.2(b)(i) or as directed by DPA Contracting Authority in accordance with DPA Section 21.1(a);
 - (iii) Dev Co fails to pay any sum or sums due to DPA Contracting Authority under this Agreement, which sum or sums are not being disputed in accordance with the DPA Dispute Resolution Procedure;
 - (iv) Dev Co fails to comply with DPA Section 14 (Liens Arising from the DPA Works) in respect of discharging or vacating any Lien or certificate of action or having any written notice of Lien withdrawn by the Lien claimant;
 - (v) Dev Co fails to comply with DPA Section 17.1 (No Conflict of Interest) in any material respects;
 - (vi) Dev Co fails to comply with DPA Section 26 (Confidentiality, Personal Information and Communications);
 - (vii) Dev Co fails to comply with DPA Section 29 (Assignment and Change in Control);
 - (viii) Dev Co or any Dev Co Party (or anyone employed by or acting on their behalf) commits a Prohibited Act;
 - (ix) Dev Co makes any representation or warranty in this Agreement that is false or misleading when made, and that has or could have at any time a material adverse effect on the performance of the DPA Works, on DPA Contracting Authority’s ability to exercise its rights under the Assignment of Project Documents or any Assignment of DPA Subcontracts, on the Project, or that may compromise DPA Contracting Authority’s reputation or integrity or the nature of the Province’s health care system, so as to affect public confidence in that system;
 - (x) Dev Co subcontracts the performance of the DPA Works without first obtaining the written approval of DPA Contracting Authority in accordance with DPA Section 10.7(b);
 - (xi) Dev Co fails to obtain any insurance required to be obtained by or on behalf of Dev Co pursuant to this Agreement or fails to deliver any performance security required to be delivered by or on behalf of Dev Co pursuant to this Agreement or any such insurance or any such performance security delivered by Dev Co or a Dev Co Party under this

Agreement being vitiated or otherwise ceasing to be in full force and effect or in material compliance with the requirements set out in this Agreement;

- (xii) Dev Co fails to comply with any determination, decision, order or award made against Dev Co in accordance with the DPA Dispute Resolution Procedure, or Dev Co fails to proceed in accordance with the written instruction of DPA Contracting Authority during the pendency of a DPA Dispute pursuant to DPA Section 24.5(b);
- (xiii) Dev Co fails to submit a Project Proposal by the Project Proposal Submission Deadline in accordance with Section 5.4 of Schedule 3 – DPA Submissions and Project Development Process or an updated Project Proposal by the applicable deadline in accordance with Section 8.1 of Appendix 5 – Financing Process of Schedule 3 – DPA Submissions and Project Development Process, or delivers a Project Proposal which receives a comment from DPA Contracting Authority of “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE” and all or any material part of such Project Proposal is not resubmitted by the applicable deadline described in Section 5.5 of Schedule 3 – DPA Submissions and Project Development Process;
- (xiv) prior to any Notice to Proceed to Commercial Close being delivered to Dev Co by DPA Contracting Authority pursuant to DPA Section 4.1(b), Dev Co withdraws or modifies the Project Proposal before the expiry of the Project Proposal Validity Period contrary to the provisions of Schedule 3 – DPA Submissions and Project Development Process, including Sections 5.4(c) and 5.7(c) of Schedule 3 – DPA Submissions and Project Development Process;
- (xv) Dev Co fails to deliver a DPA Closing Letter of Credit in accordance with DPA Section 16.3(h);
- (xvi) an event or circumstance described in Section 6.2(b) of Schedule 3 – DPA Submissions and Project Development Process occurs entitling DPA Contracting Authority to draw on the DPA Closing Letter of Credit and retain and apply the proceeds thereof as liquidated damages;
- (xvii) Dev Co fails to comply with the terms of the Committed Financing in any material respects;
- (xviii) any repudiation of the Performance Guarantee of DPA Works Guarantor;
- (xix) Dev Co commits a material breach of its obligations under this Agreement other than as set out above in this DPA Section 18.1(a);
- (xx) the Total DPA Liability of Dev Co to DPA Contracting Authority is equal to or exceeds the DPA Maximum Liability Amount;
- (xxi) the Construction Manager commits a material breach of its obligations under the Enabling Works Contract; and
- (xxii) Dev Co fails to cause the CM Design Consultant to perform its obligations set out in the Enabling Works Contract in any material respects

which event or circumstance arose, with respect to any provision of this DPA Section 18.1(a) other than DPA Section 18.1(a)(xxi), as a consequence of a breach by DPA Contracting Authority of its obligations under this Agreement, or, with respect to DPA Section 18.1(a)(xxi), as a consequence of a breach by the Owner of its obligations under the Enabling Works Contract; and

- (xxiii) the Owner terminates the Enabling Works Contract in accordance with its terms as a result of a default of the Construction Manager thereunder.
- (b) A Party shall, promptly upon becoming aware of the occurrence of a Dev Co Event of Default, give Notice to the other Party of the occurrence and details of the Dev Co Event of Default (a “**Notice of Dev Co Event of Default**”). In addition, a Party shall promptly give Notice to the other Party 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 Dev Co Event of Default.
- (c) Upon the receipt by Dev Co or the receipt by DPA Contracting Authority of a Notice of Dev Co Event of Default provided pursuant to DPA Section 18.1(b), Dev Co shall promptly and within five days provide a written plan to remedy or to cause the remedy of such Dev Co Event of Default to DPA Contracting Authority and immediately commence and diligently continue to remedy or cause the remedy of the Dev Co Event of Default and to mitigate any adverse effects on DPA Contracting Authority. In the event that such Dev Co Event of Default is not a Dev Co Event of Default described in DPA Section 18.1(a)(i), DPA Section 18.1(a)(xvi), DPA Section 18.1(a)(xx) or DPA Section 18.1(a)(xxiii) and has not been remedied to the reasonable satisfaction of DPA Contracting Authority within 10 Business Days after such Notice of Dev Co Event of Default is received (or such longer period agreed by DPA Contracting Authority) (the “**Dev Co Event of Default Cure Period**”), then DPA Contracting Authority may terminate this Agreement in its entirety with immediate effect by giving Notice to Dev Co. In the event that such Dev Co Event of Default is a Dev Co Event of Default described in DPA Section 18.1(a)(i), DPA Section 18.1(a)(xvi), DPA Section 18.1(a)(xx) or DPA Section 18.1(a)(xxiii), then, notwithstanding the delivery of a remediation plan or any remedial actions undertaken by Dev Co, DPA Contracting Authority may terminate this Agreement in its entirety with immediate effect by giving Notice to Dev Co.
- (d) Without prejudice to any other rights of DPA Contracting Authority in this Agreement or pursuant to Applicable Law, including this DPA Section 18.1, if a Dev Co Event of Default occurs and is continuing, DPA Contracting Authority may at any time following the delivery of Notice to Dev Co and at Dev Co’s risk and expense:
- (i) take such steps as DPA Contracting Authority considers appropriate, either themselves or by engaging others (including a third party) to take such steps, to perform or obtain the performance of Dev Co’s obligations under this Agreement or to remedy such Dev Co Event of Default;
 - (ii) following the expiry of any Dev Co Event of Default Cure Period, require the termination and replacement of any DPA Subcontractor who caused or contributed to the Dev Co Event of Default; and/or
 - (iii) direct Dev Co to suspend the performance of all or a part of the DPA Works pursuant to DPA Section 21.1(a).

- (e) Upon the occurrence of a Dev Co Event of Default that Dev Co has remedied in accordance with this DPA Section 18.1, such occurrence of a Dev Co Event of Default shall thereafter cease to be a Dev Co Event of Default and DPA Contracting Authority shall not be entitled to terminate this Agreement for that occurrence of the Dev Co Event of Default.
- (f) Dev Co shall be responsible for and shall, following the delivery by DPA Contracting Authority of Notice requesting reimbursement, promptly reimburse DPA Contracting Authority 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 DPA Contracting Authority in exercising its rights under this DPA Section 18.1, including any relevant increased administrative expenses. DPA Contracting Authority shall take commercially reasonable steps to mitigate such costs. Dev Co shall not be required to reimburse DPA Contracting Authority pursuant to this DPA Section 18.1(f) if and to the extent that the Hospital is reimbursed for the same costs under the Enabling Works Contract.

18.2 DPA Contracting Authority Event of Default

- (a) For the purposes of this Agreement, “**DPA Contracting Authority Event of Default**” means DPA Contracting Authority failing to pay any sum or sums due to Dev Co under this Agreement, which sum or sums are not the subject of a notice of non-payment from DPA Contracting Authority and are not being disputed in accordance with the DPA Dispute Resolution Procedure or have not been set off by DPA Contracting Authority pursuant to DPA Section 13.5, 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 DPA Contracting Authority of a notice of outstanding payment from or on behalf of Dev Co and arose other than as a consequence of a breach by Dev Co of its obligations under this Agreement.
- (b) On the occurrence of a DPA Contracting Authority Event of Default and while the same is continuing, Dev Co may give notice to DPA Contracting Authority of the occurrence of such DPA Contracting Authority Event of Default, which notice will specify the details thereof, and, at Dev Co’s option and without prejudice to its other rights and remedies under this Agreement, may:
 - (i) suspend performance of the DPA Works until such time as DPA Contracting Authority has remedied such DPA Contracting Authority Event of Default; or
 - (ii) if such DPA Contracting Authority Event of Default has not been remedied within 30 days of receipt by DPA Contracting Authority of Notice of the occurrence of such DPA Contracting Authority Event of Default, terminate this Agreement in its entirety by Notice in writing having immediate effect.
- (c) The Hospital shall be responsible for and shall, following the delivery by Dev Co of Notice requesting reimbursement, promptly reimburse Dev 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 Dev Co in exercising its rights under this DPA Section 18.2, including any relevant increased administrative expenses. Dev Co shall take commercially reasonable steps to mitigate such costs.

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

19. NON-EVENT OF DEFAULT TERMINATION

19.1 Termination for Convenience

- (a) Notwithstanding anything to the contrary in this Agreement, DPA Contracting Authority shall, in its sole discretion, for any reason whatsoever and without cause, be entitled to terminate this Agreement at any time during the DPA Term upon giving a minimum 30 days prior Notice to Dev Co. Dev Co acknowledges that some of the circumstances that could give rise to such a termination of this Agreement include the following events or circumstances:
 - (i) without limiting any right of DPA Contracting Authority in respect of any Dev Co Event of Default, DPA Contracting Authority not being satisfied, in its sole discretion, with the performance of the DPA Works or any one or more of the DPA Project Deliverables (including related to the anticipated cost of the Project or the Project Proposal);
 - (ii) DPA Contracting Authority electing not to give a Notice to Proceed to Commercial Close to Dev Co pursuant to DPA Section 4.1(b); and
 - (iii) DPA Contracting Authority failing to obtain any approvals desired by DPA Contracting Authority in respect of the Final Project Agreement or necessary for the Hospital to enter into the Final Project Agreement.
- (b) In the event of Notice being given by DPA Contracting Authority in accordance with this DPA Section 19.1, DPA Contracting Authority shall, at any time before the expiration of such Notice, be entitled to direct Dev Co to complete any unfinished specific DPA Works, refrain from commencing, or allowing any DPA Subcontractor to commence, the DPA Works or any part or parts of the DPA Works, where such DPA Works have not yet been commenced.
- (c) In the event this Agreement is terminated under this DPA Section 19.1, upon such termination, Dev Co shall be released from liability that may arise in relation to the use of the design produced as a result of the Development Phase PA Works by DPA Contracting Authority or by a third party from and after the date of termination of this Agreement, provided however that the foregoing release shall not apply to limit DPA Contracting Authority's rights in relation to applicable DPA Subcontractors if DPA Contracting Authority enforces its rights under the Assignment of Project Documents or any Assignment of DPA Subcontract.

19.2 Termination for Force Majeure Event

- (a) If a Force Majeure Event occurs and the effects of the Force Majeure Event continue for 90 days from the date on which the affected Party gives Notice to the other Party pursuant to DPA Section 15.1(d)(i), either Party may, at any time thereafter, terminate this Agreement by Notice to the other Party having effect a minimum of 30 days following the date of such Notice, provided that the effects of the Force Majeure Event continue during such period and prevent either Party from performing all or substantially all of its obligations under this Agreement.

- (b) In the event this Agreement is terminated under this DPA Section 19.2, upon such termination, Dev Co shall be released from liability that may arise in relation to the use of the design produced as a result of the Development Phase PA Works by DPA Contracting Authority or by a third party from and after the date of termination of this Agreement, provided however that the foregoing release shall not apply to limit DPA Contracting Authority's rights in relation to applicable DPA Subcontractors if DPA Contracting Authority enforces its rights under the Assignment of Project Documents or any Assignment of DPA Subcontract.

19.3 Automatic Termination and Expiry on Commercial Close

- (a) The Parties acknowledge the provisions of Section 6.5 of Schedule 3 – DPA Submissions and Project Development Process in respect of DPA Contracting Authority and Project Co entering into a Final Project Agreement.
- (b) This Agreement shall expire and terminate automatically on Commercial Close.

19.4 No Other Rights to Terminate

- (a) Except as set out in DPA Sections 18.1(c) and 18.2(b)(ii) and this DPA Section 19, no Party shall have a right or entitlement to terminate this Agreement, nor to accept any repudiation of this Agreement, and shall not exercise, nor purport to exercise, any such right or entitlement.

20. EFFECTS OF TERMINATION

20.1 Dev Co's Obligations on Termination

- (a) In the event this Agreement is terminated other than as a result of its expiry pursuant to DPA Section 19.3(a), whether or not such termination is subject to a DPA Dispute, Dev Co shall, in addition to its other obligations under this Agreement and at Applicable Law:
- (i) at the request of DPA Contracting Authority, provide DPA Contracting Authority with any completed or partially completed DPA Works other than the Project Proposal in the formats requested by DPA Contracting Authority, including all design and other technical drawings and data, reports, working drafts and all other information directly related to the DPA Works;
 - (ii) provide DPA Contracting Authority with a report detailing: (A) the current state of the provision of the DPA Works at the date of termination; and (B) any other information requested by DPA Contracting Authority pertaining to the provision of DPA Works and performance by Dev Co under this Agreement;
 - (iii) execute such documentation as may be required by DPA Contracting Authority to give effect to the termination of this Agreement;
 - (iv) cooperate with DPA Contracting Authority and any DPA Contracting Authority Parties, provide information to DPA Contracting Authority and any DPA Contracting Authority Parties, and comply with all reasonable instructions provided by DPA Contracting Authority or any DPA Contracting Authority Party to Dev Co (including instructions for Dev Co and the Dev Co Parties to complete any unfinished specific DPA Works) in order

to provide for an orderly, efficient and safe transition of Dev Co's role in any works and services with respect to the Project to DPA Contracting Authority and to permit the Hospital to develop a new public hospital facility similar to the Facility by way of a development model that may be different than the development model contemplated by the Draft Project Agreement and by persons that exclude Dev Co and some or all of the Dev Co Parties; and

- (v) without limiting any of the foregoing provisions of this DPA Section 20.1 or any other provision of this Agreement, the Assignment of Project Documents or any Assignment of DPA Subcontracts, comply with (A) any obligation of Project Co set out in any one or more of Sections 45.4 (Consequences of Termination), 45.5 (Ownership of Information) and 45.7 (Transitional Arrangements) of the Draft Project Agreement that DPA Contracting Authority, in its sole discretion, instructs Dev Co to comply with or be responsible for in writing, which provisions of the Draft Project Agreement shall be applicable *mutatis mutandis* as though such termination occurred prior to the Final Completion Date as defined in and under the Draft Project Agreement; and (B) all other reasonable instructions provided by DPA Contracting Authority to Dev Co related thereto. For clarity, DPA Contracting Authority may, in its sole discretion, exercise any of the rights of Contracting Authority set out such Sections of the Draft Project Agreement.

20.2 Payment Obligations on Termination

- (a) Subject to DPA Section 13.5, on termination of this Agreement other than pursuant to DPA Section 19.3(a), the Hospital shall only be responsible for the payment to Dev Co of the following amounts:
 - (i) amounts payable under this Agreement in accordance with DPA Section 13.2 for the performance of the DPA Works for up to and including the effective date of the termination of this Agreement;
 - (ii) if the termination of this Agreement is pursuant to DPA Sections 18.2 or 19.1, an amount equal to Dev Co's Demobilization Costs;
 - (iii) any other amount expressly due and payable to Dev Co pursuant to DPA Sections 18.2(c) and 22.3; and
 - (iv) any other amounts expressly due and payable to Dev Co in accordance with the terms of this Agreement up to and including the effective date of the termination of this Agreement.

20.3 Other Termination Rights and Obligations of the Parties

- (a) On completion of Dev Co's obligations pursuant to this DPA Section 20, this Agreement shall terminate and, except as provided in DPA Section 20.4, all rights and obligations of DPA Contracting Authority and Dev Co under this Agreement shall cease and be of no further force and effect.
- (b) Notwithstanding any breach of this Agreement by a Party, the other Party may elect to continue to treat this Agreement as being in full force and effect and to enforce its rights under this 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 Agreement, including any right to terminate this Agreement and any right to claim damages, shall not be deemed to be a waiver of such right for any continuing or subsequent breach.

- (c) Subject to any exercise by DPA Contracting Authority of its rights to perform, or to seek, pursuant to this Agreement, a third party to perform, the obligations of Dev Co, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any notice of default or notice of termination, until the termination of this Agreement becomes effective.
- (d) Dev Co shall make provision in all DPA Subcontracts to which it is a party (including requiring the relevant Dev Co Parties to make such provision) to ensure that DPA Contracting Authority shall be in a position to exercise its rights, and Dev Co shall be in a position to perform its obligations, under this DPA Section 20.

20.4 Survival

- (a) The termination of this Agreement shall not relieve a Party of any liabilities of a Party to the other Party under this Agreement arising prior to the effective date of the termination of this Agreement or of any of a Party's obligations pursuant to this DPA Section 20.
- (b) Without limiting the generality of DPA Section 20.4(a), the termination of this Agreement shall be without prejudice to, and shall not affect:
 - (i) any representations, warranties and indemnities under this Agreement; and
 - (ii) DPA Sections 2, 3, 8, 11, 13.2, 13.4(g)(vi), 13.5 to 13.7, 14, 16.2, 16.3, 18.1(f), 18.2(c), 20, 22 to 32, 34, 37 to 42, 44, 47 and 48, any provisions of this Agreement related to the completion of the Financing Process following Commercial Close or the achievement of Financial Close (including as set out in Schedule 3 – DPA Submissions and Project Development Process) until the achievement of Financial Close, Schedule 1 – Definitions, Section 6.5 of Schedule 3 – DPA Submissions and Project Development Process, Schedule 8 – DPA Payment, and any other provisions of this 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, the Assignment of Project Documents, the Assignments of DPA Subcontracts and the Performance Guarantee of DPA Works Guarantor,

all of which shall survive the termination of this Agreement, including pursuant to DPA Section 19.3.

21. SUSPENSION OF DPA WORKS

21.1 Suspension of DPA Works by DPA Contracting Authority

- (a) DPA Contracting Authority may, at any time, direct Dev Co in writing to suspend all or any part of the DPA Works for such period of time as DPA Contracting Authority may determine to be appropriate for the convenience of DPA Contracting Authority. This right of DPA Contracting Authority to suspend the DPA Works shall not give rise to any duty on the part of DPA Contracting Authority to exercise this right for the benefit of Dev Co or any Dev Co Party.

- (b) In the event that (i) DPA Contracting Authority provides any such direction to Dev Co; (ii) such direction and suspension does not arise as a result of any failure of Dev Co to perform its obligations in accordance with this Agreement (including as a result of a Dev Co Event of Default); and (iii) Dev Co incurs any material costs as a result of any delays to the performance of the DPA Works, then, subject to Schedule 6 – DPA Variation Procedure, such suspension shall result in a DPA Variation.

22. INDEMNITIES AND CONDUCT OF CLAIMS

22.1 Dev Co Indemnities to DPA Contracting Authority

- (a) Dev Co shall indemnify and save harmless DPA Contracting Authority 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) any physical loss of or damage to all or any part of the Lands, the Site, the Existing Facilities or to any equipment, assets or other property related thereto or of any entity comprising DPA Contracting Authority;
 - (ii) the death or personal injury of any person; 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;

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 Agreement by Dev Co or any act or omission of Dev Co or any Dev Co Party, except to the extent caused, or contributed to, by the breach of this Agreement by DPA Contracting Authority; or any act or omission of DPA Contracting Authority or any DPA Contracting Authority Party.

- (b) Dev Co shall indemnify and save harmless DPA Contracting Authority 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 arising out of any one or more of:
- (i) any breach of a representation or warranty by Dev Co herein;
 - (ii) the enforcement by DPA Contracting Authority of any performance security for which Dev Co is responsible under this Agreement as a result of a Dev Co Event of Default; and
 - (iii) the exercise by DPA Contracting Authority of any rights under the Assignment of Project Documents or any Assignment of DPA Subcontract as a result of a Dev Co Event of Default.
- (c) Dev Co shall indemnify and save harmless DPA Contracting Authority, each DPA Contracting Authority Party 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, arising out of, or involving or relating

to any one or more of the performance by Dev Co of this 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 Dev Co to obtain all necessary Project Co Permits, Licences, Approvals and Agreements in accordance with this Agreement, except to the extent that such Direct Losses are caused, or contributed to, by the breach of this Agreement by DPA Contracting Authority or by any act or omission of DPA Contracting Authority or any DPA Contracting Authority Party.

- (d) Dev Co shall indemnify DPA Contracting Authority for damages suffered or incurred on account of (i) any payment not duly made by Dev Co pursuant to the terms of this Agreement on the due date; (ii) any overpayment to or underpayment by Dev Co; or (iii) an amount finally determined as payable by Dev Co to DPA Contracting Authority under the DPA Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from the day after the date on which payment was due, the day on which overpayment was made by the Hospital, or from the date identified (if any) applicable to an amount determined as payable by Dev Co to DPA Contracting Authority under the DPA Dispute Resolution Procedure, up to and including the date of payment.

22.2 Dev Co Indemnity for Dev Co Event of Default Termination

- (a) Without limiting or prejudice to any other right or remedy available to DPA Contracting Authority under this Agreement or pursuant to Applicable Law but without duplication of any costs that Dev Co is responsible for reimbursing DPA Contracting Authority pursuant to DPA Section 18.1(f), Dev Co shall indemnify and save harmless DPA Contracting Authority 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 termination of this Agreement by DPA Contracting Authority pursuant to DPA Section 18.1(c), including any Direct Losses arising as a result of DPA Contracting Authority having to re-procure the Project.

22.3 Hospital Indemnities to Dev Co

- (a) The Hospital shall indemnify and save harmless Dev Co and the Dev 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 Agreement by DPA Contracting Authority or any act or omission of DPA Contracting Authority or any DPA Contracting Authority Party, except to the extent caused, or contributed to, by the breach of this Agreement by Dev Co or by any act or omission of Dev Co or any Dev Co Party;
 - (ii) any physical loss of or damage to all or any part of any property or assets of Dev Co or any Dev Co Party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Agreement by DPA Contracting Authority or any deliberate or negligent act or omission of DPA Contracting Authority or any DPA Contracting Authority

Party, except to the extent caused, or contributed to, by the breach of this Agreement by Dev Co or by any act or omission of Dev Co or any Dev 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 Agreement by DPA Contracting Authority or any deliberate or negligent act or omission of DPA Contracting Authority or any DPA Contracting Authority Party, except to the extent caused, or contributed to, by the breach of this Agreement by Dev Co or by any act or omission of Dev Co or any Dev Co Party,

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

- (b) The Hospital shall indemnify and save harmless Dev 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 the Hospital herein.
- (c) The Hospital shall indemnify Dev Co for damages suffered or incurred on account of (i) any payment not duly made by the Hospital pursuant to the terms of this Agreement on the due date; (ii) any overpayment to or underpayment by the Hospital; or (iii) an amount finally determined as payable by DPA Contracting Authority to Dev Co under the DPA Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from the day after the date on which payment was due, the day on which overpayment was made by Dev Co, or from the date identified (if any) applicable to an amount determined as payable by DPA Contracting Authority to Dev Co under the DPA Dispute Resolution Procedure, up to and including the date of payment.

22.4 Conduct of Claims

- (a) Without limiting DPA Section 2.3, the Parties agree to comply with the provisions of Section 53.3 (Conduct of Claims) of the Draft Project Agreement, which shall be applicable *mutatis mutandis* and applied in respect of the provisions of DPA Sections 22.1 and 22.2.

23. LIMITS OF LIABILITY

23.1 No Liability for Indirect Losses or in Tort

- (a) Without prejudice to the Parties' rights in respect of payments provided for in this Agreement, the indemnities under this Agreement shall not apply and there shall be no right 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 an Indirect Loss.
- (b) Subject to the indemnities provided herein, DPA Contracting Authority and the DPA Contracting Authority Parties shall not be liable in tort to Dev Co or any Dev Co Party, and neither Dev Co nor any Dev Co Party shall be liable in tort to DPA Contracting Authority or any DPA Contracting

Authority Party in respect of any negligent act or omission of any such person relating to or in connection with this Agreement and no such person shall bring such a claim.

- (c) Notwithstanding any other provision of this Agreement, and except to the extent recovered under any of the insurances required pursuant to Schedule 9 – DPA Insurance, neither Party shall be entitled to recover compensation or make a claim under this 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 Agreement, or otherwise.

23.2 **Maximum Liability**

- (a) Notwithstanding anything to the contrary in this Agreement other than, and subject to, Sections 23.2(b) and 23.2(c), the maximum aggregate liability of either Party to the other Party arising under or relating to this Agreement, including in respect of any delay by Dev Co in the performance of the DPA Works, any indemnity provided by either Party to the other Party under this Agreement, or as a consequence of any termination of this Agreement, (the “**Total DPA Liability**”) shall not exceed \$[REDACTED] (the “**DPA Maximum Liability Amount**”).

- (b) The DPA Maximum Liability Amount shall:

(i) be exclusive of any insurance or performance security (other than the Performance Guarantee of DPA Works Guarantor) proceeds received or which will be received pursuant to insurance policies or performance security maintained pursuant to this Agreement or which would have been received if Dev Co and the Dev Co Parties had obtained and maintained insurance in accordance with this Agreement;

(ii) not apply in cases of willful misconduct, deliberate acts of wrongdoing, fraud, gross negligence, material misrepresentation or for claims for death or personal injury;

(iii) in the case of Dev Co, shall not apply in respect of:

A. any claim by DPA Contracting Authority against Dev Co:

(I) pursuant to DPA Section 22.1(b)(ii) or DPA Section 22.1(b)(iii);

(II) in respect of any defects or deficiencies in the DPA Works Submittals submitted pursuant to this Agreement;

(III) related to any third party intellectual property rights misappropriation or infringement by Dev Co or a Dev Co Party; or

(IV) in respect of Dev Co abandoning the DPA Works;

B. any fines or penalties payable by Dev Co or a Dev Co Party resulting from a breach of Applicable Law by Dev Co or a Dev Co Party;

C. any breach by Dev Co of any of DPA Sections 8.1(a)(xvi), 8.1(a)(xvii), 10.7(i), 10.12(g)(v) or 29, as such provisions apply in relation to Restricted Persons;

- D. any costs or expenses incurred by DPA Contracting Authority in enforcing a claim under this Agreement, or in relation to recovering any insurance related to a failure by Dev Co to perform the DPA Works, save and except as otherwise set out in DPA Section 23.2(b)(iii)A(I); and
 - E. any liabilities arising under any Encumbrance (including any Lien) created or caused by Dev Co or any Dev Co Party in connection with the performance of the DPA Works.
- (c) Nothing in this DPA Section 23.2 shall restrict, limit, prejudice or in any other way impair the rights and/or remedies of the Parties under any other provision of this Agreement.

24. DPA DISPUTE RESOLUTION PROCEDURE

24.1 General

- (a) The Parties agree to follow and comply with the DPA Dispute resolution procedure set out in this DPA Section 24 (the “**DPA Dispute Resolution Procedure**”) to resolve any DPA Dispute between them that arises during or following the DPA Term.
- (b) The Parties shall use commercially reasonable efforts to resolve any DPA Disputes that could impact the development or submission of the Project Proposal prior to the Final Checkpoint.

24.2 Amicable Negotiations and Arbitration

- (a) The Parties agree that at all times each of them will make reasonable and *bona fide* efforts to resolve any DPA Dispute arising between them through amicable, full, frank, candid and without prejudice negotiations (i) between the Project teams of the Parties; and (ii) if and to the extent the Project teams cannot resolve the DPA Dispute, then between the Party Representatives.
- (b) If the Parties are unable to resolve the DPA Dispute pursuant to DPA Section 24.2(a), then either Party may, as soon as practicable, give the other Party Notice of such DPA Dispute (a “**Notice of DPA Dispute**”). Each Notice of DPA Dispute shall contain
 - (i) particulars of the matters in DPA Dispute sufficient to allow the Party who will receive the Notice of DPA Dispute to understand and meaningfully respond to the Notice of DPA Dispute;
 - (ii) describe any relief sought;
 - (iii) to the extent available at the time the Notice of DPA Dispute is delivered, attach all key documents relevant to the DPA Dispute on which the Party intends to rely for the purposes of resolving the DPA Dispute pursuant to this DPA Section 24.2 in the possession or control of such Party following reasonable due diligence; and
 - (iv) be signed by the Party Representative of the Party that is delivering the Notice of DPA Dispute.
- (c) The Parties agree that a Notice of DPA Dispute must be delivered as a precondition to the Parties proceeding with any further steps contemplated in this DPA Section 24.2.

- (d) After receipt of a Notice of DPA Dispute, the DPA Dispute shall be referred for resolution to one or more senior executives of each of the Parties who is in a position of authority above that of the Party Representative and has or has been delegated full authority to resolve the DPA Dispute subject only to approval of the Chief Executive Officer or board of directors or similar governing or regulatory body of the Party (as applicable), as determined by each such senior executive (the “**Senior Executive Representatives**”). The Senior Executive Representatives shall meet within 15 Business Days (or such longer period agreed by the Parties) of the receipt of the Notice of DPA Dispute at a mutually convenient location and make reasonable and *bona fide* efforts to resolve the DPA Dispute through amicable, full, frank, candid and without prejudice negotiations.
- (e) If the Senior Executive Representatives cannot resolve the DPA Dispute to the satisfaction of the Parties at the meeting described in DPA Section 24.2(d) or any subsequent meeting(s) scheduled and attended by the Senior Executive Representatives, any Party may require, by the delivery of Notice to the other Party (a “**Notice of Request to Arbitrate**”), that the resolution of the DPA Dispute be submitted to arbitration in accordance with the *Arbitration Act*. A Notice of Request to Arbitrate will not be effective unless it (i) is signed by the Party Representative of the Party who is delivering the Notice of Request to Arbitrate; (ii) indicates it is a Notice of Request to Arbitrate pursuant to this DPA Section 24.2(e); and (iii) expressly identifies the DPA Dispute to be arbitrated.
- (f) If a DPA Dispute is submitted to arbitration pursuant to DPA Section 24.2(e), the following terms and conditions apply:
- (i) the DPA Dispute referred to arbitration shall be resolved by a single arbitrator unless the Parties otherwise agree in writing;
 - (ii) the Parties shall jointly appoint the arbitrator, provided that if the Parties are unable to agree on the arbitrator within 15 Business Days after delivery of the Notice of Request to Arbitrate, either Party may apply to the Ontario Superior Court of Justice to appoint the arbitrator pursuant to the *Arbitration Act*;
 - (iii) the arbitrator must have qualifications and experience relevant to the issues in the DPA Dispute commensurate with the nature, complexity and value of the DPA Dispute to be arbitrated;
 - (iv) no one shall be nominated or appointed to act as an arbitrator who is or was within the past five years in any way interested, financially or otherwise, in the business affairs of DPA Contracting Authority, Dev Co, any Affiliate of Dev Co or any consultant, subconsultant or subcontractor of any of them who may be involved or implicated in the DPA Dispute;
 - (v) the arbitrator shall not alter, amend or otherwise change the terms and conditions of this Agreement.
 - (vi) unless otherwise agreed by the Parties, the seat and venue of the arbitration shall be Toronto, Ontario. The language of the arbitration shall be English;
 - (vii) the arbitrator shall render its award as soon as possible and no later than 60 days after the date of the closure of the hearing, or such other period of time as agreed to by the Parties in writing and accepted by the arbitrator;

- (viii) the costs of the arbitration are within the discretion of the arbitrator. In exercising discretion to award costs, the arbitrator 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; and
- (ix) the award of the arbitrator shall be final and binding upon the Parties and not subject to appeal.

24.3 Litigation

- (a) Except as set out in this DPA Section 24.3, the Parties shall not be permitted to resolve any DPA Dispute by litigation.
- (b) If necessary to prevent irreparable harm to a Party, nothing contained in this DPA Section 24.3 will prevent the Parties from seeking interim protection from the Ontario Superior Court of Justice, including seeking an interlocutory injunction.
- (c) Either Party may bring an application or motion directly to the Ontario Superior Court of Justice for a determination regarding appointment of the challenged or a proposed alternative arbitrator.
- (d) All litigation permitted pursuant this DPA Section 24.3 shall be resolved in the Ontario Superior Court of Justice. Both Parties irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of any DPA Disputes or matters which arise under this Agreement or in connection with the Project and which are to be resolved by litigation.

24.4 Adjudication

- (a) The Parties acknowledge and agree that, notwithstanding anything to the contrary in this DPA Section 24, to the extent that the *Construction Act* applies to this Agreement and the aspect of the performance of the DPA Works that is the subject of the DPA Dispute, either Party may submit a DPA Dispute for resolution by adjudication pursuant to and in accordance with the adjudication provisions of the *Construction Act*.
- (b) In the event that a DPA Dispute is submitted for resolution by adjudication pursuant to this DPA Section 24.4, the Parties agree that any Party that is dissatisfied with a determination of the adjudicator may, within 30 days of the release of the adjudicator's determination (or such longer period agreed by the Parties, acting reasonably), deliver a Notice of Request to Arbitrate the DPA Dispute pursuant to DPA Section 24.2(e). In such an event, the determination of the adjudicator shall be reviewed *de novo* by arbitration in accordance with DPA Section 24.2(f). If neither Party delivers a Notice of Request to Arbitrate the DPA Dispute pursuant to this DPA Section 24.4(b) before the expiry of such period, or if any arbitration that is commenced pursuant to DPA Section 24.2(f) is subsequently abandoned in writing by the Parties before an arbitral award is made pursuant to DPA Section 24.2(f), then the determination of the adjudicator shall be final and binding on the Parties and shall not be subject to appeal, arbitration, litigation or any other DPA Dispute resolution process in this Agreement, and the Parties expressly waive any and all such rights in respect of the DPA Dispute resolved by the adjudicator.

24.5 Continued Performance During DPA Disputes

- (a) Dev Co and DPA Contracting Authority shall diligently carry out their respective obligations under this Agreement during the pendency of any DPA Dispute. If during the pendency of any DPA Dispute it is considered necessary by either Party to proceed in respect of a matter that is in DPA Dispute, then subject to DPA Section 24.5(b), either Party may proceed without prejudice to either Party's rights under this Agreement in respect of the DPA Dispute.
- (b) While a DPA Dispute is pending, DPA Contracting Authority may give such written instructions as in DPA Contracting Authority's opinion are necessary in respect of the matter that is in DPA Dispute, including for Dev Co to proceed with the DPA Works which are the subject of the DPA Dispute in accordance with the position of DPA Contracting Authority, and Dev Co shall comply with such written instructions forthwith.
- (c) Dev Co acknowledges and agrees that (i) a pending DPA Dispute will not justify Dev Co's failure or refusal to comply with any written instructions given by DPA Contracting Authority pursuant to DPA Section 24.5(b); and (ii) Dev Co has no right to require a determination pursuant to this DPA Section 24 of whether or not DPA Contracting Authority is entitled to give such written instructions or whether or not Dev Co is required to comply with such written instructions, before complying with such written instructions. Only concurrently with or after complying with DPA Contracting Authority's written instructions shall Dev Co be entitled to refer any such DPA Dispute for resolution in accordance with this DPA Section 24.
- (d) Any claims for time and/or cost consequences of complying with DPA Section 24.5(b) shall be addressed as part of the resolution of the applicable DPA Dispute, provided that, in the event the matter in DPA Dispute is determined in favour of Dev Co, proceeding in accordance with DPA Contracting Authority's written instructions pursuant to DPA Section 24.5(b) shall, subject to and in accordance with Schedule 6 – DPA Variation Procedure, result in a DPA Variation.

25. RECORDS, INFORMATION AND AUDIT

25.1 Records Provisions, Information and General Audit Rights

- (a) Without limiting DPA Section 2.3, the Parties agree to comply with the provisions of Sections 31.15 (Audit of Performance of Project Operations), 34.1 (Records, Information and Audit) and 34.2 (Information and General Audit Rights) and Schedule 26 – Record Provisions of the Draft Project Agreement, which shall be applicable *mutatis mutandis*.
- (b) With respect to any DPA Subcontract which may be assignable to DPA Contracting Authority pursuant to the Assignment of Project Documents or pursuant to an Assignment of DPA Subcontracts, without limiting any obligation of Dev Co pursuant to DPA Section 25.1(a) or any other requirement of this Agreement, Dev Co shall prepare, retain and maintain at its own expense in accordance with the terms of Section 1 (General Requirements) of Schedule 26 – Record Provisions to the Draft Project Agreement and subject to Section 2.2 (Records To Be Kept) of Schedule 26 – Record Provisions to the Draft Project Agreement, which shall be applicable *mutatis mutandis*:
 - (i) each such DPA Subcontract; and

- (ii) all documents, records and drawings in any form, including any electronic or physical form, related to such DPA Subcontract, and including all work product, invoices and correspondence related to such DPA Subcontract.

26. CONFIDENTIALITY, PERSONAL INFORMATION AND COMMUNICATIONS

26.1 Confidentiality and Personal Information

- (a) Without limiting DPA Section 2.3, the Parties agree to comply with the provisions of Sections 49.1 to 49.7 (Confidentiality / Communications) and Section 50 (Personal Information) of the Draft Project Agreement, which shall be applicable *mutatis mutandis*. For clarity, a redacted version of this Agreement and the Total DPA and Design Works Fixed Price may be disclosed by DPA Contracting Authority subject to and in accordance with such provisions, and the reference to Section 45 (Effect of Termination) in Section 49.6(a)(viii) of the Draft Project Agreement shall be interpreted to be a reference to DPA Section 20.

26.2 Promotion Restrictions

- (a) Notwithstanding anything to the contrary in DPA Section 26.1 and except as set out in the DPA Communications Plan:
 - (i) any publicity or publications related to this Agreement and the DPA Works shall be at the sole discretion of DPA Contracting Authority; and
 - (ii) DPA Contracting Authority may, in its sole discretion, acknowledge the DPA Works provided by Dev Co in any such publicity or publication.
- (b) Dev Co shall not:
 - (i) except as set out in the DPA Communications Plan or otherwise agreed by DPA Contracting Authority, make use of its association with DPA Contracting Authority; or
 - (ii) without the prior written consent of DPA Contracting Authority, which may be granted or refused in its sole discretion, make any claim, representation or warranty to any third party that it has been engaged to perform the Project Operations or has been awarded the Project under the Final Project Agreement (other than the Development Phase PA Works) unless and until after the execution and delivery of the Final Project Agreement and at such time subject to the terms and conditions of such agreement.
- (c) Without limiting the generality of this DPA Section 26.2, except as expressly set out in the DPA Communications Plan, Dev Co shall not at any time directly or indirectly communicate with the media in relation to this Agreement or the DPA Works unless it has first obtained the express written authorization to do so from DPA Contracting Authority, which may be provided or refused in DPA Contracting Authority's sole discretion.

26.3 DPA Communications Plan

- (a) By no later than the date that is 20 Business Days following the Effective Date, Dev Co shall submit to DPA Contracting Authority a draft plan in respect of communications related to the Project, which shall be applicable:

- (i) during the DPA Term in connection with this Agreement, including with respect to the performance of the DPA Works; and
 - (ii) during the term of the Enabling Work Contract in connection with such contract, including with respect to the performance of the Enabling Works,

(the “**Draft DPA Communications Plan**”).
- (b) The Draft DPA Communications Plan shall:
- (i) comply with the applicable requirements of this Agreement, including DPA Sections 26.1 and 26.2, and of the Form of Enabling Works Contract, including GC 2.6 – Confidentiality;
 - (ii) be consistent with the relevant portions of the “Overall Approach, Development Phase Partnering and Design Communications Plan” included in the Dev Co Proposal Extracts; and
 - (iii) notwithstanding DPA Section 26.3(b)(ii), be consistent with and based on the communications principles and relevant obligations of Contracting Authority and Project Co set out in Schedule 18 – Communications of the Draft Project Agreement.
- (c) Dev Co shall consult with DPA Contracting Authority before and during the development of the Draft DPA Communications Plan.
- (d) The Draft DPA Communications Plan shall be subject to the written approval of DPA Contracting Authority, acting reasonably. Upon DPA Contracting Authority’s written approval of the Draft DPA Communications Plan, such plan shall automatically and immediately become the “**DPA Communications Plan**” under this Agreement and, following its execution and delivery, under the Enabling Works Contract.
- (e) The Parties agree to implement and comply with the DPA Communications Plan to the extent it relates to this Agreement, including with respect to the performance of the DPA Works. Dev Co agrees to cause the Construction Manager to implement and comply with the DPA Communications Plan to the extent it relates to the Enabling Works Contract, including with respect to the performance of the Enabling Works.

27. TITLE

27.1 Title

- (a) Without limiting DPA Section 2.3, and if applicable, Section 44 (Title) of the Draft Project Agreement is applicable *mutatis mutandis*.

28. INTELLECTUAL PROPERTY

28.1 Representation and Warranty

- (a) Dev Co represents, warrants and covenants to DPA Contracting Authority and agrees that:

- (i) Dev Co is and shall be the sole and exclusive owner of the DPA Data and the DPA Intellectual Property Rights or has and shall have the right to provide the licences granted to DPA Contracting Authority in this Agreement;
- (ii) Dev Co has and shall have the right to execute, and shall ensure that the Dev Co Parties have the right to execute, all assignments of DPA Intellectual Property, DPA Data and DPA Jointly Developed Materials contemplated under this DPA Section 28; and
- (iii) the DPA Data and the DPA Intellectual Property Rights and their use by the DPA Contracting Authority Parties do not and shall not infringe, and are not and shall not be a misappropriation of, any third party DPA Intellectual Property Rights, and, as of the date of this Agreement, Dev Co has not received any alleged infringement or misappropriation notices from third parties regarding the DPA Data or the DPA Intellectual Property Rights.

28.2 Delivery of DPA Data and DPA Intellectual Property Rights

- (a) Without limiting any obligation of Dev Co to deliver documents or information under this Agreement, Dev Co shall make all DPA Data and DPA Intellectual Property Rights available to, and upon request shall deliver to, Contracting Authority free of charge all DPA Data, and shall obtain all necessary licences, permissions and consents to ensure that Dev Co shall make the DPA Data and DPA Intellectual Property Rights available to and deliver the DPA Data to DPA Contracting Authority on the aforesaid terms of this DPA Section 28.2, for any and all of the DPA Approved Purposes.

28.3 Licence of Project Data and DPA Intellectual Property Rights

- (a) Dev Co:
 - (i) hereby grants to DPA Contracting Authority an irrevocable, worldwide, royalty free, perpetual, non-exclusive and transferable licence, including the right to grant sub-licences, to use the DPA Data and the DPA Intellectual Property Rights for any and all of the DPA Approved Purposes; and
 - (ii) shall, at Dev Co's cost, where any DPA Intellectual Property Rights are or become vested in a third party, obtain the grant of an equivalent licence to that referred to in DPA Section 28.3(a)(i).
- (b) In this DPA Section 28.3(a) and DPA Section 28.5(a), "use" includes any and all acts of copying, modifying, adapting, translating, incorporating with other materials, creating derivative works and otherwise using the DPA Data and DPA Intellectual Property Rights.
- (c) DPA Contracting Authority's rights under this DPA Section 28.3 include, following any termination of this Agreement otherwise than pursuant to DPA Section 19.3, the right to provide the DPA Data to third parties and use the DPA Data in order to permit the Hospital to develop, operate and maintain a new public hospital facility similar to the Facility or any part or parts thereof by way of the same or a similar development model to the one contemplated by the Draft Project Agreement or a different development model and with the participation of persons that exclude Dev Co and some or all of the Dev Co Parties, including to enter into and carry out future agreements to enable such development, operation and maintenance with or without Dev Co and

some or all of the Dev Co Parties. Notwithstanding DPA Section 26, Dev Co shall not contest or object to any such disclosure or assert any confidentiality interest or other right to restrict, condition or limit any such disclosure or the use of such DPA Data by any such third parties for the DPA Approved Purposes.

28.4 DPA 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 Dev Co and DPA Contracting Authority pursuant to this Agreement or in relation to the Facility or the Project (the “**DPA Jointly Developed Materials**”), then the Parties hereby acknowledge and agree that DPA Contracting Authority shall be the sole and exclusive owner of all right, title and interest in and to the DPA Jointly Developed Materials, any DPA Intellectual Property associated therewith and any and all improvements, modifications and enhancements thereto. Dev Co shall, at the request of DPA Contracting Authority, execute such further agreements and cause the Dev 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) DPA Contracting Authority hereby grants Dev Co a royalty free, non-exclusive and non-transferable licence, with a right to grant sub-licences to each DPA Subcontractor, to use the DPA Jointly Developed Materials during the DPA Term for the sole purposes of Dev Co or any DPA Subcontractor performing its obligations under this Agreement or its DPA Subcontract, as applicable.
- (c) Upon the termination of this Agreement, all rights and licences whatsoever granted to Dev Co in the DPA Jointly Developed Materials shall automatically terminate, and Dev Co shall return any and all DPA Jointly Developed Materials in the custody or possession of Dev Co to DPA Contracting Authority.

28.5 Maintenance of Data

- (a) To the extent that any of the data, materials and documents referred to in this DPA Section 28 are generated by, or maintained on, a computer or similar system, Dev Co shall procure for the benefit of DPA Contracting Authority, either at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable DPA Contracting Authority or its nominee to access and otherwise use (as such term is defined in DPA Section 28.3(b)), subject to the payment by DPA Contracting Authority of any relevant fee, such data, materials and documents for the DPA Approved Purposes.
- (b) Without limiting the obligations of Dev Co under DPA Section 28.5(a), Dev Co shall ensure the back up and storage in safe custody of the data, materials and documents referred to in this DPA Section 28 in accordance with Good Industry Practice. Dev Co shall submit to the DPA Contracting Authority Representative Dev Co’s proposals for the back up and storage in safe custody of such data, materials and documents and DPA Contracting Authority shall be entitled to object if the same is not in accordance with Good Industry Practice. Dev Co shall comply, and shall cause all Dev Co Parties to comply, with all procedures to which the DPA Contracting Authority Representative has not objected. Dev Co may vary its procedures for such back up and storage subject to submitting its proposals for change to the DPA Contracting Authority Representative, who shall be entitled to object on the basis set out above.

28.6 Claims

- (a) Where a demand, claim, action or proceeding is made or brought against DPA Contracting Authority or a DPA Contracting Authority Party which arises out of the alleged infringement or misappropriation of any rights in or to any DPA Data or DPA Intellectual Property Rights or the use thereof by DPA Contracting Authority or any DPA Contracting Authority Party or because the use of any materials, Plant (as defined in the Draft Project Agreement), machinery or equipment in connection with the Project infringes any rights in or to any DPA Intellectual Property of a third party then, unless such infringement has arisen out of the use of any DPA Data or DPA Intellectual Property Rights by DPA Contracting Authority otherwise than in accordance with the terms of this Agreement, Dev Co shall indemnify, defend and hold harmless DPA Contracting Authority from and against all such demands, claims, actions and proceedings and DPA Section 22.4 shall apply.

28.7 Contracting Authority Trade-Marks

- (a) Dev Co shall not
- (i) use any DPA Contracting Authority Trade-Marks without obtaining a trade-mark licence on terms and conditions mutually satisfactory to DPA Contracting Authority and Dev Co, each acting reasonably; or
 - (ii) use the names or any identifying logos or otherwise of DPA Contracting Authority or the DPA Contracting Authority Representative in any advertising or permit them so to be used except with the prior written consent of DPA Contracting Authority.

28.8 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 Agreement that might prohibit or otherwise interfere with MOI's, IO's, MOH's or the Province's ability to use this Agreement in any manner desired by MOI, IO, MOH or the Province.
- (b) Each of the Parties hereby consents to the use by MOI, IO, MOH and/or the Province of this Agreement, and any portion thereof, subject to compliance with FIPPA and to the removal by DPA Contracting Authority (in consultation with Dev Co) of any information supplied in confidence to MOI, IO, MOH and/or the Province by either Party in circumstances where disclosure may be refused under section 17(1) of FIPPA.

28.9 Restrictions

- (a) Dev Co hereby covenants and agrees that it will not make any commercial use, including use in any request for proposals or similar procurement process, of the DPA Data, the DPA Intellectual Property Rights, the DPA Jointly Developed Materials, the DPA Intellectual Property of DPA Contracting Authority or the Confidential Information of DPA Contracting Authority, including the Output Specifications, or any other drawings, reports, documents, plans, formulae, calculations, manuals, or other data that was created specifically for the Project or was based upon the DPA Data, the DPA Intellectual Property Rights, the DPA Jointly Developed Materials, the DPA Intellectual Property of DPA Contracting Authority or the Confidential Information of DPA Contracting Authority, including the Output Specifications.

29. ASSIGNMENT AND CHANGE IN CONTROL

29.1 Assignment

- (a) Subject to DPA Section 29.1(b), Dev Co shall not assign or transfer all or any part of its rights or obligations under this Agreement without the prior consent of DPA Contracting Authority, which may be granted, withheld or granted on conditions, in DPA Contracting Authority's sole discretion.
- (b) On or any time after Commercial Close, Dev Co may assign all of its rights and obligations under this Agreement to Project Co or to the Construction Contractor with the prior consent of DPA Contracting Authority, acting reasonably.
- (c) Without limiting DPA Section 2.3, DPA Contracting Authority may assign or otherwise dispose of the benefit of the whole or part of this Agreement to any person to whom DPA Contracting Authority may assign or otherwise dispose of its interest in the Draft Project Agreement, subject to and in accordance with Section 56.2 (Contracting Authority Assignment) of the Draft Project Agreement, which is applicable *mutatis mutandis*.

29.2 Change in Control

- (a) Without limiting DPA Section 2.3, the Parties agree that Section 56.4 (Changes in Ownership and Control) and Section 56.5 (Contracting Authority Due Diligence) of the Draft Project Agreement is applicable to this Agreement, *mutatis mutandis*, provided that:
 - (i) the terms "Project Co Group" and "Control Party" in such Section shall be deemed to be references to "Dev Co Group" and "Dev Co Control Party" as defined in Schedule 1 – DPA Definitions;
 - (ii) Dev Co shall not have any obligations with respect to the identification or payment of any "Excess Equity Gain"; and
 - (iii) Section 56.6 (Gain Share) of the Draft Project Agreement shall be inapplicable.

30. NOTICES

30.1 Notices to Parties

- (a) All notices, requests, demands, instructions, certificates, consents and other communications (each being a "**Notice**") required or permitted under this Agreement shall be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable provision of this Agreement) and served by sending the same by registered mail, by hand (in each case with a copy by electronic submission to the DPA Contracting Authority Representative and the DPA Dev Co Representative), or by electronic submission as follows:

If to Dev Co:

**ED PCL Trillium Dev Co Limited Partnership
[REDACTED]**

If to DPA Contracting Authority:

**Trillium Health Partners
[REDACTED]**

and to:

**Infrastructure Ontario
[REDACTED]**

30.2 Notices to Representatives

- (a) In addition to the Notice requirements set out in this DPA Section 30.1, where any Notice is to be provided or submitted to the DPA Contracting Authority Representative or the DPA Dev Co Representative it shall be provided or submitted by sending the same by registered mail, by hand (in each case with a copy by electronic submission to the DPA Contracting Authority Representative), or by electronic submission as follows with regards to the initial DPA Dev Co Representative and the initial DPA Contracting Authority Representative:

If to DPA Dev Co Representative:

**ED PCL Trillium Dev Co Limited Partnership
[REDACTED]**

If to the DPA Contracting Authority Representative:

**Infrastructure Ontario
[REDACTED]**

with a copy to:

**Trillium Health Partners
[REDACTED]**

30.3 Electronic Submission

- (a) Where any Notice is provided or submitted to a Party via electronic submission, an original of the Notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a Notice given via electronic submission shall not be invalid by reason only of a Party's failure to comply with this DPA Section 30.3.

30.4 Change of Address

- (a) Either Party to this Agreement may, from time to time, change any of its contact information set forth in DPA Sections 30.1 or 30.2 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.

30.5 Deemed Receipt of Notices

- (a) Subject to DPA Sections 30.5(b) 30.5(c) and 30.5(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 electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.
- (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 electronic submission in accordance with this DPA Section 30.
- (c) If any Notice delivered by hand or transmitted by electronic submission 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 5:00 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 electronic submission shall be deemed to have been received by the recipient on the day it is transmitted only if an electronic submission report (maintained by the sender) indicates that the transmission of such Notice was successful.

30.6 Service on DPA Contracting Authority

- (a) Where any Notice is required to be served on DPA Contracting Authority, the obligation to serve such Notice shall be fulfilled by serving it on DPA Contracting Authority in accordance with the provisions of this DPA Section 30.

31. AMENDMENTS

- (a) Without limiting the provisions of Schedule 6 – DPA Variation Procedure, this 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 Agreement.

32. WAIVER

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

33. RELATIONSHIP BETWEEN THE PARTIES

- (a) The Parties are independent contractors. This Agreement is not intended to and does not create or establish between the Parties, or between DPA Contracting Authority and any Dev Co Party, any relationship as partners, joint venturers, employer and employee, master and servant, or (except as otherwise provided in this Agreement) of principal and agent, and does not create or establish any relationship whatsoever between DPA Contracting Authority and any representative or employee of Dev Co or the Dev Co Parties.
- (b) The Parties further agree that:
 - (i) except as expressly provided in this 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 that it 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 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 Agreement; and
 - (iv) any person which a Party may engage as an agent, employee, subcontractor or otherwise, to perform such Party's obligations as permitted under this Agreement, 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.

34. GENERAL DUTY TO MITIGATE

- (a) DPA Contracting Authority and Dev 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 Agreement.

35. ACTUAL KNOWLEDGE

- (a) Except where limited to its actual knowledge and/or such knowledge which it, at law, may from time to time, be deemed to have, Dev Co and DPA Contracting Authority shall, for all purposes of this Agreement, be deemed to have such knowledge in respect of the Project as is actually held (or ought reasonably to be held) by the directors, officers and senior management of Dev Co and in the case of DPA Contracting Authority, its directors, officers and senior management, and the DPA Contracting Authority Representative or the DPA Dev Co Representative, as applicable. For clarity, except as expressly set out to the contrary, a reference in this Agreement to the "knowledge" of Dev Co or of DPA Contracting Authority, shall be construed in a manner consistent with the foregoing sentence.

36. ENTIRE AGREEMENT

- (a) Except where provided otherwise in this Agreement, this Agreement constitutes the entire agreement between the Parties in connection with the subject matter of this Agreement and supersede all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Agreement.
- (b) DPA Contracting Authority is not obligated in any way by the terms of this Agreement to proceed to Commercial Close or Financial Close or to proceed with the Project.

37. NO RELIANCE

- (a) Each of the Parties acknowledge that:
 - (i) it has not entered into this 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 Agreement or not, except those expressly made, given or repeated in this 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 Agreement; and
 - (ii) this DPA Section 37 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Agreement.

38. SEVERABILITY

- (a) Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this 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 Agreement. If any such provision of this 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 Agreement as near as possible to its original intent and effect.

39. ENUREMENT

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

40. GOVERNING LAW AND JURISDICTION

- (a) This Agreement, and each of the documents contemplated by or delivered under or in connection with this 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 the DPA 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.
- (c) Nothing in this Agreement affects the rights, protections and immunities of the Crown under the *Crown Liability and Proceedings Act* (Ontario).

41. REMEDIES CUMULATIVE

- (a) Except as otherwise set forth in this Agreement, the rights, powers and remedies of each Party set forth in this 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 Agreement.

42. FURTHER ASSURANCES

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

43. 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 Agreement.

44. LANGUAGE OF THIS AGREEMENT

- (a) Each Party acknowledges having requested and being satisfied that this Agreement and related documents be drawn in English. Chacune des parties reconnait avoir demandé que ces documents soient rédigés en anglais et s'en déclare 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 Agreement shall be in English.

45. PROOF OF AUTHORITY

- (a) DPA Contracting Authority reserves the right to require any person executing this Agreement on behalf of Dev Co to provide proof, in a form acceptable to DPA Contracting Authority, that such person has the requisite authority to execute this Agreement on behalf of and to bind Dev Co.

46. COUNTERPARTS

- (a) This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all of the Parties shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by sending a copy by electronic mail or other electronic transmission shall be as effective as the manual delivery of an executed counterpart.

47. GOVERNMENT ENTITIES AS THIRD PARTY BENEFICIARIES

- (a) The provisions of DPA Sections 4.4(a), 11.2(a), and 11.3(a), any DPA Works PA Requirements described in Section 59.17(a)(i) of the Draft Project Agreement, and each other provision of this 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 “**DPA Third Party Beneficiaries**”); and
 - (ii) are in addition to, and not in substitution for, any other rights that the DPA Third Party Beneficiaries may have by contract or otherwise.
- (b) DPA Contracting Authority shall hold the rights and benefits of DPA Sections 4.4(a), 11.2(a), and 11.3(a), any DPA Works PA Requirements described in Section 59.17(a)(i) of the Draft Project Agreement, and each other provision of this Agreement which is to the benefit of a Government Entity in trust for and on behalf of the DPA Third Party Beneficiaries and DPA Contracting Authority hereby accepts such trust and agrees to hold the benefit of and enforce performance of such covenants on behalf of the DPA Third Party Beneficiaries.

48. COPYRIGHT NOTICE

- (a) The Parties acknowledge that King’s Printer for Ontario is the exclusive owner of the copyright in this Agreement.

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IN WITNESS WHEREOF the Parties have executed this Agreement as of the Effective Date.

**ONTARIO INFRASTRUCTURE AND
LANDS CORPORATION**, a Crown agent
continued under the *Ontario Infrastructure and
Lands Corporation Act, 2011*

By: _____
Name: [REDACTED]
Title: [REDACTED]

I have authority to bind the corporation.

TRILLIUM HEALTH PARTNERS

By: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

By: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

We have authority to bind the corporation.

**ED PCL TRILLIUM DEV CO LIMITED
PARTNERSHIP, [REDACTED]**

By: _____
Name: [REDACTED]
Title: [REDACTED]

By: _____
Name: [REDACTED]
Title: [REDACTED]

We have authority to bind the corporation.

SCHEDULE 1

DPA DEFINITIONS

1. **Definitions.** In the Agreement, unless the context otherwise requires:
 - 1.1 “**100% Schematic Design Stage**” has the meaning given in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
 - 1.2 “**30% Design Development Stage**” has the meaning given in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
 - 1.3 “**60% Design Development Stage**” has the meaning given in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
 - 1.4 “**90% Design Development Stage**” has the meaning given in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
 - 1.5 “**Ad Hoc Meeting**” has the meaning given in Schedule 16 – DPA Term Governance, Meetings and Progress Reporting of the Agreement.
 - 1.6 “**Additional Project Due Diligence**” has the meaning given in DPA Section 10.9 of the Agreement.
 - 1.7 “**Adjustment Date**” has the meaning given in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
 - 1.8 “**Advance DPA Works**” has the meaning given in the Request for Proposals.
 - 1.9 “**Affiliate**” has the meaning given in the Draft Project Agreement.
 - 1.10 “**Agencies**” all advisory, adjudicative, regulatory (including those with governing boards), and operational service agencies of the Province.
 - 1.11 “**Agreement**” means this development phase agreement and all schedules, appendices and exhibits attached to the Agreement.
 - 1.12 “**Applicable Law**” has the meaning given in the Draft Project Agreement.
 - 1.13 “**Arbitration Act**” means the *Arbitration Act*, 1991, S.O. 1991, c. 17.
 - 1.14 “**Assignment of DPA Subcontract**” means each agreement assigning a DPA Subcontract, entered into between DPA Contracting Authority, Dev Co and the applicable DPA Subcontractors, subject to the terms thereof and, in the form set out in Schedule 14 – Form of Assignment of DPA Subcontract of the Agreement.
 - 1.15 “**Assignment of Project Documents**” means the agreement assigning the DPA Subcontracts, including the Design Agreements, and other contracts and documents entered into by Dev Co

relating to the Project to DPA Contracting Authority, subject to the terms thereof, on the Effective Date.

- 1.16 “**ATS**” has the meaning given in the Draft Project Agreement.
- 1.17 “**Background Information**” has the meaning given in the Draft Project Agreement, provided that (a) the provisions of DPA Section 2.3(a)(ii) of the Agreement shall not apply to this definition, and (b) in the event that Commercial Close does not occur, the date of the Project Agreement shall be deemed to refer to the date of the termination of the Agreement.
- 1.18 “**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.
- 1.19 “**Canadian GAAP**” has the meaning given in the Draft Project Agreement.
- 1.20 “**Cash Allowance Amounts**” means, collectively, all of the following amounts:
- (a) \$[REDACTED] for the DPA Works described in item (a) of the definition of “Cash Allowance Items” in this Schedule 1;
 - (b) \$[REDACTED] for the DPA Works described in item (b) of the definition of “Cash Allowance Items” in this Schedule 1; and
 - (c) \$[REDACTED] for the DPA Works described in item (c) of the definition of “Cash Allowance Items” in this Schedule 1,
- being, in the aggregate, an amount equal to \$[REDACTED]; and “**Cash Allowance Amount**” means each of the Cash Allowance Amounts set out in each of items (a), (b) and (c) above of this definition.
- 1.21 “**Cash Allowance Disbursement Authorization**” has the meaning given in DPA Section 13.4(c) of the Agreement.
- 1.22 “**Cash Allowance Expenditure Proposal**” has the meaning given in DPA Section 13.4(b)(i) of the Agreement.
- 1.23 “**Cash Allowance Items**” means, collectively, the following:
- (a) [REDACTED];
 - (b) [REDACTED]; and
 - (c) [REDACTED],
- and “**Cash Allowance Item**” shall be construed accordingly.
- 1.24 “**Change in Ownership**” has the meaning given in the Draft Project Agreement.
- 1.25 “**Clinical Functionality Report**” has the meaning given in the Draft Project Agreement.

- 1.26 “**Closing Allowance**” has the meaning given in DPA Section 13.1(d)(ii)A. of the Agreement.
- 1.27 “**Commercial Close**” means the date of the execution and delivery of the Final Project Agreement.
- 1.28 “**Commercial Close Stage**” has the meaning given in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.29 “**Commercial Close Target Date**” has the meaning given in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.30 “**Committed Financing**” has the meaning given in Appendix 2 – DPA Financial Submittals and Requirements of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.31 “**Confidential Information**” has the meaning given in the Draft Project Agreement.
- 1.32 “**Conflict of Interest**” means any situation or circumstance where in relation to the performance of Dev Co’s or a Dev Co Party’s contractual obligations in a contract with any entity comprising DPA Contracting Authority and/or any OPS Client, Dev Co’s or any Dev Co Party’s other commitments, relationships or financial interests (a) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or (b) could or could be seen to compromise, impair or be incompatible with the effective performance of Dev Co’s contractual obligations under the Agreement.
- 1.33 “**Construction Act**” means the *Construction Act*, R.S.O. 1990, c. C. 30.
- 1.34 “**Construction Contractor**” means [REDACTED], who the Parties intend will be the “Construction Contractor” under the Final Project Agreement, and any substitute building contractor as may be permitted by the Agreement.
- 1.35 “**Construction Document Submittals**” has the meaning given in the Draft Project Agreement.
- 1.36 “**Construction Manager**” means the Construction Contractor, in its capacity as the “Construction Manager” under the Enabling Works Contract.
- 1.37 “**Construction Period**” has the meaning given in the Draft Project Agreement.
- 1.38 “**Construction Risk Register**” has the meaning given in Schedule 16 – DPA Term Governance, Meetings and Progress Reporting of the Agreement.
- 1.39 “**Construction Works Schedules**” has the meaning given in Schedule 7 – DPA Works Schedules Requirements of the Agreement.
- 1.40 “**Contracting Authority**” has the meaning given in the Draft Project Agreement.
- 1.41 “**Contracting Authority Design Team**” has the meaning given in the Draft Project Agreement.
- 1.42 “**Contracting Authority Party**” has the meaning given in the Draft Project Agreement.

- 1.43 “**Contracting Authority Permits, Licences, Approvals and Agreements**” has the meaning given in the Draft Project Agreement.
- 1.44 “**Costed Element**” has the meaning given in DPA Section 6.3(a) of the Agreement.
- 1.45 “**COVID-19**” means the infectious disease commonly known as “COVID-19” or the novel coronavirus disease 2019, caused by the SARS-CoV-2 virus, including any and all clades or variants of such disease.
- 1.46 “**CM Design Consultant**” has the meaning given in DPA Section 10.12(i)(i)(B) of the Agreement.
- 1.47 “**CPI**” means, as at the date of the Agreement, CPI XFET and, thereafter, the latest available Consumer Price Index Canada (all items) as published by Statistics Canada from time to time (whether preliminary or final), or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with the DPA Dispute Resolution Procedure, most closely resembles such index.
- 1.48 “**CPI XFET**” means the Consumer Price Index, excluding food, energy and the effect of changes in indirect taxes.
- 1.49 “**CPI_n**” is the value of CPI on April 1 of the relevant year, to be determined by reference to the relevant index in the month of February most recently preceding the indexation date.
- 1.50 “**CPI₀**” is the value of CPI at the Effective Date, to be determined by reference to the relevant index in the month immediately preceding the Effective Date.
- 1.51 “**Critical Path**” has the meaning given in Schedule 7 – DPA Works Schedules Requirements of the Agreement.
- 1.52 “**Current Progress DPA Works Schedule**” has the meaning given in Schedule 7 – DPA Works Schedules Requirements of the Agreement.
- 1.53 “**Debt Agent**” has the meaning given in Appendix 2 – DPA Financial Submittals and Requirements of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.54 “**Debt Arranger**” has the meaning given in Appendix 2 – DPA Financial Submittals and Requirements of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.55 “**Debt Financing**” has the meaning given in Appendix 5 – Financing Process of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.56 “**Demobilization Costs**” means the aggregate total, without duplication, of each of the amounts comprising the reasonable Direct Cost as paid or incurred by Dev Co and the DPA Subcontractors in accordance with and subject to the Agreement as a result of the termination of the Agreement that is specifically related to, and is attributable to, the winding down and orderly demobilization of the performance of the DPA Works or the transitioning Dev Co’s role in the Project to DPA Contracting Authority, to the extent that each such amount is a new direct incremental cost that

would not otherwise have been paid or incurred by Dev Co or the relevant DPA Subcontractor under the Agreement but for such termination, including, if and to the extent applicable, each of the following amounts:

- (a) the cost of organizing, indexing, archiving, and preparing documents for handover to DPA Contracting Authority;
- (b) the cost of terminating DPA Subcontracts and any leases in respect of space used solely for the purposes of the Project;
- (c) the cost of developing the report described in DPA Section 20.1(a)(ii) of the Agreement;
- (d) the cost of complying with Dev Co’s obligations set out in DPA Section 20.1(a)(iv) of the Agreement; and
- (e) any Third Party Advisory and Administrative Costs,

provided that each such amount comprising the “Demobilization Costs” shall expressly exclude any:

- (i) loss of overhead or profit of Dev Co or any DPA Subcontractor and any other Indirect Losses;
- (ii) breakage fees, success fees, penalties or similar amounts;
- (iii) except as set out in item (e) of this definition, consultant and legal fees and disbursements; and
- (iv) amount arising out of any obligations or liabilities of Dev Co or any DPA Subcontractor set out in any agreement or other arrangement entered into by Dev Co or any DPA Subcontractor other than in the ordinary course of business on commercial arm’s length terms, save and except to the extent the amount would have arisen if such agreement or other arrangement had been entered into in the ordinary course of business and on commercial arm’s length terms,

and provided that the amount of such Direct Cost shall be reduced to the extent that Dev Co or the DPA Subcontractor failed to take commercially reasonable steps to mitigate such Direct Cost.

- 1.57 **“Deputy DPA Dev Co Representative”** means the individual identified as the “Deputy DPA Dev Co Representative” in Schedule 5 – DPA Key Individuals to the Agreement.
- 1.58 **“Design Agreements”** means each contract entered into between Dev Co and any DPA Design Works Subcontractor or between any DPA Design Works Subcontractor and any other DPA Subcontractor at any tier in accordance with the Agreement.
- 1.59 **“Design Conformance Consultant”** has the meaning given in the Draft Project Agreement.
- 1.60 **“Design Data”** has the meaning given in the Draft Project Agreement.

- 1.61 “**Design Development Submittals**” has the meaning given in the Draft Project Agreement.
- 1.62 “**Design Quality Plan**” has the meaning given in the Draft Project Agreement.
- 1.63 “**Design Review Meetings**” has the meaning given in the Draft Project Agreement.
- 1.64 “**Design Team**” means [REDACTED], engaged by Dev Co to design the Facility and any substitute design team engaged by Dev Co as may be permitted by the Agreement.
- 1.65 “**Design Works**” means, collectively:
- (a) the DPA Design Works; and
 - (b) the Remaining PA Design Works.
- 1.66 “**Design Workshops**” has the meaning given in the Draft Project Agreement.
- 1.67 “**Dev Co**” has the meaning given on the first page of the Agreement.
- 1.68 “**Dev Co Control Party**” means:
- (a) any person with any form of direct ownership interest in Dev Co, [REDACTED];
 - (b) [REDACTED];
- and “**Dev Co Control Parties**” shall be construed accordingly.
- 1.69 “**Dev Co Event of Default**” has the meaning given in DPA Section 18.1(a) of the Agreement.
- 1.70 “**Dev Co Event of Default Cure Period**” has the meaning given in DPA Section 18.1(c) of the Agreement.
- 1.71 “**Dev Co Group**” means Dev Co together with any person or group of persons, who, either individually or collectively, have Direct or Indirect Power or Control of Dev Co.
- 1.72 “**Dev Co Party**” means any of:
- (a) the Construction Contractor;
 - (b) the Service Provider;
 - (c) the Potential Equity Provider, after it is engaged by Dev Co in accordance with Schedule 3 – DPA Submissions and Project Development Process of the Agreement;
 - (d) any person engaged by Dev Co, the Construction Contractor or the Service Provider from time to time, as may be permitted by the Agreement to procure or manage the provision of the DPA Works (or any of them), including any DPA Subcontractor; and

- (e) in respect of each of the above, their subcontractors of any tier, agents, representatives, employees, officers and directors,
- and “**Dev Co Parties**” shall be construed accordingly.
- 1.73 “**Dev Co Proposal Documents**” has the meaning given in Schedule 10 – DPA Dev Co Proposal Extracts of the Agreement.
- 1.74 “**Dev Co Proposal Extracts**” has the meaning given in Schedule 10 – DPA Dev Co Proposal Extracts of the Agreement.
- 1.75 “**Dev Co’s RFP Proposal**” has the meaning given in Schedule 10 – DPA Dev Co Proposal Extracts of the Agreement.
- 1.76 “**Development Phase PA Works**” means, collectively:
- (a) the DPA Design Works;
 - (b) the DPA PLAA Works; and
 - (c) in the event the Agreement is terminated other than in accordance with DPA Section 18.2 or DPA Section 19.3 of the Agreement and DPA Contracting Authority exercises its rights under the Assignment of Project Documents and any Assignment of DPA Subcontracts, all other works and services required to complete the design of the Facility and all Design Data in accordance with the applicable DPA Subcontracts.
- 1.77 “**Development Risk Register**” has the meaning given in Schedule 16 – DPA Term Governance, Meetings and Progress Reporting of the Agreement.
- 1.78 “**Direct Cost**” has the meaning given in Schedule 6 – DPA Variation Procedure of the Agreement.
- 1.79 “**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.
- 1.80 “**Direct or Indirect Power or Control**” has the meaning given in the Draft Project Agreement.
- 1.81 “**DPA Ancillary Extract Documents**” has the meaning given in Schedule 10 – DPA Dev Co Proposal Extracts of the Agreement.
- 1.82 “**DPA Approved Purposes**” means:
- (a) DPA Contracting Authority and DPA Contracting Authority Parties performing their obligations under the Agreement;
 - (b) the maintenance, update, modification, completion, or continued development of the Works Submittals and the DPA Project Deliverables;

- (c) the performance of a Final Project Agreement, including the Project Operations thereunder;
 - (d) the design, construction, operation and/or maintenance of the Facility or any facility similar to the Facility or part or parts thereof; and
 - (e) the development by MOH and/or the Province of best practices for healthcare facilities in Ontario.
- 1.83 “**DPA Background Information**” means any and all drawings, reports, studies, plans, data, documents, or other information, given or made available to Dev Co or any Dev Co Party by DPA Contracting Authority or any DPA Contracting Authority Party, or which was obtained from or through any other sources, in each case prior to the Effective Date, or which is otherwise deemed to be DPA Background Information in accordance with the terms of this Agreement.
- 1.84 “**DPA Closing Letter of Credit**” has the meaning given in DPA Section 16.3(a) of the Agreement.
- 1.85 “**DPA Communications Plan**” has the meaning given in DPA Section 26.3(d) of the Agreement.
- 1.86 “**DPA Contracting Authority**” has the meaning given in the recitals to the Agreement.
- 1.87 “**DPA Contracting Authority Delay Period**” has the meaning given in Section 12.2(a) of the Agreement.
- 1.88 “**DPA Contracting Authority Event of Default**” has the meaning given in DPA Section 18.2(a) of the Agreement.
- 1.89 “**DPA Contracting Authority Party**” means any of DPA Contracting Authority’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 (as defined in the Draft Project Agreement), but excluding Dev Co and any Dev Co Party, and “**DPA Contracting Authority Parties**” shall be construed accordingly.
- 1.90 “**DPA Contracting Authority Representative**” means the person identified in DPA Section 30.2(a) of the Agreement, or such other person designated by DPA Contracting Authority as such in a Notice delivered to Dev Co from time to time in accordance with the Agreement.
- 1.91 “**DPA Contracting Authority Trade-Marks**” means any and all Trade-Marks used by DPA Contracting Authority in any manner whatsoever.
- 1.92 “**DPA Data**” means:
- (a) all Design Data;
 - (b) the Works Submittals and the DPA Project Deliverables;
 - (c) all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the creation of the Works Submittals and the DPA Project Deliverables and the delivery of the DPA Works; and

- (d) any other materials, documents and or data acquired, brought into existence or used in relation to the Agreement,
- other than the DPA Jointly Developed Materials, DPA Background Information and Background Information and other than DPA Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction.
- 1.93 “**DPA Design Works**” has the meaning given in Schedule 2 – DPA Scope of Work of the Agreement.
- 1.94 “**DPA Design Works Subcontractor**” means any DPA Subcontractor engaged by or through Dev Co to perform any of the DPA Design Works, including any consultant and any other subcontractor at any tier.
- 1.95 “**DPA Dev Co Representative**” means the person identified in DPA Section 30.2(a) of the Agreement, or such other person designated as such by Dev Co in a Notice delivered to DPA Contracting Authority from time to time in accordance with the Agreement.
- 1.96 “**DPA Dispute**” means all disagreements, disputes or controversies arising during or following the DPA Term in relation to or arising out of the interpretation, enforceability, performance, breach, or validity of the Agreement or any provision of the Agreement, the rights or obligations of the Parties under the Agreement, or the exercise or failure to exercise a discretion or power given to a Party under the Agreement.
- 1.97 “**DPA Dispute Resolution Procedure**” has the meaning given in DPA Section 24.1(a) of the Agreement.
- 1.98 “**DPA Indigenous Advisory Committee**” has the meaning given in Schedule 16 – DPA Term Governance, Meetings and Progress Reporting of the Agreement.
- 1.99 “**DPA 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.
- 1.100 “**DPA Intellectual Property Rights**” means all DPA Intellectual Property in or associated with the DPA Data and all DPA Intellectual Property which, or the subject matter of which, is at any time before or after the Effective Date created, brought into existence, acquired, used or intended to be used by Dev Co, any Dev Co Party, Project Co or any Project Co Party or by other third parties (for such third parties’ use by or on behalf of or for the benefit of Dev Co or Project Co) for any or all of the purposes of:

- (a) the DPA Works;
 - (b) the Agreement;
 - (c) the Project Operations; or
 - (d) the Final Project Agreement.
- 1.101 “**DPA Jointly Developed Materials**” has the meaning given in DPA Section 28.4(a) of the Agreement.
- 1.102 “**DPA Key Individuals**” has the meaning given in DPA Section 10.6(a) of the Agreement.
- 1.103 “**DPA Letter of Credit Client**” has the meaning given in DPA Section 16.3(a) of the Agreement.
- 1.104 “**DPA Maximum Liability**” has the meaning given in DPA Section 23.2(a) of the Agreement.
- 1.105 “**DPA PLAA Works**” has the meaning given in Schedule 2 – DPA Scope of Work of the Agreement.
- 1.106 “**DPA Project Deliverables**” has the meaning given in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.107 “**DPA Review Procedure**” has the meaning given in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.108 “**DPA Schedule 3 Submittals**” has the meaning given in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.109 “**DPA Scope of Work**” has the meaning given in Schedule 2 – DPA Scope of Work of the Agreement.
- 1.110 “**DPA Subcontract**” means the contracts entered into by or between Dev Co and any DPA Subcontractor or between any DPA Subcontractor at any tier, including the Construction Contractor, the Service Provider, the Design Team and any other DPA Subcontractor at any tier in relation to any aspect of the DPA Works or the Project.
- 1.111 “**DPA Subcontractor**” means any subcontractor of Dev Co engaged by or through Dev Co to perform any of the DPA Works, including the Construction Contractor, the Service Provider, any DPA Supplier, the Design Team or other consultant, and any subcontractor of any other subcontractor at any tier in relation to the DPA Works or the Project.
- 1.112 “**DPA Submittals**” has the meaning given in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.113 “**DPA Supplier**” means a person who supplies to Dev Co, or to any DPA Subcontractor any equipment, materials, supplies or services as part of, or for, the DPA Works.
- 1.114 “**DPA Term**” has the meaning given in DPA Section 7.1(a) of the Agreement.

- 1.115 “**DPA Third Party Beneficiaries**” has the meaning given in DPA Section 47(a)(i) of the Agreement.
- 1.116 “**DPA Variation**” has the meaning given in Schedule 6 – DPA Variation Procedure of the Agreement.
- 1.117 “**DPA Variation Confirmation**” has the meaning given in Schedule 6 – DPA Variation Procedure of the Agreement.
- 1.118 “**DPA Variation Directive**” has the meaning given in Schedule 6 – DPA Variation Procedure of the Agreement.
- 1.119 “**DPA Works**” has the meaning given in DPA Section 10.1(a) of the Agreement.
- 1.120 “**DPA Works Committee**” has the meaning given in Schedule 16 – DPA Term Governance, Meetings and Progress Reporting of the Agreement.
- 1.121 “**DPA Works Contract**” has the meaning given in Schedule 14 – Form of Assignment of DPA Subcontract of the Agreement.
- 1.122 “**DPA Works Guarantor**” means [REDACTED].
- 1.123 “**DPA Works PA Requirements**” means the requirements for the performance of the DPA Works set out in Schedule 4 – DPA Works PA Requirements of the Agreement.
- 1.124 “**DPA Works Schedule Progress Report**” has the meaning given in Schedule 7 – DPA Works Schedules Requirements of the Agreement.
- 1.125 “**DPA Works Schedules**” has the meaning given in Schedule 7 – DPA Works Schedules Requirements of the Agreement.
- 1.126 “**DPA Works Submittals**” has the meaning given in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.127 “**Draft DPA Communications Plan**” has the meaning given in DPA Section 26.3(a) of the Agreement.
- 1.128 “**Draft PA Negotiations Process Completion**” has the meaning given in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.129 “**Draft PA Review Procedure**” has the meaning given in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.130 “**Draft Project Agreement**” means a draft of the project agreement in respect of the Project between the Hospital and Project Co attached as Schedule 11 – DPA Draft Project Agreement of the Agreement, as revised pursuant to the terms and conditions of the Agreement.
- 1.131 “**Draft Project Agreement Negotiations Process**” has the meaning given in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.

- 1.132 “**Drawings**” has the meaning given in the Form of Enabling Works Contract.
- 1.133 “**Earned Value Management Plan**” has the meaning given in Schedule 7 – DPA Works Schedules Requirements of the Agreement.
- 1.134 “**Earned Value Metrics Report**” has the meaning given in Schedule 7 – DPA Works Schedules Requirements of the Agreement.
- 1.135 “**Economic Interest**” means any right to receive, directly or indirectly and whether in cash or in kind, a payment, repayment, fee, interest, dividend distribution, redemption or any other consideration of benefit or value to the recipient of any nature whatsoever, but excluding wages, salaries or other employment-related benefits.
- 1.136 “**Effective Date**” has the meaning given on the first page of the Agreement.
- 1.137 “**Enabling Works**” means the “**Work**” to be set out in and performed in accordance with the Enabling Works Contract, which, **Work**, as of the Effective Date, is generally described in Schedule 19 – Enabling Works Requirements and is not DPA Works under the Agreement.
- 1.138 “**Enabling Works Contract**” means the construction management contract to be entered into by the Owner and the Construction Manager in respect of the performance of the Enabling Works in accordance with DPA Section 10.12 of the Agreement.
- 1.139 “**Enabling Works Plan**” has the meaning given in DPA Section 10.12(c)(ii) of the Agreement.
- 1.140 “**Enabling Works Subcontract**” means each “**Subcontract**” (as defined in the Form of Enabling Works Contract) with an Enabling Works Subcontractor under the Enabling Works Contract, which, for the purposes of the Agreement, shall not be a DPA Subcontract.
- 1.141 “**Enabling Works Subcontractor**” means each “**Subcontractor**” and “**Supplier**” (as such terms are defined in the Form of Enabling Works Contract) under the Enabling Works Contract, who, for the purposes of the Agreement, shall not be a DPA Subcontractor insofar as and to the extent that such person is a Subcontractor performing Enabling Works under the Enabling Works Contract.
- 1.142 “**Encumbrance**” has the meaning given in the Draft Project Agreement.
- 1.143 “**Equipment**” has the meaning given in the Draft Project Agreement.
- 1.144 “**Equipment Sub-Schedule**” has the meaning given in Schedule 7 – DPA Works Schedules Requirements of the Agreement of the Agreement.
- 1.145 “**Equity Capital**” has the meaning given in the Draft Project Agreement.
- 1.146 “**Equity Capital Financing**” has the meaning given in Appendix 5 – Financing Process of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.147 “**Equity Capital Financing Proposal**” has the meaning given in Appendix 2 – DPA Financial Submittals and Requirements of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.

- 1.148 “**Equity IRR**” has the meaning given in Appendix 2 – DPA Financial Submittals and Requirements of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.149 “**Existing Equipment**” has the meaning given in the Draft Project Agreement.
- 1.150 “**Existing Facilities**” has the meaning given in the Draft Project Agreement.
- 1.151 “**Facility**” has the meaning given in the Draft Project Agreement.
- 1.152 “**Final Checkpoint**” has the meaning given in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.153 “**Final Completion**” has the meaning given in the Draft Project Agreement.
- 1.154 “**Final EV Payment DPA Works**” means the DPA Works reflected in the last Proper Invoice issued by Dev Co in accordance with Schedule 8 – DPA Payment of the Agreement before the date of the delivery by DPA Contracting Authority of a Notice to Proceed to Commercial Close to Dev Co pursuant to DPA Section 4.1(b) of the Agreement.
- 1.155 “**Final Project Agreement**” has the meaning given in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.156 “**Finance Working Group**” has the meaning given in Schedule 16 – DPA Term Governance, Meetings and Progress Reporting of the Agreement.
- 1.157 “**Financial Advisor**” has the meaning given in Appendix 2 – DPA Financial Submittals and Requirements of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.158 “**Financial Close**” has the meaning given in the Draft Project Agreement.
- 1.159 “**Financial Close Target Date**” has the meaning given in Appendix 2 – DPA Financial Submittals and Requirements of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.160 “**Financial Model**” has the meaning given in Appendix 2 – DPA Financial Submittals and Requirements of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.161 “**Financing**” has the meaning given in Appendix 5 – Financing Process of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.162 “**Financing Process**” has the meaning given in Appendix 5 – Financing Process of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.163 “**Financing Process Governing Principles**” has the meaning given in Appendix 5 – Financing Process of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.

- 1.164 “**Financing Process Third Parties**” has the meaning given in Appendix 2 – DPA Financial Submittals and Requirements of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.165 “**Financing Process Third Parties Submittal**” has the meaning given in Appendix 2 – DPA Financial Submittals and Requirements of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.166 “**Financing Proposal**” has the meaning given in Appendix 2 – DPA Financial Submittals and Requirements of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.167 “**Force Majeure Event**” has the meaning given in DPA Section 15.1(a) of the Agreement.
- 1.168 “**Form of Enabling Works Contract**” means the form of contract described in and the form of supplemental conditions attached to Schedule 18 – Form of Enabling Works Contract to the Agreement in respect of the Enabling Works.
- 1.169 “**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.
- 1.170 “**Government Entity**” has the meaning given in the Draft Project Agreement.
- 1.171 “**Governmental Authority**” means any federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over DPA Contracting Authority, any aspect of the performance of the Agreement or the operation of the Existing Facilities or the Hospital Services, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.
- 1.172 “**High Fidelity Room Mock-Ups**” has the meaning given in DPA Section 10.15(a)(i) of the Agreement.
- 1.173 “**Hospital**” has the meaning set out in the preamble to the Agreement.
- 1.174 “**HST**” means the value-added tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.
- 1.175 “**Impacted Indigenous Nations and Indigenous Entities**” has the meaning given in the Draft Project Agreement.
- 1.176 “**In-Contract Equipment**” has the meaning given in the Draft Project Agreement.

- 1.177 “**Indigenous Communities Engagement Plan**” means the “Indigenous Communities Engagement Plan” set out as part of the Dev Co Proposal Extracts.
- 1.178 “**Indirect Losses**” means any loss of either Party that is:
- (a) for punitive, exemplary or aggravated damages;
 - (b) for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity; or
 - (c) a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by either Party.
- 1.179 “**Infrastructure Ontario**” and “**IO**” each has the meaning set out on the first page of the Agreement.
- 1.180 “**Initial Development Stage**” has the meaning given in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.181 “**Initial DPA Subcontracts**” means the DPA Subcontracts, including the Design Agreements, that have been executed as of the Effective Date and as indicated as such in Schedule 13 – Initial DPA Subcontracts of the Agreement.
- 1.182 “**Key DPA Works Milestones**” has the meaning given in Schedule 7 – DPA Works Schedules Requirements of the Agreement.
- 1.183 “**Lands**” has the meaning given in the Draft Project Agreement.
- 1.184 “**Lenders**” has the meaning given in the Draft Project Agreement.
- 1.185 “**Lending Agreements**” has the meaning given in the Draft Project Agreement.
- 1.186 “**Level 3 Construction Works Schedule**” has the meaning given in Schedule 7 – DPA Works Schedules Requirements of the Agreement.
- 1.187 “**Lien**” has the meaning given in DPA Section 14.1(a) of the Agreement.
- 1.188 “**Material DPA Subcontract**” means any:
- (a) DPA Subcontract, which, together with all other DPA Subcontracts between the same or related counterparties in respect of the DPA Works, has an aggregate value equal to or more than \$[REDACTED];
 - (b) DPA Subcontract pursuant to which a DPA Key Individual is provided to the Project by the DPA Subcontractor counterparty; or
 - (c) other DPA Subcontract identified by the DPA Contracting Authority Representative in a Notice provided to Dev Co prior to the later of (i) the Effective Date and (ii) the end of the Initial Development Stage.

- 1.189 “**Milestone Payment**” has the meaning given in the Draft Project Agreement.
- 1.190 “**Minor Deficiencies**” has the meaning given in the Draft Project Agreement.
- 1.191 “**Mock-Up Space Agreement**” has the meaning given in DPA Section 10.15(b) of the Agreement.
- 1.192 “**Mock-Up Space Facilities**” has the meaning given in DPA Section 10.15(b) of the Agreement.
- 1.193 “**MOH**” means His Majesty the King in right of Ontario as represented by the Minister of Health, and includes any successors thereto or persons exercising delegated power under the Minister’s authority.
- 1.194 “**MOH Hospital Submissions**” has the meaning given in DPA Section 10.13(a) of the Agreement.
- 1.195 “**Negotiable Draft Project Agreement Provisions**” has the meaning given in DPA Section 4.2(a) of the Agreement.
- 1.196 “**Non-Priced PA Design Works**” means each specific element of the Works required to complete the design of the Facility and all Design Data following Commercial Close in accordance with a Final Project Agreement identified by an “N/A” in the Price Submission Form.
- 1.197 “**Non-Resident**” means a person who is, at the relevant time, a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).
- 1.198 “**Not-In-Contract**” **Equipment**” has the meaning given in the Draft Project Agreement.
- 1.199 “**Notice**” has the meaning given in DPA Section 30.1(a) of the Agreement.
- 1.200 “**Notice of Dev Co Event of Default**” has the meaning given in DPA Section 18.1(b) of the Agreement.
- 1.201 “**Notice of DPA Dispute**” has the meaning given in DPA Section 24.2(b) of the Agreement.
- 1.202 “**Notice of Request to Arbitrate**” has the meaning given in DPA Section 24.2(e) of the Agreement.
- 1.203 “**Notice to Proceed to Commercial Close**” has the meaning given in DPA Section 4.1(b) of the Agreement.
- 1.204 “**OCPM**” has the meaning given in DPA Section 10.14 of the Agreement.
- 1.205 “**Owner**” means the Hospital, in its capacity as the “Owner” under the Enabling Works Contract.
- 1.206 “**Ontario Public Service**” means the ministries and other administrative units of the Province over which Ministers of the Crown preside, and for the purposes of the Agreement includes the Agencies;
- 1.207 “**Operational Term**” has the meaning given in the Draft Project Agreement.
- 1.208 “**OPS Client**” means any entity falling within the Ontario Public Service.

