

SCHEDULE 2

DESIGN AND CONSTRUCTION PROTOCOLS

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SCHEDULE 2

DESIGN AND CONSTRUCTION PROTOCOLS

1. INTERPRETATION

1.1 Definitions

In this Schedule, in addition to the definitions set out in Schedule 1 of this Agreement:

“**Alward Park Licence**” has the meaning set out in Section 6.8;

“**CaGBC**” means the Canada Green Building Council;

“**Certificate of Parking Commencement**” has the meaning set out in Section 3.4 of this Schedule;

“**Certificate of Service Commencement**” has the meaning set out in Section 3.4 of this Schedule;

“**City**” means the City of Prince George;

“**Commissioning Plan**” has the meaning set out in Section 12.2 of this Schedule;

“**Construction Period Joint Committee**” has the meaning set out in Section 2.6 of this Schedule;

“**Deficiencies**” has the meaning set out in Section 13.1 of this Schedule;

“**Design and Construction Representative**” has the meaning set out in Section 2.1 of this Schedule;

“**Geotechnical Report**” means the report entitled “Geotechnical Assessment for BC Cancer Agency’s Centre for the North Project” by AMEC Earth & Environmental dated September 30, 2008;

“**Independent Certifier**” has the meaning set out in Section 3.1 of this Schedule;

“**Intended Uses**” means the uses for the Facility as described in the Design and Construction Specifications;

“**LD Reference Date**” has the meaning set out in Section 11.4;

“**LEED Gold Certification**” means the award of a LEED Gold certification from the CaGBC under the LEED Rating System;

“**LEED Project Checklist**” means the checklist set out in Section 4.8.

“**LEED Rating System**” means CaGBC’s Leadership in Energy & Environmental Design (LEED) Green Building Rating System for New Construction & Major Renovations LEED Canada – NC 1.0 (and March 2007 Addendum);

“**Licensed Lands**” has the meaning set out in Section 6.8;

“**Life Cycle Report**” has the meaning set out in Section 5.6 of this Schedule;

“**Move-In-Schedule**” has the meaning set out in Section 10.5 of this Schedule;

“**Project Co’s Quality Consultant**” has the meaning set out in Section 8.3 of this Schedule;

“**Project Schedule**” has the meaning set out in Section 10.1 of this Schedule;

“**Proposal Extracts (Design and Construction)**” means the provisions of Appendix 2G [Proposal Extracts (Design and Construction)];

“**Quality Assurance Plan**” has the meaning set out in Section 8.5 of this Schedule;

“**Quality Assurance Program**” has the meaning set out in Section 8.4 of this Schedule;

“**Quality System**” means an organizational structure, procedures, processes and resources necessary to implement a comprehensive, planned and systematic program, designed and implemented by Project Co pursuant to this Agreement, to ensure that the standards of quality control, quality management and quality assurance required by this Agreement are achieved by Project Co in every material aspect of the Design and Construction;

“**Reviewed Drawings and Specifications**” has the meaning set out in Section 5(a) of Appendix 2B [Review Procedure];

“**Site**” means the area within the “Site Demarcation Line” shown on the drawing attached as Appendix 2H [Site Plan];

“**Submittal**” has the meaning set out in Section 1 of Appendix 2B [Review Procedure].

“**Submittal Schedule**” has the meaning set out in Section 2(a) of Appendix 2B [Review Procedure];

“**Updated Project Schedule**” has the meaning set out in Section 10.2 of this Schedule;

“**User Consultation Group**” has the meaning set out in Section 5.3 of this Schedule; and

“**Work Plan**” has the meaning set out in Section 6.9.

2. PARTIES’ DESIGN AND CONSTRUCTION REPRESENTATIVES

2.1 Appointment of Representatives

Both parties will within 5 Business Days of the Effective Date designate in writing a person (the “**Design and Construction Representative**”) to be the party’s single point of contact with respect to the Design and the Construction. A party’s Design and Construction Representative may or may not be a Key Individual. Except as otherwise set out in this Agreement, all costs or expenses incurred by or with respect to a party’s Design and Construction Representative will be for the account of that party.

2.2 Replacement

Subject to Section 2.8 of this Agreement in respect of Key Individuals, a party may at any time and in its own discretion by notice to the other party change the person appointed as the party’s Design and Construction Representative. If for any reason a party’s Design and Construction Representative is unable or unwilling to continue then the party will immediately appoint a replacement Representative. If

at any time a party objects to a Representative of the other party then the other party will give reasonable consideration to replacing the Representative with a person reasonably acceptable to the objecting party.

2.3 Authority of Representatives

A party's Design and Construction Representative will have full authority to act on behalf of and bind the party with respect to Design and Construction under this Agreement, including giving any review, acceptance, approval or confirmations which may be given by the Authority. Notwithstanding the above, a party's Design and Construction Representative will not have the authority to execute or agree to any amendments or to give any waivers of this Agreement.

2.4 Review Procedure

The parties will comply with Appendix 2B [Review Procedure].

2.5 Authority Not Responsible for Design or Construction

The Authority's rights of review, acceptance, approval or confirmation of compliance with respect to any aspect of the Design or the Construction, including pursuant to Appendix 2B [Review Procedure], will be for the Authority's benefit only, and no review, acceptance, approval or confirmation of compliance by the Authority's Design and Construction Representative or other representative of the Authority will in any way relieve Project Co of its obligation for all aspects of the Design and Construction of the Facility except as may be expressly set out in this Agreement.

2.6 Construction Period Committee

- (a) Not less than 20 Business Days after the Effective Date, the Authority and Project Co will establish, and will maintain until Service Commencement, a joint liaison committee (the "**Construction Period Joint Committee**") consisting of the Design and Construction Representatives, a representative from NHA and such other members as the parties may agree from time to time.
- (b) The purpose of the Construction Period Joint Committee is to provide a formal forum for the parties to consult and cooperate in all matters relating to the Facility during the Construction Period and any member appointed to the Construction Period Joint Committee will not have any duties or obligations arising out of such appointment independent of such member's duties or obligations to the party making such appointment.
- (c) The Construction Period Joint Committee:
 - (1) will only have the authority as expressly delegated to it by the Authority and Project Co, and both parties will give reasonable consideration to delegating appropriate authority to permit efficient decision making with respect to the Facility;
 - (2) may strike, establish terms of reference for, delegate authority and appoint members having the necessary experience and qualifications to such sub-

committees as the Construction Period Joint Committee may determine are necessary from time to time and all such sub-committees will report to the Construction Period Joint Committee;

- (3) will establish protocols and procedures for undertaking the tasks and responsibilities delegated to it, including a co-operative and consultative process to review all documentation submitted to it in relation to the Design and Construction;
 - (4) may make recommendations to the parties on all matters relating to the Facility, which the parties may accept or reject in their complete discretion; and
 - (5) will have no authority to agree to any amendments or to give any waivers of this Agreement.
- (d) Subject to the provisions of this Agreement, the members of the Construction Period Joint Committee may adopt such procedures and practices for the conduct of the activities of the Construction Period Joint Committee as they consider appropriate from time to time and:
- (1) may invite to any meeting of the Construction Period Joint Committee such other (non-voting) persons as a member may decide; and
 - (2) receive and review a report from any person agreed by the members of the Construction Period Joint Committee.
- (e) The Construction Period Joint Committee will meet at least once each month at a location provided by Project Co at or near the Lands (unless otherwise agreed by its members) and from time to time as necessary. If any member of the Construction Period Joint Committee requests an additional meeting, the parties will act reasonably in accommodating this request. Meetings of the Construction Period Joint Committee will be convened on not less than 10 Business Days' notice (which will also identify the agenda items to be discussed at the meeting) provided that in an emergency a meeting may be called at any time on such notice as may be reasonable in the circumstances. The Construction Period Joint Committee will be chaired by a representative of the Authority unless the Authority requires that a representative of Project Co chair the Construction Period Joint Committee.
- (f) Minutes of all recommendations and meetings of the Construction Period Joint Committee will be kept by Project Co in accordance with Schedule 14 [Records and Reports] and copies circulated promptly to the parties within five Business Days of the making of the recommendation or the holding of the meeting.

