

SCHEDULE 11
DESIGN-BUILDER COLLATERAL AGREEMENT

for the New St. Paul's Phase 1a

PROVIDENCE HEALTH CARE SOCIETY
[DESIGN-BUILDER]
[PROJECT CO]

Dated: ▼

SCHEDULE 11

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DESIGN-BUILDER COLLATERAL AGREEMENT

THIS AGREEMENT is dated as of ▼, 20▼.

AMONG:

▼,
(the "**Design-Builder**")

AND:

PROVIDENCE HEALTH CARE SOCIETY, a society incorporated under the Societies Act
(British Columbia)
(the "**Owner**")

AND:

▼,
("**Project Co**")

WHEREAS:

- A. The Owner and Project Co have entered into an agreement dated as of ▼, 20▼ (the "**Project Agreement**") whereby Project Co has agreed to design, construct and finance the Facility (the "**Project**"), all as more particularly described in the Project Agreement;
- B. Project Co and the Design-Builder have entered into an agreement dated as of ▼, 20▼ (the "**Material Contract**") whereby the Design-Builder has agreed to carry out the Design and Construction;
- C. It is a condition of the Material Contract that the Design-Builder enter into this Agreement with the Owner and Project Co; and
- D. The Owner and Project Co have agreed under the terms of the Project Agreement to execute and deliver this Agreement.

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 AND INTERPRETATION

1.1 Definitions

Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Agreement will have the respective meaning given to such terms in the Project Agreement, and:

"**Agreement**" means this agreement, including any recitals to this agreement, as amended or restated from time to time;

"**Material Contract**" has the meaning set out in Recital B;

"**Parties**" means the Owner, Project Co and the Design-Builder;

"Project" has the meaning set out in Recital A;

"Project Agreement" has the meaning set out in Recital A;

"Proposed Transfer Date" has the meaning set out in Section 4.1;

"Proposed Transfer Notice" has the meaning set out in Section 4.1;

"Proposed Step-in Date" has the meaning set out in Section 3.1;

"Proposed Substitute" has the meaning set out in Section 4.1;

"Step-in Date" means the date the Owner delivers the Step-in Undertaking;

"Step-in Notice" has the meaning set out in Section 3.1;

"Step-in Period" means the period commencing on the Step-in Date and ending on the earliest of:

- (a) the Step-out Date;
- (b) the Transfer Effective Date; and
- (c) the termination date of the Material Contract as permitted under Section 3.8.

"Step-in Undertaking" has the meaning set out in Section 3.5;

"Step-out Date" has the meaning set out in Section 3.9;

"Termination Notice" has the meaning set out in Section 2.1;

"Transfer Agreement" has the meaning set out in Section 4.5(b); and

"Transfer Effective Date" means the effective date of the Transfer Agreement.

1.2 Construction and Interpretation

Unless otherwise defined in this Agreement or to the extent the context requires, this Agreement will be interpreted according to the provisions set out in Sections 2 and 3(b) of Schedule 1 [Definitions and Interpretation] to the Project Agreement, except that references in such section to Project Co will be also deemed to be references to the Design-Builder.

1.3 Governing Law

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

1.4 Attornment

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

2. TERMINATION NOTICE AND OWNER TERMINATION

2.1 Termination Notice

The Design-Builder will not terminate the Material Contract without first giving the Owner at least 20 Business Days' notice or if the ground for termination is the same as a ground for which Project Co may terminate the Project Agreement, then the applicable notice period under the Project Agreement, specifying the grounds for such termination (the "**Termination Notice**").

2.2 Survival of Material Contract

Notwithstanding any provision of the Material Contract to the contrary, on termination of the Project Agreement by the Owner, the parties agree that the Material Contract will not come to an end except in accordance with the terms of this Agreement.

2.3 [Intentionally Deleted]

3. STEP-IN AND STEP-OUT

3.1 Step-In Notice

Subject to Section 3.2, if the Owner has terminated the Project Agreement in accordance with its terms or if the Owner has received a Termination Notice, the Owner may give notice to the Design-Builder (a "**Step-in Notice**") of the intention of the Owner to issue a Step-in Undertaking on a specified date (the "**Proposed Step-in Date**") provided that such Proposed Step-in Date is:

- (a) no later than 10 Business Days after termination of the Project Agreement if the Project Agreement was terminated by the Owner; and
- (b) no later than 10 Business Days after delivery of the Termination Notice to the Owner.