- 1.209 “**Output Specifications**” has the meaning given in the Draft Project Agreement.
- 1.210 “**Party**” means either DPA Contracting Authority or Dev Co, and “**Parties**” means both DPA Contracting Authority and Dev Co.
- 1.211 “**Party Representative**” means the DPA Contracting Authority Representative or the DPA Dev Co Representative, as the context requires.
- 1.212 “**Payment Compensation Amount**” means [REDACTED].
- 1.213 “**Performance Guarantee of DPA Works Guarantor**” means the performance guarantee given by the DPA Works Guarantor to DPA Contracting Authority in the form set out in Schedule 15 – Form of Performance Guarantee of DPA Works Guarantor of the Agreement.
- 1.214 “**Permits, Licences, Approvals and Agreements**” has the meaning given in the Draft Project Agreement.
- 1.215 “**Phase Completion**” has the meaning given in the Draft Project Agreement.
- 1.216 “**PLAA Table**” has the meaning given in Schedule 2 – DPA Scope of Work of the Agreement.
- 1.217 “**Potential Equity Provider**” means one or more persons that, subject to and in accordance with the Agreement, will be identified in the definition of “Equity Provider” as defined and as set out in Schedule 1 – Definitions and Interpretation of the Final Project Agreement on or before Commercial Close and who will be the Equity Provider under the Final Project Agreement.
- 1.218 “**Potential Lenders**” means the persons that, subject to and in accordance with the Agreement, could or will be the “Lenders” under the Final Project Agreement.
- 1.219 “**Price Submission Form**” has the meaning given in Schedule 7 – DPA Works Schedules Requirements of the Agreement.
- 1.220 “**Prohibited Act**” means:
- (a) offering, giving or agreeing to give to DPA Contracting Authority 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:
 - (i) for doing or not doing, or for having done or not having done, any act in relation to the obtaining or performance of the Agreement or any other agreement with DPA Contracting Authority or any public body in connection with the Project; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to the Agreement or any other agreement with DPA Contracting Authority or any public body in connection with the Project,
- provided that this Section (i) shall not apply to Dev Co or any Dev Co Party (or anyone employed by or acting on their behalf) providing consideration to DPA Contracting Authority or any public body in the ordinary course, or as reasonably necessary, to fulfill

or comply with the obligations and liabilities of Dev Co under the Agreement or any other agreement with DPA Contracting Authority or any public body in connection with the Project;

- (b) entering into the Agreement or any other agreement with DPA Contracting Authority 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 Dev Co, or on its behalf or to its knowledge, DPA Contracting Authority 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 DPA Contracting Authority, provided that this Section (ii) shall not apply to a fee or commission paid by Dev Co or any Dev Co Party (or anyone employed by or acting on their behalf) to DPA Contracting Authority 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 Dev Co under the Agreement or any other agreement with DPA Contracting Authority or any public body in connection with the Project without contravening the intent of this definition;
 - (c) breaching or committing any offence under Applicable Law in respect of corrupt or fraudulent acts in relation to the Agreement or any other agreement with DPA Contracting Authority or any public body in connection with the Project; or
 - (d) defrauding or attempting to defraud or conspiring to defraud DPA Contracting Authority or any other public body.
- 1.221 **“Project”** has the meaning given in the recitals to the Agreement.
- 1.222 **“Project Checkpoints”** has the meaning given in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.223 **“Project Co”** means the person that, subject to and in accordance with the Agreement, will be controlled by Dev Co and the other members of the Dev Co Group and will enter into the Final Project Agreement with the Hospital on Commercial Close.
- 1.224 **“Project Co Party”** has the meaning given in the Draft Project Agreement.
- 1.225 **“Project Co Permits, Licences, Approvals and Agreements”** has the meaning given in the Draft Project Agreement.
- 1.226 **“Project Co Services”** has the meaning given in the Draft Project Agreement.
- 1.227 **“Project De-Scoping”** has the meaning given in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.228 **“Project Operations”** has the meaning given in the Draft Project Agreement.
- 1.229 **“Project Proposal”** has the meaning given in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.

- 1.230 “**Project Proposal Longstop Date**” means July 21, 2025, being the date that is nine months after the original Project Proposal Submission Deadline, as may be extended in accordance with Section 2.10(c) of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.231 “**Project Proposal Negotiations**” has the meaning given in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.232 “**Project Proposal Stage**” has the meaning given in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.233 “**Project Proposal Submission Deadline**” means October 21, 2024, as may be altered by the Parties pursuant to Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.234 “**Project Proposal Validity Period**” has the meaning given in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.235 “**Project Term**” has the meaning given in the Draft Project Agreement.
- 1.236 “**Proper Invoice**” has the meaning given in Schedule 8 – DPA Payment of the Agreement of the Agreement.
- 1.237 “**Proposal Part**” means a part of Dev Co’s proposal submitted in response to the Request for Proposals, including any revisions to such part of the submission agreed upon by DPA Contracting Authority and Dev Co as part of the Request for Proposals process.
- 1.238 “**Proposed DPA Works Schedule**” has the meaning given in Schedule 7 – DPA Works Schedules Requirements of the Agreement.
- 1.239 “**Proposed Works Schedule**” has the meaning given in the Draft Project Agreement.
- 1.240 “**Province**” means His Majesty the King in right of Ontario.
- 1.241 “**Remaining PA Design Works**” means the Works required to complete the design of the Facility and all Design Data following Commercial Close in accordance with a Final Project Agreement, which excludes the Non-Priced PA Design Works and, for greater certainty, the DPA Design Works. For the purposes of the Agreement and without limiting any liability of Project Co under a Final Project Agreement (including with respect to the remedying of any defects), the design of the Facility and all Design Data shall be completed when a comment of “No Comment” or “Minor Non-Conformance” with no additional comment of “Re-Submit” has been assigned to each of the Schematic Design Submittals, Design Development Submittals, Construction Document Submittals and other Design Data and items required to be submitted by Project Co for design review under any Final Project Agreement, in accordance with Schedule 10 – Review Procedure of the Final Project Agreement.
- 1.242 “**Remaining PA Design Works Overhead and Profit**” means any and all amounts for overhead and profit to be charged by Project Co, the Construction Contractor and the Service Provider in

respect of the performance of the Remaining PA Design Works under a Final Project Agreement, which amounts shall be determined in accordance with the Agreement during the DPA Term.

- 1.243 “**Remaining Total DPA and Design Works Fixed Price**” has the meaning given in DPA Section 13.2(b) of the Agreement.
- 1.244 “**Request for Proposals**” means the request for proposals issued in respect of the Project on April 20, 2022.
- 1.245 “**Restricted Person**” means any person who, or any member of a group of persons acting together, any one of which:
- (a) (i) is subject to any economic or political sanctions imposed by Canada or Ontario, or (ii) 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) (i) is subject to a final order (including being subject to conditions or undertakings prescribed by the order) issued under Part IV.1 of the *Investment Canada Act* (Canada) (Investments Injurious to National Security) that would prevent such person from undertaking the Project in whole or in part in a manner which DPA Contracting Authority consider unacceptable in their sole discretion or (ii) is currently, or could become, subject to a review of an investment by a non-Canadian under Part IV.1 of the *Investment Canada Act* (Canada) (Investments Injurious to National Security) that could result in an order described in (i) being issued (as determined by DPA Contracting Authority in their sole discretion);
 - (d) in the case of an individual, (i) has been convicted of any indictable offence, less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder, whether or not such person received a custodial sentence; or (ii) has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such individual is a “Restricted Person” is made hereunder;
 - (e) in the case of a person other than an individual, if it or any of the members of its (or its general partner’s) board of directors or its senior executive managers has been convicted of any indictable offence less than five years prior to the date at which the consideration of whether such person is a “Restricted Person” is made hereunder, whether or not such person received a custodial sentence; or (ii) any of the members of its (or its general partner’s) board of directors or its senior executive managers has been sentenced to a custodial sentence, other than a suspended sentence, for any regulatory offence other than under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction less than five years prior to the date at which the consideration of whether such person is a “Restricted Person” is made hereunder;

- (f) 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;
 - (g) is subject to a material claim of DPA Contracting Authority 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 DPA Contracting Authority’s view, in either case, be reasonably likely materially to affect the ability of Dev Co to perform its obligations under the Agreement; or
 - (h) has a material interest in the production of tobacco products.
- 1.246 “**Review Procedure**” has the meaning given in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.247 “**Review Procedure Activity**” has the meaning given in Schedule 7 – DPA Works Schedules Requirements of the Agreement.
- 1.248 “**Risk Review Meeting**” has the meaning given in Schedule 16 – DPA Term Governance, Meetings and Progress Reporting of the Agreement.
- 1.249 “**Schematic Design Submittals**” has the meaning given in the Draft Project Agreement.
- 1.250 “**Seasonal Works**” has the meaning given in the Draft Project Agreement.
- 1.251 “**Security Release Date**” has the meaning given in DPA Section 16.3(f) of the Agreement.
- 1.252 “**Senior Executive Representatives**” has the meaning given in DPA Section 24.2(d) of the Agreement.
- 1.253 “**Service Provider**” means [REDACTED], who the Parties intend will be the “Service Provider” under the Final Project Agreement, and any substitute service provider as may be permitted by the Agreement.
- 1.254 “**Shop Drawings**” has the meaning given in the Draft Project Agreement.
- 1.255 “**Site**” has the meaning given in the Draft Project Agreement.
- 1.256 “**Specifications**” has the meaning given in the Form of Enabling Works Contract.
- 1.257 “**Start-Up Meeting**” has the meaning given in Schedule 16 – DPA Term Governance, Meetings and Progress Reporting of the Agreement.
- 1.258 “**Substantial Completion**” has the meaning given in the Draft Project Agreement.
- 1.259 “**Surety**” has the meaning given in the Draft Project Agreement.

- 1.260 “**Surety’s Consent**” has the meaning given in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- 1.261 “**Taxes**” has the meaning given in the Draft Project Agreement.
- 1.262 “**Technical Reports**” has the meaning given in the Draft Project Agreement.
- 1.263 “**Technical Specifications**” means the technical specifications in respect of the design and construction of the Facility to be developed by Dev Co and included in Part 3 of the Output Specifications in accordance with the Agreement, including DPA Section 10.16 of the Agreement.
- 1.264 “**Technical Specifications Completion**” has the meaning given in DPA Section 10.16(f) of the Agreement.
- 1.265 “**Total DPA and Design Works Fixed Price**” has the meaning given in DPA Section 13.1(a) of the Agreement.
- 1.266 “**Total DPA Liability**” has the meaning given in DPA Section 23.2(a) of the Agreement.
- 1.267 “**Trade-Mark**” means any registered or unregistered mark, trade-mark, service mark, distinguishing guise, logo, insignia, seal, design or symbol.
- 1.268 “**Transition**” has the meaning given in the Draft Project Agreement.
- 1.269 “**Transition Advisor**” has the meaning given in the Draft Project Agreement.
- 1.270 “**Utility Company**” has the meaning given in the Draft Project Agreement.
- 1.271 “**Variation Enquiry**” has the meaning given in the Draft Project Agreement.
- 1.272 “**Works**” has the meaning given in the Draft Project Agreement.
- 1.273 “**Works Report**” has the meaning given in the Draft Project Agreement.
- 1.274 “**Works Submittals**” has the meaning given in the Draft Project Agreement.

SCHEDULE 2

DPA SCOPE OF WORK

For the purposes of the Agreement, “**DPA Scope of Work**” means all works and services necessary to, subject to and in accordance with the terms and conditions of the Agreement:

1. subject to Section 2.1(c) of Schedule 3 – DPA Submissions and Project Development Process of the Agreement and DPA Section 4.1 of the Agreement, perform and continuously progress the design of the Facility and all Design Data until Commercial Close is achieved (the “**DPA Design Works**”), including in accordance with:
 - (a) the applicable DPA Works PA Requirements, including the applicable provisions of Section 18 (Design and Construction Obligations) of the Draft Project Agreement, and the applicable provisions of Schedule 15 – Output Specifications (including the requirements set out in Part 1 of Schedule 15 – Output Specifications) but excluding Part 4 of Schedule 15 – Output Specifications; and
 - (b) Schedule 3 – DPA Submissions and Project Development Process of the Agreement, including Dev Co’s submission of all DPA Works Submittals related to the DPA Design Works for DPA Contracting Authority’s review and comment pursuant to the Draft PA Review Procedure;
2. with respect to Permits, Licences, Approvals and Agreements, perform the following activities (collectively, the “**DPA PLAA Works**”):
 - (a) commence the obtainment of the Project Co Permits, Licences, Approvals and Agreements and perform all of the other obligations of Project Co, that are the responsibility of “Project Co” during the DPA Term as set out in Appendix 1 – Permits, Licences, Approvals and Agreements of Schedule 1 – Definitions and Interpretation of the Draft Project Agreement (the “**PLAA Table**”);
 - (b) if approved or directed by DPA Contracting Authority in accordance with the PLAA Table, obtain the Project Co Permits, Licences, Approvals and Agreements that are the responsibility of “Project Co” during the DPA Term as set out in the PLAA Table;
 - (c) assist DPA Contracting Authority in obtaining the Contracting Authority Permits, Licences, Approvals and Agreements; and
 - (d) notwithstanding anything to the contrary in the PLAA Table, with the written approval or at the written direction of DPA Contracting Authority, in DPA Contracting Authority’s sole discretion, commence the obtainment of or obtain and perform all of the other obligations of Project Co with respect to any Project Co Permits, Licences, Approvals and Agreements that are the responsibility of “Project Co” following the DPA Term as set out in the PLAA Table,

including in accordance with the applicable DPA Works PA Requirements (including, for greater certainty, Section 9.4 of the Draft Project Agreement and the PLAA Table);

3. perform and complete the performance of all of the obligations of Dev Co in Schedule 3 – DPA Submissions and Project Development Process, including the submission of the Project Proposal and other DPA Project Deliverables, the performance and completion of the Project Proposal Negotiations, and the performance and completion of the Financing Process and the process for achieving Commercial Close and Financial Close;
4. perform its obligations under DPA Section 10.12 in respect of the Enabling Works, and cause the performance of the Enabling Works under the Enabling Works Contract in accordance with the Agreement;
5. provide assistance to DPA Contracting Authority in obtaining any desired and necessary stakeholder approvals, including approvals in respect of the Project from the MOH in accordance with DPA Section 10.13 of the Agreement and from other Governmental Authorities;
6. prior to the First Checkpoint, perform and complete a climate risk and resilience assessment (the “**Climate Risk and Resilience Assessment**”) and submit to DPA Contracting Authority a related climate risk and resilience assessment report (the “**Climate Risk and Resilience Assessment Report**”) for DPA Contracting Authority’s review and approval. Dev Co shall actively consult with DPA Contracting Authority during the performance of the Climate Risk and Resilience Assessment and the development of the Climate Risk and Resilience Assessment Report, each of which shall meet the requirements set out in **Appendix “A” – Climate Risk and Resilience Assessment Requirements and Obligations** to this Schedule 2. Dev Co shall, in addition, perform all of its other obligations in Appendix “A” – Climate Risk and Resilience Assessment Requirements and Obligations to this Schedule 2; and
7. perform and complete all other obligations and activities set out in the Agreement for Dev Co and the Dev Co Parties to perform, including as set out in DPA Section 10 of the Agreement.

APPENDIX “A”

CLIMATE RISK AND RESILIENCE ASSESSMENT REQUIREMENTS AND OBLIGATIONS

1. The Climate Risk and Resilience Assessment shall assess climate hazards, climate asset vulnerabilities and the likelihood and potential consequences of climate risks materializing and adversely impacting the Facility or Contracting Authority under any Final Project Agreement. In response to such hazards, vulnerabilities and risks, the Climate Risk and Resilience Assessment shall include climate resilience and adaptation recommendations tailored to the detailed design of the Facility and ongoing operations of the Facility during its estimated service life.
2. The Climate Risk and Resilience Assessment shall gather the most up to date and relevant climate data on climate parameters, including: temperature (extremes, annual averages, shoulder season variations, etc.), precipitation (intensity, frequency, duration, etc.), wind (average speeds, gusts, etc.), as well as complex variables (wildfire, drought, pluvial flooding, ice-jam flooding, etc.) identified as appropriate by DPA Contracting Authority and Dev Co.
3. Unless otherwise agreed by the Parties, the Climate Risk and Resilience Assessment shall:
 - (a) apply global climate model (GCMs) data based on most recent climate scenarios available from the Intergovernmental Panel on Climate Change;
 - (b) report on regionally downscaled modelling and data trending from nearest proximate weather station(s);
 - (c) reflect the following climate time horizons: Baseline (1981 -2010), 2020s (2011 – 2040), 2050s (2040 to 2069), and 2080s (2070 to 2099);
 - (d) include metrics on data uncertainty;
 - (e) employ climate modelling using a relative concentration pathway (RCP) 8.5 (high carbon). Other scenarios may be included for reference or as requested;
 - (f) apply the following definition of risk, as per the updated PIEVC and ISO 31000: Risk = Likelihood x Consequence;
 - (g) employ likelihood and consequence impact score rankings from 1 to 5 with corresponding impact statements (aligned with the risk evaluation matrix in Climate Lens – General Guidance);
 - (h) include an evaluation of the Facility’s systems (envelope, mechanical, electrical, etc.), Site systems (landscape, stormwater, sewer, etc.) and support services (access, utilities, etc.);
 - (i) include climate adjusted design criteria for the following climate parameters:
 - (i) January [REDACTED]% dry bulb temperature;
 - (ii) July [REDACTED]% dry bulb temperature;
 - (iii) July [REDACTED]% wet bulb temperature;

- (iv) heating degree days (below 18°C);
 - (v) 15-min rain (1/10 year);
 - (vi) one day rain (1/50 year);
 - (vii) annual total rain;
 - (viii) snow load, S_s (1/50 year);
 - (ix) rain load, S_r (1/50 year); and
 - (x) hourly wind pressure (1/50 year);
 - (j) use the Environment and Climate Change Canada (ECCC) 2020 document titled “Climate-Resilient Buildings and Core Public Infrastructure: an assessment of the impact of climate change on climatic design data in Canada” (authored by Cannon, A.J., D.I. Jeong, X. Zhang and F.W. Zwiers) Government of Canada, Ottawa, ON, 106 pp. (Available at: <https://climate-scenarios.canada.ca/?page=buildings-report>) to modify the most relevant Design Data for the Site from the Ontario Building Code, 2012, 2019 update to 2050, 2070 and 2080 time horizons provided in the ECCC document;
 - (k) review the resulting datasets with the project designers and Sponsors to assess to which parameters the project will design; and
 - (l) include, reflect, report on, employ and apply any other matters identified by DPA Contracting Authority, acting reasonably.
4. The use of quantitative and qualitative information shall be undertaken to the extent agreed by the Parties, acting reasonably, in order to inform the Climate Risk and Resilience Assessment. Such information should consider:
- (a) framing of climate risk and resilience based on the service the Facility is providing to the public, and the Facility’s potential to provide sustainable levels of service;
 - (b) the Facility’s condition data based on lifecycle of the asset and its systems;
 - (c) interviews with internal and external stakeholders, including appropriate subject matter experts;
 - (d) seeking Indigenous traditional knowledge when appropriate;
 - (e) research on climate impacts previously experienced in the area, such as flooding or power outages and their causes;
 - (f) integration of existing and constructed natural infrastructure assets in the Site and stormwater management plans;
 - (g) group adaptation recommendations into the following categories: existing measures, new low cost/no cost measures and measures that require additional project scope and cost; and

- (h) noting if adaptation recommendations can align with measures taken for LEED, WELL, ENVISION, and any other certifications being sought by the Project.
5. In addition to Applicable Law, Good Industry Practice, and instructions provided by DPA Contracting Authority, Dev Co's methodology in respect of the Climate Risk and Resilience Assessment shall align with the following guidance:
- (a) Infrastructure Canada's Climate Lens Requirements (2018);
 - (b) ICLR/CRI/GIZ PIEVC Protocol And Risk Management Standards;
 - (c) ISO 14090:2019 – Adaptation To Climate Change — Principles, Requirements, And Guidelines;
 - (d) ISO 14091:2021- Adaptation To Climate Change — Guidelines On Vulnerability, Impacts And Risk Assessment;
 - (e) ISO 14092: 2020 – Guidance For Local Planning For Local Governments And Communities;
 - (f) ISO 31000:2018 – Risk Management;
 - (g) Climate-Resilient Buildings and Core Public Infrastructure: An Assessment of the Impact of Climate Change on Climatic Design Data In Canada (2020);
 - (h) Climate Resilience Guidelines for BC Health Facility Planning & Design, (October 2020 Draft V1.0); and
 - (i) 3 LEED v4 Resilience Pilot Credit.
6. Dev Co shall synthesize and incorporate its Climate Risk and Resilience Assessment results and recommendations into the Climate Risk and Resilience Assessment Report, and all design options and costing for the Project. Dev Co shall adjust current building code climate parameters for the Site to future climate scenarios as outlined in Climate-Resilient Buildings and Core Public Infrastructure: an assessment of the impact of climate change on climatic design data in Canada, and then assessed for feasibility for design integration to achieve "better-than-code" climate resilience.
7. Dev Co shall, as part of the Climate Risk and Resilience Assessment Report, submit a narrative from each design discipline (e.g. structural, mechanical, electrical, landscape, etc.) that describes how the Project has taken measures to mitigate identified climate risks within the Project's detailed design.
8. Dev Co shall reference in the Climate Risk and Resilience Assessment Report any sections of the Output Specifications that, in its reasonable opinion, will be impacted by the Climate Risk and Resilience Assessment. Such identification shall include any proposed changes to such sections to accommodate the recommendations of the report.
9. If requested by DPA Contracting Authority, Dev Co shall carry out climate risk mitigation measures needed to achieve the LEED requirements of the Project set out in the Draft Project Agreement.

SCHEDULE 3

DPA SUBMISSIONS AND PROJECT DEVELOPMENT PROCESS

1.	GENERAL PROVISIONS	3
1.1	Contents of this Schedule 3.....	3
1.2	Definitions	3
1.3	Summary of Development Phase Stages	7
2.	PROJECT DEVELOPMENT PROCESS AND PROJECT CHECKPOINTS	9
2.1	Initial Development Stage.....	9
2.2	100% Schematic Design Stage	11
2.3	30% Design Development Stage	12
2.4	60% Design Development Stage	13
2.5	Independent Certifier Appointment Process.....	14
2.6	Appointment of the CDB.....	16
2.7	Surety’s Consent	17
2.8	90% Design Development Stage	18
2.9	Project Proposal Stage and Commercial Close Stage.....	20
2.10	Project Proposal Longstop Date.....	21
3.	REVIEW PROCEDURES	22
3.1	Submission of DPA Submittals – General.....	22
3.2	Submission of DPA Works Submittals under Draft PA Review Procedure.....	23
3.3	Submission of DPA Schedule 3 Submittals under DPA Review Procedure	23
3.4	General Requirements for DPA Schedule 3 Submittals	25
3.5	Comments	26
3.6	DPA Disputes	28
3.7	Effect of Review	28
3.8	DPA Schedule 3 Submittal Explanation	28
3.9	Revisions.....	28
3.10	Audit by the DPA Contracting Authority Representative	29
3.11	DPA Variations.....	29
4.	DRAFT PROJECT AGREEMENT FINALIZATION PROCESS	29

4.1	DPA Contracting Authority Draft Project Agreement Revisions	29
4.2	Draft Project Agreement Negotiations Process	30
4.3	Scheduling of Draft Project Agreement Negotiations Process	31
4.4	Conduct of the Draft Project Agreement Negotiations Process.....	31
4.5	Approval of Finalized Negotiable Draft Project Agreement Provisions	32
4.6	Failure to Achieve Draft PA Negotiations Process Completion.....	33
5.	PROJECT PROPOSAL STAGE	34
5.1	Dev Co to Submit Project Proposal	34
5.2	Project Proposal Content and Requirements.....	34
5.3	Dev Co Project Investigations	34
5.4	Submission of Project Proposal	35
5.5	DPA Contracting Authority Review and Comment on Project Proposal	36
5.6	Updated Project Proposal.....	37
5.7	Project Proposal Negotiations.....	37
6.	COMMERCIAL CLOSE STAGE	39
6.1	Notice to Proceed to Commercial Close	39
6.2	Closing Obligations Secured by DPA Closing Letter of Credit	40
6.3	Dev Co’s Closing Obligations	41
6.4	DPA Contracting Authority – Authorization and Approvals.....	43
6.5	Achievement of Commercial Close	43

1. GENERAL PROVISIONS

1.1 Contents of this Schedule 3

- (a) This Schedule 3 consists of the main body of this Schedule and the following Appendices:
- (i) Appendix 1 – DPA Technical Submittals and Requirements
 - (ii) Appendix 2 – DPA Financial Submittals and Requirements
 - (iii) Appendix 3 – Project Proposal Content and Requirements
 - (iv) Appendix 4 – Form of Surety’s Consent
 - (v) Appendix 5 – Financing Process
 - (vi) Appendix 6 – Form of DPA Closing Letter of Credit
 - (vii) Appendix 7 – Form of Escrow Closing Procedure Agreement

1.2 Definitions

In this Schedule 3, the following terms have the following meanings:

- (a) **“100% Schematic Design Stage”** has the meaning given in Section 2.2(a).
- (b) **“100% Schematic Design Stage DPA Submittals”** means, collectively:
- (i) the DPA Works Submittals described in Appendix A to Schedule 10 – Review Procedure of the Draft Project Agreement identified as to be submitted during the 100% Schematic Design Stage;
 - (ii) the DPA Schedule 3 Submittals outlined in Appendix 1 – DPA Technical Submittals and Requirements to this Schedule 3 identified as to be submitted during the 100% Schematic Design Stage; and
 - (iii) any other DPA Schedule 3 Submittals to be submitted during the 100% Schematic Design Stage.
- (c) **“30% Design Development Stage”** has the meaning given in Section 2.3(a).
- (d) **“30% Design Development Stage DPA Submittals”** means, collectively:
- (i) the DPA Works Submittals described in Appendix A to Schedule 10 – Review Procedure of the Draft Project Agreement identified as to be submitted during the 30% Design Development Stage;
 - (ii) the DPA Schedule 3 Submittals outlined in (A) Appendix 1 – DPA Technical Submittals and Requirements to this Schedule 3 and (B) Appendix 2 – DPA Financial Submittals and

- Requirements to this Schedule 3, identified as to be submitted during the 30% Design Development Stage; and
- (iii) any other DPA Schedule 3 Submittals to be submitted during the 30% Design Development Stage.
- (e) **“60% Design Development Stage”** has the meaning given in Section 2.4(a).
- (f) **“60% Design Development Stage DPA Submittals”** means, collectively:
- (i) the DPA Works Submittals described in Appendix A to Schedule 10 – Review Procedure of the Draft Project Agreement identified as to be submitted during the 60% Design Development Stage;
 - (ii) the DPA Schedule 3 Submittals outlined in (A) Appendix 1 – DPA Technical Submittals and Requirements to this Schedule 3 and (B) Appendix 2 – DPA Financial Submittals and Requirements to this Schedule 3, identified as to be submitted during the 60% Design Development Stage; and
 - (iii) any other DPA Schedule 3 Submittals to be submitted during the 60% Design Development Stage.
- (g) **“90% Design Development Stage”** has the meaning given in Section 2.8(a).
- (h) **“90% Design Development Stage DPA Submittals”** means, collectively:
- (i) the DPA Works Submittals described in Appendix A to Schedule 10 – Review Procedure of the Draft Project Agreement identified as to be submitted during the 90% Design Development Stage;
 - (ii) the DPA Schedule 3 Submittals outlined in (A) Appendix 1 – DPA Technical Submittals and Requirements to this Schedule 3 and (B) Appendix 2 – DPA Financial Submittals and Requirements to this Schedule 3, identified as to be submitted during the 90% Design Development Stage; and
 - (iii) any other DPA Schedule 3 Submittals to be submitted during the 90% Design Development Stage.
- (i) **“Adjustment Date”** has the meaning given in Section 6.3(c).
- (j) **“Bonding Submission”** has the meaning given in Section 2.7(d).
- (k) **“CDB”** has the meaning given in the Draft Project Agreement.
- (l) **“CDB Chair”** has the meaning given in the Draft Project Agreement.
- (m) **“CDB Finalization”** has the meaning given in Section 2.6(d).
- (n) **“CDB Member Agreements”** has the meaning given in the Draft Project Agreement.

- (o) “**CDB Member Statements**” has the meaning given in the Draft Project Agreement.
- (p) “**Climate Risk and Resilience Assessment**” has the meaning given in Schedule 2 – DPA Scope of Work.
- (q) “**Climate Risk and Resilience Assessment Report**” has the meaning given in Schedule 2 – DPA Scope of Work.
- (r) “**Certification Services**” has the meaning given in Schedule 6 – Independent Certifier Agreement of the Draft Project Agreement.
- (s) “**Commercial Close Stage**” has the meaning given in Section 2.9(b).
- (t) “**Commercial Close Target Date**” has the meaning given in Section 6.1(a).
- (u) “**DPA Contracting Authority Review Period**” has the meaning given in Schedule 7 – DPA Works Schedules Requirements.
- (v) “**DPA Financial Submittals**” means, collectively, the DPA Schedule 3 Submittals described in Appendix 2 – DPA Financial Submittals and Requirements to this Schedule 3.
- (w) “**DPA Project Deliverables**” means, collectively, (i) all of the DPA Submittals, and (ii) the Project Proposal.
- (x) “**DPA Review Procedure**” has the meaning given in Section 3.3(a).
- (y) “**DPA Schedule 3 Submittals**” has the meaning given in Section 3.3(a).
- (z) “**DPA Submittals**” means, collectively, the DPA Works Submittals and the DPA Schedule 3 Submittals.
- (aa) “**DPA Technical Submittals**” means, collectively, the DPA Schedule 3 Submittals described in Appendix 1 – DPA Technical Submittals and Requirements to this Schedule 3.
- (bb) “**DPA Works Submittals**” means the Works Submittals to be submitted to, or reviewed or otherwise processed by, or commented on by DPA Contracting Authority under the Agreement during the DPA Term in accordance with Section 3.2(a), for greater certainty, being the provisions of the Draft PA Review Procedure.
- (cc) “**Draft PA Negotiations Process Completion**” has the meaning given in Section 4.5(b).
- (dd) “**Draft PA Provisions Approval Notice**” has the meaning given in Section 4.5(a).
- (ee) “**Draft PA Review Procedure**” has the meaning given in Section 3.2(a).
- (ff) “**Draft Project Agreement Negotiations Process**” means the process for negotiating and finalizing the Negotiable Draft Project Agreement Provisions set out in Sections 4.2 to 4.6.

- (gg) “**Escrow Agent**” has the meaning given in Appendix 7 – Form of Escrow Closing Procedure Agreement to this Schedule 3.
- (hh) “**Escrow Closing Procedure Agreement**” has the meaning given in Section 6.3(a)(v).
- (ii) “**Fee**” has the meaning given in Schedule 6 – Independent Certifier Agreement of the Draft Project Agreement.
- (jj) “**Final Checkpoint**” has the meaning given in Section 2.8(b).
- (kk) “**Final Project Agreement**” means the Draft Project Agreement finalized pursuant to, as applicable, Sections 4, 5.7 or 6.3(a).
- (ll) “**Financial Close Target Date**” has the meaning given in Section 6.1(a).
- (mm) “**First Checkpoint**” has the meaning given in Section 2.2(b).
- (nn) “**First Initial Period**” has the meaning given in Section 2.1(b).
- (oo) “**IC Offer**” has the meaning given in Section 2.5(a)(iii).
- (pp) “**Independent Certifier**” has the meaning given in the Draft Project Agreement.
- (qq) “**Initial Development Stage**” means the period commencing on the date for the commencement of the Advance DPA Works described in Section 10.2.1(3) of the Request for Proposals, and ending upon the date set out in Section 2.1(h).
- (rr) “**Initial Development Stage DPA Submittals**” means, collectively:
 - (i) the DPA Technical Submittals identified in Appendix 1 – DPA Technical Submittals and Requirements to this Schedule 3 as to be submitted during the Initial Development Stage; and
 - (ii) any other DPA Schedule 3 Submittals to be submitted during the Initial Development Stage.
- (ss) “**Initial Development Stage Expiry Notice**” has the meaning given in Section 2.1(h).
- (tt) “**Members**” has the meaning given in the Draft Project Agreement.
- (uu) “**Project Checkpoints**” means, collectively, the First Checkpoint, the Second Checkpoint, the Third Checkpoint and the Final Checkpoint.
- (vv) “**Project Co Proposal Extracts**” has the meaning given in the Draft Project Agreement.
- (ww) “**Project De-Scoping**” has the meaning given in Section 2.1(h)(ii).
- (xx) “**Project Proposal**” has the meaning given in Section 5.1(a).

- (yy) **“Project Proposal Negotiations”** has the meaning given in Section 5.7(a).
- (zz) **“Project Proposal Stage”** has the meaning given in Section 2.9(a).
- (aaa) **“Project Proposal Validity Period”** has the meaning given in Section 5.4(c).
- (bbb) **“Qualified IC”** has the meaning given in Section 2.5(a)(i).
- (ccc) **“Reduced Project Scope DPA Variation”** has the meaning given in Section 2.1(h)(ii).
- (ddd) **“Review Procedure”** means, as applicable, either the DPA Review Procedure or the Draft PA Review Procedure.
- (eee) **“Second Checkpoint”** has the meaning given in Section 2.3(b).
- (fff) **“Second Initial Period”** has the meaning given in Section 2.1(d).
- (ggg) **“Specific Project Proposal Part”** has the meaning given in Section 6.3(c).
- (hhh) **“Standing Offer Agreements”** has the meaning given in Section 2.5(a)(i).
- (iii) **“Surety”** means the person who will issue the performance bond and labour and material payment bond for the Project in accordance with Section 2.7.
- (jjj) **“Surety’s Consent”** has the meaning given in Section 2.7(a).
- (kkk) **“Technical Member”** has the meaning given in the Draft Project Agreement.
- (lll) **“Third Checkpoint”** has the meaning given in Section 2.4(b).

1.3 **Summary of Development Phase Stages**

- (a) Without limiting any provision of the Agreement, the activities the Parties will carry out during the DPA Term under the Agreement will be completed during the following stages:
 - (i) the Initial Development Stage, which commences before the Effective Date and ends upon the date described in Section 2.1(h);
 - (ii) the 100% Schematic Design Stage, which commences on the date described in Section 2.1(h) and ends upon the First Checkpoint;
 - (iii) the 30% Design Development Stage, which commences on the First Checkpoint and ends upon the Second Checkpoint;
 - (iv) the 60% Design Development Stage, which commences on the Second Checkpoint and ends upon the Third Checkpoint;
 - (v) the 90% Design Development Stage, which commences on the Third Checkpoint and ends upon the Final Checkpoint;

- (vi) the Project Proposal Stage, which commences on the Final Checkpoint and, subject to DPA Sections 4.1(b) and 4.1(c) of the Agreement and Section 6.1(b), ends upon DPA Contracting Authority delivering a Notice to Proceed to Commercial Close pursuant to the Agreement; and
 - (vii) the Commercial Close Stage, which, subject to DPA Sections 4.1(b) and 4.1(c) of the Agreement and Section 6.1(b), commences on the delivery of a Notice to Proceed to Commercial Close and ends upon the Hospital and Project Co entering into a Final Project Agreement on Commercial Close.
- (b) The Parties acknowledge that the purpose of the Initial Development Stage is for:
- (i) Dev Co to commence the performance of the DPA Works, which, in accordance with Section 2.1(c), does not include the performance of any DPA Design Works during such stage; and
 - (ii) DPA Contracting Authority to assess and make a determination as to whether any Project De-Scoping will be implemented in accordance with any Reduced Project Scope DPA Variation.
- (c) The Parties acknowledge that the intention of each of the Project Checkpoints is to allow:
- (i) the associated stage of the DPA Design Works to be completed in accordance with the Agreement in conjunction and coordination with other key activities to be completed by the Parties during the same stage of the DPA Term;
 - (ii) the Parties to obtain a holistic snapshot of the evolution of the estimated nominal cost to the Hospital of Project Co performing the Project Operations under a Final Project Agreement and the estimated schedule of Project Co performing such Project Operations;
 - (iii) for the Draft Project Agreement Negotiations Process to proceed and be completed and for Dev Co to organize the obtainment of the Financing for Project Co under a Final Project Agreement, in an organized and efficient manner; and
 - (iv) for the Parties to set the stage for ensuring that Dev Co submits the highest quality Project Proposal possible within the Hospital's affordability constraints for the Project, while minimizing the potential for material Project Proposal Negotiations and of Contracting Authority electing not to deliver a Notice to Proceed to Commercial Close to Dev Co pursuant to the Agreement and exercising its rights pursuant to Section 6.1(b).
- (d) Unless expressly set out in the Agreement to the contrary (including in Section 5.4(a)), the Parties shall not cease to perform or delay the performance of any of their respective obligations under the Agreement solely as a result of any delay in the occurrence of any Project Checkpoint and shall continue to perform all such obligations (including in respect of the performance of the Development Phase PA Works) irrespective of any such delay to a Project Checkpoint.

2. PROJECT DEVELOPMENT PROCESS AND PROJECT CHECKPOINTS

2.1 Initial Development Stage

- (a) Subject to Sections 2.1(f) and 2.1(h), the Initial Development Stage will consist of two consecutive periods, being the First Initial Period and Second Initial Period.
- (b) During and before the expiry of the first 44 Business Days of the Initial Development Stage (the “**First Initial Period**”), Dev Co shall:
 - (i) conduct its own review, due diligence and analysis of all Background Information provided by DPA Contracting Authority to Dev Co following the last date for the issuance of addenda under the Request for Proposals (including DPA Contracting Authority’s Revit model for the Project, DPA Contracting Authority’s schedule for the Project, and any Project affordability constraints in respect of the cost of the Project identified by DPA Contracting Authority pursuant to DPA Section 6.2 of the Agreement), satisfy itself as to the accuracy, completeness and fitness for purpose of any such Background Information upon which it shall place reliance, and identify and raise, prior to the expiry of such period, any and all ambiguities or issues requiring clarification associated with such Background Information;
 - (ii) prepare for and participate in meetings with DPA Contracting Authority and carry out its other applicable obligations set out in Schedule 16 – DPA Term Governance, Meetings and Progress Reporting, including Start-Up Meetings, Geo-Exchange System Workshops, the Initial Risk Workshop and Ad Hoc Meetings, where, without limitation, the Project’s scope (including the Output Specifications), risks, schedule, transaction structure and issues identified by the Parties will be discussed; and
 - (iii) submit to DPA Contracting Authority the Initial Development Stage DPA Submittals identified in Appendix 1 – DPA Technical Submittals and Requirements to this Schedule 3 as to be submitted during the Initial Development Stage in accordance with the DPA Review Procedure.
- (c) Dev Co shall not perform any DPA Design Works during the Initial Development Stage.
- (d) DPA Contracting Authority shall, subject to Section 2.1(f), have a period of 22 Business Days following the expiry of the First Initial Period (the “**Second Initial Period**”) to make a determination as to whether any Project De-Scoping will be implemented in accordance with Section 2.1(h), which determination shall, without limitation:
 - (i) be informed by the input and Initial Development Stage DPA Submittals provided by Dev Co pursuant to Section 2.1(b) and the input and requirements of DPA Contracting Authority’s stakeholders and advisors; and
 - (ii) be subject to DPA Contracting Authority obtaining any approvals necessary for the implementation of any Project De-Scoping, including if applicable from the MOH.
- (e) During the Second Initial Period, Dev Co shall:

- (i) subject to Sections 2.1(j) and 2.1(k), mobilize its forces to commence all DPA Works not described in Section 2.1(b);
 - (ii) prepare for and participate in meetings with DPA Contracting Authority and carry out its other obligations set out in Schedule 16 – DPA Term Governance, Meetings and Progress Reporting; and
 - (iii) provide any assistance and support requested by DPA Contracting Authority with regards to the matters described in Section 2.1(d).
- (f) DPA Contracting Authority shall, in its sole discretion, have the right and option to extend the Second Initial Period for one additional 15 Business Day period following the expiry of the Second Initial Period by the DPA Contracting Authority Representative providing the DPA Dev Co Representative with Notice of DPA Contracting Authority’s exercise of such right and option at any time before the expiry of the Second Initial Period.
- (g) Each of the First Initial Period and Second Initial Period (including any extension thereof pursuant to Section 2.1(f)) shall be deemed to exclude those Business Days which occur between **[REDACTED]**.
- (h) Without limiting the provisions of DPA Section 12 of the Agreement, Schedule 6 – DPA Variation Procedure or Section 4.1, unless otherwise agreed by the Parties, by no later than the expiry of the Second Initial Period, DPA Contracting Authority shall provide Notice to Dev Co (the “**Initial Development Stage Expiry Notice**”) that:
- (i) Dev Co shall continue to perform the DPA Works (including the DPA Design Works) on the basis of the Agreement (including the Output Specifications), the Initial Development Stage is at an end as of the date of the Initial Development Stage Expiry Notice, and the 100% Schematic Design Stage has commenced as of such date; or
 - (ii) DPA Contracting Authority shall, within five Business Days (or such longer period agreed by the Parties, acting reasonably), commence and be required to implement one or more DPA Variations in accordance with Schedule 6 – DPA Variation Procedure to reduce, delete, remove, substitute or otherwise modify or vary the scope of the Project Operations set out in the Agreement (“**Project De-Scoping**”), and, in such an event, the Initial Development Stage shall end and the 100% Schematic Design Stage shall commence upon the date of the full execution and delivery of the associated DPA Variation Confirmation or DPA Variation Directive (or in the event that more than one DPA Variation will be implemented, the first DPA Variation Confirmation or DPA Variation Directive) setting out the revised scope of the Project in accordance with Schedule 6 – DPA Variation Procedure (each a “**Reduced Project Scope DPA Variation**”).
- (i) Notwithstanding anything to the contrary in the Agreement, Dev Co shall not be entitled to any additional cost or schedule relief under the Agreement in accordance with Schedule 6 – DPA Variation Procedure or otherwise under the Agreement as part of or in connection with the implementation of any Reduced Project Scope DPA Variation.

- (j) Nothing in this Section 2.1 shall limit any obligation of a Party under the Agreement to perform any activity where the Party is expressly required to perform such activity during the Initial Development Stage pursuant to the Agreement (including the submission by Dev Co to DPA Contracting Authority of any Initial Development Stage DPA Submittals in accordance with the DPA Review Procedure other than those described in Section 2.1(b)).
- (k) Dev Co agrees that, notwithstanding anything to the contrary in this Section 2.1, Dev Co shall commence the performance of any other DPA Works not described in this Section 2.1 during the Initial Development Stage if directed to do so in writing by DPA Contracting Authority.

2.2 **100% Schematic Design Stage**

- (a) During the period beginning on the date set out in Section 2.1(h) and continuing until the occurrence of the First Checkpoint (the “**100% Schematic Design Stage**”), the Parties shall perform the following activities:
 - (i) the Parties shall mobilize their resources and commence the performance of their respective obligations under the Agreement;
 - (ii) Dev Co shall submit each of the 100% Schematic Design Stage DPA Submittals to DPA Contracting Authority in accordance with Section 3.1 (including the applicable Review Procedure);
 - (iii) the Parties shall commence the Draft Project Agreement Negotiations Process in accordance with the Agreement;
 - (iv) Dev Co shall:
 - A. provide any comments on or objections to any revisions to the Draft Project Agreement made by DPA Contracting Authority pursuant to Section 4.1(a) during such period;
 - B. submit any and all information, documentation and proposed document drafting and revisions requested by DPA Contracting Authority pursuant to Section 4.4(c)(ii) during such period; and
 - C. provide any and all written comments on the revised Negotiable Draft Project Agreement Provisions circulated by DPA Contracting Authority pursuant to Section 4.4(c)(iii) during such period;
 - (v) Dev Co shall perform and complete the Climate Risk and Resilience Assessment and develop and submit the related Climate Risk and Resilience Assessment Report to DPA Contracting Authority for review, in accordance with Schedule 2 – DPA Scope of Work; and
 - (vi) the Parties shall carry out the meetings described in Schedule 16 – DPA Term Governance, Meetings and Progress Reporting, and each of the Parties shall perform each of the other activities or obligations to be performed by it under the Agreement, during such period.

- (b) Unless otherwise agreed by DPA Contracting Authority in writing, the 100% Schematic Design Stage shall end when:
- (i) Dev Co has submitted all of the 100% Schematic Design Stage DPA Submittals pursuant to Section 2.2(a)(i);
 - (ii) Dev Co has submitted any and all comments, objections, information, documentation, and proposed document drafting and revisions on the revised Negotiable Draft Project Agreement Provisions pursuant to Section 2.2(a)(iv); and
 - (iii) Dev Co has completed the Climate Risk and Resilience Assessment and submitted the related Climate Risk and Resilience Assessment Report to DPA Contracting Authority for review, in accordance with Schedule 2 – DPA Scope of Work,
- (the “**First Checkpoint**”).

2.3 **30% Design Development Stage**

- (a) During the period beginning on the First Checkpoint and continuing until the occurrence of the Second Checkpoint (the “**30% Design Development Stage**”), the Parties shall perform the following activities:
- (i) unless otherwise agreed by DPA Contracting Authority, Dev Co shall resolve all comments received from DPA Contracting Authority pursuant to the applicable Review Procedure with respect to the 100% Schematic Design Stage DPA Submittals such that each of the 100% Schematic Design Stage DPA Submittals receives a comment of “No Comment” or “Minor Non-Conformance” with no additional comment of “Re-Submit” pursuant to the applicable Review Procedure;
 - (ii) Dev Co shall submit each of the 30% Design Development Stage DPA Submittals to DPA Contracting Authority in accordance with Section 3.1 (including the applicable Review Procedure);
 - (iii) the Parties shall continue the Draft Project Agreement Negotiations Process in accordance with the Agreement;
 - (iv) Dev Co shall:
 - A. provide any comments on or objections to any revisions to the Draft Project Agreement made by DPA Contracting Authority pursuant to Section 4.1(a) during such period;
 - B. submit any and all information, documentation and proposed document drafting and revisions requested by DPA Contracting Authority pursuant to Section 4.4(c)(ii) during such period; and

- C. provide any and all written comments on the revised Negotiable Draft Project Agreement Provisions circulated by DPA Contracting Authority pursuant to Section 4.4(c)(iii) during such period;
 - (v) Dev Co shall submit to DPA Contracting Authority the Technical Specifications submittal described in DPA Section 10.16(b)(i) of the Agreement; and
 - (vi) the Parties shall carry out the meetings described in Schedule 16 – DPA Term Governance, Meetings and Progress Reporting, and each of the Parties shall perform each of the other activities or obligations to be performed by it under the Agreement, during such period.
- (b) Unless otherwise agreed by DPA Contracting Authority in writing, the 30% Design Development Stage shall end when Dev Co:
- (i) has resolved all comments received from DPA Contracting Authority pursuant to the applicable Review Procedure with respect to the 100% Schematic Design Stage DPA Submittals in accordance with Section 2.3(a)(i);
 - (ii) has submitted all of the 30% Design Development Stage DPA Submittals pursuant to Section 2.3(a)(ii); and
 - (iii) has submitted any and all comments, objections, information, documentation, and proposed document drafting and revisions on the revised Negotiable Draft Project Agreement Provisions pursuant to Section 2.3(a)(iv)
- (the “**Second Checkpoint**”).

2.4 60% Design Development Stage

- (a) During the period beginning on the Second Checkpoint and continuing until the occurrence of the Third Checkpoint (the “**60% Design Development Stage**”), the Parties shall perform the following activities:
- (i) unless otherwise agreed by DPA Contracting Authority, Dev Co shall resolve all comments received from DPA Contracting Authority pursuant to the applicable Review Procedure with respect to the 30% Design Development Stage DPA Submittals such that each of the 30% Design Development Stage DPA Submittals receives a comment of “No Comment” or “Minor Non-Conformance” with no additional comment of “Re-Submit” pursuant to the applicable Review Procedure;
 - (ii) Dev Co shall submit each of the 60% Design Development Stage DPA Submittals to DPA Contracting Authority in accordance with Section 3.1 (including the applicable Review Procedure);
 - (iii) the Parties shall continue the Draft Project Agreement Negotiations Process in accordance with the Agreement;
 - (iv) Dev Co shall:

- A. provide any comments on or objections to any revisions to the Draft Project Agreement made by DPA Contracting Authority pursuant to Section 4.1(a) during such period;
 - B. submit any and all information, documentation and proposed document drafting and revisions requested by DPA Contracting Authority pursuant to Section 4.4(c)(ii) during such period; and
 - C. provide any and all written comments on the revised Negotiable Draft Project Agreement Provisions circulated by DPA Contracting Authority pursuant to Section 4.4(c)(iii) during such period;
- (v) Dev Co shall submit to DPA Contracting Authority the Technical Specifications submittal described in Section 10.16(b)(ii) of the Agreement;
 - (vi) Dev Co shall commence and complete the construction of the High Fidelity Room Mock-Ups in accordance with the requirements of the Draft PA Review Procedure. For greater certainty, such completed High Fidelity Room Mock-Ups shall be submitted to DPA Contracting Authority as part of the 60% Design Development Stage DPA Submittals;
 - (vii) the Parties shall commence the process for appointing the Independent Certifier required by the Draft Project Agreement set out in Section 2.5; and
 - (viii) the Parties shall carry out the meetings described in Schedule 16 – DPA Term Governance, Meetings and Progress Reporting, and each of the Parties shall perform each of the other activities or obligations to be performed by it under the Agreement, during such period.
- (b) Unless otherwise agreed by DPA Contracting Authority in writing, the 60% Design Development Stage shall end when Dev Co:
- (i) has resolved all comments received from DPA Contracting Authority pursuant to the applicable Review Procedure with respect to the 30% Design Development Stage DPA Submittals in accordance with Section 2.4(a)(i);
 - (ii) has submitted all of the 60% Design Development Stage DPA Submittals pursuant to Section 2.4(a)(ii); and
 - (iii) has submitted any and all comments, objections, information, documentation, and proposed document drafting and revisions on the revised Negotiable Draft Project Agreement Provisions pursuant to Section 2.4(a)(iv)
- (the “**Third Checkpoint**”).

2.5 Independent Certifier Appointment Process

- (a) During the 60% Design Development Stage, the Parties shall commence the following process or, if applicable, the process set out in Section 2.5(b), for appointing the Independent Certifier required

by the Draft Project Agreement, including as required by the provisions of Section 23 and Schedule 6 – Independent Certifier Agreement of the Draft Project Agreement:

- (i) Infrastructure Ontario has prequalified and entered into standing offer agreements (“**Standing Offer Agreements**”) with persons who may provide independent certifier services with respect to projects initiated by Infrastructure Ontario. DPA Contracting Authority shall provide a list of such persons who could act as the Independent Certifier under a Final Project Agreement (each a “**Qualified IC**”) to Dev Co within 10 Business Days of the commencement of the 60% Design Development Stage;
 - (ii) subject to Section 2.5(b)(iii), following receipt of such list, Dev Co shall promptly (A) select one of the Qualified ICs to be its choice to act as the Independent Certifier under a Final Project Agreement and (B) identify such choice in a Notice delivered to the DPA Contracting Authority Representative;
 - (iii) following receipt of such Notice, DPA Contracting Authority shall exert commercially reasonable efforts to obtain a binding offer from the applicable Qualified IC in respect of the provision by such person of the Certification Services to be provided by the Independent Certifier under the Independent Certifier Agreement, which offer shall, amongst other things, identify the representatives of the Qualified IC who would provide the Certification Services and the Fee payable by the Parties to the Independent Certifier under such agreement (the “**IC Offer**”);
 - (iv) the IC Offer shall be subject to the approval of Dev Co, acting reasonably;
 - (v) after Dev Co has approved the IC Offer, DPA Contracting Authority shall issue a call-up to such Qualified IC pursuant to its Standing Offer Agreement, so that DPA Contracting Authority may incorporate the terms of the IC Offer into the form of Independent Certifier Agreement attached as Schedule 6 – Independent Certifier Agreement to the Draft Project Agreement that will be executed and delivered by such Qualified IC and the Parties in accordance with the terms of the Agreement and the Final Project Agreement; and
 - (vi) such process shall be completed upon each of the Parties, acting reasonably, and the Qualified IC approving the form of Independent Certifier Agreement.
- (b) In the event that:
- (i) by the Second Checkpoint, less than three Standing Offer Agreements are in full force and effect;
 - (ii) by the Second Checkpoint, DPA Contracting Authority, in its sole discretion, otherwise no longer wishes to proceed to identify the Independent Certifier pursuant to the process set out in Section 2.5(a);
 - (iii) Dev Co, acting reasonably and in a Notice provided to the DPA Contracting Authority Representative, objects to all of the Qualified ICs set out in the list provided by DPA Contracting Authority to Dev Co pursuant to Section 2.5(a)(i); or

- (iv) the Parties fail to complete the process set out in Section 2.5(a) after a reasonable amount of time, as determined by DPA Contracting Authority, acting reasonably,

then, notwithstanding the provisions of Section 2.5(a) and any previous acts undertaken by or omissions of the Parties pursuant to Section 2.5(a) and any related DPA Disputes in relation thereto, DPA Contracting Authority shall promptly provide Notice to the DPA Dev Co Representative that the Independent Certifier shall be identified by way of a request for proposals process for the provision of independent certifier services for the Project to be issued by Infrastructure Ontario and not (or no longer) pursuant to the process set out in Section 2.5(a). In such an event, DPA Contracting Authority shall consult with Dev Co with respect to such request for proposals process, including with regards to the evaluation process and the identification and selection of the preferred potential independent certifier, who will be required to execute and deliver the Independent Certifier Agreement with the Parties in the form attached as Schedule 6 – Independent Certifier Agreement to the Draft Project Agreement in accordance with the terms of the Agreement and the Final Project Agreement.

- (c) If applicable, the process set out in Section 2.5(b) shall be completed upon the Parties, acting reasonably, and the Qualified IC approving the final form of Independent Certifier Agreement.
- (d) Any dispute between the Parties in respect of the completion of the process for the appointment of the Independent Certifier set out in this Section 2.5 may be referred by a Party for resolution in accordance with the DPA Dispute Resolution Procedure.
- (e) The Parties (i) agree to exert commercially reasonable efforts to complete the process for the appointment of the Independent Certifier set out in this Section 2.5 (including, if applicable, to resolve any DPA Disputes that arise in connection with such process) before the Third Checkpoint, and (ii) acknowledge the provisions of Section 2.8(b)(v), providing that the process for appointing the Independent Certifier set out in this Section 2.5 is to be completed prior to the Final Checkpoint.

2.6 Appointment of the CDB

- (a) Within 15 Business Days of the commencement of the 60% Design Development Stage, DPA Contracting Authority shall identify in writing to Dev Co the Technical Member of its choice for the CDB in accordance with the requirements of Schedule 27 – Dispute Resolution Procedure of the Draft Project Agreement.
- (b) Within 10 Business Days of DPA Contracting Authority identifying in writing to Dev Co the Technical Member of its choice for the CDB in accordance with Section 2.6(a), Dev Co shall identify in writing to DPA Contracting Authority the Technical Member of its choice for the CDB in accordance with the requirements of Schedule 27 – Dispute Resolution Procedure of the Draft Project Agreement.
- (c) Within 10 Business Days following the identification of Dev Co’s Technical Member of its choice for the CDB pursuant to Section 2.6(b), DPA Contracting Authority and Dev Co shall exert commercially reasonable efforts to agree to the identity of the CDB Chair in accordance with the requirements of Schedule 27 – Dispute Resolution Procedure of the Draft Project Agreement.
- (d) Prior to the Third Checkpoint, the Parties shall exert commercially reasonable efforts to:

- (i) complete the process for the identification of the Technical Members and the CDB Chair set out in this Section 2.6; and
- (ii) finalize and agree to the form of CDB Member Statement and CDB Member Agreement (including the fees set out in each CDB Member Agreement) with each of the Technical Members and the CDB Chair

(“CDB Finalization”).

- (e) The Parties acknowledge the provisions of Section 2.8(b)(vi) providing that CDB Finalization is to be completed prior to the Final Checkpoint.
- (f) If the Parties have not identified any Technical Member or the CDB Chair in accordance with this Section 2.6 by the Third Checkpoint, then the identification of such person may be referred by a Party for resolution in accordance with the DPA Dispute Resolution Procedure.
- (g) During the Commercial Close Stage, Dev Co and DPA Contracting Authority shall deliver each of the CDB Member Statements and the CDB Member Agreements it is responsible for delivering in accordance with, as applicable, Section 1 or Section 2 of Schedule 2 – Completion Documents of the Final Project Agreement in the form finalized and agreed to during the CDB Finalization process, such that all of the Members of the CDB are appointed and the CDB is fully constituted on the date the documents described in such Sections are released from escrow pursuant to the Escrow Closing Procedure Agreement.

2.7 Surety’s Consent

- (a) Dev Co acknowledges that it must submit a surety’s consent as set in Appendix 4 – Form of Surety’s Consent to this Schedule 3 as part of its Project Proposal pursuant to Appendix 3 – Project Proposal Content and Requirements to this Schedule 3 (a “**Surety’s Consent**”) in order to secure the issuance of a performance bond and a labour and material payment bond for the Project as required by the Final Project Agreement.
- (b) Dev Co is advised that, in submitting the Surety’s Consent, it may submit either:
 - (i) a Surety’s Consent duly completed and executed by a Surety substantially in the same form and content as set out in Appendix 4 – Form of Surety’s Consent to this Schedule 3, including the form of performance bond and labour and material payment bond attached thereto; or
 - (ii) a Surety’s Consent duly completed and executed by a Surety substantially in the form set out in Appendix 4 – Form of Surety’s Consent to this Schedule 3, including attached forms of a performance bond and a labour and material payment bond, which, having regard to the intended purpose of the Final Project Agreement, Dev Co can demonstrate will result in value for money to DPA Contracting Authority.
- (c) If Dev Co wishes to submit a Surety’s Consent pursuant to Section 2.7(b)(ii), then Dev Co shall, by no later than 10 Business Days of the commencement of the 60% Design Development Stage, submit such form of Surety’s Consent to DPA Contracting Authority.

- (d) DPA Contracting Authority may, in its sole discretion, accept or reject a form of Surety’s Consent submitted pursuant to Section 2.7(c), including the proposed form of performance and labour and material payment bonds attached to the Surety’s Consent, submitted by Dev Co (the “**Bonding Submission**”).
- (e) If DPA Contracting Authority rejects Dev Co’s Bonding Submission pursuant to Section 2.7(d), DPA Contracting Authority may, in its sole discretion, advise Dev Co as to any changes that DPA Contracting Authority may require to the Bonding Submission and, without limiting the right of DPA Contracting Authority to reject the Bonding Submission if those requirements are not met in DPA Contracting Authority’s sole discretion, negotiate the form of Surety’s Consent with Dev Co to meet those requirements, including by requiring the resubmission of:
 - (i) the proposed form of performance and labour and material payment bonds attached to the Surety’s Consent; and
 - (ii) any ancillary amendments to the Draft Project Agreement that may be required, which shall be made in accordance with Section 4.1(a).
- (f) Without limiting any right of DPA Contracting Authority to reject any Bonding Submission in accordance with Sections 2.7(d) and 2.7(e), the Parties acknowledge the provisions of Section 2.8(b)(vii) providing that the form of any Bonding Submission negotiated by the Parties pursuant to Section 2.7(e) is to be finalized prior to the Final Checkpoint.

2.8 90% Design Development Stage

- (a) During the period beginning on the Third Checkpoint and continuing until the occurrence of the Final Checkpoint (the “**90% Design Development Stage**”), the Parties shall perform the following activities:
 - (i) unless otherwise agreed by DPA Contracting Authority, Dev Co shall resolve all comments received from DPA Contracting Authority pursuant to the applicable Review Procedure with respect to the 60% Design Development Stage DPA Submittals such that each of the 60% Design Development Stage DPA Submittals receives a comment of “No Comment” or “Minor Non-Conformance” with no additional comment of “Re-Submit” pursuant to the applicable Review Procedure;
 - (ii) Dev Co shall submit each of the 90% Design Development Stage DPA Submittals to DPA Contracting Authority in accordance with Section 3.1 (including the applicable Review Procedure);
 - (iii) unless otherwise agreed by DPA Contracting Authority, Dev Co shall resolve all comments received from DPA Contracting Authority pursuant to the applicable Review Procedure with respect to the 90% Design Development Stage DPA Submittals such that each of the 90% Design Development Stage DPA Submittals receives a comment of “No Comment” or “Minor Non-Conformance” with no additional comment of “Re-Submit” pursuant to the applicable Review Procedure;
 - (iv) Dev Co shall:

- A. provide any comments on or objections to any revisions to the Draft Project Agreement made by DPA Contracting Authority pursuant to Section 4.1(a) during such period;
 - B. submit any and all information, documentation and proposed document drafting and revisions requested by DPA Contracting Authority pursuant to Section 4.4(c)(ii) during such period; and
 - C. provide any and all written comments on the revised Negotiable Draft Project Agreement Provisions circulated by DPA Contracting Authority pursuant to Section 4.4(c)(iii) during such period;
- (v) Dev Co shall submit to DPA Contracting Authority the Technical Specifications pursuant to Section 10.16(b)(iii) of the Agreement;
 - (vi) Dev Co shall adjust the High Fidelity Room Mock-Ups in accordance with the requirements of the Draft PA Review Procedure. For greater certainty, such adjusted High Fidelity Room Mock-Ups shall be submitted to DPA Contracting Authority as part of the 90% Design Development Stage DPA Submittals;
 - (vii) the Parties shall achieve Draft PA Negotiations Process Completion;
 - (viii) if applicable, the Parties shall complete the process for appointing the Independent Certifier set out in Section 2.5;
 - (ix) if applicable, the Parties shall achieve CDB Finalization;
 - (x) if applicable, the Parties shall finalize the form of any Bonding Submission negotiated by the Parties pursuant to Section 2.7(e); and
 - (xi) the Parties shall carry out the meetings described in Schedule 16 – DPA Term Governance, Meetings and Progress Reporting, and each of the Parties shall perform each of the other activities or obligations to be performed by it under the Agreement, during such period.
- (b) Unless otherwise agreed by DPA Contracting Authority in writing, the 90% Design Development Stage shall end when:
 - (i) Dev Co has resolved all comments received from DPA Contracting Authority pursuant to the applicable Review Procedure with respect to the 60% Design Development Stage DPA Submittals in accordance with Section 2.6(a)(i);
 - (ii) Dev Co has (A) submitted all of the 90% Design Development Stage DPA Submittals pursuant to Section 2.6(a)(ii), and (B) resolved all comments received from DPA Contracting Authority pursuant to the applicable Review Procedure with respect to the 90% Design Development Stage DPA Submittals in accordance with Section 2.6(a)(iii);

- (iii) Dev Co has submitted any and all comments, objections, information, documentation, and proposed document drafting and revisions on the revised Negotiable Draft Project Agreement Provisions pursuant to Section 2.6(a)(iv);
 - (iv) Draft PA Negotiations Process Completion has been achieved;
 - (v) the process for appointing the Independent Certifier set out in Section 2.5 has been completed;
 - (vi) CDB Finalization has been achieved;
 - (vii) the form of any Bonding Submission negotiated by the Parties pursuant to Section 2.7(e) has been finalized; and
 - (viii) Technical Specifications Completion has been achieved,
- (the “**Final Checkpoint**”).

2.9 **Project Proposal Stage and Commercial Close Stage**

- (a) During the period beginning on the Final Checkpoint and, subject to DPA Sections 4.1(b) and 4.1(c) of the Agreement and Section 6.1(b), continuing until the date that DPA Contracting Authority delivers a Notice to Proceed to Commercial Close pursuant to the Agreement (the “**Project Proposal Stage**”), the Parties shall perform their respective obligations under Section 5 and their other applicable obligations under the Agreement, including:
 - (i) Dev Co’s submission of the Project Proposal in accordance with Section 5;
 - (ii) Dev Co’s submission of the Financing Proposal in accordance with Appendix 5 – Financing Process to this Schedule 3;
 - (iii) the Parties’ completion of any Project Proposal Negotiations;
 - (iv) Dev Co’s continued performance of the Development Phase PA Works, including the submission of the DPA Works Submittals described in Appendix A to Schedule 10 – Review Procedure of the Draft Project Agreement identified as to be submitted during the Project Proposal Stage and the Commercial Close Stage to DPA Contracting Authority pursuant to the Draft PA Review Procedure; and
 - (v) pursuant to Schedule 16 – DPA Term Governance, Meetings and Progress Reporting.
- (b) Subject to DPA Sections 4.1(b) and 4.1(c) of the Agreement and Section 6.1(b), during the period beginning on the date that DPA Contracting Authority delivers a Notice to Proceed to Commercial Close pursuant to the Agreement and continuing until the Hospital and Project Co enter into a Final Project Agreement (the “**Commercial Close Stage**”), the Parties shall perform their respective obligations under Section 6 and their other applicable obligations under the Agreement, including:
 - (i) pursuant to Appendix 5 – Financing Process to this Schedule 3;

- (ii) Dev Co's continued performance of the Development Phase PA Works, including the submission of the DPA Works Submittals described in Appendix A to Schedule 10 – Review Procedure of the Draft Project Agreement identified as to be submitted during the Project Proposal Stage and the Commercial Close Stage to DPA Contracting Authority pursuant to the Draft PA Review Procedure; and
 - (iii) pursuant to Schedule 16 – DPA Term Governance, Meetings and Progress Reporting of the Agreement.
- (c) Notwithstanding the achievement of the Final Checkpoint, the submission of the Project Proposal, any Project Proposal Negotiations and each Parties' performance of its other obligations under the Agreement during the Project Proposal Stage and the Commercial Close Stage:
- (i) Dev Co shall continue to perform the DPA Works in accordance with the Agreement during such stages, including for the purposes of maintaining and, if possible advancing, the Project's schedule under the Final Project Agreement following Commercial Close; and
 - (ii) for greater certainty, none of the DPA Works performed or any other fact or matter discovered or arising after the submission of the Project Proposal shall, unless expressly otherwise set out in the Agreement to the contrary, permit Dev Co to revise (A) the Project Proposal after it is submitted in accordance with the Agreement or (B) the Final Project Agreement.

2.10 Project Proposal Longstop Date

- (a) Subject to complying with their respective obligations in the Agreement and without limiting any obligation or liability of a Party in the Agreement and unless otherwise agreed by the Parties in writing, in the event that the Project Proposal Longstop Date occurs before the Project Proposal Submission Deadline, then:
- (i) Dev Co may, by written Notice to DPA Contracting Authority, require DPA Contracting Authority to make an election in accordance with Section 2.10(b); or
 - (ii) DPA Contracting Authority may elect to make an election in accordance with Section 2.10(b).
- (b) In the event that Dev Co requires DPA Contracting Authority to make an election in accordance with Section 2.10(a)(i) or DPA Contracting Authority elects to make an election in accordance with Section 2.10(a)(ii), then DPA Contracting Authority shall, in its sole discretion and without limiting any right of DPA Contracting Authority pursuant to Schedule 6 – DPA Variation Procedure:
- (i) by way of Notice to Dev Co, direct Dev Co to complete the DPA Works in accordance with the Agreement, provided that:
 - A. notwithstanding anything in the Agreement and that the Final Project Agreement will not be executed or delivered, the DPA Works may include the completion of

the design of the Facility and the Design Data in accordance with the requirements of the Agreement;

- B. Dev Co shall not submit a Project Proposal or perform or be paid for any of its obligations described in Sections 5 and 6 or any other portions of the DPA Scope of Work identified in such Notice that DPA Contracting Authority no longer requires Dev Co to perform, which, subject to and in accordance with Schedule 6 – DPA Variation Procedure, shall be removed by the Parties from the DPA Scope of Work by way of a DPA Variation; and
- C. DPA Sections 13.2(b) and 13.2(c) of the Agreement shall no longer be applicable or have any force or effect; or
 - (ii) terminate the Agreement pursuant to DPA Section 19.1 of the Agreement.
- (c) The Project Proposal Longstop Date shall be adjusted on a day-for-day basis at any time that the Project Proposal Submission Deadline is adjusted in accordance with the terms of the Agreement, except where the Project Proposal Submission Deadline is adjusted as a result of a DPA Contracting Authority Delay Period.

3. REVIEW PROCEDURES

3.1 Submission of DPA Submittals – General

- (a) For the purposes of this Schedule 3, Dev Co shall perform its obligations under and submit to DPA Contracting Authority each of the DPA Submittals, in accordance with:
 - (i) with regards to the DPA Works Submittals, the applicable DPA Works PA Requirements and the Draft PA Review Procedure;
 - (ii) with regards to the DPA Technical Submittals, the applicable requirements of Appendix 1 – DPA Technical Submittals and Requirements to this Schedule 3 and the DPA Review Procedure;
 - (iii) with regards to the DPA Financial Submittals, the applicable requirements of Appendix 2 – DPA Financial Submittals and Requirements to this Schedule 3 and the DPA Review Procedure;
 - (iv) with regards to each other DPA Schedule 3 Submittal, the specific requirements of the Agreement applicable to such DPA Schedule 3 Submittal;
 - (v) the DPA Works Schedules; and
 - (vi) all other applicable provisions of the Agreement.
- (b) Where required by DPA Contracting Authority by Notice to the DPA Dev Co Representative and without prejudice to or limiting any right or obligation of DPA Contracting Authority under the Agreement, the Parties shall schedule and Dev Co shall provide to DPA Contracting Authority a

pre-submission of any DPA Submittal for DPA Contracting Authority’s informal review and feedback prior to Dev Co formally submitting such submittal for DPA Contracting Authority’s review and comment pursuant to the applicable Review Procedure as required pursuant to the Agreement. Such pre-submission shall be requested by DPA Contracting Authority a reasonable amount of time in advance of the scheduled date for submission of the relevant DPA Submittal, and in any event a minimum of 10 Business Days in advance of such time.

- (c) Without limiting any right or discretion of DPA Contracting Authority or obligation of Dev Co, in each case, under the Agreement, and subject to Section 3.7 of the DPA Review Procedure in respect of DPA Schedule 3 Submittals and Section 6 (Effect of Review) of the Draft PA Review Procedure in respect of DPA Works Submittals, DPA Contracting Authority, at DPA Contracting Authority’s discretion, shall provide collaborative and cooperative feedback on pre-submissions of submittals received pursuant to Section 3.1(b).

3.2 Submission of DPA Works Submittals under Draft PA Review Procedure

- (a) Dev Co shall submit each of the DPA Works Submittals to DPA Contracting Authority subject to and in accordance with the provisions of Schedule 10 – Review Procedure of the Draft Project Agreement, applicable *mutatis mutandis* (the “**Draft PA Review Procedure**”).
- (b) Without limiting DPA Section 2.3 of the Agreement, for the purposes of the Draft PA Review Procedure, each reference in the Draft PA Review Procedure to:
 - (i) a Works Submittal under the Draft Project Agreement shall be a reference to the applicable DPA Works Submittal;
 - (ii) the Independent Certifier or the CDB shall be inapplicable to the extent referenced in the applicable provision of the Draft PA Review Procedure;
 - (iii) the Current Look-ahead Schedule under the Draft Project Agreement shall be a reference to the Current Progress DPA Works Schedule (as defined in Schedule 7 – DPA Works Schedules Requirements);
 - (iv) a Review Procedure Activity under the Draft Project Agreement shall be a reference to the applicable Review Procedure Activity (as defined in Schedule 7 – DPA Works Schedules Requirements); and
 - (v) a Works Activity under the Draft Project Agreement shall be a reference to the applicable DPA Works Activity (as defined in Schedule 7 – DPA Works Schedules Requirements).

3.3 Submission of DPA Schedule 3 Submittals under DPA Review Procedure

- (a) Dev Co shall submit to DPA Contracting Authority:
 - (i) the DPA Technical Submittals;
 - (ii) the DPA Financial Submittals; and

- (iii) any and all other documents, items and anything else expressly required or specified by the Agreement to be submitted to, or reviewed or otherwise processed by, or commented on by DPA Contracting Authority under the Agreement during the DPA Term in accordance with the DPA Review Procedure,

(collectively, the “**DPA Schedule 3 Submittals**”) subject to and in accordance with the provisions of this Section 3.3 and Sections 3.4 to 3.11 (the “**DPA Review Procedure**”).

- (b) Dev Co shall provide for a progressive and orderly flow of DPA Schedule 3 Submittals from Dev Co to the DPA Contracting Authority Representative to allow for a sufficient DPA Contracting Authority Review Period for each DPA Schedule 3 Submittal, taking into account both the resources necessary for DPA Contracting Authority to conduct such review and whether delay in the review of the subject matter of the DPA Schedule 3 Submittal would have a material impact on Dev Co’s ability to progress future anticipated DPA Schedule 3 Submittals and the DPA Works in accordance with the DPA Works Schedules.
- (c) Dev Co shall allow a minimum DPA Contracting Authority Review Period of:
 - (i) 15 Business Days following receipt thereof for each of the DPA Schedule 3 Submittals that are included within the Initial Development Stage DPA Submittals;
 - (ii) 30 Business Days following receipt thereof for each of the DPA Schedule 3 Submittals that are included within the 100% Schematic Design Stage DPA Submittals;
 - (iii) 30 Business Days following receipt thereof for each of the DPA Schedule 3 Submittals that are included within the 30% Design Development Stage DPA Submittals;
 - (iv) 20 Business Days following receipt thereof for each of the DPA Schedule 3 Submittals that are included within the 60% Design Development Stage DPA Submittals;
 - (v) 20 Business Days following receipt thereof for each of the DPA Schedule 3 Submittals that are included within the 90% Design Development Stage DPA Submittals;
 - (vi) 15 Business Days following receipt thereof for the first Draft Baseline DPA Works Schedule and 5 Business Days following receipt thereof for any subsequent Draft Baseline DPA Works Schedule; and
 - (vii) 10 Business Days following receipt thereof for any other DPA Schedule 3 Submittals,

or such longer period as the Parties may agree, provided that if Dev Co has made major changes to the content, grouping or quantity of the DPA Schedule 3 Submittals, or if a DPA Schedule 3 Submittal was not submitted to DPA Contracting Authority on the date indicated in the Current Progress DPA Works Schedule, then such period of time shall be increased by Dev Co, acting reasonably, taking account the factors set out in this Section 3.3.

- (d) When scheduling DPA Schedule 3 Submittals and the performance of the DPA Works, Dev Co shall allow an adequate DPA Contracting Authority Review Period prior to performing the DPA Works that are the subject of the DPA Schedule 3 Submittals, for review of the DPA Schedule 3

Submittals by DPA Contracting Authority and for Dev Co to make any required changes to DPA Schedule 3 Submittals resulting from DPA Contracting Authority's comments.

3.4 General Requirements for DPA Schedule 3 Submittals

- (a) Unless otherwise specified by the DPA Contracting Authority Representative, Dev Co shall issue electronic and three printed copies of all DPA Schedule 3 Submittals to DPA Contracting Authority in a format agreed by the Parties, acting reasonably.
- (b) Dev Co shall compile and maintain (and share with DPA Contracting Authority) a register of the date and contents of the submission of all DPA Schedule 3 Submittals and the date of receipt and content of all returned DPA Schedule 3 Submittals and comments thereon.
- (c) All DPA Schedule 3 Submittals shall be in English.
- (d) All DPA Schedule 3 Submittals required by the 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.
- (e) All DPA Schedule 3 Submittals shall include copies of all documents to be reviewed and shall clearly identify the purpose of the DPA Schedule 3 Submittal and Dev Co's proposed course of action relating to the DPA Schedule 3 Submittal and the DPA Works that are the subject of the DPA Schedule 3 Submittal.
- (f) All DPA Schedule 3 Submittals shall, where applicable, refer to the relevant provisions of the Agreement.
- (g) All DPA Schedule 3 Submittals shall be clearly identified as a DPA Schedule 3 Submittal and shall be delivered with appropriate covering documentation, which shall include a list of all attached DPA Schedule 3 Submittals and for each DPA Schedule 3 Submittal:
 - (i) the document number(s);
 - (ii) revision numbers (if applicable);
 - (iii) document title(s);
 - (iv) name of entity that prepared the DPA Schedule 3 Submittal;
 - (v) the DPA Schedule 3 Submittal history showing date and delivery information and/or log number of all previous submissions of that DPA Schedule 3 Submittal; and
 - (vi) the identification of any previous DPA Schedule 3 Submittal superseded by the current DPA Schedule 3 Submittal.
- (h) If a Proposal Part corresponds to a DPA Schedule 3 Submittal, then Dev Co shall ensure that its initial submission of such DPA Schedule 3 Submittal, in accordance with the DPA Review Procedure, is substantially the same content and level of detail as the corresponding Proposal Part. For clarity, this requirement shall not:

- (i) lessen, reduce or otherwise modify or amend DPA Contracting Authority’s rights under the Agreement to review each DPA Schedule 3 Submittal in accordance with the DPA Review Procedure; or
- (ii) constitute acceptance or comment by DPA Contracting Authority of any Proposal Part or any DPA Schedule 3 Submittal in accordance with the DPA Review Procedure.

3.5 Comments

- (a) The DPA Contracting Authority Representative shall review and respond to each DPA Schedule 3 Submittal in accordance with the time periods specified in Section 3.3(c). The DPA Contracting Authority Representative shall return DPA Schedule 3 Submittals to Dev Co and assign one of the following 4 comments:
 - (i) “NO COMMENT”;
 - (ii) “MINOR NON-CONFORMANCE”;
 - (iii) “MAJOR NON-CONFORMANCE”; or
 - (iv) “CRITICAL NON-CONFORMANCE”.
- (b) The comment “NO COMMENT” will be assigned to those DPA Schedule 3 Submittals that, in the opinion of the DPA Contracting Authority Representative, conform to the requirements of the Agreement. Dev Co shall, if applicable, comply with and implement such DPA Schedule 3 Submittals.
- (c) The comment “MINOR NON-CONFORMANCE” will be assigned to those DPA Schedule 3 Submittals that, in the opinion of the DPA Contracting Authority Representative, generally conform to the requirements of the Agreement, but in which immaterial deficiencies have been found by the DPA Contracting Authority Representative’s review. Dev Co shall correct these DPA Schedule 3 Submittals and, if applicable, shall comply with and implement such DPA Schedule 3 Submittals after correction, including in accordance with the comments. If the DPA Contracting Authority Representative assigns to a DPA Schedule 3 Submittal the additional comment “RE-SUBMIT”, Dev Co shall correct and re-submit such DPA Schedule 3 Submittal to the DPA Contracting Authority Representative no later than 20 Business Days after the comments have been provided to Dev Co, or such longer time period as determined by the DPA Contracting Authority Representative, acting reasonably, and as set out in writing. If at any time it is discovered that Dev Co has not corrected the deficiencies on DPA Schedule 3 Submittals stamped “MINOR NON-CONFORMANCE”, then Dev Co will be required to modify the DPA Schedule 3 Submittals and DPA Works as required to ensure that the DPA Works comply with the Agreement and Dev Co may be required, at the DPA Contracting Authority Representative’s discretion, to resubmit the relevant DPA Schedule 3 Submittals. In such circumstances the DPA Contracting Authority 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.

- (d) The comment “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE” will be assigned to those DPA Schedule 3 Submittals that, in the opinion of the DPA Contracting Authority Representative, contain significant deficiencies or do not generally conform with the requirements of the Agreement, including this Section 3. Dev Co shall correct and re-submit these DPA Schedule 3 Submittals within 10 Business Days after the comment has been provided to Dev Co, or such longer time period as determined by the DPA Contracting Authority Representative, acting reasonably, and as set out in writing. The DPA Contracting Authority Representative will then review such re-submitted DPA Schedule 3 Submittals and assign a comment to the corrected DPA Schedule 3 Submittal. The DPA Schedule 3 Submittals shall be corrected, revised and resubmitted as often as may be required to obtain a comment that permits Dev Co to proceed. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal. In addition to the above, a DPA Schedule 3 Submittal with a “CRITICAL NON-CONFORMANCE” shall be escalated to the DPA Works Committee.
- (e) Where the DPA Contracting Authority Representative issues the comment “MINOR NON-CONFORMANCE”, “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE”, the DPA Contracting Authority Representative shall provide reasons for the comment, referencing the particulars of the Section(s) of the Agreement that the DPA Schedule 3 Submittal fails to satisfy, and, if requested by the Dev Co Representative, the DPA Contracting Authority Representative shall meet with the Dev Co Representative to discuss the reasons for the comment within 10 Business Days.
- (f) If, at any time after any comment is assigned to a DPA Schedule 3 Submittal, the DPA Contracting Authority Representative or Dev Co discovers any significant deficiencies or any failure to conform to the requirements of the Agreement, the DPA Contracting Authority Representative may revise the comment assigned to any DPA Schedule 3 Submittal. If the Parties agree or it is determined in accordance with Section 3.6 that the revised comment is correct, Dev Co shall make all such corrections to the DPA Schedule 3 Submittals and, if applicable, the DPA Works. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- (g) For the purpose of facilitating and expediting the review and correction of DPA Schedule 3 Submittals, the DPA Contracting Authority Representative and the Dev Co Representative shall meet as may be mutually agreed to discuss and review any outstanding DPA Schedule 3 Submittals and any comments thereon.
- (h) Where a DPA Schedule 3 Submittal is voluminous, the DPA Contracting Authority Representative at his or her discretion may elect to stamp only the cover page or first sheet of the DPA Schedule 3 Submittal with the appropriate comment, if any, and return to Dev 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 Dev Co. Any pages returned without such an explanation as to their status shall be deemed to be “NO COMMENT” by DPA Contracting Authority.
- (i) In lieu of returning a DPA Schedule 3 Submittal, the DPA Contracting Authority Representative may by letter notify Dev Co of the comment assigned to the DPA Schedule 3 Submittal and if such comment is “MINOR NON-CONFORMANCE”, “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE” the letter shall contain comments in sufficient detail for Dev Co to identify the issue to be corrected and the correction sought.

3.6 DPA Disputes

- (a) If Dev Co disputes any act of DPA Contracting Authority or the DPA Contracting Authority Representative in respect of a DPA Schedule 3 Submittal, Dev Co shall promptly notify the DPA Contracting Authority Representative of the details of such DPA Dispute and shall submit the reasons why Dev Co believes a different comment should be assigned, together with appropriate supporting documentation. The DPA Contracting Authority Representative shall review the DPA Schedule 3 Submittal, the reasons and supporting documentation and within 5 Business Days after receipt thereof shall either confirm the original comment or notify Dev Co of a revised comment.
- (b) If after such review by the DPA Contracting Authority Representative Dev Co disputes the comment on a DPA Schedule 3 Submittal, subject to Section 3.11(a), Dev Co may refer the matter for determination in accordance with the DPA Dispute Resolution Procedure.

3.7 Effect of Review

- (a) Any review and comment by DPA Contracting Authority or the DPA Contracting Authority Representative of any DPA Schedule 3 Submittals is for general conformity to the obligations and requirements of the Agreement, and any such review and comment shall not (i) relieve Dev Co of the risk and responsibility for the DPA Works and for meeting all of its obligations under and requirements of the Agreement; (ii) relieve Project Co of the risk and responsibility for the Works and for meeting all of its obligations under and requirements of the Final Project Agreement; and (iii) create any new or additional obligations or liabilities for DPA Contracting Authority. Without limiting the generality of the foregoing any and all errors or omissions in DPA Schedule 3 Submittals or of any review and comment shall not (i) exclude or limit Dev Co's obligations or liabilities under the Agreement in respect of matters related to the DPA Schedule 3 Submittal; (ii) exclude or limit Project Co's obligations or liabilities under the Final Project Agreement; or (iii) exclude or limit DPA Contracting Authority's rights under the Agreement in respect of matters related to the DPA Schedule 3 Submittal.

3.8 DPA Schedule 3 Submittal Explanation

- (a) At any time, the DPA Contracting Authority Representative may, acting reasonably, require Dev Co, the Dev Co Parties and any other relevant personnel, at no additional cost to DPA Contracting Authority, to explain to the DPA Contracting Authority Representative and DPA Contracting Authority's advisors the intent of Dev Co's DPA Schedule 3 Submittals, including as to its satisfaction of the Agreement.

3.9 Revisions

- (a) Dev Co shall ensure that DPA Schedule 3 Submittals keep the same, unique reference number throughout the review process, and that subsequent revisions of the same DPA Schedule 3 Submittal are identified by a sequential revision number. Correspondence related to such DPA Schedule 3 Submittal shall reference the reference number and revision number.
- (b) Re-submittals shall clearly show all revisions from the previous DPA Schedule 3 Submittal. Bound and digital 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.

- (c) 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 DPA Schedule 3 Submittal. Electronic versions of the DPA Schedule 3 Submittal shall identify the persons who initialled the revisions to the printed version of the DPA Schedule 3 Submittal.

3.10 Audit by the DPA Contracting Authority Representative

- (a) Without limiting any other right under the Agreement, the DPA Contracting Authority Representative shall have the right to audit all DPA Schedule 3 Submittals, including comparing all DPA Schedule 3 Submittals to previous DPA Schedule 3 Submittals.
- (b) If during an audit or at any other time it is discovered by DPA Contracting Authority or Dev Co that any DPA Schedule 3 Submittals were not correctly developed or, if applicable, complied with or implemented, Dev Co shall at its sole cost, immediately take all necessary steps to correct and modify the applicable DPA Schedule 3 Submittals and, if applicable, the DPA Works to which they relate and shall advise the DPA Contracting Authority Representative of all such corrections and modifications.

3.11 DPA Variations

- (a) If, having received comments from the DPA Contracting Authority Representative on any DPA Schedule 3 Submittal, Dev Co considers that compliance with those comments would amount to a DPA Variation, Dev Co shall, within 10 Business Days of receipt of and before complying with the comments, provide Notice to DPA Contracting Authority of the same and, if it is agreed by the Parties, or is determined pursuant to the DPA Dispute Resolution Procedure, that a DPA Variation would arise if the comments were complied with, DPA Contracting Authority may at its election, either deal with it in accordance with Schedule 6 – DPA Variation Procedure or amend its comment on the DPA Schedule 3 Submittal. Any failure by Dev Co to notify DPA Contracting Authority in accordance with this Section 3.11 that Dev Co considers compliance with any comments of the DPA Contracting Authority Representative would amount to a DPA Variation shall constitute an irrevocable acceptance by Dev Co that any compliance with the DPA Contracting Authority Representative’s comments shall be without cost to DPA Contracting Authority and without any extension of time.

4. DRAFT PROJECT AGREEMENT FINALIZATION PROCESS

4.1 DPA Contracting Authority Draft Project Agreement Revisions

- (a) Without limiting any of Sections 5.4(b), 5.7 or 6.3 but subject to DPA Section 12.1(c)(iii) of the Agreement, DPA Contracting Authority may, from time to time prior to the earlier to occur of the Final Checkpoint and the date that is 10 Business Days prior to the Project Proposal Submission

Deadline, in its sole discretion, (i) make revisions to the Draft Project Agreement, and (ii) reissue the Draft Project Agreement in whole or in part to Dev Co, provided that DPA Contracting Authority may only make any such revisions to or reissue the Draft Project Agreement (including to reflect the implementation of Dev Co's DPA Submittals in the Draft Project Agreement) within the period that is 10 Business Days in advance of the Project Proposal Submission Deadline if DPA Contracting Authority obtains the prior consent of Dev Co.

(b) Dev Co shall, at its cost and expense, be permitted to provide comments on or object to any revisions to the Draft Project Agreement made by DPA Contracting Authority pursuant to Section 4.1(a), provided that:

(i) DPA Contracting Authority shall not be required to accept any such comments provided by Dev Co or revise the Draft Project Agreement to accommodate any such comments; and

(ii) Dev Co shall not object to any such revisions to the Draft Project Agreement,

unless Dev Co demonstrates to DPA Contracting Authority's reasonable satisfaction that such revisions would (A) cause the Facility or the performance of the Project Operations under the Final Project Agreement to fail to comply with Applicable Law; or (B) have a material and adverse effect on (I) the performance of the Project Operations under the Final Project Agreement in a manner that would not be financially compensable to Project Co under the Final Project Agreement, or (II) the ability of Dev Co to obtain the Financing or perform its obligations in accordance with Section 6.3.

(c) If, in accordance with Section 4.1(b), Dev Co provides any comments on or objects to any revisions to the Draft Project Agreement made by DPA Contracting Authority pursuant to Section 4.1(a), then DPA Contracting Authority may withdraw such Draft Project Agreement revisions or make further revisions to the Draft Project Agreement to accommodate such comments or objection, and, in such an event, the provisions of Section 4.1(b) shall apply to such further revisions to the Draft Project Agreement.

(d) In the event that Dev Co fails to provide any comments on or object to any revisions to the Draft Project Agreement made by DPA Contracting Authority pursuant to Section 4.1(a) within 10 Business Days of receipt of notice of revisions to or reissuance of the Draft Project Agreement (or such longer period agreed to by the Parties, acting reasonably), then, for the purposes of the Agreement, Dev Co shall be deemed to have approved of and be satisfied with such revisions to the Draft Project Agreement.

4.2 Draft Project Agreement Negotiations Process

(a) Each of the Parties agrees to:

(i) subject to and in accordance with this Section 4.2, use reasonable commercial efforts to negotiate and finalize, at its own cost and expense, with the other Party the Negotiable Draft Project Agreement Provisions other than the provisions described in Section 6.3(a)(ii), which shall be finalized in accordance with such Section and not in accordance with this Section 4.2; and

- (ii) subject to Section 2.8(b), use reasonable commercial efforts to achieve Draft PA Negotiations Process Completion prior to the scheduled date for the Final Checkpoint and in any event by no later than the Project Proposal Submission Deadline.