3. INDEPENDENT CERTIFIER

3.1 Appointment

The parties will cooperate to jointly appoint a person (or firm of persons) (the “**Independent Certifier**”), who is:

- (a) qualified and experienced with respect to the design and construction of projects in British Columbia similar to the Project, and
- (b) independent from both the Authority and Project Co (and who will be impartial to the parties),

to provide certification services for the benefit of the parties during the Construction Period. The parties will enter into an agreement with the Independent Certifier on the terms generally as set out in Appendix 2A [Independent Certifier Agreement]. The parties confirm that Project Co may also appoint the Independent Certifier to provide certification services in respect of the Design-Build Agreement.

3.2 Appointment and Replacement

If within 20 Business Days of the Effective Date the Independent Certifier has not been appointed, or if for any reason during the Construction Period the Independent Certifier is unable or unwilling to continue to perform the Independent Certifier services or if the Independent Certifier’s appointment has been terminated by the Authority and Project Co, then:

- (a) within 5 Business Days of the date that is 20 Business Days after the Effective Date (or within 5 Business Days of the date of termination of the Independent Certifier’s appointment, if applicable), Project Co will provide the names of 3 candidates acceptable to Project Co for consideration by the Authority;
- (b) within 10 Business Days of receiving the candidate names, the Authority will notify Project Co of the candidates acceptable to the Authority, and the parties will cooperate to enter into a contract with an acceptable candidate generally in the form set out in Appendix 2A [Independent Certifier Agreement]; and
- (c) if none of the candidates are acceptable to the Authority, acting reasonably, or if for any reason an Independent Certifier is not appointed within 25 Business Days of the request from the Authority under Section (a) above, then either party may immediately apply to the British Columbia International Commercial Arbitration Centre for the selection of an Independent Certifier, providing the other party the opportunity to participate in the selection and appointment process.

3.3 Monthly Inspections and Report

Under its agreement with the parties the Independent Certifier will:

- (a) consult with the Design-Builder and others involved in the Design; and

- (b) conduct inspections of the Construction,

as the Independent Certifier determines is required to be generally satisfied that the Design and Construction are proceeding in accordance with the requirements of this Agreement, and will no later than the 10th day of each month prepare and deliver to the Authority and Project Co a monthly written report containing a description of:

- (c) the Design and Construction completed in the previous month;
- (d) the progress of the Design and Construction relative to the Updated Project Schedule, with an explanation and analysis of any variances; and
- (e) any elements of the Facility that for any reason vary from the requirements of this Agreement, with particular reference to this Schedule and Schedule 3 [Design and Construction Specifications].

3.4 Application for Certificate of Service Commencement or Parking Commencement

The Independent Certifier will, no later than 5 Business Days after application by Project Co for a Certificate of Parking Commencement or Certificate of Service Commencement, as the case may be, in cooperation with Project Co's Design and Construction Representative and the Authority's Design and Construction Representative, make an inspection of the Facility or the Parking Facilities, as the case may be, and then within a further 5 Business Days, with respect to an application for a:

- (a) Certificate of Service Commencement for the Facility:
 - (1) issue a certificate indicating that Service Commencement has been achieved (a **"Certificate of Service Commencement"**); or
 - (2) provide Project Co and the Authority's Design and Construction Representative with a list of all incomplete Design and Construction that must be completed prior to Service Commencement;
- (b) Certificate of Parking Commencement for the Parking Facilities:
 - (1) issue a certificate indicating that Parking Commencement has been achieved (a **"Certificate of Parking Commencement"**); or
 - (2) provide Project Co and the Authority's Design and Construction Representative with a list of all incomplete Design and Construction that must be completed prior to Parking Commencement;

A Certificate of Service Commencement or Parking Commencement issued by the Independent Certifier will be final and not referable to the Dispute Resolution Procedure or otherwise subject to dispute between the parties.

3.5 Permitted Access

Project Co will give the Independent Certifier access to the Design and Construction work as the Independent Certifier reasonably requests in order to be fully informed as to the progress of the Design and Construction including:

- (a) access to drawings, specifications, schedules, records, and other documents or data relating to the Design and Construction, including such information that is being produced by or in the possession of the Design Builder or others; and
- (b) access to the Site,

and Project Co will:

- (c) permit the Independent Certifier to attend all Design meetings and, during Construction, all Construction meetings except to the extent Project Co and the Authority expressly otherwise agree; and
- (d) keep the Independent Certifier fully informed as to the progress of the Construction, including giving notice in accordance with Good Industry Practice of any part of the work on the Facility before it becomes covered up and unavailable for inspection.

3.6 No Responsibility for Design or Construction

Nothing in this Agreement (including this Schedule) will be interpreted as giving the Independent Certifier any responsibility or authority for any aspect of the Design or the Construction, or as relieving Project Co of its responsibility for the Design and Construction as set out in this Agreement, and neither Project Co nor the Design-Builder nor any Sub-Contractor will be entitled to rely on any review, acceptance, approval or confirmation that the Independent Certifier may give with respect to Design or Construction.

4. PROJECT CO'S RESPONSIBILITIES

4.1 Design/Build Responsibility

Notwithstanding any other provision of this Agreement, Project Co will:

- (a) have complete responsibility for the Design and Construction of the Facility;
- (b) perform and complete the Design and Construction:
 - (1) in accordance with all terms of this Agreement including the terms of this Schedule and the Design and Construction Specifications;
 - (2) so as to provide a new cancer centre facility that at Service Commencement:
 - (A) is complete and operational and fit for the Intended Uses;
 - (B) will permit Project Co to provide the Services in accordance with the requirements of this Agreement; and

- (C) is fully integrated with other existing or planned buildings or structures at the Site, as described in the Design and Construction Specifications; and
- (3) to reflect and capture the intent and benefits of the Proposal Extracts (Design and Construction).

Each of the obligations in Sections 4.1(b)(1), 4.1(b)(2) and 4.1(b)(3) of this Schedule are independent obligations, and the fact that Project Co has satisfied one obligation will be no defence to an allegation that it has failed to satisfy another.

4.2 Standard of Performance for Design and Construction

Project Co will at all times during the Construction Period and in all respects, perform the Design and Construction to the standards as required by Section 2.1 of Schedule 3 [Design and Construction Specifications].

4.3 Defects in Design or Construction

Project Co will, without cost to the Authority, and without limiting Project Co's obligations to perform the Services as set out in this Agreement, including Schedule 4 [Services Protocols and Specifications], correct any Defect that becomes apparent at any time during the Term, subject to the terms of this Agreement, including any Scheduled Maintenance and the Handback Requirements.