3.2 Lenders' Step-in Rights

The Owner will not issue a Step-In Notice at any time that the Senior Lenders are validly exercising any step-in rights with respect to the Project under:

- (a) the Lenders' Remedies Agreement;
- (b) any Senior Financing Agreement; or
- (c) any direct agreement entered into between the Design-Builder and the Senior Lenders with respect to the Material Contract,

and the running of all notice periods and timelines set out in Section 3.1 will be suspended until such time as the Senior Lenders are no longer exercising, or are no longer permitted to exercise, such rights under the Lenders' Remedies Agreement, any Senior Financing Agreement or any such direct agreement. The Design-Builder will provide copies of all relevant notices delivered by it to, or to it by, the Senior Lenders in respect of the exercise of such rights so as to enable the Owner and the Design-Builder to determine, in accordance with this Section 3.2 the notice periods and timelines set out in Section 3.1.

3.3 Notice of Obligations and Step-In Undertaking

Not less than five Business Days prior to the Proposed Step-in Date, the Design-Builder will give notice to the Owner of any sums which are due and payable but unpaid by Project Co and of any other material

obligations or liabilities, which should have been performed or discharged by Project Co under the Material Contract, in each case, as at the date of the Step-in Notice.

3.4 Update of Obligations

Not less than two Business Days prior to the Proposed Step-in Date, the Design-Builder will give notice to the Owner of any change in such sums, obligations or liabilities referred to in Section 3.3.

3.5 Delivery of Step-In Undertaking

On or before the Proposed Step-in Date, the Owner may deliver to the Design-Builder a written undertaking to the Design-Builder (the "**Step-in Undertaking**") undertaking to the Design-Builder to:

- (a) pay or procure the payment to the Design-Builder, within 15 Business Days of demand by the Design-Builder, of any sum due and payable or accruing due and payable but unpaid by Project Co to the Design-Builder under the Material Contract before the Step-in Date provided such amounts have been notified by the Design-Builder to the Owner in accordance with Sections 3.3 and 3.4;
- (b) perform or discharge or procure the performance or discharge of any unperformed or undischarged obligations of Project Co under the Material Contract which will have fallen due for performance or discharge before the Step-in Date and which have been notified by the Design-Builder to the Owner in accordance with Sections 3.3 and 3.4;
- (c) pay or procure the payment of any sum due and payable by Project Co under the Material Contract as a result of either any work or services performed during the Step-in Period or any act or omission occurring during the Step-in Period which arises from any act or omission occurring after the Step-in Date; and
- (d) perform or discharge or procure the performance or discharge of any obligations of Project Co under the Material Contract as a result of any act or omission occurring during the Step-in Period which arises from any act or omission occurring after the Step-in Date.

3.6 Limits on Owner Liability on Step-In

The Owner will not be required to assume any liability under a Step-in Undertaking for any outstanding obligations or liabilities of Project Co to the Design-Builder which:

- (a) existed as at the Step-In Date; and
- (b) are not notified to the Owner pursuant to Sections 3.3 and 3.4.

3.7 Non-Delivery of the Step-In Undertaking

If the Owner does not deliver the Step-in Undertaking on or before the Proposed Step-in Date, the Step-in Notice will be deemed to have been withdrawn and the rights and obligations of the parties will be construed as if the Step-in Notice had not been given.

3.8 Effect of Step-In Undertaking

During any Step-in Period, the Design-Builder will continue to observe and perform its duties and obligations under the Material Contract and will only be entitled to exercise its rights of termination under the Material Contract:

- (a) by reference to a default under the Material Contract arising during the Step-in Period (other than to the extent that a Project Co Insolvency Event constitutes such a default) provided that no event of default by Project Co under the Project Agreement will entitle the Design-Builder to exercise such rights of termination during the Step-in Period;
- (b) if the Owner fails to pay when due any amount owed to the Design-Builder or fails to perform or discharge when falling due for performance or discharge any obligation under the Step-in Undertaking; or
- (c) if such rights of termination arise in circumstances where there is no default under the Material Contract by the Owner or the Design-Builder.

3.9 Step-Out

The Owner may, at any time, terminate the Step-in Period by giving the Design-Builder at least 30 days' notice specifying the date on which the Step-in Period will terminate (the "**Step-out Date**").

3.10 Effect of Step-Out

The Owner will be released from the Step-in Undertaking on the expiry or termination of the Step-in Period, provided that the Owner has performed and discharged in full or procured the performance and discharge in full of any of the Owner's obligations under the Step-in Undertaking arising on or before the expiry or termination of the Step-in Period.