4.3 Scheduling of Draft Project Agreement Negotiations Process

- (a) As soon as practicable following the Effective Date, the Parties agree to:
 - (i) meet and collaboratively develop a list of the Negotiable Draft Project Agreement Provisions to be negotiated and a schedule and target deadlines for the conduct and completion of the Draft Project Agreement Negotiations Process, which will permit the completion of the process by a date as far in advance of the scheduled date for the Final Checkpoint and the Project Proposal Submission Deadline in the DPA Works Schedules as possible, taking into account factors that include:
 - A. the technical, commercial and financial input required to commence and complete such negotiations, including to reflect that certain DPA Works may be required to be completed to allow for such negotiations to commence or be completed;
 - B. the expected duration of such negotiations; and
 - C. the priority and importance to the Project and the Parties of each particular item to be negotiated; and
 - (ii) include such schedule and deadlines in the DPA Works Schedules and update them to reflect the progress of the DPA Works and the actual conduct of the Draft Project Agreement Negotiations Process in accordance with DPA Section 10.3 of the Agreement.

4.4 Conduct of the Draft Project Agreement Negotiations Process

- (a) Each Party agrees to act reasonably, in good faith and without any unreasonable delay in the negotiation and finalization of the Negotiable Draft Project Agreement Provisions, and that such negotiations shall be carried out on the basis of the following general principles:
 - (i) the Parties will establish a collaborative and transparent negotiations culture and at all times will act in a manner that is consistent with a “best for project” approach to undertaking and completing negotiations;
 - (ii) negotiations may not result in any material non-conformant term being inserted into the Draft Project Agreement or, except with the agreement of DPA Contracting Authority in writing, any alteration of any material commercial, technical or legal term of the Draft Project Agreement not set out in the Negotiable Draft Project Agreement Provisions;
 - (iii) the Parties will seek to create exceptional value and efficiencies for the Project and mutual benefits for the Parties;
 - (iv) the Parties will establish, maintain and promote a value for money approach with respect to undertaking and completing such negotiations;

- (v) the outcomes of such negotiations shall be consistent with the principles set out in the recitals to the Draft Project Agreement which guide the financing and procurement of public infrastructure projects in Ontario; and
 - (vi) the Parties will use reasonable commercial efforts to undertake and complete such negotiations in a manner that minimizes the likelihood of DPA Disputes, including DPA Disputes that are referred for resolution pursuant to the DPA Dispute Resolution Procedure.
- (b) The Parties shall meet regularly as required and use reasonable commercial efforts to successfully complete the negotiation and finalization of the Negotiable Draft Project Agreement Provisions, to provide all required Draft PA Provisions Approval Notices and to achieve Draft PA Negotiations Process Completion by each of the applicable deadlines set out in the DPA Works Schedules.
- (c) Dev Co acknowledges and agrees that during and for the purposes of completing the Draft Project Agreement Negotiations Process:
- (i) while Dev Co is permitted to propose revisions to and drafting for the Negotiable Draft Project Agreement Provisions to DPA Contracting Authority, DPA Contracting Authority shall be responsible for drafting and from time to time reissuing to Dev Co revised versions of the Draft Project Agreement (in whole or in part) that reflect any proposed revisions to the Negotiable Draft Project Agreement Provisions and any final revisions to the Negotiable Draft Project Agreement Provisions approved by the Parties in Draft PA Provisions Approval Notices;
 - (ii) Dev Co shall, without any unreasonable delay, submit information, documentation and proposed drafting and revisions requested by DPA Contracting Authority from time to time that will allow DPA Contracting Authority to revise or draft the Negotiable Draft Project Agreement Provisions pursuant to Section 4.4(c)(i); and
 - (iii) Dev Co shall, if required and without any unreasonable delay, provide written comments on the revised Negotiable Draft Project Agreement Provisions circulated by DPA Contracting Authority pursuant to Section 4.4(c)(i).

4.5 Approval of Finalized Negotiable Draft Project Agreement Provisions

- (a) If and when DPA Contracting Authority and Dev Co have finalized any revised Negotiable Draft Project Agreement Provisions, each Party Representative shall confirm and evidence its approval of such final provisions in a Notice delivered to the other Party Representative without any unreasonable delay (each a “**Draft PA Provisions Approval Notice**”).
- (b) The Draft Project Agreement Negotiations Process will be formally completed (“**Draft PA Negotiations Process Completion**”) when all of the Draft PA Provisions Approval Notices in respect of all of the Negotiable Draft Project Agreement Provisions have been delivered by each Party Representative to the other Party Representative in accordance with Section 4.5(a).

4.6 Failure to Achieve Draft PA Negotiations Process Completion

(a) Notwithstanding anything to the contrary in the Agreement, subject to complying with their respective obligations in this Section 4 and other obligations in the Agreement and without limiting any obligation or liability of a Party in the Agreement:

(i) no Party shall be under any obligation or liability to the other Party under the Agreement if and solely on the basis that the Parties fail to finalize any of the Negotiable Draft Project Agreement Provisions, deliver any Draft PA Provisions Approval Notice or achieve Draft PA Negotiations Process Completion by the scheduled date for the Final Checkpoint or the Project Proposal Submission Deadline; and

(ii) unless otherwise agreed by the Parties in writing, in the event that Draft PA Negotiations Process Completion is not achieved and the Final Checkpoint has not occurred by the Project Proposal Submission Deadline, then at the election of DPA Contracting Authority, in its sole discretion and without limiting any right of DPA Contracting Authority pursuant to Schedule 6 – DPA Variation Procedure:

A. DPA Contracting Authority shall, by way of Notice to Dev Co, direct Dev Co to complete the DPA Works in accordance with the Agreement, provided that:

(1) notwithstanding anything to the contrary in the Agreement and that a Final Project Agreement will not be executed or delivered, the DPA Works may include the completion of the design of the Facility and all Design Data in accordance with the requirements of the Agreement;

(2) Dev Co shall not submit a Project Proposal or perform or be paid for any of its obligations described in Sections 5 and 6 or any other portions of the DPA Scope of Work identified in such Notice that DPA Contracting Authority no longer requires Dev Co to perform, which, subject to and in accordance with Schedule 6 – DPA Variation Procedure, shall be removed by the Parties from the DPA Scope of Work by way of a DPA Variation; and

(3) DPA Sections 13.2(b) and 13.2(c) of the Agreement shall no longer be applicable or have any force or effect; or

B. DPA Contracting Authority shall terminate the Agreement pursuant to DPA Section 19.1 of the Agreement,

Without limiting the generality of the foregoing, DPA Contracting Authority acknowledges that any such failure by Dev Co shall not be or be deemed to be a Dev Co Event of Default under the Agreement, including pursuant to DPA Section 18.1(a)(ii) of the Agreement, provided that it has otherwise complied with its obligations in respect of such negotiations.

(b) Subject to Section 4.6(c), the Parties agree that, unless otherwise agreed by the Parties in writing, the Project Proposal Submission Deadline shall be automatically extended to allow for the

resolution of any DPA Dispute referred for resolution pursuant to the DPA Dispute Resolution Procedure that arises in respect of the Draft Project Agreement Negotiations Process.

- (c) The Parties agree that nothing in this Section 4 limits any right of DPA Contracting Authority pursuant to the Agreement to revise the Project Proposal Submission Deadline in accordance with this Schedule 3 or the rights of DPA Contracting Authority pursuant to DPA Section 19.1 of the Agreement.

5. PROJECT PROPOSAL STAGE

5.1 Dev Co to Submit Project Proposal

- (a) Dev Co shall submit a formal and binding proposal to DPA Contracting Authority that will permit Project Co to have an opportunity to enter into a Final Project Agreement with the Hospital in respect of the Project (the “**Project Proposal**”), subject to and in accordance with this Section 5.

5.2 Project Proposal Content and Requirements

- (a) Dev Co shall:
 - (i) develop the Project Proposal in accordance with the requirements set out in Appendix 3 – Project Proposal Content and Requirements to this Schedule 3 and any format requirements provided by DPA Contracting Authority; and
 - (ii) as part of the Project Proposal, complete and where required, execute or cause the execution of, all documents required, and in form and substance provided, by DPA Contracting Authority, acting reasonably, in order to give legal effectiveness to or to support the submission of the Project Proposal, including a binding Project Proposal offer form, a price form, a summary of proposal cost form, and declarations from certain Dev Co Parties identified by DPA Contracting Authority (including in respect of Conflicts of Interest).

5.3 Dev Co Project Investigations

- (a) For the purposes of Dev Co’s Project Proposal:
 - (i) Dev Co shall, at its own cost and expense, be solely responsible for carrying out its own independent research, due diligence and other investigations (including by seeking independent advice) considered necessary by it to satisfy itself as to all existing conditions affecting the Project and the Draft Project Agreement. Dev Co’s obligations in this Section 5.3 apply irrespective of any DPA Background Information contained in the Agreement (including the Draft Project Agreement), any information received by Dev Co or any Dev Co Party during the DPA Term (including any Background Information), or any other background or reference information or documents prepared by DPA Contracting Authority or a DPA Contracting Authority Party or by any other third parties and which may be made available to Dev Co or the Dev Co Parties by or through DPA Contracting Authority or a DPA Contracting Authority Party. Dev Co’s obligation to carry out independent research, due diligence and other investigations, and, if applicable, its ability to rely on information provided by or through DPA Contracting Authority or any DPA

Contracting Authority Party related to the Project is more particularly set out in the Draft Project Agreement; and

- (ii) except as explicitly provided in the Agreement, DPA Contracting Authority does not represent or warrant, and except as explicitly provided in the Draft Project Agreement, Contracting Authority shall not represent and warrant, the accuracy or completeness of any information set out in the DPA Background Information or Background Information, or of any other background or reference information or documents prepared by DPA Contracting Authority or a DPA Contracting Authority Party, or by any other third parties and which may be made available to Dev Co or the Dev Co Parties by or through DPA Contracting Authority or a DPA Contracting Authority Party. Dev Co and the Dev Co Parties shall make such independent assessments as they consider necessary to verify and confirm the accuracy and completeness of all such information and documents as any use of or reliance by Dev Co and the Dev Co Parties on any and all such information and documents shall be at Dev Co's and the Dev Co Parties' sole risk and without recourse against DPA Contracting Authority or a DPA Contracting Authority Party.

5.4 Submission of Project Proposal

- (a) Dev Co shall submit its Project Proposal to DPA Contracting Authority following the Final Checkpoint and on or before the Project Proposal Submission Deadline, which, subject to Section 8.1 of Appendix 5 – Financing Process to this Schedule 3, shall not reflect any binding commitment of Dev Co in respect of the Financing.
- (b) The Parties agree that the Project Proposal Submission Deadline may be altered:
 - (i) unilaterally by DPA Contracting Authority (including materially altered), and, in such an event, any such alteration shall be effected by way of a DPA Variation, subject to and in accordance with Schedule 6 – DPA Variation Procedure, provided that Dev Co shall only be entitled to additional compensation and schedule relief under the Agreement if and to the extent that such DPA Variation results in a material increase in Dev Co's costs and schedule to perform the DPA Works and provided that the alteration by DPA Contracting Authority of the Project Proposal Submission Deadline did not result from any failure of Dev Co or any Dev Co Party to perform its obligations in accordance with the requirements of the Agreement;
 - (ii) in accordance with Section 4.6(b);
 - (iii) by agreement between the Parties in writing, both acting reasonably and without any unreasonable delay or any requirement for the Parties to amend the Agreement;
 - (iv) as a result of a Force Majeure Event; and
 - (v) as a result of a DPA Variation other than as set out in Section 5.4(b)(i).
- (c) The Project Proposal shall be irrevocable and shall remain in effect for 145 days after it is submitted to DPA Contracting Authority pursuant to this Section 5 (the “**Project Proposal Validity Period**”).

- (d) Notwithstanding Section 5.5(c), the Parties agree that, in the event that the Project Proposal as a whole (including, for clarity, as updated by Dev Co pursuant to Section 5.6(a)) receives a comment from DPA Contracting Authority of “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE” pursuant to Section 5.5(a)(iv), then, without limiting any right of DPA Contracting Authority under the Agreement, the Project Proposal Validity Period shall be automatically extended by the amount of time required for DPA Contracting Authority to review the Project Proposal and provide such comment to Dev Co in accordance with Section 5.5(a) and for Dev Co to correct, rectify and resubmit the Project Proposal in accordance with Section 5.5(c) such that the Project Proposal is capable of subsequently being provided a comment of “NO COMMENT” or “MINOR NON-CONFORMANCE” by DPA Contracting Authority in accordance with Section 5.5(a).
- (e) DPA Contracting Authority may provide a written request to Dev Co to extend the Project Proposal Validity Period. Dev Co may, in its sole discretion, refuse any such request to extend the Project Proposal Validity Period, provided that, notwithstanding any such refusal to extend the Project Proposal Validity Period, Dev Co’s Project Proposal shall continue to be valid and irrevocable in accordance with the Project Proposal Validity Period existing at the time of such request by DPA Contracting Authority.
- (f) If, during the course of Project Proposal Negotiations, Dev Co resubmits prices to DPA Contracting Authority or agrees to revised terms and conditions of the Project Proposal prior to the expiration of the Project Proposal Validity Period, Dev Co shall be deemed to have agreed to an extension of the Project Proposal Validity Period for Dev Co’s amended Project Proposal to a date that is the later of (i) the Project Proposal Validity Period prior to Dev Co’s resubmission to DPA Contracting Authority of the revised prices or revised terms and conditions, and (ii) 95 calendar days after the date of such resubmission.

5.5 DPA Contracting Authority Review and Comment on Project Proposal

- (a) As soon as practicable following DPA Contracting Authority’s receipt of the Project Proposal submitted by Dev Co, DPA Contracting Authority shall review and provide comments to Dev Co on the Project Proposal as follows:
 - (i) the comment “NO COMMENT” will be assigned to those parts of the Project Proposal that, in the opinion of DPA Contracting Authority, conform to the requirements of the Agreement;
 - (ii) the comment “MINOR NON-CONFORMANCE” will be assigned to those parts of the Project Proposal that, in the opinion of DPA Contracting Authority, generally conform to the requirements of the Agreement, but in which immaterial deficiencies have been found by DPA Contracting Authority’s review;
 - (iii) the comment “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE” will be assigned to those parts of the Project Proposal that, in the opinion of the DPA Contracting Authority, contain significant deficiencies or do not generally conform with the requirements of the Agreement; and

- (iv) based on the foregoing comments provided by DPA Contracting Authority on the parts of the Project Proposal, the comment of “NO COMMENT”, “MINOR NON-CONFORMANCE”, “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE” will, in the opinion of DPA Contracting Authority, be assigned to the Project Proposal as a whole on the same basis as set out above in this Section 5.5(a).
- (b) Where DPA Contracting Authority issues the comment “MINOR NON-CONFORMANCE”, “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE” on the Project Proposal pursuant to Section 5.5(a), DPA Contracting Authority shall:
 - (i) provide reasons for the comment, referencing the particulars of the Section(s) of the Agreement that the Project Proposal fails to satisfy, and, if requested by Dev Co, DPA Contracting Authority shall meet with Dev Co to discuss the reasons for the comment; and
 - (ii) set out any requirement for Dev Co to correct, rectify and resubmit all or any part of the Project Proposal that fails to conform with the requirements of the Agreement, and a reasonable time for Dev Co to make such resubmission.
- (c) Following Dev Co’s receipt of any comment from DPA Contracting Authority on the Project Proposal pursuant to Section 5.5(a), Dev Co shall, if required by DPA Contracting Authority pursuant to Section 5.5(b), correct, rectify and resubmit all or the relevant part of the Project Proposal before the expiry of the period of time identified by DPA Contracting Authority.
- (d) If requested by Dev Co, DPA Contracting Authority shall meet with Dev Co to discuss the reasons for any comment provided by DPA Contracting Authority pursuant to Section 5.5(a).

5.6 Updated Project Proposal

- (a) The process for Dev Co to update the Project Proposal in respect of the Financing is set out in and is subject to Section 8.1 of Appendix 5 – Financing Process to this Schedule 3.

5.7 Project Proposal Negotiations

- (a) Without prejudice to or limiting the requirements of Section 5.5, following DPA Contracting Authority’s receipt of the Project Proposal submitted by Dev Co, DPA Contracting Authority may, in its sole discretion, at any time prior to the expiration of the Project Proposal Validity Period, enter into negotiations with Dev Co in respect of its Project Proposal (“**Project Proposal Negotiations**”).
- (b) Notwithstanding DPA Section 4.2 of the Agreement but subject to DPA Sections 12(c)(ii) and 12(c)(iii) of the Agreement, DPA Contracting Authority may use the negotiations process to negotiate any aspect of Dev Co’s Project Proposal or the Draft Project Agreement, or both, including, for greater clarity, any:
 - (i) amendments required by DPA Contracting Authority related to the Financing Proposal contained or reflected within the Project Proposal or to be reflected in the Draft Project Agreement, including to negotiate any aspect of the Financing Proposal with Dev Co that

DPA Contracting Authority determines is unsatisfactory to DPA Contracting Authority, including any indicative Credit Spreads set out in the Financing Proposal; and

- (ii) amendments to the Draft Project Agreement that are required to:
 - A. accommodate the Financing;
 - B. revise the scope or any terms of the Project in the event that Dev Co's prices have exceeded DPA Contracting Authority's affordability constraints (including any such revisions to the payment, financing and other provisions of the Draft Project Agreement that could require Dev Co to restructure or otherwise materially revise the quantum and other terms of the Financing);
 - C. ensure that Dev Co's Level 3 Construction Works Schedule meets the applicable requirements of the Final Project Agreement; and/or
 - D. satisfy DPA Contracting Authority with respect to the current status of Dev Co's health and safety certifications, provided as part of the Project Proposal.
- (c) Notwithstanding any negotiations between DPA Contracting Authority and Dev Co, the Project Proposal shall remain valid and irrevocable until the expiration of the Project Proposal Validity Period, as extended in accordance with Section 5.4(f), or until Financial Close.
- (d) If, in accordance with this Section 5.7, Dev Co and DPA Contracting Authority negotiate revisions to the Final Project Agreement, DPA Contracting Authority and Dev Co shall develop a revised Draft Project Agreement, which, for the purposes of the Agreement shall, subject to Section 6.3(a)(ii), be the "Final Project Agreement".
- (e) The Parties shall use reasonable commercial efforts to complete any Project Proposal Negotiations initiated by DPA Contracting Authority to their mutual satisfaction prior to the expiry of the Project Proposal Validity Period, provided that subject to complying with their respective obligations in this Section 5.7 and other obligations in the Agreement and without limiting any obligation or liability of a Party in the Agreement:
 - (i) no Party shall be under any obligation or liability to the other Party under the Agreement if and solely on the basis that the Party fails to complete to its satisfaction any Project Proposal Negotiations prior to the expiry of the Project Proposal Validity Period; and
 - (ii) unless otherwise agreed by the Parties in writing, in the event the Parties fail to complete to their satisfaction any such Project Proposal Negotiations prior to the expiry of the Project Proposal Validity Period, as extended in accordance with Section 5.4(f), then at the election of DPA Contracting Authority, in its sole discretion and without limiting any right of DPA Contracting Authority pursuant to Schedule 6 – DPA Variation Procedure:
 - A. DPA Contracting Authority shall, by way of Notice to Dev Co, direct Dev Co to complete the DPA Works identified by DPA Contracting Authority in such Notice in accordance with the Agreement, provided that:

- (1) notwithstanding anything to the contrary in the Agreement and that a Final Project Agreement will not be executed or delivered, the DPA Works may include the completion of the design of the Facility and all Design Data in accordance with the requirements of the Agreement; and
- (2) Dev Co shall not perform or be paid for any of its remaining obligations described in this Section 5 and Section 6 or any other portions of the DPA Scope of Work identified in such Notice that DPA Contracting Authority no longer requires Dev Co to perform, which, subject to and in accordance with Schedule 6 – DPA Variation Procedure, shall be removed by the Parties from the DPA Scope of Work by way of a DPA Variation; or

- B. DPA Contracting Authority shall terminate the Agreement pursuant to DPA Section 19.1 of the Agreement.

Without limiting the generality of the foregoing, DPA Contracting Authority acknowledges that any such failure by Dev Co to complete to its satisfaction any such Project Proposal Negotiations shall not be or be deemed to be a Dev Co Event of Default under the Agreement, including pursuant to DPA Section 18.1(a)(ii) of the Agreement, provided that it has otherwise complied with its obligations in respect of such negotiations.

6. COMMERCIAL CLOSE STAGE

6.1 Notice to Proceed to Commercial Close

- (a) Dev Co acknowledges that in the event that DPA Contracting Authority makes any election for the Hospital to proceed to enter into a Final Project Agreement with Project Co following the completion of, *inter alia*, the matters described in Sections 5.5 to 5.7, DPA Contracting Authority shall deliver a Notice to Proceed to Commercial Close to Dev Co pursuant to DPA Section 4.1(b) of the Agreement. DPA Contracting Authority shall, acting reasonably and after consultation with Dev Co, identify target dates for the achievement of Commercial Close (the “**Commercial Close Target Date**”) and Financial Close (the “**Financial Close Target Date**”) in the Notice to Proceed to Commercial Close.
- (b) In the event that, following the completion of any Project Proposal Negotiations, DPA Contracting Authority elects not to deliver a Notice to Proceed to Commercial Close to Dev Co pursuant to DPA Section 4.1(b) of the Agreement or fails to do so before the expiry of the Project Proposal Validity Period, then at the election of DPA Contracting Authority, in its sole discretion and without limiting any right of DPA Contracting Authority pursuant to Schedule 6 – DPA Variation Procedure:
 - (i) DPA Contracting Authority shall, by way of Notice to Dev Co, direct Dev Co to complete the DPA Works identified by DPA Contracting Authority in such Notice in accordance with the Agreement, provided that:
 - A. notwithstanding anything to the contrary in the Agreement and that a Final Project Agreement will not be executed or delivered, the DPA Works may include the

completion of the design of the Facility and all Design Data in accordance with the requirements of the Agreement; and

- B. Dev Co shall not perform or be paid for any of its obligations described in this Section 6 or any other portions of the DPA Scope of Work identified in such Notice that DPA Contracting Authority no longer requires Dev Co to perform, which, subject to and in accordance with Schedule 6 – DPA Variation Procedure, shall be removed by the Parties from the DPA Scope of Work by way of a DPA Variation; or
- (ii) DPA Contracting Authority shall terminate the Agreement pursuant to DPA Section 19.1 of the Agreement.

6.2 Closing Obligations Secured by DPA Closing Letter of Credit

- (a) On the date that is five Business Days following the date DPA Contracting Authority delivers a Notice to Proceed to Commercial Close to Dev Co pursuant to the Agreement, Dev Co shall deliver the DPA Closing Letter of Credit in accordance with DPA Section 16.3 of the Agreement.
- (b) DPA Contracting Authority shall be entitled to draw on the DPA Closing Letter of Credit and retain and apply the proceeds thereof as liquidated damages if:
 - (i) there is a breach by Dev Co of its obligations set out in Section 6.3;
 - (ii) Commercial Close has not occurred for reasons other than the failure of the Hospital and Project Co to execute the Final Project Agreement in accordance with its terms:
 - A. on or before the Commercial Close Target Date; or
 - B. if the Commercial Close Target Date has passed and DPA Contracting Authority has given its consent, on or before the expiration of the Project Proposal Validity Period (or the extended Project Proposal Validity Period, if applicable); or
 - C. Dev Co has notified DPA Contracting Authority in writing that it wishes to cease all discussions with DPA Contracting Authority relating to the Project and Project Co will not enter into the Final Project Agreement with the Hospital.
- (c) DPA Contracting Authority shall not be required to give any prior written notice to Dev Co of its intention to draw on the DPA Closing Letter of Credit. If Dev Co provides Notice to DPA Contracting Authority that Dev Co disputes DPA Contracting Authority's right to draw on the DPA Closing Letter of Credit and to retain the proceeds as liquidated damages, then DPA Contracting Authority shall nonetheless be entitled to draw on the DPA Closing Letter of Credit, but will remain liable to repay all or a portion of the amount drawn, together with interest at the Payment Compensation Amount, until the DPA Dispute has been finally resolved. If Dev Co fails to renew or extend the DPA Closing Letter of Credit at least 30 days prior to its expiry date, DPA Contracting Authority may, at any time without notice to Dev Co, draw on the DPA Closing Letter of Credit and hold the proceeds thereof in the same manner and for the same purposes as the DPA Closing Letter of Credit.

6.3 Dev Co's Closing Obligations

(a) Dev Co shall:

(i) achieve Commercial Close:

A. on or prior to the Commercial Close Target Date; or

B. if the Commercial Close Target Date has passed and DPA Contracting Authority has given its consent, prior to the expiration of the Project Proposal Validity Period (or the extended Project Proposal Validity Period, if applicable),

based on, subject to Section 6.3(a)(ii), the Final Project Agreement in the same form and content as finalized prior to the date DPA Contracting Authority delivered the Notice to Proceed to Commercial Close to Dev Co pursuant to the Agreement or on the Final Project Agreement as revised and agreed to by Dev Co and DPA Contracting Authority;

(ii) execute the Final Project Agreement, subject only to revision in respect of the following:

A. minor changes, additions and modifications necessary to create a legally complete and binding agreement;

B. changes, additions and modifications to those provisions which require,

(1) the insertion or addition of information relating to Dev Co's corporate (including partnership) and funding structure which are not inconsistent with the principles set out in the Final Project Agreement; or

(2) the insertion or addition of information or the modification of provisions of the Final Project Agreement required in order to reflect accurately the nature of Dev Co's relationships with its principal DPA Subcontractors;

C. based on the Project Proposal, changes, additions and modifications required in order to complete any provision or Schedule of the Final Project Agreement; and

D. changes, additions and modifications to those parts of the Final Project Agreement which are indicated in the Final Project Agreement as being subject to completion or finalization,

provided, that, in each case, the changes, additions or modifications identified in this Section 6.3(a)(ii) are consistent with the principles set out in the Final Project Agreement, are consistent with Section 6.3(c), and are otherwise acceptable to DPA Contracting Authority, acting reasonably;

(iii) prior to the expiration of the Project Proposal Validity Period (or the extended Project Proposal Validity Period, if applicable), maintain its prices in accordance with the terms and conditions of the Agreement, subject only to (A) revisions, if any, permitted by

Appendix 5 – Financing Process to this Schedule 3; (B) Section 6.3(c); and (C) any other revisions to the prices explicitly agreed to in writing by DPA Contracting Authority;

- (iv) if applicable, no later than five Business Days after receipt of the Notice to Proceed to Commercial Close pursuant to the Agreement, submit to DPA Contracting Authority for its review the updated Level 3 Construction Works Schedule that reflects the outcome of any negotiations conducted pursuant to Section 5.7(b)(ii)C, meets the applicable requirements of the Final Project Agreement, and will become the Proposed Works Schedule under the Final Project Agreement; and
 - (v) at least two Business Days before Commercial Close, execute an escrow closing procedure agreement with the Hospital and the other parties thereto substantially in the form set out in Appendix 7 – Form of Escrow Closing Procedure Agreement to this Schedule 3 (the “**Escrow Closing Procedure Agreement**”). Dev Co shall be responsible for causing all parties to such agreement other than the Hospital and the Escrow Agent to enter into such agreement.
- (b) Subject to Appendix 5 – Financing Process to this Schedule 3, Dev Co shall provide access and shall promptly make available to DPA Contracting Authority and its advisors, agents and representatives such documentation, financial and technical information as may be reasonably requested by DPA Contracting Authority from time to time in connection with DPA Contracting Authority’s due diligence investigations, including copies of any written representation, statements, assurances, commitments or agreements which Dev Co, the Dev Co Parties or any of their respective advisors have received from any municipality, governmental authority or utility relating to the Project. Dev Co shall provide to DPA Contracting Authority, in a timely fashion, final draft versions of all documents required to be delivered by Dev Co in accordance with the Final Project Agreement, together with such other documentation as DPA Contracting Authority may reasonably request from time to time.
- (c) Unless otherwise agreed by the Parties, by no later than the date that is five Business Days prior to the first Dry Run (as defined in Appendix 5 – Financing Process to this Schedule 3) (the “**Adjustment Date**”), Dev Co shall:
- (i) recalculate and adjust the Remaining Total DPA and Design Works Fixed Price in accordance with DPA Section 13.2(b)(ii) of the Agreement, provided that Dev Co shall only subtract from the Total DPA and Design Works Fixed Price (A) all amounts that were paid or are payable by the Hospital to Dev Co in accordance with DPA Section 13.2(a) of the Agreement in respect of all DPA Works performed during the DPA Term up to and including the Final Payment DPA Works, and (B) any Cash Allowance Amounts that have not been paid and are not payable by the Hospital to Dev Co in accordance with DPA Section 13.4 of the Agreement where the Total DPA and Design Works Fixed Price has not been reduced by such Cash Allowance Amounts in accordance with DPA Section 13.4(g)(vi) of the Agreement as of the Adjustment Date;
 - (ii) update its Financing Proposal (including its Financial Model) to reflect such adjusted Remaining Total DPA and Design Works Fixed Price; and

- (iii) submit the adjusted Remaining Total DPA and Design Works Fixed Price and updated portions of the Financing Proposal to DPA Contracting Authority for its review and approval, not to be unreasonably withheld or delayed, together with all supporting details, calculations and documentation necessary for DPA Contracting Authority to verify, understand and approve of such adjusted Remaining Total DPA and Design Works Fixed Price and updated portions of the Financing Proposal.
- (d) Subject to Appendix 5 – Financing Process to this Schedule 3, no later than 30 days prior to the Financial Close Target Date, Dev Co shall deliver to DPA Contracting Authority drafts of all documents referred to in Section 1 of Schedule 2 – Completion Documents of the Final Project Agreement.
- (e) Dev Co acknowledges and agrees that:
 - (i) further to Section 5.4(c), DPA Contracting Authority, in its sole discretion, may incorporate certain parts of its Project Proposal into the Final Project Agreement as Project Co Proposal Extracts. Notwithstanding the foregoing, DPA Contracting Authority shall act reasonably in incorporating any specific part of the Project Proposal into the Project Co Proposal Extracts where Dev Co demonstrates to DPA Contracting Authority that incorporating such part of the Project Proposal into the Project Co Proposal Extracts (the “**Specific Project Proposal Part**”) without also incorporating a related specific part(s) of the Project Proposal into the Project Co Proposal Extracts will (A) materially adversely change the intent, or materially prejudice the interpretation, of the Specific Project Proposal Part or the Final Project Agreement, as contemplated by the Project Proposal; or (B) otherwise materially adversely affect the performance of the Project Operations by Project Co under the Final Project Agreement; and
 - (ii) save and except for any Project Co Proposal Extracts, on Commercial Close, its Project Proposal will be superseded entirely by the Final Project Agreement and rendered null and void in accordance with Section 1.1(d) of the Final Project Agreement.

6.4 DPA Contracting Authority – Authorization and Approvals

- (a) Dev Co acknowledges and agrees that the Hospital entering into of the Final Project Agreement with Project Co pursuant to the Agreement is conditional on and subject to DPA Contracting Authority obtaining any necessary authorizations and approvals required in connection with the Project, including, for certainty, the approval of any relevant Governmental Authority.

6.5 Achievement of Commercial Close

- (a) Notwithstanding anything to the contrary in the Agreement but without limiting any provision of the Final Project Agreement (including Section 2.5(a)(ii) of the Final Project Agreement), no Party may, as of and following the day prior to Commercial Close, commence any claim or DPA Dispute against the other Party under the Agreement related to the Development Phase PA Works performed under the Agreement, except for any claim or DPA Dispute related to the Hospital’s obligation to pay Dev Co amounts invoiced for the performance of the Development Phase PA Works in accordance with the Agreement which are not yet payable in accordance with the terms of the Agreement as of Commercial Close (including any claim or DPA Dispute related to any

Liens or any holdbacks or set-offs made by DPA Contracting Authority from such payments pursuant to the Agreement), which, if any such claim or DPA Dispute arises, shall, subject to Section 6.5(b), be commenced in accordance with the Agreement following Commercial Close and shall not be commenced under the Final Project Agreement.

- (b) The Parties agree that the Hospital entering into the Final Project Agreement with Project Co pursuant to the Agreement on Commercial Close shall automatically and immediately constitute a waiver by Dev Co of all claims whatsoever against DPA Contracting Authority under the Agreement, arising prior to Commercial Close, except:
 - (i) without limitation to the specific Notice requirements in the Agreement, those made in writing by Dev Co to DPA Contracting Authority arising prior to Commercial Close and still unresolved; and
 - (ii) any claim which could not reasonably have been known to Dev Co or a Dev Co Party prior to Commercial Close following due diligence.
- (c) Notwithstanding DPA Section 32(a) of the Agreement, no further waiver in writing from Dev Co is required in order to give effect to the waiver set out in Section 6.5(b).

APPENDIX 1

DPA TECHNICAL SUBMITTALS AND REQUIREMENTS

1. **Definitions and General**

- (a) In this Appendix 1, unless the context otherwise requires or a contrary intention appears, (i) capitalized terms which are defined in the Agreement and not otherwise defined in this Appendix 1 shall have the meanings given to them in the Agreement, and (ii) capitalized terms which are not defined in the Agreement or in this Appendix 1 shall have the meanings given to them in the Draft Project Agreement, and the following terms shall have the following meanings:
- (i) “**100% SD**” means the 100% Schematic Design Stage;
 - (ii) “**30% DD**” means the 30% Design Development Stage;
 - (iii) “**60% DD**” means the 60% Design Development Stage;
 - (iv) “**90% DD**” means the 90% Design Development Stage;
 - (v) “**Alternative System**” means any alternative system to the Geo-Exchange System and the Baseline System proposed by Dev Co as part of the “Geo-Exchange System Business Case” which achieves similar or better levels of energy performance and greenhouse gas intensity as the Geo-Exchange System;
 - (vi) “**Baseline System**” means the mechanical system for the Facility described in Schedule 15 – Output Specifications of the Draft Project Agreement;
 - (vii) “**Construction Risk Contingency Amount**” has the meaning given in Schedule 16 – DPA Term Governance, Meetings and Progress Reporting of the Agreement;
 - (viii) “**IDS**” means the Initial Development Stage;
 - (ix) “**Geo-Exchange System**” means a system that exchanges heat with the earth or a body of water, usually with the goal of providing efficient heating and cooling using heat pumps; and

- (x) “PP” means the Project Proposal.
- (b) Table 1 of this Appendix 1 describes the DPA Technical Submittals and the requirements in respect of the development, content and timing of submission by Dev Co to DPA Contracting Authority of the DPA Technical Submittals in accordance with the Agreement, including Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- (c) Each DPA Technical Submittal must satisfy each of the applicable requirements of Schedule 3 – DPA Submissions and Project Development Process of the Agreement, and be well developed, detailed and robust.
- (d) The DPA Technical Submittals described in Table 1 of this Appendix 1 under the headings “Construction Cost Estimates”, “Services Cost Estimates”, “Lifecycle Replacement Schedule”, “Lifecycle Replacement and Refurbishment Plan”, “Risk Submissions” and “Cost Estimate Submittals Summary” to be submitted by Dev Co during 30% DD, 60% DD and 90% DD, shall be subject to the following additional requirements:
 - (i) with respect to such submittals to be submitted to DPA Contracting Authority during each of 30% DD and 60% DD, such submittals shall be submitted to DPA Contracting Authority in accordance with the Agreement by no later than the date that is 30 days following the submission of the last DPA Works Submittal that is a Design Development Submittal to be submitted during such stage; and
 - (ii) with respect to such submittals to be submitted to DPA Contracting Authority during 90% DD, such submittals shall be submitted to DPA Contracting Authority in accordance with the Agreement by no later than the date that is 21 days following the submission of the last DPA Works Submittal that is a Design Development Submittal to be submitted during such stage.

For clarity, Dev Co is not required to submit a “draft” of any of the DPA Technical Submittals referred to in this Section 1(d) at the time of submission of the DPA Works Submittals that are Design Development Submittals.

Table 1: DPA Technical Submittals and Requirements

DPA TECHNICAL SUBMITTAL		REQUIREMENTS	SUBMISSION FREQUENCY / TIMING						
CATEGORY	SUB-CATEGORY		IDS	100% SD	30% DD	60% DD	90% DD	PP	OTHER
Project Cost Estimate and Potential Project De-Scoping		Dev Co shall prepare and submit: (i) a high-level cost estimate for the Project to Unifomat Level 1 with the additional details of B10, E10, E20 and F30 , each developed to Unifomat Level 2; and (ii) following consultation with and in accordance with the direction of DPA Contracting Authority, a report setting out any potentially required or recommended Project De-Scoping.	x						
Geo-Exchange System Business Case		Dev Co shall prepare a business case on the feasibility of incorporating a Geo-Exchange System and any Alternative System into the Project, including into the design of the Facility, following the Effective Date. 1. The business case shall be comprised of, at a minimum, the following information: (i) a recommended design for the Geo-Exchange System and any Alternative System; (ii) an energy and greenhouse gas emissions analysis of the impact of each of the Geo-Exchange System, the Baseline System and any Alternative System on the Facility; (iii) details on the constructability of the Geo-Exchange System and any Alternative System; (iv) an anticipated design and construction schedule and any phasing impacts of including the Geo-Exchange System and any Alternative System in the Facility’s final design; (v) a Target Energy Model that meets the requirements of the Draft Project Agreement, is adjusted to account for the Geo-Exchange System and any Alternative System, and is based on the relevant information contained in the DPA Background Information; (vi) a comparison of the Geo-Exchange System to the Baseline System and any Alternative System, which shall include a comparison of: A. indicative pricing (capital costs) and an analysis of the 30-year life cycle costs associated with each of the Geo-Exchange System, the Baseline System and any Alternative System; B. a narrative on how each of the Geo-Exchange System, Baseline System, and any Alternative System will contribute to the zero carbon transition plan and what further options may be incorporated in the future to achieve operational carbon neutrality for the Facility; and C. a sensitivity analysis to demonstrate the impact of increased carbon tariffs, natural gas costs, and electrical costs on each of the Geo-Exchange System, Baseline System and any Alternative System; and (vii) a detailed explanation of the methodology used to estimate energy consumption and greenhouse gas intensity for each of the Geo-Exchange System, Baseline System, and any Alternative System, including details with respect to any assumptions made by Dev Co. 2. The business case shall: (i) align with the illustrative schematic design energy model outputs contained in the DPA Background Information; (ii) be based on: A. the preliminary studies conducted by DPA Contracting Authority provided as part of the DPA Background Information; and		x					

**Trillium Health Partners M-Site Redevelopment
P3 DBFM Project**

**Development Phase Agreement
Appendix 1 to Schedule 3
Redacted Version**

DPA TECHNICAL SUBMITTAL		REQUIREMENTS	SUBMISSION FREQUENCY / TIMING						
CATEGORY	SUB-CATEGORY		IDS	100% SD	30% DD	60% DD	90% DD	PP	OTHER
		<p>B. the Geo-Exchange System being comprised of [REDACTED] wells, each [REDACTED] feet deep, as described in the DPA Background Information;</p> <p>(iii) as part of the comparison of the Geo-Exchange System to the Baseline System and any Alternative Systems, maintain consistency with respect to any system, load or element not directly impacted by conversion to a Geo-Exchange System, such as process loads, lighting loads and building envelope. If demand response is considered as part of any Alternative System, it must be applied to the analysis of the Geo-Exchange System and the Baseline System and the impact of any direct fossil fuel usage in terms of cost and emissions must be captured in the analysis;</p> <p>(iv) as part of the 30-year life cycle cost analysis for each of the Geo-Exchange System, Baseline System, and any Alternative System, consider the total cost of energy, including carbon tariffs and potential for different escalation rates for fuels, and costs relating to operations, maintenance and lifecycle equipment replacement. All costs and rates included in such analysis shall remain the same for each of the Geo-Exchange System, Baseline System, and any Alternative System; and</p> <p>(v) include a detailed breakdown of all capital and maintenance costs referenced in the business case.</p> <p>3. The business case shall take into account that the Baseline System exceeds the minimum energy efficiency requirements of SB-10 of the Ontario Building Code, and that the Baseline System performance is captured by the energy and greenhouse gas targets outlined in Part 3 of Schedule 15 – Output Specifications of the Draft Project Agreement.</p> <p>4. All capital costs identified in the business case shall include materials, labour and, if applicable, costs associated with increased building area and utilities to accommodate Dev Co’s solution. For example, if the installation of electric boilers will increase utility service to the Facility and result in the need to expand the size of the boiler room, the capital cost will include the cost of the increased utility service and the cost for increasing the boiler room or Dev Co must provide a justification on how it can be fit within the space proposed within the illustrative schematic design.</p> <p>5. Dev Co is to refer to the DPA Background Information for (i) sketches related to geo-exchange, including the “Geothermal Foundation Coord” sketch, which indicate the estimated maximum number of wells that could be installed on the Site, (ii) the indicative schedule based on the preliminary diligence undertaken by DPA Contracting Authority, and (iii) the illustrative schematic design energy model outputs.</p> <p>6. For clarity, a Geo-Exchange System is not contemplated as part of the current scope of the Project, including its base building design. Should the decision be made by DPA Contracting Authority during the DPA Term to include a Geo-Exchange System as part of the Project, then, without limiting any right of DPA Contracting Authority in the Agreement, the DPA Works and Project Operations to be performed by Project Co following Commercial Close in respect of such system shall be included in the Agreement and the Draft Project Agreement (including by the provision by DPA Contracting Authority of specifications and requirements for such Geo-Exchange System in an updated version of Part 1 of Schedule 15 – Output Specifications of the Draft Project Agreement) in accordance with the Agreement, including, as required, by way of a DPA Variation.</p>							
Remaining Works Business Case		Dev Co shall prepare a business case (the “BCRW”) to fully inform DPA Contracting Authority during the early phases of the DPA Term of the actual and potential implications on the Project and future operations of the Hospital at the Lands of the potential deletion of certain Remaining Works and the related Project Co Services described in paragraph 1.i of this row below	x	x					

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from the scope of the Project (the “**Proposed Remaining Works De-Scoping**”), including on the estimated costs to be incurred by DPA Contracting Authority and the Hospital in connection with the Proposed Remaining Works De-Scoping.

1. The BCRW shall, at a minimum:
 - i. in the Outline BCRW submittal (as defined in paragraph 3 of this row below):
 - A. set out and consider the following Proposed Remaining Works De-Scoping option (the “**RWs De-Scoping Option**”):
 1. the existing, vacated and former Trillium Health Mississauga Hospital facilities shall not be demolished, and shall remain unoccupied and unused; basic maintenance and security services and other works at such facilities described in paragraph 2 of this row below shall be provided; no subsequent Project Operations on the Lands related to such option shall be performed; and the J-Wing must be retained as a functional facility;
 - B. assess and determine the J-Wing’s highest and best post-acute use;
 - C. compare the actual and potential implications of the RWs De-Scoping Option (including its estimated costs) against the portion of the existing scope of the Project set out in the Agreement and Draft Project Agreement impacted by the option (including its estimated costs); and
 - D. identify whether or not Dev Co recommends the RWs De-Scoping Option.

Dev Co shall collaborate with DPA Contracting Authority in developing the RWs De-Scoping Option prior to and during the development of the Outline BCRW;
 - ii. identify the impacted scope of the DPA Works and Project Operations to be performed by Project Co following Commercial Close by reference to the applicable provisions of the Agreement and the Draft Project Agreement that will be impacted by the Proposed Remaining Works De-Scoping, including to the Output Specifications and Schedule 10 – Review Procedure of the Draft Project Agreement, and propose revisions to such provisions;
 - iii. identify the required and related scope changes to the Site Plan Approval submissions, other Permits, Licences, Approvals and Agreements and phasing plans, resulting from the Proposed Remaining Works De-Scoping, including, in particular, as a result of not demolishing the existing, vacated and former hospital that impact the functional needs of the Facility (including the access ramp to P1 and P2; the relocation of utilities; etc.). Provide alternatives and mitigating measures to constraints imposed by the impacted change in scope;
 - iv. provide a narrative description and accompanying site, phasing and building plans related to the revised Project Operations scope related to the Proposed Remaining Works De-Scoping;
 - v. provide an assessment of the constraints and costs related to the deletion or deferral of the Remaining Works to have been completed after the demolition of the existing, vacated and former hospital, including site remediation, the establishment of new services distribution, campus roads, surface parking, landscape open space

DPA TECHNICAL SUBMITTAL		REQUIREMENTS	SUBMISSION FREQUENCY / TIMING						
CATEGORY	SUB-CATEGORY		IDS	100% SD	30% DD	60% DD	90% DD	PP	OTHER
		<p>and serviced development parcels, as well as the loss or deferral of hospital revenue from the future development on the Lands;</p> <p>vi. provide an assessment of the implications for the municipal land use planning approvals described above in this paragraph, including on the existing Site Plan Approvals process. If and to the extent time permits, such assessment shall be based on Dev Co’s consultations with Governmental Authorities, including the City of Mississauga, approved by DPA Contracting Authority;</p> <p>vii. provide revised Project timelines, showing a comparison to the Project’s schedules;</p> <p>viii. in each of the IDS and 100% SD DPA Submittals, provide revised Project cost estimates on the same basis as the cost estimates separately submitted by Dev Co described in this Table 1 in respect of the same stage. For greater certainty, all capital costs identified in the BCRW shall include materials, labour, overhead and profit and management fees; and</p> <p>ix. be submitted in accordance with paragraph 3 of this row below.</p> <p>2. Dev Co shall collaborate with DPA Contracting Authority to identify a comprehensive list and quantification in the BCRW of one-time and ongoing operational and other non-capital costs (other costs) associated with the Proposed Remaining Works De-Scoping. To the extent applicable, the BCRW shall base other costs on the maintenance of the former, vacated and existing hospital for five years following Substantial Completion. Such other costs include:</p> <p>i. the maintenance in good repair of such hospital facilities, including the building envelope and minimal mechanical and electrical systems as required to permit the future conversion and renovation of the whole or parts of such hospital facilities for other non-acute care occupancies or uses;</p> <p>ii. the abatement of designated substances as required;</p> <p>iii. security for the immediate site and buildings;</p> <p>iv. the maintenance of minimal site services and utilities connections;</p> <p>v. fees, taxes and other assessments paid to service providers and to Governmental Authorities required for the ongoing maintenance of such hospital facilities; and</p> <p>vi. other costs as may be identified by DPA Contracting Authority and reasonably quantified.</p> <p>3. The BCRW shall be developed and submitted as follows:</p> <p>i. an outline BCRW (the “Outline BCRW”) shall be developed and submitted during the IDS; and</p> <p>ii. the full BCRW with respect to the RWs De-Scoping Option shall be developed and submitted during the 100% SD.</p>							

**Trillium Health Partners M-Site Redevelopment
P3 DBFM Project**

**Development Phase Agreement
Appendix 1 to Schedule 3
Redacted Version**

DPA TECHNICAL SUBMITTAL		REQUIREMENTS	SUBMISSION FREQUENCY / TIMING						
CATEGORY	SUB-CATEGORY		IDS	100% SD	30% DD	60% DD	90% DD	PP	OTHER
		<p>4. DPA Contracting Authority shall review the BCRW in accordance with the Agreement, and further provide additional general feedback on the Outline BCRW and select its preferred approach to the RWs De-Scoping Option described in such submittal.</p> <p>5. Should any decision be made by DPA Contracting Authority to revise the scope of the Project in connection with the Proposed Remaining Works De-Scoping for the purposes of the Project, then, without limiting any right of DPA Contracting Authority in the Agreement, such revisions shall be included in the Agreement and the Draft Project Agreement (including Schedule 15 – Output Specifications of the Draft Agreement) and the DPA Works and Project Operations to be performed by Project Co following Commercial Close shall be accordingly amended, in accordance with the Agreement, including, if required, by way of a DPA Variation.</p>							
Scope and Space Tracking Table		Dev Co shall complete and submit Attachment 1 – Scope and Space Tracking Table to this Appendix 1 which sets out in detail the scope and space requirements for the Facility at each Project Checkpoint. Dev Co shall track any adjustments to scope and space requirements of the Facility at the indicated Project Checkpoints as the design is developed. The tracking table will be used to update stakeholders, including the MOH, in respect of the progress of design and any associated scope and space adjustments for the Facility.		x	x	x	x	x	
Construction Cost Estimates		<p><u>General</u></p> <p>(i) Cost code tables are provided in Attachment 2 – Cost Code Tables to this Appendix 1. Cost categories included in such tables are a guide only. Additional or fewer categories may apply to specific Project requirements.</p> <p>(ii) The Construction Cost Estimates are to be based on an appropriate level of design and supporting detail pursuant to the requirements of the applicable Project Checkpoint specified in the Agreement and the applicable requirements of the Draft Project Agreement, including as set out in Schedule 15 – Output Specifications of the Draft Project Agreement.</p> <p>(iii) The Construction Cost Estimates shall be provided in Uniforamt 2010.</p> <p>(iv) The Construction Cost Estimates shall include a suitable design and estimating contingency appropriate for the class of estimate, level of design detail, and risk profile for the Project.</p> <p>(v) The Construction Cost Estimates shall include sufficient cost detail for all construction activities over the Project Term.</p>							
	Coded Cost Estimates	Dev Co shall submit a Class D cost estimate, detailed to Levels 1 and 2		x					
		Dev Co shall submit a Class C cost estimate, summarised to Level 2 costing			x				
		Dev Co shall submit a Class B cost estimate, completed to Level 3 detail, and summarised to Level 2				x			
		Dev Co shall submit a Class B cost estimate, completed to Level 4 detail, and summarised to Level 2					x	x	

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**Trillium Health Partners M-Site Redevelopment
P3 DBFM Project**

**Development Phase Agreement
Appendix 1 to Schedule 3
Redacted Version**

DPA TECHNICAL SUBMITTAL		REQUIREMENTS	SUBMISSION FREQUENCY / TIMING						
CATEGORY	SUB-CATEGORY		IDS	100% SD	30% DD	60% DD	90% DD	PP	OTHER
Services Cost Estimates		<p><u>General</u></p> <p>(i) The Services Cost Estimates are to be based on the applicable requirements for and scope of the Project Co Services set out in the Draft Project Agreement, including as set out in Part 4 of Schedule 15 - Output Specifications of the Draft Project Agreement.</p> <p>(ii) The Services Cost Estimates shall include sufficient cost details for Project Co Services that the Service Provider will be required to provide throughout the Project Term.</p> <p>The Services Cost Estimate shall be itemized as follows and be provided in the form of Attachment 3 – Operating Cost Form to this Appendix 1:</p> <p>(i) Labour Costs (including on-site and off-site corporate costs and administrative labour costs);</p> <p>(ii) Facility Management Services Costs (as required under the Draft Project Agreement), inclusive of third-party subcontracts costs, automation and technological costs;</p> <p>(iii) Scheduled Maintenance Services Costs (including labour, capital costs and subcontractor costs) in accordance with Maintained Elements;</p> <p>(iv) Transition and Mobilization Costs; and</p> <p>(v) Spare Parts and Consumables Costs.</p> <p>Dev Co shall provide to DPA Contracting Authority a preliminary Services Cost Estimate at the 100% Schematic Design Stage, and, at each of the 30% Design Development Stage, 60% Design Development Stage and 90% Design Development Stage, an updated Services Cost Estimate from the previously submitted Services Cost Estimate in order to account for the progression of the Facility’s design and any resulting impacts on the Facility Management Services and Lifecycle Replacement and Refurbishment Services.</p>		X	X	X	X	X	
Lifecycle Replacement Schedule		<p>Dev Co shall complete and submit Attachment 4 – Lifecycle Replacement Schedule Form to this Appendix 1 (the “Lifecycle Replacement Schedule”) in accordance with the instructions set out in such attachment, and shall submit it with the required level of detail as follows:</p> <p>(i) At the 100% Schematic Design Stage, the Lifecycle Replacement Schedule shall be summarized in Uniformat II – Levels 1 and 2 format;</p> <p>(ii) At the 30% Design Development Stage, the Lifecycle Replacement Schedule shall be summarized in– Uniformat II – Level 2 format;</p> <p>(iii) At the 60% Design Development Stage, the Lifecycle Replacement Schedule shall be summarized in Uniformat II – Level 3 detail and summarized to Level 2 format; and</p> <p>(iv) At the 90% Design Development Stage, the Lifecycle Replacement Schedule shall be summarized in Uniformat II – Level 3 detail and summarized to Level 2 format.</p>		X	X	X	X	X	

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MTDOCS 47305997v3

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P3 DBFM Project**

**Development Phase Agreement
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Redacted Version**

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Lifecycle Replacement and Refurbishment Plan		Dev Co shall submit a plan (the “ Lifecycle Replacement and Refurbishment Plan ”) specific to the Project that describes the practices that Project Co will employ related to Lifecycle Replacement and Refurbishment Services, including: (i) a description of how the risk of premature failure will be managed during the Project Term particularly for building elements with less than [REDACTED] % expected useful life remaining at the Expiry Date; (ii) a description of how Project Co will meet the handback requirements of the Draft Project Agreement, including how it will ensure that the quantification of deferred maintenance adheres to the requirements set out in the Draft Project Agreement, providing the Facility Condition Index calculation at year 30 based on the information submitted in Attachment 4 – Lifecycle Replacement Schedule Form to this Appendix 1, and demonstrating that handback requirements can be achieved; (iii) a description of Project Co’s approach to delivering the required lifecycle reports, including the progress report on the capital program included in the Annual Lifecycle Plan, Year-to-Date budget report on spend against the Lifecycle Payment for the relevant Contract Year, and any other monthly and annual reports; and (iv) a description of Project Co’s approach to addressing systemic maintenance issues related to Maintained Elements and its impact on the Lifecycle Replacement and Refurbishment Plan, including how Project Co will update the information submitted in Attachment 4 – Lifecycle Replacement Schedule Form to this Appendix 1 on an annual basis to consider the following: A. results from building condition reports and the Facility Technical Review; B. system performance and maintenance trends, including data from Scheduled Maintenance and Unscheduled Maintenance Activities; C. input from Contracting Authority; and D. findings from risk assessments.					X	X	
Cost Estimate Submittals Summary		Dev Co shall complete and submit Attachment 5 - Cost Estimate Submittals Summary Form to this Appendix 1 to summarize the Construction Cost Estimates, Services Cost Estimates and financial cost estimates. The information to be included in Attachment 5 - Cost Estimate Submittals Summary Form to this Appendix 1 shall align with the information contained in: (i) Attachment 2 - Cost Code Tables to this Appendix 1; (ii) Attachment 3 - Operating Costs Form to this Appendix 1; (iii) Attachment 4 – Lifecycle Replacement Schedule Form to this Appendix 1; (iv) the Financial Model; (v) the Risk Submissions; and (vi) any other relevant schedules and estimates submitted by Dev Co under the categories of “Project Cost Estimate and Potential Project De-Scoping”, “Construction Cost Estimates”, “Services Cost Estimates”, “Lifecycle Replacement Schedule”, and “Lifecycle Replacement and Refurbishment Plan “ as identified above.		X	X	X	X	X	
Project Management Plan	Approach to Partnering Communications, and Integration for the Project	As part of the Project Management Plan, Dev Co shall submit a narrative which sets out the approach to partnering, communications and integration during the Project Term. The narrative shall be divided into the following three sections: (i) Overall Approach; (ii) Construction Period; and (iii) Operational Term.					X	X	

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MTDOCS 47305997v3

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P3 DBFM Project**

**Development Phase Agreement
Appendix 1 to Schedule 3
Redacted Version**

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CATEGORY	SUB-CATEGORY		IDS	100% SD	30% DD	60% DD	90% DD	PP	OTHER
		<p><u>Overall Approach</u> Dev Co shall describe the overall approach to partnering, communications and integration to be implemented during the Project Term, including:</p> <ul style="list-style-type: none"> (i) development of a successful long-term partnership with Contracting Authority for the purpose of supporting Contracting Authority in achieving its vision, mission and core values; (ii) management of interface structures and team structures, with a description of proposed internal reporting mechanisms and communications protocols with Contracting Authority, Contracting Authority Parties and other stakeholders; (iii) promotion of a positive relationship with Contracting Authority, the Contracting Authority Parties and other stakeholders through each of the design, construction and facilities management phases of the Project so as to enhance the long-term benefits of the Project to Contracting Authority; (iv) maximization of integration of the activities of Project Co, Construction Contractor and Service Provider during each of the design, construction and facilities management phases of the Project Term so as to achieve an efficient and highly functional Facility; (v) development of a strategy for a successful relationship with the City of Mississauga and Region of Peel to obtain timely Permits, Licences, Approvals and Agreements, including Site Plan Approval and sequential building permit approvals; (vi) development of a strategy for creating successful relationships with various external stakeholders, including: <ul style="list-style-type: none"> A. Utility Companies (including telecommunications service providers); B. Credit Valley Conservation Authority; and C. neighboring property owners (including Bronte College, Turner & Porter Funeral Directors Ltd., Metrolinx); and (vii) the criteria that will be used to monitor and measure the success of partnering, communications and integration efforts, and specific mitigation strategies used to address issues, gaps and deficiencies identified in the most efficient and cost effective manner. <p><u>Construction Period</u> Dev Co shall describe the partnering approach, philosophy and processes (including any LEAN, or evidence based design guidelines, or standards) that will be implemented during the Construction Period, including:</p> <ul style="list-style-type: none"> (i) the approach to the design development process, including working in collaboration with user groups, stakeholders and the Design Conformance Consultant; (ii) the approach to incorporating Contracting Authority’s clinical and technical users stakeholder input into the Design Data submitted in accordance with Schedule 10 - Review Procedure of the Draft Project Agreement; (iii) best practices for integrating and coordinating the activities of the Project Co Representative and the Contracting Authority Representative; (iv) the approach to achieving the effective operation of the Works Committee within the parameters of Section 11 of the Draft Project Agreement; (v) the approach to resolving disputes pursuant to Schedule 27 – Dispute Resolution Procedure of the Draft Project Agreement; (vi) the process for integrating the activities of the Service Provider in the design and construction of the Project; (vii) the approach to managing, tracking, reporting on and resolving Variations pursuant to Schedule 22 – Variation Procedure of the Draft Project Agreement, with particular emphasis on the approach to be taken for the timely management of small Variations that proceed from the design development process; (viii) the criteria used to monitor and measure the success of the processes implemented, and specific mitigation strategies used to address issues, gaps and deficiencies identified in the most efficient and cost effective manner; and 							

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MTDOCS 47305997v3

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P3 DBFM Project**

**Development Phase Agreement
Appendix 1 to Schedule 3
Redacted Version**

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CATEGORY	SUB-CATEGORY		IDS	100% SD	30% DD	60% DD	90% DD	PP	OTHER
		<p>(ix) the approach to achieving a fully co-ordinated and integrated design and construction of the Project in collaboration with Contracting Authority.</p> <p><u>Operational Term</u> Dev Co shall describe the partnering approach, philosophy and processes that will be implemented during the Operational Term of the Project, including:</p> <p>(i) best practices for integrating and coordinating the activities of Project Co, Contracting Authority and the Service Provider;</p> <p>(ii) the approach to achieving the effective operation of the Facilities Management Committee within the parameters of Section 12 of the Draft Project Agreement;</p> <p>(iii) the approach to resolving disputes pursuant to Schedule 27 - Dispute Resolution Procedure of the Draft Project Agreement; and</p> <p>(iv) the criteria used to monitor and measure the success of the processes implemented, and specific mitigation strategies used to address, issues, gaps and deficiencies identified in the most efficient and cost effective manner.</p>							
	Team Structure and Processes	<p>Dev Co shall provide a detailed description of its team structure and processes, including:</p> <p>(i) a list of key persons for each of the Construction Period and Operational Term of the Project, including the persons that Dev Co proposes to be the Key Individuals described in Schedule 9 – Key Individuals of the Draft Project Agreement (provided that, where Schedule 5 – DPA Key Individuals of the Agreement specifies a title under the “Position” column in the table of DPA Key Individuals and Schedule 9 – Key Individuals of the Draft Project Agreement specifies the same title under the “Position” column in the table of Key Individuals, the individual who is the DPA Key Individual for such a position shall be put forward as the Key Individual for that same position unless DPA Contracting Authority has, in accordance with the Agreement, consented in writing, in advance, to a different individual being put forward as a Key Individual for such position);</p> <p>(ii) an organization chart indicating its approach to managing Project Co’s team structure and lines of communication with Contracting Authority. The organisation charts shall also indicate, at a minimum, whether the resources are full-time or partially dedicated (if the latter, indicate the percentage of time that will be assigned to the contract) and whether the individuals will be located at a centralised location, or on-site;</p> <p>(iii) the approach to managing Project Co’s resources, including the timeframe for engaging specific team members, how resources are related to key decisions and activities;</p> <p>(iv) the approach to managing external stakeholders and approval bodies;</p> <p>(v) the approach to managing and securing necessary approvals (including Site Plan Approval) from utility providers and Governmental Authorities, including the City of Mississauga, the Region of Peel and Credit Valley Conservation Authority;</p> <p>(vi) the approach to interfacing with Infrastructure Ontario and Contracting Authority;</p> <p>(vii) the approach to internal decision making; and</p> <p>(viii) curriculum vitae for all key design, construction and facilities management personnel (including the persons Dev Co proposes to be the Key Individuals described in Schedule 9 – Key Individuals of the Draft Project Agreement), which highlights their experience on healthcare projects of a similar size and nature and includes information about their role, participation and duration of involvement in other similar projects. Each curriculum vitae shall be no more than 3 pages.</p>					x	x	

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MTDOCS 47305997v3

**Trillium Health Partners M-Site Redevelopment
P3 DBFM Project**

**Development Phase Agreement
Appendix 1 to Schedule 3
Redacted Version**

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CATEGORY	SUB-CATEGORY		IDS	100% SD	30% DD	60% DD	90% DD	PP	OTHER
	Construction Management Plan	<p>Dev Co shall prepare and submit a construction management plan specific to the Project that describes the construction team’s methodology and approach, including:</p> <ul style="list-style-type: none"> (i) scheduling; (ii) an approach and methodology regarding existing soil conditions described in the Geotechnical Reports as part of the Background Information, and informed by any further investigations during the DPA Term; (iii) an approach, structure and methodology that describes each proposed phase of the Works (including, for clarity, the Remaining Works), including details of the construction management plan that might vary depending on the activity in any given phase of the Works; (iv) with respect to mock ups, an approach and methodology to seek and obtain Contracting Authority and stakeholder comments, and the strategy (to be reflected in the Proposed Works Schedule) to efficiently address and implement such comments in the Project’s final design and construction; (v) an approach to manage interface coordination for design and construction in respect of the elements of the Works that interface with Contracting Authority’s systems, such as telephone system, WIFI system, and audio-visual and ICAT systems; (vi) an approach to working at the Site to perform the Works, including strategies to perform the Works (such as coordination of the Works, Works schedules and Site access) while other off-site construction activities are completed concurrently by third parties; (vii) an approach to managing Site reviews by Project Co’s Design Team (including architect, landscape architect, structural engineer, mechanical engineer, electrical engineer, civil engineer, security consultant, systems integrators, commissioning consultant, Equipment consultant etc.) with respect to adhering to the design and construction documentation while ensuring quality assurance and quality control of the Works; (viii) sub-trade management and coordination; (ix) an approach to construction traffic management and parking; (x) an approach to the management of noise, dust, roadway, sidewalk soiling and damage, vibration during the Construction Period; (xi) a reporting and internal governance structure that demonstrates the integration of Project Co Parties during the Construction Period, including: <ul style="list-style-type: none"> A. the Construction Contractor; B. the Service Provider; C. the Design Team; and D. Contracting Authority; (xii) an approach to managing potential Variations during the Works, as well as a detailed description in relation to the minor handling of changes in requirements as a result of the design development process and in accordance with the Project Agreement; and (xiii) an approach to perform the Works in alignment with third parties, including: <ul style="list-style-type: none"> A. memorandums of understanding; B. agreements with Utility Companies; C. coordination with MOH’s ambulance communication equipment installations (guidelines and design requirements); and A. third party retail operators for Site access and coordination of construction activities. 					x	x	

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MTDOCS 47305997v3

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P3 DBFM Project**

**Development Phase Agreement
Appendix 1 to Schedule 3
Redacted Version**

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CATEGORY	SUB-CATEGORY		IDS	100% SD	30% DD	60% DD	90% DD	PP	OTHER
Quality Submissions	Design Quality Control Checklist	Quality control checklist and forms to be submitted by Dev Co in accordance with the Design Quality Plan.		x	x	x	x		
	Construction Quality Plan	<p>Dev Co shall prepare and submit a construction quality plan (the “Construction Quality Plan”) specific to the Project that describes the quality control practices the construction team will employ to ensure the highest standards of finish and workmanship during the Construction Period, including:</p> <p>(i) a description of the approach to integrate Contracting Authority’s project review protocol as part of the Construction Quality Plan and a description of the approach to working with Contracting Authority to conduct Site reviews and inspections throughout the entirety of the Construction Period in respect of quality assurance and quality to identify deficiencies and issues noted. The description shall include the approach to addressing Contracting Authority’s concerns in respect of the quality of construction and conformance of construction set out in the Draft Project Agreement;</p> <p>(ii) a description of the approach to (A) documenting, correcting and rectifying deficiencies during construction (particularly leading up to Substantial Completion), and (B) completion sequencing. This process shall incorporate opportunities for Contracting Authority’s review of the process and any associated Works, and shall take into account the unique attributes of the Project, including its location, size and complexity;</p> <p>(iii) a description of the quality control regime and a summary of the independent testing and inspections that will be undertaken as part of such regime. Specific approaches for identifying, documenting and correcting deficient materials and work prior to the closing of walls, ceilings, roofing, etc. shall be included;</p> <p>(iv) a description of the quality control regime to address Site issues, including protection of the Environmental Protection Area (EPA Zone), traffic control, dust control, off-site dirt tracking, materials management, materials deliveries, parking, vibration, noise by law adherence, disruption to neighbours, (as applicable);</p> <p>(v) evidence of an accredited quality assurance system for the construction team and all key consultants and a description of how multiple quality assurance systems will be coordinated and managed for consistency;</p> <p>(vi) a description of the expected role to be played by the Design Conformance Consultant in identifying deficiencies and non-conformance, unacceptable and substandard work, which must be completed and corrected by Project Co;</p> <p>(vii) a description of the approach to soils management;</p> <p>(viii) a description of the approach to integrated systems testing and commissioning in accordance with the ICAT responsibility matrix set out in Schedule 15 – Output Specifications of the Draft Project Agreement;</p> <p>(ix) a plan for engaging the Service Provider and integrating its feedback on finishes and construction methods; and</p> <p>(x) a plan describing a soil, groundwater and sediment management plan, demonstrating an understanding, commitment, capability and approach to comply with applicable regulations, approvals and agreements relating to the handling of soil at or brought to the Site.</p>				x	x	x	
ICAT Submissions	ICAT Integration Plan	<p>Dev Co shall submit the plans described in this Section (collectively, the “ICAT Integration Plan”). The ICAT Integration Plan shall be updated by Dev Co, including to reflect any feedback received from DPA Contracting Authority during the DPA Term.</p> <p>The ICAT Integration Plan shall include the following:</p> <p>(i) ICAT System Design and Construction Coordination Sub-Plan;</p> <p>(ii) ICAT Systems Integration Sub-Plan; and</p> <p>(iii) ICAT Plan.</p>		x	x	x	x	x	

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MTDOCS 47305997v3

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**Development Phase Agreement
Appendix 1 to Schedule 3
Redacted Version**

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	ICAT System Design and Construction Coordination Sub-Plan	<p><u>ICAT System Design</u> Dev Co shall provide a plan that addresses coordination and integration of the ICAT systems planned by Contracting Authority. The intent of the plan is to minimize or eliminate possible changes to the building infrastructure that would cause additional building costs to Project Co, Contracting Authority or the Province. The plan shall address the appropriateness of the desired ICAT system design and the building infrastructure. The issue of initial installation and activation of the systems will need to be addressed, as well as a peer review of Contracting Authority’s ICAT systems design, providing affirmation of the appropriateness of the basis of design or if not possible, a recommended basis of design.</p> <p><u>In-Contract Equipment Coordination</u> Dev Co shall provide a plan that defines the roles and responsibilities, process and coordination services that are in keeping with other construction timing activities. In particular, this plan shall describe in detail, how Dev Co will involve and obtain the input and approval of Contracting Authority in review of the ICAT In-Contract Equipment specifications for tender, procurement and review and acceptance to ensure compatibility of this Equipment with the operational requirements of Contracting Authority.</p>		X	X	X	X	X	
	ICAT Systems Integration Sub-Plan	Dev Co shall provide a plan that indicates how an integration diagram between Project Co’s systems and Contracting Authority’s systems will be established. Dev Co shall explain which major systems are expected to be the responsibility of Project Co, and the integration requirements of these systems. This shall include hardware, software, effects on networking architecture and expected interface requirements. Dev Co shall also address how cybersecurity will be embedded into the integration plan and how the standards of Contracting Authority will be met.		X	X	X	X	X	
	ICAT Plan	Dev Co shall develop and submit a plan to review all IT infrastructure, IT spaces, In-Contract Equipment, Not-In-Contract Equipment and associated mechanical and electrical requirements. This review shall include: (i) review of all IT Spaces; and (ii) network architecture (both wired and wireless) including: A. basis of design review, risks or anticipated issues; B. value for money analysis; C. recommended solutions; D. cybersecurity analysis; and E. growth analysis.		X	X	X	X	X	
Energy Submissions (Target Energy Model, the LEED Reference Building Energy Model)	Major Energy Submission Package	Dev Co shall, in accordance with the requirements set out in Appendix H – Major Energy Submission Packages of Schedule 36 – Energy Matters of the Draft Project Agreement, submit to DPA Contracting Authority: (i) a Major Energy Submission Package, provided that: A. for the purposes of the submissions, no Current Conditions Energy Model shall be submitted as part of the Major Energy Submission Package and all references to the Project Energy Models in Appendix H – Major Energy Submission Packages of Schedule 36 – Energy Matters of the Draft Project Agreement shall be deemed to only refer to the Target Energy Model; B. cut-sheets of applicable equipment described in the Energy Model may be submitted instead of shop drawings; and		X	X	X	X		

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MTDOCS 47305997v3

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P3 DBFM Project**

**Development Phase Agreement
Appendix 1 to Schedule 3
Redacted Version**

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and Energy Target Letter)		C. descriptions of controls sequences which are set out in the Energy Model may be submitted instead of controls drawings and final controls sequences;							
		(ii) a completed draft Energy Target Letter in the form set out in Attachment 6 hereto, provided that the legal name of Project Co and the date of the Draft Project Agreement need not be included; and		x	x	x	x		
		(iii) a preliminary estimate of annual energy use (collectively, the “Energy Submission”).		x	x	x			
		(i) Dev Co shall update the Energy Submission as required: A. to reflect any changes to the design of the Facility; B. as required to address any failure of Dev Co’s DPA Submittals to conform to the requirements of Schedule 36 – Energy Matters of the Draft Project Agreement as identified by DPA Contracting Authority, which revisions to the Energy Submission shall be subject to the approval of DPA Contracting Authority, in its sole discretion; or C. as otherwise agreed to by DPA Contracting Authority and Dev Co, as the case may be. (ii) The Energy Submission, including the Target Energy Model, the LEED Reference Building Energy Model and an original executed copy of the complete Energy Target Letter, shall be delivered by Project Co to Contracting Authority pursuant to Section 1 of Schedule 2 – Completion Documents of the Draft Project Agreement as follows: A. if no revisions to the Energy Submission are requested by Contracting Authority pursuant to the provisions of Section 6 of Schedule 36 – Energy Matters of the Draft Project Agreement, Dev Co shall revise the Energy Target Letter in the form set out in Attachment 6 to this Appendix 1 by adding the legal name of Project Co and the date of Draft Project Agreement in the signature block but shall otherwise deliver the same Energy Submission submitted at 90% DD; or B. if revisions to the Energy Submission are requested by Contracting Authority pursuant to the provisions of Section 6 of Schedule 36 – Energy Matters of the Draft Project Agreement, Dev Co shall deliver the revised Energy Submission approved by Contracting Authority or otherwise agreed to between DPA Contracting Authority and Dev Co, as the case may be, in accordance with such Section, and, in particular, shall revise the Energy Target Letter in the form set out in Attachment 6 to this Appendix 1 by adding the legal name of Project Co and the date of the Draft Project Agreement in the signature block.					x	x	Otherwise at the request of DPA Contracting Authority during the Commercial Close Stage
Sustainability Submissions		Dev Co shall submit a narrative and illustrations demonstrating its understanding of the Facility's sustainability goals, as described in Schedule 15 - Output Specifications of the Draft Project Agreement, which shall include, at a minimum: LEED and Toronto Green Standard							
		(i) A full and detailed written statement and LEED credit tracking list sheet responding to the requirement of achieving a LEED v4 BD+C Healthcare Silver Certification; (ii) The submission documentation for each construction related credit and minimum performance requirement shall include: A. a narrative of how Dev Co intends to obtain the relevant LEED credit; B. sample "tracking" tools as required to document the credit throughout the construction process; and		x	x	x	x	x	

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MTDOCS 47305997v3

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**Development Phase Agreement
Appendix 1 to Schedule 3
Redacted Version**

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		<p>C. an updated LEED scorecard, including details summarizing the strategies targeted to achieve the credit shall be submitted with the documentation;</p> <p>(iii) A description of how features of the Facility design support and enhance the sustainable design strategy/solutions, minimize maintenance and the need for replacement of building elements and systems; and</p> <p>(iv) A description of how the features of the Facility design meet the “Tier 1” requirements of the Toronto Green Standard.</p> <p>Energy Targets As determined by the Target Energy Model, Dev Co shall identify:</p> <p>(i) the extent to which the design solution achieves the following targets: A. Total Energy Use Intensity Target of [REDACTED]; and B. Greenhouse Gas Emissions Intensity Target of [REDACTED]; and</p> <p>(ii) the amount of the peak electrical demand of the Facility compared to the design target, as well as if demand management strategies are considered.</p> <p>The Greenhouse Gas Emissions Intensity Target shall be calculated using the following emissions intensities: (iii) Electricity: [REDACTED] (iv) Natural gas: [REDACTED]</p> <p>Long-Term Sustainability and Environmental Impact Dev Co’s narrative shall describe how:</p> <p>(i) features of the Facility design support and enhance sustainable design strategy/solutions and support the long-term investment in capital. In addition, the narrative shall describe the design response to the requirements of design service life;</p> <p>(ii) the design solution achieves the design intention of maximizing air and water side heat recovery (including base building and process loads), and ensuring equipment operates at constant efficient level;</p> <p>(iii) the design integrates measures which demonstrate an energy efficient building, including how the design reduces energy consumption through technology, sub-metering and operational measures;</p> <p>(iv) features of the design will help the Facility respond to future extreme weather (i.e., extreme temperatures; flooding; etc.); and</p> <p>(v) the design considers low carbon / carbon reduction solutions to reduce operational carbon of the mechanical system (i.e. low carbon systems such as geo-exchange and wastewater heat recovery).</p>							
	Zero Carbon Transition Plan	<p>To assist Contracting Authority to plan for low to zero carbon operations, Dev Co shall prepare a zero carbon transition plan which shall include:</p> <p>(vi) a description of the mechanical HVAC strategy and how components of the system may be adapted to accommodate non-combustion-based technologies (such as operating temperature of the distribution system or electrical-sourced heating technologies);</p> <p>(vii) identification and leveraging of natural intervention points (such as the anticipated end of life of mechanical equipment);</p> <p>(viii) a preliminary load analysis to estimate potential changes in utility capacity;</p> <p>(ix) a high level phasing plan for execution;</p> <p>(x) identification of areas which could be used as locations for future infrastructure; and</p> <p>(xi) a statement of assumptions behind implementation and limitations within the proposed design for this transition.</p>				x	x	x	

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MTDOCS 47305997v3

**Trillium Health Partners M-Site Redevelopment
P3 DBFM Project**

**Development Phase Agreement
Appendix 1 to Schedule 3
Redacted Version**

DPA TECHNICAL SUBMITTAL		REQUIREMENTS	SUBMISSION FREQUENCY / TIMING						
CATEGORY	SUB-CATEGORY		IDS	100% SD	30% DD	60% DD	90% DD	PP	OTHER
Transition and Commissioning Submissions		<p>Dev Co shall submit the plans as described below to DPA Contracting Authority (collectively, the “Transition and Commissioning Plan”).</p> <p>The Transition and Commissioning Plan shall include the following sections, each of which is described in further detail below:</p> <ul style="list-style-type: none"> (i) Outline Commissioning Plan; and (ii) Transition Management Sub-Plan. 							
	Outline Commissioning Plan	<p>Dev Co shall provide an outline commissioning plan (the “Outline Commissioning Plan”) that includes the following elements:</p> <ul style="list-style-type: none"> (i) Project Co’s monitoring regime; (ii) a description of how Project Co will meet the requirements set out in Schedule 14 – Outline Commissioning Program of the Draft Project Agreement, Schedule 15 – Output Specifications of the Draft Project Agreement and the requirements for each Phase Completion, Substantial Completion, each Remaining Works Phase Completion and Final Completion; (iii) the approach to developing each Phase Commissioning Program, the Final Commissioning Program and each Remaining Works Phase Commissioning Program; (iv) the approach to working with the Contracting Authority Commissioning Consultant; (v) the approach to commissioning of all systems and components relating to the Facility, including the provision of system design testing, integrated system final testing (system wide), including functional testing of each input and output in the system as well as all related administrative functions; (vi) the approach specific to the testing and commissioning of all systems as detailed in Section 1.4.7 – IT, AV, Communications and Automation Systems, Section 1.4.8 – Integrated Safety and Security and Section 1.4.9 – Integration and Interoperability of Part 1 of Schedule 15 – Output Specifications of the Draft Project Agreement; and (vii) the approach to commissioning activities that are seasonal, or occupancy driven, and the methodology for achieving the requirements of each Phase Completion, Substantial Completion, each Remaining Works Phase Completion and Final Completion. 				x	x	x	
	Transition Management Sub-Plan	<p>Dev Co shall provide a transition management sub-plan (the “Transition Management Sub-Plan”) that includes the following elements:</p> <ul style="list-style-type: none"> (i) the detailed approach to planning, managing and coordinating the Transition from the Existing Facilities to the Facility in a manner that supports Contracting Authority’s ability to maintain efficient and uninterrupted operations, including the inventories and relocation of Existing Equipment; (ii) the experience, qualifications and reputation of all key transition personnel; (iii) the approach to retaining an experienced and reputable Transition Advisor with the appropriate expertise and resources to execute and implement the Transition from the Existing Facilities to the Facility; (iv) the plan for decision making and coordination as related to the Transition from the Existing Facilities to the Facility, including interaction with Contracting Authority, the Contracting Authority Parties, the Works Committee, the Transition Subcommittee and the Transition Advisor; 				x	x	x	

**Trillium Health Partners M-Site Redevelopment
P3 DBFM Project**

**Development Phase Agreement
Appendix 1 to Schedule 3
Redacted Version**

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		(v) the detailed plan for quality assurance as related to the Transition from the Existing Facilities to the Facility, including roles and responsibilities related to quality assurance, proposed reporting mechanism to Contracting Authority to demonstrate the effective delivery of Transition services and means by which issues are identified and resolved; (vi) the detailed plan for training and educational sessions, as such training and education relates to the Transition from the Existing Facilities to the Facility, including roles and responsibilities related to training scheduling of training sessions, and a proposed reporting mechanism to Contracting Authority; (vii) the detailed approach for coordinating and integrating the Transition requirements with Contracting Authority’s plan for preparations to start-up and operate the Facility following Substantial Completion, including Contracting Authority’s preparations related to operational testing and commissioning in the Facility and the decommissioning of spaces vacated in the Existing Facilities; and (viii) the detailed plan for integrating their move requirements with that of Contracting Authority’s patient move plan.							
Procurement Plan		Dev Co shall submit a plan that details all items (including materials and Equipment) which may be required for the Project (the “ Procurement Plan ”). The items identified in each submission of the Procurement Plan shall align with Dev Co’s then current design submission. The Procurement Plan shall include, where possible, the proposed date of ordering, the proposed date of delivery, the proposed supplier, and the specifications. The Procurement Plan shall also clearly identify any items which may have a long lead time and which Dev Co proposes as a Project Work Proposal pursuant to Schedule 6 – DPA Variation Procedure of the Agreement could be finalised and ordered prior to the expiry of the DPA Term in order to maintain the Project schedule.				x	x	x	
Equipment Procurement and Co-ordination Plan		Dev Co shall submit the plans described in this section (collectively, the “ Equipment Procurement and Coordination Plan ”). Dev Co will be required to include the Equipment Procurement and Coordination Plan, to the detail possible, with each design development stage submission beginning with the 30% Design Development Stage. The Equipment Procurement and Coordination Plan shall include the following sections, each of which is described in further detail below: (i) Equipment Design and Construction Coordination Sub-Plan; and (ii) Equipment Procurement and Existing Equipment Sub-Plan.			x	x	x	x	
	Equipment Design and Construction Coordination Sub-Plan	Dev Co shall provide an equipment design and construction coordination sub-plan (the “ Equipment Design and Construction Coordination Sub-Plan ”) that includes the following elements: (i) <u>Equipment Coordination</u> The Equipment Design and Construction Coordination Sub-Plan shall address the coordination, integration and suitability of the Equipment with building systems. The intent of such plan is to minimize or eliminate possible changes to the building infrastructure that would cause additional building costs to Project Co, Contracting Authority or the Province. The Equipment Design and Construction Coordination Sub-Plan shall address both issues related to the initial installation coordination and guidelines for Contracting Authority in regard to replacement of Equipment and Existing Equipment in the future. The Equipment Design and Construction Coordination Sub-Plan shall include a peer review of Contracting Authority’s Equipment				x	x	x	

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MTDOCS 47305997v3

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		<p>List and Equipment Utility Data Report, providing affirmation of the appropriateness of the basis of design or if not possible, a recommended basis of design.</p> <p>(ii) <u>Building Construction Coordination</u></p> <p>The Equipment Design and Construction Coordination Sub-Plan shall accommodate flexibility and adaptability for wall, ceiling and floor installation and construction interface that supports use of Equipment and Existing Equipment, Equipment and Existing Equipment installation, or Equipment installation and Equipment utilities. The Equipment Design and Construction Coordination Sub-Plan shall address the need to close and complete the construction as late as possible so as to minimize repeat work to open walls and ceilings to install Equipment and Existing Equipment.</p> <p>(iii) <u>Flexibility and Adaptability</u></p> <p>During the Operational Term, Contracting Authority anticipates the change out and update of Equipment and Existing Equipment for reasons of maintenance, upgrade or changing needs. Accordingly, Dev Co shall provide a strategy that accommodates flexibility and adaptability necessary for future (predictable) change outs of Equipment and Existing Equipment. The Equipment Design and Construction Coordination Sub-Plan shall include path of travel, loading and unloading crane plans for the removal and delivery of large equipment. The aim of this section of the Equipment Design and Construction Coordination Sub-Plan is for Project Co to integrate its approach to the building design with the requirements set out in Section 1.2.5 – Expansion, Flexibility and Adaptability of Part 1 of Schedule 15 – Output Specifications of the Draft Project Agreement as well as additional capacity requirements set out in the balance of the Output Specifications (systems, access, routes, etc.).</p> <p>(iv) <u>Modular Workstations Coordination</u></p> <p>The Equipment Design and Construction Coordination Sub-Plan shall accommodate flexibility and adaptability for modular workstations that supports use of Equipment or Existing Equipment installed in modular workstations, including modular workstations that provide flexibility to all utility requirements (for example, cable management for power and telecommunications) and modular workstations that allow for flexibility and adaptable support for Equipment and Existing Equipment.</p> <p>The Equipment Design and Construction Coordination Sub-Plan shall also accommodate flexibility and adaptability for modular workstation configurations and future reconfigurations.</p> <p>(v) <u>Schedule of Completion for Room Equipment Utilities, Door Installation, Room Finishes</u></p> <p>Dev Co shall propose a strategy to integrate building Utilities supporting Existing Equipment and Equipment, door installation and finishes of equipment rooms so that branch utility infrastructure, doors and room finishes can be installed at the latest date, to offer the latest Equipment selection date by Contracting Authority. A Gantt chart schedule shall be provided to demonstrate this strategy.</p> <p>(vi) <u>In-Contract Equipment Coordination</u></p>							

**Trillium Health Partners M-Site Redevelopment
P3 DBFM Project**

**Development Phase Agreement
Appendix 1 to Schedule 3
Redacted Version**

DPA TECHNICAL SUBMITTAL		REQUIREMENTS	SUBMISSION FREQUENCY / TIMING						
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		<p>The Equipment Design and Construction Coordination Sub-Plan shall define the roles and responsibilities, process and coordination services that are in keeping with other construction timing activities. In particular, the Equipment Design and Construction Coordination Sub-Plan shall describe in detail how Project Co will involve and obtain the input and approval of Contracting Authority in the review of the In-Contract Equipment specifications for tender, procurement and review and acceptance to ensure compatibility of such Equipment with the operational requirements of Contracting Authority.</p> <p>In the same manner, Dev Co shall also describe in detail how, during the Operational Term and in connection with the Project Co Services, Project Co will involve and obtain the input and approval of Contracting Authority in the review of the In-Contract Equipment for tender, procurement and review and acceptance to ensure compatibility of such Equipment with the operational requirements of Contracting Authority.</p> <p>(vii) <u>Not-In-Contract Equipment and MES Equipment Coordination</u></p> <p>The Equipment Design and Construction Coordination Sub-Plan shall accommodate flexibility and adaptability for Not-In-Contract Equipment and equipment provided through the MES.</p> <p>(viii) <u>Not-In Contract Equipment Lifecycle Replacement</u></p> <p>The Equipment Design and Construction Coordination Sub-Plan shall indicate how Dev Co’s design allows for future lifecycle replacement by Contracting Authority of Equipment without affecting the operations of the Facility. Dev Co shall explain how major replacement Equipment and Existing Equipment items are to be removed and replaced to the installation location with minimum impact to any related building infrastructure and Clinical Services.</p>							
	Equipment Procurement and Existing Equipment Sub-Plan	<p>Dev Co shall prepare and submit a plan (the “Equipment Procurement and Existing Equipment Sub-Plan”) which shall:</p> <p>(i) provide the general approach to implementing all Equipment and Existing Equipment related activities, including the Key Individuals who will be leading the various efforts and a clear definition of the roles and responsibilities of the various Project Co Parties, as well as Contracting Authority Parties;</p> <p>(ii) identify the key roles proposed to participate in the Equipment planning, design, procurement, installation and commissioning processes, including their experience and qualifications, the organizational structure of the team, and the system and database support available;</p> <p>(iii) describe the key activities for clinical In-Contract Equipment procurement, including preparations related to approval of purchase orders, tender submission analyses and recommendations, Shop Drawings review, commissioning, verification, testing and acceptance involving and to the satisfaction of Contracting Authority;</p> <p>(iv) identify the process by which decision making will take place, in particular for all In-Contract Equipment that impacts hospital operations, demonstrating how interaction and coordination with Contracting Authority, Contracting Authority’s equipment consultant and advisors, the Equipment Steering Committee and others will occur;</p> <p>(v) identify the process by which Dev Co intends to implement all activities to support and enable the timely planning, installation and commissioning of Not-In-Contract Equipment, including decision making and coordination with Contracting Authority to integrate the Not-In-Contract Equipment procurement activities, Contracting Authority’s equipment consultant and advisors, the Equipment Steering Committee and others will occur;</p> <p>(vi) provide a description of the approach to perform the activities pursuant to Part 5 of Schedule 15 – Output Specifications of the Draft Project Agreement to coordinate with vendors, Contracting Authority and others, in accordance with which</p>				x	x	x	

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MTDOCS 47305997v3

**Trillium Health Partners M-Site Redevelopment
P3 DBFM Project**

**Development Phase Agreement
Appendix 1 to Schedule 3
Redacted Version**

DPA TECHNICAL SUBMITTAL		REQUIREMENTS	SUBMISSION FREQUENCY / TIMING						
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		<p>Equipment and Existing Equipment are received, unloaded, stored, unpacked, delivered to their location, assembled, installed, commissioned, verified and accepted;</p> <p>(vii) provide a detailed plan of how Dev Co will manage the risk retained by Project Co and the risk retained by Contracting Authority in the Equipment, Existing Equipment and Equipment processes, and how Project Co will mitigate the risks retained by Contracting Authority's acceptance in coordination with the building design, construction and commissioning;</p> <p>(viii) provide a detailed plan of how Dev Co will perform the key activities related to conducting and updating the Existing Equipment physical inventory;</p> <p>(ix) account for the completion of one physical inventory for the Existing Equipment and the preparation and finalization of an inventory checklist;</p> <p>(x) identify the team proposed to participate in the Existing Equipment physical inventory activities. The proposed team shall have the following minimum qualifications:</p> <p>A. background in biomedical engineering and/or nursing, with:</p> <p>i. knowledge of clinical equipment, standard industry clinical equipment nomenclature;</p> <p>ii. an ability to identify and document the power / data and other utility and building design requirements for the equipment; and</p> <p>iii. experience in conducting equipment inventories in a clinical environment;</p> <p>B. background in interior design, with:</p> <p>i. knowledge of furniture, standard industry furniture nomenclature;</p> <p>ii. the ability to identify and document the power / data and other utility and building design requirements for the furniture; and</p> <p>iii. experience in conducting furniture and equipment inventories in a clinical environment; and</p> <p>(xi) demonstration of how the Equipment installation, training, and commissioning processes will integrate with Substantial Completion and Contracting Authority acceptance.</p> <p>In addition, DPA Contracting Authority intends to employ a late procurement strategy for Equipment in order to obtain the most advanced and proven medical technology available. The Equipment Procurement and Existing Equipment Sub-Plan shall reflect this strategy. The Equipment Procurement and Existing Equipment Sub-Plan shall consist of a work plan and shall be consistent with the Equipment procurement swim lanes pursuant to Part 5 of Schedule 15 – Output Specifications of the Draft Project Agreement and Equipment Sub-Schedule required in Section 15.1 of Schedule 7 – DPA Works Schedules Requirements of the Agreement.</p>							
FF&E Plan		<p>Dev Co shall develop and submit a plan to review all FF&E items. This review shall include:</p> <p>(i) review of all In-Contract Equipment items; and</p> <p>(ii) review of all Not-In-Contract Equipment items including:</p> <p>A. basis of design review, risks or anticipated issues;</p> <p>B. value for money analysis;</p> <p>C. recommended solutions;</p> <p>D. cybersecurity analysis; and</p> <p>E. growth analysis.</p>		x	x	x	x	x	