4.4 Compliance with Laws

Project Co will undertake and perform the Design and Construction in accordance with applicable Laws, and so that all elements of the Design and the Construction, including all workmanship, construction equipment and materials, and the supply and installation of Equipment, meet or exceed the requirements of applicable Laws. If there is any conflict or ambiguity between the provisions of applicable Laws, or between a provision of applicable Laws and the Design and Construction Specifications, or between provisions of the Design and Construction Specifications, then the provision of higher quality or higher standard will govern.

4.5 Permits for the Design and Construction

Without limiting Project Co's obligations under this Agreement, and subject to Section 4.6, Project Co will obtain all Permits required for the Design and Construction. Project Co will keep the Authority's Design and Construction Representative fully informed of the details of all discussions and negotiations with Governmental Authorities with respect to all Permits for which it is responsible and upon request from the Authority's Design and Construction Representative Project Co will provide to the Authority copies of all documentation and correspondence with a Government Authority relating to such Permits. Project Co will provide reasonable advance notice to the Authority of any meetings with the City or other Governmental Authorities and upon request by the Authority a representative of the Authority may attend any such meetings. Project Co assumes all risk and costs arising in relation to Permits for which Project Co is responsible as described in this Section 4.5, including delays to the Project Schedule arising from delays in obtaining Permits or inability to obtain Permits, conditions of obtaining Permits, or amendments to Permits as may be required.

The Authority will provide Project Co with such information and administrative assistance as Project Co may reasonably require in relation to all Permits for which Project Co is responsible.

4.6 Class II Nuclear Facility Construction Licence

The Authority is required to apply for and obtain a Class II Nuclear Facility Construction Licence for the Radiation Therapy Vaults from the Canadian Nuclear Safety Commission. Project Co will prepare, in accordance with applicable requirements of the Canadian Nuclear Safety Commission, the licence application and all supporting documents for submission by the Authority. Before preparing the application documents, Project Co will submit drawings and specifications of the radiation shielding design to the Authority for review in accordance with Section 4(b) of Appendix 2B [Review Procedure]. Project Co will include in the Project Schedule sufficient time for review of the licence application by the Canadian Nuclear Safety Commission (having regard for the Commission's customary time period for reviewing similar applications) following the Authority's submission of the application.

4.7 LEED Gold Certification

Project Co will obtain LEED Gold Certification of the Facility in accordance with the following:

- (a) Project Co will, subject to this Section, achieve all necessary prerequisites, credits and points under the LEED Rating System required to achieve the LEED Gold Certification and may in its discretion determine which of the credits and points to pursue, except that Project Co will achieve Energy and Atmosphere Credit 1 – Optimize Energy Performance: 38% Reduction in Design Energy Cost Relative to MNECB (4 points).
- (b) If at any time after the Effective Date the requirements to achieve LEED Gold Certification under the LEED Rating System change, and Project Co is required to comply with such change in order to achieve LEED Gold Certification the Facility, then Project Co will forthwith notify the Authority of such change and such change will be a Change pursuant to Schedule 6 [Changes, Minor Works and Innovation Proposals].
- (c) If for any reason Project Co fails to achieve 4 points in Energy and Atmosphere Credit 1 (38% Reduction in Design Energy Cost Relative to MNECB) for the Facility within 18 months of the Service Commencement Date then Project Co will, upon written demand from the Authority, and in addition to any payment owing under Section 4.7(d) of this Schedule, immediately pay to the Authority \$500,000.
- (d) If for any reason Project Co fails to obtain LEED Gold Certification for the Facility within 18 months of the Service Commencement Date then Project Co will, upon written demand from the Authority, and in addition to any payment owing under Section 4.7(c) of this Schedule, immediately pay to the Authority \$100,000 for every point less than 39 points, to a maximum payment amount of \$500,000.
- (e) Upon payment of amounts, if any, owing under this Section 4.7 Project Co will have no further obligations or liability in respect of obtaining LEED Gold Certification, except to provide the Authority with such information and administrative assistance as the Authority may reasonably require in relation to obtaining LEED Gold Certification, and for greater

certainly the failure to obtain LEED Gold Certification will not be a Project Co Event of Default.

4.8 Authority Policies and Programs

The Authority will implement and maintain the following programs and policies in the Facility after Service Commencement, which may be relevant to Project Co obtaining prerequisites, credits or points related to LEED Gold Certification of the Facility:

- (a) a policy prohibiting smoking in the Facility;
- (b) a scent-free policy for Authority staff working in the Facility;
- (c) a recycling program in the Facility generally for the following materials: paper, cardboard, glass, metal and plastic (if and to the extent recycling of such materials is available in the City at Service Commencement);
- (d) an education program designed by the Authority to inform visitors to the Facility of sustainable features of the Building; and
- (e) the Authority will enter into a contract with an electricity supplier for the purchase of "green power" (power that meets Environment Canada's EcoLogo requirements or is certified by the Center for Resource Solutions' Green-e program) during the first two years of the Operating Period, if such a contract is available on commercially reasonable terms. Amounts payable under that contract will be made in accordance with Schedule 8 [Payments].

The Authority makes no representation as to the relevance or sufficiency of the above Authority policies and programs to Project Co's obligation to obtain LEED Gold Certification of the Facility. While Project Co may rely on the Authority to comply with this Section, Project Co will otherwise be completely responsible for obtaining LEED Gold Certification of the Facility in accordance with Section 4.7.

4.9 LEED Project Checklist

As a condition of application for Service Commencement Project Co will deliver to the Authority:

- (a) a LEED project checklist, generally in accordance with CaGBC requirements, together with a written confirmation that in Project Co's judgment:
 - (1) Energy and Atmosphere Credit 1 – Optimize Energy Performance: 38% Reduction in Design Energy Cost Relative to MNECB (4 points) will be achieved as required by Section 4.7(a) of this Schedule; and
 - (2) LEED Gold Certification will be achieved for the Facility as required by Section 4.7 of this Schedule; and
- (b) a written opinion from a LEED accredited professional supporting the confirmation described in Section 4.9(a).

4.10 Energy

Project Co will comply with the requirements of Appendix 2D [Energy].

5. DESIGN

5.1 Additional Design Considerations

In addition to other requirements of this Agreement, Project Co will undertake and perform the Design so that the Design:

- (a) is undertaken by a design team exercising such degree of care, skill and diligence as would reasonably be expected from consultants qualified to perform services similar in scope, nature and complexity to the Design, as of the date of this Agreement, and Project Co will appoint a design team that:
 - (1) is so qualified;
 - (2) includes (as required by applicable Law or Good Industry Practice) licensed or registered professional engineers and architects; and
 - (3) has sufficient expertise and experience to expeditiously and efficiently perform all of the Design in a proper and professional manner to the standard set out in this Agreement;
- (b) includes specific consideration of “constructability” and “life cycle” cost issues at all stages of Design, as appropriate; and
- (c) includes consideration of efficient and cost-effective operation and maintenance.

5.2 Design Process

Project Co will undertake the Design:

- (a) in accordance with Appendix 2B [Review Procedure]; and
- (b) in phases progressively, as follows:
 - (1) Schematic Design Phase – this phase will include supplemental information not included in Appendix 2G [Proposal Extracts (Design and Construction)] and development of drawings and other documents illustrating the scale and character of the Facility, architecture and engineering systems and any development permit (if applicable) in sufficient detail to describe how the parts of the Facility functionally relate to each other, such as the Site plan, spatial relationship diagrams, principal floor plans, sections, and elevations;
 - (2) Initial Works Phase – this phase will include drawings, specifications and other documents for the foundations and structure, including lateral load resisting

systems (shear walls), underground services and building code review including fire protection;

- (3) Early Delivery Package Phase - this phase will include drawings, specifications and other documents describing in detail the requirements for the major mechanical and electrical long lead-time delivery items, building cladding and window systems and any other long lead-time items or parts of the Facility;
- (4) Building Permit Phase – this phase will include drawings, specifications and other documents required for application for the building permit for the Facility;
- (5) 50% Complete Working Drawings Phase – this phase will include all drawings, specifications and other documents representing 50% complete working drawings, specifications and other documents; and
- (6) 100% Complete Working Drawings - this phase will include all drawings, specifications and other documents representing 100% complete working drawings, specifications and other documents.

For each phase, Project Co will provide to the Authority the level of detail and documentation that the Authority would customarily receive or expect to receive for a facility similar to the Facility in accordance with Good Industry Practice, including (as applicable):

- (A) dimensioned floor plans and elevations showing all millwork;
- (B) furniture and equipment;
- (C) interior elevations for all rooms;
- (D) exterior building elevations;
- (E) completed Site and landscaping plans;
- (F) room finish schedules;
- (G) room data sheets;
- (H) reflected ceiling plans;
- (I) interior finishes; and
- (J) a written report detailing and describing the manner in which the following have been taken into account in the Design:
 - (i) planning;
 - (ii) LEED Gold Certification, including energy efficiency/sustainability and the relevant LEED project checklist and points;

- (iii) material selection;
- (iv) constructability;
- (v) Life Cycle Requirements; and
- (vi) building operating services.

Project Co will only issue drawings and specifications for construction purposes based on Reviewed Drawings and Specifications as described in Appendix 2B [Review Procedure] or with the Authority's prior written approval under Section 6 of Appendix 2B [Review Procedure].

5.3 User Consultations

Project Co will undertake the Design with appropriate consultation with representatives of the Facility Users (the "**User Consultation Group**"), and accordingly Project Co will, at its cost, as part of the Design process, conduct consultations with the User Consultation Group in accordance with Appendix 2C [User Consultation Process].

5.4 Design Change

The following will apply to the Authority's requests for amendments to the Facility design:

- (a) revisions to drawings and specifications and additional Design requested by the Authority under the processes described in Section 5 of this Schedule, including Section 5.2 (Design Process) and Section 5.3 (User Consultations), are not Changes and will be completed at Project Co's cost (except to the extent that any such requested revision would constitute a change to the Design and Construction Specifications, the terms of Schedule 6 [Changes, Minor Works and Innovation Proposals] will apply and such revision will not be implemented except under a Change Certificate issued by the Authority); and
- (b) if and to the extent the Authority requires a variation of any Design described in the Reviewed Drawings and Specifications (other than a variation required to bring the Design into conformity with the Design and Construction Specifications or the Proposal Extracts (Design and Construction)) then such variation will be a Change and the terms of Schedule 6 [Changes, Minor Works and Innovation Proposals] will apply.

5.5 Mock Up Rooms

Project Co will, at its cost, as part of the user consultation process described in Appendix 2C [User Consultation Procedure], prepare two "mock ups", with the same dimensions and relative sizing and location as the items to be constructed, of each of the following rooms: one pair of chemotherapy chairs (and associated support services); and the patient stretcher holding area (room number 3.1.1.27 in the Clinical Specification). Project Co will provide each "mock-up" at the location described in Attachment 1 to Appendix 2B [Review Procedure]. The first "mock up" of each of the above rooms will be based on a tape on the floor or other similar means to indicate dimensions and relative sizing of the room and location of millwork, services, equipment and furniture. The second "mock-up" of each of the above rooms will be a

physical mock-up in sufficient detail to include all finishes, millwork, services, equipment and furniture so that the Authority, the User Consultation Group and the Design-Builder's Sub-Contractors can visualize all features of the final design. Project Co will modify the mock-ups as may be required as the design develops based on feedback from the User Consultation Group.

5.6 Life Cycle Report

On or before the Service Commencement Date, Project Co will prepare in consultation with the Design-Builder and the Service Provider a report ("**Life Cycle Report**") that sets out the proposed parameters for the anticipated life of major elements in the Facility and the Life Cycle Requirements relating thereto, to be used as a basis for the Life Cycle Plan referred to in Section 4.4 of Schedule 4 [Services Protocols and Specifications], and deliver such report to the Authority. If a proposed life cycle report is included in the Proposal Extracts (Design and Construction), the Life Cycle Report will be an update of that proposed life cycle report. The Authority will, acting reasonably, make its staff who work in building maintenance and repair available for consultation with Project Co, the Services Provider(s) and the Design-Builder regarding Design issues and the Life Cycle Report.

5.7 Ownership of Design

With respect to ownership and property rights relating to the Design:

- (a) the Authority will not have an ownership interest in the Design, including any of the drawings or specifications prepared and produced by Project Co, the Design-Builder or any Sub-Contractor;
- (b) Project Co grants to the Authority, or as required will cause the Design-Builder and all Sub-Contractors to grant to the Authority, an irrevocable license giving the Authority the non-exclusive right to use the Design in connection with the Facility, including any of the documents and information listed in Section 6.18 of this Schedule, beyond the end of the Term and as long as the Facility exists, including for renovations, additions and alterations to the Facility, provided that, except for reference purposes, the Design, including the plans, sketches, drawings, electronic files, graphic representations and specifications will not be used on any other project; and
- (c) Project Co will execute and deliver, or cause to be executed and delivered, any and all further and other documents as the Authority may reasonably request to effect and record the licence referred to in Section 5.7(b) of this Schedule.

6. CONSTRUCTION

6.1 Construction of the Facility

Project Co will perform the Construction in strict conformity with the Reviewed Drawings and Specifications, as may be modified and amended from time to time in accordance with the terms of this Agreement, and this obligation will be in addition to all other obligations of Project Co under this Agreement.

6.2 Amendments and Changes to the Drawings and Specifications

During the Construction, Project Co will submit all amendments or additions to the Reviewed Drawings and Specifications to the Authority's Design and Construction Representative for review under Appendix 2B [Review Procedure].

Any Changes during the Construction will be subject to the terms of Schedule 6 [Changes, Minor Works and Innovation Proposals].

6.3 Skilled Workers

Project Co will employ or cause the Design-Builder to employ a sufficient number of sufficiently skilled workers to perform the Construction in compliance with this Agreement.

6.4 Control of the Construction

Project Co will have total control of the Construction and will effectively direct and supervise the Construction so that it is undertaken in compliance with the terms of this Agreement. Project Co will be responsible for all construction means, methods, techniques, sequences and procedures with respect to the Construction and for coordinating the various elements of the Construction, and nothing in this Agreement (including this Schedule) will be interpreted as giving any responsibility for the above to the Authority, the Authority's Design and Construction Representative or any other representative or agent of the Authority, or to the Independent Certifier.

6.5 Existing Utilities

Project Co will be responsible to confirm the location of, and protect, all existing utilities that may be affected by the Construction.

6.6 Site Investigation

By entering into this Agreement, Project Co will be deemed to have inspected the Site in relation to the performance of its obligations under this Agreement and to have satisfied itself and accepted all risks and related responsibilities relating to the Site (except as expressly provided to the contrary in this Agreement) including:

- (a) the adequacy of the rights of access to and through the Site for the Construction;
- (b) vehicular access and parking;
- (c) temporary storage of building materials and equipment; and
- (d) geotechnical conditions.