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MTDOCS 47305997v3

**Trillium Health Partners M-Site Redevelopment
P3 DBFM Project**

**Development Phase Agreement
Appendix 1 to Schedule 3
Redacted Version**

DPA TECHNICAL SUBMITTAL		REQUIREMENTS	SUBMISSION FREQUENCY / TIMING						
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Milestone Optimisation & Output Specifications Critique Report		<p>Dev Co shall prepare and submit to DPA Contracting Authority a report proposing design improvements and cost saving measures in respect of the design submissions – including denoting any related impacts to schedule, risk and cost.</p> <p>Where any such proposals deviate from any requirements indicated in Schedule 15 - Output Specifications of the Draft Project Agreement, Dev Co will submit a written statement with illustrative diagrams providing a rationale in support of the deviation. Rationale will be organized on a floor by floor basis.</p> <p>Where Dev Co is proposing a product or system that is intended to be “equal” to the technical quality described in Schedule 15 - Output Specifications of the Draft Project Agreement, this product or system shall be clearly highlighted. All products or systems that are not intended to be used shall be shown to be deleted from the Table of Contents of Schedule 15 - Output Specifications of the Draft Project Agreement.</p> <p>Where Dev Co proposes a section of the Uniformat 2010 specification that has no parallel section in Schedule 15 - Output Specifications of the Draft Project Agreement then this section shall be clearly identified as “New” in the table of contents for submission.</p> <p>Dev Co shall complete the “Self Reporting Output Specifications Checklist” demonstrating:</p> <ul style="list-style-type: none"> (i) assumptions made by Dev Co either: (A) to assist Dev Co in its interpretation of; or (B) as a result of Dev Co’s independent interpretation of, the Output Specifications, and which, in the opinion of Dev Co, are not explicitly stated in the Output Specifications provided by DPA Contracting Authority; and (ii) departures from or alternate solutions or approaches to the Output Specifications (“Variiances”) along with a rationale for any proposed Variiances. <p>Submission of the variance rationale and diagrams are solely for the purposes of evaluating Dev Co’s design submission and shall constitute neither an amendment of Schedule 15 - Output Specifications of the Draft Project Agreement nor DPA Contracting Authority’s acceptance of any proposed Variiances.</p>		X	X	X	X	X	
Service Provider Operational Readiness Plan		<p>Dev Co shall submit progressive Operational Readiness Plans with each design development stage submission in accordance with the requirements detailed in the Draft Project Agreement.</p> <p>Each Operational Readiness Plan shall describe the approach to ensuring Project Co and the Project Co Parties will be fully operational and capable of delivering the Project Co Services upon Substantial Completion, including the following activities:</p> <ul style="list-style-type: none"> (i) the preparation, submission, and review with Contracting Authority of the various manuals, policies and procedures and other deliverables as set out in Part 4 of Schedule 15 - Output Specifications of the Draft Project Agreement; (ii) the establishment of Project Co’s on-site management, administration and service office; (iii) the population of the Computerized Maintenance Management System (“CMMS”) database and development of maintenance and lifecycle replacement plans; (iv) the set-up and testing of the FM Help Desk in accordance with the requirements set out in Part 4 of Schedule 15 – Output Specifications of the Draft Project Agreement; 		X	X	X	X	X	

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MTDOCS 47305997v3

**Trillium Health Partners M-Site Redevelopment
P3 DBFM Project**

**Development Phase Agreement
Appendix 1 to Schedule 3
Redacted Version**

DPA TECHNICAL SUBMITTAL		REQUIREMENTS	SUBMISSION FREQUENCY / TIMING						
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		(v) the establishment of business processes related to the monitoring of alarms, tracking and reporting of Availability Failures, Performance Failures, System Failures, and Energy Failures; (vi) the establishment of sub-contracted services; (vii) a preliminary listing and description of joint service protocols between the Service Provider and Contracting Authority; (viii) participation during the commissioning process and in relevant committees; (ix) the timing of onboarding of resources, including relevant key individuals assigned to operational start-up activities; (x) training development and implementation for the Service Provider’s on-site team and support organizations as well as Contracting Authority personnel; (xi) the process that Project Co will use to ensure the smooth transition of Transferred Employees, including: A. a description of the required collaboration with Contracting Authority; B. a description of the processes and activities to be used to ensure that Transferred Employees are properly trained prior to the Transfer Date in order to be effective in the delivery of the Project Co Services; and C. approach to meet the requirements set out in Schedule 17- Employee Transition of the Draft Project Agreement; and (xii) the process that Project Co will use to address Phase Minor Deficiencies, Minor Deficiencies and Remaining Works Minor Deficiencies and operational issues that arise after Substantial Completion, including how Project Co will ensure that the such deficiencies are managed and addressed in a harmonized manner by the Project Co Parties.							
Risk Submissions	QRA Contingency Report	Dev Co shall undertake a quantitative risk analysis of the risks identified in the Construction Risk Register and prepare and submit a report to DPA Contracting Authority (the “ QRA Contingency Report ”). The purpose of the QRA Contingency Report is to identify the risk profile of the Project, approaches and planning for mitigation, and necessary contingencies for the Construction Period. The QRA Contingency Report shall: (i) assess the likelihood of a risk occurrence (expressed as a percentage); (ii) assess the effect of each risk on the schedule of the Project; and (iii) assess the effect of each risk on the Project budget (both capital cost impact and cost of schedule delay/impact). Dev Co shall provide the basis of assessments/methodology for capital cost and cost of schedule delay impacts. At least 10 Business Days in advance of each submission of a QRA Contingency Report, Dev Co shall provide the following information and materials to DPA Contracting Authority, which shall also be included as part of the QRA Contingency Report: (i) an updated Construction Risk Register; (ii) risk impact assessments and allocations; (iii) a review and challenge of estimates of individual risk impact costs (as-needed); (iv) validation that the cost of mitigation has been included in the contingency calculation; (v) highlights of the key risks identified in the Development Risk Register; and (vi) a master quantitative cost risk analysis (“ QCRA ”) to quantify the risk exposure of the Project (specifically, Project Co-owned risks and Project Co’s portion of shared risks).		x	x	x	x	x	

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MTDOCS 47305997v3

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P3 DBFM Project**

**Development Phase Agreement
Appendix 1 to Schedule 3
Redacted Version**

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		<p>None of the foregoing information or materials submitted by Dev Co in advance of a submission of a QRA Contingency Report shall be a DPA Submittal or be subject to the DPA Review Procedure.</p> <p>The QRA Contingency Report shall be organized as follows:</p> <ul style="list-style-type: none"> (i) Purpose; (ii) Methodology; (iii) Key Risks / Top Risks; (iv) Plan to Mitigate for the following Project Checkpoint; (v) Construction Risk Register (with the sum of the expected monetary value or “EMV” for the identified risks and opportunities for pre-mitigated and post-mitigated values); (vi) Estimated Construction Risk Contingency Amount; (vii) Historical Analysis and Adjustments to the Construction Risk Contingency Amount; and (viii) Results. <p>In addition, the QRA Contingency Report shall include backup data/native files to support the submission of the QRA Contingency Report and total evaluation of the Construction Risk Contingency Amount (e.g. basis of assessments narrative/breakdown, estimates, etc.).</p>							
Works Schedules		Dev Co shall submit each of the following submittals in accordance with the applicable requirements of Schedule 7 – DPA Works Schedules Requirements of the Agreement:							
		(i) Basis of Construction Works Schedule Report; and		x	x	x	x	x	
		(ii) Construction Works Schedule (each iteration to also include the submission of the Equipment Sub-Schedule).		x	x	x	x	x	
Manuals	Sample Manuals	<p>Dev Co shall provide a sample of the following Manuals:</p> <ul style="list-style-type: none"> (i) Human resources plan, including position profiles for each position included in the proposed organization chart for the Operational Term, training and orientation, back-up, retention, and succession planning; (ii) Emergency Management Manual required pursuant to Part 4 of Schedule 15 – Output Specifications of the Draft Project Agreement, including addressing fire emergencies and providing fire safety training/education to Contracting Authority personnel, utility failure, and interfacing with local emergency services; and (iii) Environmental Management Plan, identifying the measures that will be implemented to meet the requirements set-out in Part 4 of Schedule 15 – Output Specifications of the Draft Project Agreement. 					x	x	

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MTDOCS 47305997v3

**Trillium Health Partners M-Site Redevelopment
P3 DBFM Project**

**Development Phase Agreement
Appendix 1 to Schedule 3
Redacted Version**

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	Process for Developing and Implementing Manuals	<p>Dev Co shall prepare and submit a document which shall:</p> <ul style="list-style-type: none"> (i) describe the process that will be implemented by Project Co to prepare, review and seek approval of the Manuals for every Service Category, pursuant to Part 4 of Schedule 15 – Output Specifications of the Draft Project Agreement, in order to guide the ongoing operations and Maintenance Activities and the provision of the Project Co Services at the Facility; (ii) describe the process that will be used to ensure that the Manuals are adapted to reflect Facility particularities, Contracting Authority input and engagement, and Good Industry Practice, both during the implementation of the Operational Start-up Plan and during the Operational Term; (iii) provide an explanation of how the applicable controls that will be put into place to ensure that the Service Provider adheres to the requirements and protocols detailed in the Manuals during the Operational Term, and how non-adherence to Manuals will be handled; and (iv) provide an explanation of how the applicable controls that will be put into place to ensure that Project Co adheres to the requirements of the Manuals during the Operational Term. 					X	X	
Communications Submissions									
	Construction Period Communications Protocol	Dev Co shall submit a communications protocol for the Construction Period in accordance with the requirements detailed in Schedule 18 – Communications of the Draft Project Agreement.					X	X	
	Facilities Management Communications Protocol	<p>Dev Co shall submit a communications protocol for Facility management that describes the partnering approach, philosophy and processes that will be implemented during the Operational Term, including:</p> <ul style="list-style-type: none"> (i) best practices for integrating and coordinating the activities of Project Co and Contracting Authority, and its service providers; (ii) its approach to achieving the effective operation of the Facilities Management Committee within the parameters of set out in the Draft Project Agreement; (iii) the criteria used to monitor and measure the success of the processes implemented, and specific mitigation strategies used to address, issues, gaps and deficiencies identified in the most efficient and cost effective manner; (iv) its approach to resolving Disputes pursuant to Schedule 27 - Dispute Resolution Procedure of the Draft Project Agreement; (v) how Project Co will set up, manage and participate in the following committees as described in Section 4.2 of Part 4 of Schedule 15 – Output Specifications of the Draft Project Agreement, including the establishment of committee terms of references, meeting templates (e.g., agendas, meeting minutes), and collaborative decision-making: <ul style="list-style-type: none"> A. Facility Management Committee; B. FM Operations Committee; C. Joint IT Committee; and D. any sub-committees that are required by the Draft Project Agreement and proposed by Dev Co; (vi) the procedures that Dev Co proposes Project Co will implement to ensure efficient management interfaces and effective collaboration between the Parties, including: (A) the committees set out above, including tracking and resolving action items discussed in committee meetings; (B) between the Project Co Parties in a manner that facilitates the delivery of 					X	X	

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MTDOCS 47305997v3

**Trillium Health Partners M-Site Redevelopment
P3 DBFM Project**

**Development Phase Agreement
Appendix 1 to Schedule 3
Redacted Version**

DPA TECHNICAL SUBMITTAL		REQUIREMENTS	SUBMISSION FREQUENCY / TIMING						
CATEGORY	SUB-CATEGORY		IDS	100% SD	30% DD	60% DD	90% DD	PP	OTHER
		the Project Co Services and (C) in a manner that ensures that Contracting Authority and Project Co are made aware of the day-to-day requirements of building occupants; and (vii) the processes Dev Co proposes Project Co will implement to ensure effective communication, and efficient escalation and responsiveness to cooperate with and inform Contracting Authority.							
	Governance and Communications Plan	Dev Co shall prepare and submit a detailed plan with respect to: (i) how Dev Co proposes Project Co will set up, manage and participate in the committees required under the Draft Project Agreement, including the establishment of committee terms of references, meeting templates (e.g., agendas, meeting minutes), and collaborative decision-making. Where the applicable committee has already been established during the DPA Term, Dev Co shall demonstrate how momentum and continuity will be maintained during the Project Term; (ii) any sub-committees that are required pursuant to the Draft Project Agreement and proposed by Dev Co, including pursuant to Schedule 15 - Output Specifications of the Draft Project Agreement; (iii) the procedures that Dev Co proposes Project Co will implement to ensure efficient management and regular interfacing: A. with the committees required during the Project Term; and B. between the Project Co Parties in a manner that facilitates the delivery of the Project Co Services and ensures that Contracting Authority and Project Co are made aware of the day-to-day requirements of building occupants; (iv) the processes Dev Co proposes Project Co will implement to ensure effective communication, and efficient escalation and responsiveness to cooperate with and inform Contracting Authority; and (v) the processes Dev Co proposes Project Co will implement to communicate the following to Contracting Authority and building occupants: A. scheduled preventative maintenance work; B. changes to planned maintenance or other activities; C. delays in addressing a Service Request; D. notification of requirement to implement temporary repairs; and E. any Emergency situation that could affect Hospital Services.					x	x	
Health and Safety Submissions		Dev Co shall provide a health and safety submission comprised of the following (the “ Health and Safety Submissions ”): (i) Evidence of COR Certification, including a valid IHSA Letter of Good Standing for each COR-Certified Construction Project Co Party or, to the extent that such party does not have COR Certification, evidence of ISO 45001 Accreditation, including a letter outlining good standing as of the latest annual surveillance audit, together with evidence that such party has made an application to IHSA for its COR Certification; (ii) WSIB clearance certificate, or, if a WSIB clearance certificate is not available, equivalent documentation from another jurisdiction, for the Construction Contractor (and where the Construction Contractor is a partnership or joint venture, in respect of each partner of the partnership or each member of the joint venture, as applicable); and (iii) The Contractor Site Specific Safety Manual, which shall, at a minimum, comply in all respects with: A. all applicable requirements of the <i>Occupational Health and Safety Act</i> (Ontario); B. industry best practices; C. health and safety requirements set by Project Co with respect to the Project and the Site, and D. health and safety requirements of the Draft Project Agreement.						x	

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**Trillium Health Partners M-Site Redevelopment
P3 DBFM Project**

**Development Phase Agreement
Appendix 1 to Schedule 3
Redacted Version**

DPA TECHNICAL SUBMITTAL		REQUIREMENTS	SUBMISSION FREQUENCY / TIMING						
CATEGORY	SUB-CATEGORY		IDS	100% SD	30% DD	60% DD	90% DD	PP	OTHER
Pandemic and Epidemic Response and Mitigation Plan		<p>Dev Co shall prepare a plan (the “Pandemic and Epidemic Response and Mitigation Plan”), based on the relevant portions of the Dev Co Proposal Extracts, that sets out the activities and reporting to Contracting Authority that Project Co will implement in order to prepare for and to respond to any potential or actual pandemic or epidemic that may affect the performance of Project Co’s obligations under a Final Project Agreement (including COVID-19 or any subsequent outbreak of COVID-19).</p> <p>The Pandemic and Epidemic Response and Mitigation Plan shall, at a minimum, provide for the detailed steps that Project Co and its Subcontractors will undertake to prepare for and respond to the effects of COVID-19 or any future pandemic or epidemic that could occur and affect the performance of Project Co’s obligations under a Final Project Agreement, including a subsequent outbreak of COVID-19.</p>					X	X	
Service Submissions	Help Desk	<p>Dev Co shall prepare and submit a document(s) which:</p> <ul style="list-style-type: none"> (i) describes how the FM Help Desk information management system will meet the requirements set out in Part 4 of Schedule 15 – Output Specifications of the Draft Project Agreement, including the ability to receive, track and reporting on information through the web, phone and hand-held devices to Contracting Authority, requestor and other Contracting Authority representatives, on an individual Service Request basis as well as consolidated by type, department or other requirements of Contracting Authority; (ii) provides a process chart illustrating how Service Requests will be received, categorized, dispatched and closed-out; (iii) describes how Project Co’s Help Desk system will be used in the preparation of the Monthly Service Report and the calculation of Deductions and provide samples of reports that will be provided to Contracting Authority to meet the requirements of the Draft Project Agreement; and (iv) describes how the Help Desk will be staffed using Contracting Authority resources and how these resources will be trained to use Project Co’s Help Desk system and the requirements of the Draft Project Agreement. 					X	X	
	Proactive Management of Property and Infrastructure	Dev Co shall prepare and submit a document which details the asset management approach and process (building condition reports, capital planning, options analysis related to maintenance and project options, full life view of asset management, Facility Condition Index, etc.) to meet the requirements set out in Part 4 of Schedule 15 – Output Specifications of the Draft Project Agreement.					X	X	
	Asset Management, Scheduled Maintenance, Unscheduled Maintenance and CMMS	<p>Dev Co shall prepare and submit a document(s) which shall:</p> <ul style="list-style-type: none"> (i) detail the approach to preventive maintenance, explaining how it aligns with Good Industry Practice and how it provides value to Contracting Authority; (ii) describe how the CMMS will be populated during the Operational Start-up Period and hand-over and how the accuracy thereof will be validated during the Operational Term, in order to ensure that the CMMS includes all Maintained Elements; (iii) describe how maintenance tasks and activities will be documented and how it will be confirmed that such tasks and activities have been properly undertaken, by providing objective evidence demonstrating that all necessary quality control measures are in place. Specifically address how Maintenance Activities required under Applicable Law and maintenance on Critical Equipment will be tracked and reported to Contracting Authority; (iv) describe what additional maintenance will be undertaken on Critical Equipment and other equipment essential to the Facility; 					X	X	

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DPA TECHNICAL SUBMITTAL		REQUIREMENTS	SUBMISSION FREQUENCY / TIMING						
CATEGORY	SUB-CATEGORY		IDS	100% SD	30% DD	60% DD	90% DD	PP	OTHER
		(v) provide a sample of the Maintenance Activities for the following building elements: building envelope, heat generation equipment, refrigeration equipment, air handling units, emergency generators, doors and lock hardware, cameras and elevators. Include the associated tasks and inspection forms that will be used in the delivery of the Project Co Services and will be included in the CMMS; (vi) detail how the CMMS will be used to drive the delivery of efficient Maintenance Activities and how the CMMS will meet the requirements described in Part 4 of Schedule 15 – Output Specifications of the Draft Project Agreement; (vii) describe any monitoring and predictive analytics that will be implemented to track and improve equipment performance; (viii) describe how preventive maintenance, corrective maintenance and lifecycle activities will be integrated, in order to provide continuity and avoid disruption at the Facility (ix) describe how Scheduled Maintenance, Unscheduled Maintenance and lifecycle activities will be integrated, in order to provide continuity and avoid disruption at the Facility; and (x) describe how Project Co and the Project Co Parties will coordinate with Contracting Authority, including through the FM Operating Committee, to ensure that the work is scheduled in a manner that avoids disruption and considers the Hospital’s activities and operations.							
	Quality Management and Quality Control	Dev Co shall prepare and submit a document which shall: (i) describe the Quality Management System, including: A. quality assurance measures that will be implemented to adhere to ISO 9001 requirements, including internal and external audits; and B. quality control measures that will be implemented to demonstrate, through objective evidence, that Project Co and the Project Co Parties are adhering to the Project Co Services requirements, including adhering to Maintenance Standards; (ii) describe the Facility Technical Review process, including providing a description of how Project Co will address deficiencies identified by the Independent FM Inspector; (iii) describe the approach to routine facility inspections; and (iv) include proposed performance action plans.					x	x	
	Reporting Requirements	Dev Co shall prepare and submit a document which details the approach to satisfying the reporting requirements in the Draft Project Agreement, including: (i) describing how information management systems are flexible in order to provide data and reports in the format required by Contracting Authority; (ii) providing the necessary hardware and software for Contracting Authority to be able to view and access information and data related to Project Co Services in Project Co’s information management systems (i.e., CMMS and BMS); (iii) providing a sample Performance Monitoring Report, and describing how Project Co will adapt the format of the report in response to Contracting Authority’s input and requests when required, including how deductions shall be made from the Monthly Service Payment; and (iv) describing the approach to preparing the Annual Energy Report, including key milestones and timeframes for each, and how any deficiencies or observations will be addressed and the timing of their resolution.					x	x	
	Building Occupant Satisfaction	Dev Co shall prepare and submit a document which details the approach to Project Co obtaining feedback from Contracting Authority and building occupants using the Satisfaction Surveys and Transaction Surveys as set out in Part 4 of Schedule 15 –					x	x	

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DPA TECHNICAL SUBMITTAL		REQUIREMENTS	SUBMISSION FREQUENCY / TIMING						
CATEGORY	SUB-CATEGORY		IDS	100% SD	30% DD	60% DD	90% DD	PP	OTHER
		Output Specifications of the Draft Project Agreement and implementing corrective actions and efficiencies to address any comments or other issues raised through such feedback.							
Indigenous Participation Plan		<p>Dev Co shall develop a plan which sets out in detail the approach Project Co will take and the measures Project Co will implement under a Final Project Agreement to involve and engage Indigenous persons, including Impacted Indigenous Nations and Indigenous Entities, in the Project Operations during the Project Term (the “Indigenous Participation Plan”). The Indigenous Participation Plan shall, at a minimum, comply with the following requirements:</p> <p>(i) Engagement: Provide a detailed description of how Project Co will ensure meaningful, respectful and culturally safe engagement with Indigenous persons in the Project. Such description shall clearly demonstrate how Project Co’s efforts in this regard will be coordinated with Contracting Authority’s values based, human centred approach to Indigenous engagement activities and anchored in anti-racist, inclusive and trauma informed practices. At a minimum, this description shall include:</p> <ul style="list-style-type: none"> A. a description of the Indigenous design elements that have been or will be incorporated into the design of the Project; B. a strategy to gather, incorporate and integrate input and any other information related to the Project’s design and construction from Impacted Indigenous Nations and Indigenous Entities; C. a strategy to gather feedback on the design and construction of the Project from Impacted Indigenous Nations and Indigenous Entities; D. a strategy for presenting draft design and construction solutions to Impacted Indigenous Nations and Indigenous Entities; E. an approach to address how the design and construction solutions may be revised and updated based on the input and other information received and feedback from Impacted Indigenous Nations and Indigenous Entities; and F. a strategy for considering any feedback, comments or concerns received from Impacted Indigenous Nations and Indigenous Entities during the Project Term. <p>All aspects of the description under this heading, should avoid a pan-Indigenous approach by outlining a structured plan for engagement that respects the relationship which Impacted Indigenous Nations and Indigenous Entities have with the territory on which the Site is located.</p> <p>Project Co shall demonstrate how it will support Contracting Authority’s Indigenous engagement activities when and as requested, including that those whom Project Co chooses to lead its efforts to provide such support are trained in Indigenous cultural competency. The parameters for any such Contracting Authority-led Indigenous engagement activities will be established and communicated to Dev Co during the DPA Term, and the scope of such activities, and Project Co’s specific responsibilities in respect thereof, shall be set out in Indigenous Participation Plan;</p> <p>(ii) Training and Skills Development: Provide a detailed strategy setting out how Project Co will provide training and skills development opportunities to Indigenous persons in implementing the Project, including specifically identifying any training and skills development opportunities proposed for Impacted Indigenous Nations and Indigenous Entities;</p>				x	x	x	

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DPA TECHNICAL SUBMITTAL		REQUIREMENTS	SUBMISSION FREQUENCY / TIMING						
CATEGORY	SUB-CATEGORY		IDS	100% SD	30% DD	60% DD	90% DD	PP	OTHER
		<p>(iii) <u>Human Resources and Employment</u>: Set out a detailed description of the programs and strategies to be employed by Project Co to ensure Indigenous persons are recruited and retained in respect of the Project, as appropriate, taking into account the location of the Site. Project Co is encouraged to include and identify Indigenous persons as part of its teaming, contracting and employment strategies;</p> <p>(iv) <u>Partnerships and Contracting</u>: Provide a comprehensive strategy for providing business opportunities to Indigenous Entities (including service providers and individuals, within the supply chain of Subcontractors associated with the Project), and describing what outreach efforts will be undertaken to ensure such Indigenous Entities are aware of and have the meaningful opportunity to take advantage of such business opportunities, including specifically identifying outreach strategies for engagement with Impacted Indigenous Nations and Indigenous Entities, their representatives and their business entities and subsidiaries regarding partnerships and contracting opportunities;</p> <p>(v) <u>Other Measures and Innovative Approaches</u>: Provide a detailed description of any other measures Project Co will undertake to foster the meaningful, respectful and culturally safe engagement of Indigenous persons in respect of the Project. For example, such measures could include providing opportunities for training and education about Impacted Indigenous Nations and Indigenous Entities, Indigenous history, culture, Truth and Reconciliation Commission Calls to Action, anti-racism and other topics related to dismantling colonial systems and systemic racism. This training could support employees, representatives, subcontractors, advisors and consultants of Project Co and the Project Co Parties; and</p> <p>(vi) <u>Targets and Objectives</u>: Provide a clear approach to and process for establishing objectives and setting targets for all elements of the Indigenous Participation Plan, and establish such objectives and set such targets. Such approach and process must include a mechanism for meaningful engagement with Indigenous persons as well as with Contracting Authority, in respect of the establishment of such objectives and targets. Such approach and process shall take into account Project constraints (such as Project budget and scope) weighed against the economic benefit of the opportunities in question. In addition to the foregoing, the Indigenous Participation Plan shall establish targets and objectives in respect of the following:</p> <p>A. the development of Indigenous resources and Indigenous businesses that will contribute to the economic development of Indigenous communities and Indigenous peoples; and</p> <p>B. the stimulation of Indigenous employment and business development, including building Indigenous capacity to effectively participate in the Project and future projects by providing on-the-job training, skills development, apprenticeship and mentorship.</p>							

ATTACHMENT 1

SCOPE AND SPACE TRACKING TABLE

[REDACTED]

ATTACHMENT 2

COST CODE TABLES

[REDACTED]

ATTACHMENT 3
OPERATING COST FORM

[REDACTED]

ATTACHMENT 4

LIFECYCLE REPLACEMENT SCHEDULE FORM

[REDACTED]

ATTACHMENT 5

COST ESTIMATE SUBMITTALS SUMMARY FORM

[REDACTED]

ATTACHMENT 6

FORM OF ENERGY TARGET LETTER

[REDACTED]

APPENDIX 2

DPA FINANCIAL SUBMITTALS AND REQUIREMENTS

1. DEFINITIONS

1.1 Definitions

In this Appendix 2, unless the context indicates a contrary intention, terms which are defined in the Agreement (and not otherwise defined in this Appendix 2) shall have the meanings given to them in the Agreement and the following terms shall have the following meanings:

- (a) “**Adjusted PA Payments**” has the meaning given in Appendix 5 – Financing Process of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- (b) “**Benchmark Rate**” has the meaning given in Section 2 of Attachment A – Benchmark Rate to this Appendix 2.
- (c) “**Benchmarking Date**” has the meaning given in Appendix 5 – Financing Process of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- (d) “**Best Efforts Bond Debt Financing**” has the meaning given in Appendix 5 – Financing Process of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- (e) “**Committed Financing**” means, collectively, the binding commitments to provide the Financing from the Potential Equity Provider and the Potential Lenders.
- (f) “**Committed Financing Process CA Engagement and Collaboration Plan**” has the meaning given in Section 3.3(b)(i).
- (g) “**Credit Spreads**” means the financing premiums/spreads in excess of the Benchmark Rate(s), including as calculated/illustrated in the Financial Model in accordance with Section 3 of Table A of Attachment A – Benchmark Rate to this Appendix 2. For greater certainty, the Credit Spreads do not include any hedge premiums, swap counterparty spreads or any other applicable fees.
- (h) “**Debt Agent**” means the person engaged by Dev Co in accordance with the Agreement for the purposes of the Project to lead any bond financing placement, as agent for and on behalf of Dev Co and Project Co.
- (i) “**Debt Arranger**” means the person engaged by Dev Co in accordance with the Agreement for the purposes of the Project that is accountable for leading the overall Debt Financing process for and on behalf of Dev Co and Project Co, in conjunction with the Financial Advisor, including for appointing the Potential Lenders’ legal counsel, and drafting and completing term sheets and related debt commitments.
- (j) “**Debt Financing Outreach Process and Competition Submittal**” means the DPA Financial Submittal submitted by Dev Co in response to and in accordance with Section 3.4.

- (k) **“Debt Financing Plan”** means the DPA Financial Submittal submitted by Dev Co in response to and in accordance with Section 3.3.
- (l) **“Equity Capital Financing”** has the meaning given in Appendix 5 – Financing Process of DPA Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- (m) **“Equity Capital Financing Proposal”** means the DPA Financial Submittal submitted by Dev Co in response to and in accordance with Section 3.1 and updated pursuant to Section 3.5, which includes indicative proposals in respect of the Equity Capital Financing for the Project and shall satisfy the requirements of Section 3.1 and Section 3.5, as applicable, and include any and all other relevant supporting information not expressly described in such Sections.
- (n) **“Equity IRR”** means the proposed internal rate of return in respect of the Equity Capital.
- (o) **“Financial Advisor”** means the person engaged by Dev Co for the purposes of the Project during and in accordance with the Request for Proposals process, who is responsible for advising Dev Co in respect of the development of all aspects of the Financing, including the structure of the Financing, the development of financing options and associated costs, the development and custody of the Financial Model until Financial Close, and oversight over the drafting and finalization of the Lending Agreements.
- (p) **“Financial Model”** means the computer model described in Section 3.8.
- (q) **“Financial Model Specification Booklet”** means the Financial Model Specification Booklet described in Section 3.8(b)(vi).
- (r) **“Financing Process Third Parties”** means, collectively, the Debt Agent and the Debt Arranger.
- (s) **“Financing Process Third Parties Submittal”** means the DPA Financial Submittal submitted by Dev Co in response to and in accordance with Section 3.2.
- (t) **“Financing Proposal”** means the DPA Financial Submittal submitted by Dev Co in response to and in accordance with Section 3.6, being Dev Co’s binding proposal in respect of the Financing for the Project, which shall satisfy the requirements of Sections 3.6 and 3.7, include the Financial Model in accordance with Section 3.8, and include any and all other relevant supporting information not expressly described in such Sections. For greater certainty, the Financing Proposal shall not be required to include any committed pricing in respect of any Best Efforts Bond Debt Financing.
- (u) **“Separate Not-In-Contract Equipment Fee”** means the cost of Project Co’s performance of its obligations in relation to the procurement of Not-In-Contract Equipment set out in Section 21 of the Project Agreement.
- (v) **“Separate Transition Services Fee”** means the cost of the Transition Advisor and the planning, coordination, management and execution of the Transition set out in Section 24.15 of the Draft Project Agreement.
- (w) **“Third Party Advisory and Administrative Costs”** has the meaning given in Section 3.2(b)(ii).

2. GENERAL

2.1 DPA Financial Submittals and Requirements

- (a) This Appendix 2, amongst other things, describes the DPA Financial Submittals and the requirements in respect of the development, content and timing of submission by Dev Co to DPA Contracting Authority of the DPA Financial Submittals in accordance with the Agreement, including Appendix 5 – Financing Process of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- (b) Each DPA Financial Submittal must satisfy each of the applicable requirements of Schedule 3 – DPA Submissions and Project Development Process of the Agreement and be well developed, detailed and robust. Where indicated in this Appendix 2, the DPA Financial Submittal (or any indicated part thereof) shall be binding on Dev Co in accordance with its terms and with any applicable provisions of the Agreement.
- (c) The following is a list of the DPA Financial Submittals, each of which is to be submitted to DPA Contracting Authority for its review subject to and in accordance with Appendix 5 – Financing Process of Schedule 3 – DPA Submissions and Project Development Process of the Agreement and the other applicable provisions of the Agreement:
 - (i) the Equity Capital Financing Proposal;
 - (ii) the Financing Process Third Parties Submittal;
 - (iii) the Debt Financing Plan;
 - (iv) the Debt Financing Outreach Process and Competition Submittal; and
 - (v) the Financing Proposal.

3. DPA FINANCIAL SUBMITTALS AND REQUIREMENTS

3.1 Equity Capital Financing Proposal

- (a) **Submission Deadline:** No later than 180 days following the Effective Date.
- (b) **Other Requirements:**

Equity Capital Financing Proposal	Requirements
<p>(i) Identification and Description of each Potential Equity Provider:</p>	<ul style="list-style-type: none"> • Dev Co must identify and provide a description of each person comprising the Potential Equity Provider, the proposed amount of Equity Capital funds, and the timing of investment of such funds in the Project. • At a minimum, the description must clearly define the proposed sources of Equity Capital funds, levels of commitments (including any maximum levels of commitment) and all necessary approvals

Equity Capital Financing Proposal	Requirements
	<p>required or received in order to commit the necessary funds by Financial Close.</p>
<p>(ii) Documentation required for each Potential Equity Provider:</p>	<p>Dev Co must provide:</p> <ul style="list-style-type: none"> • an indicative and non-binding Equity Capital commitment letter from each person comprising the Potential Equity Provider, confirming at a minimum: <ul style="list-style-type: none"> ○ the expected maximum amount of Equity Capital that it can commit to the Project; ○ the expected expiry date of such commitment; ○ an expected range for the Equity IRR associated with such commitment (on a pre-tax basis); and ○ any key terms and conditions related to such commitment; and • for each person comprising the Potential Equity Provider, a report identifying the source(s) of Equity Capital (i.e. specific fund or investing entity) and its current financial position, including: <ul style="list-style-type: none"> ○ an overview of recent financial performance (supported by financial statements of the most recent quarter and updated, where available); ○ a fund performance report (if applicable); ○ a ratings report, if available, or any other financial documents to support the financial analysis; and ○ detailed process and internal approvals procedures/timelines for allocation of funding, and the anticipated timeline for committing funding for the Project.
<p>(iii) Equity Pricing Requirements :</p>	<p>Dev Co must provide a summary of the proposed Equity Capital structure, which includes:</p> <ul style="list-style-type: none"> • the assumed Debt Financing structure for the purposes of sizing the Equity Capital; • a rationale for the proposed sizing of the Equity Capital (based on debt to equity gearing), noting any deviations from market norms; • proposed Equity IRR, on a pre-tax basis, at Financial Close and at Substantial Completion along with associated rationale based on current market conditions; • Equity IRR benchmarks, including a list of recent, relevant equity commitments that have been placed in the market by the Potential Equity Provider and the Equity IRRs associated with such commitments. To the extent that the proposed Equity IRR deviates from the benchmarks provided, a narrative shall be provided explaining the reasons for such deviation, citing market factors and project-specific issues that would warrant such deviation (which

Equity Capital Financing Proposal	Requirements
	<p>narrative may include reference to internal equity hurdle rates as rationale to justify the proposed Equity IRR); and</p> <ul style="list-style-type: none"> • a draft Equity Capital distribution profile.

3.2 Financing Process Third Parties Submittal

- (a) **Submission Deadline:** A date during the 60% Design Development Stage that will be determined by DPA Contracting Authority, acting reasonably, and identified by DPA Contracting Authority to Dev Co in writing prior to the 60% Design Development Stage.
- (b) **Other Requirements:**

Financing Process Third Parties Submittal	Requirements
<p>(i) Identification of the Financing Process Third Parties:</p>	<ul style="list-style-type: none"> • Dev Co shall identify the proposed persons that will serve as the Debt Arranger and Debt Agent in respect of the Financing Process under the Agreement, including a description of each such person’s respective role in the Financing Process and approach to working with the other Financing Process Third Party, the Financial Advisor, Dev Co and DPA Contracting Authority in order for Dev Co to be able to submit the Project Proposal and cause Project Co to execute and deliver the Final Project Agreement and achieve Financial Close. • The Financial Advisor, Debt Arranger and Debt Agent may be the same person or a combination of several different persons, provided that no Conflict of Interest would arise and no such person is a Restricted Person. • Dev Co shall provide: <ul style="list-style-type: none"> ○ the names of the individual(s) at each of the Debt Arranger and Debt Agent proposed to lead the Financing Process and describe their experience and how they would contribute to the success of the Project from a financing perspective; ○ detailed resumes for no more than three persons from each of the Debt Arranger and Debt Agent. These resumes must indicate overall experience and any specific experience, relevant to the nature and scope of the Project; and ○ where one entity is proposed for more than one role, a summary of how those roles will be fulfilled and resourced by such entity.

Financing Process Third Parties Submittal	Requirements
	<p>Debt Arranger: Specifically with respect to the proposed Debt Arranger, Dev Co shall include:</p> <ul style="list-style-type: none"> • an overview of the Debt Arranger’s demonstrated ability and experience as it relates to providing the envisioned scope of services with a specific focus on raising short and/or long-term financing on a best-efforts basis on projects of similar size and scope to the Project and occurring over similar timelines and by way of similar financing processes; • demonstrated experience of the Debt Arranger with respect to sourcing financing with an objective of minimizing project cost subject to nominal budget constraints while maximizing execution certainty on projects of similar size and scope to the Project; and • a statement confirming that the services of the Debt Arranger will be performed in accordance with the requirements of Section 5.2(a)(ii) of Appendix 5 – Financing Process of Schedule 3 – DPA Submissions and Project Development Process of the Agreement. <p>Debt Agent: Specifically with respect to the proposed Debt Agent, Dev Co shall include:</p> <ul style="list-style-type: none"> • an overview of the Debt Agent’s demonstrated ability and experience as it relates to providing the envisioned scope of services with a specific focus in raising short and/or long-term financing on a best-efforts basis on projects of similar size and scope to the Project and occurring over similar timelines and by way of similar financing processes; • a draft form of agreement between Dev Co and the Debt Agent, which sets out that the Debt Agent will, on Financial Close, be paid by or on behalf of Project Co an all-inclusive amount not greater than an amount equal to [REDACTED] basis points multiplied by the final amount of the bond financing included as part of the Debt Financing at Financial Close plus applicable HST as compensation for the Debt Agent’s services in respect of the Financing; • demonstrated experience by the Debt Agent with respect to sourcing financing with an objective of minimizing project costs subject to nominal budget constraints while maximizing execution certainty on projects of similar size and scope to the Project; • a statement confirming that the Debt Agent shall be paid the amount described above as compensation for its services in respect of the Financing; and

Financing Process Third Parties Submittal	Requirements
	<ul style="list-style-type: none"> a statement confirming that the services of the Debt Agent will be performed in accordance with the requirements of Section 5.2(a)(ii) of Appendix 5 – Financing Process of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
(ii) Third Party Advisory and Administrative Costs	<p>Dev Co shall:</p> <ul style="list-style-type: none"> provide an estimate of the fees, costs and expenses that will be incurred in respect of third party advisors and associated administrative matters in relation to the Financing Process, all as described in this Section 3.2(b)(ii) (collectively, the “Third Party Advisory and Administrative Costs”); and provide confirmation and supporting evidence showing that the amounts estimated for the Third Party Advisory and Administrative Costs are in line with applicable market benchmarks for similar design-build-finance and maintenance projects in Ontario. <p>The Third Party Advisory and Administrative Costs shall include the following:</p> <ol style="list-style-type: none"> fees and any other amounts payable to the Financial Advisor; fees, costs and expenses incurred by Dev Co in relation to the DPA Closing Letter of Credit; fees, costs and expenses related to legal counsel to the Potential Lenders, payable by Dev Co or any Dev Co Party; fees, costs and expenses related to the insurance advisors to the Potential Lenders, payable by Dev Co or any Dev Co Party; fees, costs and expenses related to the technical advisor to the Potential Lenders, payable by Dev Co or any Dev Co Party; fees, costs and expenses for the Financial Model audit, as required by the Potential Lenders; and fees and any other amounts payable to the model auditor payable by Dev Co or any Dev Co Party, if applicable.

3.3 Debt Financing Plan

- (a) **Submission Deadline:** A date during the 60% Design Development Stage or the 90% Design Development Stage that will be determined by DPA Contracting Authority, acting reasonably, and identified by DPA Contracting Authority to Dev Co in writing prior to or during the 60% Design Development Stage. It is intended that such date will occur after Dev Co’s submission of the Financing Process Third Parties Submittal.
- (b) **Other Requirements:**

Debt Financing Plan	Requirements
<p>(i) Description / Approach to Debt Financing Market Outreach Process and Funding Competition</p>	<p>Dev Co shall provide a detailed description of its general strategy for and approach to obtaining the Debt Financing, including running its debt market outreach process and debt competition that highlights how they intend to obtain the most competitive terms and conditions from Potential Lenders. The description should include the following:</p> <ul style="list-style-type: none"> • the overall strategy, key steps and timelines proposed to canvass the debt market for potential participation as Potential Lenders in the Project that ensures a robust, comprehensive and competitive process; • how the approach will achieve a balance between the cost of the financing solution being contemplated and the certainty of reaching Financial Close; • how the approach will solicit the best pricing, structure and terms available from leading bank lenders, bond underwriters and long-term placement investors in the market; • how the pricing, structure and terms solicited through the debt funding outreach process and funding competition and negotiated thereafter into robust and fully committed financing documentation will translate into the development and implementation of a financing plan acceptable to DPA Contracting Authority; and • how Dev Co plans to engage and collaborate with DPA Contracting Authority in the Debt Financing outreach, funding competition and Committed Financing processes, including on the basis required by Appendix 5 – Financing Process of Schedule 3 – DPA Submissions and Project Development Process of the Agreement (the “Committed Financing Process CA Engagement and Collaboration Plan”). This shall include weekly or biweekly reporting meetings with DPA Contracting Authority throughout the DPA Term (including at meetings of the Finance Working Group) and DPA Contracting Authority’s involvement in marketing efforts, investor calls, etc.
<p>(ii) Approach to Debt Financing Structure</p>	<p>Based on design-build-finance-maintain or similar progressive projects and current market conditions, Dev Co shall provide the following:</p> <ul style="list-style-type: none"> • the anticipated Potential Lenders (for example, banks, life insurance companies, pension funds) and their proposed involvement (approximate in percentage terms); • a plan that details how Dev Co intends to ensure an adequate level of commitment from Potential Lenders for a timely and successful Commercial Close and Financial Close;

Debt Financing Plan	Requirements
	<ul style="list-style-type: none"> • an explanation of contingency plans should there be a gap in the Financing or should any of the Potential Lenders not be in a position to provide its share of the Financing; • an explanation of plans and efforts to negotiate/eliminate any provisions or clauses that may put the Project’s Financing at risk (e.g. “market out” clauses); • a list of any innovative financing transaction structures that will be used to achieve added value for money to DPA Contracting Authority and the Project, including benchmarking and other efforts to ensure reduced Financing costs; and • relevant information to support Dev Co’s responses to the points above (including letters of support from funding sources, etc.) where available. For greater clarity, Dev Co is not required to provide specific dollar amounts for contemplated debt in its Debt Financing Plan.

3.4 Debt Financing Outreach Process and Competition Submittal

- (a) **Submission Deadline:** A date during the 90% Design Development Stage that will be determined by DPA Contracting Authority, acting reasonably, and identified by DPA Contracting Authority to Dev Co in writing prior to or during the 90% Design Development Stage. It is intended that such date will occur after Dev Co’s submission of the Debt Financing Plan.
- (b) **Other Requirements:**

Debt Financing Outreach Process and Competition Submittal	Requirements
<p>(i) Summary of Process</p>	<p>Dev Co shall provide the results of its Debt Financing outreach process and competition results in a report addressed to DPA Contracting Authority, which includes, at a minimum, the following:</p> <ul style="list-style-type: none"> • a description of the overall process that was conducted, its objective(s) and any deviations from the Debt Financing Plan; • the identification and a description of the parties that were invited to be a part of the outreach process and funding competition; • the identification and a description of the parties that participated in the outreach process and funding competition; • Dev Co’s views on the overall capacity and interest in financing the Project, including key considerations and risks; • a plan of bond distribution by the Debt Agent (where applicable); • a confirmation letter from the Debt Agent attesting to the overall debt raising process by including customary language confirming compliance with due process and industry best practices; • a confirmation letter from the Debt Arranger attesting to the overall debt raising process by including customary language confirming compliance with due process and industry best practices; • a version of the market engagement deck that was leveraged to help facilitate the market outreach process and debt competition; and • Dev Co’s overall recommendation of the proposed Debt Financing solution for the Project, including the identification of the Potential Lenders (banks, financial institutions etc.) and respective involvement, based on the requirements of this submittal, debt market outreach process and debt competition results.

Debt Financing Outreach Process and Competition Submittal	Requirements																								
<p>(ii) Proposed Debt Financing Solution</p>	<p>Dev Co shall include a detailed description of the proposed Debt Financing solution for the Project in respect of how it achieves the Financing Process Governing Principles based on the selection criteria of the financial institutions providing the proposed Debt Financing, including:</p> <ul style="list-style-type: none"> • the most competitive pricing conditions, including margins, upfront, swap and commitment fees; • the Potential Lenders’ track record of delivering their commitments in the context of financial turmoil; • financial stability of the Potential Lenders from an institutional standpoint; and • the flexibility of the Potential Lenders to accept the most beneficial terms and conditions for the Project and DPA Contracting Authority. <p>Dev Co shall also update the Committed Financing Process CA Engagement and Collaboration Plan.</p>																								
<p>(iii) Key Terms and Conditions to be obtained during the Debt Financing Competition</p>	<p>In order to objectively ensure the review of competitive Debt Financing proposals during the funding competition, the following key financial terms and conditions are to be obtained by Dev Co, at a minimum, from the interested financial institutions identified in the proposed debt funding solution and provided to DPA Contracting Authority. For clarity, these terms and conditions should be obtained from all Potential Lenders for the Project as well as any other financial institutions that participated in the process.</p> <table border="1" data-bbox="581 1331 1404 1835"> <thead> <tr> <th colspan="2" data-bbox="581 1331 1404 1373">Key Financial Terms & Conditions</th> </tr> </thead> <tbody> <tr> <td data-bbox="581 1373 1177 1415"></td> <td data-bbox="1177 1373 1404 1415"></td> </tr> <tr> <td colspan="2" data-bbox="581 1415 1404 1457">Construction Facility (Banks):</td> </tr> <tr> <td data-bbox="581 1457 1177 1499">Take and Hold Indicative Commitment (C\$)</td> <td data-bbox="1177 1457 1404 1499"></td> </tr> <tr> <td data-bbox="581 1499 1177 1541">Tenor (years/months)</td> <td data-bbox="1177 1499 1404 1541"></td> </tr> <tr> <td data-bbox="581 1541 1177 1583">Upfront Fee (bps flat)</td> <td data-bbox="1177 1541 1404 1583"></td> </tr> <tr> <td data-bbox="581 1583 1177 1625">Margin (bps p.a.)</td> <td data-bbox="1177 1583 1404 1625"></td> </tr> <tr> <td data-bbox="581 1625 1177 1667">Commitment Fee (as a % of Margin)</td> <td data-bbox="1177 1625 1404 1667"></td> </tr> <tr> <td data-bbox="581 1667 1177 1709">Interest Rate Swap Appetite (Quantum)</td> <td data-bbox="1177 1667 1404 1709"></td> </tr> <tr> <td data-bbox="581 1709 1177 1751">Interest Rate Swap Indicative Margin (bps p.a.)</td> <td data-bbox="1177 1709 1404 1751"></td> </tr> <tr> <td data-bbox="581 1751 1177 1793"></td> <td data-bbox="1177 1751 1404 1793"></td> </tr> <tr> <td colspan="2" data-bbox="581 1793 1404 1835">Construction Facility (Bonds):</td> </tr> </tbody> </table>	Key Financial Terms & Conditions				Construction Facility (Banks):		Take and Hold Indicative Commitment (C\$)		Tenor (years/months)		Upfront Fee (bps flat)		Margin (bps p.a.)		Commitment Fee (as a % of Margin)		Interest Rate Swap Appetite (Quantum)		Interest Rate Swap Indicative Margin (bps p.a.)				Construction Facility (Bonds):	
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Debt Financing Outreach Process and Competition Submittal	Requirements	
	Take and Hold Indicative Commitment (C\$)	
	Tenor (years/months)	
	Average Life (years/months)	
	Upfront Fee (bps flat)	
	Margin (bps p.a.)	
	Desired bond rating	
	Long Term Facility (Bonds): (Private/Broadly marketed)	
	Take and Hold Indicative Commitment	
	Tenor (years/months)	
	Average Life (years/months)	
	Max. Gearing (Debt : Equity)	
	Upfront Fee (bps flat)	
	Margin (bps p.a.)	
	Desired bond rating	
	Debt Sizing DSCR requirement	
	Financial Covenants	
	DSCR: Event of Default	
	DSCR: Distribution Block	
	<ul style="list-style-type: none"> In addition to the key financial terms and conditions outlined above, Dev Co is to provide a summary of the key terms and risks in respect of the identified funders' offers for the debt solution being proposed. 	
(iv) Detailed Indicative Term Sheet and Financing Information (optional)	Dev Co is encouraged, but not required, to submit detailed indicative term sheets and supporting financing information for the debt solution being proposed as part of this DPA Financial Submittal.	

3.5 Update to Equity Capital Financing Proposal

- (a) **Submission Deadline:** A date during the 90% Design Development Stage that will be determined by DPA Contracting Authority, acting reasonably, and identified by DPA Contracting Authority to Dev Co in writing prior to or during the 90% Design Development Stage. It is intended that such date will occur on or about the date for submission of the Debt Financing Outreach Process and Competition Submittal.

(b) **Other Requirements:**

Update to Equity Capital Financing Proposal	Requirements
(i) Update to Equity Capital Financing Proposal	<ul style="list-style-type: none"> • Dev Co shall update and re-submit the Equity Capital Financing Proposal to set out revised estimates of the proposed Equity Capital Financing commitment and a revised expected range of Equity IRR associated with such proposed commitment (on a pre-tax basis); and • Dev Co shall not otherwise make any material changes to the initial Equity Capital Financing Proposal without the prior written consent of DPA Contracting Authority, not to be unreasonably withheld.
(ii) Detailed Indicative Term Sheet and Financing Information (optional)	<ul style="list-style-type: none"> • Dev Co is encouraged, but not required, to submit detailed indicative term sheets and supporting financing information for the Equity Capital Financing being proposed as part of this updated DPA Financial Submittal.

3.6 Financing Proposal

(a) **Submission Deadline:** No later than the date that is 30 days following DPA Contracting Authority’s delivery of the Notice described in Section 8.1(a) of Appendix 5 – Financing Process of Schedule 3 – DPA Submissions and Project Development Process of the Agreement

(b) **Other Requirements:**

Financing Proposal	Requirements
(i) Financing Proposal	<p>Dev Co shall provide an achievable, realistic and binding committed proposal in respect of the Financing for the Project, which shall:</p> <ul style="list-style-type: none"> • be consistent with the previously submitted DPA Financial Submittals and, to the extent applicable, the Project Proposal, including the Financial Model; • not be required to include any committed pricing in respect of any Best Efforts Bond Debt Financing; and • not contain any penalties or break fees that would apply if the Project does not achieve Commercial Close or Financial Close pursuant to the Agreement or any Final Project Agreement.

Financing Proposal	Requirements
<p>(ii) Description of Financing Proposal</p>	<p>It must include, at a minimum, the following:</p> <ul style="list-style-type: none"> • a description of Dev Co’s proposed financing structure, including confirmation of the engagement of the Potential Equity Provider identified in the Equity Capital Financing Proposal, the Potential Lenders, the funding structure, an organizational chart of the Project Co consortium, and the role of its investors; • the final committed values for the Equity Capital Financing (including the respective commitments for each Potential Equity Provider), and the associated Equity IRR; • a description of the proposed approach to performance security to meet the requirements of the Draft Project Agreement, Potential Lenders, and the <i>Construction Act</i> (Ontario), including details of any surety bonds (including performance bonds and labour and material bonds), letters of credit, parent company guarantees, or any other forms of security being proposed, including level of security proposed (in percentage terms and dollar amounts). With regards to performance security to be provided by Project Co, the Potential Equity Provider, subcontractors and any associated third parties in respect of the Project (including performance guarantees), the details of the parent and ultimate parent company involvement in any and all such performance security and details of how such person will satisfy any terms of such performance security; • Dev Co’s confirmation as it relates to providing the performance security; • details of any working capital requirements and details of how these requirements will be met; • details of any standby facilities provided to meet the requirements of the Final Project Agreement; and • to the extent that forms of financing other than debt and equity are to be used, Dev Co is to provide appropriate details equivalent to those requested for equity and debt.
<p>(iii) Elements of Financing Proposal</p>	<p>In respect of all Potential Lenders (senior and subordinated) and Potential Equity Providers, Dev Co must provide:</p> <ul style="list-style-type: none"> • a description of each such person along with the proposed amount of committed funds and timing of investment/availability of these funds. This description shall include clearly defining the sources of funds, confirmation of commitments (for example, credit committee approval and other similar approvals) and all other necessary approvals received to commit the necessary funds by Financial Close. This shall include the identity and credit status of each such person as well as the amount to be provided by it. Note, in the case of the Potential Equity Provider, key terms with respect to equity commitments and Equity IRR

Financing Proposal	Requirements
	<p>shall be consistent with the updated Equity Capital Financing Proposal;</p> <ul style="list-style-type: none"> • in addition to the above, credit status (including for example credit rating reports and other credit information) must be provided for each person that has provided or will be providing any part of the Financing; • a statement confirming compliance with Section 2.3 of Appendix 5 – Financing Process of Schedule 3 – DPA Submissions and Project Development Process of the Agreement; • a plan that details and ensures committed financing from Potential Lenders for a timely and successful Financial Close; • a plan of bond distribution by the Debt Agent (where applicable); and • a detailed plan of action to eliminate or mitigate risks associated with Potential Lenders’ terms and conditions that may impact Dev Co’s ability to reach Financial Close, including, at a minimum: <ul style="list-style-type: none"> ○ Potential Lenders’ conditions precedent to Financial Close; ○ any material adverse condition clauses (“MAC”); ○ the level of direct or indirect conditions that might conflict with or affect the Project documents, including the Agreement, the Draft Project Agreement and the form of Lenders’ Direct Agreement; ○ any flex conditions; and ○ any other terms or conditions that might put the financing commitment at risk, whether at Financial Close or thereafter. <p>Contingency Plans</p> <ul style="list-style-type: none"> • Dev Co must provide its contingency financing plans as evidenced by one or more of the following: <ul style="list-style-type: none"> ○ a commitment by the Potential Lenders to top up their respective share(s) (to replace any Potential Lender who might fail to advance); ○ the level of diversification in the pool of Potential Lenders; ○ the strength of relationships with committed Potential Lenders, as well as other non-participating lenders; ○ any other contingency plans to ensure Financial Close is achieved under the same conditions; and ○ the ability of the Potential Equity Provider to meet any condition(s) that might be required by Potential Lenders leading up to Financial Close, if applicable.

Financing Proposal	Requirements
<p>(iv) Term Sheets and Commitments</p>	<p>Dev Co shall provide copies of all term sheets and commitments, which shall include the following in respect of all proposed Debt Financing instruments:</p> <ul style="list-style-type: none"> • confirmation as to the identity of the Debt Arranger and Debt Agent; • type of facility; • purpose of facility; • availability period; • the amount of financing proposed or committed and currency in which it is to be provided; • the drawdown schedule; • details of grace periods, including duration and contingency; • repayment or redemption schedules, maturity dates and prepayment terms including make-whole clauses which are expected to be in line with industry practices and standards; • security requirements (from either parents or third parties) for any surety bonds (including performance bonds and labour and material bonds), letters of credit, parent company guarantees or any other forms of security required under the Final Project Agreement or otherwise being proposed; • arrangement, underwriting, commitment, agency and all other fees; • interest rates (whether fixed or floating) specifying the Benchmark Rate spreads thereon and margins, including a ratchet mechanism, if any; • requirements for reserve accounts; • project accounts structure (including blocked accounts) and funds flow waterfall; • any proposed hedging arrangements in respect of interest rates (including swap margins); • with respect to the interest rate hedging strategy, Dev Co shall also describe and provide details of its proposed interest rate hedging strategy that may be used, if any, including, the time period over which a hedge is expected to be in place and the proportion of the debt repayments that are to be hedged; • events of default and other termination right triggers; • step-in arrangements; • conditions precedent to funding; • due diligence requirements; • any other restrictions, requirements or conditions that may materially impact Dev Co's ability to raise financing or Project Co's ability to drawdown on committed financing after Financial Close;

Financing Proposal	Requirements
	<ul style="list-style-type: none"> • if the financing plan is dependent on a credit rating, an indicative credit rating from one or more credit reference agencies; and • description of the benchmarking efforts undertaken by Dev Co to ensure competitive terms and conditions for its financing partners.
(v) Additional Information	<p>Dev Co shall provide the following:</p> <ul style="list-style-type: none"> • a description of the Security Documents proposed and how the Security Documents address the various levels of risk; and • a confirmation letter from the Financial Advisor stating that the financing plan and solution is achievable, robust and has been obtained competitively and on commercially reasonable terms.
(vi) Letter of Support for Construction	<p>Dev Co shall provide a letter from each guarantor and/or other supporting entity describing any and all parent company guarantees and/or other support which will be provided in support of Project Co's obligations, including, for greater certainty, any parent company guarantees of obligations expected to be subcontracted by Project Co:</p> <ul style="list-style-type: none"> • the full name and any unique identification numbers of the organization(s) that will provide the support; • the scope of each guarantee and/or support, and how this guarantee and/ or support will work in practice if called on; • the proposed level of the guarantee and/ or support; and • the duration of the guarantee and/or support.
(vii) Legislative Holdback	<p>If applicable, Dev Co shall provide a description of any contemplated early release of the holdbacks retained in accordance with the <i>Construction Act</i> (Ontario) relating to any Subcontracts (as defined in the Draft Project Agreement). The description shall explain (a) how each early release is in compliance with the <i>Construction Act</i> (Ontario) and (b) how each such early release will be funded and financed.</p>
(viii) DPA Closing Letter of Credit	<p>Pursuant to and in accordance with the Development Phase Agreement, Dev Co must provide the DPA Closing Letter of Credit in the amount of \$[REDACTED] by the date set out in DPA Section 16.3. In support of this obligation, Dev Co must provide as part of the Financing Proposal:</p> <p>(a) a letter or letter(s) from its financial institution(s) addressed to DPA Contracting Authority confirming:</p> <p>(i) the financial institution's commitment to provide the DPA Closing Letter of Credit, duly executed in the form set out in and in accordance with the requirements of the Development Phase Agreement, and by the date set out in the Agreement; and</p>

Financing Proposal	Requirements
	<p>(ii) the issuance of the DPA Closing Letter of Credit is not subject to any restrictions whatsoever, including the approval of its credit committee; and</p> <p>(b) a signed letter from Dev Co addressed to DPA Contracting Authority confirming that Dev Co will provide DPA Contracting Authority the DPA Closing Letter of Credit.</p>

3.7 Basis and Assumptions for the Financing Proposal

- (a) Capitalized terms used in this Section 3.7 but not defined in the Agreement have the respective meanings given to them in the Draft Project Agreement.
- (b) The Financing Proposal shall be based on the assumptions set out in the table below. Dev Co is required to list the assumptions described in this Section 3.7 in its Financing Proposal and provide confirmation to DPA Contracting Authority in the Financing Proposal that these assumptions have been used in the portion of the Financing Proposal that is in response to the requirements set out in Sections 3.6 and 3.8.

Basis and Assumption	Requirement
(i) Financial Close & Financial Model Start Date	The Financial Close date to be used as the date for the start of construction is the Financial Close Target Date.
(ii) Base Date	The base date to be used is the date of Financial Close.
(iii) Duration of Project Agreement	The Draft Project Agreement provides for an expiry date of 30 years from the Scheduled Substantial Completion Date specified in the Project Proposal. As an example, assuming a seven-year construction period following the execution and delivery of the Final Project Agreement, the length of the Final Project Agreement is approximately 37 years from Commercial Close.
(iv) Currency	Where prices are requested in the Agreement or Draft Project Agreement those prices are to be submitted in Base Date (as described in Section 3.7(b)(ii)) prices and in Canadian dollars.
(v) Price Validity	With the exception of an adjustment for movement in the relevant Benchmark Rate and any non-committed pricing in respect of any Best Efforts Bond Debt Financing, all prices in the Financing Proposal shall remain firm and irrevocable from the date of submission of the Financing Proposal until the expiry of the Project Proposal Validity Period (as may be extended in accordance with the Agreement).
(vi) Inflation	CPIXFET is assumed to be at a rate of [REDACTED]% per annum and indexation will be applied on an annual basis starting on [REDACTED]

Basis and Assumption	Requirement
	and ending on [REDACTED] based on the assumptions listed in Section 3.8(b)(x).
(vii) Interest Rates	<p>Dev Co shall provide in its proposed committed financing solution the relevant Benchmark Rate(s) it has used, as priced at the time of submission of the Financing Proposal.</p> <p>Dev Co shall provide clearly defined, verifiable and transparent supporting information on source and composition of the Benchmark Rate(s) identified through publicly observable screen shots (for example, include a Bloomberg Screen or Reuters Screen) from which the Benchmark Rate(s) was extracted, average life, drawdown and repayment profile and where applicable, formulas and calculations that would allow DPA Contracting Authority to verify the reference interest Benchmark Rate(s) at Financial Close. The benchmark instruments specified in the Financing Proposal for pricing the Benchmark Rate(s) must be identical to the benchmark instruments specified in the term sheet submitted as part of the Financing Proposal.</p> <p>For financing solutions that involve swap(s), Dev Co must complete the information in the Attachment B - Swap Term Sheet attached to this Appendix 2.</p> <p>Dev Co shall define, describe and provide details and explanations of any spread, premium, Potential Lenders' margins and any other adjustments (for example flex rates, liquidity premiums or margins for executable rates, etc.) over and above the Benchmark Rate(s) that Dev Co considers necessary. Any such additional interest rate risk over and above the Benchmark Rate(s) should be clearly quantified in the Financing Proposal and, other than any non-committed pricing in respect of any Best Efforts Bond Debt Financing, will not be adjusted prior to Financial Close in accordance with Appendix 5 – Financing Process of Schedule 3 – DPA Submissions and Project Development Process of the Agreement. For greater clarity, any hedge premium, delayed draw premium or swap counterparty credit premium will not be adjusted.</p> <p>Any component of the Financing that is not part of any Best Efforts Bond Debt Financing shall not be subject to any spread or margin adjustments prior to Financial Close in accordance with Appendix 5 – Financing Process of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.</p> <p>The verifiable Benchmark Rate(s) will be the only rate(s) that will be adjusted prior to Financial Close in accordance with Appendix 5 – Financing Process of Schedule 3 – DPA Submissions and Project Development Process of the Agreement</p> <p>Dev Co is to reference the information in Attachment A - Benchmark Rate to this Appendix 2 for additional requirements on the Benchmark</p>

Basis and Assumption	Requirement
	Rate(s) and associated composition of the Benchmark Rate(s) and all-in rate for the purposes of the Financing Proposal.
(viii) Indicative Credit Spread for Bonds	<p>Dev Co shall submit an indicative Credit Spread for any Best Efforts Bond Debt Financing along with appropriate rationale and supporting commentary that will be used to justify and assess the reasonableness and anticipated consistency of the Credit Spread as DPA Contracting Authority, Contracting Authority, Dev Co and Project Co approach Financial Close.</p> <p>Dev Co is to provide the following in order to substantiate and verify its indicative Credit Spread:</p> <ul style="list-style-type: none"> • general overview of the debt capital markets at the time of Dev Co’s indicative credit spread and anticipated Credit Spread at the time of Financial Close based on input received by the Debt Agent from potential bond purchasers; • precedent transactions of similar risk profile / asset class that were recently closed; • any publicly verifiable information that can be used to further support Dev Co’s indicative Credit Spread; and • expected direction of movement at the time of submission of the Financing Proposal and at Financial Close. <p>For greater clarity, if in DPA Contracting Authority’s sole discretion Dev Co’s indicative Credit Spread is unsatisfactory to DPA Contracting Authority, DPA Contracting Authority reserves the right to request that Dev Co clarify the indicative Credit Spread and/or to require Dev Co to resubmit the indicative Credit Spread as part of the negotiations process in respect of the Project Proposal set out in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.</p>
(ix) Payment Date	Monthly payments by Contracting Authority are assumed to be made on the last day of each Contract Month.
(x) Tax	<ul style="list-style-type: none"> • Dev Co must provide details of its taxation assumptions to demonstrate to DPA Contracting Authority that Dev Co has actively considered all tax implications related to the Agreement and the Final Project Agreement on Dev Co and, following Financial Close, Project Co, as applicable. Dev Co and, following Financial Close, Project Co, are responsible for the completeness and correctness of these assumptions. • Dev Co is advised that hospitals are subject to special HST treatment under Applicable Law. • For clarity, Dev Co shall be solely responsible for obtaining and relying on tax advice from its own advisors and experts in relation to the DPA Financial Submittals, the Final Project Agreement and the Project, including in relation to the proposed

Basis and Assumption	Requirement
	Project structure and its tax consequences. Dev Co shall be responsible for obtaining any advance tax interpretations and rulings as it considers appropriate or necessary.
(xi) Payment Mechanism	The Payment Mechanism described in Schedule 20 – Payment Mechanism of the Draft Project Agreement is to be used without exception for developing the Financing Proposal.
(xii) Refinancing	<p>Dev Co must describe any plans for refinancing the Financing set out in the Financing Proposal, including, for greater clarity, any Mandatory Refinancing(s) (as defined in Schedule 28 – Refinancing of the Draft Project Agreement). Where it is intended that any Debt Financing will be refinanced, Dev Co must provide details of any assumptions about the structure and the timing of refinancing, interest rates, margins, timing of repayments, reserve accounts and cover ratios.</p> <p>Dev Co must describe the maturity of any original interest rate hedges (swaps) entered into at Financial Close and Dev Co’s plans and contractual rights related to these swaps if the refinancing(s) described above take place.</p>
(xiii) Substantial Completion Payment	<p>Contracting Authority will pay, on the date that is two Business Days after the Substantial Completion Date, an amount which shall be calculated in accordance with the parameters set out in this Section 3.7(b)(xiii) and shall be the “Substantial Completion Payment” under the Final Project Agreement. Dev Co must include the Substantial Completion Payment in the Financing Proposal and in a price submission form, the form of which shall be provided by DPA Contracting Authority to Dev Co pursuant to Section 5.2(a)(ii) of Schedule 3 – DPA Submissions and Project Development Process of the Agreement. The amount of the Substantial Completion Payment may be adjusted by agreement between the Parties prior to Commercial Close.</p> <p>Substantial Completion Payment Calculation Parameters: The Substantial Completion Payment shall act as a “take-out” payment, such that the amount of the payment shall be sized to reduce the amount of Private Capital Invested to be no less than [REDACTED]% of Total Capital Costs. Dev Co shall structure its Milestone Payments (as described in Section 3.7(b)(xiv)) and the Substantial Completion Payment to ensure that a minimum of [REDACTED]% of Total Capital Costs remain financed by Private Capital Invested following receipt of the Milestone Payments and Substantial Completion Payment.</p> <p>For greater certainty, DPA Contracting Authority has the authority for Contracting Authority to pay up to [REDACTED]% of Total Capital Costs through the sum of the Milestone Payments and the Substantial Completion Payment.</p>

Basis and Assumption	Requirement
	<p>For the purposes of the Substantial Completion Payment and Milestone Payments, “Total Capital Costs” refer to the total amount of cost related to construction and financing of the Project. Such amounts include all hard construction costs (including the holdback), SPV costs during construction, financing costs (net of any interest earned from any investment instrument(s) during construction) and reserve accounts funded during construction.</p> <p>The above parameters shall be used to calculate the value of the Substantial Completion Payment based on the Financial Model as at the date of Financial Close. The interest rate resetting process may alter the amount of the Milestone Payments and Substantial Completion Payment.</p>
<p>(xiv) Milestone Payments</p>	<p>Subject to and in accordance with the terms of the Draft Project Agreement, Contracting Authority will pay to Project Co six Milestone Payments, in accordance with the parameters set out in this Section 3.7(b)(xiv).</p> <p>Contracting Authority will pay the Milestone Payments in an amount equal to up to [REDACTED]% of the Funded Capital Costs for each Milestone Payment (being, Milestone Payment (1), Milestone Payment (2), Milestone Payment (3), Milestone Payment (4), Milestone Payment (5) and Milestone Payment (6).</p> <p>For greater clarity, Dev Co shall calculate the Milestone Payments using the following formula:</p> <p style="text-align: center;">[REDACTED]</p> <p>Dev Co’s Financing Proposal and Financial Model must provide for the six Milestone Payments to be paid by Contracting Authority to Project Co in accordance with the terms of the Final Project Agreement. At all times, the Private Capital Invested shall be equal to or greater than [REDACTED]% of the Funded Capital Costs.</p>
<p>(xv) Remaining Works Progress Payments</p>	<p>Following Substantial Completion, Contracting Authority will pay monthly Remaining Works Progress Payments to Project Co in accordance with Schedule 7 – Remaining Works of the Final Project Agreement.</p> <p>The aggregate of all of the Remaining Works Progress Payments will be equal to the total cost to Project Co of performing the Remaining Works set out in the Financial Model, being a portion of the Cost of the Works. This total cost is defined as the “Remaining Works Price” in Schedule 7 – Remaining Works of the Draft Project Agreement.</p> <p>Dev Co’s Financing Proposal and Financial Model must provide for each of the monthly Remaining Works Progress Payments to be paid by Contracting Authority to Project Co in accordance with the terms of the Final Project Agreement, and set out the “Remaining Works Statement</p>

Basis and Assumption	Requirement
	of Values” as defined in Schedule 7 – Remaining Works of the Draft Project Agreement.
(xvi) Energy Cost	<p>Unless otherwise identified by DPA Contracting Authority to Dev Co in writing prior to the Final Checkpoint, the costs for energy (“Energy Costs”) shall be assumed to be at a rate of:</p> <p style="padding-left: 40px;">(A) for electricity, \$[REDACTED] per kilowatt hour; and</p> <p style="padding-left: 40px;">(B) for natural gas, \$[REDACTED] per equivalent kilowatt hour.</p> <p>Energy consumption amounts for electricity and natural gas are to be direct outputs of the Target Energy Model described in Schedule 36 – Energy Matters of the Draft Project Agreement and submitted by Dev Co as part of its DPA Technical Submittals.</p> <p>All Energy Costs shall be assumed to escalate at [REDACTED]% per annum.</p> <p>For greater clarity, Energy Costs will be calculated in the Financial Model, and Energy Costs are assumed to occur starting at Substantial Completion.</p>
(xvii) Cash Allowance	Dev Co must include the Cash Allowance Amounts in its Financial Model set out in Schedule 1 – Definitions and Interpretation of the Draft Project Agreement.
(xviii) Accounting	Dev Co is solely responsible for the completeness and correctness of their accounting assumptions.
(xix) Base Relevant Insurance Cost	<p>The Base Relevant Insurance Cost as detailed in Schedule 25 – Insurance and Performance Security Requirements of the Project Agreement will be equal to the amount set out in the definition of “Base Relevant Insurance Cost” in Schedule 25 – Insurance and Performance Security Requirements of the Project Agreement.</p> <p>For greater clarity, the Base Relevant Insurance Cost as provided above is required to be carried by Project Co for the first Insurance Review Period and every period thereafter up to the Expiry Date. Such costs will be subject to benchmarking per the methodology outlined in Schedule 25 – Insurance and Performance Security Requirements of the Project Agreement.</p>
(xx) Base Case Equity IRR	Dev Co shall calculate their Base Case Equity IRR as the annualized effective compounded return rate for Equity Capital invested in the Project. The cash flow for calculation must be based on equity cash injections and cash distributions shown in the Financial Model.
(xxi) Independent Certifier Fees	Contracting Authority shall share the Independent Certifier costs determined pursuant to Section 2.4 of Schedule 3 – DPA Submissions and Project Development Process of the Agreement with Project Co on

Basis and Assumption	Requirement
	an equal basis. The Fee for the Certification Services pursuant to the Independent Certifier Agreement shall be payable monthly in arrears as the Certification Services are completed and the costs are invoiced to Contracting Authority and Project Co.
(xxii) Closing Allowance	Dev Co shall, subject to DPA Section 13.1(d)(ii)A., include the Closing Allowance in the Financing Proposal.
(xxiii) Estimated CDB Costs	<p>In accordance with Section 4.12 of Schedule 27 – Dispute Resolution Procedure of the Draft Project Agreement, all Member fees and expenses and any other costs associated with the establishment and activities of the CDB (including in relation to obtaining CDB decisions) shall be shared equally by Contracting Authority and Project Co. Dev Co must include Project Co’s share of the total amount of such fees, expenses and costs determined pursuant to Section 2.5 of Schedule 3 – DPA Submissions and Project Development Process of the Agreement in its Financing Proposal.</p> <p>All fees, costs and expenses of the Members will be payable to the Members in accordance with the CDB Member Agreements, the form of which is attached as Appendix “B” – Form of CDB Member Agreement to Schedule 27 – Dispute Resolution Procedure of the Draft Project Agreement.</p>
(xxiv) Third Party Advisory and Administrative Costs	Dev Co shall provide in the Financing Proposal the amount of Third Party Advisory and Administrative Costs as set out in Section 3.2(b)(ii).
(xxv) Percentage of Annual Service Payment subject to CPIXFET escalation	Dev Co may determine the proportion of the Annual Service Payment which is subject to CPIXFET escalation. This proportion may not exceed the proportion of Project Co’s costs which are associated with maintenance activities and special purpose vehicle costs. DPA Contracting Authority may refer to relevant drop-down agreements with subcontractors to verify maintenance costs, which do not include debt and equity, for clarity.
(xxvi) Bedding-In Period Deduction Relief Thresholds	<p>In accordance with Section 2.1(a) of Part C of Schedule 20 – Payment Mechanism of the Project Agreement, Dev Co shall calculate and submit to DPA Contracting Authority an amount equal to [REDACTED]% of the Monthly Service Payment for the first full Contract Month of the Operational Term, which will be used to determine the threshold for Deduction relief during the first 60 calendar days of the Bedding-In Period [REDACTED]</p> <p>In accordance with Section 2.1(b) of Part C of Schedule 20 – Payment Mechanism of the Draft Project Agreement, Dev Co shall calculate and submit to DPA Contracting Authority an amount equal to [REDACTED]% of the Monthly Service Payment for the first full Contract Month of the Operational Term, which will be used to</p>

Basis and Assumption	Requirement
	<p>determine the threshold for Deduction relief during the last 120 calendar days of the Bedding-In Period [REDACTED]</p> <p>The dollar figures submitted above must be referenced in Dev Co's Financial Model. DPA Contracting Authority will insert them into Sections 2.1(a) and 2.1(b) of Part C of Schedule 20 – Payment Mechanism of the Project Agreement prior to Commercial Close.</p>

3.8 Financial Model

- (a) Capitalized terms used in this Section 3.8 but not defined in the Agreement have the respective meanings given to them in the Draft Project Agreement.
- (b) The Financing Proposal shall contain the Financial Model and the related documentation and information described in this Section 3.8, which must satisfy the requirements set out in the table below.

Financial Model or Related Document	Requirements
(i) Financial Model	<p>Dev Co shall provide the computer model it has used as, and which is proposed to become, the Financial Model under the Final Project Agreement in the format specified and in accordance with the requirements set out in this Section 3.8. The computer model must allow the viewer access to all internal formulas, data, and assumptions.</p> <p>All errors or inconsistencies in formulas or assumptions contained in the Financial Model are solely the responsibility of Dev Co, and, following Financial Close, Project Co.</p>
(ii) Audit Letter	<p>Dev Co must provide a Financial Model audit letter that confirms the logic and integrity of the model (including the model reference number) and that this logic is materially consistent with the Agreement and the Draft Project Agreement. The complete audit letter must be included as part of the Financing Proposal, including any attachments, appendices or schedules. The Financial Model must not include any disclaimers or qualifications. Dev Co should note that the Financial Model will be reviewed in advance of the Benchmarking Date and at that time or any time prior to the Benchmarking Date, if requested, Dev Co must submit a revised Financial Model audit letter.</p>
(iii) General Model Requirements	<p>Dev Co's Financial Model must:</p> <ul style="list-style-type: none"> • Provide financial projections (cost and revenue projections) on a monthly basis from Financial Close until the end of the Project Agreement

Financial Model or Related Document	Requirements
	<ul style="list-style-type: none"> • Be expressed in Canadian dollars • Include a print option macro • Not incorporate any password protection (or the password protection must be disclosed) • Not include hidden sheets or area • Not contain any circular references or balancing numbers and no input numbers in the calculation worksheets • Use a start date for the Project that corresponds to the Financial Close Date as specified in Section 3.7(b)(i).
<p>(iv) Specific Financial Model Requirements</p>	<p>The Financial Model must show details of sources and uses of funds, in total nominal terms, including debt and equity injection and repayments, interest payments, financing costs, dividends, other fees and costs, design costs, construction costs, lifecycle costs and maintenance costs.</p> <p>The Financial Model must separately list insurance premiums on insurance coverage required in accordance with the Draft Project Agreement, insurance premiums on additional insurance coverage required by Potential Lenders, taxes, Project Co/SPV specific costs (including any costs of obtaining performance support) and legal and other advisory fees (including Third Party Advisory and Administrative Costs). Dev Co should note that insurance is not subject to indexation or inflation and this should be clearly reflected in the Financial Model submitted by Dev Co.</p> <p>The Financial Model must, at a minimum, include:</p> <ul style="list-style-type: none"> • Assumption schedules • Capital and operating costs • Taxation • Payment Mechanism • Key dates to Financial Close • A scenario control sheet • Outputs <ul style="list-style-type: none"> ○ In a separate sheet, provide a breakdown of all projected payments by Contracting Authority to Project Co, including all: (i) Monthly Service Payments, (ii) monthly Lifecycle Payments, (iii) the Milestone Payments, (iv) the Separate Not-In-Contract Equipment Fee and Separate Transition Services Fee, (v) the Substantial Completion Payment, and (vi) the Remaining Works Progress Payments, both in real (uninflated) and nominal (inflated) terms; ○ In a separate sheet, the calculation and schedule of all Milestone Payments. This sheet should include calculations showing that each Funded Capital Cost trigger for the respective Milestone

Financial Model or Related Document	Requirements
	<p>Payment has been achieved and that a minimum of [REDACTED]% of Total Capital Costs remain financed by Private Capital Invested;</p> <ul style="list-style-type: none"> ○ In a separate sheet, the proposed Financing, with funding schedules that specify the expected debt repayment dates and the amount of debt service (broken down by principal, interest, and other fees), in nominal terms only, to be repaid; ○ The calculation of Project returns for the different elements of financing; ○ Projected income statements; ○ Projected balance sheet; ○ Cash flow projections; ○ Cash cascade in order of seniority (which must be consistent with any funding term sheets). Ensure that the cash cascade describes: <ul style="list-style-type: none"> ▪ the administration of the cascade; ▪ funding mechanisms for all reserve accounts; ▪ how operating contingencies affect reserve accounts; and ▪ how funding mechanisms, or other contingency plans, rectify the situation; ○ In a separate sheet, the final version of Attachment 3 – Operating Costs Form of Appendix 1 – DPA Technical Submittals and Requirements to Schedule 3 – DPA Submissions and Project Proposal Process of the Agreement, completed and submitted in accordance with the instructions contained therein and the requirements of the Agreement; ○ In a separate sheet, the final version of Attachment 4 – Lifecycle Replacement Schedule Form of Appendix 1 – DPA Technical Submittals and Requirements to Schedule 3 – DPA Submissions and Project Proposal Process of the Agreement, completed and submitted in accordance with the instructions contained therein and the requirements of the Agreement; ○ In a separate sheet, the final version of Attachment 5 - Cost Estimate Submittals Summary Form of Appendix 1 – DPA Technical Submittals and Requirements to Schedule 3 – DPA Submissions and Project Proposal Process of the Agreement, completed and submitted in accordance with the instructions contained therein and the requirements of the Agreement; and

Financial Model or Related Document	Requirements
	<ul style="list-style-type: none"> ○ Supporting schedules <p>The proposed Financial Model must also, at a minimum, produce the following outputs:</p> <ul style="list-style-type: none"> ● Project Equity IRR, in both real terms and nominal terms, on a pre-tax and post-tax basis ● Return on equity and sub-debt, in both real terms and nominal terms, and a blended equity return, that incorporates all sub-senior debt finance on both a pre-tax and post-tax basis ● Debt to equity ratio at the time of Financial Close and at Substantial Completion Date, defined as total financial debt divided by total shareholders' funds ● Drawdown and repayment schedules, including dates and amounts for all sources of finance (on a monthly basis) ● Weighted average cost of capital calculated on a before-tax basis and based on the overall debt / equity structure of the Project, as estimated on the day of Financial Close (i.e. including all debt and equity injection during the life of the Project) ● Annual debt service cover ratio and loan life cover ratio for each year of the Final Project Agreement, with minimum and average ratios ● Any other ratios that are considered relevant to the proposed financial structure, financial covenants or financing agreements ● The precise timing of any equity injections and details of the phasing, if appropriate ● Total Project capital costs include all construction and related costs (i.e., costs related to design, construction, commissioning and completion of the Project). Dev Co's Financial Model must show a detailed breakdown of each of these elements, including a detailed breakdown of development costs and a detailed breakdown of all remaining design costs. For greater clarity, the Financial Model should include a breakdown of the total Project capital costs and the individual line items of this breakdown should be linked to the appropriate parts of the Financial Model so that the nature and timing of the capital costs components are verifiable using Dev Co's Financial Model. ● The construction price that is included in the Financial Model will be Dev Co's estimated construction price at Financial Close (i.e. input nominal construction costs) ● A schedule of projected maintenance and lifecycle reserves on a monthly basis ● Revenues and costs on a monthly basis ● IO Construction Insurance Program (IOCIP) costs over the construction term separately broken out ● Operations and maintenance expenditures

Financial Model or Related Document	Requirements
	<ul style="list-style-type: none"> • A breakdown of Project Co’s revenues and costs, including but not limited to: <ul style="list-style-type: none"> ○ SPV running costs ○ Other operating costs ○ Revenue and capital flows • As a separate calculation, Dev Co must clearly demonstrate how any hedge credit charges are calculated in the financial model, including the formula(s) to calculate the hedge credit charge and all relevant supporting data to allow DPA Contracting Authority to verify the calculation • In a separate sheet, provide a breakdown of all projected payments by Contracting Authority to Project Co, including all: (i) Monthly Service Payments (including a breakdown of Lifecycle Payments), (ii) the Substantial Completion Payment, (iii) Milestone Payments, (iv) the Separate Not-In-Contract Equipment Fee and Separate Transition Services Fee, (v) the Substantial Completion Payment, and (vi) the Remaining Works Progress Payments, and the associated expected HST that would be payable on each such payment by Contracting Authority throughout the Project Term. Please also provide all assumptions and other details used to calculate all such expected HST amounts.
(v) General Reporting Requirements	Dev Co may be asked to provide summary materials/reports as extracts from the Financial Model to assist DPA Contracting Authority with its reporting and populating obligations, including budgetary reports and contribution agreements
(vi) Financial Model Specification Booklet	<p>Dev Co must provide a detailed and comprehensive Financial Model specification booklet, including, at a minimum, instructions for using the Financial Model, including:</p> <ul style="list-style-type: none"> • How changes to input variables should be entered; • How to run the model following changes to inputs; • How to run sensitivities; • The use of all macros, if any, contained in the model should be minimized. If macros are used, a detailed description of the macros and their functionalities must be included. The detailed description for each macro must include the following: <ul style="list-style-type: none"> ○ a copy of the code for the applicable macro in human readable format; ○ reasons why this macro is used; ○ which operations and functions are accomplished through the macro; ○ which cells are modified by the macro;

Financial Model or Related Document	Requirements
	<ul style="list-style-type: none"> ○ the macro’s results; ○ explanation of how the optimization is carried out, particularly with regards to input modifications; and ○ instructions pertaining to the necessary modifications of a macro following modifications in the Financial Model such as adding or deleting lines or columns in the Financial Model; ● How to print key reports and the entire model; ● Details of the optimization procedure(s) that is in line with the methodology described in Section 5 of Attachment A – Benchmark Rate to this Appendix 2 and must describe the following: <ul style="list-style-type: none"> ○ how the optimization procedure(s), where applicable, solves for Equity IRR, debt service coverage ratios and any resiliency ratios; and ○ explanation of the steps that are carried out in the Financial Model and/or optimization procedure(s) if, as a result of any change to the Benchmark Rate(s) at Financial Close or any change to the Credit Spreads, any of the above ratios breach the Potential Lenders’ requirements under the Lending Agreements; and ● Construction of the model, including: <ul style="list-style-type: none"> ○ Contents list of sheets and data contained within; and ○ Details of complex or unusual formulae.
(vii) Inputs Booklet	<p>Dev Co must provide a detailed and comprehensive inputs booklet, which, at a minimum, identifies and provides details of all inputs used in the Financial Model, including:</p> <ul style="list-style-type: none"> ● For each source of finance: the drawdown timetable; grace period; repayment schedules; debt maturity profile; costs of finance, including margins and fees and all success fees; and any variations to margins or fees over the life of the loans; ● Macro-economic assumptions, including interest and inflation rates ● Taxation assumptions and associated sensitivities on model; ● The assumptions made in relation to the tax liabilities and recoverability ● Accounting policies, including depreciation by asset type, and working capital requirements; and ● All other assumptions that have been necessary in order to construct the Financial Model. <p>The inputs booklet must be consistent with, and reconcile to, the Financial Model.</p>

Financial Model or Related Document	Requirements
(viii) Sensitivity Analysis	<p>As part of the review of the Financing Proposal, Dev Co is required to provide the sensitivity analyses listed below. DPA Contracting Authority reserves the right to conduct additional sensitivities. For the purposes of clarity, DPA Contracting Authority may wish to test the hypothetical impact of the sensitivities listed below on the results of the Financial Model, regardless of the risk transfer contemplated in the Draft Project Agreement.</p> <p>Effect on total Project nominal cost of change in inflation by (assuming that base case inflation is [REDACTED]%):</p> <ul style="list-style-type: none"> • [REDACTED] % increase (for whole Project) • [REDACTED] % increase (for whole Project) • [REDACTED] % increase (for whole Project) <p>Effect on total Project nominal cost of change in Benchmark Rates by:</p> <ul style="list-style-type: none"> • [REDACTED] basis points increase and decrease in underlying benchmark rates • [REDACTED] basis points increase and decrease in underlying benchmark rates • [REDACTED] basis points increase and decrease in underlying benchmark rates <p>DPA Contracting Authority’ advisors will be using the Financial Model and sensitivity analysis as part of the overall assessment of whether the Financing Proposal represents a financing plan that is achievable and realistic.</p>
(ix) Nominal Project Value	<p>Dev Co’s price proposal is the total aggregate of the Monthly Service Payments schedule plus Milestone Payments plus the Separate Not-In-Contract Equipment Fee plus the Separate Transition Services Fee plus the Substantial Completion Payment plus the Remaining Works Progress Payments plus the Energy Costs.</p> <p>For the purposes of calculating the overall price, one-time payments for:</p> <ul style="list-style-type: none"> • the Separate Not-In-Contract Equipment Fee; • the Separate Transition Services Fee; • the Substantial Completion Payment; • the Remaining Works Progress Payments, <p>will be deemed to occur on the Substantial Completion Date.</p>
(x) Pricing Assumptions	<p>Dev Co’s nominal price for the Project will be calculated using the Monthly Service Payments, and using the following:</p> <ul style="list-style-type: none"> • For purposes of this calculation, the annual increase in the Consumer Price Index CPIXFET will be assumed to be [REDACTED]%; • Energy Costs will be assumed to escalate at an annual rate of [REDACTED]%

Financial Model or Related Document	Requirements
	<ul style="list-style-type: none">• Regardless of the date of any payment or whether a period is a fraction of a year, escalation should never be compounded by a fraction of a year, but by full year increments; and• Monthly Service Payments are assumed to be made on the last day of each Contract Month.

ATTACHMENT A
BENCHMARK RATE

[REDACTED]

ATTACHMENT B
SWAP TERM SHEET

[REDACTED]

APPENDIX 3

PROJECT PROPOSAL CONTENT AND REQUIREMENTS

Subject to Section 5.6 of Schedule 3 – DPA Submissions and Project Development Process of the Agreement, the Project Proposal shall be comprised of the following documents and shall be subject to the following requirements:

1. **Project Proposal Submission Document:** A complete and legally binding Project Proposal submission document executed and delivered by Dev Co, in a form to be provided by DPA Contracting Authority to Dev Co in accordance with Section 5.2(a)(ii) of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
2. **Final Project Agreement Price Form:** A complete price form document, in a form to be provided by DPA Contracting Authority to Dev Co in accordance with Section 5.2(a)(ii) of Schedule 3 – DPA Submissions and Project Development Process of the Agreement. The inputs to such price form shall, without duplication, include:
 - (a) the total values set out in the final Construction Cost Estimate and the final Services Cost Estimate detailed to Level 4 submitted by Dev Co and reviewed by DPA Contracting Authority pursuant to Schedule 3 – DPA Submissions and Project Development Process of the Agreement (including as described in Appendix 1 – DPA Technical Submittals and Requirements) as of the Final Checkpoint;
 - (b) in accordance with DPA Section 13.2 of the Agreement, the Remaining Total DPA and Design Works Fixed Price; and
 - (c) the costs and expenses of the Financing set out in the Financing Proposal.
3. **Financing Proposal:** The Financing Proposal, including the Financial Model.
4. **Final Checkpoint DPA Submittals:** The final version of each of the following DPA Submittals submitted by Dev Co and reviewed by DPA Contracting Authority under the Agreement as of the Final Checkpoint:
 - (a) **Construction Cost Estimates:** Completed to Class B, detailed to Level 4 and summarized to Level 2, and in accordance with the requirements identified in Attachment 1 – Documents to Support Cost Submissions of Appendix 1 – DPA Technical Submittals and Requirements to Schedule 3 – DPA Submissions and Project Proposal Process;
 - (b) **Services Cost Estimates:** Completed in accordance with the requirements identified in Attachment 3 – Operating Cost Form of Appendix 1 – DPA Technical Submittals and Requirements to Schedule 3 – DPA Submissions and Project Proposal Process;
 - (c) **90% Design Development Stage DPA Works Submittals:** The DPA Works Submittals described in Appendix A to Schedule 10 – Review Procedure of the Draft Project Agreement submitted during the 90% Design Development Stage;

- (d) **Scope and Space Tracking Table;**
- (e) **Lifecycle Replacement Schedule;**
- (f) **Lifecycle Replacement and Refurbishment Plan;**
- (g) **Cost Estimate Submittals Summary;**
- (h) **Project Management Plan**
- (i) **Construction Quality Plan;**
- (j) **ICAT Submissions;**
- (k) **Energy Submission;**
- (l) **Sustainability Submissions;**
- (m) **Transition and Commissioning Submissions;**
- (n) **Procurement Plan;**
- (o) **Equipment Procurement and Co-ordination Plan;**
- (p) **FF&E Plan;**
- (q) **Milestone Optimisation & Output Specifications Critique Report;**
- (r) **Service Provider Operational Readiness Plan;**
- (s) **Risk Submissions;**
- (t) **Basis of Construction Works Schedule Report;**
- (u) **Construction Works Schedule (including the Equipment Sub-Schedule);**
- (v) **Manuals;**
- (w) **Communications Submissions;**
- (x) **Health and Safety Submissions;**
- (y) **Pandemic and Epidemic Response and Mitigation Plan;**
- (z) **Service Submissions; and**
- (aa) **Indigenous Participation Plan.**

5. **Surety's Consent:** Dev Co shall include a Surety's Consent executed by a Surety in accordance with Section 2.7 of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.

6. **Draft PA Provisions Approval Notices and form of Final Project Agreement:** Dev Co shall include the Draft PA Provisions Approval Notices as defined in and provided pursuant to Schedule 3 – DPA Submissions and Project Development Process of the Agreement, and represent and warrant that (a) Dev Co is satisfied with the form of the Draft Project Agreement, and (b) subject to any provision of the Agreement permitting further revisions to such form of Draft Project Agreement, that such form of Draft Project Agreement is the form of the Final Project Agreement that Project Co shall enter into with the Hospital on Commercial Close.

APPENDIX 4

FORM OF SURETY'S CONSENT

Date:

Number:

To: **Ontario Infrastructure and Lands Corporation and Trillium Health Partners**

Whereas ED PCL Trillium Dev Co Limited Partnership, [REDACTED] (the “Principal”) has submitted a written Project Proposal to Ontario Infrastructure and Lands Corporation (“IO”) and Trillium Health Partners (the “Obligee” and together with IO, “DPA Contracting Authority”) dated [Insert date of Project Proposal] for the design, construction, financing and maintenance of the Trillium Health Partners M-Site Redevelopment P3 DBFM Project.

The condition of this obligation is such that if the Principal shall have its Project Proposal accepted and shall cause Project Co to execute a Final Project Agreement with the Obligee by [Insert the date that is [REDACTED] days following the date of Dev Co’s submission of the Project Proposal (which is the time period the Project Proposal remains valid and irrevocable in accordance with the Development Phase Agreement)], then [Insert legal name of Surety], a corporation created and existing under the laws of Canada and duly authorized to transact the business of suretyship in Canada as surety (the “Surety”) hereby undertakes and agrees with DPA Contracting Authority to issue the performance bond and labour and material payment bond for the Project in the forms attached hereto as Attachments A and B respectively, each bond to be in the amount as set out in Section 19.1 (Performance Security Requirements) of Schedule 25 – Insurance and Performance Security Requirements of the Final Project Agreement.

Provided, however, this consent shall be null and void unless an application for such bonds is delivered to the Surety by the Principal within 60 days following the Principal achieving Financial Close.

Unless otherwise defined herein, all capitalized terms herein shall have the meanings ascribed thereto in the Development Phase Agreement between DPA Contracting Authority and the Principal dated March 10, 2023, as amended from time to time.

[Surety]

By: _____
Name:
Attorney-in-Fact

By: _____
Name:
Attorney-in-Fact

ATTACHMENT A TO APPENDIX 4

PERFORMANCE BOND

[REDACTED]

ATTACHMENT B TO APPENDIX 4

LABOUR AND MATERIAL PAYMENT BOND

[REDACTED]

APPENDIX 5

FINANCING PROCESS

1. DEFINITIONS

1.1 Definitions

In this Appendix 5, unless the context indicates a contrary intention, terms which are defined in the Agreement (and not otherwise defined in this Appendix 5) shall have the meanings given to them in the Agreement and the following terms shall have the following meanings:

- (a) “**Adjusted PA Payments**” has the meaning given in Section 9.3(d).
- (b) “**Benchmark Rate**” has the meaning given in Appendix 2 – DPA Financial Submittals and Requirements of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- (c) “**Benchmarking Date**” has the meaning given in Section 9.3(b).
- (d) “**Best Efforts Bond Debt Financing**” has the meaning given in Section 2.2(a)(ii)(B).
- (e) “**Credit Spreads**” has the meaning given in Appendix 2 – DPA Financial Submittals and Requirements of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- (f) “**Debt Financing**” has the meaning given in Section 2.1(a).
- (g) “**Debt Financing Outreach Process and Competition Submittal**” has the meaning given in Appendix 2 – DPA Financial Submittals and Requirements of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- (h) “**Debt Financing Plan**” has the meaning given in Appendix 2 – DPA Financial Submittals and Requirements of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- (i) “**Dry Run**” has the meaning given in Section 9.3(b).
- (j) “**Equity Capital Financing**” has the meaning given in Section 2.1(a).
- (k) “**Equity Commitment Agreement**” has the meaning given in the Draft Project Agreement.
- (l) “**Escrow Closing Procedure Agreement**” has the meaning given in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- (m) “**Financial Close Plan**” has the meaning given in Section 9.1(a).
- (n) “**Financing**” has the meaning given in Section 2.1(a).

- (o) “**Financing Process**” has the meaning given in Section 2.1(a).
- (p) “**Financing Process Governing Principles**” has the meaning given in Section 2.2(a).
- (q) “**Lenders Commitment Letter**” has the meaning given in Section 9.1(d).
- (r) “**Rate Set Protocol**” has the meaning given in Section 9.1(c)(ii).

2. FINANCING PROCESS AND GOVERNING PRINCIPLES

2.1 Financing Process

- (a) Dev Co shall, subject to and in accordance with the Agreement, take all steps necessary and exert best efforts to obtain all financing, including all equity financing (“**Equity Capital Financing**”) and debt financing (“**Debt Financing**”), necessary and sufficient for Project Co to be able to satisfy its obligations under the Agreement and the Final Project Agreement (the “**Financing**”), including to permit Contracting Authority and Project Co to execute and deliver the Final Project Agreement and for Financial Close to occur, in accordance with the Agreement and the Final Project Agreement (the “**Financing Process**”).
- (b) Without limiting and subject to the other provisions of the Agreement, the Financing Process shall proceed as follows:
 - (i) during the DPA Term, representatives of the Parties shall attend meetings of the Finance Working Group in accordance with Schedule 16 – DPA Term Governance, Meetings and Progress Reporting;
 - (ii) Dev Co shall identify the Financing Process Third Parties, and, subject to Section 8.1(d), following the submission of the Project Proposal, submit the Financing Proposal in respect of the Committed Financing. This process shall take place by way of Dev Co’s submission of each DPA Financial Submittal to DPA Contracting Authority for its review and comment in accordance with and subject to the DPA Review Procedure and the other applicable provisions of the Agreement, including the requirements of Appendix 2 – DPA Financial Submittals and Requirements of this Schedule 3 and the additional requirements set out in this Appendix 5. The submission timeline for each DPA Financial Submittal is set out in Appendix 2 – DPA Financial Submittals and Requirements of Schedule 3 – DPA Submissions and Project Development Process of the Agreement, including the identification of the DPA Financial Submittals that are to be submitted before and, subject to Section 8.1(d), following Dev Co’s submission of the Project Proposal; and
 - (iii) following DPA Contracting Authority’s delivery of a Notice to Proceed to Commercial Close in accordance with the Agreement, the Parties shall complete the Financing Process in accordance with the Agreement (including Schedule 3 – DPA Submissions and Project Development Process of the Agreement, this Appendix 5 and the Financial Close Plan) and the Final Project Agreement.

2.2 Financing Process Governing Principles, and DPA Contracting Authority Participation and Engagement in Financing Process

- (a) The Parties agree that:
- (i) the Equity Capital Financing shall be obtained by Dev Co in accordance with the process set out in this Appendix 5 and Appendix 2 – DPA Financial Submittals and Requirements of Schedule 3 – DPA Submissions and Project Development Process of the Agreement;
 - (ii) unless otherwise agreed by DPA Contracting Authority,
 - (A) the Debt Financing shall be obtained by Dev Co by way of a competitive procurement process in accordance with this Appendix 5 and Appendix 2 – DPA Financial Submittals and Requirements of Schedule 3 – DPA Submissions and Project Development Process of the Agreement; and
 - (B) without limiting the generality of the foregoing, Dev Co shall cause the Debt Agent to obtain, on behalf of and as agent for Dev Co and Project Co, all long-term bond Debt Financing on a best efforts basis (“**Best Efforts Bond Debt Financing**”); and
 - (iii) in addition to the requirements set out in DPA Section 5.1(a) of the Agreement, the Financing Process shall be governed by the following principles, whereby the Parties shall:
 - (A) ensure DPA Contracting Authority’s involvement in the Financing Process in accordance with Section 2.2(c);
 - (B) explore competitive Debt Financing options and structures;
 - (C) identify innovative or unique financing transaction structures to address anticipated market conditions and challenges or opportunities unique to the Project;
 - (D) minimize the cost to DPA Contracting Authority under the Agreement and the nominal cost to Contracting Authority under the Final Project Agreement (including the amount of the payments Contracting Authority will make to Project Co under the Final Project Agreement) such that such cost is within any affordability constraints of DPA Contracting Authority in respect of the Project;
 - (E) maximize the certainty of Dev Co being able to successfully complete the Financing Process and of implementing the Financing in accordance with the Agreement (including the DPA Works Schedules) and the Final Project Agreement; and
 - (F) minimize the risk to the Project under the agreements pursuant to which the Financing Process is implemented, including the Lending Agreements, the Equity Commitment Agreement and all other agreements identified in the Financing Proposal

(collectively, the “**Financing Process Governing Principles**”).

- (b) The Parties acknowledge and agree that none of the Financing Process Governing Principles shall limit any right of a Party where in the Agreement it is set out that a Party may exercise any of its rights in its sole discretion.
- (c) Dev Co agrees that until Financial Close:
 - (i) Dev Co shall comply with DPA Section 6.1(a) of the Agreement in respect of the Financing Process and the Financing;
 - (ii) DPA Contracting Authority shall be permitted to be involved in, and Dev Co shall consult with DPA Contracting Authority in advance respect of, all material aspects of the Financing Process carried out by or on behalf of Dev Co; and
 - (iii) without limiting the generality of the foregoing provisions of this Section 2.2(c), Dev Co shall permit DPA Contracting Authority to have access to, and shall promptly disclose to DPA Contracting Authority, all relevant documents and other information related to the Financing Process and the Financing reasonably requested by DPA Contracting Authority from time to time on a transparent basis and DPA Contracting Authority shall have the right and option, and shall be granted reasonable opportunity, to attend all significant meetings with the Financial Advisor, the Financing Process Third Parties and other third parties participating in the Financing Process (including any road shows). Notwithstanding the foregoing, the Parties agree that Dev Co shall, upon the request of DPA Contracting Authority, promptly disclose to DPA Contracting Authority lists of all Potential Equity Providers and Potential Lenders, relevant minutes of any meetings with third parties related to the Financing Process or the Financing, and relevant communications and information received from credit ratings agencies or Potential Lenders related to decisions made with respect to the proposed or actual structure of the Financing (including with respect to debt service coverage ratio requirements, operating resiliency requirements, reserve account requirements, equity lock up requirements, and other financing requirements).
- (d) DPA Contracting Authority acknowledges that nothing in Section 2.2(c) applies to information, documentation or meetings that may be subject to legal professional privilege or are confidential lawyer-client communications.

2.3 Participating Potential Lenders

- (a) No Potential Lender participating in the Financing Process shall be an Affiliate of Dev Co or any Dev Co Party. Each Potential Lender shall act at all times at arm’s length to Dev Co and each Dev Co Party.

2.4 DPA Variation Procedure

- (a) The Parties acknowledge that nothing in this Appendix 5 shall limit the provisions of DPA Section 12 of the Agreement.

3. DPA REVIEW PROCEDURE

3.1 Submission of DPA Financial Submittals Pursuant to DPA Review Procedure

- (a) The Parties acknowledge and confirm that the provisions of DPA Sections 5.1(b) and (c) of the Agreement will apply to the process for the preparation and submission of each of the DPA Financial Submittals by Dev Co to DPA Contracting Authority under the Agreement prior to its submission pursuant to Section 3.1(b).
- (b) Dev Co shall submit all DPA Financial Submittals for DPA Contracting Authority's review and comment in accordance with Schedule 3 – DPA Submissions and Project Development Process of the Agreement, including the DPA Review Procedure and Appendix 2 – DPA Financial Submittals and Requirements of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.

4. EQUITY CAPITAL FINANCING PROPOSAL PROCESS ADDITIONAL REQUIREMENTS

4.1 DPA Contracting Authority Right to Object to Equity Capital Financing Proposal

- (a) In addition to and notwithstanding the requirements of the DPA Review Procedure in respect of the submission and review of the Equity Capital Financing Proposal, the Parties agree that DPA Contracting Authority may, acting reasonably and instead of assigning any comment pursuant to the DPA Review Procedure, have the right to, by way of Notice provided to Dev Co, object to the Equity Capital Financing Proposal submitted to DPA Contracting Authority by Dev Co. Any such objection made by DPA Contracting Authority shall be made following prior consultation with Dev Co, contain a detailed rationale for such objection and be made on the basis of DPA Contracting Authority's review of relevant financial industry benchmarks (including bid and secondary market and general interest rate environment benchmarks), precedent transactions, Project risks, credit rating assumptions and other relevant objective criteria as DPA Contracting Authority shall determine.
- (b) In the event that DPA Contracting Authority objects to the Equity Capital Financing Proposal in accordance with Section 4.1(a), then the Parties shall, as soon as practicable, exert reasonable commercial efforts to resolve the issues raised by DPA Contracting Authority in such objection within 15 Business Days of the date of such objection (or such longer period agreed to by the Parties, acting reasonably). If, after the expiry of such period, the Parties have not resolved such issues, then, unless a Party refers such issues for resolution in accordance with the DPA Dispute Resolution Procedure prior to the expiry of such period and without limiting any other right of DPA Contracting Authority under the Agreement, DPA Contracting Authority shall, by way of Notice to Dev Co, direct Dev Co to either:
 - (i) submit a new and replacement Equity Capital Financing Proposal *de novo* in accordance with the requirements of the Agreement, which shall respond to and address the issues raised by DPA Contracting Authority in such objection; or
 - (ii) conduct an equity financing competition in accordance with processes and parameters developed jointly by the Parties, acting reasonably, and following the completion of such

competition, Dev Co shall submit a new and replacement Equity Capital Financing Proposal *de novo* in accordance with the requirements of the Agreement (as may be modified in accordance with the Agreement to reflect such processes and parameters). Notwithstanding the foregoing, in the event that, in the reasonable opinion of DPA Contracting Authority, the Parties are unable to complete the development of such processes and parameters within 15 Business Days of the delivery of such Notice (or such longer period determined by DPA Contracting Authority, acting reasonably), then DPA Contracting Authority shall complete the development of such processes and parameters for the Parties, and the Parties shall subsequently implement such processes and parameters for the purposes of conducting such equity financing competition.

- (c) Dev Co shall not be entitled to a DPA Variation or any additional compensation or any schedule extension as a result of DPA Contracting Authority exercising its rights pursuant to Sections 4.1(a) and 4.1(b).
- (d) This Section 4.1 shall apply to the initial Equity Capital Financing Proposal submitted pursuant to Appendix 2 – DPA Financial Submittals and Requirements of Schedule 3 – DPA Submissions and Project Development Process of the Agreement and to the updated Equity Capital Financing Proposal submitted pursuant to Appendix 2 – DPA Financial Submittals and Requirements of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.

4.2 Comments on and Revisions to Negotiable Draft Project Agreement Provisions

- (a) By no later than the date of the submission of the Equity Capital Financing Proposal, Dev Co shall submit to DPA Contracting Authority any comments on, and accompanying recommended revisions to, the Negotiable Draft Project Agreement Provisions pursuant to Section 4.4(c) of Schedule 3 – DPA Submissions and Project Development Process of the Agreement, which are intended to improve the overall efficiency of the capital structure of the Financing, decrease the cost of the Financing under the Final Project Agreement or reduce Project risks set out in the Draft Project Agreement that could reasonably create challenges for Dev Co to obtain the Financing on reasonable terms and conditions (including any comments on and recommended revisions to the payment structure of the Draft Project Agreement or to Schedule 20 – Payment Mechanism of the Draft Project Agreement).

5. FINANCING PROCESS THIRD PARTIES SUBMITTAL AND FINANCIAL ADVISOR ADDITIONAL REQUIREMENTS

5.1 DPA Contracting Authority Right to Object to Debt Agent

- (a) In addition to and notwithstanding the requirements of the DPA Review Procedure in respect of the submission and review of the Financing Process Third Parties Submittal, the Parties agree that DPA Contracting Authority may, acting reasonably and instead of assigning a comment of either “No Comment” or “Minor Non-Conformance” with no additional comment of “Re-Submit” in accordance with the DPA Review Procedure, have the right to, by way of Notice provided to Dev Co, object to the identity of the Debt Agent. Any such objection made by DPA Contracting Authority shall be made following prior consultation with Dev Co and contain a detailed rationale for such objection. DPA Contracting Authority may but is not obligated to within such Notice, propose for Dev Co’s consideration, one or more potential persons who could serve as an

alternative Debt Agent in accordance with the requirements of Appendix 2 – DPA Financial Submittals and Requirements of Schedule 3 – DPA Submissions and Project Development Process of the Agreement, which proposal Dev Co may accept or reject, acting reasonably. Within 15 Business Days of receiving any such Notice, Dev Co shall:

- (i) in the event such Notice proposes any such person and Dev Co accepts such person as the Debt Agent, submit a new and replacement Financing Process Third Parties Submittal *de novo* in accordance with the requirements of the Agreement that is revised only to reflect such new Debt Agent; or
 - (ii) in the event such Notice does not propose any such person or such Notice proposes one or more such persons but Dev Co rejects each of them, identify a new Debt Agent that satisfies the requirements of Appendix 2 – DPA Financial Submittals and Requirements of Schedule 3 – DPA Submissions and Project Development Process of the Agreement in a new and replacement Financing Process Third Parties Submittal that is revised only to reflect such new Debt Agent and is submitted *de novo* in accordance with the requirements of the Agreement.
- (b) Following any submission of a new and replacement Financing Process Third Parties Submittal in accordance with Section 5.1(a), if DPA Contracting Authority objects to the identity of the Debt Agent in accordance with such Section, then the matter shall be resolved in accordance with the DPA Dispute Resolution Procedure.

5.2 Engagement and Replacement of Financing Process Third Parties

- (a) After the Financing Process Third Parties Submittal is assigned a comment of either “No Comment” or “Minor Non-Conformance” with no additional comment of “Re-Submit” in accordance with the DPA Review Procedure, Dev Co shall:
- (i) provide the form of agreement pursuant to which each of the Financing Process Third Parties will be engaged by Dev Co for DPA Contracting Authority’s approval, acting reasonably, which form shall be consistent with the provisions of the Agreement, including this Section 5.2(a);
 - (ii) engage, at the cost and expense of Dev Co, each of the Financing Process Third Parties on the basis set out in the Financing Process Third Parties Submittal, and cause each of them to perform their services in respect of the Project:
 - (A) at all times, diligently and in a professional and competent manner;
 - (B) by persons qualified and skilled in their occupations and with the care and skill reasonably to be expected of persons providing a scope of services similar to their services in respect of the Project, including by taking into account the size, scope, complexity, quality and prestige of the Project; and
 - (C) in accordance with Applicable Law, the Financing Process Governing Principles and the agreement described in Section 5.2(a)(i).

- (b) If Dev Co wishes to replace a Financing Process Third Party after the applicable Financing Process Third Party Submittal is assigned a comment of either “No Comment” or “Minor Non-Conformance” with no additional comment of “Re-Submit” in accordance with the DPA Review Procedure, Dev Co may only do so after:
- (i) prior reasonable consultation with DPA Contracting Authority;
 - (ii) proposing a replacement Financing Process Third Party to DPA Contracting Authority that satisfies the requirements of Appendix 2 – DPA Financial Submittals and Requirements of Schedule 3 – DPA Submissions and Project Proposal Process of the Agreement;
 - (iii) providing DPA Contracting Authority with all relevant information in respect of the proposed replacement required by such Appendix; and
 - (iv) obtaining the prior written consent of DPA Contracting Authority to such replacement, acting reasonably.

5.3 Engagement and Replacement of Financial Advisor

- (a) Dev Co shall engage the Financial Advisor at its cost and expense and shall cause the Financial Advisor to perform its services in respect of the Project:
- (i) at all times, diligently and in a professional and competent manner;
 - (ii) by persons qualified and skilled in their occupations and with the care and skill reasonably to be expected of persons providing a scope of services similar to their services in respect of the Project, including by taking into account the size, scope, complexity, quality and prestige of the Project; and
 - (iii) in accordance with Applicable Law and the Financing Process Governing Principles.
- (b) If Dev Co wishes to replace the Financial Advisor after it is engaged, Dev Co may only do so:
- (i) after prior reasonable consultation with DPA Contracting Authority;
 - (ii) proposing a replacement Financial Advisor to DPA Contracting Authority;
 - (iii) providing DPA Contracting Authority with all relevant information in respect of the proposed replacement to DPA Contracting Authority; and
 - (iv) obtaining the prior written consent of DPA Contracting Authority to such replacement, acting reasonably.

6. DEBT FINANCING PLAN PROCESS ADDITIONAL REQUIREMENTS

6.1 DPA Contracting Authority Right to Object to Debt Financing Plan

- (a) In addition to and notwithstanding the requirements of the DPA Review Procedure in respect of the submission and review of the Debt Financing Plan, the Parties agree that DPA Contracting

Authority may, acting reasonably and instead of assigning a comment of either “No Comment” or “Minor Non-Conformance” with no additional comment of “Re-Submit” in accordance with the DPA Review Procedure, have the right to, by way of Notice provided to Dev Co, object in writing to the Debt Financing Plan submitted to DPA Contracting Authority by Dev Co. Any such objection made by DPA Contracting Authority shall be made following prior consultation with Dev Co and contain a detailed rationale for such objection.

- (b) In the event that DPA Contracting Authority objects to the Debt Financing Plan in accordance with Section 6.1(a), then the Parties shall, as soon as practicable, exert reasonable commercial efforts to resolve the issues raised by DPA Contracting Authority in such objection within 15 Business Days of the date of such objection (or such longer period agreed to by the Parties, acting reasonably). If, after the expiry of such period, the Parties have not resolved such issues, then, unless a Party refers such issues for resolution in accordance with the DPA Dispute Resolution Procedure prior to the expiry of such period, without limiting any other right of DPA Contracting Authority under the Agreement, DPA Contracting Authority shall, by Notice to Dev Co, direct Dev Co to submit a new and replacement Debt Financing Plan *de novo* in accordance with the requirements of the Agreement, which shall respond to and address the issues raised by DPA Contracting Authority in such objection.
- (c) Dev Co shall not be entitled to a DPA Variation or any additional compensation or any schedule extension as a result of DPA Contracting Authority exercising its rights pursuant to Sections 6.1(a) and 6.1(b).

7. DEBT FINANCING OUTREACH PROCESS AND ADDITIONAL REQUIREMENTS

7.1 Debt Financing Outreach Process and Competition Submittal

- (a) After the Debt Financing Plan is assigned a comment of either “No Comment” or “Minor Non-Conformance” with no additional comment of “Re-Submit” in accordance with the DPA Review Procedure, Dev Co shall promptly implement the applicable portions of Debt Financing Plan, which shall be completed by no later than the date for the submittal of the Debt Financing Outreach Process and Competition Submittal set out in Appendix 2 – DPA Financial Submittals and Requirements of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- (b) The results of the implementation of the applicable portions of the Debt Financing Plan shall be set out in the Debt Financing Outreach Process and Competition Submittal submitted by Dev Co to DPA Contracting Authority in accordance with the Agreement, including the requirements of Appendix 2 – DPA Financial Submittals and Requirements of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- (c) In addition to and notwithstanding the requirements of the DPA Review Procedure in respect of the submission and review of the Debt Financing Outreach Process and Competition Submittal, the Parties agree that DPA Contracting Authority may, acting reasonably and instead of assigning a comment of either “No Comment” or “Minor Non-Conformance” with no additional comment of “Re-Submit” in accordance with the DPA Review Procedure, have the right to, by way of Notice provided to Dev Co, object in writing to the Debt Financing Outreach Process and Competition Submittal submitted to DPA Contracting Authority by Dev Co. Any such objection made by DPA

Contracting Authority shall be made following prior consultation with Dev Co, contain a detailed rationale for such objection and be made on the basis of DPA Contracting Authority's review of relevant financial industry benchmarks, precedent transactions, Project risks, and other relevant objective criteria as determined by DPA Contracting Authority.

- (d) In the event that DPA Contracting Authority objects to the Debt Financing Outreach Process and Competition Submittal in accordance with Section 7.1(c), then the Parties shall, as soon as practicable, exert reasonable commercial efforts to resolve the issues raised by DPA Contracting Authority in such objection within 15 Business Days of the date of such objection (or such longer period agreed to by the Parties, acting reasonably). If, after the expiry of such period, the Parties have not resolved such issues, then, unless a Party refers such issues for resolution in accordance with the DPA Dispute Resolution Procedure prior to the expiry of such period, without limiting any other right of DPA Contracting Authority under the Agreement, DPA Contracting Authority shall by way of Notice to Dev Co:
- (i) direct Dev Co to either:
- (A) submit a new and replacement Debt Financing Outreach Process and Competition Submittal *de novo* in accordance with the requirements of the Agreement, which shall respond to and address the issues raised by DPA Contracting Authority in such objection; or
- (B) conduct a new debt financing competition in accordance with processes and parameters developed jointly by the Parties, acting reasonably, and following the completion of such competition, Dev Co shall submit a new and replacement Debt Financing Outreach Process and Competition Submittal *de novo* in accordance with the requirements of the Agreement (as may be modified in accordance with the Agreement to reflect such processes and parameters); and/or
- (ii) either:
- (A) revise and reissue the Draft Project Agreement in accordance with Section 4.1 of Schedule 3 – DPA Submissions and Project Development Process of the Agreement, including the payment, financing and other provisions of the Draft Project Agreement to account for the anticipated quantum and structure of the required Financing; or
- (B) revise and reissue the Draft Project Agreement in accordance with Section 4.1 of Schedule 3 – DPA Submissions and Project Development Process of the Agreement to delete the requirement for Debt Financing and, subject to and in accordance with Schedule 6 – DPA Variation Procedure, implement a DPA Variation to remove the requirement for Debt Financing from the DPA Scope of Work.
- (e) Dev Co shall not be entitled to a DPA Variation or any additional compensation or any schedule extension as a result of DPA Contracting Authority exercising its rights pursuant to Sections 7.1(c) and 7.1(d).

8. COMMITTED FINANCING PROCESS ADDITIONAL REQUIREMENTS

8.1 Commencement of Committed Financing Process and Updated Project Proposal

- (a) At any time during the Project Proposal Stage, DPA Contracting Authority may, in its sole discretion, provide Notice to Dev Co to commence the process for obtaining the Committed Financing and developing and submitting the Financing Proposal in accordance with the requirements of the Agreement, including the requirements of Appendix 2 – DPA Financial Submittals and Requirements of Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- (b) Notwithstanding the requirements of the DPA Review Procedure, the Financing Proposal must be assigned a comment of “No Comment” in accordance with the DPA Review Procedure.
- (c) After the date that Dev Co has obtained the Committed Financing (other than, for clarity, in respect of the Best Efforts Bond Debt Financing) and the Financing Proposal is assigned a comment of “No Comment” in accordance with the DPA Review Procedure, then, within 5 Business Days of such date, Dev Co shall update the Project Proposal to reflect (and only to reflect) the Financing and submit the updated parts of the Project Proposal for DPA Contracting Authority’s review pursuant to Section 5.5 of Schedule 3 – DPA Submissions and Project Development Process, which shall be applicable *mutatis mutandis*.
- (d) Notwithstanding Section 8.1(c), if Dev Co has not submitted the Project Proposal by the date that Dev Co has obtained the Committed Financing (other than, for clarity, in respect of the Best Efforts Bond Debt Financing) and the Financing Proposal is assigned a comment of “No Comment” in accordance with the DPA Review Procedure, then, unless the Parties otherwise agree, acting reasonably, Dev Co shall develop the Project Proposal to reflect such Financing and submit the Project Proposal for DPA Contracting Authority’s review in accordance with Section 5.5 of Schedule 3 – DPA Submissions and Project Development Process without any requirement or right of Dev Co to further update or revise the Project Proposal under the Agreement other than as expressly set out in Sections 5.7 and 6 of Schedule 3 – DPA Submissions and Project Development Process
- (e) Nothing in this Appendix 5 or in the Financing Proposal shall limit DPA Contracting Authority’s Project Proposal Negotiations rights under the Agreement.

9. FINANCIAL CLOSE PLAN AND FINANCIAL CLOSE

9.1 Financial Close Plan and Draft Financing Documents

- (a) Within five Business Days of DPA Contracting Authority’s delivery of a Notice to Proceed to Commercial Close in accordance with the Agreement, Dev Co shall submit for DPA Contracting Authority’s review and approval, acting reasonably, a draft of Dev Co’s plan for achieving Commercial Close and Financial Close (the “**Financial Close Plan**”), which shall, at a minimum, set out the following:

- (i) the steps Dev Co shall take to complete and implement the Financing Process and execute and deliver the Final Project Agreement by the Commercial Close Target Date and achieve Financial Close by the Financial Close Target Date;
 - (ii) Dev Co's schedule for achieving the following milestone dates:
 - (A) the date of the anticipated substantial drafting completion of each of the material documents comprising Dev Co's draft documentation provided pursuant to Section 9.1(c) and each other material Project document, if such date is anticipated or required to be in advance of the date of the execution and delivery of the Escrow Closing Procedure Agreement in accordance with the Agreement, including as required by Dev Co for credit rating agency purposes;
 - (B) the receipt of final ratings from credit rating agencies in respect of the Financing;
 - (C) proposed dates for all Dry Runs; and
 - (D) the final pricing and, if applicable, settlement of the Financing in accordance with the Financing Proposal and this Appendix 5, including Section 9.3;
 - (iii) a statement setting out the level of completion and acceptance by the proposed counterparties to the draft Financing documentation (including the Potential Lenders and the Potential Equity Provider) provided by Dev Co pursuant to Section 9.1(c);
 - (iv) Dev Co's assessment of the level of and the risks associated with uncommitted Debt Financing syndications and any other processes or risks that could impede or prevent the execution and delivery of the Final Project Agreement by the Commercial Close Target Date or the achievement of Financial Close by the Financial Close Target Date; and
 - (v) any other information reasonably requested by DPA Contracting Authority.
- (b) After the Financial Close Plan has been approved by DPA Contracting Authority, Dev Co shall implement the Financial Close Plan. DPA Contracting Authority may elect, in its sole discretion, to extend one or more of the dates identified in the Financial Close Plan.
- (c) Notwithstanding Section 6.4(b) of Schedule 3 – DPA Submissions and Project Development Process of the Agreement, Dev Co shall, at the same time as the Financial Close Plan is submitted to DPA Contracting Authority for review in accordance with Section 9.1(a), deliver:
- (i) drafts of all of the agreements and other relevant documents required to implement the Financing (including the Equity Commitment Agreement and the Lending Agreements) for the purposes of DPA Contracting Authority's due diligence investigations; and
 - (ii) a draft of Dev Co's proposed protocol for the setting of the final pricing of the Debt Financing in accordance with Section 9.1 and the other applicable provisions of the Agreement (the "**Rate Set Protocol**"), which shall be reflective of the structure of the Committed Financing and the process for pricing and settling any Best Efforts Bond Debt Financing and includes representatives of DPA Contracting Authority, Dev Co, the

Potential Lenders and all other relevant third parties. DPA Contracting Authority shall have the right to review and approve of the draft Rate Set Protocol, acting reasonably.

- (d) With respect to Debt Financing other than any Best Efforts Bond Debt Financing, in a Notice given to Dev Co prior to Commercial Close, DPA Contracting Authority shall, acting reasonably, prescribe the date (provided that DPA Contracting Authority may give a further Notice of a revised date, acting reasonably) on which Dev Co shall submit to DPA Contracting Authority a letter (or letters), the form and substance of which shall be satisfactory to DPA Contracting Authority, on the letterhead of the applicable Potential Lenders and executed by the applicable Potential Lenders (the “**Lenders Commitment Letter**”) addressed to Dev Co confirming:
- (i) the Lenders’ funding commitment to provide the financing described in the Financing Proposal, which, subject to Section 9.1(d)(ii), may be subject to such reasonable and customary conditions of the Potential Lenders as agreed to by DPA Contracting Authority, acting reasonably;
 - (ii) that the funding commitment does not contain any material adverse change clause, market flex clause, or any other similar condition which explicitly or implicitly makes the funding commitment by the Potential Lenders conditional on the absence of a material adverse change in the market, or if any such conditions were originally applicable that the Potential Lenders have now waived such conditions; and
 - (iii) that the Potential Lenders accept the Final Project Agreement without any material change.
- (e) Prior to the issuance of the Lenders Commitment Letter, and no later than five Business Days prior to the due date of the Lenders Commitment Letter as prescribed by DPA Contracting Authority pursuant to Section 9.1(d), Dev Co shall submit a draft thereof to DPA Contracting Authority for review and comment by DPA Contracting Authority, which draft shall be consistent in all material respects with the Lenders Commitment Letter ultimately provided by Dev Co to DPA Contracting Authority.

9.2 Completion of Financing Process and Financial Close

- (a) Following DPA Contracting Authority’s delivery of a Notice to Proceed to Commercial Close in accordance with the Agreement, Dev Co shall lead and manage the process necessary for the completion of the Financing Process, including as set out in the Financial Close Plan, the Escrow Closing Procedure Agreement, the Agreement and the Final Project Agreement.

9.3 Final Financing Pricing Process

- (a) Notwithstanding anything to the contrary in the Agreement:
- (i) the Parties agree that prices in respect of the Financing in the Financing Proposal shall only be adjusted or, with respect to any Best Efforts Bond Debt Financing set, on the Benchmarking Date, in accordance with the procedures set out in the Rate Set Protocol, the provisions of the Escrow Closing Procedure Agreement, and the provisions of this Section 9.3;

- (ii) the Parties further agree that:
 - (A) with respect to any Best Efforts Bond Debt Financing, the Benchmark Rate(s) and the Credit Spreads will be set on the Benchmarking Date;
 - (B) with respect to Debt Financing other than any Best Efforts Bond Debt Financing, no such adjustments will be permitted to:
 - (I) the Credit Spreads; and
 - (II) any rates on any subordinated or junior debt, including equity bridge loans and similar non-senior debt facilities; and
 - (C) the Financial Model shall be adjusted in accordance with the Rate Set Protocol and the Escrow Closing Procedure Agreement to reflect and account for the adjustments and pricing in respect of the Financing described in Section 9.3(a)(i).
- (b) The date upon which the adjustments and pricing in respect of the Financing described in Section 9.3(a)(i) will occur (the “**Benchmarking Date**”) shall be on a day and at a time selected by DPA Contracting Authority, in its sole discretion, within three Business Days following the satisfaction or waiver of Contracting Authority’s and Project Co’s conditions precedent to Financial Close set out in the Final Project Agreement. For greater certainty, Financial Close may be achieved on one of such days. In DPA Contracting Authority’s sole discretion, the Benchmarking Date may be changed to another day and/or another time within five Business Days following the completion of all of Contracting Authority’s and Project Co’s conditions precedent to Financial Close set out in the Final Project Agreement.
- (c) Up to four simulation non-binding rate set exercises (each is a “**Dry Run**”) will be undertaken by DPA Contracting Authority and Dev Co leading up to the Benchmarking Date to ensure that the process for establishing the net change to the Benchmark Rate(s) and the pricing of any Best Efforts Bond Debt Financing is effective and the Parties agree as to how the Financial Model is to be adjusted based on the adjusted Benchmark Rate(s) and the final pricing of any Best Efforts Bond Debt Financing. This process will consist of an initial benchmarking and pricing, and daily benchmarking and pricing as the Benchmarking Date approaches.
- (d) If, as a result of any adjustments and pricing in respect of the Financing described in Section 9.3(a)(i), any change to the Equity IRR, debt service coverage ratios and resiliency ratios have changed in Dev Co’s Financial Model, then the payments made by Contracting Authority under the Final Project Agreement, and, if necessary, the debt-equity gearing ratio will be adjusted in Dev Co’s Financial Model to restore the Equity IRR, debt service coverage ratios and resiliency ratios to the same levels as in the Financial Model that were included in the Financing Proposal (the “**Adjusted PA Payments**”). DPA Contracting Authority requires this optimization procedure to be performed on the audited Financial Model.

APPENDIX 6

FORM OF DPA CLOSING LETTER OF CREDIT

[Note to Dev Co: The DPA Closing Letter(s) of Credit must be issued by a bank acceptable to DPA Contracting Authority, acting reasonably, and must be callable at the bank's counters in Toronto, Ontario.]

Letter of Credit: #[●]

Date: [●]

Ontario Infrastructure and Lands Corporation
[REDACTED]

Trillium Health Partners
[REDACTED]

Dear Sir/Madam:

RE: Letter of Credit in respect of (i) a development phase agreement dated March 10, 2023 between DPA Contracting Authority (as defined below) and ED PCL Trillium Dev Co Limited Partnership, [REDACTED] (“Dev Co”) (as amended from time to time, the “Development Phase Agreement”), and (ii) a project agreement to be entered into between Project Co and Contracting Authority (each as defined therein) (as amended from time to time, the “Project Agreement”), in respect of the Trillium Health Partners M-Site Redevelopment P3 DBFM Project

At the request of our client, [●] [Note to Dev Co: Insert name of DPA Closing Letter of Credit Client], we, [Note to Dev Co: Insert name and address of issuing bank], hereby issue in favour of (i) Ontario Infrastructure and Lands Corporation and Trillium Health Partners (collectively, “DPA Contracting Authority” and the “Beneficiaries” and each individually is a “Beneficiary”), and (ii) Trillium Health Partners (“Contracting Authority”), each as a separate and non-concurrent beneficiary of an irrevocable standby letter of credit (the “Letter of Credit”) in the amount of [●] (\$[●]) [Note to Dev Co: Insert the amount of the DPA Closing Letter of Credit in accordance with Section 16.3 of the Development Phase Agreement.]

The amount available under this Letter of Credit is payable, first, to either Beneficiary at any time and from time to time commencing on the date of this Letter of Credit and ending upon the achievement of Commercial Close (as such term is defined in the Development Phase Agreement), upon (a) receipt by us of a written demand for payment, accompanied by a certificate signed by one officer of a Beneficiary certifying that DPA Contracting Authority is entitled to draw on this Letter of Credit pursuant to Section 16.3(b) or Section 16.3(c) of the Development Phase Agreement and that Commercial Close (as each such term is defined in the Development Phase Agreement) has not yet been achieved, and (b) presentation of the original of this Letter of Credit.

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The amount available under this Letter of Credit is payable, second, to Contracting Authority under the Project Agreement, at any time and from time to time, commencing at the achievement of Commercial Close (as such term is defined in the Project Agreement), upon (a) receipt by us of a written demand for payment, accompanied by a certificate signed by one officer of Contracting Authority certifying that Contracting Authority is entitled to draw on this Letter of Credit pursuant to Section 2.3 of the Project Agreement and that Commercial Close (as each such term is defined in the Project Agreement) has been achieved, and (b) presentation of the original of this Letter of Credit.

This Letter of Credit will expire at 5:00 p.m. (Toronto time) on [●] **[Note to Dev Co: Insert the date that is one year after the Financial Close Target Date]** (the “**Expiry Date**”), and either Beneficiary may, in accordance with the paragraphs above, call for payment of any amount outstanding under this Letter of Credit at any time up to 5:00 p.m. (Toronto time) on that date should this Letter of Credit not be extended.

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 the Beneficiaries, in writing, by courier, that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt by the Beneficiaries of such notice, either Beneficiary may draw the full amount hereunder by means of a 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. Delivery of the demand may only be made by hand, by registered post or by courier to the following address: [●]. **[Note to Dev Co: Insert issuing bank’s Toronto address.]**

Written demands drawn under this Letter of Credit shall state on their face that they are drawn under this Letter of Credit # [●]. **[Note to Dev Co: Insert Letter of Credit number.]**

It is understood that **[Note to Dev Co: Insert name of issuing bank]** is obligated under this Letter of Credit for payments of monies only.

The Development Phase Agreement and the Project Agreement are referred to herein for reference purposes only and neither of them forms 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 the Beneficiaries 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:

APPENDIX 7

FORM OF ESCROW CLOSING PROCEDURE AGREEMENT

[REDACTED]

SCHEDULE 4

DPA WORKS PA REQUIREMENTS

[REDACTED]

SCHEDULE 5

DPA KEY INDIVIDUALS

1. Definitions

In this Schedule 5, the following terms shall have the following meanings:

- (a) **“DPA Project Management Plan”** means the “DPA Project Management Plan” set out as part of the Dev Co Proposal Extracts; and
- (b) **“Role Experience”** means the accumulated experience of any individual to perform the role of the applicable DPA Key Individual described in this Schedule 5, where the primary responsibilities of such individual’s experience are substantially similar or directly relevant to those responsibilities identified for such DPA Key Individual position.

2. Key Individuals for Project Term under the Final Project Agreement

- (a) Subject to DPA Sections 4.1(b), 4.1(c) and 10.6 of the Agreement, each of the DPA Key Individuals identified with a “YES” in the column titled “Project Term” shall assume the roles and responsibilities of the corresponding Key Individual position identified in Schedule 9 – Key Individuals of the Draft Project Agreement under any Final Project Agreement. Each of the DPA Key Individuals identified with a “NO” in the column titled “Project Term” shall not continue as a Key Individual pursuant to Schedule 9 – Key Individuals of the Draft Project Agreement under any Final Project Agreement.

3. Clinical / Non-Clinical Planning Sub-Leads

- (a) Dev Co shall ensure and demonstrate that clinical and non-clinical planning for all functional programs of the Facility will be coordinated by each of the Clinical/Non-Clinical Planning Sub-Leads identified in this Schedule 5.

Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
Dev Co	DPA Dev Co Representative	The DPA Dev Co Representative shall have the applicable responsibilities set out in the Agreement, including: (i) developing and managing partnership and collaboration with DPA Contracting Authority; (ii) designing reporting relationships internally and with DPA Contracting Authority;	YES	[REDACTED]

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Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
		<p>(iii) overseeing the management and coordination of the multi-disciplinary team performing the DPA Works and Enabling Works; and</p> <p>(iv) interfacing with relevant stakeholders, including the MOH, City of Mississauga, Region of Peel, the Credit Valley Conservation Authority and user groups.</p> <p>Minimum Role Experience: 10 years.</p>		

Dev Co	Deputy DPA Dev Co Representative	<p>The responsibilities of the Deputy DPA Dev Co Representative shall include:</p> <ul style="list-style-type: none"> (i) supporting the DPA Dev Co Representative in the development and management of partnership and collaboration with DPA Contracting Authority and its advisors; (ii) overseeing the activities of the Dev Co Parties in the performance of the DPA Works and Enabling Works; (iii) managing Dev Co’s team resource planning, including: proposed changes or substitutions to DPA Key Individual positions, succession planning, and execution of equity, diversity and inclusion initiatives; and (iv) coordinating with the DPA Contracting Authority on matters related to transition and preparing the “Transition Management Sub-Plan” identified under the heading “Transition and Commissioning Submissions” in Appendix 1 – Technical Submittals and Requirements of Schedule 3 – DPA Submissions and Project Proposal Process to the Agreement. 	YES	[REDACTED]
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Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
		Minimum Role Experience: 10 years.		
Dev Co	Project Manager	<p>The responsibilities of the Project Manager shall include:</p> <ul style="list-style-type: none"> (i) supporting the management of the Dev Co Parties in the performance of the DPA Works and Enabling Works; (ii) leading the implementation of and updates to the DPA Project Management Plan; (iii) developing communications and integration protocols that align with DPA Contracting Authority’s approach to communications; (iv) supporting the management of collaboration with DPA Contracting Authority and its advisors; and (v) supporting the management of Dev Co’s team resource planning. <p>Minimum Role Experience: 10 years.</p>	YES	[REDACTED]

Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
Dev Co	Project Director	<p>The responsibilities of the Project Director shall include:</p> <ul style="list-style-type: none"> (i) leading the management and engagement of the Dev Co Parties during the Initial Development Stage; (ii) supporting the management of the Dev Co Parties in the performance of the DPA Works and Enabling Works; (iii) leading the implementation of and updates to the DPA Project Management Plan; (iv) developing communications and integration protocols that align with DPA Contracting Authority’s approach to communications; (v) supporting the management of collaboration with DPA Contracting Authority and its advisors; and (vi) supporting the management of Dev Co’s team resource planning. <p>Minimum Role Experience: 10 years.</p>	NO	[REDACTED]

Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
Dev Co	Governmental Authorities Lead	<p>The responsibilities of the Governmental Authorities Lead shall include:</p> <ul style="list-style-type: none"> (i) leading the preparation of technical submissions for obtaining Permits, Licences, Approvals and Agreements; (ii) overseeing the Dev Co Parties and DPA Key Individuals responsible for Permits, Licences, Approvals and Agreements activities in performing the DPA Works and Enabling Works; (iii) developing and managing successful relationships with, but not limited to, Governmental Authorities and Utility Companies; and (iv) collaborating within the Dev Co team and DPA Contracting Authority to obtain information required to support and facilitate applications for Permits, Licences, Approvals and Agreements. <p>Minimum Role Experience: 10 years.</p>	YES	[REDACTED]

Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
Dev Co	Cost Estimation Lead	<p>The responsibilities of the Cost Estimation Lead shall include:</p> <ul style="list-style-type: none"> (i) managing the development of the cost estimation approach and Earned Value Management Plan; (ii) leading the analysis and maintenance of up-to-date cost estimation information; (iii) leading the costing and development of the final Construction Cost Estimate and final Services Cost Estimate; (iv) interfacing with DPA Contracting Authority regarding risks and cost saving and de-scoping opportunities; and (v) leading the reporting of cost estimation information. <p>Minimum Role Experience: 10 years.</p>	NO	[REDACTED]

Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
Dev Co	Schedule Lead	<p>The responsibilities of the Schedule Lead shall include:</p> <ul style="list-style-type: none"> (i) managing the development of the DPA Works Schedules and Construction Works Schedules; (ii) managing the development of the DPA Works Schedule in connection with the Earned Value Management Plan; (iii) leading the monitoring, analysis, and maintenance of up-to-date DPA Works Schedules; (iv) managing the entry of costing data into the DPA Works Schedules and monitoring and maintaining up-to-date cost DPA Works Schedules; (v) interfacing with DPA Contracting Authority regarding risks and schedule optimization and time saving opportunities; and (vi) leading the reporting of schedule and information on Earned Value (EV) (as defined in Schedule 7 – DPA Works Schedules Requirements). <p>Minimum Role Experience: 10 years.</p>	YES	[REDACTED]

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Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
Dev Co	Risk Lead	<p>The responsibilities of the Risk Lead shall include:</p> <ul style="list-style-type: none"> (i) developing the risk management process that will be utilized throughout the DPA Term; (ii) managing the development and maintenance of the Development Risk Register and Construction Risk Register; (iii) overseeing the development of risk mitigation strategies and identification of responsible parties; (iv) optimizing the risk management process using feedback to ensure efficiencies; (v) interfacing with DPA Contracting Authority regarding risk management; and (vi) leading the reporting of risk and risk response strategies. <p>Minimum Role Experience: 7 years.</p>	YES	[REDACTED]

Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
Dev Co	Finance Lead	<p>The responsibilities of the Finance Lead shall include leading all efforts related to the Financing during the DPA Term, including:</p> <ul style="list-style-type: none"> (i) the development of the DPA Financial Submittals; (ii) leading all Financing and related activities required to achieve a timely and successful Financial Close; and (iii) being the primary point of contact with DPA Contracting Authority during the DPA Term for all Financing related matters. <p>The Finance Lead shall have experience in providing, arranging or securing financing for at least three construction projects of comparable size, jurisdiction, and complexity as the Project.</p>	NO	[REDACTED]
Dev Co	Communications Lead	<p>The Communications Lead shall be responsible for:</p> <ul style="list-style-type: none"> (i) the development and implementation of the DPA Communications Plan; and (ii) all activities (internal and external) required to satisfy the communications obligations of Dev Co under the Agreement. <p>Minimum Role Experience: 10 years.</p>	YES	[REDACTED]

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Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
Design Team	Architectural Design Lead	<p>The responsibilities of the Architectural Design Lead shall include:</p> <ul style="list-style-type: none"> (i) coordinating all designs produced by the architectural Design Team; and (ii) supporting the preparation of relevant DPA Works Submittals. <p>Minimum Role Experience: 10 years.</p>	YES	[REDACTED]

Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
Design Team	Clinical Planning Lead	<p>The responsibilities of the Clinical Planning Lead shall include:</p> <ul style="list-style-type: none"> (i) coordinating clinical planning of the Facility produced by the Design Team; (ii) leading the clinical planning design development stakeholder meetings; (iii) coordinating clinical planning considerations in design optimisation with an objective of ensuring future flexibility; (iv) coordinating with DPA Contracting Authority and other key stakeholders to schedule clinical planning progress reviews with stakeholders; receive and respond to inputs on the design; and (v) supporting the preparation of the relevant DPA Works Submittals. <p>Minimum Role Experience: 10 years.</p>	YES	[REDACTED]

Design Team	Lead Project Manager (Design Team)	<p>The responsibilities of the Lead Project Manager (Design Team) shall include:</p> <ul style="list-style-type: none"> (i) coordinating the Design Team to advance the design from the existing Output Specifications to meet the requirements and deliverables outlined in Schedule 3 – DPA Submissions and Project Development Process of the Agreement and Schedule 7 – DPA Works Schedules Requirements of the Agreement; (ii) ensuring the schedule for the relevant DPA Submittals is reflected in each update of the DPA Works Schedules if and as required pursuant to Schedule 7 – DPA Works Schedule Requirements of the Agreement; (iii) managing the submission of Schematic Design Submittals, Design Development Submittals and other submittals; (iv) ensuring that all activities with respect to the DPA Works are fully integrated with each other; (v) overseeing the implementation of the Design Quality Plan and managing the quality control, 	YES	[REDACTED]
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Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
		<p>monitoring, and verification of the DPA Works; and</p> <p>(vi) interfacing with the Risk Lead, Schedule Lead and Cost Estimation Lead to identify, document, review and mitigate design-related Project risks.</p> <p>(vii) managing collaboration with DPA Contracting Authority and its advisors;</p> <p>(viii) managing collaboration with the DPA Key Individuals, the Construction Contractor, and the Service Provider to optimize the design and facilitate cost optimization;</p> <p>(ix) coordinating with DPA Contracting Authority and its advisors to prioritize the review of each of the relevant DPA Submittals, if necessary;</p> <p>(x) ensuring obligations set out under the applicable Review Procedure are satisfied for each relevant DPA Submittal; and</p> <p>(xi) overseeing the implementation of the OCPM.</p> <p>Minimum Role Experience: 10 years.</p>		

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Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
Design Team	Engineering Lead - Mechanical	<p>The responsibilities of the Engineering Lead - Mechanical shall include:</p> <ul style="list-style-type: none"> (i) overseeing the development of the Facility mechanical design, including HVAC, plumbing and drainage systems, equipment selections, and the provision of capacity to accommodate flexibility and expansion potential; and (ii) supporting the preparation of relevant DPA Submittals. <p>Minimum Role Experience: 10 years.</p>	YES	[REDACTED]

Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
Design Team	Engineering Lead – Electrical	<p>The responsibilities of the Engineering Lead - Electrical shall include:</p> <ul style="list-style-type: none"> (i) overseeing the development of the Facility electrical design, including electrical systems (including redundancy, emergency power and back-up), equipment selection, concept for lighting control, interface with daylight harvesting and the provision of capacity to accommodate flexibility for future renovations; and (ii) supporting the preparation of relevant DPA Submittals. <p>Minimum Role Experience: 10 years.</p>	YES	[REDACTED]

<p>Design Team</p>	<p>Engineering Lead ICAT</p>	<p>The responsibilities of the Engineering Lead ICAT shall include:</p> <ul style="list-style-type: none"> (i) overseeing the development of the Facility ICAT systems design, including systems hardware and software for the following systems: network architecture, network equipment, wireless networks, integrated nurse call, unified communications, intercommunications, distributed antenna system, land mobile radio das, time source and master clock, ATS design and real time locating services; (ii) overseeing the development of design aspects related to telecommunications pathways and spaces including: entrance facilities, data centres, secondary data frames, telecommunications rooms, structured cabling, and equipment cabinets; (iii) ensuring that the design of the ICAT systems for the Facility will conform to the requirements of relevant codes and standards; (iv) planning for ICAT systems integration; (v) overseeing the development of the 	<p>YES</p>	<p>[REDACTED]</p>
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Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
		<p>cyber security of the various networks and various distinct users; and</p> <p>(vi) supporting the preparation of relevant DPA Submittals.</p> <p>Minimum Role Experience: 10 years.</p>		
Design Team	Equipment (FF&E) Lead	<p>The responsibilities of the Equipment (FF&E) Lead shall include:</p> <p>(i) working with DPA Contracting Authority’s FFE team and consultants in connection with the design of the furniture, fixtures and Equipment elements and systems in coordination with the Facility design;</p> <p>(ii) supporting the development of the Equipment planning activities and procurement activities within the Construction Works Schedule; and</p> <p>(iii) preparation of relevant DPA Submittals.</p> <p>Minimum Role Experience: 10 years.</p>	YES	[REDACTED]

<p>Design Team</p>	<p>Clinical / Non-Clinical Planning Sub-Lead - Ambulatory Care</p>	<p>The responsibilities of the Clinical / Non-Clinical Planning Sub-Lead - Ambulatory Care shall include:</p> <ul style="list-style-type: none"> (i) coordinating clinical planning of the Facility in relation to functional programs for ambulatory care produced by the Design Team; (ii) supporting clinical planning design stakeholder meetings in matters regarding functional programs related to ambulatory care; (iii) coordinating clinical planning considerations in design optimization with an objective of ensuring future flexibility of functional programs related to ambulatory care; (iv) coordinating with DPA Contracting Authority and other key stakeholders to schedule clinical planning progress reviews with stakeholders as well as receiving and responding to inputs on the design in matters regarding functional programs related to ambulatory care; and (v) supporting the preparation of the relevant DPA Submittals. 	<p>YES</p>	<p>[REDACTED]</p>
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Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
		Minimum Role Experience: 7 years.		

Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
Design Team	Clinical / Non-Clinical Planning Sub-Lead - Inpatient	<p>The responsibilities of the Clinical / Non-Clinical Planning Sub-Lead - Inpatient shall include:</p> <ul style="list-style-type: none"> (i) coordinating clinical planning of the Facility in relation to functional programs for inpatient care produced by the Design Team; (ii) supporting the clinical planning design development stakeholder meetings in matters regarding functional programs related to inpatient care; (iii) coordinating clinical planning considerations in design optimization with an objective of ensuring future flexibility of functional programs related to inpatient care; (iv) coordinating with DPA Contracting Authority and other key stakeholders to schedule clinical planning progress reviews with stakeholders as well as receiving and responding to inputs on the design in matters regarding functional programs related to inpatient care; and (v) supporting the preparation of the relevant DPA Submittals. <p>Minimum Role Experience: 7 years.</p>	YES	[REDACTED]

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<p>Design Team</p>	<p>Clinical / Non-Clinical Planning Sub-Lead – Women and Children’s Health</p>	<p>The responsibilities of the Clinical / Non-Clinical Planning Sub-Lead – Women and Children’s Health shall include:</p> <ul style="list-style-type: none"> (i) coordinating clinical planning of the Facility in relation to functional programs for women and children’s health produced by the Design Team; (ii) supporting the clinical planning design development stakeholder meetings in matters regarding functional programs related to women and children’s health; (iii) coordinating clinical planning considerations in design optimization with an objective of ensuring future flexibility of functional programs related to women and children’s health; (iv) coordinating with DPA Contracting Authority and other key stakeholders to schedule clinical planning progress reviews with stakeholders as well as receiving and responding to inputs on the design in matters regarding functional programs related to women and children’s health; and (v) supporting the preparation of the relevant DPA Submittals. 	<p>YES</p>	<p>[REDACTED]</p>
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Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
		Minimum Role Experience: 7 years.		

<p>Design Team</p>	<p>Clinical / Non-Clinical Planning Sub-Lead - Diagnostics & Clinical Support</p>	<p>The responsibilities of the Clinical / Non-Clinical Planning Sub-Lead - Diagnostics & Clinical Support shall include:</p> <ul style="list-style-type: none"> (i) coordinating clinical planning of the Facility in relation to functional programs for diagnostics & clinical support produced by the Design Team; (ii) supporting the clinical planning design development stakeholder meetings in matters regarding functional programs related to diagnostics & clinical support; (iii) coordinating clinical planning considerations in design optimization with an objective of ensuring future flexibility of functional programs related to diagnostics & clinical support; (iv) coordinating with DPA Contracting Authority and other key stakeholders to schedule clinical planning progress reviews with stakeholders as well as receiving and responding to inputs on the design in matters regarding functional programs related to diagnostics & clinical support; and (v) supporting the preparation of the relevant DPA Submittals. 	<p>YES</p>	<p>[REDACTED]</p>
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Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
		Minimum Role Experience: 7 years.		

Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
Design Team	Clinical / Non-Clinical Planning Sub-Lead - Therapeutics	<p>The responsibilities of the Clinical / Non-Clinical Planning Sub-Lead - Therapeutics shall include:</p> <ul style="list-style-type: none"> (i) coordinating clinical planning of the Facility in relation to functional programs for therapeutics produced by the Design Team; (ii) supporting the clinical planning design development stakeholder meetings in matters regarding functional programs related to therapeutics; (iii) coordinating clinical planning considerations in design optimization with an objective of ensuring future flexibility of functional programs related to therapeutics; (iv) coordinating with DPA Contracting Authority and other key stakeholders to schedule clinical planning progress reviews with stakeholders as well as receiving and responding to inputs on the design in matters regarding functional programs related to therapeutics; and (v) supporting the preparation of the relevant DPA Submittals. <p>Minimum Role Experience: 7 years.</p>	YES	[REDACTED]

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<p>Design Team</p>	<p>Clinical / Non-Clinical Planning Sub-Lead – Administration and Education</p>	<p>The responsibilities of the Clinical / Non-Clinical Planning Sub-Lead - Administration and Education shall include:</p> <ul style="list-style-type: none"> (i) coordinating clinical planning of the Facility in relation to functional programs for administration and education produced by the Design Team; (ii) supporting the clinical planning design development stakeholder meetings in matters regarding functional programs related to administration and education; (iii) coordinating clinical planning considerations in design optimization with an objective of ensuring future flexibility of functional programs related to administration and education; (iv) coordinating with DPA Contracting Authority and other key stakeholders to schedule clinical planning progress reviews with stakeholders as well as receiving and responding to inputs on the design in matters regarding functional programs related to administration and education; and (v) supporting the preparation of the 	<p>YES</p>	<p>[REDACTED]</p>
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Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
		relevant DPA Submittals. Minimum Role Experience: 7 years.		

Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
Design Team	Clinical / Non-Clinical Planning Sub-Lead - Public	<p>The responsibilities of the Clinical / Non-Clinical Planning Sub-Lead - Public shall include:</p> <ul style="list-style-type: none"> (vi) coordinating clinical planning of the Facility in relation to functional programs for the public produced by the Design Team; (vii) supporting the clinical planning design stakeholder meetings in matters regarding functional programs related to the public; (viii) coordinating clinical planning considerations in design optimization with an objective of ensuring future flexibility of functional programs related to the public; (ix) coordinating with DPA Contracting Authority and other key stakeholders to schedule clinical planning progress reviews with stakeholders as well as receiving and responding to inputs on the design in matters regarding functional programs related to the public; and (x) supporting the preparation of the relevant DPA Submittals. <p>Minimum Role Experience: 7 years.</p>	YES	[REDACTED]

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<p>Design Team</p>	<p>Clinical / Non-Clinical Planning Sub-Lead - General Support</p>	<p>The responsibilities of the Clinical / Non-Clinical Planning Sub-Lead: General Support shall include:</p> <ul style="list-style-type: none"> (i) coordinating clinical planning of the Facility in relation to functional programs for general support produced by the Design Team; (ii) supporting the clinical planning design stakeholder meetings in matters regarding functional programs related to general support; (iii) coordinating clinical planning considerations in design optimisation with an objective of ensuring future flexibility of functional programs related to general support; (iv) coordinating with DPA Contracting Authority and other key stakeholders to schedule clinical planning progress reviews with stakeholders as well as receiving and responding to inputs on the design in matters regarding functional programs related to general support; and (v) supporting the preparation of the relevant DPA Submittals. <p>Minimum Role Experience: 7 years.</p>	<p>YES</p>	<p>[REDACTED]</p>
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Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
Design Team	Structural Engineer Lead	The responsibilities of the Structural Engineer Lead shall include developing the Facility’s structural design, including preparation of the relevant DPA Submittals. Minimum Role Experience: 10 years.	YES	[REDACTED]
Design Team	ICAT Integration & Interoperability Lead	The responsibilities of the ICAT Integration & Interoperability Lead shall include: (i) design aspects related to the integration and interoperability of all Facility systems; (ii) integration of existing hospital and building systems as required within the Facility; (iii) planning for an enterprise service bus required to integrate the ICAT systems identified in this section; and (iv) supporting the preparation of the relevant DPA Submittals. Minimum Role Experience: 10 years.	YES	[REDACTED]
Design Team	Audio Visual Lead	The Audio Visual Lead shall be responsible for all design aspects related to audio visual system requirements under the Agreement and under any Final Project Agreement. Minimum Role Experience: 10 years.	YES	[REDACTED]

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Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
Design Team	Integrated Safety and Security Systems Lead	The Integrated Safety and Security Lead shall be responsible for the design of all hardware and software for electronic security systems required for the DPA Works and under any Final Project Agreement. Minimum Role Experience: 10 years.	YES	[REDACTED]
Design Team	Building Code Engineer	The Building Code Engineer shall be responsible for ensuring that the relevant DPA Submittals are in full compliance with the requirements of the applicable Building Code. Minimum Role Experience: 10 years.	YES	[REDACTED]
Design Team	Urban / Municipal Planning Lead	The Urban / Municipal Planning Lead shall be responsible for the developing the Facility’s site plan design, including the preparation of: (i) the relevant DPA Submittals; and (ii) technical submissions for obtaining Permits, Licences, Approvals and Agreements. Minimum Role Experience: 10 years.	YES	[REDACTED]

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Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
Design Team	Landscape Design Lead	The Landscape Design Lead shall be responsible for all landscape design, including coordination and preparation of the relevant DPA Submittals. Minimum Role Experience: 10 years.	YES	[REDACTED]
Design Team	Civil Lead	The Civil Lead shall be responsible for all civil works design, coordination with any specialty consultants (e.g., geotechnical, stormwater management), and the coordination and preparation of the relevant DPA Submittals. Minimum Role Experience: 10 years.	YES	[REDACTED]

Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
Dev Co	DPA Indigenous Engagement Consultant	<p>The DPA Indigenous Engagement Consultant shall advise on all matters related to Indigenous engagement during the DPA Term, including:</p> <ul style="list-style-type: none"> (i) supporting the Communications Lead with respect to all communications with First Nations and other Indigenous communities or persons; (ii) assisting in the implementation and monitoring of the Indigenous Communities Engagement Plan, including through participation on the DPA Indigenous Advisory Committee; (iii) reviewing the design and providing input, commentary and feedback with respect to the cultural appropriateness of the design, as well as confirming the incorporation of areas of Indigenous recognition; and (iv) ensuring that the DPA Works are conducted in a manner that avoids a pan-Indigenous approach and respects the appropriate cultural and community needs of the individual Impacted Indigenous Nations and Indigenous Entities. <p>Minimum Role Experience: 7 years.</p>	YES	Dev Co shall propose to DPA Contracting Authority in writing, for DPA Contracting Authority’s approval, a suitably qualified and experienced individual who meets the requirements of this Schedule 5 in respect of the DPA Indigenous Engagement Consultant. The proposal shall include relevant information in respect of the applicable individual (including a curriculum vitae), and be provided by Dev Co by no later than the date that is 20 Business Days following the Effective Date.

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Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
Design Team	Sustainable Design / LEED Lead	<p>The responsibilities of the Sustainable Design / LEED Lead shall include:</p> <ul style="list-style-type: none"> (i) developing the sustainability strategies for design and engineering to achieve the sustainability requirements for the Project, and ensuring its implementation in the design process and the construction planning of the Facility; (ii) developing the LEED certification strategy to achieve the LEED requirements for the Project, and ensuring its implementation in the design process and the construction planning of the Facility; and (iii) coordinating and preparing the relevant DPA Submittals. <p>Minimum Role Experience: 10 years.</p>	YES	[REDACTED]
Design Team	Energy Simulation Lead	<p>The Energy Simulation Lead shall be responsible for the development of the Target Energy Model and LEED Reference Building Energy Model, including the preparation of the relevant DPA Submittals.</p> <p>Minimum Role Experience of 10 years.</p>	YES	[REDACTED]

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Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
Design Team	Acoustics Consultant	The Acoustic Consultant shall be responsible for all acoustical and vibrations design, including the preparation of the relevant DPA Submittals. Minimum Role Experience: 10 years.	YES	[REDACTED]
Design Team	Aviation Consultant	The Aviation Consultant shall be responsible for the helipad design, including the preparation of the relevant DPA Submittals. Minimum Role Experience: 10 years.	YES	[REDACTED]
Design Team	Building Science Specialist	The Building Science Specialist shall be responsible for the building envelope design, including the preparation of relevant DPA Submittals. Minimum Role Experience: 10 years.	YES	[REDACTED]
Design Team	Hardware Consultant	The Hardware Consultant shall be responsible for the doors' hardware design, including preparation of the relevant DPA Submittals. Minimum Role Experience: 10 years.	YES	[REDACTED]
Design Team	Accessibility Consultant	The Accessibility Consultant shall be responsible for the accessibility elements design, including the preparation of the relevant DPA Submittals. Minimum Role Experience: 10 years.	YES	[REDACTED]

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Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
Design Team	Transportation Consultant	The Transportation Consultant shall be responsible for the transportation elements design, including the preparation of the relevant DPA Submittals. Minimum Role Experience: 10 years.	YES	[REDACTED]
Design Team	Interior Design / Workplace Strategy Lead	The Interior Design / Workplace Strategy Lead shall be responsible for the interior design of the Facility, including preparation of the relevant DPA Submittals. Minimum Role Experience: 7 years.	YES	[REDACTED]
Design Team	IPAC Consultant	The IPAC Consultant shall be responsible for the infection prevention and control (IPAC) elements design, including preparation of the relevant DPA Submittals. Minimum Role Experience: 10 years.	YES	[REDACTED]
Design Team	Wayfinding and Signage Lead	The Wayfinding and Signage Lead shall be responsible for developing the wayfinding strategy and signage design, including the preparation of the relevant DPA Submittals. Minimum Role Experience: 10 years.	YES	[REDACTED]

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Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
Design Team	Material Management / Conveyance Systems Lead	The Material Management / Conveyance Systems Lead shall be responsible for developing the material management / conveyance systems design including the ATS, pneumatic tube system, and the preparation of the relevant DPA Submittals. Minimum Role Experience: 10 years.	YES	[REDACTED]

Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
Construction Contractor	Construction Manager	<p>The Construction Manager shall be responsible for:</p> <ul style="list-style-type: none"> (i) leading all construction phasing and planning activities in coordination with the Design Team, the Service Provider, and major subcontractors; (ii) liaising with site managers and sub-trades to review the designs and manage the gathering and tracking of design inputs; (iii) liaising with site managers and sub-trades to oversee the development of the Construction Works Schedule and manage the gathering and tracking of schedule inputs; (iv) coordinating constructability reviews at specified design milestones; (v) leading the preparation of relevant DPA Submittals related to construction phasing and planning activities; and (vi) coordinating with DPA Contracting Authority to plan for the transition from the DPA Term to the Construction Period under any Final Project Agreement. <p>Minimum Role Experience: 10 years.</p>	YES	[REDACTED]

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Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
Construction Contractor	Quality (QA / QC) Manager	<p>The Quality (QA/QC) Manager shall be responsible for:</p> <ul style="list-style-type: none"> (i) managing the preparation of the Construction Quality Plan; (ii) developing the construction quality control, testing and inspection regime; (iii) engaging the Service Provider and integrating feedback on finishes and construction methods into the construction planning; (iv) coordinating with DPA Contracting Authority for site reviews and addressing DPA Contracting Authority concerns in respect to quality assurance and quality control of construction; and (v) implementing and managing an accredited quality assurance system. <p>Minimum Role Experience: 10 years.</p>	YES	[REDACTED]

Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
Construction Contractor	Project Co Commissioning Lead	The Project Co Commissioning Lead shall be responsible for coordinating all aspects of commissioning of the Facility, including planning, scheduling, coordinating, and performing the commissioning of the Facility and systems. Minimum Role Experience: 10 years.	YES	[REDACTED]
Construction Contractor	Procurement Lead	The Procurement Lead shall be responsible for coordinating with the Design Team, the Service Provider and DPA Contracting Authority to manage the procurement of vendors and suppliers. Minimum Role Experience: 10 years.	YES	[REDACTED]
Construction Contractor	Construction Health and Safety Planning Manager	The Construction Health and Safety Planning Manager shall be responsible for all activities required under the Agreement related to construction health and safety planning and the preparation of relevant DPA Submittals. Minimum Role Experience: 7 years.	NO	[REDACTED]

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Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
Construction Contractor	Electrical Lead	The Electrical Lead shall be responsible for overseeing the construction planning of the electrical systems in conformance with the Output Specifications, including its design and ensuring that the electrical systems construction plans are fully coordinated and integrated with other systems, including existing systems. Minimum Role Experience: 10 years.	YES	[REDACTED]
Construction Contractor	Mechanical Lead	The Mechanical Lead shall be responsible for overseeing the construction planning of the mechanical systems in conformance with the Output Specifications and ensuring that the construction plans for the mechanical systems are fully coordinated and integrated with existing and other systems, including existing systems. Minimum Role Experience: 10 years.	YES	[REDACTED]

Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
Service Provider	Service Provider Integration Lead	<p>The Service Provider Integration Lead shall be responsible for:</p> <ul style="list-style-type: none"> (i) facilitating design development, construction planning and Facility maintenance planning in collaboration with DPA Contracting Authority, the Dev Co Parties and key DPA Subcontractors; (ii) interfacing with the DPA Subcontractor for mechanical and electrical, the ICAT provider and other subcontractors, as necessary, to review designs including gathering and tracking of design inputs; (iii) conducting maintainability, serviceability and operability reviews at specified design milestones; and (iv) coordinating with the Construction Contractor and DPA Contracting Authority to plan for transition from the DPA Term to the Construction Period and into the Operational Term. <p>Minimum Role Experience: 10 years.</p>	YES	[REDACTED]

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Dev Co Party	Position	Function and Minimum Role Experience	Project Term	Name and Contact Information
Service Provider	Site General Manager	<p>The Site General Manager shall be Project Co’s facilities management operating representative and shall be the single point of contact to manage all services connected with the Output Specifications during the Operational Term.</p> <p>The Site General Manager will ultimately oversee the day-to-day operations of the Facility, establish necessary manuals and plans, policies, quality assurance systems and management controls to ensure the delivery of high-quality service.</p> <p>During the DPA Term, the Site General Manager will liaise with the Service Provider Integration Lead to ensure that all requirements in connection with performing the Project Co Services are captured in the development of the design.</p> <p>Minimum Role Experience: 10 years.</p>	YES	[REDACTED]

SCHEDULE 6

DPA VARIATION PROCEDURE

1. DPA VARIATIONS

1.1 Definitions

- (a) In this Schedule 6, unless the context indicates a contrary intention, terms which are defined in the Agreement (and not otherwise defined in this Schedule 6) shall have the meanings given to them in the Agreement and the following terms shall have the following meanings:
- (i) “**Additional Project Works Agreement**” has the meaning given in Section 2.1(e).
 - (ii) “**Direct Cost**” has the meaning given in Appendix A of this Schedule 6.
 - (iii) “**DPA Variation**” means a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the DPA Scope of Work.
 - (iv) “**DPA Variation Ancillary Agreement**” means any written agreement between the Parties that is directly related and in addition to a DPA Variation Confirmation and is necessary to implement the DPA Variation, including to amend the Agreement. Each DPA Variation Ancillary Agreement shall be attached to the related DPA Variation Confirmation in accordance with Section 1.8(a)(ii)(A).
 - (v) “**DPA Variation Confirmation**” has the meaning given in Section 1.8(a)(ii).
 - (vi) “**DPA Variation Directive**” means a written instruction which is issued on a form designated as a “DPA Variation Directive” and signed by the DPA Contracting Authority Representative directing Dev Co to immediately proceed with a DPA Variation pending the execution and delivery of a DPA Variation Confirmation for that DPA Variation.
 - (vii) “**DPA Variation Draft PA Revisions**” means any revisions to the provisions of the Draft Project Agreement that are not incorporated by reference into the Agreement that are desired by a Party, or necessary, to accommodate a DPA Variation.
 - (viii) “**DPA Variation Enquiry**” has the meaning given in Section 1.3(a).
 - (ix) “**Estimate**” has the meaning given in Section 1.4(a).
 - (x) “**No-Cost DPA Variation**” means any DPA Variation whereby, in accordance with the Agreement, (A) no payment or other compensation is payable by the Hospital to Dev Co, and (B) Dev Co is not entitled to any schedule relief (including any extension of time) for the performance of the DPA Works, and includes any DPA Variation described in DPA Section 12.1(c)(iii) of the Agreement.
 - (xi) “**Overhead and Profit**” has the meaning given in Appendix B of this Schedule 6.
 - (xii) “**Project Work Proposal**” has the meaning given in Section 2.1(a).

- (xiii) “**Project Work Proposal Notice**” has the meaning given in Section 2.1(c).
- (xiv) “**Reduced DPA Works Compensation Amount**” has the meaning given in Section 1.10(a).
- (xv) “**Reduced DPA Works Variation**” has the meaning given in Section 1.10(a).
- (xvi) “**Unit Rates**” means the all-inclusive unit rates for the DPA Key Individuals and other categories of individuals described in Appendix C of this Schedule 6, each of which shall be index linked, exclusive of HST and include all overhead, profit and other charges in respect of the performance of the relevant part of the DPA Works related to a DPA Variation by the applicable individual.

1.2 General

- (a) DPA Contracting Authority has the right from time to time to propose and require Dev Co to carry out and implement a DPA Variation, and any such DPA Variation shall be subject to the provisions of this Schedule 6, provided that DPA Contracting Authority shall not be permitted to withdraw a DPA Variation Enquiry with respect to those circumstances specified in the Agreement for which DPA Contracting Authority is obligated to proceed with a DPA Variation.
- (b) DPA Contracting Authority shall be obligated to proceed with a DPA Variation in certain circumstances specified in the Agreement, and any such DPA Variation shall be subject to the provisions of this Schedule 6.
- (c) The only payment or compensation payable by the Hospital to Dev Co in connection with any DPA Variation shall be the sum of the following amounts:
 - (i) the Direct Cost of such DPA Variation; plus
 - (ii) Overhead and Profit.
- (d) Notwithstanding anything to the contrary in the Agreement, including this Schedule 6, Dev Co shall not be entitled to any payment or compensation in connection with any DPA Variation if all or substantially all of the Direct Cost of such DPA Variation is in respect of performing all or any part of the procedure for developing and finalizing the DPA Variation in accordance with this Schedule 6 (including for reviewing, commenting on, negotiating, administering and, where applicable, executing and delivering the documentation related to the DPA Variation).
- (e) Dev Co will not be entitled to any payment, compensation, extension of time or any other relief from the performance of Dev Co’s obligations under the Agreement for a DPA Variation, except to the extent provided in a DPA Variation Confirmation or a DPA Variation Directive in accordance with this Schedule 6.
- (f) The Parties acknowledge that they anticipate that a substantial number of DPA Variations will be implemented during the DPA Term, including No-Cost DPA Variations.
- (g) Dev Co agrees to work cooperatively with DPA Contracting Authority to finalize and implement DPA Variations in a timely and efficient manner in accordance with the provisions of the Agreement, including this Schedule 6.

- (h) Dev Co shall:
 - (i) attend and shall cause any relevant DPA Subcontractors to attend any meetings requested by DPA Contracting Authority from time to time to discuss the implementation of any DPA Variation or DPA Variations generally, including with respect to the administration and pricing of DPA Variations; and
 - (ii) at the request of DPA Contracting Authority and without limiting any right of DPA Contracting Authority under this Schedule 6, promptly provide feedback and any comments on any documentation described in Section 1.3(b)(iii) provided by DPA Contracting Authority to Dev Co, before DPA Contracting Authority provides such documentation to Dev Co as part of a DPA Variation Enquiry or in connection with any DPA Variation Directive.

1.3 DPA Variation Enquiry

- (a) Subject to Section 1.11(b)(ii), if DPA Contracting Authority proposes (including as a result of a Project Work Proposal) or is obligated pursuant to the terms of the Agreement or Applicable Law to initiate a DPA Variation it shall deliver to the DPA Dev Co Representative a Notice of the proposed DPA Variation (a “**DPA Variation Enquiry**”).
- (b) A DPA Variation Enquiry shall:
 - (i) describe the proposed DPA Variation with sufficient detail to enable Dev Co to prepare a detailed Estimate, and, at the option of DPA Contracting Authority, set out any specific information described in Section 1.6(a) that DPA Contracting Authority does not require Dev Co to provide as part of the Estimate;
 - (ii) in the event that the proposed DPA Variation will require Dev Co to incur any Direct Cost for which it is entitled to compensation in accordance with the Agreement, state whether, subject to Section 1.9, DPA Contracting Authority intends to pay for the DPA Variation by way of lump sum payment or payments or adjustment to the Total DPA and Design Works Fixed Price;
 - (iii) provide:
 - (A) a preliminary indication of any provisions of the Agreement and/or the Draft Project Agreement that will be affected by the proposed DPA Variation; and
 - (B) at the option of DPA Contracting Authority:
 1. any amendments to the Agreement (including, for greater certainty, any revisions to the provisions of the Draft Project Agreement that are incorporated by reference into the Agreement) as a consequence of the DPA Variation and any DPA Variation Ancillary Agreements. The Parties acknowledge that, except as otherwise expressly set out in the Agreement, an objective of such amendments and such DPA Variation Ancillary Agreements is to ensure that (save for the obligation of the Hospital to make payments or altered payments in respect of the DPA Variation) the Parties are in no better and no worse

position in relation to the Agreement and the performance of the DPA Works than they would have been in if the DPA Variation had not been implemented and, in particular, that there will be no material adverse change to the risk profile of the DPA Works as a result of the DPA Variation; and/or

2. any DPA Variation Draft PA Revisions; and

- (iv) if the proposed DPA Variation is a Reduced DPA Works Variation, include a request for Dev Co to provide the Reduced DPA Works Compensation Amount.

1.4 Delivery of Estimate

- (a) Subject to Section 1.4(b), as soon as practicable and in any event within 15 Business Days after receipt of a DPA Variation Enquiry (or such longer period as the Parties agree acting reasonably), Dev Co shall, notwithstanding the issuance of any subsequent DPA Variation Directive related to such DPA Variation Enquiry, deliver its detailed breakdown, estimate and other information in respect of such DPA Variation prepared in accordance with and meeting the requirements of Section 1.6 and in the form prescribed by DPA Contracting Authority, acting reasonably (an “**Estimate**”).
- (b) In the event that a DPA Variation Directive is issued before Dev Co delivers an Estimate in respect of a DPA Variation, Dev Co shall deliver such Estimate as soon as practicable and in any event within 15 Business Days after DPA Contracting Authority’s issuance of such DPA Variation Directive (or such longer period as the Parties agree acting reasonably).

1.5 Dev Co Grounds for Objection

- (a) Subject to Section 1.5(c), Dev Co may only refuse to deliver an Estimate or implement a DPA Variation Directive if (I), with regards to the delivery of an Estimate, Dev Co can demonstrate to DPA Contracting Authority’s satisfaction, acting reasonably, before the expiry of the period for the delivery of an Estimate specified or agreed pursuant to Section 1.4(a), or (II), with regards to the implementation of a DPA Variation Directive, Dev Co can promptly demonstrate to DPA Contracting Authority’s satisfaction, acting reasonably, that:
- (i) the implementation of the DPA Variation would materially and adversely affect the health and safety of any person;
- (ii) the implementation of the DPA Variation would:
- (A) infringe Applicable Law;
- (B) cause to be revoked any of the existing Permits, Licences, Approvals and Agreements required by Dev Co to perform the DPA Works, and any such Permit, Licence, Approval and Agreement is not, using commercially reasonable efforts, capable of amendment, renewal or replacement; or
- (C) require any new Permits, Licences, Approvals and Agreements for Dev Co to perform the DPA Works, any of which will not, using commercially reasonable efforts by Dev Co or DPA Contracting Authority, as applicable, be obtainable;

- (iii) the proposed DPA Variation would have a material and adverse effect on the performance of the DPA Works (except those DPA Works which have been specified as requiring amendment in the DPA Variation Enquiry or DPA Variation Directive) in a manner not compensated pursuant to this Schedule 6;
 - (iv) the implementation of the DPA Variation would be a departure from Good Industry Practice;
 - (v) DPA Contracting Authority does not have the legal power or capacity to require the DPA Variation to be implemented or to do anything envisaged by this Schedule 6 in respect of or in connection with the DPA Variation;
 - (vi) the DPA Variation would, if implemented, result in a change in the essential nature of the Facility;
 - (vii) the DPA Variation Enquiry does not comply with the requirements of Section 1.3 (including a failure to include adequate information therein to enable Dev Co to prepare an Estimate in respect thereof);
 - (viii) if applicable, the DPA Variation Directive fails to include adequate information therein to enable Dev Co to promptly proceed to implement the DPA Variation or prepare an Estimate in respect thereof;
 - (ix) the time specified for commencement and/or completion of the DPA Variation cannot be achieved by Dev Co despite exerting commercially reasonable efforts; or
 - (x) with respect to a DPA Variation that materially alters the Project Proposal Submission Deadline, Dev Co will have insufficient time to prepare and submit a Project Proposal that complies with the Agreement or comply with its other obligations in Schedule 3 – DPA Submissions and Project Development Process, despite exerting commercially reasonable efforts.
- (b) If Dev Co refuses to provide an Estimate or implement a DPA Variation Directive on the grounds set out in Section 1.5(a), Dev Co shall, within the applicable period described in Section 1.5(a), deliver to the DPA Contracting Authority Representative a Notice specifying the grounds upon which Dev Co rejects the DPA Variation and the details thereof.
- (c) Dev Co acknowledges and agrees that, notwithstanding anything to the contrary in the Agreement, the grounds for which Dev Co may refuse to implement a DPA Variation (including a DPA Variation Directive) set out in Section 1.5(a) shall not include, and Dev Co shall not refuse to implement a DPA Variation on the basis that, the DPA Variation would vary, reduce, delete or remove one or more significant portions of the DPA Scope of Work, including, in DPA Contracting Authority’s sole discretion:
- (i) varying, reducing, deleting or removing significant portions of the scope of the Project, including pursuant to Section 2.1 of Schedule 3 – DPA Submissions and Project Development Process, or otherwise in order to ensure that the cost of the Project does not exceed DPA Contracting Authority’s affordability constraints;

- (ii) varying, reducing, deleting or removing all or a significant portion of the DPA Works required to be completed during the Initial Development Stage or in order for any one or more Project Checkpoints to occur, including in order to accelerate the schedule for the Hospital and Project Co to execute and deliver a Final Project Agreement;
- (iii) deleting and removing Dev Co's obligations to submit a Project Proposal pursuant to the Agreement and to perform any of its obligations or remaining obligations under Sections 4, 5 and 6 of Schedule 3 – DPA Submissions and Project Development Process;
- (iv) reducing, deleting and removing all obligations of Dev Co under the Agreement other than its obligations related to and associated with the performance of the DPA Design Works and any other specific obligations of Dev Co under the Agreement identified by DPA Contracting Authority;
- (v) deleting and removing the obligation of Dev Co to obtain Debt Financing as part of the Financing Process; or
- (vi) deleting and removing the performance of the Enabling Works from the DPA Scope of Work and adding such works and services or similar works and services to the Works under any Final Project Agreement.

1.6 Estimate Requirements

- (a) Unless otherwise set out in a DPA Variation Enquiry pursuant to Section 1.3(b)(i) or the DPA Contracting Authority Representative separately provides a Notice to the DPA Dev Co Representative that it only requires certain specific information, each Estimate shall include the following information, sufficient to demonstrate to DPA Contracting Authority's reasonable satisfaction:
 - (i) the steps Dev Co will take to implement the DPA Variation, in such detail as is reasonable and appropriate in the circumstances, including a schedule, work breakdown structure, contact list, description of roles and responsibilities, an organizational structure chart, and other required resources (including from DPA Subcontractors and potential DPA Subcontractors);
 - (ii) any schedule impact on the completion of the DPA Works (including for greater certainty, any impact of the proposed DPA Variation after taking into consideration other DPA Variations), together with a critical path schedule analysis detailing and demonstrating such impact. Such information shall include any impact on the Project Proposal Submission Deadline;
 - (iii) any impact on the payments from the Hospital to Dev Co pursuant to DPA Section 13 and Schedule 8 – DPA Payment of the Agreement, other than as set out in Section 1.6(xii);
 - (iv) any impact on the Financing Process;
 - (v) any other impact on the performance of the DPA Works or Remaining PA Design Works and any other impact on or required relief from the Agreement (including for certainty, any

impact of the proposed DPA Variation after taking into consideration other DPA Variations);

(vi) either:

- (A) if the documentation described in Section 1.3(b)(iii)(B)1 was provided by DPA Contracting Authority pursuant to such Section, confirmation that such documentation is acceptable to Dev Co or Dev Co's comments on such documentation; or
- (B) any documentation described in Section 1.3(b)(iii)(B)1 if such documentation was not provided by DPA Contracting Authority pursuant to such Section;

(vii) either:

- (A) if any DPA Variation Draft PA Revisions were provided by DPA Contracting Authority pursuant to Section 1.3(b)(iii)(B)2, confirmation that such revisions are acceptable to Dev Co or Dev Co's comments on such revisions; and
- (B) at Dev Co's option, any additional DPA Variation Draft PA Revisions proposed by Dev Co, acting reasonably,

which, in each case, the Parties agree shall be dealt with separately by the Parties in accordance with Section 1.6(i) and not as part of the process for finalizing the Estimate or the DPA Variation or for implementing the DPA Variation pursuant to this Schedule 6;

- (viii) any impact on the Direct Cost to Dev Co and each relevant DPA Subcontractor of the proposed DPA Variation, including all of the costs that will be incurred, reduced or avoided and the impact on Dev Co's cash flows from incurring, reducing or avoiding such costs;
- (ix) the proposed methods of certification of any aspect of the DPA Works required by the DPA Variation if not covered by the provisions of the Agreement;
- (x) subject to Section 1.9, if the proposed DPA Variation is not a Reduced DPA Works Variation, Dev Co's preliminary indication of the potential increase or decrease, if any, to the Total DPA and Design Works Fixed Price;
- (xi) any Permits, Licences, Approvals and Agreements that must be obtained, amended, renewed or replaced for the DPA Variation to be implemented, and the latest date by which Dev Co must receive a DPA Variation Confirmation and Dev Co or DPA Contracting Authority, as applicable, must obtain, amend, renew or replace such Permits, Licences, Approvals and Agreements for the Estimate to remain valid; and
- (xii) if the proposed DPA Variation is a Reduced DPA Works Variation, the proposed Reduced DPA Works Compensation Amount, together with all relevant supporting calculations showing the preliminary indication of the potential impacts, if any, on the affected payments described in Section 1.10(b),

in each case, together with such supporting information, details, calculations and justifications as is reasonably required.