6.7 Geotechnical Report

The Authority has made available the Geotechnical Report. Project Co may rely on the accuracy of the geotechnical information as set out and contained in the Geotechnical Report but only as specifically set out below:

- (a) Project Co may rely only on information, if any, contained in the Geotechnical Report describing the location of a test bore hole completed on the Site, and also the description of the soil and geotechnical material in a specific bore hole;
- (b) Project Co may not rely on any other information whatsoever that may be contained in the Geotechnical Report, including the adequacy of the number or locations of the described bore holes, or any opinions or recommendations interpreting the bore hole information for any purpose.

The Authority's responsibility for the information in the Geotechnical Report is limited as set out above, and Project Co specifically acknowledges that it assumes and accepts all risks that the bore hole information, as may be available in the Geotechnical Report, may not accurately or completely describe actual Site conditions including geotechnical or soil conditions (including risk of boulders, rock, low-strength soil and voids) and ground water conditions (including risk of underground streams or water table conditions) that may affect the Design or Construction.

6.8 Site Issues

Project Co:

- (a) will perform all Construction activities:
 - (1) within the Site (not on any other portion of the Lands), except as approved by the Authority for construction of any required off-site services, links to the Hospital and temporary or permanent off-site parking; and
 - (2) without blocking or disrupting vehicle or pedestrian access to the Hospital emergency department;
- (b) acknowledges:
 - (1) the terms of the licence (the "**Alward Park Licence**") dated December 14, 2009 granted by the City to the Authority relating to the use of the lands shown on Appendix 2H [Site Plan] as "Public Park" (formerly known as Alward Park) (the "**Licensed Lands**"); and
 - (2) the letter agreement dated December 18, 2009 between the Authority and the British Columbia Cancer Society with respect to the transfer of the Licensed Lands and the continuation of the Alward Park Licence until June 15, 2011 upon transfer of the Alward Park Lands from the City to the British Columbia Cancer Society;
- (c) may use the Licensed Lands in accordance with the terms and conditions set out in the Alward Park Licence and, if Project Co uses the Licensed Lands, Project Co will perform the obligations of the Authority under the licence, including the obligation to remove all parking-related infrastructure and vacate the Alward Park Site no later than June 15, 2011 or earlier if the Alward Park Licence is terminated in accordance with its terms;

- (d) will take reasonable steps to prevent Construction workers or suppliers from:
 - (1) using any portion of the Lands for vehicular parking; or
 - (2) smoking on any portion of the Lands;
- (e) will post an information phone number in a prominent location on the Site such that neighbours and passers-by can phone in and contact Project Co; and
- (f) will provide a community liaison officer to provide a single point of contact with Project Co regarding construction and development issues.

6.9 Connections and Integration to Existing Hospital

The Hospital must remain fully operational at all times during Construction. Project Co will:

- (a) co-operate with NHA to co-ordinate any work required to connect to the Hospital to minimize the interference to the on-going operation of the Hospital, including the delivery of quality patient care;
- (b) at least seven days before undertaking any work in the Hospital or proceeding with any proposed shutdown of Hospital services, deliver to the Authority and obtain the Authority's approval of a work plan ("**Work Plan**") clearly identifying:
 - (1) the activity that may interfere with the operation of the Hospital, including a description of the nature, timing and extent of interference;
 - (2) the steps Project Co intends to take to minimize the extent of such interference;
 - (3) the temporary measures that the Authority will be required to take to accommodate the interference; and
 - (4) any specific reporting relationships between Project Co and the staff desirable or required to coordinate the interference,

unless the Authority, at its discretion, notifies Project Co in writing that a Work Plan will not be required for particular work or a particular shutdown.

Prior to delivering a Work Plan, Project Co will consult with the Authority and NHA and, upon reasonable request, the Authority will make appropriate staff available for such consultation to determine the Work Plan that minimizes interference to the Hospital. Project Co will not proceed with any work in the Hospital or any proposed shutdown of Hospital services without: the Authority's prior written approval of a Work Plan under this Section, such approval not to be unreasonably withheld or delayed; or advance written notice from the Authority confirming that a Work Plan is not required.

6.10 The Authority's Access to Site

Subject to complying with all relevant safety procedures, including any relevant health and safety plans for the carrying out of the Construction and Project Co's and/or the Design-Builder's site rules, the

Authority's Design and Construction Representative, and their respective delegates, will have access at all reasonable times during normal working hours to:

- (a) attend the Site and view the Construction; and
- (b) subject to obtaining the consent of the relevant manufacturer or supplier (which Project Co will use all reasonable efforts to obtain), visit any site or workshop where materials, plant or equipment are being manufactured, prepared or stored for use in the Construction for the purposes of general inspection and of attending any test or investigation being carried out in respect of the Construction.

The Authority's Design and Construction Representative will have the right to attend all monthly progress meetings and site meetings.

Project Co will cooperate with the Authority to arrange for tours of the Site at reasonable times during Construction for interested doctors and other health care officials and personnel, in a way that does not interfere with the progress of the Construction.

Except as set out above or as otherwise provided for in this Agreement, the Authority will not grant any person access to the Site or the Facility during the Construction Period without the consent of Project Co, such consent not to be unreasonably withheld or delayed.

6.11 Inspection

Prior to the Service Commencement Date, Project Co will, upon request by the Authority's Design and Construction Representative including detailed reasons for the request, open up for inspection by the Authority's Design and Construction Representative any part of the work on the Facility which the Authority's Design and Construction Representative, acting reasonably, believes is defective and:

- (a) if the parties agree or if it is determined in accordance with the Dispute Resolution Procedure that there are no Defects in the relevant part of such work, and Project Co complied with the requirements of Section 3.5 of this Schedule, then any delay caused by the exercise of such rights will be treated as a Compensation Event and be subject to Section 8.3 of this Agreement;
- (b) if the parties agree or if it is determined in accordance with the Dispute Resolution Procedure that any relevant part of the work on the Facility is defective, then:
 - (1) Project Co will rectify and make good such Defect(s);
 - (2) any consequence of such rectification or making good Defect(s) will be carried out by Project Co at no cost to the Authority; and
 - (3) Project Co will not be entitled to any extension of time to the Project Schedule in relation to such rectification and making good of such work; and
- (c) if the parties are unable to reach agreement in accordance with Sections 6.11(a) or (b) above, then the matter will, at the request of either party, be referred to the Dispute

Resolution Procedure. If, in order to maintain compliance with the Project Schedule, it is necessary to proceed in respect of the matter in Dispute, the parties will proceed in accordance with the position of the Authority, provided that Project Co proceeding in accordance with the Authority's position will be a Compensation Event if the relevant matter in Dispute is determined in favour of Project Co.

6.12 Builders Lien Act and Builders Liens

With respect to builders liens and the requirements of the *Builders Lien Act* (British Columbia):

- (a) the Authority will not have any responsibility to be the payment certifier under any contract related to Construction;
- (b) Project Co will make all required builders lien holdbacks;
- (c) no builders lien holdback will be retained by the Authority under this Agreement;
- (d) if it is determined that any builders lien holdback is required to be retained by the Authority, then Project Co agrees that it is making and will make all of its required holdbacks as agent for the Authority;
- (e) Project Co will indemnify the Authority from any damages, costs, claims and expenses of any kind, including actual solicitors costs, arising from the failure of the Authority to retain a builders lien holdback; and
- (f) failure to hold back payment of amounts due to any Person in accordance with section 4 of the *Builders Lien Act* (British Columbia) will not constitute a Project Co Event of Default.

6.13 Safety and Protection of Property

As between the Authority and Project Co, Project Co will be solely responsible for safety during the Construction Period, including the safety of all persons on the Site and any other location where the Construction is performed (whether on the Site or other location lawfully or not) and members of the public, and will comply with the requirements of applicable Laws, applicable construction safety legislation, regulations and codes and Good Industry Practice. Project Co will protect the Authority's property and any third party's property from damage in the performance of the Construction.

6.14 Construction Noise and Cleanliness

Project Co will:

- (a) take all reasonable steps to minimize dust and noise from the Construction;
- (b) keep the Site in a tidy condition during the Construction, substantially free from the accumulation of waste products and debris; and
- (c) at the completion of Construction and before Service Commencement leave the Site and the Facility in a clean condition suitable for occupation by the Authority.

6.15 Signage

The Authority will provide Project Co with a sign to be displayed at the Site during Construction. Project Co will erect such sign at a prominent place on the Site that is acceptable to the Authority and NHA, acting reasonably. Project Co may erect additional signage at the Site during Construction to identify Project Co, the Design-Builder and Project Contractors provided such signs are acceptable to both the Authority's Design and Construction Representative and NHA, acting reasonably.

6.16 Temporary Works

During the Construction Period Project Co will:

- (a) have the sole responsibility for the design, erection, operation, maintenance and removal of temporary structures and other temporary facilities and the design and execution of construction methods required in their use;
- (b) provide its own services necessary for Project Co's construction use including but not limited to power, telephone, water and sewage, and will not connect directly to the existing hospital buildings or infrastructure except with the Authority's prior approval; and
- (c) at its own cost replace or repair any amenities, services or structures affected by the Design or the Construction, including roads, drainage systems, landscaping, light standards and hydrants.

6.17 Project Meetings

Without limiting the obligations pursuant to Section 2.6 of this Schedule in respect of the Construction Period Joint Committee, at the Authority's request, Project Co's Design and Construction Representative will attend meetings to update the Authority on the progress of Construction and to discuss any issues that have arisen. The meetings will be at least weekly unless agreed otherwise by the Authority.

6.18 Project Records

Notwithstanding any other provision of this Agreement:

- (a) As-Built Drawings and Specifications: Project Co will:
 - (1) throughout the Construction, update the Reviewed Drawings and Specifications (with respect to the drawings, such update will be in hard copy and "CAD" or other electronic format reasonably acceptable to the Authority's Design and Construction Representative), including all final shop drawings, so as to produce accurate and complete as-built documents for the Facility;
 - (2) as requested from time to time during the Construction, make available such as-built drawings and specifications to the Authority's Design and Construction Representative for review to permit the Authority's Design and Construction Representative to monitor Project Co's compliance with the requirements of this Section; and

- (3) provide three full-size hard copies and two electronic copies in “.dwg” format of the completed as-built drawings and specifications to the Authority’s Design and Construction Representative on or before Service Commencement.
- (b) Maintenance Manuals: Project Co will:
 - (1) on or before Service Commencement, make available all maintenance manuals, specifications, warranties and related information, in either written or electronic form, for all the equipment and systems that have been included in the Design and Construction of the Facility for review by the Authority’s Design and Construction Representative; and
 - (2) organize and store such information in accordance with Schedule 14 [Records and Reports];
- (c) Design Records: Project Co will retain records of the Design development;
- (d) Minutes of Meetings: Project Co will retain minutes of meetings between the Authority and Project Co relating to the Design and Construction and will circulate such minutes to the Authority’s Design and Construction Representative for review and comment as soon as reasonably possible after the relevant meeting, and a reasonable period before any subsequent meeting so that all parties may consider the minutes and take required actions in advance of the subsequent meeting;
- (e) Inspection Reports and Tests Results: Project Co will retain official reports and certified test records of all inspections and tests which were undertaken as part of the Construction;
- (f) Utility Plans: Project Co will retain utility plans for the Facility and the Site;
- (g) Landscape Plans: Project Co will retain landscape plans for the Facility and the Site;
- (h) Copies of all Permits: Project Co will retain copies of all Permits for the Construction and occupation of the Facility; and
- (i) Signed Quality Assurance Plan: Project Co will retain a signed copy of the Quality Assurance Plan for the Construction and all records of the Quality Assurance Program implemented as required by this Agreement.

6.19 Equipment Operation and Training

Project Co will be knowledgeable on the proper use and maintenance of all equipment and systems Project Co installs in the Facility, including communication systems, and will provide sufficient training and education to the Authority staff to enable the Authority to properly utilize such equipment and systems. The Authority will identify the relevant Authority staff, by name or position, and make such staff available at reasonable times prior to the Target Service Commencement Date.

7. EQUIPMENT SUPPLY AND INSTALLATION

7.1 Design and Construction Requirements

The obligations and responsibilities of the parties related to Equipment are set out in Appendix 2E [Equipment]. Project Co will complete the Design and Construction to accommodate in the Facility the installation, operation, repair and maintenance of all the Equipment, including as required electrical and plumbing connections, structural accommodation and efficient access, all to the tolerances and specifications as may be specified and required by the manufacturers or suppliers of the Equipment (which may be of a higher standard than specified in Schedule 3 [Design and Construction Specifications]).

8. QUALITY MANAGEMENT

8.1 Quality of the Design and Construction

Project Co is solely responsible for the quality of the Design and Construction.

8.2 Quality System

Project Co acknowledges that a comprehensive Quality System is critical for the proper and timely completion of the Design and Construction and accordingly Project Co will implement and follow a Quality System.

8.3 Project Co's Quality Consultant

Project Co will retain a qualified expert in quality management ("**Project Co's Quality Consultant**") to develop a Quality Assurance Program.

8.4 Quality Assurance Program

Project Co's quality assurance program (the "**Quality Assurance Program**") will:

- (a) detail Project Co's measures required to complete all aspects of the Design and Construction pursuant to its Quality System and in accordance with the requirements of this Agreement including this Schedule 2 [Design and Construction Protocols] and Schedule 3 [Design and Construction Specifications];
- (b) address and be applicable to all aspects of the Design and Construction;
- (c) provide for a graded approach to quality in which the appropriate level of quality assurance requirements for various elements of the Design and Construction are defined;
- (d) describe or comply with the following:
 - (1) the required quality level for each process or activity involved in the Design and Construction and the means of achieving it;

- (2) the steps to ensure that everyone participating in the Design or Construction is committed to the Quality Assurance Program;
- (3) the steps to ensure that the management and organizational structure and responsibilities are defined and understood by everyone participating in the Design or Construction;
- (4) require that all persons participating in the Design or Construction are competent to do their required tasks;
- (5) require that individuals involved with the Quality Assurance Program will be held accountable for their work;
- (6) provide that the right people will have the right information at the right time;
- (7) provide that relevant experience for each process or activity will be sought and used;
- (8) Design and Construction activities are planned and controlled;
- (9) the right items, processes, and practices will be used;
- (10) materials and services are verified to confirm that they are correct; persons giving verification will be sufficiently qualified and will be independent from those who perform or install the materials or services;
- (11) peer reviews and inspections will be performed on structured planned basis on all elements of the Design and Construction and:
 - (A) errors and deficiencies will be identified and recorded;
 - (B) errors and deficiencies remedied or corrected and a record maintained of the remedy or correction, and
- (12) maintain records as required by this Agreement;
- (e) provide for independent design verification in accordance with Good Industry Practice;
- (f) provide that professionals of record will:
 - (1) carry out on-site inspections, review materials testing and inspector's reports, undertake required surveying, measuring, and verification of materials and construction methods to ensure conformance with the Reviewed Drawings and Specifications and the Design and Construction Specifications; and
 - (2) provide a letter of assurance that is an attestation that the Design and Construction has been performed in accordance with the Reviewed Drawings and Specifications and the Design and Construction Specifications.