- (b) With respect to each Estimate and proposed DPA Variation, Dev Co shall:
- (i) subject to Sections 1.6(c) and 1.6(e), use and oblige each DPA Subcontractor to use commercially reasonable efforts, including the use of competitive quotes or tenders, to minimize any increase in costs and to maximize any reduction in costs;
 - (ii) except as otherwise set out in this Schedule 6, limit all costs of Dev Co and each DPA Subcontractor payable by DPA Contracting Authority pursuant to this Schedule 6 to the Direct Cost described in Appendix A of this Schedule 6, which shall be quantifiable and supported by evidence and proper documentation in accordance with Section 1.2(vii) of such Appendix;
 - (iii) calculate Overhead and Profit in accordance with Appendix B of this Schedule 6 in respect of all DPA Variations;
 - (iv) ensure that all costs of providing the DPA Works:
 - (A) reflect and do not exceed any applicable Unit Rates, unless otherwise agreed by DPA Contracting Authority;
 - (B) reflect any other labour and material rates that comply with the applicable provisions of Appendix A of this Schedule 6 and otherwise apply in the open market to providers of services similar to those required by the DPA Variation;
 - (C) reflect any and all changes in the Agreement arising out of the proposed DPA Variation; and
 - (D) reflect any and all changes in risk allocation;
 - (v) take into account and apply the full amount of any and all costs related to expenditures that have been or will be reduced or avoided as a result of the DPA Variation, including in respect of all applicable amounts for overhead and profit that were anticipated to be incurred but for the DPA Variation. All such reductions in and avoidance of costs shall:
 - (A) fully be to the account and for the benefit of DPA Contracting Authority; and
 - (B) with respect to any Reduced DPA Works Variation, reflect and be based on the Unit Rates for all applicable individuals who would have performed the affected DPA Works but for the DPA Variation;
 - (vi) mitigate and cause each relevant DPA Subcontractor to mitigate the impact of the DPA Variation, including on the DPA Works Schedules, the performance of the DPA Works, and the Direct Cost to be incurred; and
 - (vii) provide sufficient information to DPA Contracting Authority with its Estimate to demonstrate to DPA Contracting Authority's satisfaction, acting reasonably, that it has complied with the provisions of this Section 1.6(b).
- (c) Dev Co shall use commercially reasonable efforts to obtain the best value for money when procuring and/or delivering any work, services, supplies, materials or equipment required by the

DPA Variation, including, at the request of DPA Contracting Authority, applying, using and comparing applicable industry benchmarks or benchmarking data for such purposes, and will comply with all Good Industry Practice in relation to any such procurement, to a standard no less than Dev Co would apply if all costs incurred were to its own account without recourse to DPA Contracting Authority, including using commercially reasonable efforts to mitigate such costs. Also, to the extent the procurement or delivery of any work, services, supplies, materials or equipment required by the DPA Variation results in costs or expenses that are in excess of those costs or expenses established by industry benchmarks or benchmarking data, Dev Co shall provide DPA Contracting Authority sufficient information and analysis to demonstrate to DPA Contracting Authority's satisfaction, acting reasonably, that such excess costs or expenses are reasonable and justified in the context of the subject DPA Variation.

- (d) As soon as practicable, and in any event not more than 15 Business Days after DPA Contracting Authority receives an Estimate (or such longer period as the Parties agree acting reasonably), Dev Co and DPA Contracting Authority shall discuss and seek to agree on the Estimate, including any amendments to the Estimate agreed to by the Parties, and on any DPA Variation Ancillary Agreements.
- (e) At the request of DPA Contracting Authority, including if DPA Contracting Authority is required by Applicable Law or any policy applicable to DPA Contracting Authority, to competitively tender any contract in relation to the proposed DPA Variation, Dev Co shall seek and evaluate competitive tenders for the proposed DPA Variation, including in accordance with such Applicable Law or policy.
- (f) DPA Contracting Authority may modify a DPA Variation Enquiry in writing at any time for any matter relating to the Estimate or the discussions in relation thereto, in which case Dev Co shall, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification (or such longer period as the Parties agree acting reasonably), notify the DPA Contracting Authority Representative in writing of any resulting changes to the Estimate.
- (g) The Parties shall use reasonable commercial efforts to agree on the Estimate and any DPA Variation Ancillary Agreements within a reasonable amount of time after they have discussed and sought to agree on the Estimate and any such DPA Variation Ancillary Agreements pursuant to Section 1.6(d). Subject to Section 1.11(b)(v), if the Parties cannot agree on an Estimate or any DPA Variation Ancillary Agreement after the expiry of such reasonable amount of time, then at any time:
 - (i) either Party may refer any DPA Dispute in respect of the Estimate or DPA Variation Ancillary Agreement for determination in accordance with the DPA Dispute Resolution Procedure; or
 - (ii) Dev Co may provide a request in writing to the DPA Contracting Authority Representative for DPA Contracting Authority to confirm that the DPA Variation Enquiry has not been withdrawn, which DPA Contracting Authority shall respond to in writing within five Business Days either, in DPA Contracting Authority's sole discretion, confirming that the DPA Variation Enquiry has not been withdrawn or, subject to Section 1.8(d), withdrawing the DPA Variation Enquiry.

- (h) Subject to Sections 1.2(a) and 1.8(d), DPA Contracting Authority agrees that DPA Contracting Authority shall promptly provide Notice in writing to the DPA Dev Co Representative withdrawing a DPA Variation Enquiry if DPA Contracting Authority, in its sole discretion, determines that it no longer wishes Dev Co to carry out and implement a DPA Variation.
- (i) Notwithstanding anything to the contrary in this Schedule 6, the Parties agree that, with regards to any DPA Variation Draft PA Revisions provided pursuant to this Schedule 6:
- (i) DPA Contracting Authority may make any such DPA Variation Draft PA Revisions that are acceptable to DPA Contracting Authority, in its sole discretion, in accordance with Section 4.1 of Schedule 3 – DPA Submissions and Project Development Process, provided that DPA Contracting Authority shall not, in principle, be permitted to (I) reject any comment made by Dev Co on any DPA Variation Draft PA Revision pursuant to Section 1.6(a)(vii)(A) or (II) reject any proposal by Dev Co for any additional DPA Variation Draft PA Revision made pursuant to Section 1.6(a)(vii)(B), if Dev Co demonstrates to DPA Contracting Authority’s reasonable satisfaction that:
- (A) DPA Contracting Authority addressing such comment or making such revision or a similar revision would be required in order for the performance of the Project Operations under the Final Project Agreement to comply with Applicable Law; or
- (B) DPA Contracting Authority not addressing such comment or not making such revision or a similar revision would have a material and adverse effect on (I) the performance of the Project Operations under the Final Project Agreement in a manner that would not be financially compensable to Project Co under the Final Project Agreement, or (II) the ability of Dev Co to obtain the Financing or perform its obligations in accordance with Section 6.3 of Schedule 3 – DPA Submissions and Project Development Process.
- DPA Contracting Authority shall, in its sole discretion, also be permitted to further revise any DPA Variation Draft PA Revisions or make additional DPA Variation Draft PA Revisions prior to making them in accordance with Section 4.1 of Schedule 3 – DPA Submissions and Project Development Process;
- (ii) following the Final Checkpoint but before DPA Contracting Authority’s delivery of a Notice to Proceed to Commercial Close to Dev Co pursuant to the Agreement, such DPA Variation Draft PA Revisions shall be negotiated by the Parties as part of the Project Proposal Negotiations process; or
- (iii) following the Final Checkpoint and after DPA Contracting Authority’s delivery of a Notice to Proceed to Commercial Close to Dev Co pursuant to the Agreement, such DPA Variation Draft PA Revisions shall be negotiated by the Parties as soon as possible and prior to the expiry of the Project Proposal Validity Period in accordance with and subject to the provisions of Section 5.7 of Schedule 3 – DPA Submissions and Project Development Process, applicable *mutatis mutandis*, as though such negotiations were Project Proposal Negotiations, provided that, in addition to such provisions, DPA Contracting Authority agrees that it shall not be permitted to draw on the DPA Closing Letter of Credit pursuant to Schedule 3 – DPA Submissions and Project Development Process in the event, and

solely on the basis, that the Parties fail to agree to such revised provisions of the Draft Project Agreement.

1.7 DPA Contracting Authority's Right to Perform

- (a) DPA Contracting Authority shall have the right to perform or cause the performance of the subject matter of a proposed DPA Variation, without compensation to Dev Co.

1.8 DPA Variation Confirmation

- (a) As soon as possible after the later of the date the Estimate and any DPA Variation Ancillary Agreements were either agreed to or the date any DPA Dispute in respect thereof was determined in accordance with the DPA Dispute Resolution Procedure, DPA Contracting Authority shall either:
 - (i) subject to Section 1.2(b) and Section 1.8(d), withdraw the DPA Variation Enquiry by Notice to the DPA Dev Co Representative; or
 - (ii) issue a written confirmation of the Estimate signed by DPA Contracting Authority (the “**DPA Variation Confirmation**”), which
 - (A) shall include:
 1. any agreed modifications to such Estimate or any modifications resulting from the determination of a DPA Dispute in respect thereof;
 2. all information and attach any DPA Variation Ancillary Agreements and other documents necessary to implement the DPA Variation, including, if and to the extent applicable, to extend any time period set out in or required by the Agreement, amend the Agreement, provide for payment to Dev Co as set out in Section 1.9, or provide relief to Dev Co from the provisions of the Agreement; and
 3. a full and final release provided by Dev Co to DPA Contracting Authority in respect of (I) any claims or demands from Dev Co for any payment, compensation, extension of time or any other relief from the performance of Dev Co's obligations under the Agreement for the implementation of the DPA Variation and (II) the events and circumstances giving rise to the DPA Variation, except to the extent expressly provided in the DPA Variation Confirmation, or attach a DPA Variation Ancillary Agreement that includes such full and final release;
- (b) As soon as possible, and in any event not more than five Business Days, following Dev Co's receipt of a DPA Variation Confirmation issued pursuant to Section 1.8(a)(ii), Dev Co shall execute and deliver a copy of such executed DPA Variation Confirmation and any DPA Variation Ancillary Agreements to DPA Contracting Authority.
- (c) Subject to Section 1.11, upon the DPA Variation Confirmation and any DPA Variation Ancillary Agreements being issued, executed and delivered:

- (i) Dev Co shall implement the DPA Variation as provided for in the DPA Variation Confirmation, and subject to amendments pursuant to Section 1.8(a)(ii)(A)2, all provisions of the Agreement applicable to the DPA Works shall apply to the DPA Works as thereby changed; and
 - (ii) payment in relation to the DPA Variation shall be as provided for in Section 1.9 and pursuant to any amendments pursuant to Section 1.8(a)(ii)(A)2.
- (d) Except as hereinafter provided, until a DPA Variation Confirmation and any DPA Variation Ancillary Agreements have been issued, executed and delivered:
- (i) the determination of whether or not to proceed with a DPA Variation shall at all times be at DPA Contracting Authority's sole discretion, despite any DPA Dispute or any other matter in relation to a DPA Variation being referred to or determined in accordance with the DPA Dispute Resolution Procedure; and
 - (ii) DPA Contracting Authority may at any time withdraw a DPA Variation Enquiry, and DPA Contracting Authority shall not be obligated to Dev Co in respect of a DPA Variation until such time as DPA Contracting Authority in its sole discretion issues a DPA Variation Confirmation,

provided that DPA Contracting Authority may not withdraw a DPA Variation Enquiry in circumstances where DPA Contracting Authority is obligated pursuant to the terms of the Agreement to proceed with a DPA Variation. In such circumstances, the DPA Dispute Resolution Procedure shall be employed to finalize any aspects of the DPA Variation which cannot otherwise be agreed to in accordance with the terms of this Schedule 6.

1.9 Payment

- (a) If a DPA Variation Confirmation has been issued, a Total DPA and Design Works Fixed Price adjustment or payment by the Hospital for the DPA Variation, as set out in the Estimate and as adjusted and confirmed by the DPA Variation Confirmation, shall be made as follows:
- (i) the Total DPA and Design Works Fixed Price shall be adjusted as set out in the DPA Variation Confirmation; or
 - (ii) payment for the DPA Variation as set out in the DPA Variation Confirmation shall be paid as follows:
 - (A) the Hospital shall make such payment in lump sum amounts based on a payment schedule agreed by DPA Contracting Authority and Dev Co, acting reasonably, to reflect the amount and timing of the Direct Cost to be incurred by Dev Co in carrying out the DPA Variation to the extent borne by DPA Contracting Authority; and
 - (B) where payment for part of the DPA Variation reflects the carrying out of, or specific progress towards, an element within the DPA Variation, Dev Co shall provide satisfactory evidence and proper documentation confirming that the part of the DPA Variation corresponding to each occasion when payment is due under the payment schedule has been duly carried out.

In the event DPA Contracting Authority and Dev Co fail to agree as to the terms of the payment schedule, the payment schedule shall be determined in accordance with the DPA Dispute Resolution Procedure, provided that, where all or any part of the DPA Variation is being carried out by a third party under a contract with Dev Co, subject to the terms of any contract between Dev Co and that third party in relation to the implementation of the DPA Variation having been approved by DPA Contracting Authority (such approval not to be unreasonably withheld or delayed), the process under the DPA Dispute Resolution Procedure shall determine a payment schedule which would enable Dev Co to be paid by the Hospital in time to make payments to that third party in accordance with its contract with Dev Co.

For greater certainty, the Total DPA and Design Works Fixed Price shall not be adjusted as a result of the DPA Variation if Dev Co is paid pursuant to Section 1.9(a)(ii)(B).

- (b) If the Hospital pays for the DPA Variation in accordance with Section 1.9(a)(ii)(B), the Hospital shall make payment to Dev Co in accordance with the agreed payment schedule and the applicable provisions of Schedule 8 – DPA Payment of the Agreement, together with any additional evidence and proper documentation satisfactory to DPA Contracting Authority to support such payment, including as set out in Section 1.9(a)(ii)(B).
- (c) Dev Co shall not be entitled to any amount in excess of the amount of the Estimate confirmed in the DPA Variation Confirmation.
- (d) Upon request by Dev Co, DPA Contracting Authority shall provide to Dev Co copies of any consent or approval issued by DPA Contracting Authority in connection with a proposed DPA Variation.

1.10 Reduction in DPA Works

- (a) If a DPA Variation involves any reduction in the DPA Scope of Work (each is a “**Reduced DPA Works Variation**”) which results in savings in the Direct Cost to Dev Co, such savings shall result in a reduction in the compensation payable to Dev Co under the Agreement in an amount equal to the associated reduction in the Direct Cost (the “**Reduced DPA Works Compensation Amount**”).
- (b) Unless otherwise agreed by the Parties, Dev Co shall compensate the Hospital for any Reduced DPA Works Variation by way of a reduction in the Total DPA and Design Works Fixed Price and the payments payable to Dev Co pursuant to DPA Section 13 and Schedule 8 – DPA Payment of the Agreement, in an aggregate amount equal to the Reduced DPA Works Compensation Amount.

1.11 DPA Variation Directive

- (a) In the event that:
 - (i) DPA Contracting Authority, in its sole discretion, requires a DPA Variation to be implemented prior to the issuance of a DPA Variation Enquiry, an Estimate or a DPA Variation Confirmation; or
 - (ii) an Estimate or a DPA Variation Confirmation or any DPA Variation Ancillary Agreements are not promptly agreed upon by DPA Contracting Authority and Dev Co or if there is a DPA Dispute in relation thereto,

DPA Contracting Authority may issue a DPA Variation Directive, and, following receipt of the DPA Variation Directive, Dev Co shall, subject to Section 1.5, promptly proceed to implement the DPA Variation.

- (b) Without limiting Dev Co's obligation to promptly implement each DPA Variation Directive:
- (i) the determination of the valuation and time extensions, if any, required in connection with such DPA Variation, shall be made as soon as reasonably possible after the commencement of the implementation of the DPA Variation;
 - (ii) in the event that DPA Contracting Authority did not deliver a DPA Variation Enquiry in respect of such DPA Variation before the DPA Variation Directive was issued, DPA Contracting Authority shall not be required to deliver such DPA Variation Enquiry;
 - (iii) in the event that Dev Co did not deliver an Estimate in respect of such DPA Variation before the DPA Variation Directive was issued, Dev Co shall deliver such Estimate in accordance with the time period set out in Section 1.4(b);
 - (iv) until an Estimate in respect of such DPA Variation is agreed to or any DPA Dispute in respect thereof is determined in accordance with the DPA Dispute Resolution Procedure, unless otherwise agreed by the Parties, the DPA Contracting Authority Representative, acting reasonably, shall initially determine the valuation of such DPA Variation in accordance with Appendices A and B of this Schedule 6;
 - (v) Dev Co shall, subject to Section 1.5, commence the implementation of and shall continue to implement such DPA Variation notwithstanding any DPA Dispute in respect of the valuation of all or any part of such DPA Variation or any time extension required in connection with such DPA Variation (including any DPA Dispute related to the Estimate in respect of such DPA Variation). No such DPA Dispute shall justify Dev Co's failure or refusal to commence or continue to implement such DPA Variation. Only concurrently with or after complying with such DPA Variation shall Dev Co be entitled to refer any such DPA Dispute for resolution in accordance with the DPA Dispute Resolution Procedure. In the event that Dev Co fails or refuses to commence or continue to implement such DPA Variation as a result of any such DPA Dispute, the Parties agree that Dev Co shall not be entitled to any schedule extension in respect of the specific period of time in which such failure or refusal continues even if the matter in DPA Dispute is determined in favor of Dev Co pursuant to the DPA Dispute Resolution Procedure; and
 - (vi) the Hospital shall pay Dev Co for all DPA Variations implemented by way of a DPA Variation Directive as provided for in Section 1.9 and, if applicable, Section 1.11(b)(iv).

1.12 No-Cost DPA Variations

- (a) In the event that any proposed DPA Variation or DPA Variation Directive is a No-Cost Variation, then, notwithstanding anything to the contrary in this Schedule 6:
- (i) Dev Co agrees to, at the request of DPA Contracting Authority, carry out its obligations in Sections 1.4(a), 1.4(b), 1.5(a), 1.5(b), 1.6(d), 1.6(f) and 1.6(g) as soon as reasonably possible; and

- (ii) without limiting the generality of Section 1.12(a), DPA Contracting Authority may, acting reasonably, identify to Dev Co in writing:
 - (A) a shorter period of time for Dev Co to deliver the Estimate in accordance with, as applicable, Section 1.4(a) or Section 1.4(b) than the 15 Business Day period identified in such Section, including a shorter period of time for Dev Co to refuse to deliver an Estimate pursuant to Sections 1.5(a) and 1.5(b);
 - (B) a shorter period of time for Dev Co and DPA Contracting Authority to discuss and seek to agree on the Estimate, including any amendments to the Estimate agreed to by the Parties, and on any DPA Variation Ancillary Agreements, in accordance with Section 1.6(d) than the 15 Business Day period identified in such Section;
 - (C) a shorter period of time for Dev Co to notify the DPA Contracting Authority Representative in writing of any resulting changes to the Estimate in accordance with Section 1.6(f) than the 10 Business Day period identified in such Section; and
 - (D) without liability to DPA Contracting Authority, the reasonable amount of time for the Parties to agree on the Estimate and any DPA Variation Ancillary Agreements described in Section 1.6(g).

2. PROJECT WORKS PROPOSALS

2.1 General

- (a) During the DPA Term, either Party may discuss and make informal proposals to the other Party in respect of:
 - (i) potential DPA Variations, including Dev Co potentially performing additional Works set out in the Draft Project Agreement prior to entering into a Final Project Agreement; or
 - (ii) any other works or services related to the Project,which were not contemplated by the Agreement as of the Effective Date and either Party believes would be beneficial to DPA Contracting Authority or the Project, including for value engineering, cost reduction, schedule acceleration, or efficiency enhancing purposes or for other purposes (each a “**Project Work Proposal**”).
- (b) Unless otherwise agreed by the Parties, each Party shall bear its own costs and expenses in respect of each Project Work Proposal, including with respect to negotiating and finalizing the form of any Additional Project Works Agreement.
- (c) In the event that, during the DPA Term, Dev Co wishes to formally submit any Project Work Proposal to DPA Contracting Authority for DPA Contracting Authority’s consideration, then the DPA Dev Co Representative shall, at Dev Co’s cost and expense, deliver to the DPA Contracting Authority Representative a Notice in accordance with Section 2.2 proposing a DPA Variation or that the Parties enter into an Additional Project Works Agreement, in respect of implementing the subject matter of such Project Work Proposal (a “**Project Work Proposal Notice**”).

- (d) DPA Contracting Authority shall be under no obligation whatsoever to accept any Project Work Proposal from Dev Co unless such proposal is implemented pursuant to a DPA Variation or Section 2.3, and may accept or reject any Project Work Proposal in its sole discretion.
- (e) DPA Contracting Authority may, at any time, proceed with its own Project Work Proposal (notwithstanding any Project Work Proposal Notice received from Dev Co on the same or a similar subject matter), either by:
 - (i) issuing to Dev Co a DPA Variation Enquiry in respect of such Project Work Proposal, and, in such an event, the procedure set out in Section 1.3 will apply; or
 - (ii) without limiting any right of DPA Contracting Authority pursuant to the Agreement (including this Schedule 6), proposing in writing to Dev Co that the Parties enter into a separate agreement in respect of the subject matter of the Project Work Proposal (each an “**Additional Project Works Agreement**”), and, in such an event, Section 2.3 shall apply.

2.2 Project Work Proposal Notice

- (a) A Project Work Proposal Notice from Dev Co shall:
 - (i) set out details of the Project Work Proposal in sufficient detail to enable DPA Contracting Authority to evaluate it in full;
 - (ii) specify Dev Co’s reasons for proposing Project Work Proposal;
 - (iii) indicate all reasonably foreseeable implications of the Project Work Proposal, including the anticipated benefits to the Project, and an informal estimate of the costs or cost savings to DPA Contracting Authority, and whether any extension of the DPA Term would be anticipated or required; and
 - (iv) indicate the latest date by which a DPA Variation Enquiry must be issued or an Additional Project Works Agreement must be entered into by the Parties.
- (b) If DPA Contracting Authority, in its sole discretion, elects to consider a Project Work Proposal Notice received from Dev Co, DPA Contracting Authority may:
 - (i) issue to Dev Co a DPA Variation Enquiry in respect of such Project Work Proposal Notice, and, in such an event, the procedure set out in Section 1.3 will apply; or
 - (ii) without limiting any right of DPA Contracting Authority pursuant to the Agreement (including this Schedule 6), propose in writing to Dev Co that the Parties enter into an Additional Project Works Agreement, and in such an event, Section 2.3 shall apply.

2.3 Additional Project Works Agreement

- (a) In the event that DPA Contracting Authority proposes to implement a Project Work Proposal by way of an Additional Project Works Agreement pursuant to Section 2.1(e) or 2.2(b), the Parties agree to use commercially reasonable efforts to negotiate and finalize the form of and enter into such agreement within the period of time reasonably required by each Party.

- (b) Notwithstanding anything to the contrary in this Section 2, the Parties agree that:
 - (i) subject to Section 2.3(a), no Party is required to enter into an Additional Project Works Agreement; and
 - (ii) DPA Contracting Authority may elect, in its sole discretion, that only the Hospital and Dev Co enter into any Additional Project Works Agreement.
- (c) Dev Co acknowledges and agrees that nothing in this Section 2.3 limits or prejudices any right of DPA Contracting Authority under the Agreement whatsoever, including its right to issue a DPA Variation Enquiry in respect of the applicable Project Work Proposal in the event that the Parties are unable to negotiate, finalize or enter into any Additional Project Works Agreement pursuant to Section 2.3(a).

APPENDIX A

CALCULATION OF DIRECT COST

1. DIRECT COST

1.1 Subject to Section 1.2 of this Appendix A, the term “**Direct Cost**” means the aggregate total, without duplication, of only the following amounts, as paid or incurred by Dev Co and by each relevant DPA Subcontractor to the extent that each such amount specifically relates to, and is attributable to, the DPA Variation under which Dev Co is expressly entitled to its Direct Cost and is a new direct incremental cost that would not otherwise have been paid or incurred by, as applicable, Dev Co or the relevant DPA Subcontractor but for such DPA Variation:

- (i) wages and benefits paid for labour in the direct employ of Dev Co or each DPA Subcontractor while performing that part of the DPA Works at the Site;
- (ii) salaries, wages and benefits of Dev Co or each DPA Subcontractor’s personnel when stationed at the office on the Site 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 Dev Co or each DPA Subcontractor’s 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 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) 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 DPA Variation;
- (vi) 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 DPA Variation, whether rented from or provided by Dev Co or a DPA Subcontractor, including installation, minor repair and replacement, dismantling, removal, transportation and delivery costs thereof;
- (vii) deposits lost;
- (viii) except as otherwise set out in this Agreement, a reasonable amount of profit consistent with prevailing market rates that is charged by any DPA Subcontractor, other than the Construction Contractor, the Service Provider and any entity not at arms-length from Dev Co, the Construction Contractor, the Service Provider or the Potential Equity Provider;

- (ix) the reasonable fees and disbursements of external technical consultants and external legal advisors of Dev Co and its DPA Subcontractors;
- (x) the cost of third party quality assurance required by DPA Contracting Authority, such as independent inspection and testing services;
- (xi) charges levied by Governmental Authorities, but excluding fines or penalties not related to the implementation of the DPA Variation;
- (xii) subject to Section 1.1(iv) of this Appendix A, Taxes (and without limiting the obligation of the Hospital to pay HST payable by it under the Agreement), but excluding:
 - (A) HST;
 - (B) taxes imposed on Dev Co or a DPA Subcontractor 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 Dev Co or a DPA Subcontractor;
 - (D) taxes relating to withholdings on any payments by Dev Co or a DPA Subcontractor; and
 - (E) taxes relating to any business or activity other than the business or activities related to, and conducted for, the purposes of the DPA Works;
- (xiii) the cost of removal and disposal of contaminants, hazardous substances, waste products and debris for which Dev Co is not responsible under the Agreement;
- (xiv) termination payments which are required under Applicable Law to be made to employees of Dev Co or any DPA Subcontractor reasonably and properly incurred by Dev Co arising as a direct result of any Reduced DPA Works Variation, 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;
- (xv) the cost of competitively tendering any contract in relation to the proposed DPA Variation that is required by DPA Contracting Authority, including as a result of any Applicable Law or any policy applicable to DPA Contracting Authority;
- (xvi) the cost of any additional insurance or performance security required or approved by DPA Contracting Authority;
- (xvii) the cost of obtaining all Project Co Permits, Licences, Approvals and Agreements; and
- (xviii) if and to the extent applicable, for the purposes of the definition of "Demobilization Costs" set out in Schedule 1 – DPA Definitions, any Third Party Advisory and Administrative Costs.

- 1.2 The Direct Cost payable shall be subject to and limited by the following:
- (i) the Direct Cost shall be net of:
 - (A) all discounts, rebates and other price reductions and benefits, which relate to the Direct Cost incurred; and
 - (B) all costs described in Section 1.6(b)(v) of this Schedule 6;
 - (ii) the amount paid for materials, products, supplies and equipment incorporated into the DPA Works as a result of the DPA Variation shall not exceed commercially competitive rates available in the Province of Ontario for such materials, products, supplies and equipment from arms-length third party suppliers;
 - (iii) with regards to each amount described in Sections 1.1(a)(ii) to 1.1(iv) of this Appendix A for salaried personnel, the per hour cost incurred by Dev Co or any DPA Subcontractor for salaried personnel shall be calculated by dividing the annual salary (inclusive of all benefits, statutory remittances and holidays) by 2080 hours, provided that, in accordance with the preamble to Section 1.1 of this Appendix A, no such amount shall be a Direct Cost if it does not relate to or is not attributable to a new incremental direct cost of Dev Co or the DPA Subcontractor paid or incurred by it as a result of the specific work or services performed by such salaried personnel to implement the DPA Variation;
 - (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 the Greater Toronto Area;
 - (v) any amounts paid in accordance with this Appendix A for fees, wages, salaries and benefits charged by Dev Co or any DPA Subcontractor shall be reasonable and shall not exceed commercially competitive rates available in the Greater Toronto Area or, if applicable, the relevant Unit Rates;
 - (vi) notwithstanding anything to the contrary in this Schedule 6, the Direct Cost shall not include:
 - (A) any cost incurred due to the failure on the part of Dev Co or any Dev Co Party to exercise reasonable care and diligence in its attention to the execution of that part of the DPA Works (including any cost due to any negligence, improper work, deficiencies or breaches of contract by Dev Co and/or any DPA Subcontractor);
 - (B) the fees, costs or expenses, or any other form of compensation, paid or payable by Dev Co or any DPA Subcontractor to any person performing asset management, personnel services and/or similar, comparable or like services to or for the benefit of Dev Co or any DPA Subcontractor;
 - (C) the cost and expense of maintaining corporate offices, the cost and expense of office administration, general accounting and estimation, payroll, printing, office supplies, phones and courier/postal service, the cost and expense of personnel not

- directly involved in the implementation of the DPA Variation, and any other overhead cost or expense;
- (D) the cost of travel and subsistence expenses; or
 - (E) any costs or expenses associated with the participation of Dev Co and any DPA Subcontractor in the meetings described in Section 1.2(f) of this Schedule 6; and
- (vii) the Direct Cost must be quantifiable and supported by evidence and proper documentation, such as invoices, proof of payments, and detailed hourly rate information as required by DPA Contracting Authority. Proper documentation shall include unit rates or prices and quantities for all items (including labour and materials) and evidence of any relevant salaries, wages, benefits, statutory remittances and holidays costs for personnel, that comprise the Direct Cost, including for all work completed by any DPA Subcontractor. Any Direct Cost item claimed as a percentage of any other Direct Cost item, such as a “risk contingency”, will not be permissible, unless approved by DPA Contracting Authority in writing.

APPENDIX B

CALCULATION OF OVERHEAD AND PROFIT

- (a) **“Overhead and Profit”** means, for each of rows 1, 2, 3, 4 and 5 in Table A – Applicable Overhead and Profit, the product of:
 - (i) the Direct Cost of, as applicable, the work or services within the category described in such row, multiplied by
 - (ii) the percentage set out in such row as determined based on the Direct Cost of the DPA Variation.
- (b) For greater certainty, (i) the percentages applicable to Overhead and Profit shall not be determined based on any component or components of the subject DPA Variation; and (ii) only one column in Table A – Applicable Overhead and Profit shall apply to each DPA Variation.
- (c) Dev Co, the Construction Contractor and the Service Provider shall charge no more than the amount of Overhead and Profit calculated in accordance with Appendix B of this Schedule 6.
- (d) No amount for Overhead and Profit shall be charged on any:
 - (i) other amount of Overhead and Profit; or
 - (ii) part of the Direct Cost that is attributable to a Unit Rate for DPA Works self-performed or to be self-performed by Dev Co, the Construction Contractor or the Service Provider.
- (e) No other methodology for the calculation of Overhead and Profit shall be permitted or apply.
- (f) Dev Co acknowledges and agrees that the Overhead and Profit payable in accordance with this Schedule 6 is intended to and shall be deemed to compensate Dev Co, the Construction Contractor and the Service Provider for all costs and expenses incurred in connection with a DPA Variation other than the Direct Cost, including, all overhead, profit, office administration and the other amounts expressly excluded from the Direct Cost pursuant to Section 1.2 of Appendix A of this Schedule 6.

TABLE A
APPLICABLE OVERHEAD AND PROFIT

[REDACTED]

APPENDIX C

UNIT RATES

[REDACTED]

SCHEDULE 7

DPA WORKS SCHEDULES REQUIREMENTS

1. DEFINITIONS

In this Schedule 7, unless the context indicates a contrary intention, terms which are defined in the Agreement (and not otherwise defined in this Schedule 7) shall have the meanings given to them in the Agreement and the following terms shall have the following meanings:

- 1.1. “**Activity ID**” has the meaning given in Section 1.5(b)(i) of Appendix A to this Schedule 7.
- 1.2. “**Baseline DPA Works Schedule**” means the baseline works schedule prepared by Dev Co in accordance with Section 9, adopted in accordance with Section 3.2(a)(iii), and as amended or replaced in accordance with the provisions of the Agreement.
- 1.3. “**Basis of Construction Works Schedule Report**” has the meaning given in Section 16.1.
- 1.4. “**Basis of DPA Works Schedule Report**” has the meaning given in Section 13.1(a).
- 1.5. “**Change Log**” has the meaning given in Section 18.1(b)(vi).
- 1.6. “**Construction Works Schedules**” means the schedules developed by Dev Co in accordance with Section 14.1.
- 1.7. “**Critical Path**” has the meaning given in Section 1.8(a) of Appendix A to this Schedule 7.
- 1.8. “**Critical Path Activity**” means any DPA Works Activity with a total float equal or less than zero Working Days included in the Critical Path to achieve Project Proposal Submission by the Project Proposal Submission Deadline and to execute a Final Project Agreement in accordance with the Agreement by the scheduled date for Commercial Close, and “**Critical Path Activities**” means all such DPA Works Activities.
- 1.9. “**Critical Path Method**” means the method used to:
 - (a) predict the duration of the DPA Works by analyzing which sequence of DPA Works Activities has the least amount of scheduling flexibility. Early dates are figured by a forward pass using a specific start date and late dates are figured by using a backward pass starting from a completion date; and
 - (b) execute network scheduling using activity durations and logic ties between activities to model the plan to execute the DPA Works.
- 1.10. “**Current Look-Ahead Schedule**” means the most up-to-date Look-Ahead Schedule submitted by Dev Co pursuant to this Schedule 7, representing the current Dev Co strategy for performing and completing the DPA Works in greater detail than is shown in the Proposed DPA Works Schedule or the Current Progress DPA Works Schedule, as applicable pursuant to Section 23.1.

- 1.11. “**Current Progress DPA Works Schedule**” means the most up-to-date Progress DPA Works Schedule submitted by Dev Co pursuant to this Schedule 7, representing the current Dev Co strategy for performing and completing the DPA Works and the actual progress of the DPA Works.
- 1.12. “**Data Date**” means a calendar date in the life of a project upon and through which the progress status for the DPA Works is being determined. For the Proposed DPA Works Schedule, and the Baseline DPA Works Schedule, the Data Date shall equal the date set out in Section 9.4(a). For each Progress DPA Works Schedule, the Data Date is the cut-off date for the reporting period. For any Revised Baseline DPA Works Schedule, DPA Contracting Authority shall determine the Data Date. For each Look-Ahead Schedule, the Data Date shall equal the date on which the Look-Ahead Schedule is required to be delivered to DPA Contracting Authority pursuant to Section 23.2.
- 1.13. “**Design Development Activity**” means any of the following activities or DPA Milestone Events:
- (a) the DPA Design Works;
 - (b) activities outlined in the Design Quality Plan;
 - (c) due diligence, including review of existing information;
 - (d) meetings (including the Design Workshops, Checkpoint Meetings and DPA Works Coordination Meetings described in Schedule 16 – DPA Term Governance, Meetings and Progress Reporting) on design topics expected to involve multiple stakeholders, or any other activities required to satisfy and demonstrate design conformance;
 - (e) production of DPA Works Submittals;
 - (f) other design development activities specified as part of the DPA Works; and
 - (g) any additional activities related to or associated with any of the foregoing required for Dev Co to fulfill the requirements of the Agreement,
- and “**Design Development Activities**” means, collectively, all such activities.
- 1.14. “**Development Fee and Contingency and Corporate Security**” means, collectively, the following items that were set out in Dev Co’s Price Submission Form:
- (a) the “Development fee”, in an amount equal to \$[REDACTED]; and
 - (b) the “Contingency and corporate security”, in an amount equal to \$[REDACTED].
- 1.15. “**DPA and PA Design Works Stage**” has the meaning given in the Request for Proposals.
- 1.16. “**DPA Contracting Authority Review Period**” means the time period required by DPA Contracting Authority to review a DPA Submittal measured in Business Days starting on the first Business Day after receipt of a DPA Submittal from Dev Co up to and including the day on which DPA Contracting Authority returns the DPA Submittal to Dev Co with an assigned comment pursuant to the applicable Review Procedure.
- 1.17. “**DPA Milestone Events**” means, for each of the DPA Works Activities,

- (a) the start and completion of each deliverable and the identification of any external constraints which are associated with the applicable activity; and
 - (b) interfaces with stakeholders associated with the applicable activity.
- 1.18. **“DPA PLAA Activity”** means for any Permits, Licenses, Approvals and Agreements any of the following activities or DPA Milestone Events associated with such Permits, Licences, Approvals and Agreements, including:
- (a) consultation and/or coordination activities with the applicable federal, provincial, municipal authorities, utility service providers and property owners (if applicable);
 - (b) preparation of documentation for the permit, licence, approval or agreement request, including pre-submission co-ordination and consultation;
 - (c) review and approval of the permit, licence, approval or agreement starting on the date the submission is made to the relevant person and ending on the date it is anticipated the decision would be made; and
 - (d) any additional activities related to or associated with any of the foregoing for Dev Co to fulfill the requirements of the Agreement,
- and **“DPA PLAA Activities”** means, collectively, all such activities.
- 1.19. **“DPA Works Activity”** means any of the following activities or any other activity to complete the DPA Works required by the Agreement:
- (a) Design Development Activities;
 - (b) DPA PLAA Activities;
 - (c) Key DPA Works Milestones;
 - (d) Stakeholder Consultation Activities;
 - (e) Utility Related Activities;
 - (f) Review Procedure Activities;
 - (g) Facilities Maintenance Communication Planning Activities;
 - (h) development of Construction Works Schedules;
 - (i) due diligence;
 - (j) value engineering;
 - (k) class of estimates activities;
 - (l) activities to be performed:

- (i) that cannot be started or finished without the involvement of DPA Contracting Authority or one or more stakeholders; and
- (ii) that must be started or finished before a DPA Contracting Authority activity or stakeholder activity can be started or finished; and
- (m) any other Price Submission Form Activities,

and “**DPA Works Activities**” means, collectively, all such activities.

1.20. “**DPA Works Completion Duration**” means the period of time from the Effective Date (as specified in the Proposed DPA Works Schedule) to the Project Proposal Submission Deadline (as specified in the Proposed DPA Works Schedule).

1.21. “**DPA Works Milestone**” means any of the Key DPA Works Milestones, or any other milestone included in the DPA Works Schedules.

1.22. “**DPA Works Schedule**” means any of the schedules required pursuant to this Schedule 7, including:

- (a) the Proposed DPA Works Schedule;
- (b) the Baseline DPA Works Schedule (including any Revised Baseline DPA Works Schedule);
- (c) any Recovery DPA Works Schedule;
- (d) any Look-Ahead Schedule (including any Current Look-Ahead Schedule); and
- (e) any Progress DPA Works Schedule (including any Current Progress DPA Works Schedule),

and “**DPA Works Schedules**” means, collectively, all of the DPA Works Schedules.

1.23. “**DPA Works Schedule Progress Report**” has the meaning given in Section 18.1(a),

1.24. “**DPA Works Schedule Submission Register**” has the meaning given in Section 1.1(d) of Appendix A to this Schedule 7.

1.25. “**DPA Submittals Requirements**” means, as applicable, the requirements of the DPA Review Procedure and Appendix 1 – DPA Technical Submittals and Requirements to Schedule 3 – DPA Submissions and Project Development Process, and the Draft PA Review Procedure.

1.26. “**Draft Baseline DPA Works Schedule**” means a draft version of the Baseline DPA Works Schedule based on the Proposed DPA Works Schedule, to be delivered by Dev Co pursuant to Section 9.

1.27. “**Earned Value Management Plan**” has the meaning given in Section 19.1(a).

1.28. “**Earned Value Metrics**” has the meaning given to that term in Section 2.4 of Appendix B.

- 1.29. **“Earned Value Metrics Report”** has the meaning given to that term in Section 20.1.
- 1.30. **“Equipment Sub-Schedule”** has the meaning given in Section 15.1.
- 1.31. **“EV Reconciliation Period”** has the meaning given in Schedule 8 – DPA Payment.
- 1.32. **“Facilities Maintenance Communication Planning Activities”** means all the activities related to facilities maintenance communication planning as set out in the “Communications Plans” section of Table 1 of Appendix 1 – DPA Technical Submittals and Requirements to Schedule 3 – DPA Submissions and Project Development Process.
- 1.33. **“Indicative Construction Works Schedule”** has the meaning given in Section 14.3(a)(i).
- 1.34. **“Key DPA Works Milestone”** means any of the following DPA Milestone Events and activities:
- (a) the commencement of the Advance DPA Works;
 - (b) the Effective Date;
 - (c) the submission of the Initial Development Stage DPA Submittals;
 - (d) the end of the Initial Development Stage;
 - (e) the submission of the 100% Schematic Design Stage DPA Submittals;
 - (f) the achievement of the First Checkpoint;
 - (g) the submission of the 30% Design Development Stage DPA Submittals;
 - (h) the achievement of the Second Checkpoint;
 - (i) the submission of the 60% Design Development Stage DPA Submittals;
 - (j) the achievement of the Third Checkpoint;
 - (k) the submission of the 90% Design Development Stage DPA Submittals;
 - (l) the achievement of the Final Checkpoint;
 - (m) the completion of the construction of, and the subsequent completion of all adjustments to, the High Fidelity Room Mock-Ups described in the Draft PA Review Procedure that are to occur during the DPA Term;
 - (n) the submission of each class of estimate in accordance with the “Services Cost Estimates” section of Table 1 of Appendix 1 – DPA Technical Submittals and Requirements to Schedule 3 – DPA Submissions and Project Development Process;
 - (o) the Project Proposal Submission Deadline and Project Proposal Submission (including, for clarity, submission of the Level 3 Construction Works Schedule);

- (p) DPA Contracting Authority’s provision of the Notice to commence the process for obtaining the Committed Financing and developing and submitting the Financing Proposal pursuant to Section 8.1(a) of Appendix 5 – Financing Process of Schedule 3 – DPA Submissions and Project Development Process;
- (q) the submission of the Financing Proposal in accordance with Appendix 5 – Financing Process of Schedule 3 – DPA Submissions and Project Development Process;
- (r) if required, the submission of the updated Project Proposal in accordance with Section 8.1(c) of Appendix 5 – Financing Process of Schedule 3 – DPA Submissions and Project Development Process;
- (s) DPA Contracting Authority’s provision of any Notice to Proceed to Commercial Close in accordance with the Agreement;
- (t) the execution of the Final Project Agreement in accordance with the Agreement; and
- (u) any additional milestones related to or associated with any of the foregoing required for Dev Co to fulfill the requirements of the Agreement,

and “**Key DPA Works Milestones**” means, collectively, all of the Key DPA Works Milestones.

- 1.35. “**Level 2 Construction Works Schedule**” has the meaning given in Section 14.3(c).
- 1.36. “**Level 3 Construction Works Schedule**” has the meaning given in Section 14.3(e).
- 1.37. “**Longest Path**” means the longest continuous path of DPA Works Activities through the Project, which controls the Project Proposal Submission Deadline and Commercial Close.
- 1.38. “**Look-Ahead Schedule**” means each schedule to be developed in accordance with Section 23, which shall be in respect of those elements of, as applicable, the Proposed DPA Works Schedule or the Current Progress DPA Works Schedule occurring during the four calendar week period beginning on the Data Date (including all DPA Works Activities in progress, starting and ending and deadlines related to such activities, occurring during such period, including any relevant deadlines for key DPA Contracting Authority decisions related to ICAT, furniture, fixtures and equipment), developed with the appropriate level of detail to support:
 - (a) the planning and coordination of DPA Contracting Authority’s and its stakeholders’ activities; and
 - (b) the activities necessary for DPA Contracting Authority to track the progress of the DPA Works.
- 1.39. “**Major Milestones Submittal**” means any of the following:
 - (a) the Initial Development Stage DPA Submittals;
 - (b) the 100% Schematic Design Stage DPA Submittals;
 - (c) the 30% Design Development Stage DPA Submittals;

- (d) the 60% Design Development Stage DPA Submittals;
- (e) the 90% Design Development Stage DPA Submittals;
- (f) the Project Proposal;
- (g) the Notice to commence the process for obtaining the Committed Financing and developing and submitting the Financing Proposal pursuant to Section 8.1(a) of Appendix 5 – Financing Process of Schedule 3 – DPA Submissions and Project Development Process;
- (h) the Financing Proposal;
- (i) any updated Project Proposal required pursuant to Section 8.1(c) of Appendix 5 – Financing Process of Schedule 3 – DPA Submissions and Project Development Process;
- (j) a Notice to Proceed to Commercial Close provided in accordance with the Agreement; and
- (k) the Financial Close Plan (as defined in Appendix 5 – Financing Process of Schedule 3 – DPA Submissions and Project Development Process),

and “**Major Milestones Submittals**” means, collectively, all of the Major Milestones Submittals.

- 1.40. “**Near Critical Path Activity**” means any DPA Works Activity with a total float equal to or less than 20 Working Days, including all DPA Works Activities on the Critical Path in order for Dev Co to complete and submit the Project Proposal by the Project Proposal Submission Deadline and execute a Final Project Agreement in accordance with the Agreement by the scheduled date for Commercial Close, and “**Near Critical Path Activities**” means, collectively, all such DPA Works Activities.
- 1.41. “**Price Submission Form**” has the meaning given in the Request for Proposals.
- 1.42. “**Price Submission Form Activity**” means a schedule activity required by DPA Contracting Authority, which is Traceable to and based on the Price Submission Form of the DPA Works and which shall be included in the Proposed DPA Works Schedule and the Baseline DPA Works Schedule (and carried through in the Progress DPA Works Schedules), and shall include each item set out in Appendix E to this Schedule 7. For greater certainty, the Development Fee and Contingency and Corporate Security shall not be a Price Submission Form Activity.
- 1.43. “**Progress DPA Works Schedule**” means each schedule to be developed in accordance with Section 12.
- 1.44. “**Project Proposal Submission**” means the submission of the Project Proposal by Dev Co to DPA Contracting Authority in accordance with Schedule 3 – DPA Submissions and Project Development Process.
- 1.45. “**Project Scheduler**” means the Dev Co manager responsible for developing and maintaining the DPA Works Schedules and related reports.

- 1.46. **“Proposed DPA Works Schedule”** means the schedule to perform and complete the DPA Works established between DPA Contracting Authority and Dev Co prior to or on the date of the Agreement and attached as Appendix “D” to this Schedule 7, which includes details in support of monitoring the progress of the DPA Works, determining the likely future progress of the DPA Works, and to analyze the schedule impact of any and all events or circumstances reported or updated pursuant to DPA Section 10.3 of the Agreement and any DPA Variation Confirmation or DPA Variation Directive until such time as the draft of the Draft Baseline DPA Works Schedule becomes the Baseline DPA Works Schedule pursuant to Section 3.2(a)(iii).
- 1.47. **“Recovery DPA Works Schedule”** has the meaning given in Section 11.1(a)(i).
- 1.48. **“Recovery DPA Works Schedule Report”** has the meaning given in Section 11.1(a)(ii).
- 1.49. **“Retired Activity”** has the meaning given in Section 1.10(a) of Appendix A to this Schedule 7.
- 1.50. **“Review Procedure Activity”** means any of the following activities or milestones in the context of Schedule 3 – DPA Submissions and Project Development Process:
- (a) the proposed Dev Co submission of each DPA Submittal indicated as an activity where the first day of the activity shall be the day on which Dev Co submits the DPA Submittal to DPA Contracting Authority for review followed by the DPA Contracting Authority Review Period starting on the second day of the activity shown in the schedule and the time provided to DPA Contracting Authority to complete the review in accordance with the Agreement;
 - (b) specific activities and approvals that are the responsibility of DPA Contracting Authority that pertain to and must be coordinated with the DPA Works; and
 - (c) any additional activities related to or associated with any of the foregoing for Dev Co to fulfill the requirements of the Agreement,
- and **“Review Procedure Activities”** means, collectively, all such activities.
- 1.51. **“Review Procedure Activities Register”** means a submittals register that Dev Co develops, monitors, and regularly updates, where such register tracks all DPA Submittals, (including all re-submittals) that Dev Co is required to provide in accordance with Schedule 3 – DPA Submissions and Project Development Process from and after the commencement of the Advance DPA Works through to Commercial Close.
- 1.52. **“Revised Baseline DPA Works Schedule”** has the meaning given in Section 10.1.
- 1.53. **“Schedule Revision Date”** means the last date on which changes were made to any specific DPA Works Schedule, including the content, calendars or working time, Work Breakdown Structure, groupings, sequencing logic, activity or milestone relationships, activity or milestone descriptions, any Work Breakdown Structure code, the addition or deletion of any activity or milestone, or any settings, but excluding updates to indicate the actual progress of each activity, actual DPA Works Milestone dates, actual DPA Works Activity start and end dates, and revised forecast dates and activity durations for all incomplete DPA Works Activities and DPA Works Milestones.

- 1.54. “**Stakeholder Consultation Activity**” means any of the following activities or DPA Milestone Events that require stakeholder engagement under the Agreement:
- (a) stakeholder partnering sessions;
 - (b) DPA Submittals development and finalization;
 - (c) milestones noting decisions that support final design integration between DPA Contracting Authority’s systems and Dev Co’s systems;
 - (d) design meetings (other than as set out below);
 - (e) presentations or Design Workshops on design topics expected to involve multiple stakeholders, or any other activities required to satisfy and demonstrate design conformance; and
 - (f) any additional activities that require stakeholder engagement under the Agreement,
- and “**Stakeholder Consultation Activities**” means, collectively, all such activities.
- 1.55. “**Traceable**” means prepared in such a way that DPA Contracting Authority has the ability to maintain, track and trace all activities and milestones, including Activity ID’s, descriptions, activity codes, cost values, logical sequences, interdependencies, and data consistency between and/or within all DPA Works Schedules and any applicable DPA Submittals Requirements.
- 1.56. “**Updated Indicative Construction Works Schedule**” has the meaning given in Section 14.3(b)(ii).
- 1.57. “**Updated Level 2 Construction Works Schedule**” has the meaning given in Section 14.3(d).
- 1.58. “**Utility Related Activity**” means for each system relevant to the DPA Works any of the following activities:
- (a) approvals by Utility Companies; and
 - (b) any other activity related to or associated with any of the foregoing required for Dev Co to fulfill the requirements of the Agreement,
- and “**Utility Related Activities**” means, collectively, all such activities.
- 1.59. “**Work Breakdown Structure**” or “**WBS**” is a hierarchical framework for organizing and ordering the activities that make up the entire DPA Scope of Work as set out in AACE International Recommended Practice 33R-15 entitled, “*Developing the Project Work Breakdown Structure.*”
- 1.60. “**Working Day**” or “**Working Days**” means a day on which Dev Co can reasonably schedule a specific DPA Works Activity considering the requirements of the Agreement and any other constraints.

2. DOCUMENTS COMPRISING THE DPA WORKS SCHEDULE REQUIREMENTS SCHEDULE

2.1. This Schedule 7 is comprised of the following documents:

- (a) these general provisions of this Schedule 7;
- (b) Appendix A – DPA Works Schedules Technical Requirements;
- (c) Appendix B – DPA Works Schedule EVM Reporting Requirements;
- (d) Appendix C – Activity Code and User Defined Fields (UDF) Requirements;
- (e) Appendix D – Proposed DPA Works Schedule;
- (f) Appendix E – Price Submission Form Activities; and
- (g) Appendix F – Work Breakdown Structure.

3. DEVELOPMENT OF DPA WORKS SCHEDULES

3.1. Types and Purposes of DPA Works Schedules

- (a) Dev Co acknowledges and agrees that it will develop and maintain the following types of DPA Works Schedules in accordance with this Schedule 7:
 - (i) baseline schedules consisting of the Proposed DPA Works Schedule and the Baseline DPA Works Schedule (including any Revised Baseline DPA Works Schedules), each of which is required to demonstrate Dev Co’s intended schedule to perform and complete the DPA Works and from which the progress of the DPA Works will be measured;
 - (ii) monthly Progress DPA Works Schedules, each of which is required to demonstrate the actual progress of the DPA Works up to and including the applicable Data Date; and
 - (iii) bi-weekly Look-Ahead Schedules, each of which is required to demonstrate the actual progress of the DPA Works up to and including the date that is four weeks following the applicable Data Date in greater detail than as set out in the Proposed DPA Works Schedule or the Current Progress DPA Works Schedule, as applicable pursuant to Section 23.1.
- (b) Dev Co further acknowledges and agrees that it may be required to develop and comply with Recovery DPA Works Schedules in accordance with this Schedule 7.

3.2. Sequence of DPA Works Schedules

- (a) Subject to the terms and conditions of this Schedule 7, Dev Co acknowledges and agrees that the progression and development of the DPA Works Schedules shall be as follows:

- (i) the Proposed DPA Works Schedule shall be the basis for the initial Draft Baseline DPA Works Schedule applicable to the DPA Works until replaced by the finalized Baseline DPA Works Schedule;
- (ii) Dev Co shall, by no later than the date that is 20 days following the Effective Date, submit the Draft Baseline DPA Works Schedule to DPA Contracting Authority for DPA Contracting Authority's review in accordance with the DPA Review Procedure;
- (iii) in accordance with Section 9.7, once the Draft Baseline DPA Works Schedule has been finalized, it shall become the Baseline DPA Works Schedule that is applicable to the DPA Works, unless and until it is replaced by a Revised Baseline DPA Works Schedule that becomes the Baseline DPA Works Schedule in accordance with Section 10;
- (iv) for every month following the Effective Date until the date set out in Section 17.1(d), Dev Co shall submit to DPA Contracting Authority a Progress DPA Works Schedule in accordance with Section 12 for review by DPA Contracting Authority pursuant to the DPA Review Procedure. Dev Co shall progress each updated Progress DPA Works Schedule from the previous month's Progress DPA Works Schedule and shall:
 - A. for the period prior to the finalization of the Baseline DPA Works Schedule, ensure that the Progress DPA Works Schedule is Traceable to and progressed from the Proposed DPA Works Schedule and the immediately preceding Progress DPA Works Schedule;
 - B. for the period from and after the finalization of the Baseline DPA Works Schedule, ensure that the Progress DPA Works Schedule is Traceable to and progressed from the Baseline DPA Works Schedule and the immediately preceding Progress DPA Works Schedule; and
 - C. label the Progress DPA Works Schedule(s) in sequence as Progress DPA Works Schedule – MMYYYY Revision 1, Progress DPA Works Schedule – MMYYYY Revision 2, and so on;
- (v) once each updated Progress DPA Works Schedule (Progress DPA Works Schedule – MMYYYY Revision 1, 2, etc.) has been finalized in accordance with the DPA Review Procedure and this Schedule 7, it shall become the active Progress DPA Works Schedule and the Current Progress DPA Works Schedule in respect of the DPA Works; and
- (vi) on a by-weekly basis, Dev Co shall submit to DPA Contracting Authority a Look-Ahead Schedule in accordance with this Schedule 7, including Section 23.

4. GENERAL REQUIREMENTS

- 4.1. Dev Co shall schedule the DPA Works to conform to all of the requirements of the Agreement. The DPA Works Schedules shall contain sufficient detail to enable DPA Contracting Authority to:

- (a) monitor the planned schedule for the DPA Works and the progress to complete the DPA Works, and determine whether Dev Co is likely to be able to (i) achieve Project Proposal Submission by the Project Proposal Submission Deadline, and (ii) execute a Final Project Agreement in accordance with the Agreement by the scheduled date for Commercial Close;
 - (b) manage DPA Contracting Authority interfaces and analyze the schedule impacts of any potential delay, Force Majeure Event or DPA Variation on the progress of the DPA Works; and
 - (c) monitor any changes to the Project Proposal Longstop Date.
- 4.2. Dev Co shall prepare each DPA Works Schedule in accordance with Good Industry Practice for a large complex project and in accordance with the Agreement and include appropriate schedule activities, logic, and sequencing.
- 4.3. Dev Co shall base all the DPA Works Schedules on the logical sequencing and reasonable durations anticipated to complete the DPA Works.
- 4.4. Dev Co shall prepare detailed computerized DPA Works Schedules using the Critical Path Method network and a Baseline DPA Works Schedule with a dependent cash flow forecast, each in a form acceptable to DPA Contracting Authority.
- 4.5. Dev Co shall divide the applicable DPA Works into activities and milestones with appropriate phases, sequencing, interdependencies and logic to show Dev Co’s overall approach to the planning and execution of the DPA Works, including all DPA Works Activities, all DPA Works Milestones, and any other activities related to mobilization and setup, quality control and quality assurance activities, integration activities, DPA Variations and Cash Allowance Items to complete the DPA Works.
- 4.6. Notwithstanding anything to the contrary in the Agreement, no DPA Works Schedule shall be used by Dev Co for the purposes of the Agreement until it is assigned a comment of “NO COMMENT” or “MINOR NON-CONFORMANCE” pursuant to the DPA Review Procedure.
- 4.7. Dev Co shall:
- (a) continuously monitor and compare the progress of the DPA Works against the Baseline DPA Works Schedule, the Current Progress DPA Works Schedule and the Current Look-Ahead Schedule;
 - (b) update the Baseline DPA Works Schedule in accordance with this Schedule 7;
 - (c) maintain the continuity of the DPA Works Schedules critical path network for all updates and revisions;
 - (d) immediately provide Notice to the DPA Contracting Authority Representative of any variance or potential variance in any DPA Works Activities or DPA Works Milestones if the affected DPA Works Activities or DPA Works Milestones have any known or readily apparent impact on DPA Contracting Authority, including integration and coordination issues with DPA Contracting Authority’s activities;

- (e) promptly provide Notice to the DPA Contracting Authority Representative of any variance or potential variance in any DPA Works Activities or DPA Works Milestones from the requirements of the Agreement and promptly advise DPA Contracting Authority in accordance with the provisions of DPA Section 2.4(c) of the Agreement if and to the extent required by such provisions;
 - (f) at the request of DPA Contracting Authority, provide applicable industry benchmarks or benchmarking data or detailed back-up calculations and assumptions for the DPA Works Activities durations;
 - (g) prepare the DPA Works Schedules to be Traceable to each applicable DPA Submittals Requirement so that DPA Contracting Authority has the ability to maintain, track, and trace all DPA Submittals Requirement deliverables within DPA Works Schedules; and
 - (h) include cost values for all Price Submission Form Activities to enable the calculation of the required Earned Value Metric.
- 4.8. Upon discovery, Dev Co shall immediately advise the DPA Contracting Authority Representative in writing if the amount of total float on any Critical Path Activity or Near Critical Path Activity reduces by five Working Days or more from the amount of total float shown in the immediate previous submission of a Progress DPA Works Schedule.

5. DPA WORKS SCHEDULES MEETINGS AND WORKSHOPS

5.1. Initial Meetings to Discuss Draft Baseline DPA Works Schedule

- (a) Prior to Dev Co's submission of the Draft Baseline DPA Works Schedule, Dev Co shall schedule and attend a minimum of one planning meeting with DPA Contracting Authority to discuss the scope, phasing and sequencing of the DPA Works Activities, the DPA Works Milestones, and to resolve questions or issues relating to the Proposed DPA Works Schedule.
- (b) The planning meetings shall take place at the date and time mutually agreed upon by DPA Contracting Authority and Dev Co, provided that, the first meeting shall be completed by the date that is no later than 10 days following the Effective Date.

5.2. Ongoing Meetings to Discuss DPA Works Schedules

- (a) Unless otherwise agreed by DPA Contracting Authority and Dev Co, during each stage of the DPA Term described in Section 1.3(a) of Schedule 3 – DPA Submissions and Project Development Process, Dev Co shall meet with DPA Contracting Authority to explain Dev Co's strategy, activities, Critical Path and areas of concern or particular challenges associated with the performance of the DPA Works or any part thereof in relation to the applicable Progress DPA Works Schedule, Look-Ahead Schedule or any other DPA Works Schedules. The meetings shall take place at the date and time mutually agreed upon by DPA Contracting Authority and Dev Co.
- (b) To prepare for each DPA Works Committee meeting, the DPA Dev Co Representative, the Project Scheduler, the DPA Contracting Authority Representative and any of their respective invitees shall meet in the week before each DPA Works Committee meeting to

discuss the Current Progress DPA Works Schedule, the Current Look-Ahead Schedule and any other DPA Works Schedule related matters.

5.3. Baseline DPA Works Schedule Meeting Procedures and Practices

- (a) The meetings described in Sections 5.1(a) and 5.2(a) shall have the following procedures and practices:
 - (i) Dev Co shall chair the meeting;
 - (ii) Dev Co shall prepare the agenda, which shall be subject to any comments provided by DPA Contracting Authority;
 - (iii) the agenda and accompanying materials shall be circulated to the attendees at least five Business Days in advance of the meeting date;
 - (iv) minutes of each meeting, including action items and their status, recommendations and requests for matters to be escalated to the DPA Works Committee shall be recorded and maintained by Dev Co; and
 - (v) Dev Co shall distribute the minutes of the meeting within five Business Days of the meeting. Unless DPA Contracting Authority advises Dev Co within five Business Days of receipt of the minutes that DPA Contracting Authority disagrees with the contents of the minutes, DPA Contracting Authority and Dev Co shall be deemed to be in agreement with the minutes.

6. SUBMISSION REQUIREMENTS

6.1. General Submission Requirements

- (a) Dev Co shall, in accordance with this Schedule 7, submit to DPA Contracting Authority each DPA Works Schedule, Basis of DPA Works Schedule Report, Earned Value Management Plan, Earned Value Metrics Report, DPA Works Schedule Progress Report and other report to be submitted pursuant to this Schedule 7.
- (b) Dev Co shall review and approve each submittal described in Section 6.1(a) and shall indicate such review and approval by including the DPA Dev Co Representative's dated signature on the front cover.
- (c) Dev Co shall submit each submittal described in Section 6.1(a) (other than each Look-Ahead Schedule) and any revision to any such submittal for DPA Contracting Authority's review in accordance with the DPA Review Procedure.
- (d) All such submittals shall be submitted electronically, for clarity, in the source file format, and the filename of each of the electronic files submitted shall indicate the project name acronym, schedule type, revision number and the Data Date in the format 'YYYYMMDD' (e.g. the 5th version of the Progress DPA Works Schedule for the ABC project indicating the progress of the DPA Works up to 31 October 2018 shall be named "ABC Updated Baseline DPA Works Schedule Rev 05 – 20181031").

7. DPA WORKS SCHEDULES REQUIREMENTS FOR DPA SUBMITTALS

- 7.1. Dev Co shall schedule the Review Procedure Activities, including the submission dates for all DPA Submittals and the applicable DPA Contracting Authority Review Period for each in accordance with the applicable Review Procedure.
- 7.2. No review period pursuant to a Review Procedure of any DPA Submittal shall commence until a complete package for the DPA Submittal is submitted by Dev Co to DPA Contracting Authority for review in accordance with the requirements of the Agreement.

8. DPA WORKS SCHEDULES TECHNICAL REQUIREMENTS

- 8.1. Dev Co shall comply with the Baseline DPA Works Schedule technical requirements set out in Appendix “A” to this Schedule 7.

9. BASELINE DPA WORKS SCHEDULE

- 9.1. The Baseline DPA Works Schedule is a baseline representation of Dev Co’s initial strategy to perform and complete the DPA Works.
- 9.2. The Draft Baseline DPA Works Schedule shall be an unaltered copy of the Proposed DPA Works Schedule for all information up to the date on which the Draft Baseline DPA Works Schedule is submitted to DPA Contracting Authority pursuant to this Schedule 7. For clarity, the DPA Works Completion Duration and all DPA Works Activities and DPA Works Milestones scheduled to start before the date on which the Draft Baseline DPA Works Schedule is submitted to DPA Contracting Authority shall remain unchanged, provided that, subject to the foregoing, Dev Co may refine the remaining activity sequencing and durations only:
 - (a) if these strategic or assumption changes are documented and explained in the Basis of DPA Works Schedule Report; and
 - (b) on the basis that the forecast date for the submission of the Project Proposal shall be equal to the Project Proposal Submission Deadline and all other Key DPA Works Milestone dates shall remain unchanged,;
- 9.3. Dev Co shall not schedule, as part of the Draft Baseline DPA Works Schedule, any new DPA Works Activities that were not included in the Proposed DPA Works Schedule on the date of the Agreement, which require any material input, review or participation or decision from DPA Contracting Authority, any DPA Contracting Authority Party or other Project stakeholder without providing the DPA Contracting Authority Representative at least 10 Business Days prior Notice and without obtaining the prior written agreement of the DPA Contracting Authority Representative.
- 9.4. The Draft Baseline DPA Works Schedule and the Baseline DPA Works Schedule shall:
 - (a) have a Data Date equal to the date upon which the Advance DPA Works were required to be commenced in accordance with the requirements of the Request for Proposals, unless the Baseline DPA Works Schedule is revised as a result of a DPA Variation issued pursuant to Schedule 6 – DPA Variation Procedure in which case the Data Date for the Revised Baseline DPA Works Schedule shall be the date of the DPA Variation Confirmation;

- (b) not have any progress data for any DPA Works Activity or DPA Works Milestone;
 - (c) not include any delays or Force Majeure Event;
 - (d) have activities, including all DPA Works Activities, which are Traceable to those that appeared in the Proposed DPA Works Schedule;
 - (e) conform to the requirements of the Agreement, including this Schedule 7;
 - (f) include the design development process, including Dev Co’s design documentation program, the review and input by various DPA Contracting Authority Parties and stakeholders and DPA Contracting Authority decision points, in accordance with the Agreement. For greater certainty, all activities associated with user group meetings shall be included;
 - (g) include all committees, meetings, workshops, working groups and review groups as outlined in DPA Schedule 16 – DPA Term Governance, Meetings and Progress Reporting;
 - (h) address any comments on the Proposed DPA Works Schedule provided by DPA Contracting Authority;
 - (i) identify all differences between the Proposed DPA Works Schedule and the Baseline DPA Works Schedule; and
 - (j) shall not change any Activity ID numbers from the corresponding Activity ID numbers set out in the Proposed DPA Works Schedule.
- 9.5. In its review of the Draft Baseline DPA Works Schedule pursuant to the DPA Review Procedure, DPA Contracting Authority may request that additional DPA Works Milestones or DPA Works Activities be incorporated into the Draft Baseline DPA Works Schedule. Upon such request, Dev Co shall promptly revise the Draft Baseline DPA Works Schedule to include such additional milestones and activities.
- 9.6. The Draft Baseline DPA Works Schedule and the Baseline DPA Works Schedule shall include at a minimum:
- (a) the title “Draft Baseline DPA Works Schedule” until it becomes the Baseline DPA Works Schedule pursuant to this Schedule 7 and “Baseline DPA Works Schedule” thereafter;
 - (b) all elements included in the Proposed DPA Works Schedule;
 - (c) the data from the Proposed DPA Works Schedule shall be saved as the baseline for the Draft Baseline DPA Works Schedule and shall be shown together with the revised dates and durations to graphically indicate the variances between the Proposed DPA Works Schedule and the Draft Baseline DPA Works Schedule. When the Draft Baseline DPA Works Schedule becomes the Baseline DPA Works Schedule pursuant to this Schedule 7, the data from the Draft Baseline DPA Works Schedule shall become the new baseline data for the Baseline DPA Works Schedules. For clarity, each activity in the Draft Baseline DPA Works Schedule shall have two horizontal bars indicating the Proposed DPA Works Schedule baseline and the revised Draft Baseline DPA Works Schedule proposed baseline;

- (d) all Key DPA Works Milestones grouped together at the top of the Baseline DPA Works Schedule in a section with the heading “Key DPA Works Milestones”;
 - (e) the following DPA Works Activities and DPA Works Milestones structured in such a way so as to clearly indicate Dev Co’s overall approach, phasing and sequencing of the planning and execution of the DPA Works:
 - (i) Key DPA Works Milestones; and
 - (ii) any other activities required by Dev Co to fulfill the requirements of the Agreement; and
 - (f) DPA Submittals Requirements grouped together, indicating, at minimum, the applicable deliverables for each of the Major Milestones Submittals.
- 9.7. When the Draft Baseline DPA Works Schedule is assigned a comment of “NO COMMENT” or “MINOR NON-CONFORMANCE” in accordance with the DPA Review Procedure, the Draft Baseline DPA Works Schedule shall become the Baseline DPA Works Schedule under the Agreement.
- 9.8. If the Draft Baseline DPA Works Schedule is not assigned a comment of “NO COMMENT” or “MINOR NON-CONFORMANCE” in accordance with the DPA Review Procedure by the date that is sixty nine days following the Effective Date, then any entitlement of Dev Co in accordance with the Agreement to an extension of time under the Agreement shall be reduced by a period of time equal to the number of days between (a) the date the Draft Baseline DPA Works Schedule is ultimately assigned a comment of “NO COMMENT” or “MINOR NON-CONFORMANCE” in accordance with the DPA Review Procedure and (b) the date that is sixty nine days following the Effective Date, unless the failure of the Draft Baseline DPA Works Schedule to be assigned a comment of “NO COMMENT” or “MINOR NON-CONFORMANCE” in accordance with the DPA Review Procedure is a direct result of a failure by DPA Contracting Authority to comply with the Agreement.
- 10. REVISED BASELINE DPA WORKS SCHEDULE**
- 10.1. If DPA Contracting Authority is of the opinion that, as a result of an amendment to the Agreement, an event of delay contemplated by DPA Section 10.3(b) of the Agreement, any Force Majeure Event, a DPA Variation Confirmation or a DPA Variation Directive, the scope and/or schedule of the DPA Works has changed significantly since the finalization of the Baseline DPA Works Schedule, then DPA Contracting Authority may require Dev Co to replace the Baseline DPA Works Schedule with a revised and updated Baseline DPA Works Schedule (a “**Revised Baseline DPA Works Schedule**”). If DPA Contracting Authority gives Notice to the DPA Dev Co Representative that it requires a Revised Baseline DPA Works Schedule, then Dev Co shall prepare and submit a Revised Baseline DPA Works Schedule (which, for clarity, shall be a DPA Schedule 3 Submittal) no later than 15 Business Days after the DPA Dev Co Representative receives such Notice, for review by DPA Contracting Authority pursuant to the DPA Review Procedure.
- 10.2. If Dev Co is of the opinion that, as a result of an amendment to the Agreement, a DPA Variation Confirmation or a DPA Variation Directive, the scope of the DPA Works has changed significantly since the finalization of the Baseline DPA Works Schedule, then Dev Co may prepare a Revised

Baseline DPA Works Schedule for review by DPA Contracting Authority in accordance with the DPA Review Procedure. As part of its review of such Revised Baseline DPA Works Schedule, DPA Contracting Authority may determine whether such Revised Baseline DPA Works Schedule is necessary or appropriate.

- 10.3. Each Revised Baseline DPA Works Schedule submitted by Dev Co shall:
- (a) meet all of the requirements set out in the Agreement in respect of the Baseline DPA Works Schedule;
 - (b) set out activities which are Traceable to those that appeared in the Baseline DPA Works Schedule;
 - (c) identify all differences between the Baseline DPA Works Schedule and the Revised DPA Works Schedule; and
 - (d) include a Data Date that is determined by DPA Contracting Authority.
- 10.4. When the Revised Baseline DPA Works Schedule is assigned a comment of “NO COMMENT” or “MINOR NON-CONFORMANCE” in accordance with the DPA Review Procedure, the Revised Baseline DPA Works Schedule shall replace and become the Baseline DPA Works Schedule under the Agreement.

11. RECOVERY DPA WORKS SCHEDULE

- 11.1. If at any time it becomes apparent to a Party, acting reasonably, that Dev Co is or will be unable to comply with the requirements of the Baseline DPA Works Schedule, including any one or more of the Key DPA Works Milestone dates set forth on the Baseline DPA Works Schedule, Dev Co shall:
- (a) by the date that is no later than five Working Days of Dev Co becoming aware of its inability to meet the Baseline DPA Works Schedule or of any written request from DPA Contracting Authority, prepare and deliver to DPA Contracting Authority, for review:
 - (i) a recovery works schedule (each a “**Recovery DPA Works Schedule**”) that shall comply with the requirements for the Baseline DPA Works Schedule as set out in this Schedule 7; and
 - (ii) a report supporting the Recovery DPA Works Schedule (each a “**Recovery DPA Works Schedule Report**”) that shall comply with the requirements of a DPA Works Schedule Progress Report as set out in Section 18.1, and shall:
 - A. set out, in detail and in narrative form, the commercially reasonable mitigation measures being taken by Dev Co to mitigate the delay and Dev Co’s plan to continue the mitigation measures until Commercial Close; and
 - B. include information and details required by DPA Contracting Authority, acting reasonably, and shall demonstrate how, to the extent possible, Dev Co shall achieve the recovery of the schedule and bring the DPA Works back on schedule.

11.2. Dev Co shall ensure that the Recovery DPA Works Schedule and the Recovery DPA Works Schedule Report, taken together, explain the causes of the delay in the progress of the DPA Works and set out a strategy that is compliant with the DPA and will be implemented by Dev Co to eliminate the delay.

12. PROGRESS DPA WORKS SCHEDULES

12.1. Progress DPA Works Schedule Validity

- (a) Notwithstanding anything to the contrary in Schedule 3 – DPA Submissions and Project Development Process, if a comment of “MAJOR NON-CONFORMANCE” or “CRITICAL NON-CONFORMANCE” is assigned to any Progress DPA Works Schedule in accordance with the DPA Review Procedure (including if the actual progress of the DPA Works, an actual start date, or an actual finish date does not correspond to the information indicated in the Progress DPA Works Schedule for the applicable time period), then the Progress DPA Works Schedule shall be deemed to be null and void, shall not be relied upon, and Dev Co shall submit a revised version of the Progress DPA Works Schedule for review to DPA Contracting Authority pursuant to the DPA Review Procedure within five Business Days of receiving such comment.

12.2. Progress DPA Works Schedule Content

- (a) Dev Co shall submit to DPA Contracting Authority each Progress DPA Works Schedule and any subsequently updated Progress DPA Works Schedule for review by DPA Contracting Authority in accordance with the DPA Review Procedure. For clarity, no submission of a Progress DPA Works Schedule shall amend the Proposed DPA Works Schedule or the Baseline DPA Works Schedule.
- (b) Each Progress DPA Works Schedule shall include, at minimum, the following:
 - (i) the title “Progress DPA Works Schedule” in the title block;
 - (ii) all elements required to be included in the Baseline DPA Works Schedule;
 - (iii) the current progress of the DPA Works;
 - (iv) activities that are progressed from and Traceable to those that appeared in the Proposed DPA Works Schedule or the Baseline DPA Works Schedule (including any Revised Baseline DPA Works Schedule), as applicable, and the immediately preceding Progress DPA Works Schedule;
 - (v) a Data Date which is the last day of the month to which the Progress DPA Works Schedule applies unless otherwise agreed to between DPA Contracting Authority and Dev Co;
 - (vi) documentation setting out the progress of the DPA Works for all DPA Works Activities and DPA Works Milestones (via three distinct sets of activity bars) and progressed up to the end of the relevant month, measured relative to the Baseline DPA Works Schedule and the Progress DPA Works Schedule of the previously reported month, which activity bars shall be organized as follows:

- A. one activity bar setting out the current progress of the DPA Works, updated to the end of the relevant month;
 - B. one activity bar showing the Progress DPA Works Schedule for the previously reported month; and
 - C. one activity bar showing the Baseline DPA Works Schedule;
- (vii) include updated forecast dates required to complete the DPA Works for all previously noted DPA Works Activities and DPA Works Milestones;
- (viii) include additional DPA Works Milestones or DPA Works Activities that are requested by DPA Contracting Authority;
- (ix) the Baseline DPA Works Schedule (including any Revised Baseline DPA Works Schedule) shown as a baseline in the schedule using the scheduling software’s baseline functionality to visually indicate the variance between the Baseline DPA Works Schedule and the actual dates for all past or ongoing DPA Works Activities and DPA Works Milestones and the new forecast dates for all future DPA Works Activities and DPA Works Milestones as indicated in the Progress DPA Works Schedule. For clarity, each activity shall be shown with two bars, the baseline bar and the actual or forecast bar in a format acceptable to DPA Contracting Authority; and
- (x) the implementation of each DPA Variation Directive and DPA Variation Confirmation through which the change in the scope of the DPA Works is shown. For clarity, all DPA Variations resulting in changes in the scope of the DPA Works shall be listed in the Progress DPA Works Schedule as separate activities grouped together under the heading “DPA Variations”. Each such activity name shall start with, as applicable, “VD-“ or “VC-” followed by the DPA Variation Directive or DPA Variation Confirmation number and a short description of the DPA Variation;
- (c) any Force Majeure Event or other potential delay to the DPA Works for which the Notice required pursuant to DPA Section 10.3 of the Agreement is to be or was provided to DPA Contracting Authority. Dev Co shall show the duration of the event, the impact to any of the related DPA Works Activities and the mitigation measures to be implemented by Dev Co to minimize the relevant day; and
- (d) the recovery plan to mitigate any delays or Force Majeure Events.

13. BASIS OF DPA WORKS SCHEDULE REPORT

13.1. Contents of the Report

- (a) With each issuance by Dev Co of the Proposed DPA Works Schedule, the Baseline DPA Works Schedule and any Revised Baseline DPA Works Schedule, Dev Co shall submit a report on the basic principles underlying and documenting the assumptions made by Dev Co to generate, the applicable Proposed DPA Works Schedule, Baseline DPA Works Schedule or Revised Baseline DPA Works Schedule (each a “**Basis of DPA Works Schedule Report**”).

- (b) Dev Co shall ensure that each Basis of DPA Works Schedule Report submitted by Dev Co includes a blacklined document comparing the then current version to the immediately preceding version of the Basis of DPA Works Schedule Report which clearly indicates the changes made by Dev Co to the Basis of DPA Works Schedule Report from the immediately preceding version.
- (c) Dev Co shall ensure that each Basis of DPA Works Schedule Report includes, at a minimum, the following content and sections:
 - (i) a cover page including the title “Report on the Basis of DPA Works Schedule”, the Project title, date of the report, issuance date, version date, and the version number of the associated Baseline DPA Works Schedule, and the signature of the DPA Dev Co Representative who has approved the report;
 - (ii) “Section 1 – Project Description, Schedule Integration Process”, including a written narrative of a high-level description of the Project. Describe the inclusion of schedule input from Dev Co’s parties, vendors, third parties (such as Governmental Authorities and Utility Companies), and DPA Contracting Authority, and a written narrative of the Project scope, in addition to the basis for defining the Work Breakdown Structure;
 - (iii) “Section 2 – Implementation Strategy”, including a written narrative with sufficient detail to describe the overall approach, proposed sequencing and work plan to complete the DPA Works to (A) achieve Project Proposal Submission by the Project Proposal Submission Deadline, and (B) execute a Final Project Agreement in accordance with the Agreement by the scheduled date for Commercial Close. For clarity, the first Basis of DPA Works Schedule Report shall explain the basis of development of the schedule, the means and methods that Dev Co plans to deploy in order to meet the completion date requirements. This section shall include diagrams to clarify intent and shall be written to identify the strategy and approach to:
 - A. complete any additional site investigations and other due diligence;
 - B. complete the design developments and review process; and
 - C. obtain any required major Permits, Licences, Approvals and Agreements;
 - (iv) “Section 3 – Critical Path Analysis”, including the following:
 - A. “Critical Path Risk”, describing in tabular form the risks to completing the Critical Path Activities (including Activity ID) to (I) achieve Project Proposal Submission by the Project Proposal Submission Deadline, and (II) execute a Final Project Agreement in accordance with the Agreement by the scheduled date for Commercial Close, and Dev Co’s strategy to mitigate or avoid these risks; and

- B. overall project “Critical Path Activities” and “Near Critical Path Activities” that include a Gantt Chart schedule that shows the Critical Path of the Project as well as Near Critical Path Activities;
- (v) “Section 4 – General Assumptions”, including any assigned project calendars to the activities, labour resource constraints and other assumptions used by Dev Co to generate the schedule;
- (vi) “Section 5 – P6 Schedule Constraints”, including a table of any imposed date constraints used or specific constraint for the review of each Schematic Design Submittal and Design Development Submittal. For each constraint, the following shall be included: Activity ID, constraint description, constraint type, hard coded date used, reason for the constraint, and the date and reference to approval by DPA Contracting Authority permitting the constraint; and
- (vii) “Section 6 – Projected Cash Flow”, including cash flow graphs that depict projected cash flow.

14. CONSTRUCTION WORKS SCHEDULE

- 14.1. Dev Co shall develop a construction works schedule for the performance of the Works under a Final Project Agreement (the “**Construction Works Schedule**”) using a rolling wave project planning methodology. Dev Co shall progressively develop the Construction Works Schedule and submit it as part of each applicable Major Milestones Submittal described in Section 14.3.
- 14.2. Each Construction Works Schedule shall:
 - (a) clearly set out and identify Dev Co’s proposed Scheduled Phase Completion Date(s), Scheduled Substantial Completion Date, Scheduled Remaining Works Phase Completion Dates and Scheduled Final Completion Date;
 - (b) conform to Schedule 12 – Works Scheduling Requirements to the Draft Project Agreement, including, for clarity, Appendix A to Schedule 12 – Works Scheduling Requirements to the Draft Project Agreement and all provisions applicable to the Proposed Works Schedule;
 - (c) be well organized with a logical “Work Breakdown Structure” (as defined in Schedule 12 – Works Scheduling Requirements to the Draft Project Agreement);
 - (d) include all activities and timelines as outlined in the Draft Project Agreement, including their durations, required to achieve each Phase Completion, Substantial Completion, each Remaining Works Phase Completion and Final Completion;
 - (e) subject to the Parties otherwise agreeing, include an appropriate level of detail as outlined in Section 14.3;
 - (f) include the sequencing of construction activities, demonstrating an alignment with the development of the Project’s design development process in conformance with the requirements of the Draft Project Agreement;

- (g) include all “Works Activities” (as defined in Schedule 12 – Works Scheduling Requirements to the Draft Project Agreement);
- (h) include all “Key Works Milestones” (as defined in Schedule 12 – Works Scheduling Requirements to the Draft Project Agreement);
- (i) include the design development process, including the Project Co’s design documentation program, the review and input by various Contracting Authority parties and stakeholders and Contracting Authority decision points in accordance with the requirements of Section 18 of the Draft Project Agreement. For greater certainty, all activities associated with user group meetings shall be included;
- (j) include the submission of Works Submittals and associated review periods to be implemented in accordance with the requirements of Schedule 10 – Review Procedure of the Draft Project Agreement, with demonstrated contingency/float for the resubmission of rejected Works Submittals;
- (k) demonstrate the obtainment of all Permits, Licences, Approvals and Agreements;
- (l) include the sequencing of construction activities, demonstrating an alignment with the development of Project Co’s design development process in conformance with the Agreement and the requirements of the Draft Project Agreement;
- (m) include the Equipment Sub-Schedule activities as set out in Section 15;
- (n) include the commissioning activities;
- (o) include the Facility Management Communication Activities;
- (p) be integrated with the MES Equipment strategy;
- (q) include the procurement activities;
- (r) include the Transition activities;
- (s) include the rectification of Minor Deficiencies, completion of Seasonal Works activities; and
- (t) include the performance and completion of the Remaining Works, including the rectification of Remaining Works Minor Deficiencies.

14.3. The progression of the development of the Construction Works Schedule shall be as follows:

- (a) Dev Co shall submit a Construction Works Schedule as part of the 100% Schematic Design Stage DPA Submittals (the “**Indicative Construction Works Schedule**”) that:
 - (i) is proportional to the level of detail of the rest of the 100% Schematic Design Stage DPA Submittals, provided that Dev Co shall ensure that any activity duration shall be no less than one Working Day and no more than 120 Working Days;

- (b) Dev Co shall submit a Construction Works Schedule as part of the 30% Design Development Stage DPA Submittals (the “**Updated Indicative Construction Works Schedule**”) that:
 - (i) addresses any comments on the Indicative Construction Works Schedule provided by DPA Contracting Authority; and
 - (ii) is proportional to the level of detail of the rest of the 30% Design Development Stage DPA Submittals, provided that Dev Co shall ensure that any activity duration shall be no less than one Working Day and no more than 60 Working Days;
- (c) Dev Co shall submit a Construction Works Schedule as part of the 60% Design Development Stage DPA Submittals (the “**Level 2 Construction Works Schedule**”) that:
 - (i) addresses any comments on the Updated Indicative Construction Works Schedule provided by DPA Contracting Authority; and
 - (ii) is proportional to the level of detail of the rest of the 60% Design Development Stage DPA Submittals, provided that Dev Co shall ensure that any activity duration shall be no less than one Working Day and no more than 40 Working Days;
- (d) Dev Co shall submit a Construction Works Schedule as part of the 90% Design Development Stage DPA Submittals (the “**Updated Level 2 Construction Works Schedule**”) that:
 - (i) addresses any comments on the Level 2 Construction Works Schedule provided by DPA Contracting Authority; and
 - (ii) is proportional to the level of detail if the rest of the 90% Design Development Stage DPA Submittals, provided that Dev Co shall ensure that any activity duration shall be no less than one Working Day and no more than 30 Working Days;
- (e) Dev Co shall submit a Construction Works Schedule as part of the Project Proposal (the “**Level 3 Construction Works Schedule**”) that:
 - (i) addresses any comments on the Updated Level 2 Construction Works Schedule provided by DPA Contracting Authority; and
 - (ii) is proportional to the level of detail of the rest of the Project Proposal, provided that Dev Co shall ensure that any activity duration shall be no less than one Working Day and no more than 20 Working Days; and
- (f) subject to the provisions of the Agreement, including Schedule 3 – DPA Submissions and Project Development Process, the Level 3 Construction Works Schedule shall become the Proposed Works Schedule under any Final Project Agreement.

15. EQUIPMENT SUB-SCHEDULE

- 15.1. Dev Co shall develop an equipment schedule (the “**Equipment Sub-Schedule**”) using a rolling wave project planning methodology for the full Equipment and Existing Equipment scope in

relation to the Works, Dev Co shall progressively develop the Equipment Sub-Schedule as part of each Construction Works Schedule.

- 15.2. The Equipment Sub-Schedule shall include all activities associated with Equipment and Existing Equipment in accordance with the requirements outlined in Section 21 of the Draft Project Agreement to support the completion of the Works under a Final Project Agreement.
- 15.3. As a minimum, key milestone dates and activities shall be provided for all Equipment and Existing Equipment in the Equipment Sub-Schedule;
- 15.4. The Equipment Sub-Schedule shall interface with the Construction Document Submittals process to validate the Equipment List (inclusive of Equipment and Existing Equipment) and to make the necessary accommodations in the design of the Project to accommodate the Equipment and Existing Equipment
- 15.5. The Equipment Sub-Schedule must be an integrated component of the Construction Works Schedule and shall include a sufficient level of detail to properly understand the handling of each Equipment tender package and the relationship of the design details of these packages in relation to the overall Works (particularly the user engagement process in relation to Equipment and Existing Equipment) and must, at a minimum, identify:
 - (a) key planning and design activities for Equipment and Existing Equipment, including:
 - (i) the development of design criteria;
 - (ii) the design layout and utilities review, coordination and updates;
 - (iii) Existing Equipment inventory, coordination and updates,
 - (iv) preparation related to the Output Specifications, Shop Drawings review, commissioning, verification, testing and acceptance;
 - (v) a process that supports late procurement for both In-Contract Equipment and Not-In-Contract Equipment to utilize the latest available technology;
 - (vi) flexibility in accommodating the selected Equipment; and
 - (vii) proposed cycles for Contracting Authority to update the Equipment List (as defined in the Draft Project Agreement), including a plan for how the list updates are reflected in the ongoing development of the building design documents;
 - (b) identify specific tasks to be performed by Project Co to schedule, track and manage all aspects of the inventory, procurement, installation, assembly, commissioning, verification and acceptance by Contracting Authority of Equipment and Existing Equipment under a Final Project Agreement, including:
 - (i) Equipment related activities maximizing a late procurement strategy for both In-Contract Equipment and Not-In-Contract Equipment in order to obtain the most advanced and proven medical technology available;

- (ii) development of the procurement specifications for the Equipment at a tender package/Equipment grouping level;
 - (iii) procurement windows for the Equipment coordinated with the overall Construction Works Schedule;
 - (iv) allowances for any revisions to the Project design or Utilities based on the specific technical characteristics of the procured Equipment;
 - (v) integration of Contracting Authority decision-making and required approvals during the procurement activities;
 - (vi) schedules and approach for the inventory, assessment, design, accommodation and transfer of Existing Equipment (inclusive of sub-plans for business continuity of Contracting Authority);
 - (vii) delivery, staging, installation, commissioning of Equipment and Existing Equipment;
 - (viii) Equipment and Existing Equipment receiving, storage and security;
 - (ix) Equipment and Existing Equipment unpacking, assembly, placement and related waste removal; and
 - (x) Equipment and Existing Equipment connection, testing, verification and commissioning activities; and
- (c) the integration with each Phase Completion, Substantial Completion, each Remaining Works Phase Completion and Final Completion activities.

16. BASIS OF CONSTRUCTION WORKS SCHEDULE REPORT

- 16.1. With each Construction Works Schedule, Dev Co shall submit a report on the basic principles underlying and documenting the assumptions made by Dev Co to generate the Construction Works Schedule (each a “**Basis of Construction Works Schedule Report**”).
- 16.2. Dev Co shall ensure that each Basis of Construction Works Schedule Report submitted by Dev Co:
- (a) clearly sets out and identifies Dev Co’s proposed Scheduled Phase Completion Date(s), Scheduled Substantial Completion Date, each Scheduled Remaining Works Phase Completion Date and Scheduled Final Completion Date; and
 - (b) includes a blacklined document comparing the then current version to the immediately preceding version of the Basis of Construction Works Schedule Report. For greater certainty, the blacklined document shall clearly indicate the changes made by Dev Co to the immediately preceding version of the Basis of Construction Works Schedule Report.
- 16.3. Each submission shall conform to the requirements of Section 14 of Schedule 12 – Works Scheduling Requirements to the Draft Project Agreement.

17. SUBMISSION AND REVIEW OF DPA WORKS SCHEDULES

17.1. Dev Co shall, in accordance with this Schedule 7, prepare and submit to DPA Contracting Authority:

- (a) by no later than the date that is 20 days following the Effective Date, the Draft Baseline DPA Works Schedule;
- (b) within 10 Business Days of the end of each calendar month following the Effective Date until Commercial Close:
 - (i) a Progress DPA Works Schedule; and
 - (ii) a DPA Works Schedule Progress Report;
- (c) within 10 Business Days of the end of each EV Reconciliation Period and within 10 Business Days of the end of each month thereafter until Commercial Close, an Earned Value Metrics Report satisfying the reporting requirements set out in Appendix B to this Schedule 7;
- (d) within 15 days of Commercial Close, a final Progress DPA Works Schedule with a Data Date equal to Commercial Close; and
- (e) on each applicable date set out in Section 23.2, a Look-Ahead Schedule,

in each case, meeting the requirements of this Schedule 7 to the satisfaction of DPA Contracting Authority.