8.5 Quality Assurance Plan

Project Co will, within 15 days of the Effective Date, deliver to the Authority a draft quality assurance plan (the “**Quality Assurance Plan**”) that describes the implementation of the Quality Assurance Program. If a proposed quality assurance plan is included in the Proposal Extracts (Design and Construction), the draft quality assurance plan may be an update of that proposed quality assurance plan. The Authority may, within 30 days of receipt of Project Co’s draft quality assurance plan, provide comments on the draft and Project Co will, acting reasonably, take account of the comments in finalizing the Quality Assurance Plan. Project Co will promptly implement and strictly comply with the Quality Assurance Plan as recommended by Project Co’s Quality Consultant.

8.6 Reporting

Project Co will deliver to the Authority a monthly report of the Quality Assurance Plan prepared by Project Co’s Quality Consultant covering all aspects of the Design and Construction completed in the reporting period that are relevant to the Quality Assurance Plan. Project Co will highlight any deficiencies identified and corrective actions taken to address such deficiencies during the period covered by such report.

8.7 Quality Review by the Authority

The Authority may, at its discretion, perform its own audits of the Quality Assurance Program and for that purpose Project Co will make available for review by the Authority, upon request from the Authority, all records of the Quality Assurance Program and the Quality Assurance Plan to permit the Authority to be satisfied that Project Co is following its Quality Assurance Plan.

9. WORKERS COMPENSATION

9.1 Evidence of WCB Compliance

Project Co will provide evidence, satisfactory to the Authority’s Design and Construction Representative, of compliance by Project Co and all Project Contractors with the requirements of the *Workers Compensation Act*, as amended, and all regulations and successor legislation thereto, including payments due thereunder at the following times:

- (a) prior to commencing the Construction; and
- (b) at any time during Construction, upon request of the Authority’s Design and Construction Representative acting reasonably.

9.2 Indemnity for WCB Non-Compliance

If Project Co or anyone employed by or through Project Co in the performance of any Construction does not comply with the requirements of the *Workers Compensation Act*, as amended, and all regulations and successor legislation thereto, including payment and deduction and remittance of any and all contributions, fees, assessments and charges required to be made pursuant to the above, Project Co will indemnify the Authority from any cost, loss, liability or obligation which the Authority may incur as a result.

9.3 Prime Contractor

For the purposes of applicable legislation and regulations, Project Co agrees to be, or will cause the Design-Builder to be, at all times during the Construction Period, the prime contractor as defined in the *Workers Compensation Act* for the Site and accordingly will comply, or will cause to be complied, with all resulting requirements and obligations including:

- (a) ensuring continuing coordination of the occupational health and safety activities of all employers on the Site, including the Authority, the Authority's Design and Construction Representative, any other contractors and everyone engaged by or through any of them;
- (b) delivering any notices of the Project as required by applicable regulations; and
- (c) complying with the obligations of a prime contractor for a multi-employer workplace as prescribed by the applicable regulations.

If for any reason the Workers Compensation Board of British Columbia refuses to recognize Project Co or the Design-Builder as the prime contractor then, to the extent permitted by law, Project Co will cooperate with the Authority and perform on behalf of the Authority the obligations which the Authority is required to undertake as prime contractor in connection with the Construction by virtue of the *Workers Compensation Act* and Regulations, or other statutes.

9.4 Failure to Comply with WCB Requirements

If at any time the Construction is stopped because Project Co, or any Project Co Person providing services or work on the Project, unreasonably fails or refuses to comply with an order issued pursuant to the *Workers Compensation Act*, then such failure or refusal will be considered a Project Co Material Breach.

10. PROJECT SCHEDULE AND SCHEDULING

10.1 Initial Project Schedule

Attached as Appendix 2F [Initial Project Schedule] is the initial project schedule (the "**Project Schedule**"), which the parties have relied upon in entering into this Agreement.

10.2 Project Schedule Updates

Project Co will, as required from time to time until Service Commencement, but no less than once per calendar month by the 15th day of each month, in consultation with the Authority update the Project Schedule so that it is at all times an accurate, reasonable and realistic representation of Project Co's plans for the completion of the Design and Construction of the Facility in accordance with the requirements of this Agreement. The updates will include:

- (a) adjustments resulting from Supervening Events and Changes, if any, as permitted by this Agreement;
- (b) as the Design progresses, best estimates of:

- (1) the start and completion dates for the design phases described in Section 5.2 of this Schedule; and
- (2) the commencement of Construction;
- (c) the planned start and completion dates of the major activities of Construction;
- (d) the planned start and completion dates of work required to connect to the Hospital or any proposed shut-down of Hospital services; and
- (e) the Target Service Commencement Date, which may not be updated or otherwise changed within 12 months of such date unless the Authority, in its discretion, consents, or as otherwise provided in Section 10.2(a) above.

Project Co will deliver an updated Project Schedule monthly to the Authority and the Independent Certifier and upon delivery the updated Project Schedule (the "**Updated Project Schedule**") will be the Project Schedule under this Agreement in substitution for the previously issued Project Schedule. If at any time the Authority does not agree with the proposed updates that may be required to the Project Schedule then the disagreement may be referred to the Dispute Resolution Procedure.

10.3 Failure to Update Project Schedule

If Project Co fails or refuses to deliver an Updated Project Schedule as required under Section 10.2 of this Schedule, then such failure or refusal will be deemed to be a Project Co Material Breach.

10.4 Compliance with Project Schedule

Project Co will undertake the Design and Construction of the Facility in compliance with the Updated Project Schedule, as may be updated pursuant to this Agreement.

10.5 Move-In Schedule

Project Co acknowledges that the Authority will rely on the Service Commencement Date as set out in the Project Schedule (as may be adjusted under Section 10.2 of this Schedule).

As soon as reasonably practicable, but in any event no later than 180 days prior to the Target Service Commencement Date, Project Co will deliver to the Authority's Design and Construction Representative a move-in schedule (the "**Move-in Schedule**") indicating the anticipated dates when the areas in the Facility will become available for occupation by the Authority so as to facilitate and permit the Authority to progressively take up occupation in the Facility in an efficient manner. The Authority's Design and Construction Representative will advise Project Co of any key or significant moves or move-in requirements, and Project Co will, as reasonably possible, accommodate the Authority's requirements and requests. Project Co will, as may be required from time to time, up-date the Move-in Schedule.

11. DELAYS AND ACCELERATION

11.1 Acceleration to Recover Project Co Delays

If at any time the Authority, acting reasonably, determines that Project Co is behind the Updated Project Schedule (other than due to a Supervening Event or a Change) and will not achieve Service Commencement by the Target Service Commencement Date, then the Authority may deliver notice to Project Co's Design and Construction Representative to use its best efforts, at Project Co's own cost and at no cost to the Authority, to accelerate the Construction so as to conform to the Updated Project Schedule and achieve Service Commencement by the Target Service Commencement Date.