18. DPA WORKS SCHEDULE PROGRESS REPORT

18.1. Contents of the Report

- (a) Dev Co shall, in accordance with Section 17.1(b)(ii), prepare and deliver to DPA Contracting Authority a narrated report documenting the overall progress and schedule performance of the DPA Works, the variances between the DPA Works Schedules where such variance is greater than 10 Working Days, and any related risks or issues (the “**DPA Works Schedule Progress Report**”).
- (b) The DPA Works Schedule Progress Report shall include the following content:
 - (i) a cover page including the title “DPA Works Schedule Progress Report”, the Project title, date of the report, issuance date, version date, and the version number of the relevant Baseline DPA Works Schedule and Progress DPA Works Schedule, and the DPA Dev Co Representative’s signature approving the report;
 - (ii) “Section 1. Overview”, including a narrated executive summary on progress, any noteworthy milestones achieved or schedule variances, and issues or risks that has or may impact the schedule;

- (iii) “Section 2. Updated General Assumptions”, including the assumptions used by Dev Co to generate the schedule
- (iv) “Section 3. Schedule analysis”, including at least:
 - A. the forecast and past Key DPA Works Milestones;
 - B. an assessment and analysis of the risk of delay to the Baseline DPA Works Schedule and the mitigation of such risks in a tabular form;
 - C. a list of all activities with no progress reported for the two subsequent months and each start and/or finish date equal to the Data Date, with a discrete explanation for the failure to start and/or finish each such activity; and
 - D. a list of activities which have been started but due to lack of progress the remaining duration for each such activity has not decreased within two subsequent months, with the discrete explanation for circumstances and reasons for failure to finish and/or progress.
- (v) “Section 4. Critical Path Analysis” that includes the following information;
 - A. “Critical Path risk”, describing in tabular form the risks to complete the Critical Path Activities (including Activity ID) to (I) achieve Project Proposal Submission by the Project Proposal Submission Deadline, and (II) execute a Final Project Agreement in accordance with the Agreement by the scheduled date for Commercial Close, Dev Co’s strategy to mitigate or avoid these risks;
 - B. overall project Critical Path as calculated using the Current Progress DPA Works Schedule and Near Critical Path Activities that includes a Gantt Chart schedule that shows the Critical Path of the Project as well as Near Critical Path Activities;
 - C. a narrative that describes the changes in the Critical Path or Near Critical Path Activities from the previous month;
 - D. a table entitled “Milestone and Critical Path Variances”, listing all Key DPA Works Milestones and all Critical Path Activities, and for each, only if the variance between the current reporting period and the previous reporting period is greater than five Working Days, listing:
 - (1) the Activity ID or milestone ID and name;
 - (2) the baseline start and end date in accordance with the Baseline DPA Works Schedule;
 - (3) the previous period’s planned start and end date in accordance with the previous Progress DPA Works Schedule;

- (4) the forecast start and end date in accordance with the Current Progress DPA Works Schedule, clearly indicating any milestones to be achieved in the following 12 week period;
 - (5) the actual start and end date where applicable;
 - (6) the physical percentage completion;
 - (7) “Total Variance” expressed in Working Days, calculated as a difference of forecast finish date from the current Progress DPA Works Schedule and the finish date from the Proposed DPA Works Schedule, the Baseline DPA Works Schedule, the Revised Baseline DPA Works Schedule, as applicable; and
 - (8) the “Reporting Period Variance” calculated as the forecast finish date from the current Progress DPA Works Schedule minus the finish date from the immediately previous Progress DPA Works Schedule, expressed in Working Days;
- (vi) “Section 5. Change Log” including:
- A. a change log register (the “**Change Log**”) detailing all changes made between an immediately previous Progress DPA Works Schedule and the Baseline DPA Works Schedule or Revised Baseline DPA Works Schedule, including any of the following changes:
 - (1) addition, deletion or changes to activity relationships;
 - (2) addition or retiring of DPA Works Activities or DPA Works Milestones or changing the description of activities;
 - (3) changes to, or release of, schedule constraints, and if so, what constraints were removed;
 - (4) changes to the activity calendar;
 - (5) changes to any activity durations;
 - (6) changes to Price Submission Form Activity assigned cost value;
 - (7) changes to milestones; and
 - (8) any other changes;
 - B. for each change described in the Change Log:
 - (1) the unique document identifier number, as shown in the DPA Works Schedule Submission Register, for both the Current Progress DPA Works Schedule in which the change has been

- made, and the previous version of the Progress DPA Works Schedule that has changed;
- (2) the activity or milestone identification number and name;
 - (3) any changes to Primavera P6 scheduling options and settings;
 - (4) the type of change; and,
 - (5) a discrete explanation for circumstances and reasons leading to the change, provided that Dev Co shall not provide a general blanket explanation, for example similar to “change in strategy” or “according to recent market conditions,” but shall diligently explain in detail the strategy change or the specific conditions that led to that change;
- (vii) “Section 6. Progress” including:
- A. in accordance with Appendix B to this Schedule 7, a report, in tabular and graphical form, including:
 - (1) an S-Curve showing Planned Value (PV) vs. Earned Value (EV) and Cash Flow Projection (forecast); and
 - (2) a Schedule Performance Index “SPI” trend over time; and
 - B. the overall progress expressed as a percentage of the physical work completed;
- (viii) “Section 7. Potential Delays” including a register of all matters which are likely to delay the DPA Works (including Force Majeure Events) and for each a short description, the date on which the Notice required pursuant to DPA Section 10.3 of the Agreement was or is to be provided to DPA Contracting Authority, the mitigation strategy implemented by Dev Co, and the current status;
- (ix) “Section 8. DPA Contracting Authority Submittal Review”, including an updated Review Procedure Activities Register; and
- (x) any other information specifically requested by DPA Contracting Authority on the progress of the DPA Works; and
- (xi) Progress DPA Works Schedule with version number.

19. EARNED VALUE MANAGEMENT PLAN

19.1. Content of the Plan

- (a) With each of the Proposed DPA Works Schedule, Draft Baseline DPA Works Schedule, and any Revised Baseline DPA Works Schedule, Dev Co shall submit a summary

document which meets the requirements set out in this Section 19 for review in accordance with the DPA Review Procedure (each an “**Earned Value Management Plan**”).

- (b) Each Earned Value Management Plan submitted by Dev Co shall:
 - (i) comply with the PMI Standard for EVM (ANSI/PMI 19-006-2019) or AACE Recommended Practices; and
 - (ii) include a blacklined document comparing the then current version to the immediately preceding version of the Earned Value Management Plan clearly indicating the changes made by Dev Co to the Earned Value Management Plan from the immediately preceding version.
- (c) The Earned Value Management Plan shall describe the progress measurement method, technique, and criteria, as applicable, to be used for progress evaluation of the DPA Works Activities. For clarity, principle methods for earned value measurement rules are listed in Section 19.1(d). The Earned Value Management Plan shall include details for these methods and how they will be implemented for the DPA Works Activities.
- (d) The following methods can be used for earned value measurement:
 - (i) units complete;
 - (ii) incremental milestones;
 - (iii) start/finish;
 - (iv) cost ratio; and
 - (v) weighted units.

For clarity, supervisor opinion option shall not be used.
- (e) Where more than one of the methods listed in Section 19.1(d) may be used, the method which allows the most objective, accurate, and timely assessment that is appropriate for the applicable project work, schedule, and cost status shall be used.
- (f) Notwithstanding Section 19.1(d), the Earned Value Management Plan shall reflect that all of the Development Fee and Contingency and Corporate Security amounts shall, for earned value measurement purposes, be payable to Dev Co in accordance with DPA Section 13.2 of the Agreement and Schedule 8 – DPA Payment of the Agreement, on an equal monthly basis during the period Dev Co is entitled to payment by the Hospital pursuant to such DPA Section and Schedule for the performance of the DPA Works under the Agreement.

20. EARNED VALUE METRICS REPORT

- 20.1. Dev Co shall, in accordance with Section 17.1(c), prepare and deliver to DPA Contracting Authority a report setting out the Earned Value Metrics, including the progress measurement for in-progress and actualized activities and the metrics for the payment of the Development Fee and Contingency and Corporate Security amounts as described in Section 19.1(f), all in accordance

with the requirements set out in Appendix B of this Schedule 7 (each an “**Earned Value Metrics Report**”).

21. PRICE SUBMISSION FORM ACTIVITY

- 21.1. Dev Co shall include the Price Submission Form Activities in the Proposed DPA Works Schedule and the Baseline DPA Works Schedule (and carried through in the Progress DPA Works Schedules and any Revised Baseline DPA Works Schedule) as set out in Appendix E to this Schedule 7.
- 21.2. Dev Co shall use “Level of Effort” summary activity type setting for each Price Submission Form Activity and link it to the applicable DPA Works Activities and DPA Works Milestones.
- 21.3. All Price Submission Form Activities shall be cost loaded in accordance with the Price Submission Form.

22. WORK BREAKDOWN STRUCTURE

- 22.1. All DPA Works Activities and the Development Fee and Contingency and Corporate Security shall be placed under Work Breakdown Structure elements set out in Appendix F to this Schedule 7.

23. LOOK-AHEAD SCHEDULES

23.1. Look-Ahead Schedule Validity

- (a) Dev Co shall ensure that DPA Works Milestone dates and the DPA Works Activity dates and durations indicated in each Current Look-Ahead Schedule correspond to:
 - (i) for each Look-Ahead Schedule submitted to DPA Contracting Authority prior to the submission of the first Progress DPA Works Schedule to DPA Contracting Authority pursuant to Section 17.1(b)(i), the DPA Works Milestone dates and DPA Works Activity dates and durations set out in the Proposed DPA Works Schedule for each specific period; and
 - (ii) for each Look-Ahead Schedule submitted to DPA Contracting Authority following the submission of the first Progress DPA Works Schedule to DPA Contracting Authority pursuant to Section 17.1(b)(i), the DPA Works Milestone dates and DPA Works Activity dates and durations set out in the Current Progress DPA Works Schedule, for each specific period,

provided that, in each case, if any of these DPA Works Milestone dates or DPA Works Activity dates or durations do not correspond with, as applicable, the Proposed DPA Works Schedule or the Current Progress DPA Works Schedule, or, as applicable, the Proposed DPA Works Schedule or the Current Progress DPA Works Schedule does not comply with the other requirements of the Agreement, the Current Look-Ahead Schedule shall be deemed to be null and void and shall not be relied upon, and Dev Co shall either:

- A. revise the Current Look-Ahead Schedule and submit the revised version to DPA Contracting Authority; or

- B. generate a new version of the Progress DPA Works Schedule that sets out the correct DPA Works Milestone dates and DPA Works Activity dates and durations, and satisfies the other requirements of the Agreement,
- within five Business Days of becoming aware of the discrepancy.
- (b) The Current Look-Ahead Schedule shall:
- (i) prior to the submission of the first Progress DPA Works Schedule to DPA Contracting Authority pursuant to Section 17.1(b)(i), be consistent with, and include all activities set out in, the Proposed DPA Works Schedule during the period of time applicable to such Current Look-Ahead Schedule, provided that all such activities shall be described to a greater level of detail than as set out in the Proposed DPA Works Schedule unless otherwise agreed by DPA Contracting Authority in writing; and
 - (ii) after the submission of the first Progress DPA Works Schedule to DPA Contracting Authority pursuant to Section 17.1(b)(i), be consistent with, and include all activities set out in, the Current Progress DPA Works Schedule during the period of time applicable to such Current Look-Ahead Schedule, provided that all such activities shall be described to a greater level of detail than as set out in the Progress DPA Works Schedule unless otherwise agreed by DPA Contracting Authority in writing.
- (c) Each activity in the Look-Ahead Schedule shall include the Activity ID of its corresponding activity in, as applicable, the Proposed DPA Works Schedule or the Current Progress DPA Works Schedule. One activity in, as applicable, the Proposed DPA Works Schedule or Current Progress DPA Works Schedule may be represented in detail by more than one activity in the Look-Ahead Schedule.

23.2. Look-Ahead Schedule Submission and Requirements

- (a) Dev Co shall submit the first Look-Ahead Schedule to DPA Contracting Authority on the first Business Day of the second calendar week following the Effective Date.
- (b) Following the delivery of the first Look-Ahead Schedule to DPA Contracting Authority pursuant to Section 23.2(a), Dev Co shall submit each subsequent Look-Ahead Schedule to DPA Contracting Authority on each date that is 2 calendar weeks after the submission of the previous Look-Ahead Schedule.
- (c) The Look-Ahead Schedule shall be submitted in a list or bar chart format.
- (d) The Look-Ahead Schedule shall, at a minimum, contain the following elements:
 - (i) the title “Look-Ahead Schedule” and the date range for which the Look-Ahead Schedule is applicable in the title block;
 - (ii) an expansion of each activity set out in the Proposed DPA Works Schedule or the Progress DPA Works Schedule, as applicable, that is in progress, due to

commence, or due to be completed during the four calendar week period beginning from the Data Date for that Look-Ahead Schedule, set out in sufficient detail:

- A. to facilitate the planning and coordination of activities by DPA Contracting Authority and its stakeholders that affect progress of the DPA Work;
 - B. to enable DPA Contracting Authority to meaningfully track the progress of the DPA Works; and
 - C. such that no single activity set out in the Look-Ahead Schedule has a duration of more than five Working Days, unless otherwise agreed by DPA Contracting Authority in writing;
- (iii) all activity progress for the two calendar week period prior to the Data Date for the Look-Ahead Schedule; and
- (iv) all activities related to each DPA Variation confirmed by a DPA Variation Confirmation issued to a greater level of detail than indicated in the Progress DPA Works Schedule.
- (e) For clarity, where Dev Co is required to provide Notice to DPA Contracting Authority pursuant to the Agreement, whether in respect of an event, milestone, circumstance, activity or otherwise, the inclusion of any information relating to such event, milestone, circumstance or activity or otherwise, in the Look-Ahead Schedule shall not satisfy any such Notice requirement.

APPENDIX A

DPA WORKS SCHEDULES TECHNICAL REQUIREMENTS

1. DPA WORKS SCHEDULES TECHNICAL REQUIREMENTS

1.1 Software Requirements

- (a) Dev Co shall:
 - (i) identify activities in a graphical, time-scaled, horizontal bar chart format;
 - (ii) generate the DPA Works Schedules using Primavera 6 Professional Release: 8.3.0 or newer, to the satisfaction of DPA Contracting Authority to support the completion of the DPA Works in accordance with the Agreement. If Dev Co recommends, and DPA Contracting Authority approves, the use of scheduling software other than Primavera, Dev Co shall provide four licences and all software updates for the duration of the DPA Term and Project Term for use by DPA Contracting Authority and Contracting Authority. Where software specific terminology is used in this Schedule 7 to defined specific requirements, Dev Co shall implement measures to achieve a similar or higher level of scheduling control, quality, content and output regardless of the software used to generate the DPA Works Schedules.
- (b) Dev Co shall ensure that each DPA Works Schedule submitted to DPA Contracting Authority shall be submitted in the following file formats;
 - (i) three, word searchable high-resolution colour Portable Document Format (.PDF) version of each DPA Works Schedule with one showing all content, the second one only showing the Critical Path Activities and the Near Critical Path Activities, and the third one only showing the Longest Path and first ten float paths. Each DPA Works Schedule layout shall be arranged by WBS, including “Gantt chart”, “Activity ID” “Activity Name”, “Original Duration”, “Remaining Duration”, “Physical Percent Complete”, “Start”, “Finish”, “Baseline Start”, “Baseline Finish”, “Total Float” and “Baseline Total Float”.
 - (ii) Dev Co shall submit the .XER file and .XML file used to generate all DPA Works Schedules together with PDF soft version of the DPA Works Schedules fully compliant with all requirements of the Agreement.
- (c) Dev Co shall base a given month’s .XER file on the preceding month’s .XER file.
- (d) Dev Co shall create and maintain a register detailing the submission of each of the DPA Works Schedule document sets (the “**DPA Works Schedule Submission Register**”). The register shall include the DPA Works Schedule document title, submission date, Schedule Revision Date, Data Date, and version number. The updated register shall be included in any DPA Works Schedules submission.
- (e) Upon DPA Contracting Authority’s request, Dev Co shall provide the details of the software and any additional software plug-ins used by Dev Co, a copy of any templates,

and the details for any software settings Dev Co has used in its scheduling software, such as calendar settings, user and administrative preferences, schedule settings, and any other information required to enable DPA Contracting Authority to replicate the DPA Works Schedules submitted by Dev Co using the native file formats provided by Dev Co.

1.2 Title Block Requirements

- (a) Dev Co shall include in the title-block of each of the DPA Works Schedules:
 - (i) Project title;
 - (ii) Unique project identifier number;
 - (iii) Unique document identifier number;
 - (iv) Title of the document (i.e. “Proposed DPA Works Schedule”, “Draft Baseline DPA Works Schedule”, “Baseline DPA Works Schedule”, “Progress DPA Works Schedule”, “Look-Ahead Schedule”);
 - (v) DPA Works Schedules (baseline) version number, and the date on which the Baseline DPA Works Schedule was agreed. If the Baseline DPA Works Schedule has not been agreed, state “not-agreed” instead of a date;
 - (vi) Data Date, when applicable;
 - (vii) Version number;
 - (viii) Author name;
 - (ix) Date on which the document was published for distribution (Data Date being “as of ddmmyyyy”), and
 - (x) Any other information as required pursuant to the Agreement.

1.3 Guides and Standards

- (a) In addition to complying with the provisions of the Agreement, including this Schedule 7, Dev Co shall provide all DPA Works Schedules such that each is consistent with the following recommended practices and guidelines;
 - (i) PMI, “A Guide to the Project Management Body of Knowledge (PMBOK® Guide)- Sixth Edition;”
 - (ii) PMI, “Construction Extension to the PMBOK Guide -Third Edition;”
 - (iii) AACE, International Recommended Practice, No. 37R-06 “Schedule Levels of Detail – As Applied in Engineering, Procurement and Construction;”
 - (iv) AACE International Recommended Practice, No. 29R-03, “Forensic Schedule Analysis;”

- (v) PMI, “The Practice Standard for Work Breakdown Structures - Third Edition”;
- (vi) PMI, “The Practice Standard for Scheduling - Second Edition”;
- (vii) AACE International, “Skills & Knowledge of Cost Engineering, Sixth Edition”;
and,
- (viii) AACE International, Recommended Practice, No. 38R-06 “Documenting the
Schedule Basis”.

1.4 **Dates**

- (a) Dev Co shall include the following dates in each DPA Works Schedule:
 - (i) the dates any actions or acceptances are required by DPA Contracting Authority;
and
 - (ii) the dates that Dev Co requires specific information from third parties.

1.5 **General Requirements for DPA Works Schedules**

- (a) All DPA Works Schedules shall be fully calculated.
- (b) For each DPA Works Activity, DPA Works Milestone, or any other activity or milestone included in the DPA Works Schedules, at least include:
 - (i) a unique activity identification number (“**Activity ID**”) that shall be alphanumeric. The first four characters are uniquely related to the Project;
 - (ii) a unique name or description using consistent and intuitive terminology that would be understandable to DPA Contracting Authority and only using activity descriptions that begin with a verb or work function followed by an object;
 - (iii) actual start and actual finish dates, and Dev Co shall include:
 - (A) an actual start date for all activities with progress registered, and provide the physical % progress for all activities with an actual start date; and
 - (B) an actual finish date for all activities with [REDACTED]% progress, and [REDACTED]% physical progress registered for all activities with an actual finish date;
 - (iv) original planned duration as defined by the Baseline DPA Works Schedule, indicated as Working Days and not calendar days, which duration shall be the most-likely duration and used for the Critical Path calculation and shall be at least one work day long. Zero duration activities shall be coded as milestones and not activities;

- (v) physical % completion, for clarity, all activities shall use the same percentage completion type representing the physical completion of the activity, and shall not use any other completion type i.e. duration completion, etc.;
 - (vi) remaining duration, manually entered or calculated when entering the physical % completion and the forecasted finish date;
 - (vii) actual duration for all completed DPA Works Activities;
 - (viii) calendar assigned;
 - (ix) total float or slack (e.g. the amount of time that the activity can be delayed without delaying the Project Proposal Submission or Commercial Close);
 - (x) free float (i.e. the amount of time that the activity can be delayed without delaying the early start of its successor activity);
 - (xi) relationship with other DPA Works Activities and DPA Works Milestones; and
 - (xii) DPA Works Activity or DPA Works Milestone lag.
- (c) Dev Co shall set the duration type to “Fixed Duration and Units” for all activities unless substantiated by Dev Co and accepted by DPA Contracting Authority, in its sole discretion.
 - (d) Dev Co shall not input or assign any progress data for any activity after the Data Date in any Progress DPA Works Schedule.
 - (e) Dev Co shall assign cost value to all Price Submission Form Activities in any DPA Works Schedule.
 - (f) Dev Co shall not use, assign, or apply user defined fields for cost in any DPA Works Schedules.
 - (g) All DPA Works Schedules activities shall use the “task dependent”, “start milestone”, “finish milestone” or “level of effort” activity type; no schedule activity shall be resource dependent or WBS summary-type activity.
 - (h) Dev Co shall minimize the use of level-of-effort type activities in any DPA Works Schedule; level-of-effort type activities shall only be used to demonstrate the overall duration for a group of activities.
 - (i) Dev Co shall not incorporate any changes to WBS in any Progress DPA Works Schedule without the prior written consent of DPA Contracting Authority.
 - (j) Any out-of-sequence relationships in a Progress DPA Works Schedule where an activity has started and the predecessor activity has not finished shall be modified or removed by Dev Co to clear any such out-of-sequence relationship. For clarity, any changes to the logics shall be reported in the Change Log.

- (k) Dev Co shall not change any actual data reported in a Progress DPA Works Schedule without the prior written consent of DPA Contracting Authority, in its sole discretion, including, without limitation, the reported physical progress percentage, the actual start date and actual finish date, earned cost, and Earned Value Metrics.
- (l) Dev Co shall not change any actual data reported in a Progress DPA Works Schedule without the prior written consent of DPA Contracting Authority, in its sole discretion, including the reported earned cost, physical progress percentage, the actual start date and actual finish date.
- (m) Dev Co shall not change the activity name for any DPA Works Schedule activity unless required by this Schedule 7 or agreed to by DPA Contracting Authority.
- (n) Dev Co shall not change the Activity ID in any DPA Works Schedule without the prior written consent of DPA Contracting Authority, in its sole discretion.
- (o) Dev Co shall add activities to show all the current revision cycles in any Progress DPA Works Schedule, as of the Data Date, for any DPA Submittals.
- (p) In each DPA Works Schedule, Dev Co shall assign all required logic relationships between the “DPA Works Activities” and the relevant DPA Submittals activities revision as set out in Schedule 3 – DPA Submissions and Project Development Process and the Agreement. For clarity, Dev Co shall include the relevant activity relationships in the DPA Works Schedules to indicate the DPA Works Activities dependent on the specific DPA Contracting Authority Review Period for a specific DPA Submittal.
- (q) The Progress DPA Works Schedule shall include the current progress of the DPA Works as of the Data Date of the specific DPA Works Schedule, including:
 - (i) the percentage completion for each schedule activity and the expected date of completion of each milestone. For clarity, the percentage represents the physical percentage of completion of the underlying DPA Works Activity (and not percentage of completion by time) and represents payment progress;
 - (ii) the actual start date for all in progress activities;
 - (iii) the actual start and end date for all completed activities;
 - (iv) the actual date for each milestone achieved;
 - (v) the earned cost for all in progress and completed activities
 - (vi) the current forecast duration, start and end date for each of the remaining activities; and
 - (vii) the current forecast date to achieve each of the remaining milestones.
- (r) Dev Co shall group the activities to clearly identify DPA Works of separate stages where the completion of a stage of DPA Works or completion of a series of linked stages results

in the achievement of one of the Key DPA Works Milestones, and each Key DPA Works Milestone shall be the finish milestone for the series of staged DPA Works.

- (s) Dev Co shall employ project level user defined activity codes as set out in the Appendix C to this Schedule 7 “Activity Code Guideline” that allows for the classification, categorizing and organising of each DPA Works Activity and DPA Works Milestone to filter, select and sort the DPA Works Activities and DPA Works Milestones for reporting and analytical purposes based on who is carrying out the work, the stage of the DPA Works, and section as agreed to with DPA Contracting Authority and further defined in Appendix C to this Schedule 7. All activity codes shall be unique and shall have appropriately defined unique definitions using consistent and intuitive terminology that would be understandable to DPA Contracting Authority.
- (t) Dev Co shall employ a coding scheme and activity grouping in the DPA Works Schedules to ensure that each DPA Works Schedule deliverable can be generated through the appropriate roll-up of activities. For clarity, each defined higher order activity may act as a summary of the lower order activities representing the overall effort to complete the higher order activity, include sufficient detail to identify the major activities and milestones for planning, coordination, progress and earned value assessment purposes.
- (u) Dev Co shall utilize colour coding of Work Breakdown Structure and other visual means to facilitate the understanding of the DPA Works Schedules by DPA Contracting Authority.
- (v) Dev Co shall organize all DPA Works Activities and DPA Works Milestones in accordance with Section 22 and the Work Breakdown Structure set out in Appendix F of this Schedule 7.
- (w) Dev Co shall assign durations to DPA Works Activities that are consistent with the scope of work and complexity of the activity, are based on Good Industry Practices, include sufficient time to accommodate a reasonable degree of minor modifications in process or approach not uncommon for an activity of that type.

1.6 Sequencing Logic

- (a) Dev Co shall use unconstrained sequencing logic and Dev Co shall not use imposed date constraints to replace or limit sequencing logic for any DPA Works Activity or DPA Works Milestone, except for the first starting milestone defining the Effective Date, unless it is impossible to sequence the work otherwise.
 - (i) When a constraint is used it shall only be of the “start-on or after” or “finish-on or before” constraint types and total constrained activities shall be less than [REDACTED]% of total incomplete activities.
 - (ii) For every imposed date constraint used, Dev Co shall provide a narrative in the Basis of DPA Works Schedule Report detailing the reason for using the imposed date constraint and the scheduling methodology used to prevent inaccuracy when calculating the Critical Path and available float.

- (iii) For clarity, Dev Co shall never use the “Expected finish”, “Start on”, “Finish on”, “Mandatory start”, “Mandatory finish”, or any other similar constraint type, nor any other constraint type that would impact on the float calculations to determine the Critical Path.
- (b) Dev Co shall include inter-relationships and logic dependencies between all DPA Works Activities, DPA Works Milestones, or any other activities or milestones included in the DPA Works Schedules, and Dev Co shall:
 - (i) use closed sequence logic for each DPA Works Activity. For clarity, each DPA Works Activity shall have at least one predecessor and at least one successor, and each DPA Works Activity shall have a start and a finish relationship;
 - (ii) use closed sequence logic for each DPA Works Milestone. For clarity, each DPA Works Milestone shall have at least one predecessor except for the first DPA Works Milestone (denoting the commencement of the Advance DPA Works), and have at least one successor except for the last DPA Works Milestone denoting Commercial Close, and each DPA Works Milestone, except for the first and last, shall have a start and a finish relationship;
 - (iii) not use the start-to-finish (SF) activity relationship type between activities;
 - (iv) not use a negative lag between any DPA Works Activities and/or DPA Works Milestones;
 - (v) only use of positive lag between DPA Works Activities and/or DPA Works Milestones upon substantiation by Dev Co and acceptance by DPA Contracting Authority, to model a specific waiting duration for a process directly related to the preceding DPA Works Activity (e.g. due to concrete curing etc.) and provide the explanation for lags in the narrative of relevant reports such as the Basis of DPA Works Schedule Report or the DPA Works Schedule Progress Report;
 - (vi) for any two DPA Works Activities or DPA Works Milestones with any type of relationships defines a lag no longer than the duration of the predecessor duration;
 - (vii) not use reverse logic, for clarity, a DPA Works Activity shall not have a finish-to-finish relationship with a predecessor, and a DPA Works Activity shall not have only a start-to-start (SS) relationship with a successor;
 - (viii) only define one relationship per activity or milestone pair, except for the finish-to-finish (FF) and start-to-start (SS) relationship pair that may be used together for an activity or milestone pair; and
 - (ix) DPA Works Schedules shall not contain any open starts or open finishes DPA Works Activities, for clarity, all DPA Works Activities shall have a relationship that defines the requirements for the finishing of that activity; each DPA Works Activity shall have a finish-to-start (FS) or finish-to-finish (FF) relationship with another successor activity.

1.7 Calendar

- (a) Dev Co shall define and use appropriate non-global project level activity-based calendars, and for each calendar define:
 - (i) a descriptive calendar name using intuitive terminology that would be understandable to DPA Contracting Authority, all calendar titles shall start with the word “project name-” i.e. project name-winter calendar;
 - (ii) the intended Working Days and working hours conforming to the requirements of the Agreement and any other governing approvals and permits that are used as the basis for Critical Path calculations, and all non-Working Days;
 - (iii) all non-Working Days including, but not limited to, all public holidays, winter shut-down, any environmental restricted time periods etc. for the full Project timeframe; and
 - (iv) the first day of each work week as a Monday.

For clarity, global calendars shall not be used.

- (b) Only specify activity durations using full Working Days and shall not use fractional durations (i.e. 5.5 days).
- (c) For each calendar, Dev Co shall include all statutory holidays in the Province of Ontario and shall use days as the planning unit for each activity.
- (d) Dev Co shall assign a calendar to each activity based on when such activity is planned to occur and in accordance with the requirements of the Agreement.

1.8 **Critical Path**

- (a) Dev Co shall determine and indicate the critical path applicable to (i) achieve Project Proposal Submission by the Project Proposal Submission Deadline, and (ii) execute a Final Project Agreement in accordance with the Agreement by the scheduled date for Commercial Close, in each DPA Works Schedule. The critical path (the “**Critical Path**”) shall:
 - (i) be calculated using the “retained logic” scheduling methodology and shall not use a progress override option;
 - (ii) not include any “level of effort” type activities. For clarity, all activities on the Critical Path shall be task dependent activities or milestones;
 - (iii) not have any out-of-sequence activities;
 - (iv) not have constraints except for the Project Proposal Submission Deadline and Commercial Close (unless otherwise agreed by DPA Contracting Authority, in its sole discretion);

- (v) be the result of an unmodified software calculation of the Critical Path using the Critical Path Method, for clarity, Dev Co shall not employ any additional filters or any other manual manipulation whatsoever to calculate the Critical Path;
 - (vi) be continuous and logic driven; and
 - (vii) consist only of activities with a total float less than or equal to zero, for clarity, if a single day is added to any one of the Critical Path Activities, the overall duration of the Critical Path shall also be increased by a single day;
- (b) in situations where the same Critical Path is not identified as calculated using the software’s various standard Critical Path filters, provide all Critical Path alternatives together with Dev Co’s narrative on which Critical Path is most representative of the DPA Works;
 - (c) Dev Co shall use finish on or before constraint type for the Project Proposal Submission Deadline and Commercial Close;
 - (d) the total number of Critical Path Activities to be less than [REDACTED]% of the total activities, and the number of Near Critical Path Activities to be less than [REDACTED]% of the total activities, unless substantiated by Dev Co and accepted by the DPA Contracting Authority; and
 - (e) when required to do so by DPA Contracting Authority, indicate all Near Critical Path Activities.

1.9 Primavera P6 Scheduling Settings

- (a) Dev Co shall use the following Primavera P6 settings for all calculations in each DPA Works Schedule:
 - (i) if using multiple projects, all projects should be opened together and the “Ignore relationships to and from other projects” option shall not be selected;
 - (ii) “Use expected finish dates” option shall not be selected;
 - (iii) “Level resources during scheduling” option shall not be used;
 - (iv) when scheduling progressed activities, the “retained-logic” scheduling methodology must be applied;
 - (v) start-to-start lag shall be calculated by early start;
 - (vi) Critical Path Activities shall have a total float less than or equal to zero;
 - (vii) total float shall be calculated based on the finish date of all opened projects;
 - (viii) total float shall be calculated as follows: finish float = late finish – early finish; and
 - (ix) Unless substantiated by Dev Co and accepted by DPA Contracting Authority the calendar for scheduling relationship lag shall be a predecessor activity calendar.

1.10 **Retired Activity**

- (a) A retired activity is an activity or group of activities that are no longer required (related to the DPA Works represented by those activities that have been removed from the Agreement) (“**Retired Activity**”);
- (b) No DPA Works Activity or DPA Works Milestone shall be retired from any DPA Works Schedule for any reason unless agreed to by DPA Contracting Authority;
- (c) If Dev Co intends to delete a DPA Works Activity or DPA Works Milestone within any Progress DPA Works Schedule for any reason, a “retired activities” node shall be created at WBS level 2 and to enable a retired activity to be moved to “retired activities” WBS band;
- (d) For any Retired Activity, all logic dependencies shall be removed for that activity;
- (e) The Progress DPA Works Schedule logic shall be adjusted to ensure that the removal of any Retired Activity does not leave any open ends and that the integrity of the schedule logic is not compromised. For clarity, the changes shall be reported in the Change Log;
- (f) All Retired Activities shall have an actual start date and finish date applied applicable to the month and year of deletion (the day prior to the Data Date of that month) and the activity description shall be modified to include “Retired “ as a prefix; and
- (g) All activity codes, and cost values assigned to that retired activity shall be removed and cost value associated with that activity shall be reassigned to a “not completed” activity in the schedule and provide the explanation for the values movement in the Change Log.

APPENDIX B

DPA WORKS SCHEDULE EVM REPORTING REQUIREMENTS

1. DEFINITIONS

- 1.1. “**Planned Value (PV)**” has the meaning set out in the latest edition of the ‘Practice Standards for Earned Value Management’ by the Project Management Institute Inc.
- 1.2. “**Earned Value (EV)**” has the meaning set out in the latest edition of the ‘Practice Standards for Earned Value Management’ by the Project Management Institute Inc.
- 1.3. “**Schedule Performance Index (SPI)**” has the meaning set out in the latest edition of the ‘Practice Standards for Earned Value Management’ by the Project Management Institute Inc.

2. DPA WORKS SCHEDULE EVM REQUIREMENTS

- 2.1. Dev Co shall include cost data to allow for earned value calculations on both an overall and year-to-date basis, cash flow forecasting up to the date DPA Contracting Authority provides a Notice to Proceed to Commercial Close in accordance with the Agreement, including a year-end earned value forecast for each financial year, and performance reporting.
- 2.2. All Price Submission Form Activities included in the Proposed DPA Works Schedule, draft of the Baseline DPA Works Schedule, any update of the Baseline DPA Works Schedule and all subsequent Progress DPA Works Schedules shall be cost loaded, including all costs. For clarity, all Price Submission Form Activities representing a works activity for which Dev Co would require payment in accordance with DPA Section 13.2 of the Agreement and Schedule 8 – DPA Payment of the Agreement shall have a cost value greater than zero representing the actual prorated Dev Co cost to perform each Price Submission Form Activity, and the sum of all of the Price Submission Form Activity cost allocations, the Cash Allowance Amounts and the Development Fee and Contingency and Corporate Security amounts to be paid to Dev Co in accordance with the Agreement shall be equal to the overall value of the contract to complete the DPA Works.
- 2.3. The scheduling information and cost data shall be sufficiently detailed to allow for cost data with an appropriate distribution to generate cash flow data during each stage of the DPA Term described in Section 1.3(a) of Schedule 3 – DPA Submissions and Project Development Process. Dev Co shall use the data to develop and provide to DPA Contracting Authority in a format acceptable to DPA Contracting Authority, the tabulated data and a cumulative “S”- curve graph plotting against each Contract Month from the Effective Date until Commercial Close.
 - (a) the baseline forecast cash flow in accordance with the latest acceptable Baseline DPA Works Schedule;
 - (b) the actual Earned Value (EV) in accordance with the data from the Progress DPA Works Schedule; and
 - (c) the revised forecast cash flow to complete the DPA Works in accordance with the Current Progress DPA Works Schedule.

- 2.4. From the Effective Date until Commercial Close, Dev Co shall report the progress measurement for each in progress and actualized activities along with the following metrics for the project:
- (a) Planned Value (PV) as calculated up to the Data Date;
 - (b) Earned Value (EV) as calculated up to the Data Date;
 - (c) Schedule Performance Index (SPI) = Earned Value (EV) / Planned Value (PV), expressed as a percentage;
 - (d) Schedule Variance (SV); The difference between the work completed and the work planned to be completed by the Data Date $SV = EV - PV$; and
 - (e) SV%; the ratio of Schedule Variance to Planned Value (PV) in percentage $SV\% = SV/PV$, (collectively, the “**Earned Value Metrics**”).
- 2.5. Dev Co shall analyse the result of the above EV indicators and provide the recommended mitigation action if necessary.
- 2.6. Each activity representing the work pursuant to a DPA Variation Confirmation shall be cost loaded in DPA Works Activities specifically for the related DPA Variation Confirmation work and having unique Activity ID’s with the agreed value, the value of these DPA Variation Confirmations shall however not be included in any calculation pursuant to Section 2.4 of this Appendix B to this Schedule 7 unless that DPA Variation Confirmation resulted in the adjustment of the latest accepted Baseline DPA Works Schedule.
- 2.7. The Table below sets out the Earned Value Metrics reporting requirements and shall be populated and presented with each Earned Value Metrics Report.

Project-wide Summary - EV

Data	Effective Date (ED)	ED plus one month (MMYYYY)	ED plus two month (MMYYYY)	...	Every month through to Commercial Close (CC) (MMYYYY)
PV (Period)					
EV (Period)					
PV (Cumulative)					
EV (Cumulative)					
SPI (Period)					
SPI (Cumulative)					

APPENDIX C

ACTIVITY CODE AND USER DEFINED FIELDS (UDF) REQUIREMENTS

1. ACTIVITY CODE AND USER DEFINED FIELD (UDF) REQUIREMENTS

- (a) For each DPA Works Activity, DPA Works Milestones, or any other activity or DPA Milestone Events included in the DPA Works Schedules, Dev Co shall use the activity codes defined as follows. Throughout the duration of the Project, DPA Contracting Authority may adjust listed coding dictionary and add or remove coding requirements.

- (i) General

Activity Code/UDF	Description
THPM - Responsible Party	Assign responsibility for all activities to relevant responsible party.

- (ii) THPM – Responsible Party Code Values

Description	Code Value
DPA Contracting Authority	DCA
Dev Co	DCO
Dev Co Party	DCP
Third Party Contracting	TPC

APPENDIX D

PROPOSED DPA WORKS SCHEDULE

[REDACTED]

APPENDIX E

PRICE SUBMISSION FORM ACTIVITIES

[REDACTED]

APPENDIX F

WORK BREAKDOWN STRUCTURE

[REDACTED]

SCHEDULE 8

DPA PAYMENT

1. DEFINITIONS AND GENERAL

1.1 Definitions

In this Schedule 8, unless the context indicates a contrary intention, terms that are defined in the Agreement (and not otherwise defined in this Schedule 8) shall have the same meanings given to them in the Agreement and the following terms shall have the following meanings:

- (a) “**Bank Account**” has the meaning given in Section 2.7(a).
- (b) “**Data Date**” has the meaning given in Schedule 7 – DPA Works Schedules Requirements of the Agreement.
- (c) “**DPA Variation Payment**” means any payment by the Hospital to Dev Co for the performance of the DPA Works in respect of a DPA Variation to be made in accordance with Section 1.9(a)(ii) of Schedule 6 – DPA Variation Procedure of the Agreement.
- (d) “**DPA Variation Payment Amount**” means the amount of any DPA Variation Payment payable by the Hospital to Dev Co in accordance with Schedule 6 – DPA Variation Procedure of the Agreement.
- (e) “**Due Date for Monthly Payment**” has the meaning given in Section 2.6(a)(i).
- (f) “**Due Date for Refund**” has the meaning given in Section 2.6(a)(ii).
- (g) “**Earned Value**” means “Earned Value (EV)” as defined in Appendix B of Schedule 7 – DPA Works Schedules Requirements of the Agreement.
- (h) “**Earned Value Adjustment Amount**” has the meaning given in Section 2.3(b).
- (i) “**Earned Value Metrics Report**” has the meaning given in Schedule 7 – DPA Works Schedules Requirements of the Agreement.
- (j) “**Earned Value Payment Amount**” has the meaning given in Section 2.2(b).
- (k) “**EV Reconciliation Period**” has the meaning given in Section 2.3(b).
- (l) “**First Initial Period**” has the meaning given in Schedule 3 – DPA Submissions and Project Development Process of the Agreement.
- (m) “**First Proper Invoice**” has the meaning given in Section 2.1(b).
- (n) “**Payment Amount**” means, collectively, the Earned Value Payment Amount and any DPA Variation Payment Amount.
- (o) “**Payment Certificate**” has the meaning given in Section 2.5(a).

- (p) “**Payment Period**” has the meaning given in Section 2.4(a).
- (q) “**Proper Invoice**” has the meaning given in Section 2.2.
- (r) “**Second Proper Invoice**” has the meaning given in Section 2.2(j).

1.2 General Principles

- (a) Subject to the provisions of the Agreement, including DPA Sections 13.1 and 13.2 of the Agreement, and in accordance with Applicable Law, including the *Construction Act*, the Hospital shall:
 - (i) pay Dev Co the undisputed amounts payable under Proper Invoices provided by Dev Co to DPA Contracting Authority in accordance with the Agreement, on account of:
 - A. the Earned Value Payment Amount earned by Dev Co in performing the DPA Works payable by the Hospital to Dev Co for the relevant Payment Period, as further determined in accordance with this Schedule 8 and as adjusted by any Earned Value Adjustment Amount determined in accordance with Section 2.3(b) or as any such Earned Value Adjustment Amount is otherwise required to be paid by the Hospital to Dev Co in accordance with Section 2.3(b) if no additional Earned Value Payment Amount is to be paid by the Hospital to Dev Co pursuant to DPA Section 13.2(b)(i) of the Agreement;
 - B. any DPA Variation Payment Amount; and
 - C. any Cash Allowance Items; and
 - (ii) upon each yearly anniversary of the Effective Date, pay Dev Co the unpaid balance of all holdbacks under the *Construction Act* that have accrued during the 365 calendar days that preceded the previous payment of holdback made pursuant to the Agreement in connection with the DPA Works supplied by Dev Co, in accordance with Section 3.
- (b) If applicable, Dev Co shall pay the Hospital any Earned Value Adjustment Amount determined in accordance with Section 2.3(b) that is payable in accordance with Section 2.3(b)(II).

1.3 Holdbacks

- (a) The Hospital shall retain an amount equal to the amount required to be held back pursuant to the *Construction Act* in respect of liens that may be claimed from each sum otherwise payable to Dev Co under the Agreement that is not a release of any monies so retained.
- (b) Subject to Section 1.3(c), any holdbacks retained pursuant to Section 1.3(a) shall not be due and payable until after the expiry of the applicable period for preservation of liens under the *Construction Act*, and provided that no liens are preserved by persons supplying the DPA Works.

- (c) Notwithstanding any provision of the Agreement, but subject to the *Construction Act*:
- (i) no sum shall be payable by the Hospital to Dev Co pursuant to the Agreement if, at the time such sum would otherwise be payable, there is outstanding and unsatisfied any claim for lien which has been preserved pursuant to the *Construction Act* by any person for DPA Works provided directly or indirectly to Dev Co to enable performance of any part of the DPA Works or DPA Contracting Authority has received a written notice of any such lien; and
 - (ii) where any sum which would otherwise be payable by the Hospital to Dev Co is not so payable because a claim for lien has been preserved pursuant to the *Construction Act*, or DPA Contracting Authority has received written notice of any such lien, such sum shall be payable by the Hospital to Dev Co only at such time when all liens or written notices of a lien which may be claimed against that sum have expired or been satisfied, withdrawn, discharged or vacated by an order made pursuant to a payment into court in accordance with the *Construction Act*,

provided that this Section 1.3(c) shall not apply to any such claim for lien claimed by Dev Co as a result of any default of DPA Contracting Authority to make any payments to Dev Co in accordance with the Agreement.

2. PAYMENT PROCEDURE

2.1 Agreed Form of Proper Invoice and First Proper Invoice

- (a) The Parties acknowledge that, prior to the Effective Date, Dev Co developed and submitted and DPA Contracting Authority approved a form of Proper Invoice to be submitted by Dev Co under the Agreement, detailing the information referred to in Section 2.2 and enabling ready identification of holdbacks under the *Construction Act* and payments to be made to DPA Subcontractors.
- (b) Notwithstanding anything to the contrary in this Schedule 8, on the Effective Date:
 - (i) Dev Co shall submit to DPA Contracting Authority the first Proper Invoice payable by the Hospital for the performance of the DPA Works under the Agreement (the “**First Proper Invoice**”), which shall be subject to the following additional requirements:
 - A. the First Proper Invoice shall be in the Earned Value Payment Amount earned by Dev Co and payable by the Hospital to Dev Co under the Agreement for all of the Advance DPA Works performed by Dev Co until the date of the expiry of the First Initial Period;
 - B. for the purposes of the Agreement, Section 2.4 shall not apply in respect of the submission of the First Proper Invoice; and
 - C. the First Proper Invoice shall be submitted by Dev Co to DPA Contracting Authority through the OCPM;

- (ii) DPA Contracting Authority shall be deemed to have reviewed and validated the First Proper Invoice; and
- (iii) DPA Contracting Authority shall issue a Payment Certificate to Dev Co in respect of the First Proper Invoice pursuant to Section 2.5.

2.2 Proper Invoice

For the purposes of the Agreement, “**Proper Invoice**” shall mean a written bill or other request for payment for services and materials comprising the DPA Works performed under the Agreement issued by Dev Co, provided such bill or request shall:

- (a) contain the information set out in Section 6.1 of the *Construction Act*;
- (b) set out the amount of the Earned Value for all DPA Works performed by Dev Co during the relevant Payment Period earned by Dev Co and payable by the Hospital to Dev Co under the Agreement (including as adjusted by any Earned Value Adjustment Amount determined in accordance with Section 2.3(b) or in accordance with Section 2.3(a)(i)), other than in respect of any DPA Works performed by Dev Co pursuant to a DPA Variation for which the Hospital is required to make any DPA Variation Payment to Dev Co (the “**Earned Value Payment Amount**”);
- (c) set out the calculation of the Earned Value Payment Amount, and include all supporting information and verification as may be required by the Agreement;
- (d) if it was required pursuant to Section 2.4(a)(i)B(1), set out the calculation of the Earned Value Adjustment Amount determined in accordance with Section 2.3(b), and include the Earned Value Metrics Report and any other supporting information and verification as may be required by the Agreement;
- (e) set out all Earned Value Payment Amounts that were the subject of previous Proper Invoices;
- (f) identify the DPA Variation Payments payable to Dev Co in accordance with Schedule 6 – DPA Variation Procedure of the Agreement, set out the calculation of each such amount, and include all supporting information and verification as may be required by Schedule 6 – DPA Variation Procedure of the Agreement;
- (g) identify any other amounts due to or from Dev Co in accordance with the Agreement, set out the calculation of each such amount, and include all supporting information and verification as may be required by the Agreement;
- (h) outline the aggregate amount of the holdbacks retained by DPA Contracting Authority under the Agreement pursuant to the *Construction Act* and the amount of the holdbacks to be retained under and applicable to the current Proper Invoice;
- (i) outline all Cash Allowance Items for expenditures which have been authorized by the Hospital in accordance with DPA Section 13.5 of the Agreement on a schedule to or section of the Proper Invoice with “Cash Allowance Items” clearly indicated on the Proper Invoice;

- (j) for the Proper Invoice submitted by Dev Co after the First Proper Invoice (the “**Second Proper Invoice**”), include the Draft Baseline DPA Works Schedule and the associated Basis of DPA Works Schedule Report submitted in accordance with the DPA Review Procedure and Schedule 7 – DPA Works Schedules Requirements of the Agreement;
- (k) for each Proper Invoice submitted by Dev Co after the Second Proper Invoice, include the Current Progress DPA Works Schedule and the associated DPA Works Schedule Progress Report submitted in accordance with the DPA Review Procedure and Schedule 7 – DPA Works Schedules Requirements of the Agreement;
- (l) attach a WSIB clearance certificate;
- (m) attach a statutory declaration on an original form of CCDC Document 9A-2018 “Statutory Declaration of Progress Payment Distribution by Contractor”, declaring that payments in connection with the DPA Works, as noted in the statutory declaration, have been made to the end of the calendar month immediately preceding the Payment Period covered by the current application (the statutory declaration shall be dated the same date as the Proper Invoice);
- (n) attach a statutory declaration from any DPA Subcontractor as may be identified by DPA Contracting Authority, on an original form of CCDC Document 9B-2018 “Statutory Declaration of Progress Payment Distribution by Subcontractor” (the statutory declaration shall be dated the same date as the Proper Invoice);
- (o) for advance payment for any materials not yet incorporated into the DPA Works: (i) list such materials (and the advance payment calculations in respect thereof) as a separate line item; and (ii) be supported by invoices and such other evidence as DPA Contracting Authority may reasonably request to establish the value and delivery date of such materials;
- (p) satisfy invoicing requirements of Applicable Law in respect of Taxes and, in particular, include Dev Co’s registration number for HST and list the total amount of HST separate from the total amount payable and list the total amount due (total amount of HST plus the amount payable for the work completed in the current Payment Period);
- (q) include a statement in large font all in uppercase as follows: “*THE CONSTRUCTION ACT, AS REVISED, IS APPLICABLE TO THIS INVOICE*”; and
- (r) meet the additional requirements as outlined in Sections 2.3 and 2.4.

2.3 Statement of Amount Due

- (a) In addition to the information required by Section 2.2, Dev Co must set out in each Proper Invoice:
 - (i) any adjustment to the cumulative Earned Value Payment Amounts previously certified for up to the end of the relevant Payment Period other than any Earned Value Adjustment Amount, as determined in accordance with the Agreement;

- (ii) any adjustment to the cumulative DPA Variation Payment Amount previously certified for up to the end of the relevant Payment Period, as determined in accordance with the Agreement; and
- (iii) any information reasonably required by DPA Contracting Authority to allow DPA Contracting Authority to:
 - A. verify the progress of the DPA Works and Earned Value;
 - B. assess the Earned Value, the total Earned Value Payment Amounts earned to date, and the DPA Variation Payment Amount; and
 - C. certify the applicable payment in accordance with Section 2.5.
- (b) In respect of (I) each stage of the DPA Term described in Section 1.3(a) of Schedule 3 – DPA Submissions and Project Development Process of the Agreement that occurs until the end of the 90% Design Development Stage, and (II) the period comprised of all Payment Periods during the Project Proposal Stage up to and including the Payment Period in which the last Proper Invoice is issued by Dev Co before a Notice to Proceed to Commercial Close is delivered by DPA Contracting Authority to Dev Co subject to and in accordance with the Agreement (each an “**EV Reconciliation Period**”), all Earned Value Payment Amounts shall be adjusted upwards or downwards as the case may be (each an “**Earned Value Adjustment Amount**”) by:
 - (i) the Earned Value achieved during the EV Reconciliation Period, calculated by determining:
 - A. the Earned Value as calculated up to the Data Date as reported in the applicable Earned Value Metrics Report (such Data Date to coincide with the last date of the EV Reconciliation Period) submitted in accordance with Section 20 of Schedule 7 – DPA Works Schedules Requirements of the Agreement to the reasonable satisfaction of DPA Contracting Authority; **less**
 - B. the Earned Value as calculated up to the Data Date as reported in the Earned Value Metrics Report for the preceding EV Reconciliation Period submitted in accordance with Section 20 of Schedule 7 – DPA Works Schedules Requirements of the Agreement to the reasonable satisfaction of DPA Contracting Authority;

less
 - (ii) the sum of all Earned Value Payment Amounts reflected in Proper Invoices submitted by Dev Co for each Payment Period within the EV Reconciliation Period,

and if the amount determined in accordance with this Section 2.3(b) is a negative amount, the amount due is an amount due and payable from Dev Co to the Hospital pursuant to the Agreement, which shall either (I) adjust and decrease the Earned Value Payment Amount

payable by the Hospital to Dev Co as set out in the next Proper Invoice to be provided by Dev Co in accordance with this Schedule 8, or (II) if no additional Earned Value Payment Amount is to be paid by the Hospital to Dev Co pursuant to DPA Section 13.2(b)(i) of the Agreement, then, unless otherwise agreed by the Parties, such amount shall be an amount payable by Dev Co to the Hospital within 20 Business Days of the determination of such amount. In addition, if the amount determined in accordance with this Section 2.3(b) is a positive amount and if no additional Earned Value Payment Amount is to be paid by the Hospital to Dev Co pursuant to DPA Section 13.2(b)(i) of the Agreement, then, unless otherwise agreed by the Parties, such amount shall be an amount payable by the Hospital to Dev Co within 20 Business Days of the determination of such amount.

- (c) The Parties agree that the final Earned Value Adjustment Amount shall be determined in accordance with Section 2.3(b) by no later than the date that is five Business Days before the Adjustment Date.

2.4 Review Process

- (a) On a monthly basis the following process shall be followed in relation to applications for payment as provided in Section 1.2(a) and pursuant to the delivery of Proper Invoices:
 - (i) on either the eighth (8th) or ninth (9th) day of the calendar month, or where the eighth (8th) or ninth (9th) day of the month is not a Business Day, on the immediately following Business Day, Dev Co shall submit to DPA Contracting Authority a draft invoice for the Payment Amount payable by the Hospital for the performance of the DPA Works in respect of (A) the immediately preceding calendar month or (B) any other period expressly set out in the Agreement for which Dev Co is entitled to be paid in accordance with this Schedule 8 (the “**Payment Period**”). The draft invoice shall be provided in the form of a Proper Invoice, and
 - A. where the Payment Period does not coincide with the first month of an EV Reconciliation Period, be supported by such evidence as DPA Contracting Authority may reasonably require;
 - B. where the Payment Period coincides with the first month of an EV Reconciliation Period,
 - (1) include and be supported by the Earned Value Metrics Report with a Data Date coinciding with the end of the previous Payment Period and be supported by any other evidence as DPA Contracting Authority may reasonably require; and
 - (2) reflect any Earned Value Adjustment Amount in accordance with Section 2.3(b);
 - (ii) the draft invoice and the subsequent Proper Invoice shall be submitted through the OCPM;

- (iii) from and including the tenth (10th) day of the calendar month, to and including the fifteenth (15th) day of the calendar month, Dev Co shall, at DPA Contracting Authority's option, participate in a monthly pre-screening meeting with DPA Contracting Authority, in accordance with DPA Contracting Authority's timing and requirements, to review the particulars, details, information and documentation, including the draft invoice, all as proposed to constitute the basis of the Proper Invoice for such month, so as to assist Dev Co with the preparation and submission of its Proper Invoice;
 - (iv) from and including the twentieth (20th) day of the calendar month, to and including the twenty-fifth (25th) day of the calendar month, between the hours of 9:00 A.M. and 5:00 P.M. on a Business Day, Dev Co shall submit to DPA Contracting Authority, a Proper Invoice for payment, for the immediately preceding calendar month;
 - (v) for clarity, if the Proper Invoice is received by either DPA Contracting Authority after 5:00 PM on a Business Day or at any time on a non-Business Day, the Proper Invoice shall be deemed to be received on the following Business Day;
 - (vi) DPA Contracting Authority shall review and validate the Proper Invoice no later than five calendar days after DPA Contracting Authority's receipt (or deemed receipt) of the Proper Invoice; and
 - (vii) in the event that all or a portion of the Proper Invoice is disputed by DPA Contracting Authority, the Hospital shall issue a notice of non-payment of such disputed portion of the Proper Invoice in accordance with the *Construction Act*. Dev Co shall amend the Proper Invoice and submit to DPA Contracting Authority, a revised Proper Invoice for the non-disputed portion of the Proper Invoice within two Business Days following receipt of the Hospital's notice of non-payment, incorporating all of the information set out in the original Proper Invoice applicable to the non-disputed portion thereof. For clarity, the form and date of the Proper Invoice cannot change despite such a revision.
- (b) Any invoice submitted either: (i) prior to the twentieth (20th) day of a calendar month; or (ii) after the twenty-fifth (25th) day of a calendar month; shall be the basis for the issuance of a notice of non-payment by the Hospital in accordance with the *Construction Act*.
- (c) All supporting documentation relating to the amounts contained in the Proper Invoice shall be made promptly available for inspection and audit by DPA Contracting Authority upon request.

2.5 DPA Contracting Authority to Certify

- (a) DPA Contracting Authority must certify in a payment certificate (each a "**Payment Certificate**") the amount (if any) due for payment in accordance with Section 2.4 by:
 - (i) the Hospital to Dev Co; or
 - (ii) Dev Co to the Hospital,

and the basis on which that amount is calculated, by no later than seven calendar days after receipt by DPA Contracting Authority of the Proper Invoice (or, where applicable, the amended Proper Invoice) submitted by Dev Co.

- (b) The Payment Certificate issued by DPA Contracting Authority must be issued to Dev Co on the date that it is certified.
- (c) A Payment Certificate must be issued even if DPA Contracting Authority considers the amount due to be zero.

2.6 Due Dates for Monthly Payments

- (a) In respect of any Payment Certificate:
 - (i) subject to the provisions of the *Construction Act*, the Hospital must pay the sum certified by DPA Contracting Authority in the Payment Certificate (together with any HST thereon) to Dev Co by no later than 28 calendar days after receipt by DPA Contracting Authority of the Proper Invoice (the “**Due Date for Monthly Payment**”); and
 - (ii) where there is a sum due to DPA Contracting Authority from Dev Co, Dev Co must pay the sum due to the Hospital no later than the date that is 10 Business Days after Dev Co’s receipt of the Payment Certificate (“**Due Date for Refund**”).
- (b) On receipt of payment from the Hospital or notice of non-payment from the Hospital, Dev Co shall comply with the *Construction Act* and either cause payment to be made to all DPA Subcontractors promptly when due in accordance with the *Construction Act* or issue notices of non-payment in accordance with the timelines and requirements of the *Construction Act*.
- (c) Nothing in this Schedule 8 limits DPA Contracting Authority’s rights to set off, withhold or deduct payments in accordance with the Agreement, Applicable Law, or pursuant to any statutory rights it possesses.

2.7 Establishing the Bank Account

- (a) On or before the Effective Date, Dev Co shall identify to DPA Contracting Authority in writing its nominated bank account for payments by the Hospital to Dev Co under the Agreement (“**Bank Account**”).
- (b) Dev Co may change its Bank Account by Notice to DPA Contracting Authority in writing of Dev Co’s new nominated bank account for payments by the Hospital to Dev Co under the Agreement, provided that Notice under this Section 2.7(b) is given by Dev Co to DPA Contracting Authority at least 10 Business Days prior to the due date for payment under the Agreement.
- (c) Notwithstanding any other provision of the Agreement, for the purpose of the Agreement, payments made by electronic transfer shall be deemed to have been made on the day and

at the time the electronic transfer is initiated, as confirmed by the initiating bank by a confirmation setting out the transfer number and the other details of the transfer.

3. RELEASE OF ACCRUED HOLDBACK ON AN ANNUAL BASIS

3.1 On each yearly anniversary of the Effective Date, Dev Co shall:

- (a) submit an application to DPA Contracting Authority requesting the release of the applicable holdback amount pursuant to the *Construction Act* that has accrued during the preceding 365 calendar days;
- (b) attach a statutory declaration on an original form CCDC 9A – 2018 “Statutory Declaration of Progress Payment Distribution by Contractor”, stating that all accounts for services, subcontracts, materials, and other indebtedness which may have been incurred by Dev Co in connection with the Agreement during the relevant period referred to in Section 3.1(a) above and for which the Hospital might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback pursuant to the *Construction Act* or as an identified amount in dispute and, if requested by DPA Contracting Authority, attach a statutory declaration from any DPA Subcontractor, as may be identified by DPA Contracting Authority, on an original form of CCDC Document 9B – 2018 “Statutory Declaration of Progress Payment Distribution by Subcontractor”; and
- (c) provide confirmation to DPA Contracting Authority in writing that:
 - (i) there are no preserved or perfected liens under, or notices of liens provided pursuant to, the *Construction Act* in respect of the Agreement or any DPA Subcontractors; or
 - (ii) all liens and notices of liens in respect of the Agreement, and all liens and notices of liens in respect of any of the DPA Subcontractors, have been satisfied, discharged or otherwise provided for under the *Construction Act*, and Dev Co shall provide proof of same to DPA Contracting Authority.

3.2 After the receipt of applications from Dev Co requesting release of the holdback under the *Construction Act* and the documents required by Sections 3.1(b) and 3.1(c), DPA Contracting Authority will certify payment of the accrued holdback amounts.

3.3 The Agreement shall be subject to the *Construction Act*, and in accordance with the *Construction Act*, DPA Contracting Authority may retain any amounts which are required by law to satisfy any liens against the DPA Works.

4. OVERPAYMENTS AND UNDERPAYMENTS

4.1 If the payments made to Dev Co are greater than Dev Co’s entitlement to payment under the Agreement (the difference being an “**Overpayment**”), then Dev Co shall indemnify DPA Contracting Authority in accordance with DPA Section 22.1(d) of the Agreement.

- 4.2 If the payments made to Dev Co are less than Dev Co’s entitlement to payment under the Agreement (the difference being an “**Underpayment**”), then the Hospital shall indemnify Dev Co in accordance with DPA Section 22.3(c) of the Agreement.
- 4.3 Where it is determined that a payment is required under this Section 4, such payment shall be considered to be an increase or reduction, as applicable, of the consideration for the supply by Dev Co of the DPA Works.
- 4.4 If a Party is required to make a payment under this Section 4, other than with respect to any Earned Value Adjustment Amount determined in accordance with Section 2.3(b), such Party must make that payment within 21 Business Days of a written request for payment being made.
- 4.5 The Hospital or Dev Co may take steps to recover any amount payable to them under this Section 4 which is not paid in accordance with Section 4.4.

5. TAXES

- 5.1 All amounts specified in the Agreement are expressed exclusive of HST, but inclusive of all other Taxes payable pursuant to Applicable Law.
- 5.2 Unless otherwise set out in the Agreement, Dev Co shall pay all applicable Taxes (other than HST, which is provided for in Section 5.3) incurred by or on Dev Co’s behalf with respect to the Agreement.
- 5.3 To the extent that HST is payable in respect of any supply made by a Party under or in connection with the Agreement, the recipient of the supply shall pay the applicable HST upon receipt of a Proper Invoice in addition to the amount otherwise payable under the Agreement.
- 5.4 If required by any Applicable Law, the Hospital shall withhold any applicable withholding Taxes from amounts due and owing to Dev Co under the Agreement and shall remit it to the appropriate Governmental Authority in accordance with Applicable Law.
- 5.5 In the case of an Overpayment under Section 4.1: (i) where HST calculated on the amount of the Overpayment was charged but not collected, Dev Co shall adjust the amount of HST charged by subtracting the portion of HST that was calculated on the amount of the Overpayment; and (ii) where HST calculated on the Overpayment was collected, Dev Co shall pay or credit to the Hospital an amount equal to the HST that had been collected on the amount of the Overpayment and issue a credit note containing the information prescribed under the *Excise Tax Act* (Canada).

6. PAYMENT RECEIPT

- 6.1 Dev Co shall issue to DPA Contracting Authority a receipt evidencing payment by the Hospital of any amount paid by the Hospital pursuant to the Agreement (including HST).

SCHEDULE 9

DPA INSURANCE

**ARTICLE 1
INSURANCE COVERAGE**

- 1.1 During the DPA Term, Dev 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 9:
- (a) Commercial General Liability and Non-Owned Automobile Liability (to be maintained by Dev Co and each of the DPA Subcontractors involved in the DPA Works);
 - (b) Professional Liability;
 - (c) “All Risks” Contractor’s Equipment;
 - (d) Automobile Liability;
 - (e) Aircraft and Watercraft Liability (if any exposure); and
 - (f) WSIB.

**ARTICLE 2
NO LIMIT ON RECOVERY**

- 2.1 Notwithstanding any other provision of the Agreement, it is hereby agreed that the limits of liability specified in this Schedule 9 for insurance policies, whether such policies are required to be obtained (or caused to be obtained) by DPA Contracting Authority or by Dev Co, shall in no way limit Dev Co’s liability or obligations to DPA Contracting Authority or DPA Contracting Authority’s liability or obligations to Dev Co, as applicable.

**ARTICLE 3
ADDITIONAL COVER**

- 3.1 Without prejudice to the other provisions of this Schedule 9, DPA Contracting Authority and Dev Co shall, at all relevant times and at their own expense, obtain and maintain, or cause to be obtained and maintained, those insurances which they are required to obtain and maintain, or cause to be obtained and maintained, by Applicable Law, or that they consider necessary.
- 3.2 DPA Contracting Authority reserves the right to require Dev Co to purchase such additional insurance coverage as DPA Contracting Authority may reasonably require. DPA Contracting Authority 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 DPA Works, contract value, industry standards, and availability of insurance) as DPA Contracting Authority may reasonably require from time to time. Any additional costs of such additional and/or amended insurance shall be borne by DPA Contracting Authority and any cost savings resulting from the implementation of such additional and/or amended insurance shall be for the account of DPA Contracting Authority.

**ARTICLE 4
RESPONSIBILITY FOR DEDUCTIBLES**

- 4.1 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 Dev Co is required to maintain (or cause to be maintained) under this Schedule 9. 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 5
COOPERATION WITH INSURER'S CONSULTANT**

- 5.1 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 Agreement, then DPA Contracting Authority and Dev Co shall, and shall require the DPA Contracting Authority Parties and the Dev 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 Dev Co and DPA Contracting Authority (or, as applicable, and if reasonably required by the insurer, between Dev Co and those engaged by or through Dev Co).

**ARTICLE 6
DPA SUBCONTRACTORS**

- 6.1 Dev Co shall require that all DPA Subcontractors are covered by, or obtain, the insurance described in this Schedule 9, provided that Dev Co shall determine the applicable limits to be obtained for such insurance. Dev Co shall be solely responsible and liable for any damages which DPA Contracting Authority may suffer as a direct result of Dev Co's failure to comply with the foregoing.
- 6.2 If Dev Co receives notice that any DPA Subcontractor employed by or through Dev Co is not covered by any insurance required by this Schedule 9 to be obtained (or caused to be obtained) by Dev Co, Dev Co shall:
- (a) ensure that such insurance coverage is put in place;
 - (b) ensure that such DPA Subcontractor does not perform any further part of the DPA Works until after such insurance coverage is put in place and, if applicable, remove the DPA Subcontractor from the Site; or
 - (c) if the DPA Subcontractor cannot be covered by a particular policy as required by this Schedule 9, replace the DPA Subcontractor with a new DPA Subcontractor who can obtain the required insurance coverage; it being acknowledged by Dev Co that the requirements and restrictions set forth in the Agreement regarding new and replaced DPA Subcontractors shall be complied with.

**ARTICLE 7
RENEWAL**

- 7.1 Dev Co shall provide to DPA Contracting Authority, at least 5 Business Days prior to the expiry date of any policy of insurance required to be obtained (or caused to be obtained) by Dev Co pursuant to this Schedule 9, evidence of the renewal of each such policy satisfactory to DPA Contracting Authority, acting reasonably.

**ARTICLE 8
NAMED AND ADDITIONAL INSUREDS AND WAIVER OF SUBROGATION**

- 8.1 All insurance provided by Dev Co, shall:
- (a) include Dev Co, DPA Contracting Authority, and the DPA Contracting Authority Parties as Named Insureds to the extent specified in Appendix A of this Schedule 9;
 - (b) include DPA Contracting Authority, the DPA Contracting Authority Parties, His Majesty the King in right of Ontario, as represented by Her ministers, agents, appointees and employees, as Additional Insureds, or loss payees to the extent of their respective insurable interests specified in Appendix A of this Schedule 9;
 - (c) except with respect to the Professional Liability, Automobile Liability and WSIB specified in Appendix A to this Schedule 9, contain a waiver of subrogation as against DPA Contracting Authority, the DPA Contracting Authority Parties and their respective shareholders, officials, directors, officers, employees, servants, consultants and agents;
 - (d) contain a breach of warranty provision whereby a breach of a condition by Dev 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 DPA Contracting Authority, without any right of contribution of any insurance carried by DPA Contracting Authority.

**ARTICLE 9
CERTIFICATES OF INSURANCE**

- 9.1 Prior to the commencement of any part of the DPA Works, Dev Co will provide DPA Contracting Authority with certificates of insurance, confirming that the insurances specified in Section 1.1 have been obtained and are in full force and effect.

**ARTICLE 10
FAILURE TO MEET INSURANCE REQUIREMENTS**

- 10.1 If Dev Co fails to obtain or maintain, or cause to be obtained and maintained, the insurance required by this Schedule 9, fails to furnish to DPA Contracting Authority a certified copy of each policy required to be obtained by this Schedule 9 or if, after furnishing such certified copy, the policy lapses, is cancelled, or is materially altered, then DPA Contracting Authority shall have the right, without obligation to do so, to obtain and maintain such insurance itself in the name of Dev Co, and the cost thereof shall either, at DPA Contracting Authority's option, be payable by Dev Co to

DPA Contracting Authority on demand or be deducted by DPA Contracting Authority from the next payment or payments otherwise due to Dev Co.

- 10.2 If coverage under any insurance policy required to be obtained (or caused to be obtained) by Dev Co should lapse, be terminated or be cancelled, then, if directed by DPA Contracting Authority, all work by Dev Co shall immediately cease until satisfactory evidence of renewal is produced.

**ARTICLE 11
MODIFICATION OR CANCELLATION OF POLICIES**

- 11.1 Except as noted in Appendix A to this Schedule 9, all insurance provided by Dev 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 90 days prior written notice by registered mail, at the address specified, to DPA Contracting Authority. 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.
- 11.2 All insurance provided by Dev Co shall contain endorsements confirming that, in the event of cancellation for non-payment of premium, the insurer(s) will give at least 15 days prior written notice by registered mail, at the address specified, to DPA Contracting Authority.

**ARTICLE 12
INSURERS**

- 12.1 All policies of insurance to be obtained (or caused to be obtained) by Dev Co in accordance with this Schedule 9 shall be issued by financially sound insurers acceptable to DPA Contracting Authority, acting reasonably, and, where required by statute, be licensed to insure such risk in the Province of Ontario.
- 12.2 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 DPA Contracting Authority, acting reasonably, with respect to the insurances required by this Schedule 9.

**ARTICLE 13
POLICY TERMS AND CONDITIONS**

- 13.1 All policies of insurance to be obtained (or caused to be obtained) by Dev Co in accordance with this Schedule 9 shall be in form and substance satisfactory to DPA Contracting Authority and its insurance advisors, acting reasonably.
- 13.2 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 14
FAILURE TO COMPLY**

- 14.1 Neither failure to comply nor full compliance by Dev Co with the insurance provisions of this Schedule 9 shall relieve Dev Co of its liabilities and obligations under the Agreement.

APPENDIX A – INSURANCE REQUIREMENTS

DPA Insurance – Trillium Health Partners M-Site Redevelopment Project

From execution of the Agreement until the end of the DPA Term

Insurances to be provided, or caused to be provided, by Dev Co

Type	Amount	Maximum Deductible	Principal Cover
Professional Liability	<p>[\$REDACTED] million minimum per claim / [\$REDACTED] million in the aggregate (inclusive of defence and related costs and supplementary payments) for Dev Co.</p> <p>[\$REDACTED] million minimum per claim / [\$REDACTED] million in the aggregate (inclusive of defence and related costs and supplementary payments) for any sub-consultant providing professional design services in connection with the Project.</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> • Present, former partner, employee, executive officer, director or shareholder of Named Insureds while acting within their scope of duties for the Named Insured • Any individuals or personal corporations retained by the Named Insured under a personal services contract • Claim defined as a written demand for money or a written allegation in breach in the rendering or failure to render professional services received by the Insured or Named Insured 	[\$REDACTED] per claim	<p>Professional Liability Insurance in connection with the DPA Works from beginning of first design, through the DPA Term plus coverage for an extended reporting period of not less than 36 months.</p> <p>For clarity, the annual practice policies of each design firm is acceptable to meet this requirement.</p>

and resulting from a single error,
omission or negligent act

- Lawyer fees and associated expenses incurred in the investigation, defence, settlement, arbitration or litigation of claims
- Duty to defend, even if the allegations are groundless, false or fraudulent
- Worldwide Territory, subject to suits brought in Canada

Principal Exclusions:

- Express warranties or guarantees
- Estimates on profit, return
- 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
- Design or manufacture of any goods or products sold or supplied by the Named Insured
- Terrorism
- Nuclear Liability
- Judgments and awards deemed uninsurable by law
- Liability assumed under design contract, unless such liability would have attached to the Named Insured by law in the absence of such agreement
- Punitive or exemplary damages, fines, penalties or interest or liquidated punitive or exemplary damages or fees
- Refusal to employ, termination of employment, humiliation or discrimination on any basis or

other employment related
practices or policies

- Cyber
- Communicable disease
- Sanctions Clause

Comments

- Named Insured: All engineers, architects, and other professional consultants that provide professional design services in connection with the Project. For clarity, the annual practice policies of each design firm is acceptable to meet this requirement.
- 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
- Retroactive Date: Full retroactive coverage from date of first design activity
- Policy to provide 60 day notice of cancellation to DPA Contracting Authority, DPA Contracting Authority Parties, IO and His Majesty the King in right of Ontario, as represented by Her ministers, agents, appointees and employees
- Each engineer, architect, and other professional consultant is required to reinstate its policy limits to meet the requirement set above, should its annual limit be reduced due to claims during the policy term.

Underwriters

Principal underwriters in compliance with Article 12 of this Schedule.

DPA Insurance – Trillium Health Partners M-Site Redevelopment Project

From execution of the Agreement until the end of the DPA Term

Insurances to be provided, or caused to be provided, by Dev Co

Type	Amount	Maximum Deductible	Principal Cover
Automobile Liability	<p>[\$REDACTED] million (Minimum) for Dev Co vehicles</p> <p>[\$REDACTED] million (Minimum) for vehicles of any DPA Subcontractors or any other contractors, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons working on or at the Site</p>	None.	<p>Standard Ontario Owners Form for all vehicles operated by Dev 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 30 days prior written notice provided to DPA Contracting Authority, IO, His Majesty the King in right of Ontario, as represented by Her ministers, agents, appointees and employees.</p>
<p>Commercial General Liability and Non-Owned Automobile Liability</p> <p>For Dev Co, the DPA Subcontractors, all subcontractors, sub-subcontractors, consultants and sub-consultants, including Direct and Contingent Employers Liability, Products and Completed Operations Liability, and Owner’s and Contractor’s Protective extensions</p>	<p>[\$REDACTED] million each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations for Dev Co</p> <p>[\$REDACTED] million each occurrence, and in the annual aggregate with respect to Broad Form Completed Operations for any DPA Subcontractors or any other contractors, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons involved in the DPA 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 (Dev Co and DPA Subcontractors):</p> <ul style="list-style-type: none"> • Full policy limits with respect to Non-Owned Automobile Liability • [\$REDACTED] million Prairie or Forest Fire Fighting Expenses <p>Principal Extensions (required to be provided by the Dev Co. and shall be endeavoured to be provided by any DPA</p>	None.	<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 insurance shall be maintained in effect, during the DPA Term until twelve (12) months following the termination of the insured’s person’s involvement in the DPA Works.</p> <p>Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to DPA Contracting Authority, IO, His Majesty the King in right of Ontario, as represented by Her ministers, agents, appointees and employees.</p>

Type	Amount	Maximum Deductible	Principal Cover
	<p>Subcontractors or any other contractors, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons involved in the DPA Works):</p> <ul style="list-style-type: none"> • Owner’s and Contractor's Protective • Blanket Contractual (written) • Direct and Contingent Employers Liability • Personal Injury (nil participation) • Cross Liability and Severability of Interest with respect to each insured party • Blasting/demolition/excavating/under-pinning/pile driving/shoring/caisson work/work below ground surface/tunnelling/grading, and similar operations associated with the DPA Works as applicable • Elevator and Hoist Collision Liability • Non-Owned Automobile Liability • Prairie or Forest Fire Fighting Expenses – subject to sub-limit • Permission for Unlicensed Vehicles’ (partial road use) • Unlicensed Equipment • Loss of Use Without Property Damage • Loading and Unloading of Automobiles • Broad Form Property Damage • Broad Form Completed Operations • Intentional Injury, committed to Protect Persons or Property • Worldwide Territory, subject to suits being brought in Canada or the US <p>Principal Exclusions:</p> <ul style="list-style-type: none"> • Injury to employees, where WSIB provides valid coverage • Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations extension period 		

Type	Amount	Maximum Deductible	Principal Cover
	<ul style="list-style-type: none"> • Operation of licensed motor vehicles, other than attached machinery while used for its purpose, or at the Project Site • Physical damage to the Project, except during Broad Form Products and Completed Operations extension period • Cyber risk • Mould, fungi and fungal derivatives • Professional liability of engineers, architects, and other professional consultants • Nuclear or radioactive contamination, except release of radioactive isotopes intended for scientific, medical, industrial or commercial use • Communicable Disease • Terrorism • War • Asbestos • Lead • Silica • Contractors' Rework • United States of America Jurisdiction Clause • Sanctions Clause 		
<i>Comments</i>	<ul style="list-style-type: none"> • The DPA Contracting Authority, DPA Contracting Authority Parties, IO and His Majesty the King in right of Ontario, as represented by Her ministers, agents, appointees and employees will be identified as Additional Insureds, or insured clients of Dev Co and its Affiliates 		
Aircraft and Watercraft Liability (If any exposure)	Minimum \$[REDACTED] million inclusive, including \$[REDACTED] million passenger hazard – Owned Aircraft Minimum \$[REDACTED] million inclusive – Non-Owned Aircraft Minimum \$[REDACTED] million inclusive Owned or Non-Owned Watercraft	None.	Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to DPA Contracting Authority, IO and MOH.
<i>Comments</i>	<ul style="list-style-type: none"> • The DPA Contracting Authority, DPA Contracting Authority Parties, IO and His Majesty the King in right of Ontario, as represented by Her ministers, agents, appointees and employees will be identified as Additional Insureds, or insured clients of Dev Co and its Affiliates 		

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<p>“All Risks” Contractors’ Equipment To cover Dev Co, DPA Subcontractors, subcontractors, sub-subcontractors, consultants and sub-consultants</p>	<p>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</p>	<p>None.</p>	<p>All Risks coverage on all owned, rented, leased or borrowed contractors’ equipment, used at the Project Site.</p>
<p><i>Comments</i></p> <ul style="list-style-type: none"> Waiver of Subrogation rights against Dev Co, DPA Contracting Authority, DPA Contracting Authority Parties, IO, DPA Subcontractors, subcontractors, sub-subcontractors, consultants, sub-consultants, as well as officers, directors, shareholders and employees of the foregoing 			
<p>WSIB</p>	<p>In accordance with Ontario Act’s established benefits and schedules</p>	<p>Not Applicable</p>	<p>(i) Dev Co and its Affiliates shall obtain and maintain at Dev Co’s expense, WSIB Insurance, in accordance with the Province of Ontario requirements.</p> <p>(ii) Dev Co shall ensure that satisfactory evidence of WSIB Insurance is provided by all Dev 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>On request, within 30 days of such request, Dev Co shall deliver to DPA Contracting Authority evidence of the WSIB coverage maintained by any person involved in the DPA Works, or confirmation of that person’s exemption from WSIB coverage.</p>

SCHEDULE 10

DPA DEV CO PROPOSAL EXTRACTS

[REDACTED]

SCHEDULE 11

DPA DRAFT PROJECT AGREEMENT

[REDACTED]

SCHEDULE 12

[INTENTIONALLY DELETED]

SCHEDULE 13

INITIAL DPA SUBCONTRACTS

LIST OF INITIAL DPA SUBCONTRACTS

[REDACTED]

SCHEDULE 14

FORM OF ASSIGNMENT OF DPA SUBCONTRACT

THIS AGREEMENT (the “Assignment of DPA Subcontract”) made as of the [●] day of [●], 202[●]

BETWEEN:

ED PCL TRILLIUM DEV CO LIMITED PARTNERSHIP, [REDACTED]

(“Dev Co”)

- AND -

[●], a [●]

(the “Head DPA Subcontractor”)

- AND -

[●], a [●]

(“DPA Subcontractor”)

- AND -

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended

(“Infrastructure Ontario” or “IO”)

- AND -

TRILLIUM HEALTH PARTNERS, a non-share capital corporation incorporated under the laws of Ontario

(the “Hospital”)

(IO and the Hospital are, collectively, “DPA Contracting Authority”)

WHEREAS pursuant to a development phase agreement dated March 10, 2023 between Dev Co and DPA Contracting Authority (such agreement, together with all amendments thereto which may hereafter be made in accordance with the terms thereof, being hereinafter called the “**Agreement**”), Dev Co has agreed to perform the DPA Works or cause to be performed the DPA Works, as defined in the Agreement;

AND WHEREAS Dev Co and the Head DPA Subcontractor entered into a subcontract dated [●], 20[●] in respect of a portion of the DPA Works (such subcontract, together with all amendments thereto which may hereafter be made in accordance with the terms thereof, being hereinafter called the “**DPA Works Contract**”);

AND WHEREAS with respect to a portion of the DPA Works under the DPA Works Contract, the Head DPA Subcontractor and DPA Subcontractor entered into a subcontract dated [●], 20[●] (such subcontract together with all amendments thereto which hereafter may be made in accordance with the terms hereof, being hereinafter called the “**DPA Subcontract**”);

AND WHEREAS under the Agreement, Dev Co has agreed to cause the Head DPA Subcontractor to cause DPA Subcontractor to enter into this Assignment of DPA Subcontract;

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. As general and continuing security for the observance and performance of the obligations of the Head DPA Subcontractor under the DPA Works Contract (the “**Obligations**”), the Head DPA Subcontractor hereby irrevocably assigns, grants and transfers and creates a security interest in (the “**Assignment**”) all right, title and interest of the Head DPA Subcontractor in and to the DPA Subcontract and all benefit, power and advantage to be derived therefrom and otherwise to enforce the rights of the Head DPA Subcontractor thereunder (collectively, the “**Assigned Rights**”), to DPA Contracting Authority, who takes such assignment, grant and transfer and security interest in the DPA Subcontract from the Head DPA Subcontractor on the terms set forth herein, which assignment, grant, transfer and security interest shall continue until terminated in accordance with the terms hereof.
2. In addition to the provisions of Section 1, the Head DPA Subcontractor hereby grants to DPA Contracting Authority the irrevocable right to all Assigned Rights by way of transfer and assignment which right may be exercised by DPA Contracting Authority by delivery of an Assignment Notice or a Direct Assignment Notice, as the case may be, and the execution and delivery of the form of assumption notice attached hereto as Appendix A (the “**Assumption Agreement**”) if the Agreement is terminated pursuant to Section 18.1(c) (Dev Co Event of Default), Section 19.1 (Termination for Convenience) or Section 19.2 (Termination for Force Majeure) of the Agreement, and the Head DPA Subcontractor hereby acknowledges that such transfer and assignment shall be deemed to be effective immediately upon the delivery of such Assignment Notice or Direct Assignment Notice, as the case may be, by DPA Contracting Authority without any further act by DPA Contracting Authority, Dev Co or the Head DPA Subcontractor, except as otherwise expressly provided in this Assignment of DPA Subcontract.
3. The rights of DPA Contracting Authority pursuant to Section 1 and Section 2 shall only be effective upon the termination of the Agreement other than as a result of its expiration, and notwithstanding if the termination of the Agreement is disputed (such date, the “**Effective Date**”). Such rights may be exercised by DPA Contracting Authority at its option and in its sole and absolute discretion at any time or times after the Effective Date, subject to and in accordance with the provisions of this Assignment of DPA Subcontract.
4. In the event the Agreement is terminated pursuant to DPA Section 19.3 (Automatic Termination and Expiry on Commercial Close) of the Agreement, the Assignment of DPA Subcontract shall be terminated and of no further force and effect from and after the date on which the Agreement expires.

5. Unless and until notification is given to DPA Subcontractor in accordance with any of the notices referred to in Section 6(v), 6(vi) or 6(vii), the Head DPA Subcontractor shall be entitled to enforce all of the benefits and powers under the DPA Subcontract and to deal with, and be obligated to, DPA Subcontractor in respect of the DPA Subcontract and matters arising therefrom in the same manner and to the same extent as if the Head DPA Subcontractor had not granted the rights set out in Section 1 and Section 2 hereof.
6. DPA Subcontractor hereby:
 - (i) acknowledges and consents to any assignment that may occur pursuant to this Assignment of DPA Subcontract and confirms that any such assignment that may occur pursuant to this Assignment of DPA Subcontract is permitted pursuant to the provisions of the DPA Subcontract;
 - (ii) agrees to give DPA Contracting Authority prompt written notice of any default by the Head DPA Subcontractor under the DPA Subcontract (“**Notice of Default**”), which Notice of Default shall attach an executed copy of the DPA Subcontract as well as a copy of the default notice issued by DPA Subcontractor to the Head DPA Subcontractor. DPA Subcontractor agrees that, upon issuance of a Notice of Default, it shall not be entitled to exercise any right it has to terminate the DPA Subcontract for a period of 15 Business Days from the later of (A) the receipt of the Notice of Default by DPA Contracting Authority, and (B) the date that the Head DPA Subcontractor has failed to comply with any applicable cure period in the DPA Subcontract, or, absent a cure period, the expiry of a reasonable period of time to cure such default. If DPA Contracting Authority (without any obligation to do so) notifies DPA Subcontractor within such 15 Business Day time period that it requires more time to determine whether it can remedy such default by the Head DPA Subcontractor, or, exercise the Assignment, DPA Subcontractor shall not be entitled to exercise any right to terminate the DPA Subcontract for a further period of 45 days from the date of receipt of such notice or such longer period as may be reasonably necessary to cure the default, provided that DPA Contracting Authority is proceeding diligently to cure such default; however, if DPA Contracting Authority exercises the Assignment within such further 45 day period, DPA Subcontractor shall not be entitled to exercise any right to terminate the DPA Subcontract provided that the Assignee (and if applicable, the DPA Assignee) agrees to assume the obligations of the Head DPA Subcontractor under the DPA Subcontract and, in that regard, executes and delivers the Assumption Agreement. In the event that DPA Contracting Authority initiates the further 45 day period referred to above, the Assignee (and if applicable, the DPA Assignee) shall compensate DPA Subcontractor for costs and expenses reasonably incurred for DPA Works performed by DPA Subcontractor during such further 45 day period;
 - (iii) agrees that if DPA Contracting Authority is prevented from exercising its rights and remedies hereunder as a result of the imposition of a stay of proceedings in connection with any insolvency, bankruptcy, receivership or similar proceedings affecting the Head DPA Subcontractor, then any cure period available to DPA Contracting Authority in accordance with the terms hereof shall be extended for a period of time equal to the duration of any such stay of proceedings;
 - (iv) in the event that the DPA Subcontract is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding of the Head DPA Subcontractor, or the DPA

Subcontract or any material part of the DPA Subcontract is terminated for any reason by the DPA Subcontract, if, DPA Contracting Authority shall so request, DPA Subcontractor will execute and deliver to DPA Contracting Authority, a new DPA Subcontract, which DPA Subcontract shall be on identical terms and conditions as the original DPA Subcontract for the remaining term of the DPA Subcontract before giving effect to such rejection or termination;

- (v) agrees that, immediately upon receipt by DPA Subcontractor of written notice (the “**Assignment Notice**”) from DPA Contracting Authority that the DPA Subcontract is being assigned to DPA Contracting Authority or DPA Contracting Authority’s nominee (in either event, such party identified in such written notice being the “**Assignee**”), and that the assignment is pursuant to Section 1 or Section 2, as applicable, and provided that the Assignee, except as limited herein, agrees to perform its obligations under this Assignment of DPA Subcontract and agrees to assume all of the obligations of the Head DPA Subcontractor under the DPA Subcontract and, in that regard, executes and delivers an Assumption Agreement, the Assignee shall have all of the right, title, benefit and interest of the Head DPA Subcontractor pursuant to the DPA Subcontract, without DPA Subcontractor’s consent and, subject to Section 8, without the payment of any penalty, and DPA Subcontractor shall deal with the Assignee as if it had been originally named in place of the Head DPA Subcontractor in the DPA Subcontract;
- (vi) agrees that the Assignee may, at any time after the giving of the Assignment Notice in Section 6(v), give written notice (the “**Successive Assignment Notice**”) to DPA Subcontractor of a further assignment of the DPA Subcontract to a new contractor of DPA Contracting Authority (the “**DPA Assignee**”), and that immediately upon receipt of the Successive Assignment Notice, and provided that the DPA Assignee, except as limited herein, agrees to assume all of the obligations of the Head DPA Subcontractor under the DPA Subcontract and, in that regard, executes and delivers an Assumption Agreement, the DPA Assignee shall have all of the right, title, benefit and interest of the Head DPA Subcontractor pursuant to the DPA Subcontract without DPA Subcontractor’s consent and, subject to Section 8, without the payment of any penalty and DPA Subcontractor shall deal with the DPA Assignee as if it had been originally named in place of the Head DPA Subcontractor in the DPA Subcontract;
- (vii) agrees that, notwithstanding Sections 6(v) and 6(vi), DPA Contracting Authority may give written notice (the “**Direct Assignment Notice**”) to DPA Subcontractor of the assignment of the DPA Subcontract directly to the DPA Assignee, and that immediately upon receipt of the Direct Assignment Notice, and provided that the DPA Assignee, except as limited herein, agrees to assume all of the obligations of the Head DPA Subcontractor under the DPA Subcontract and, in that regard, executes and delivers an Assumption Agreement, the DPA Assignee shall have all of the right, title, benefit and interest of the Head DPA Subcontractor pursuant to the DPA Subcontract without DPA Subcontractor’s consent and, subject to Section 8, without the payment of any penalty and DPA Subcontractor shall deal with the DPA Assignee as if it had been originally named in place of the Head DPA Subcontractor in the DPA Subcontract;
- (viii) agrees, upon the reasonable request of DPA Contracting Authority from time to time, to provide a certificate to DPA Contracting Authority as to the status of the DPA Subcontract,

including a description of any events which, with the passage of time or the giving of notice or both, would constitute a default thereunder;

- (ix) agrees to provide, not later than five Business Days after either the date of a Notice of Default or following receipt of written request thereof from DPA Contracting Authority, a written notice (an “**Indebtedness Notice**”) to DPA Contracting Authority, setting out all amounts owed by the Head DPA Subcontractor and all amounts in dispute, of which DPA Subcontractor is aware (having made reasonable enquiry), in each case, as of the date on which DPA Subcontractor sent the Notice of Default or received the written request from DPA Contracting Authority; and
- (x) agrees that, notwithstanding anything to the contrary in this Assignment of DPA Subcontract:
 - (i) if DPA Contracting Authority delivers an Assignment Notice or a Direct Assignment Notice, as the case may be, then instead of the Assignee or the DPA Assignee, as applicable, executing and delivering an Assumption Agreement pursuant to this Assignment of DPA Subcontract, DPA Contracting Authority may, upon the delivery of written notice to DPA Subcontractor, require that the DPA Subcontract be amended and restated to directly set out between the applicable parties thereto the entirety of any of the terms and conditions of the DPA Works Contract or the Development Phase Agreement identified by DPA Contracting Authority that are generally incorporated by reference into the DPA Subcontract. After such parties execute and deliver an amended and restated DPA Subcontract to complete such amendment and restatement, all of the provisions of this Assignment of DPA Subcontract shall apply as though such amended and restated DPA Subcontract were an Assumption Agreement; or
 - (ii) if DPA Contracting Authority delivers an Assignment Notice or a Direct Assignment Notice, as the case may be, and an Assumption Agreement is executed and delivered pursuant to this Assignment of DPA Subcontract, then, at any time during the term of the DPA Subcontract, the Assignee or the DPA Assignee, as applicable, may, upon the delivery of written notice to DPA Subcontractor, require that the DPA Subcontract be amended and restated to directly set out between the applicable parties thereto the entirety of any of the terms and conditions of the DPA Works Contract or the Development Phase Agreement identified by the Assignee or the DPA Assignee, as applicable, that are generally incorporated by reference into the DPA Subcontract;

and, in either case, DPA Subcontractor agrees to, without any unreasonable delay, execute or cause or permit to be executed, an amended and restated DPA Subcontract and such other documentation as may be reasonably required to effect such amendment and restatement.