11.2 Service Commencement Delay Costs

If Project Co fails to achieve Service Commencement by the Target Service Commencement Date (other than due to a Supervening Event or a Change), then Project Co will reimburse the Authority for any additional incremental direct, arm's length out of pocket costs which the Authority reasonably incurs and evidences to Project Co because the Authority relied on the Move-in Schedule related to the move of health care personnel and equipment into the Facility, which are in excess of the costs which the Authority would have incurred had Project Co achieved the dates set out in the Move-In Schedule (other than due to a Supervening Event or a Change). Notwithstanding anything contained in this Agreement (including any Schedule), the liability of Project Co for failing to achieve Service Commencement by the Target Service Commencement Date will not exceed \$10,000 per day, provided however that nothing in this Section 11.2 will limit the obligations of Project Co for payment of liquidated damages under Section 11.4 of this Schedule.

11.3 Acceleration to Advance Service Commencement Date

If at any time the Authority determines that it requires the Construction to proceed in advance of the Updated Project Schedule then the Authority may give written notice to Project Co to provide the Authority with a written proposal to accelerate the Construction, including cost estimates and an estimate of the time saved, and if the Authority acting reasonably decides to proceed with the acceleration then Project Co will implement the directed acceleration and if the acceleration is a Change then such Change will be made in accordance with Schedule 6 [Changes, Minor Works and Innovation Proposals].

11.4 Service Commencement Delay Liquidated Damages

In the event that Service Commencement is not achieved on or prior to the Target Service Commencement Date in effect as of the Effective Date, (the "**LD Reference Date**"), Project Co will pay to the Authority liquidated damages for the period from the LD Reference Date to the Service Commencement Date in an amount (accruing daily) equal to the sum of \$10,100 per day. If Service Commencement is not achieved on or prior to the Longstop Date, Project Co will pay to the Authority liquidated damages in such amount for the period from the LD Reference Date to the Longstop Date. The parties agree that the liquidated damages have been agreed in advance as a genuine and reasonable pre-estimate of the damages that the Authority may suffer, are not a penalty, and would be difficult to quantify.

The LD Reference Date is subject to adjustment for Changes and for Supervening Events to the same extent as described for the Target Service Commencement Date in Schedule 6 [Changes, Minor Works and Innovation Proposals] or in Section 8 (Supervening Events), as applicable. The parties acknowledge that the Target Service Commencement Date and the LD Reference Date may be different dates if the Target Service Commencement Date has been adjusted under other provisions of this Agreement including this Schedule 2 [Design and Construction Protocols].

If the obligation to pay such liquidated damages is caused by an event insured by the Construction Property Policy, Project Co will be relieved of its obligation.

Nothing in this Section 11.4 will limit the obligations of Project Co for payment of costs under Section 11.2 (Service Commencement Delay Costs) of this Schedule.

12. COMMISSIONING

12.1 Testing and Commissioning

Project Co will, prior to applying for Service Commencement, test all equipment and systems in the Facility to demonstrate to the reasonable satisfaction of the Authority's Design and Construction Representative that the Facility equipment and systems are operating so that:

- (a) the Authority may occupy the Facility for the Intended Uses; and
- (b) the Availability Conditions are satisfied for all Functional Units.

12.2 Commissioning Plan

Project Co will prepare and deliver to the Authority's Design and Construction Representative and the Independent Certifier, not less than 365 days before the Target Service Commencement Date, a testing and commissioning plan (the "**Commissioning Plan**") setting out the commissioning activities Project Co intends to carry out to satisfy Section 12.1, including:

- (a) a description of the specific equipment and systems to be tested and commissioned and the associated commissioning requirements;
- (b) a schedule, related to the Project Schedule, showing the timing of all testing and commissioning; and
- (c) supporting documentation, including as appropriate:
 - (1) design calculations and/or assumptions; and
 - (2) manufacturer's specifications.

13. COMPLETION

13.1 Deficiency List

Prior to and as a pre-condition of issuance of the Certificate of Service Commencement or Certificate of Parking Commencement, as the case may be, under Section 3.4 of this Schedule the Independent Certifier will, in cooperation with Project Co's Design and Construction Representative and the Authority's Design and Construction Representative, with respect to an application for a:

- (a) Certificate of Service Commencement, prepare a complete list of Defects that are apparent upon inspection of the Facility (the "**Deficiencies**") and deliver to Project Co and the Authority's Design and Construction Representative the list of Deficiencies; and
- (b) Certificate of Parking Commencement, prepare a complete list of Deficiencies relating to the Parking Facilities and deliver to Project Co and the Authority's Design and Construction Representative the list of Deficiencies relating to the Parking Facilities.

The Authority or Project Co may refer matters relating to the accuracy or completeness of the list of Deficiencies relating to the Facility or Parking Facilities to the Dispute Resolution Procedure. Project Co acknowledges that the Independent Certifier will need sufficient time to complete the inspection and prepare the list of Deficiencies for the Facility or the Parking Facilities, as the case may be, and accordingly Project Co will: give the Authority and the Independent Certifier no less than 30 days advance notice of the date Project Co anticipates achieving Service Commencement or Parking Commencement, as the case may be; and assist the Independent Certifier to make any advance inspections requested by the Independent Certifier. For greater certainty, the parties acknowledge that LEED Gold Certification will be obtained from CaGBC after the Service Commencement Date and as a result cannot be included as a Deficiency in the list of Deficiencies prepared as a pre-condition of the issuance of the Certificate of Service Commencement.

13.2 Correction of Deficiencies

Upon issuance of the Certificate of Service Commencement or the Certificate of Parking Commencement, as the case may be, Project Co will proceed expeditiously to correct all Deficiencies relating to the Facility or Parking Facilities, as the case may be: within 30 days after the Service Commencement Date or Parking Commencement Date; or within such longer period as may be reasonably required to correct the Deficiency and agreed by the Authority, acting reasonably. If Project Co fails or refuses to correct any Deficiency as required by this Section 13.2 then the Authority may:

- (a) exercise all rights and remedies provided under this Agreement, including Section 11 of this Agreement and the right to make any Deductions; and
- (b) upon 7 days' prior written notice at Project Co's cost correct the Deficiency or Deficiencies at the amount of the out-of-pocket cost of such corrections plus a mark-up of 20% on such cost whether or not the correction is made under this Section 13.2 or under Section 11 (including Section 11.5) of this Agreement, and the Authority may deduct such cost and mark-up from other payments under this Agreement.

Project Co will prior to or at Service Commencement obtain from the Design-Builder a letter of credit in an amount of a minimum of 1.5% of the total price to be paid by Project Co to the Design-Builder under the Design-Build Agreement. The letter of credit will, among other things, be security for Project Co for the correction of Deficiencies by the Design-Builder. Prior to the expiry of the letter of credit, Project Co will:

- (1) obtain cash security from the Design-Builder; or
- (2) draw down the letter of credit;

in an amount not less than 200% of the amount estimated by the Independent Certifier required to correct the Deficiencies that have not been corrected by such date. If Project Co does not obtain such amount, then the Authority may withhold that amount as a holdback, to be applied against the costs and mark-up described in Section 13.2(b) of this Schedule. If Project Co or the Design-Builder, as applicable, corrects the Deficiencies, then such amount will be released to Project Co or the Design-Builder as applicable.