- 7. Nothing herein contained shall render DPA Contracting Authority liable to any person for the fulfilment or non-fulfilment of the obligations, covenants and agreements, including, but not limited to the payment of any money thereunder or in respect thereto, of the Head DPA Subcontractor under the DPA Subcontract, unless and until DPA Contracting Authority has given the Assignment Notice to DPA Subcontractor, the giving of which Assignment Notice DPA

Subcontractor acknowledges is in the sole and absolute discretion of DPA Contracting Authority, in which event, the Assignee (and if applicable, any DPA Assignee) shall, subject to the provisions of Sections 8, 9, 10, 11 and 12 hereof, then become liable for all the obligations, covenants and agreements of the Head DPA Subcontractor under the DPA Subcontract, provided that from and after the date of the Successive Assignment Notice to DPA Subcontractor, the Assignee shall have no liability whatsoever to DPA Subcontractor for any default or for any damages arising in respect of a matter or matters occurring under such DPA Subcontract from and after the date of the Successive Assignment Notice, and provided further, that if DPA Contracting Authority gives the Direct Assignment Notice, DPA Contracting Authority shall have no liability whatsoever to DPA Subcontractor for any default or for any damages arising in respect of a matter or matters occurring under the DPA Subcontract at any time, provided in the event of a Successive Agreement Notice or Direct Assignment Notice, the Assignee thereunder shall, except as limited herein, become liable for all of the obligations, covenants, and agreements of the Head DPA Subcontractor under the DPA Subcontract.

8. Notwithstanding the provisions of Section 7, with respect to the period preceding the Effective Date, as applicable (the “**Pre-Assignment Period**”), the only obligations, covenants and agreements of the Head DPA Subcontractor that the Assignee (and if applicable, the DPA Assignee) shall be liable for are those payment obligations of the Head DPA Subcontractor under the DPA Subcontract relating to progress payments required to be made by the Assignee pursuant to the Agreement outstanding as of the date of the Assignment, claims for payment for change orders, and any other payment obligations relating to claims for delay and acceleration in respect of the performance of the DPA Subcontract and any alleged changes to the schedule which may remain unpaid or outstanding on the date of the Assumption Agreement that, in each case, have been disclosed to DPA Contracting Authority by DPA Subcontractor and agreed by DPA Contracting Authority prior to the execution and delivery of the Assumption Agreement.
9. Notwithstanding Section 8, DPA Subcontractor acknowledges and agrees that if during the Pre-Assignment Period, DPA Contracting Authority has made a proper payment to Dev Co or the Head DPA Subcontractor on account of DPA Works performed by DPA Subcontractor and the Head DPA Subcontractor has failed to make payment to DPA Subcontractor, the Assignee (and if applicable, the DPA Assignee) shall not be responsible for payment of such amount to DPA Subcontractor.
10. Subject to Section 9, if, at the Effective Date, there are amounts in dispute between the Head DPA Subcontractor and DPA Subcontractor relating to the DPA Subcontract as provided for in Section 8, the Assignee shall only be liable for such amounts once DPA Subcontractor has established entitlement to the amounts claimed under the DPA Subcontract. DPA Subcontractor acknowledges and agrees that in its assessment of the outstanding claims relating to the Pre-Assignment Period, the Assignee (and if applicable, the DPA Assignee) shall require a reasonable period of time to review and assess the validity and reasonableness of the claims. DPA Subcontractor shall provide such further information as is reasonably necessary to allow the Assignee (and if applicable, the DPA Assignee) to make its determination. If the parties cannot agree on the reasonableness of the amounts claimed, then the parties shall seek to establish a mutually agreed dispute resolution process. If such dispute resolution process is not agreed to within 25 days of notice from the Assignee (and if applicable, the DPA Assignee), then either party may resort to litigation to resolve the dispute.

11. Except for liability in respect of claims set out in Section 8, DPA Contracting Authority shall not be liable for any other claim for injuries, losses, damages, interest, costs, indemnity, fines, penalties, legal and professional fees and assessments or amounts of any kind whatsoever (including any loss or damage not yet ascertained as at the date of the Assignment) that DPA Subcontractor has as of the Effective Date, or otherwise shall or hereafter may have for or by reason of or in any way arising out of any cause, matter or thing whatsoever, existing to the Effective Date.
12. DPA Subcontractor shall reimburse the Assignee (and if applicable any DPA Assignee) for any amounts paid or pre-paid to DPA Subcontractor by the Assignee (and if applicable any DPA Assignee) under Section 9 in respect of which DPA Subcontractor at any time during or after the Pre-Assignment Period has been paid, pre-paid, reimbursed or refunded, directly or through set-off, by DPA Contracting Authority, Dev Co, any Dev Co Party or any other person on account of work performed or services rendered by DPA Subcontractor during the Pre-Assignment Period.
13. Dev Co agrees that all costs and expenses incurred by DPA Contracting Authority in curing or attempting to cure any default by the Head DPA Subcontractor under the DPA Subcontract, together with interest thereon at the rate described in the definition of Payment Compensation Amount in Schedule 1 – DPA Definitions to the Agreement shall be payable by Dev Co to DPA Contracting Authority, as the case may be, on demand. Without limiting the foregoing, if Dev Co fails to make any such payment to DPA Contracting Authority as required hereunder, the amount of such payment shall be deemed to be an amount which is due to DPA Contracting Authority by Dev Co pursuant to the terms of the Agreement.
14. All notices, requests, demands, instructions, certificates, consents and other communications required or permitted hereunder shall be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Assignment of DPA Subcontract) and served by sending the same by registered mail, by hand (in each case with a copy by electronic submission to DPA Contracting Authority), or by electronic submission as follows:

If to Dev Co:

**ED PCL Trillium Dev Co Limited Partnership
[REDACTED]**

If to the Head DPA Subcontractor:

**[●] [Insert name of Head DPA Subcontractor]
[●] [Insert address of Head DPA Subcontractor]**

Attn.: [●]
Email: [●]

If to DPA Subcontractor:

**[●] [Insert name of DPA Subcontractor]
[●] [Insert address of DPA Subcontractor]**

Attn.: [●]
Email: [●]

If to DPA Contracting Authority:

**Trillium Health Partners
[REDACTED]**

**Infrastructure Ontario
[REDACTED]**

Where any notice is provided or submitted to a party via electronic submission, an original of the notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via electronic submission shall not be invalid by reason only of a party's failure to comply with this Section 14.

Any party to this Assignment of DPA Subcontract may, from time to time, change any of its contact information set forth in this Section 14 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.

Subject to the remainder of this Section 14:

- (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 electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.

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 electronic submission in accordance with this Section 14.

If any notice delivered by hand or transmitted by electronic submission 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.

A notice given by electronic submission shall be deemed to have been received by the recipient on the day it is transmitted only if an electronic submission report (maintained by the sender) indicates that the transmission of such notice was successful.

- 15. This Assignment of DPA Subcontract shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
- 16. This Assignment of DPA Subcontract shall be conclusively deemed to be a contract made under and shall for all purposes be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

17. DPA Subcontractor shall from time to time and at all times hereafter, upon the reasonable written request of DPA Contracting Authority so to do, make, do, execute and deliver or cause to be made, done, executed and delivered all such further acts, deeds, assurances and things as may be desirable in the opinion of DPA Contracting Authority, acting reasonably, for more effectually implementing and carrying out the true intent and meaning of this Agreement.
18. IO, as Crown agent, and the Hospital shall be liable, on a joint and several basis, for all of the obligations of DPA Contracting Authority under this Assignment of DPA Subcontract and for each covenant of the other under this Assignment of DPA Subcontract. Notwithstanding the foregoing and anything else in this Assignment of DPA Subcontract but without limiting any obligation or liability of the Hospital under this Assignment of DPA Subcontract whatsoever, any express or implied reference to Infrastructure Ontario providing an indemnity or any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the Province or Infrastructure Ontario, whether at the time of execution of this Assignment of DPA Subcontract or at any time thereafter, shall be void and of no legal effect with respect to the Province or Infrastructure Ontario, as the case may be.
19. In this Assignment of DPA Subcontract, all capitalized terms not otherwise defined in this Assignment of DPA Subcontract shall have the meaning ascribed to them in the Agreement unless the context requires otherwise.
20. This Assignment of DPA Subcontract may be executed by the parties in counterparts and may be executed and delivered by facsimile and all such counterparts and facsimiles shall together constitute one and the same agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the parties have executed this Assignment of DPA Subcontract as of the date first above written.

**ED PCL TRILLIUM DEV CO LIMITED
PARTNERSHIP, [REDACTED]**

Name:
Title:

Name:
Title:

I/We have authority to bind the corporation.

[HEAD DPA SUBCONTRACTOR]

Name:
Title:

Name:
Title:

I/We have authority to bind the corporation.

[DPA SUBCONTRACTOR]

Name:

Title:

Name:

Title:

I/We have authority to bind the corporation.

**ONTARIO INFRASTRUCTURE AND
LANDS CORPORATION**, a Crown agent,
continued under the *Ontario Infrastructure and
Lands Corporation Act, 2011*

Name:
Title:

Name:
Title:

I/We have authority to bind the corporation.

TRILLIUM HEALTH PARTNERS

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the corporation.

APPENDIX A

FORM OF ASSUMPTION AGREEMENT

_____, 20__

[DPA SUBCONTRACTOR]

Re: Assignment of DPA Subcontract Agreement dated _____, 20__ between ED PCL Trillium Dev Co Limited Partnership, [REDACTED], [Head DPA Subcontractor], [DPA Subcontractor], Ontario Infrastructure and Lands Corporation and Trillium Health Partners (the “Assignment of DPA Subcontract”)

And Re: [_____] [Specify Subcontract]

With reference to the [Assignment Notice / Successive Assignment Notice/Direct Assignment Notice] dated _____, 20__, [Name of Assignee or DPA Assignee] hereby agrees to assume all of the obligations of the Head DPA Subcontractor to DPA Subcontractor under the DPA Subcontract dated _____, 20__, and perform the obligations under the Assignment of DPA Subcontract, all in accordance with the provisions of the Assignment of DPA Subcontract.

Capitalized terms that are not otherwise defined in this notice shall have those meanings set out in the Assignment of DPA Subcontract.

Yours truly,

[Name of Assignee or DPA Assignee]

SCHEDULE 15

FORM OF PERFORMANCE GUARANTEE OF DPA WORKS GUARANTOR

THIS GUARANTEE is made as of the [REDACTED]

BETWEEN:

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION, a Crown agent, continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended (“**Infrastructure Ontario**” or “**IO**”)

AND:

TRILLIUM HEALTH PARTNERS, a non-share capital corporation incorporated under the laws of Ontario (the “**Hospital**”)

(IO and the Hospital are, collectively, “**DPA Contracting Authority**”)

AND:

[REDACTED]

AND:

[REDACTED]

([REDACTED] are, collectively, the “**DPA Works Guarantor**”)

WHEREAS:

- A. DPA Contracting Authority and ED PCL Trillium Dev Co Limited Partnership, [REDACTED], (“**Dev Co**”) have entered into a development phase agreement dated as of the 10th day of March, 2023 (which agreement, including the schedules thereto, as the same may be amended, modified, restated, supplemented or replaced, from time to time, is hereinafter called the “**Agreement**”).
- B. As an inducement to DPA Contracting Authority to enter the Agreement with Dev Co, DPA Works Guarantor has agreed to absolutely, unconditionally and irrevocably guarantee to DPA Contracting Authority, as a direct obligation, the full and prompt performance and observance by Dev Co of each and every covenant, agreement, undertaking and obligation of Dev Co contained in the Agreement with respect to the DPA Works (as such term is defined in the Agreement), and in furtherance thereof has agreed to enter into this Guarantee.
- C. IO, as Crown agent and the Hospital, intend to enter into this Guarantee in accordance with Applicable Law, and to be liable, on a joint and several basis, for all of the obligations of DPA Contracting Authority pursuant to this Guarantee, save and except as provided for in this Guarantee.

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

- (a) Unless otherwise defined herein, all capitalized terms will have the meanings ascribed to them in the Agreement.
- (b) Unless otherwise expressly provided herein, this Guarantee shall be interpreted in accordance with DPA Section 2.1 (*General*) of the Agreement.
- (c) For the purpose of this Guarantee:
 - (i) [REDACTED];
 - (ii) “**Guaranteed Obligations**” has the meaning given in Section 2.1(a); and
 - (iii) “**Notice**” has the meaning given in Section 4.1.

1.2 Survival

This Guarantee shall survive the termination or other expiry of the Agreement.

2. GUARANTEE

2.1 Guarantee

- (a) DPA Works Guarantor does hereby absolutely, unconditionally and irrevocably guarantee to DPA Contracting Authority, as a direct obligation, the full and prompt performance and observance by Dev Co of each and every covenant, agreement, undertaking and obligation of Dev Co contained in the Agreement with respect to the DPA Works (collectively, the “**Guaranteed Obligations**”), and for greater certainty the Guaranteed Obligations do not include any covenants, agreements, undertakings and obligations of Dev Co under the Agreement which are not expressly defined in this Section 2.1(a).
- (b) Notwithstanding any other provision of this Guarantee, DPA Works Guarantor’s undertakings and obligations are derivative of and not in excess of Dev Co’s obligations under the Agreement and DPA Works Guarantor retains all rights, claims, defences and limitations of liability possessed by Dev Co under the terms of the Agreement or arising from the Parties’ performance or failure to perform thereunder and shall be entitled to assert any contractual defences that would have been available to Dev Co, including, for greater certainty, that the alleged non-performance or non observance by Dev Co of the Guaranteed Obligations arises out of or is a result of a DPA Contracting Authority Event of Default as set out in DPA Section 18.2(a) (DPA Contracting Authority Event of Default) of the Agreement.

2.2 General Provisions Relating to the Guarantee

- (a) Each and every default in performance or observance of any of the Guaranteed Obligations by Dev

Co shall give rise to a separate claim and cause of action hereunder, and separate claims or suits may be made and brought, as the case may be, hereunder as each such default occurs.

- (b) The Guarantee herein provided for shall be a continuing, absolute and unconditional guarantee of performance and observance of the Guaranteed Obligations and shall remain in full force and effect until each and all of the Guaranteed Obligations shall have been fully and satisfactorily discharged in accordance with the terms and provisions of the Agreement and DPA Works Guarantor shall have fully and satisfactorily discharged all of its obligations under this Guarantee.
- (c) The liability of DPA Works Guarantor hereunder shall remain in full force and effect irrespective of and shall in no way be affected or impaired by (and no Notice to DPA Works Guarantor shall be required in respect of):
- (i) any compromise, waiver, renewal, extension, indulgence, amendment, addition, deletion, change in, modification of, or release of any security (including any other guarantee, letter of credit or bond) for or in respect of any of the Guaranteed Obligations;
 - (ii) any amalgamation, merger or consolidation of Dev Co or DPA Works Guarantor or any sale, lease or transfer of any of the assets of Dev Co or DPA Works Guarantor;
 - (iii) any Change in Ownership of Dev Co or DPA Works Guarantor;
 - (iv) the termination or other expiry of the Agreement;
 - (v) any Force Majeure Event (it being acknowledged, however, that the performance of the Guaranteed Obligations shall be extended accordingly);
 - (vi) any change in the financial condition of Dev Co or DPA Works Guarantor;
 - (vii) any Dev Co Event of Default described in DPA Section 18.1(a)(i) of the Agreement, or any resulting release, stay or discharge of any Guaranteed Obligation;
 - (viii) any lack or limitation of power, incapacity or disability on the part of Dev Co or any other irregularity, defect or informality on the part of Dev Co with respect to the Guaranteed Obligations;
 - (ix) any provision of any laws, statutes, rules or regulations of general application in relation to suretyship or any other circumstance that might constitute, under law generally applicable to suretyship, a defence available to, or a discharge of, DPA Works Guarantor in respect of the Guaranteed Obligations or this Guarantee;
 - (x) the assignment by DPA Contracting Authority in accordance with the provisions of DPA Section 29.1(c) (*Assignment*) of the Agreement; or
 - (xi) any other occurrence or circumstance whatsoever, whether similar or dissimilar to the foregoing that, under law generally applicable to suretyship, might otherwise constitute a legal or equitable defence or discharge of the liabilities of a guarantor or surety that might otherwise limit recourse against DPA Works Guarantor.
- (d) The obligations and liabilities of DPA Works Guarantor hereunder shall not be impaired,

diminished, abated or otherwise affected by the commencement by or against Dev Co or DPA Works Guarantor of any proceedings under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extension or other similar laws.

- (e) DPA Contracting Authority shall not be bound to exhaust their recourse against Dev Co or others or any securities (including the security described in DPA Section 16 of the Agreement) or other guarantees it may at any time hold before being entitled to performance of the Guaranteed Obligations by the DPA Works Guarantor and DPA Works Guarantor renounces all benefits of discussion and division.
- (f) If DPA Contracting Authority elects to draw down on the DPA Closing Letter of Credit in accordance with DPA Sections 16.3, 18.1(f) or 22.2 of the Agreement, DPA Contracting Authority shall not be entitled to exercise its rights pursuant to this Guarantee to fund, or as reimbursement for, the costs and expenses DPA Contracting Authority has already been compensated for pursuant to DPA Sections 16.3, 18.1(f) or 22.2 of the Agreement.
- (g) It is the intent and purpose hereof that DPA Works Guarantor shall not be entitled to and does hereby waive any and all defences which are, under law generally applicable to suretyship, available to a guarantor, sureties and other secondary parties at law or in equity. Without limiting the generality of the foregoing, DPA Works Guarantor hereby waives Notice of acceptance of this Guarantee and of the non-performance by Dev Co, diligence, presentment, protest, dishonour, demand for performance from DPA Contracting Authority and Notice of non-performance or failure to perform on the part of Dev Co and all other Notices whatsoever. The Guarantee hereunder is a guarantee of performance and compliance. In order to hold DPA Works Guarantor liable hereunder, there shall be no obligation on the part of DPA Contracting Authority at any time to demand or resort for performance to Dev Co, its properties or assets or to any security, property or other rights or remedies whatsoever, nor shall there be any requirement that Dev Co be joined as a party to any proceeding for the enforcement of any provision of this Guarantee and DPA Contracting Authority shall have the right to enforce the provisions of this Guarantee irrespective of whether or not legal proceedings or other enforcement efforts against Dev Co are pending, seeking resort to or realization upon or from any of the foregoing. Without limiting the foregoing, it is understood that repeated and successive demands may be made and recoveries may be had hereunder as and when from time to time, Dev Co shall default under or with respect to any of the Guaranteed Obligations, and that, notwithstanding recovery hereunder for or in respect of any such default, the Guarantee herein shall remain in full force and effect unamended and shall apply to each and every subsequent default.
- (h) Without prejudice to and without releasing, discharging, limiting or otherwise affecting in whole or in part the obligations and liabilities of DPA Works Guarantor under this Guarantee and without in any way requiring the consent of or giving Notice to DPA Works Guarantor, DPA Contracting Authority may grant time, renewals, extensions, indulgences, releases and discharges to and accept compositions from or otherwise deal with Dev Co and/or DPA Works Guarantor or others, including any other guarantor, as DPA Contracting Authority may see fit and DPA Contracting Authority may take, abstain from taking or perfecting, vary, exchange, renew, discharge, give up, realize on or otherwise deal with security and guarantees in such manner as DPA Contracting Authority may see fit.
- (i) Neither an action or proceeding brought under this Guarantee regarding the Guaranteed Obligations

nor any judgment or recovery in consequence of that action or proceeding operates as a bar or defence action or defence to any further action that may be brought under this Guarantee. DPA Works Guarantor acknowledges that, if judgment is granted on an action or proceeding commenced under this Guarantee, the obligations of DPA Works Guarantor to DPA Contracting Authority do not merge with or end DPA Works Guarantor's obligations hereunder.

- (j) The liability of DPA Works Guarantor under this Guarantee shall arise forthwith after demand has been made in writing on DPA Works Guarantor.
- (k) DPA Works Guarantor agrees to pay to DPA Contracting Authority any and all reasonable and direct out-of-pocket costs and expenses, including reasonable legal fees (on a substantial indemnity basis) incurred by it in connection with enforcing any of its rights hereunder.

3. REPRESENTATIONS AND WARRANTIES

3.1 DPA Works Guarantor Representations and Warranties

- (a) [REDACTED]
- (b) [REDACTED]

4. NOTICES

4.1 Notices to Parties

All notices, requests, demands, instructions, certificates, consents and other communications (each being a "Notice") required or permitted under this Guarantee shall be in writing (whether or not "written notice" or "notice in writing" is specifically required by the applicable provision of this Guarantee) and served by sending the same by registered mail, by hand (in each case with a copy by electronic submission to the DPA Contracting Authority Representative), or by electronic submission as follows:

If to DPA Contracting Authority:

Trillium Health Partners
[REDACTED]

Infrastructure Ontario
[REDACTED]

If to DPA Works Guarantor:

[REDACTED]

4.2 Electronic Submission

Where any Notice is provided or submitted to a party via electronic submission, an original of the Notice sent via electronic submission shall promptly be sent by regular mail or registered mail. For greater certainty, a Notice given via electronic submission shall not be invalid by reason only of a party's failure to comply with this Section 0.

4.3 Change of Address

Either party to this Guarantee may, from time to time, change any of its contact information set forth in Section 4.1 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.

4.4 Deemed Receipt of Notices

- (a) Subject to Sections 4.4(b), 4.4(c) and 4.4(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 electronic submission shall be deemed to have been received on the day it is transmitted by electronic submission.
- (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 electronic submission in accordance with this Section 4.
- (c) If any Notice delivered by hand or transmitted by electronic submission 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 electronic submission shall be deemed to have been received by the recipient on the day it is transmitted only if an electronic submission report (maintained by the sender) indicates that the transmission of such Notice was successful.

4.5 Service on DPA Contracting Authority

Where any Notice is required to be served on DPA Contracting Authority, the obligation to serve such Notice shall be fulfilled by serving it on DPA Contracting Authority in accordance with the provisions of this Section 4.

5. GENERAL

5.1 Amendments

This Guarantee 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 Guarantee.

5.2 Waiver

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

5.3 Entire Agreement

Except where provided otherwise in this Guarantee, this Guarantee, together with the Agreement, constitute 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 Guarantee, including the Request for Proposals.

5.4 Severability

Each provision of this Guarantee shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Guarantee 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 Guarantee. If any such provision of this Guarantee 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 Guarantee as near as possible to its original intent and effect.

5.5 Enurement

This Guarantee shall enure to the benefit of, and be binding on, DPA Contracting Authority and DPA Works Guarantor and their respective permitted successors and assigns. This Guarantee may not be assigned by the DPA Works Guarantor.

5.6 Governing Law and Jurisdiction

- (a) This Guarantee 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) 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.
- (c) Nothing in this Guarantee affects the rights, protections and immunities of the Crown under the

Crown Liability and Proceedings Act (Ontario).

5.7 Cumulative Remedies

Except as otherwise set forth in this Guarantee, the rights, powers and remedies of each party set forth in this Guarantee 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 Guarantee or the Agreement.

5.8 Further Assurance

Each party shall do all reasonable things, from time to time, and execute all reasonable further documents necessary to give full effect to this Guarantee.

5.9 Costs

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 Guarantee.

5.10 Language of Agreement

- (a) Each of the parties acknowledges having requested and being satisfied that this Guarantee 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.
- (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 Guarantee shall be in English.

5.11 Proof of Authority

DPA Contracting Authority and DPA Works Guarantor each reserve the right to require any person executing this Guarantee on behalf of the other party to provide proof, in a form acceptable to DPA Contracting Authority or DPA Works Guarantor, as applicable, that they have the requisite authority to execute this Guarantee on behalf of and to bind DPA Contracting Authority or DPA Works Guarantor, as applicable.

5.12 Counterparts

This Guarantee may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all of the parties shall constitute a full, original and binding agreement for all purposes. Delivery of an executed counterpart by sending a copy by electronic mail or other electronic transmission shall be as effective as the manual delivery of an executed counterpart.

5.13 Joint and Several

- (a) Each of [REDACTED] and [REDACTED] shall be jointly and severally liable for the obligations and liabilities of DPA Works Guarantor hereunder.

- (b) IO, as Crown agent and the Hospital shall be liable, on a joint and several basis, for all of the obligations of DPA Contracting Authority under this Guarantee and for each covenant of the other under this Guarantee.

5.14 Copyright Notice

The parties acknowledge that the King's Printer for Ontario is the exclusive owner of the copyright in the Agreement.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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

**ONTARIO INFRASTRUCTURE AND LANDS
CORPORATION**, a Crown agent, continued under the
Ontario Infrastructure and Lands Corporation Act, 2011

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation

TRILLIUM HEALTH PARTNERS

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation

[REDACTED]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation

[REDACTED]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation

SCHEDULE 16

DPA TERM GOVERNANCE, MEETINGS AND PROGRESS REPORTING

1. DEFINITIONS

- (a) In this Schedule 16, unless the context indicates a contrary intention, terms which are defined in the Agreement (and not otherwise defined in this Schedule 16) shall have the meanings given to them in the Agreement and the following terms shall have the following meanings:
- (i) “**Ad Hoc Meeting**” has the meaning given in Section 5.9(a);
 - (ii) “**Checkpoint Meeting**” has the meaning given in Section 5.7(a);
 - (iii) “**Construction Risk Contingency Amount**” means a risk contingency amount that is informed by a quantitative assessment and historical data analysis of the risks to be assumed by Project Co with respect to the performance of the Works under any Final Project Agreement (including those risks to be shared with Contracting Authority).
 - (iv) “**Construction Risk Register**” has the meaning given in Section 7.3(a);
 - (v) “**Design Review Meeting**” has the meaning given in the Draft Project Agreement;
 - (vi) “**Design Workshops**” has the meaning given in the Draft Project Agreement;
 - (vii) “**Dev Co Equipment Steering Subcommittee Representative**” has the meaning given in Section 3.5(a)(ii);
 - (viii) “**Dev Co Finance Working Group Representative**” has the meaning given in Section 3.3(a)(ii);
 - (ix) “**Dev Co FM Subcommittee Representative**” has the meaning given in Section 3.6(a)(ii);
 - (x) “**Dev Co ICAT Steering Subcommittee Representative**” has the meaning given in Section 3.7(a)(ii);
 - (xi) “**Dev Co Risk Representative**” has the meaning given in Section 5.5(c)(ii)(A);
 - (xii) “**Dev Co Schedule and Cost Estimation Subcommittee Representative**” has the meaning given in Section 3.4(a)(ii);
 - (xiii) “**Development Risk Register**” has the meaning given in Section 7.2(a);
 - (xiv) “**DPA Contracting Authority Equipment Steering Subcommittee Representative**” has the meaning given in Section 3.5(a)(i);
 - (xv) “**DPA Contracting Authority Finance Working Group Representative**” has the meaning given in Section 3.3(a)(i);

- (xvi) “**DPA Contracting Authority FM Subcommittee Representative**” has the meaning given in Section 3.6(a)(i);
- (xvii) “**DPA Contracting Authority ICAT Steering Subcommittee Representative**” has the meaning given in Section 3.7(a)(i);
- (xviii) “**DPA Contracting Authority Risk Representative**” has the meaning given in Section 5.5(c)(i)(A);
- (xix) “**DPA Contracting Authority Schedule and Cost Estimation Subcommittee Representative**” has the meaning given in Section 3.4(a)(i);
- (xx) “**DPA Equipment Steering Subcommittee**” has the meaning given in Section 3.5(a);
- (xxi) “**DPA Equipment Steering Subcommittee Meeting**” has the meaning given in Section 3.5(e);
- (xxii) “**DPA Facilities Management Subcommittee Meeting**” has the meaning given in Section 3.6(f);
- (xxiii) “**DPA Facilities Management Subcommittee**” has the meaning given in Section 3.6(a);
- (xxiv) “**DPA ICAT Steering Subcommittee**” has the meaning given in Section 3.7(a);
- (xxv) “**DPA ICAT Steering Subcommittee Meeting**” has the meaning given in Section 3.7(f);
- (xxvi) “**DPA Indigenous Advisory Committee**” has the meaning given in Section 3.8.
- (xxvii) “**DPA Schedule and Cost Estimation Review Subcommittee**” has the meaning given in Section 3.4(a);
- (xxviii) “**DPA Schedule and Cost Estimation Review Meeting**” has the meaning given in Section 3.4(c);
- (xxix) “**DPA Works Committee**” has the meaning given in Section 3.2(a);
- (xxx) “**Finance Working Group**” has the meaning given in Section 3.3(a);
- (xxxi) “**Geo-Exchange System**” has the meaning given in Appendix 1 – DPA Technical Submittals and Requirements to Schedule 3 – DPA Submissions and Project Development Process;
- (xxxii) “**Geo-Exchange System Business Case**” has the meaning given in Section 5.3(a);
- (xxxiii) “**Geo-Exchange System Workshops**” has the meaning given in Section 5.3(a);
- (xxxiv) “**ICAT**” has the meaning given in Section 3.7(c);
- (xxxv) “**Initial Risk Workshop**” has the meaning given in Section 5.4(a);

(xxxvi) “**Project Risk Summary Report**” has the meaning given in Section 7.4(a);

(xxxvii) “**Risk Breakdown Structure**” means the organized depiction of specified Project risks arranged by risk category and subcategory that identifies the various areas and causes of potential risks, and which forms part of the Dev Co Proposal Extracts;

(xxxviii) “**Risk Management Plan**” has the meaning given in Section 7.1(a);

(xxxix) “**Risk Review Meeting**” has the meaning given in Section 5.5(a); and

(xl) “**Start-Up Meeting**” has the meaning given in Section 5.1(a).

2. OVERVIEW

2.1 Overview of this Schedule 16

(a) This Schedule 16 sets out:

- (i) the Agreement’s governance model;
- (ii) general meeting requirements for meetings between the Parties;
- (iii) specific meetings between the Parties; and
- (iv) Dev Co’s progress reporting obligations,

during the DPA Term in respect of the Agreement, including the performance of the DPA Works.

(b) Nothing in this Schedule 16 shall limit any other provision of the Agreement in respect of the subject matters of this Schedule 16, including the requirements of DPA Section 10.2(a)(ii)A of the Agreement.

3. GOVERNANCE MODEL

3.1 General

(a) The Parties agree that the Project governance model for the Agreement and the performance of the DPA Works shall be based on the governance structure set out in this Section 3, which, without limitation, is intended to efficiently and effectively

- (i) facilitate the exchange of information and collaboration between the Parties during the DPA Term;
- (ii) allow the Parties to make decisions and carry out, manage and oversee the performance of the DPA Works;
- (iii) plan for the performance of the Project Operations under a Final Project Agreement and for the performance of the Hospital Services (as defined in the Draft Project Agreement); and

- (iv) establish appropriate channels of escalation to resolve issues that could become DPA Disputes under the Agreement.

3.2 DPA Works Committee

- (a) The Parties shall establish a committee (the “**DPA Works Committee**”) within 15 Business Days following the Effective Date, and participate in meetings of the DPA Works Committee during the DPA Term.
- (b) The DPA Works Committee shall consist of:
 - (i) the following four representatives appointed by DPA Contracting Authority:
 - (A) one representative of Infrastructure Ontario, being the DPA Contracting Authority Representative;
 - (B) one representative of the Hospital; and
 - (C) two other representatives appointed by DPA Contracting Authority from time to time; and
 - (ii) the following three representatives appointed by Dev Co:
 - (A) the DPA Dev Co Representative;
 - (B) one representative of the Construction Contractor; and
 - (C) one other representative appointed by Dev Co from time to time.
- (c) Representatives of the Design Conformance Consultant shall be entitled, but not required, to attend meetings as non-voting members of the DPA Works Committee.
- (d) Members of the DPA Works Committee may invite, on prior written notice to all members, such advisors and consultants as they require from time to time to attend meetings and provide briefings to the DPA Works Committee.
- (e) The DPA Contracting Authority Representative shall be the chairperson of the DPA Works Committee.
- (f) The DPA Works Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the DPA Works.
- (g) The DPA Works Committee shall be responsible for receiving and reviewing all matters related to the DPA Works, including:
 - (i) any design or Enabling Works issues;
 - (ii) matters related to the DPA Works Schedules;

- (iii) any issues arising from reports or documents provided to DPA Contracting Authority by Dev Co;
 - (iv) any quality assurance issues;
 - (v) matters related to the DPA Works Reports;
 - (vi) the recommendations of subcommittees to the DPA Works Committee;
 - (vii) any “Critical Non-Conformance” assigned to a DPA Submittal pursuant to a Review Procedure escalated to the DPA Works Committee in accordance with the provisions of the applicable Review Procedure;
 - (viii) equity, diversity and inclusion matters related to the Project, including in respect of the subject matters described in and Dev Co’s compliance with DPA Section 10.4 of the Agreement;
 - (ix) any matters related to the Project Risk Summary Report;
 - (x) matters related to Indigenous engagement in respect of the DPA Works, including any matters referred to the DPA Works Committee by the DPA Indigenous Advisory Committee;
 - (xi) any special matters referred to the DPA Works Committee by DPA Contracting Authority or Dev Co; and
 - (xii) any other issues or risks pertaining to the DPA Works, including any issues or risks that have the potential to become DPA Disputes.
- (h) Subject to Section 3.2(i), any unanimous decision of the DPA Works Committee shall be final and binding on the Parties. If the DPA Works Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with the DPA Dispute Resolution Procedure.
- (i) The DPA Works Committee shall not have authority to make decisions with respect to or approve:
- (i) any amendment to or waiver of any provision of the Agreement;
 - (ii) any change to a Key DPA Works Milestone set out in the DPA Works Schedules (including the Project Proposal Submission Deadline);
 - (iii) any DPA Variation;
 - (iv) any change that may materially adversely affect Dev Co’s ability to submit the Project Proposal on or before the Project Proposal Submission Deadline in accordance with Schedule 3 – DPA Submissions and Project Development Process of the Agreement; or

- (v) any matter with respect to which DPA Contracting Authority has a right of consent or in respect of which DPA Contracting Authority may exercise discretion pursuant to the Agreement.
- (j) The DPA Works Committee shall only operate until Commercial Close.
- (k) DPA Contracting Authority shall be entitled to replace its representatives on the DPA Works Committee by Notice to the DPA Dev Co Representative. DPA Contracting Authority will use commercially reasonable efforts to deliver prior Notice of any such replacement to the DPA Dev Co Representative. Dev Co may replace any of its representatives on the DPA Works Committee with the prior written consent of DPA Contracting Authority.
- (l) The members of the DPA Works Committee may:
 - (i) adopt such procedures and practices for the conduct of the activities of the DPA Works Committee as they consider appropriate from time to time;
 - (ii) in addition to the persons identified in Section 3.2(d), invite to any meeting of the DPA Works Committee such other persons as the members of the DPA Works Committee may agree;
 - (iii) exclude from any meeting of the DPA Works Committee such persons (other than members of the DPA Works Committee) as the members of the DPA Works Committee may agree; and
 - (iv) receive and review reports from any person or organization agreed to by the members of the DPA Works Committee.
- (m) Once established, the DPA Works Committee shall meet at least once each month until Commercial Close, unless otherwise agreed in writing by the members of the DPA Works Committee or the Parties.
- (n) Either Party Representative may convene a special meeting of the DPA Works Committee at any time. Special meetings of the DPA Works Committee may be convened on not less than five Business Days' written notice to all members of the DPA Works Committee identifying the agenda items to be discussed at the special meeting, provided that, in an emergency, a meeting may be called by a Party Representative at any time on such notice as may be reasonable in the circumstances.
- (o) Unless otherwise agreed in writing by the members of the DPA Works Committee, the DPA Works Committee shall meet at the Existing Facilities or another location identified by DPA Contracting Authority in Mississauga, Ontario. Meetings of the DPA Works Committee may be held by means of such telephonic, electronic or other communication facilities agreed by the Parties, acting reasonably, so as to 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 DPA Works Committee must attend in person at least once each calendar quarter.

- (p) Three representatives of DPA Contracting Authority (one of whom shall be the DPA Contracting Authority Representative) and two representatives of Dev Co (one of whom shall be the Dev Co Representative) shall constitute a quorum at any meeting of the DPA Works Committee. A quorum of members may exercise all the powers of the DPA Works Committee. The members shall not transact business at a meeting of the DPA Works Committee unless a quorum is present.
- (q) Minutes of all meetings, recommendations and decisions of the DPA Works Committee, including those made by telephone or other form of communication, shall be recorded and maintained by DPA Contracting Authority. DPA Contracting Authority shall circulate copies of such minutes within five Business Days of the holding of the meeting or the making of the recommendation or decision. Unless Dev Co notifies DPA Contracting Authority within five Business Days of receipt of the minutes that Dev Co disagrees with the contents of the minutes, Dev Co and DPA Contracting Authority shall be deemed to have approved such minutes. DPA Contracting Authority shall maintain a complete set of all minutes of the meetings of the DPA Works Committee and shall make such minutes available for inspection by Dev Co during regular business hours.
- (r) In addition to the subcommittees of the DPA Works Committee described in this Schedule 16, the Parties may, from time to time during the DPA Term, establish subcommittees of the DPA Works Committee with respect to the performance of certain specific elements of the DPA Works or in order to plan for the performance of the Hospital's and Project Co's activities related to the Project following Commercial Close. The DPA Works Committee shall interface with and require reporting from such subcommittees as and when required by the DPA Works Committee.

3.3 Finance Working Group

- (a) Within 15 Business Days following the Effective Date, the Parties shall establish a committee (the “**Finance Working Group**”) consisting of:
 - (i) representatives of DPA Contracting Authority appointed by DPA Contracting Authority, one of which shall be designated by DPA Contracting Authority as the “**DPA Contracting Authority Finance Working Group Representative**”; and
 - (ii) representatives of Dev Co appointed by Dev Co, one of which shall be designated by Dev Co as the “**Dev Co Finance Working Group Representative**”. Such representatives shall at all times during the DPA Term include:
 - (A) the DPA Key Individual identified as Dev Co's “Finance Lead” in Schedule 5 – DPA Key Individuals;
 - (B) an individual identified by Dev Co as Dev Co's “Deputy Finance Lead”; and
 - (C) after it is appointed, a representative of the Financial Advisor identified by Dev Co from time to time.
- (b) The number of representatives that comprise the Finance Working Group shall be agreed by the Parties prior to the establishment of the Finance Working Group, and may subsequently be adjusted by agreement between the Parties, acting reasonably, at any time during the DPA Term.

- (c) The chairperson of the Finance Working Group shall be the DPA Contracting Authority Finance Working Group Representative.
- (d) The function of the Finance Working Group shall be to assist the Parties by promoting collaboration, transparency, cooperation and effective planning and communication with respect to the Financing Process.
- (e) Once established, the Finance Working Group shall, at a minimum, meet once every 10 Business Days during the DPA Term (unless otherwise agreed by the Parties in writing) and thereafter until Financial Close at a location or otherwise by a medium agreed upon by the Parties, acting reasonably, provided that the DPA Contracting Authority Finance Working Group Representative or the Dev Co Finance Working Group Representative may convene a special meeting of the Finance Working Group at any time by the provision of no fewer than five Business Days prior written notice to all members of the Finance Working Group identifying the agenda items to be discussed at the special meeting, except in the event of an emergency where a meeting may be called by the DPA Contracting Authority Finance Working Group Representative or the Dev Co Finance Working Group Representative at any time on such notice as may be reasonable in the circumstances.
- (f) Subject to DPA Section 10.6 of the Agreement in respect of the replacement of DPA Key Individuals and Section 3.3(a)(ii), the DPA Contracting Authority Finance Working Group Representative or the Dev Co Finance Working Group Representative may, upon the delivery of prior written notice to the other representative, be entitled to replace any of the Party's representatives on the Finance Working Group or any representative's role in the Finance Working Group.
- (g) The Finance Working Group may, without limitation:
 - (i) adopt such procedures and practices for the conduct of its activities as it considers appropriate from time to time;
 - (ii) invite to any meeting such other persons as the Finance Working Group or the DPA Contracting Authority Finance Working Group Representative may approve;
 - (iii) exclude from any meeting such other persons as the Finance Working Group or the DPA Contracting Authority Finance Working Group Representative may approve; and
 - (iv) receive, review and discuss reports, documents and other information related to the Financing Process.
- (h) The Parties agree that the Finance Working Group shall meet and, without limitation, discuss the following specific matters at its meetings:
 - (i) the status and content of the DPA Financial Submittals;
 - (ii) the status and update in respect of Dev Co raising the Financing;

- (iii) the Potential Equity Provider identified by Dev Co and the indicative Financing quantum (including debt and equity amount ranges for the Project) for the purpose of Equity Capital sizing;
 - (iv) prior to Dev Co’s submission of the Financing Process Third Parties Submittal, the identity of the proposed Financing Process Third Parties; and
 - (v) any other issues or matters related to the Financing or the Financing Process a Party would like to discuss.
- (i) Without limiting Section 3.3(h), the Parties agree that, before the submission of each DPA Financial Submittal to DPA Contracting Authority in accordance with the Agreement, representatives of Dev Co on the Finance Working Group shall provide a formal presentation to the Finance Working Group on the DPA Financial Submittal at a meeting of the Finance Working Group, including in respect of the contents of the DPA Financial Submittal, key issues identified by Dev Co related to the DPA Financial Submittal and the rationale for any assumptions made by Dev Co during the development of the DPA Financial Submittal. The purpose of each of these meetings is for the Finance Working Group to discuss and for the representatives of DPA Contracting Authority to provide feedback on each of the DPA Financial Submittals prior to its submission to DPA Contracting Authority in accordance with the Agreement and to assist the representatives of DPA Contracting Authority with understanding the DPA Financial Submittal.

3.4 DPA Schedule and Cost Estimation Review Subcommittee

- (a) Within 15 Business Days following the Effective Date or such later date agreed by the Parties in writing, the Parties shall establish a subcommittee of the DPA Works Committee (the “**DPA Schedule and Cost Estimation Review Subcommittee**”) consisting of:
- (i) four representatives of DPA Contracting Authority appointed by DPA Contracting Authority, one of which shall be designated as the “**DPA Contracting Authority Schedule and Cost Estimation Subcommittee Representative**”. Such representatives shall at all times during the DPA Term include:
 - (A) one representative of Infrastructure Ontario, being the DPA Contracting Authority Representative;
 - (B) one representative of the Hospital; and
 - (C) two other representatives appointed by DPA Contracting Authority from time to time; and
 - (ii) five representatives of Dev Co appointed by Dev Co, one of which shall be designated by Dev Co as the “**Dev Co Schedule and Cost Estimation Subcommittee Representative**”. Such representatives shall at all times during the DPA Term include:
 - (A) the Deputy DPA Dev Co Representative;
 - (B) the DPA Key Individual identified as Dev Co’s “Cost Estimation Lead” in Schedule 5 – DPA Key Individuals;

- (C) the DPA Key Individual identified as Dev Co’s “Schedule Lead” in Schedule 5 – DPA Key Individuals;
 - (D) the DPA Key Individual identified as Dev Co’s “Risk Lead” in Schedule 5 – DPA Key Individuals; and
 - (E) one other representative appointed by Dev Co from time to time.
- (b) The chairperson of the DPA Schedule and Cost Estimation Review Subcommittee shall be the DPA Contracting Authority Schedule and Cost Estimation Subcommittee Representative.
- (c) Subject to DPA Section 10.6 of the Agreement in respect of the replacement of DPA Key Individuals and Section 3.4(a), the DPA Contracting Authority Schedule and Cost Estimation Subcommittee Representative or the Dev Co Schedule and Cost Estimation Subcommittee Representative may, upon the delivery of prior written notice to the other representative, be entitled to replace any of the Party’s representatives on the DPA Schedule and Cost Estimation Review Subcommittee.
- (d) The function of the DPA Schedule and Cost Estimation Review Subcommittee shall be to assist the Parties by promoting collaboration, transparency, cooperation and effective planning and communication with respect to Project scheduling and cost estimation.
- (e) The DPA Schedule and Cost Estimation Review Subcommittee may from time to time make recommendations to and request guidance or decisions from the DPA Works Committee. The DPA Schedule and Cost Estimation Review Subcommittee does not have authority to make any decisions.
- (f) The DPA Schedule and Cost Estimation Review Subcommittee will hold schedule and cost estimation review meetings (each a “**DPA Schedule and Cost Estimation Review Meeting**”) in order to:
 - (i) allow Dev Co the opportunity to present, and DPA Contracting Authority the opportunity to review and provide feedback on, DPA Submittals related to the Construction Works Schedule and cost estimates prior to their submission and as they are being developed, including any issues identified by Dev Co in the preparation of such DPA Submittals, the rationale for any assumptions included in such DPA Submittals, and Dev Co’s proposed Scheduled Phase Completion Date(s), Scheduled Substantial Completion Date, Scheduled Remaining Works Phase Completion Dates, and Scheduled Final Completion Date; and
 - (ii) assist DPA Contracting Authority in understanding the underlying issues and rationale behind matters raised by the Dev Co with respect to the development of such DPA Submittals.
- (g) The Parties shall cooperate to develop a reasonable schedule for the DPA Schedule and Cost Estimation Review Meetings, and shall incorporate such schedule into the DPA Works Schedules, provided that:

- (i) once established, the DPA Schedule and Cost Estimation Review Subcommittee shall, at a minimum, meet once every 30 days during the DPA Term unless otherwise agreed by the Parties in writing; and
 - (ii) the DPA Contracting Authority Schedule and Cost Estimation Subcommittee Representative or the Dev Co Schedule and Cost Estimation Subcommittee Representative may convene a special meeting of the DPA Schedule and Cost Estimation Review Subcommittee at any time by the provision of no fewer than five Business Days prior written notice to all members of the DPA Schedule and Cost Estimation Review Subcommittee identifying the agenda items to be discussed at the special meeting, except in the event of an emergency where a meeting may be called by the DPA Contracting Authority Schedule and Cost Estimation Subcommittee Representative or the Dev Co Schedule and Cost Estimation Subcommittee Representative at any time on such notice as may be reasonable in the circumstances.
- (h) Dev Co shall prepare, and the Dev Co Schedule and Cost Estimation Subcommittee Representative shall circulate to the DPA Contracting Authority Schedule and Cost Estimation Subcommittee Representative, an agenda for each DPA Schedule and Cost Estimation Review Meeting no later than 10 Business Days prior to the scheduled date for such DPA Schedule and Cost Estimation Review Meeting.
- (i) Members of the DPA Schedule and Cost Estimation Review Subcommittee may invite, on prior written notice to all members, such advisors, subcontractors and consultants as they require from time to time to attend DPA Schedule and Cost Estimation Review Subcommittee meetings and provide briefings to the DPA Schedule and Cost Estimation Review Subcommittee.
- (j) The DPA Schedule and Cost Estimation Review Meetings may be combined with other meetings between the Parties, including the Design Review Meetings, with the written consent of the Parties.
- (k) The members of the DPA Schedule and Cost Estimation Review Subcommittee may adopt such other procedures and practices for the conduct of the activities of the DPA Schedule and Cost Estimation Review Subcommittee as they consider appropriate from time to time.

3.5 DPA Equipment Steering Subcommittee

- (a) Within 15 Business Days following the Effective Date or such later date agreed by the Parties in writing, the Parties shall establish a subcommittee of the DPA Works Committee (the “**DPA Equipment Steering Subcommittee**”) consisting of:
- (i) the following five representatives appointed by DPA Contracting Authority:
 - (A) one representative appointed by Infrastructure Ontario;
 - (B) one representative appointed by the Hospital; and
 - (C) three other representatives appointed by DPA Contracting Authority from time to time,

one of which shall be designated as the “**DPA Contracting Authority Equipment Steering Subcommittee Representative**”; and

- (ii) the following three representatives appointed by Dev Co:
 - (A) the DPA Key Individual identified as Dev Co’s “Equipment (FF&E) Lead” in Schedule 5 – DPA Key Individuals, who shall also serve as the “**Dev Co Equipment Steering Subcommittee Representative**”; and
 - (B) two other representatives appointed by Dev Co from time to time.
- (b) The DPA Contracting Authority Equipment Steering Subcommittee Representative shall be the chairperson of the DPA Equipment Steering Subcommittee.
- (c) Subject to DPA Section 10.6 of the Agreement in respect of the replacement of DPA Key Individuals and Section 3.5(a), the DPA Contracting Authority Equipment Steering Subcommittee Representative or the Dev Co Equipment Steering Subcommittee Representative may, upon the delivery of prior written notice to the other representative, be entitled to replace any of the Party’s representatives on the DPA Equipment Steering Subcommittee.
- (d) The DPA Equipment Steering Subcommittee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to Equipment and Existing Equipment.
- (e) The DPA Equipment Steering Subcommittee may from time to time make recommendations to and request guidance or decisions from the DPA Works Committee. The DPA Equipment Steering Subcommittee does not have authority to make any decisions.
- (f) The DPA Equipment Steering Subcommittee will hold meetings (each a “**DPA Equipment Steering Subcommittee Meeting**”) in order to:
 - (i) allow Dev Co the opportunity to present, and DPA Contracting Authority the opportunity to review and provide feedback on, the DPA Submittals related to Equipment and Existing Equipment prior to their submission and as they are being developed, including any issues identified by Dev Co in the preparation of such DPA Submittals and the rationale for any assumptions included therein;
 - (ii) assist DPA Contracting Authority in understanding the underlying issues and rationale behind matters raised by the Dev Co with respect to the development of such DPA Submittals; and
 - (iii) discuss any other matters in relation to Equipment and Existing Equipment raised by the members of the DPA Equipment Steering Subcommittee.
- (g) The Parties shall cooperate to develop a reasonable schedule for the DPA Equipment Steering Subcommittee Meetings, and shall incorporate such schedule into the DPA Works Schedules, provided that:

- (i) once established, the DPA Equipment Steering Subcommittee shall, at a minimum, meet once every 30 days during the DPA Term unless otherwise agreed by the Parties in writing; and
 - (ii) the DPA Contracting Authority Equipment Steering Subcommittee Representative or the Dev Co Equipment Steering Subcommittee Representative may convene a special meeting of the DPA Equipment Steering Subcommittee at any time by the provision of no fewer than five Business Days prior written notice to all members of the DPA Equipment Steering Subcommittee identifying the agenda items to be discussed at the special meeting, except in the event of an emergency where a meeting may be called by the DPA Contracting Authority Equipment Steering Subcommittee Representative or the Dev Co Equipment Steering Subcommittee Representative at any time on such notice as may be reasonable in the circumstances.
- (h) Dev Co shall prepare, and the Dev Co Equipment Steering Subcommittee Representative shall circulate, to the DPA Contracting Authority Equipment Steering Subcommittee Representative, an agenda for each DPA Equipment Steering Subcommittee Meeting no later than 10 Business Days prior to the scheduled date for such DPA Equipment Steering Subcommittee Meeting.
 - (i) Members of the DPA Equipment Steering Subcommittee may invite, on prior written notice to all members, such advisors, subcontractors and consultants as they require from time to time to attend meetings and provide briefings to the DPA Equipment Steering Subcommittee.
 - (j) DPA Equipment Steering Subcommittee Meetings may be combined with other meetings between the Parties including the Design Review Meetings, with the written consent of the Parties.
 - (k) Dev Co and the DPA Equipment Steering Subcommittee will work cooperatively with any equipment consultant retained by DPA Contracting Authority.
 - (l) The members of the DPA Equipment Steering Subcommittee may adopt such other procedures and practices for the conduct of the activities of the DPA Equipment Steering Subcommittee as they consider appropriate from time to time.

3.6 DPA Facilities Management Subcommittee

- (a) Within 15 Business Days following the Effective Date or such later date agreed by the Parties in writing, the Parties shall establish a subcommittee of the DPA Works Committee (the “**DPA Facilities Management Subcommittee**”) consisting of:
 - (i) the following five representatives appointed by DPA Contracting Authority:
 - (A) one representative appointed by Infrastructure Ontario;
 - (B) one representative appointed by the Hospital; and
 - (C) three other representatives appointed by DPA Contracting Authority from time to time,

- one of which shall be designated as the “**DPA Contracting Authority FM Subcommittee Representative**”; and
- (ii) four representatives of Dev Co, appointed by Dev Co, one of which shall be the individual identified by Dev Co as Dev Co’s “Service Provider Integration Lead” in Schedule 5 – DPA Key Individuals, who shall also serve as the “**Dev Co FM Subcommittee Representative**”.
- (b) The chairperson of the DPA Facilities Management Subcommittee shall be the DPA Contracting Authority FM Subcommittee Representative.
 - (c) Subject to DPA Section 10.6 of the Agreement in respect of the replacement of DPA Key Individuals and Section 3.6(a), the DPA Contracting Authority FM Subcommittee Representative or the Dev Co FM Subcommittee Representative may, upon the delivery of prior written notice to the other representative, be entitled to replace any of the Party’s representatives on the DPA Facilities Management Subcommittee.
 - (d) The DPA Facilities Management Subcommittee shall assist the Parties by promoting cooperative and effective communication with respect to matters related the maintenance or operation of the Facility following Substantial Completion, including the performance of the Project Co Services under a Final Project Agreement.
 - (e) The DPA Facilities Management Subcommittee may from time to time make recommendations to and request guidance or decisions from the DPA Works Committee. The DPA Facilities Management Subcommittee does not have authority to make any decisions.
 - (f) The DPA Facilities Management Subcommittee will hold meetings (each a “**DPA Facilities Management Subcommittee Meeting**”) in order to:
 - (i) allow Dev Co the opportunity to present, and DPA Contracting Authority the opportunity to review and provide feedback on the DPA Submittals related to or that will impact the maintenance or operation of the Facility following Substantial Completion, including the performance of the Project Co Services under a Final Project Agreement, prior to their submission and as they are being developed, including any issues identified by Dev Co in the preparation of such DPA Submittals and the rationale for any assumptions included therein;
 - (ii) assist DPA Contracting Authority in understanding the underlying issues and rationale behind matters raised by the Dev Co with respect to the development of such DPA Submittals; and
 - (iii) discuss any other matters in relation to the maintenance or operation of the Facility following Substantial Completion raised by the members of the DPA Facilities Management Subcommittee.
 - (g) The Parties shall cooperate to develop a reasonable schedule for the DPA Facilities Management Subcommittee Meetings, and shall incorporate such schedule into the DPA Works Schedules, provided that:

- (i) once established, the DPA Facilities Management Subcommittee shall, at a minimum, meet once every 30 days during the DPA Term unless otherwise agreed by the Parties in writing; and
 - (ii) the DPA Contracting Authority FM Subcommittee Representative or the Dev Co FM Subcommittee Representative may convene a special meeting of the DPA Facilities Management Subcommittee at any time by the provision of no fewer than five Business Days prior written notice to all members of the DPA Facilities Management Subcommittee identifying the agenda items to be discussed at the special meeting, except in the event of an emergency where a meeting may be called at any time by the DPA Contracting Authority FM Subcommittee Representative or the Dev Co FM Subcommittee Representative on such notice as may be reasonable in the circumstances.
- (h) Dev Co shall prepare, and the Dev Co FM Subcommittee Representative shall circulate to the DPA Contracting Authority FM Subcommittee Representative, an agenda for each DPA Facilities Management Subcommittee Meeting no later than 10 Business Days prior to the scheduled date for such DPA Facilities Management Subcommittee Meeting.
- (a) Members of the DPA Facilities Management Subcommittee may invite, on prior written notice to all members, such advisors, subcontractors and consultants as they require from time to time to attend DPA Facilities Management Subcommittee Meetings and provide briefings to the DPA Facilities Management Subcommittee.
- (i) DPA Facilities Management Subcommittee Meetings may be combined with other meetings between the Parties, including the Design Review Meetings, with the written consent of the Parties.
- (j) The members of the DPA Facilities Management Subcommittee may adopt such other procedures and practices for the conduct of the activities of the DPA Facilities Management Subcommittee as they consider appropriate from time to time.

3.7 DPA ICAT Steering Subcommittee

- (a) Within 15 Business Days following the Effective Date or such later date agreed by the Parties in writing, the Parties shall establish a subcommittee of the DPA Works Committee (the “**DPA ICAT Steering Subcommittee**”) consisting of:
- (i) the following five representatives appointed by DPA Contracting Authority:
 - (A) one representative appointed by Infrastructure Ontario;
 - (B) one representative appointed by the Hospital; and
 - (C) three other representatives appointed by DPA Contracting Authority from time to time,

one of which shall be designated as the “**DPA Contracting Authority ICAT Steering Subcommittee Representative**”; and
 - (ii) the following three representatives appointed by Dev Co:

- (A) the DPA Key Individual identified as Dev Co’s “Service Provider Integration Lead” in Schedule 5 – DPA Key Individuals;
 - (B) the DPA Key Individual identified as Dev Co’s “Engineering Lead ICAT” in Schedule 5 – DPA Key Individuals; and
 - (C) one other representative appointed by Dev Co from time to time,

one of which shall be designated as the “**Dev Co ICAT Steering Subcommittee Representative**”.
- (b) The chairperson of the DPA ICAT Steering Subcommittee shall be the DPA Contracting Authority ICAT Steering Subcommittee Representative.
 - (c) Subject to DPA Section 10.6 of the Agreement in respect of the replacement of DPA Key Individuals and Section 3.7(a), the DPA Contracting Authority ICAT Steering Subcommittee Representative or the Dev Co ICAT Steering Subcommittee Representative may, upon the delivery of prior written notice to the other representative, be entitled to replace any of the Party’s representatives on the DPA ICAT Steering Subcommittee.
 - (d) The DPA ICAT Steering Subcommittee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Facility’s information, communications and automation technology (“**ICAT**”) systems and equipment.
 - (e) The DPA ICAT Steering Subcommittee may from time to time make recommendations to and request guidance or decisions from the DPA Works Committee. The DPA ICAT Steering Subcommittee does not have authority to make any decisions.
 - (f) The DPA ICAT Steering Subcommittee will hold meetings (each a “**DPA ICAT Steering Subcommittee Meeting**”) in order to:
 - (i) allow Dev Co the opportunity to present, and DPA Contracting Authority the opportunity to review and provide feedback on, DPA Submittals related to or that could impact the ICAT systems or equipment prior to their submission and as they are being developed, including any issues identified by Dev Co in the preparation of such DPA Submittals and the rationale for any assumptions included therein;
 - (ii) assist DPA Contracting Authority in understanding the underlying issues and rationale behind matters raised by the Dev Co with respect to the development of such DPA Submittals; and
 - (iii) discuss any other matters in relation to ICAT raised by the members of the DPA ICAT Steering Subcommittee.
 - (g) The Parties shall cooperate to develop a reasonable schedule for the DPA ICAT Steering Subcommittee Meetings, and shall incorporate such schedule into the DPA Works Schedules, provided that:

- (i) once established, the DPA ICAT Steering Subcommittee shall, at a minimum, meet once every 30 days during the DPA Term unless otherwise agreed by the Parties in writing; and
 - (ii) the DPA Contracting Authority ICAT Steering Subcommittee Representative or the Dev Co ICAT Steering Subcommittee Representative may convene a special meeting of the DPA ICAT Steering Subcommittee at any time by the provision of no fewer than five Business Days prior written notice to all members of the DPA ICAT Steering Subcommittee identifying the agenda items to be discussed at the special meeting, except in the event of an emergency where a meeting may be called by the DPA Contracting Authority ICAT Steering Subcommittee Representative or the Dev Co ICAT Steering Subcommittee Representative at any time on such notice as may be reasonable in the circumstances.
- (h) Dev Co shall prepare, and the Dev Co ICAT Steering Subcommittee Representative shall circulate to the DPA Contracting Authority ICAT Steering Subcommittee Representative, an agenda for each DPA ICAT Steering Subcommittee Meeting no later than 10 Business Days prior to the scheduled date for such DPA ICAT Steering Subcommittee Meeting.
- (b) Members of the DPA ICAT Steering Subcommittee may invite, on prior written notice to all members, such advisors, subcontractors and consultants as they require from time to time to attend DPA ICAT Steering Subcommittee Meetings and provide briefings to the DPA ICAT Steering Subcommittee.
- (i) DPA ICAT Steering Subcommittee Meetings may be combined with other meetings between the Parties, including the Design Review Meetings, with the written consent of the Parties.
- (c) The members of the DPA ICAT Steering Subcommittee may adopt such other procedures and practices for the conduct of the activities of the DPA ICAT Steering Subcommittee as they consider appropriate from time to time.

3.8 DPA Indigenous Advisory Committee

- (a) Within 15 Business Days following the Effective Date or such later date agreed by the Parties in writing, the Parties shall establish a committee (the “**DPA Indigenous Advisory Committee**”) consisting of:
- (i) the following representatives appointed by DPA Contracting Authority:
 - (A) one representative of Infrastructure Ontario, being the DPA Contracting Authority Representative;
 - (B) one or more representative(s) appointed by the Hospital; and
 - (C) one other representative appointed by DPA Contracting Authority from time to time; and
 - (ii) the following three representatives appointed by Dev Co:
 - (A) the DPA Dev Co Representative;

- (B) the individual identified by Dev Co as Dev Co’s “DPA Indigenous Engagement Consultant” in DPA Schedule 5 – DPA Key Individuals; and
 - (C) one other representative appointed by Dev Co from time to time.
- (b) The chairperson of the DPA Indigenous Advisory Committee shall be a representative appointed by the Hospital.
- (c) DPA Contracting Authority may invite, on prior written notice to all members of the DPA Indigenous Advisory Committee, such Indigenous individuals (including from Impacted Indigenous Nations and Indigenous Entities) as DPA Contracting Authority requires from time to time to attend meetings of the DPA Indigenous Advisory Committee.
- (d) Members of the DPA Indigenous Advisory Committee may invite, on prior written notice to all members, such advisors and consultants as they require from time to time to attend meetings and provide briefings to the DPA Works Committee.
- (e) The DPA Indigenous Advisory Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to Indigenous engagement during the DPA Term and shall be responsible for receiving and reviewing all matters related to the implementation of the Indigenous Communities Engagement Plan and the development of the Indigenous Participation Plan.
- (f) The DPA Indigenous Advisory Committee may from time to time make recommendations to and request guidance or decisions from the DPA Works Committee in respect of matters related to Indigenous feedback, comment and input into the design for the Project.
- (g) DPA Contracting Authority shall be entitled to replace its representatives on the DPA Indigenous Advisory Committee by Notice to the DPA Dev Co Representative. DPA Contracting Authority will use commercially reasonable efforts to deliver prior Notice of any such replacement to the DPA Dev Co Representative. Subject to DPA Section 10.6 of the Agreement in respect of the replacement of DPA Key Individuals, Dev Co may replace any of its representatives on the DPA Indigenous Advisory Committee with the prior written consent of DPA Contracting Authority
- (h) The Parties shall cooperate to develop a reasonable schedule for the DPA Indigenous Advisory Committee, and shall incorporate such schedule into the DPA Works Schedules, provided that once established, the DPA Indigenous Advisory Committee shall, at a minimum, meet once every quarter during the DPA Term unless otherwise agreed by the Parties in writing.
- (i) Either Party Representative may convene a special meeting of the DPA Indigenous Advisory Committee at any time. Special meetings of the DPA Indigenous Advisory Committee may be convened on not less than five Business Days’ written notice to all members of the DPA Indigenous Advisory Committee identifying the agenda items to be discussed at the special meeting, provided that, in an emergency, a meeting may be called by a Party Representative at any time on such notice as may be reasonable in the circumstances.
- (j) Dev Co shall prepare, and the DPA Dev Co Representative shall circulate to the DPA Contracting Authority Representative, an agenda for each DPA Indigenous Advisory Committee meeting no

later than 10 Business Days prior to the scheduled date for such DPA Indigenous Advisory Committee.

- (k) DPA Indigenous Advisory Committee meetings may be combined with other meetings between the Parties, including the Design Review Meetings and Design Workshops, with the written consent of the Parties.
- (l) The members of the DPA Indigenous Advisory Committee may adopt such other procedures and practices for the conduct of the activities of the DPA Indigenous Advisory Committee as they consider appropriate from time to time.

4. GENERAL MEETING REQUIREMENTS

4.1 Meeting Minutes

- (a) Unless otherwise set out in this Schedule 16 or in the DPA Works PA Requirements, for all meetings or workshops described in this Schedule 16, Dev Co shall:
 - (i) record and maintain meeting minutes, including any recommendations, action items and decisions made, whether the meeting was held in person, virtually or by any other means (including by telephone or any other form of communication);
 - (ii) prepare all meeting minutes in an editable format on a template developed and agreed to by the Parties, acting reasonably; and
 - (iii) provide to DPA Contracting Authority draft meeting minutes for each meeting for review and comment no later than two Business Days after such meeting.
- (b) DPA Contracting Authority shall review all meeting minutes provided pursuant to Section 4.1(a)(iii), and provide any comments thereon to Dev Co no later than five Business Days after receipt of such minutes.
- (c) Upon receipt of any comments from DPA Contracting Authority pursuant to Section 4.1(b), Dev Co shall revise the applicable draft meeting minutes to reflect such comments and recirculate such meeting minutes to DPA Contracting Authority by the earlier of (i) five Business Days after receipt of such comments, and (ii) the next scheduled meeting of the type to which the minutes in question apply.
- (d) Once finalized, Dev Co shall submit the final meeting minutes to DPA Contracting Authority using DPA Contracting Authority's document management system software.

4.2 Meeting Agendas and Meeting Materials

- (a) Unless otherwise set out in this Schedule 16, for all meetings or workshops described in this Schedule 16, Dev Co shall provide to DPA Contracting Authority an agenda for each meeting no less than five Business Days prior to the scheduled date for such meeting, unless otherwise agreed by DPA Contracting Authority in writing. Dev Co shall provide to DPA Contracting Authority any materials necessary for each meeting no less than two Business Days prior to the scheduled date for such meeting, unless otherwise agreed by DPA Contracting Authority in writing.

4.3 Meeting Locations and Mediums

- (a) Unless otherwise agreed by the Parties in writing or set out in this Schedule 16, all meetings between the Parties described in the Agreement shall take place at the Existing Facilities or at any other location in Mississauga or Toronto, Ontario identified by DPA Contracting Authority. Meetings may be held by means of such telephonic, electronic or other communication facilities agreed by the Parties, acting reasonably, so as to permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously.

5. DPA TERM MEETINGS

5.1 Start-Up Meetings

- (a) Dev Co shall attend and participate in start-up meetings (each a “**Start-Up Meeting**”) with DPA Contracting Authority to outline the design development process under the Agreement, plan and discuss the respective activities of the Parties to be performed in respect of the Project during the DPA Term and under a Final Project Agreement, review and discuss the DPA Background Information, and discuss other Project related matters. Without limiting the generality of the foregoing, the Start-Up Meetings shall be used as a forum for the Parties to discuss the matters described in Section 5.1(d).
- (b) Dev Co shall ensure that key representatives of the Design Team and other representatives of Dev Co identified by DPA Contracting Authority shall attend each Start-Up Meeting.
- (c) Each Start-Up Meeting shall be scheduled by DPA Contracting Authority. Unless otherwise agreed by the Parties in writing, all Start-Up Meetings shall be completed by no later than 30 days prior to the date scheduled for the First Checkpoint.
- (d) The agenda for each Start-Up Meeting shall be circulated by DPA Contracting Authority at least five Business Days prior to each meeting. Dev Co is advised that the following matters may be included on the agendas:
- (i) Dev Co’s plan to develop a successful partnership with DPA Contracting Authority for the purpose of supporting DPA Contracting Authority in achieving its vision, mission and core values;
 - (ii) Dev Co’s plan to ensure that the DPA Works are completed in accordance with the requirements of the Agreement, including assuming control over the design and design process of the Project from DPA Contracting Authority;
 - (iii) Dev Co’s process to ensure optimum design quality;
 - (iv) DPA Contracting Authority’s Revit model in respect of the Project, and associated Facility design (including building design) considerations;
 - (v) any Project affordability constraints in respect of the cost of the Project identified by DPA Contracting Authority pursuant to DPA Section 6.2 of the Agreement;

- (vi) any other DPA Background Information provided by DPA Contracting Authority to Dev Co and all other matters described in Section 2.1 of Schedule 3 – DPA Submissions and Project Development Process;
- (vii) any relevant design alternatives and innovations considered during the schematic design development process to date by DPA Contracting Authority;
- (viii) Dev Co’s approach to a fully integrated interior design process that includes every element of interior finishes, furniture, fixtures, equipment, occupant signage and wayfinding;
- (ix) a proposed schedule of DPA Submittals (including DPA Works Submittals) which is consistent with the DPA Works Schedules and which provides for a progressive and orderly flow of such submittals from Dev Co to the Contracting Authority Design Team to allow sufficient time for review of each submittal by the Contracting Authority Design Team, taking into account both the resources available to the Contracting Authority Design Team to conduct such review and whether delay in the review of the subject matter of such submittals could have a material impact on Dev Co’s ability to progress future anticipated DPA Submittals and the DPA Works in accordance with the DPA Works Schedules;
- (x) Dev Co’s approach to timing, construction, adjustment and user feedback on the High Fidelity Room Mock-Ups;
- (xi) discussing each Party’s desired approach to finalizing and implementing DPA Variations, particularly No-Cost DPA Variations (as such term is defined in Schedule 6 – DPA Variation Procedure to the Agreement), in accordance with the provisions of the Agreement, with the objective of the Parties aligning on a non-binding administrative process for finalizing and implementing DPA Variations in accordance with the Agreement in a timely and efficient manner. Such discussions shall take into consideration any of the Parties’ administrative documentation and required governance processes related to finalizing and implementing DPA Variations;
- (xii) 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, and that takes into account the document security protocol described in Section 49.5(f) of the Draft Project Agreement;
- (xiii) Dev Co’s approach to accommodation of user availability for Design Workshops and accommodation of sub-user groups for larger Design Workshops to make more efficient and effective use of users’ time;
- (xiv) Dev Co’s approach to tracking changes to room-level design requirements, as specified in Schedule 15 – Output Specifications of the Draft Project Agreement, through the design development process;
- (xv) Dev Co’s approach to track and report changes to Part 1 of Schedule 15 – Output Specifications of the Draft Project Agreement for its submission at the corresponding milestone DPA Works Submittal;

- (xvi) training sessions led by Dev Co to outline its approach to partnering and collaboration with DPA Contracting Authority and the Design Conformance Consultant during the DPA Term, which shall include training on technical matters (e.g. software) and overall engagement between the Parties (e.g. mentality, goals, approach to interactions, etc.);
- (xvii) Dev Co’s approach to and schedule for planning, developing and submitting the DPA Technical Submittals in respect of the “Remaining Works Business Case” described in Appendix 1 – DPA Technical Submittals and Requirements to Schedule 3 – DPA Submissions and Project Development Process, including the process and the schedule for consulting with DPA Contracting Authority in respect of such matters and for incorporating the feedback received from DPA Contracting on such matters, in accordance with the Agreement; and
- (xviii) Dev Co’s approach to planning for and the procurement of Equipment, including a review and discussion of the following matters:
 - (A) the list of all Equipment;
 - (B) EUDR (expected to be [REDACTED]% accurate);
 - (C) the draft high-level specifications for In-Contract Equipment (as defined in the Draft Project Agreement);
 - (D) the assumed base building equipment list;
 - (E) procurement roles and responsibilities, including ‘swim lanes’;
 - (F) draft procurement bundling and schedule;
 - (G) ICAT network architecture document; and
 - (H) ATS feasibility analysis.
- (e) Dev Co shall thoroughly prepare for each Start-Up Meeting, including on the basis of the agendas and materials for such meetings provided by DPA Contracting Authority, and acknowledges that it may be requested and required by DPA Contracting Authority to make presentations and provide materials to DPA Contracting Authority at the Start-Up Meetings on certain matters set out in such agendas.

5.2 DPA Works Coordination Meetings

- (a) Dev Co shall, acting reasonably, schedule and shall cause the Deputy DPA Dev Co Representative and any other key relevant representatives of the Dev Co Parties to attend weekly meetings (or such other frequency as agreed by the Parties in writing) with the DPA Contracting Authority Representative (and any other key representatives of DPA Contracting Authority) to review matters related to the DPA Works, including the following matters:
 - (i) progress of the DPA Works;

- (ii) areas of concern or particular challenges associated with the performance of the DPA Works; and
- (iii) any other matters in relation to Project management and coordination.

5.3 Geo-Exchange System Business Case Workshops

- (a) Dev Co shall schedule and attend a series of workshops (collectively, the “**Geo-Exchange System Workshops**”) with DPA Contracting Authority to assist Dev Co in its development of the business case relating to a Geo-Exchange System for the Project identified in and required by Appendix 1 – DPA Technical Submittals and Requirements of Schedule 3 – DPA Submissions and Project Development Process (the “**Geo-Exchange System Business Case**”).
- (b) The Geo-Exchange System Workshops shall include, at a minimum:
 - (i) a discussion in respect of the DPA Background Information relating to the Geo-Exchange System and any questions from Dev Co on such information;
 - (ii) a review of the adjusted Target Energy Model (as defined in the Draft Project Agreement) to be submitted by Dev Co as part of the Geo-Exchange System Business Case in accordance with the Agreement; and
 - (iii) a discussion and finalization of Dev Co’s proposed post-processing methodology and assumptions to be included in the Geo-Exchange System Business Case.
- (c) The Geo-Exchange System Workshops shall be scheduled and completed prior to Dev Co’s submission of the Geo-Exchange System Business Case in accordance with the Agreement.

5.4 Initial Risk Workshop

- (a) Within 25 Business Days following the Effective Date, representatives of the Parties, including those representatives identified in Section 5.5(c), shall attend a risk management workshop scheduled and chaired by DPA Contracting Authority (the “**Initial Risk Workshop**”).
- (b) During the Initial Risk Workshop, the Parties shall:
 - (i) confirm the process, methodologies, reporting tools and mechanisms that will be implemented throughout the DPA Term and under any Final Project Agreement, in accordance with the Risk Management Plan, to ensure that risks are appropriately tracked and managed; and
 - (ii) confirm the approach, plan and structure for the Risk Review Meetings, including the key objectives for such meetings, regular topics and materials to be reviewed and discussed and a schedule in respect of same.

5.5 Risk Review Meetings

- (a) Following the Initial Risk Workshop, Dev Co shall schedule and attend risk review meetings with DPA Contracting Authority (each a “**Risk Review Meeting**”) for the purpose of discussing Project

risks, opportunities and potential mitigation measures under the Agreement and any Final Project Agreement, including to discuss each of the updated Development Risk Register and Construction Risk Register developed and submitted to DPA Contracting Authority by Dev Co in accordance with Section 7 and the risks, assessments and mitigation measures identified therein.

- (b) The Risk Review Meetings shall, at a minimum, occur once every month during the DPA Term unless otherwise agreed by the Parties in writing, and, in any event, such meetings shall be scheduled by Dev Co to occur prior to the submission of each DPA Works Report. Each Risk Review Meeting shall be chaired by Dev Co.
- (c) The Risk Review Meetings shall be attended by:
 - (i) the following representatives of DPA Contracting Authority:
 - (A) one or more of the lead individuals responsible for risk matters on the Project, one of whom shall be appointed by DPA Contracting Authority as the “**DPA Contracting Authority Risk Representative**”;
 - (B) the DPA Contracting Authority Schedule and Cost Estimation Subcommittee Representative; and
 - (C) any other individuals identified by DPA Contracting Authority that may be required from time to time, including representatives of the Design Conformance Consultant; and
 - (ii) the following representatives of Dev Co:
 - (A) the DPA Key Individual identified as Dev Co’s “**Risk Lead**” in Schedule 5 – DPA Key Individuals, who shall be designated as the “**Dev Co Risk Representative**”;
 - (B) the Dev Co Schedule and Cost Estimation Subcommittee Representative; and
 - (C) any other individuals identified by Dev Co that may be required from time to time.
- (d) Risk Review Meetings may include:
 - (i) a review of the existence and extent of Project risks;
 - (ii) a review of the allocation of Project risks;
 - (iii) a review of Project risk impact calculations, including a review of the basis for such assessments;
 - (iv) a review of assessments of likelihood or probability of occurrence relating to specified Project risks;
 - (v) a review of proposed Project risk mitigation measures and anticipated costs related thereto;

- (vi) prior to the Final Checkpoint, a review and development of the Construction Risk Contingency Amount; and
- (vii) a review of mitigation measures and, prior to the Final Checkpoint, any associated change in the calculation of the Construction Risk Contingency Amount.
- (e) No later than five days prior to each Risk Review Meeting, Dev Co shall circulate an up-to-date version of each of the Development Risk Register and the Construction Risk Register to the attendees of the applicable Risk Review Meeting.
- (f) The DPA Contracting Authority Risk Representative or the Dev Co Risk Representative may, acting reasonably, convene a special Risk Review Meeting at any time by the provision of no fewer than five Business Days prior written notice to the other representative, except in the event of an emergency where a meeting may be called by the DPA Contracting Authority Risk Representative or Dev Co Risk Representative at any time on such notice as may be reasonable in the circumstances.

5.6 Design Review Meetings and Design Workshops

- (a) Dev Co shall participate in Design Review Meetings and Design Workshops, as set out in and in accordance with the DPA Works PA Requirements.
- (b) Dev Co shall propose a list of user groups for the Design Workshops, which shall include subject matter experts from each of DPA Contracting Authority and Dev Co, and others as necessary, to inform the preparation of the DPA Submittals.
- (c) In addition to the matters described in Section 18.5 of the Draft Project Agreement included in the DPA Works PA Requirements:
 - (i) the Design Review Meetings shall be attended by:
 - (A) the Deputy DPA Dev Co Representative and any other individuals identified by Dev Co that may be required from time to time; and
 - (B) the DPA Contracting Authority Representative and any other individuals identified by DPA Contracting Authority that may be required from time to time, including representatives of the Design Conformance Consultant; and
 - (ii) the Parties shall:
 - (A) at the Design Review Meetings, discuss proposals by a Party for scope changes related to the design of the Facility, issues identified by a Party with respect to the Output Specifications or Hospital standards, and any other issues identified by a Party with respect to the design of the Facility or the DPA Works Submittals; and
 - (B) at the Design Workshops, discuss the development of the Technical Specifications pursuant to DPA Section 10.16(b).

5.7 Checkpoint Meetings

- (a) Dev Co shall, acting reasonably, schedule and shall cause key relevant representatives of the Dev Co Parties, including the Deputy DPA Dev Co Representative, to attend one or more meetings with DPA Contracting Authority, which shall occur no later than five Business Days following each Project Checkpoint unless otherwise agreed by DPA Contracting Authority in writing, in order to review and discuss matters related to the DPA Works performed during such Project Checkpoint (each a “**Checkpoint Meeting**”), including the following:
- (i) major design or scope changes that have occurred since the previous Project Checkpoint, including any associated cost and schedule impacts;
 - (ii) variances in cost estimates compared to budget and previous submissions, as applicable. If required by DPA Contracting Authority, separate cost review Checkpoint Meetings may occur;
 - (iii) variance in the anticipated duration of construction compared to the previous submission of the Construction Works Schedule;
 - (iv) variances in the forecast date of any Key DPA Works Milestone as reported in the Current Progress DPA Works Schedule as compared to the Baseline DPA Works Schedule;
 - (v) variances in the Critical Path or near Critical Path of the Current Progress DPA Works Schedule compared to its previous submission;
 - (vi) most significant new Project risks, proposed mitigations and updates in respect of any such previously identified significant risks;
 - (vii) critical Project issues and proposed paths forward;
 - (viii) design standard variances;
 - (ix) any additional scope requests from third parties;
 - (x) confirmation of compliance with the requirements of the Output Specifications; and
 - (xi) a summary of modifications to the Draft Project Agreement that occurred in accordance with the Agreement since the last Project Checkpoint, and the identification of key Draft Project Agreement issues that the Parties will resolve prior to the subsequent Project Checkpoint.
- (b) Dev Co shall distribute the agenda and any necessary materials relating to the content set out in Section 5.7(a) no later than five Business Days prior to the date of each Checkpoint Meeting.
- (c) The Deputy DPA Dev Co Representative shall chair each of the Checkpoint Meetings.

5.8 DPA Works Schedules Meetings and Workshops

- (a) The Parties shall comply with the requirements of Section 5 of Schedule 7 – DPA Works Schedules Requirements of the Agreement with respect to the meetings required in respect of the DPA Works Schedules.

5.9 Ad Hoc Meetings

- (a) Without limiting any other provision of the Agreement, from time to time, as required by DPA Contracting Authority, Dev Co shall attend, or attend and support DPA Contracting Authority at, additional ad hoc meetings (each an “**Ad Hoc Meeting**”). Ad Hoc Meetings may include virtual open houses, public information centers, elected official briefings, community liaison committees, property owner meetings, stakeholder briefings, DPA Contracting Authority senior management briefings, and any other ad hoc meetings required by DPA Contracting Authority. Topics that may be covered in Ad Hoc Meetings include communications strategy, transition and commissioning plans and community and other stakeholder engagement.
- (b) Subject to Section 5.9(c), in connection with each Ad Hoc Meeting, Dev Co shall, as required by DPA Contracting Authority:
 - (i) attend and participate in the Ad Hoc Meetings, which may include answering questions live or in the form of frequently asked questions provided in advance of each Ad Hoc Meeting; and
 - (ii) prepare for and contribute to each Ad Hoc Meeting, including the preparation and contribution of any required materials.
- (c) DPA Contracting Authority shall provide the Deputy DPA Dev Co Representative with Notice of each such Ad Hoc Meeting in relation to which Contracting Authority requires Dev Co’s participation, preparation or contribution (such Notice to be provided not less than five Business Days prior to the applicable Ad Hoc Meeting and include an outline of DPA Contracting Authority’s requirements in relation to Dev Co’s participation, preparation or contribution).
- (d) Dev Co acknowledges that it may be required to attend and participate in Ad Hoc Meetings that are scheduled in the evening.

6. DPA WORKS REPORTING

6.1 Monthly DPA Works Report

- (a) Dev Co shall continuously monitor the progress of the DPA Works in relation to the Baseline DPA Works Schedules and, within 10 Business Days following the end of each calendar month until Commercial Close, Dev Co shall provide to the DPA Contracting Authority Representative a written report in form and substance satisfactory to DPA Contracting Authority, acting reasonably (each a “**DPA Works Report**”), which shall, at a minimum, include:
 - (i) an executive summary describing the general status of the DPA Works and progress made over the relevant month;

- (ii) a Current Progress DPA Works Schedule in accordance with Schedule 7 – DPA Works Schedules Requirements;
- (iii) a DPA Works Schedule Progress Report in accordance with Schedule 7 – DPA Works Schedules Requirements;
- (iv) the status of the development of the Project’s design, including any issues impacting progress;
- (v) an updated DPA Works Submittals register pursuant to Schedule 3 – DPA Submissions and Project Development Process and Schedule 10 – Review Procedure to the Draft Project Agreement;
- (vi) a log tracking all DPA Variations to date;
- (vii) any contractual outstanding decisions;
- (viii) Dev Co organization and staffing changes;
- (ix) quality assurance and quality control submissions;
- (x) the Project Risk Summary Report;
- (xi) the Development Risk Register and the Construction Risk Register;
- (xii) an update on the status of the Financing;
- (xiii) a narrative update on Dev Co’s cost estimation efforts in connection with the Project, including cost pressures and mitigation options under consideration;
- (xiv) an update on the status of Cash Allowance Items;
- (xv) the current version of the Earned Value Metrics Report;
- (xvi) an update on Permits, Licences, Approvals and Agreements, including the identification of any risks, as well as the status, progress and estimated timeline, with respect to the obtainment of Permits, Licences, Approvals and Agreements; and
- (xvii) any other information specifically requested by DPA Contracting Authority on the DPA Works.

7. RISK MANAGEMENT PLAN AND PROJECT RISK REGISTERS

7.1 Risk Management Plan

- (a) Within the 30 days of the Effective Date, Dev Co shall prepare and submit to DPA Contracting Authority for its approval a plan which describes how the risk management process will be implemented during the DPA Term and how such risk management process will interface with other project management processes (the “**Risk Management Plan**”).

- (b) The Risk Management Plan shall include processes and methodologies to identify risks, perform qualitative and quantitative risk assessment and analysis for risk exposure to inform the development of the Construction Risk Contingency Amount, plan and implement risk mitigations, and monitor and control risks.
- (c) The Risk Management Plan shall include available resources, escalation paths, tools and techniques used, review and update frequency and reporting requirements.

7.2 Development Risk Register

- (a) Dev Co shall develop a qualitative risk register in respect of the identification, management and mitigation of Project risks, particularly those borne by Dev Co and shared by Dev Co and DPA Contracting Authority under the Agreement that may arise during the DPA Term (the “**Development Risk Register**”).
- (b) Dev Co shall prepare the Development Risk Register in accordance with and in the form attached to Appendix A – Form of Development Risk Register to this Schedule 16. Dev Co shall prepare and submit the Development Risk Register on a monthly basis as part of the DPA Works Report.
- (c) Risk impact assessments and allocations contained in the Development Risk Register shall be based on and be consistent with discussions between the Parties at Risk Review Meetings. The Development Risk Register submitted by Dev Co as part of the DPA Works Report shall align with the Risk Breakdown Structure which forms part of the Dev Co Proposal Extracts, as may be modified by the Parties in writing following the Initial Risk Workshop.

7.3 Construction Risk Register

- (a) Dev Co shall develop a quantitative risk register focused on the management and mitigation of risks to be borne by Project Co and risks shared between Project Co and Contracting Authority under a Final Project Agreement that may arise during the Construction Period, including the cost impacts and probability of occurrence of such risks (the “**Construction Risk Register**”). The Construction Risk Register will serve as an input to the risk analysis that will inform the Construction Risk Contingency Amount.
- (b) Dev Co shall prepare the Construction Risk Register in accordance with and in the form attached to Appendix B – Form of Construction Risk Register to this Schedule 16. Dev Co shall prepare and submit the Construction Risk Register on a monthly basis as part of the DPA Works Report.
- (c) Risk impact assessments and allocations contained in the Construction Risk Register shall be based on and be consistent with discussions between the Parties at Risk Review Meetings. Risk impact basis of assessments and relevant supporting documentation, such as estimates and drawings, shall form part of the Construction Risk Register. The Construction Risk Register submitted by Dev Co as part of the DPA Works Report shall align with the Risk Breakdown Structure which forms part of the Dev Co Proposal Extracts, as may be modified by the Parties in writing following the Initial Risk Workshop.

7.4 Project Risk Summary Report

- (a) Dev Co shall prepare a report highlighting and summarizing the key Project risks for each Project Checkpoint based on each of the Development Risk Register and the Construction Risk Register (the “**Project Risk Summary Report**”). The risks identified in the Project Risk Summary Report may be prioritized by proximity, cost and schedule impacts or any other identified factors that would contribute to the manifestation or escalation of such risks. As part of the Project Risk Summary Report, Dev Co shall describe in detail the means used to identify the key risks in respect of each reporting period.

APPENDIX A

FORM OF DEVELOPMENT RISK REGISTER

[REDACTED]

APPENDIX B

FORM OF CONSTRUCTION RISK REGISTER

[REDACTED]

SCHEDULE 17

NEGOTIABLE DRAFT PROJECT AGREEMENT PROVISIONS

[REDACTED]

SCHEDULE 18

FORM OF ENABLING WORKS CONTRACT

[REDACTED]

SCHEDULE 19

ENABLING WORKS REQUIREMENTS

[REDACTED]