3.11 Payment by Project Co

Project Co will pay to the Owner on demand any amounts notified by the Design-Builder to the Owner pursuant to Sections 3.3 and 3.4 and paid by the Owner or a Proposed Substitute to the Design-Builder pursuant to this Agreement and any such amounts will constitute amounts due and payable by Project Co to the Owner under the Project Agreement and the Owner will have all the same rights and remedies under the Project Agreement (including any rights of set-off) in respect of payment or non payment of any such amounts as the Owner would have for any payment or non-payment by Project Co of any other amounts that are due and payable by it to the Owner under the Project Agreement.

4. TRANSFER

4.1 Proposed Substitute

At any time that the Owner is entitled to give a Step-in Notice pursuant to Section 3.1 or at any time during the Step-in Period, the Owner may give notice (a "**Proposed Transfer Notice**") to the Design-Builder that it wishes itself or another Person (a "**Proposed Substitute**") to assume, by way of sale, assignment, transfer or other disposal, the rights and obligations of Project Co under the Material Contract and specifying a date (the "**Proposed Transfer Date**"):

- (a) if the Owner has terminated the Project Agreement but has not given a Step-in Notice, no later than 15 Business Days after termination of the Project Agreement;
- (b) if the Design-Builder has given a Termination Notice but the Owner has not given a Step-in Notice, no later than expiry of the Termination Notice; and
- (c) if the Owner has given a Step-in Notice (whether or not the Step-in Period has commenced), no later than 30 days after the date of the Proposed Transfer Notice.

Subject to Section 3, the Design-Builder will not be entitled to terminate the Material Contract during the notice period specified in a Proposed Transfer Notice.

4.2 Consent to Transfer

If the Proposed Transfer Notice specifies the Owner as the Proposed Substitute, the Design-Builder's consent to the transfer will be deemed to have been given. If the Proposed Substitute is not the Owner, a transfer in accordance with a Proposed Transfer Notice will only be effective if the Design-Builder consents to that transfer in writing in accordance with Section 4.3 and the Owner will (as soon as practicable) supply the Design-Builder with the following information:

- (a) the name and registered address of the Proposed Substitute;
- (b) the names of the shareholders in the Proposed Substitute and the share capital owned by each of them;
- (c) the names of the directors and the secretary of the Proposed Substitute;
- (d) details of the means by which it is proposed to finance the Proposed Substitute (including the extent to which such finance is committed and any conditions precedent as to its availability for drawing); and
- (e) details of the technical competence of the Proposed Substitute and the resources (including contractual arrangements) which are to be available to the Proposed Substitute to enable it to perform its obligations under the Material Contract.

4.3 Grant of Consent

The Design-Builder may withhold or delay consent to a transfer only if the Proposed Substitute is not the Owner and the Owner has failed to show to the Design-Builder's satisfaction (acting reasonably) that:

- (a) the Proposed Substitute has the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the Material Contract; and
- (b) the technical competence and financial standing of, and the technical and financial resources available to, the Proposed Substitute are sufficient to perform the obligations of Project Co under the Material Contract.

Within five Business Days of the receipt of a Proposed Transfer Notice and all information required under Section 4.2, the Design-Builder will notify the Owner in writing that it has consented to the transfer and if the Design-Builder has not consented, an explanation of its reasons to withhold its consent.

4.4 Consent Withheld

If the Design-Builder withholds its consent to a Proposed Transfer Notice, the Owner may give one or more subsequent Proposed Transfer Notices, pursuant to the provisions of Section 4.1, containing changed particulars relating to the same Proposed Substitute or particulars relating to another Proposed Substitute which the Owner reasonably believes would fulfil the requirements of Sections 4.3, provided that only one Proposed Transfer Notice may be outstanding at any one time, and provided further that:

- (a) if a Step-in-Notice has not been issued, any revised Proposed Transfer Date will be a date falling no later than the date specified in Section 4.1(a) or 4.1(b), as the case may be; and
- (b) if a Step-in Notice has been issued, any revised Proposed Transfer Date will be a date falling no later than the date specified in Section 4.1(c).

4.5 Implementation of Transfer

If the Design-Builder consents or is deemed to have consented to a transfer pursuant to a Proposed Transfer Notice, then on the Proposed Transfer Date:

- (a) the Proposed Substitute will become a party to the Material Contract in place of Project Co and, thereafter, will be treated as if it was and had always been named as a party to the Material Contract in place of Project Co; and
- (b) the Design-Builder, the Construction Guarantor, Project Co and the Proposed Substitute will enter into a transfer agreement (the "**Transfer Agreement**") and any other requisite agreements, in form and substance satisfactory to the Design-Builder, acting reasonably, pursuant to which:
 - (1) the Proposed Substitute will be granted all of the rights of Project Co under the Material Contract; and
 - (2) the Proposed Substitute will assume all of the obligations and liabilities of Project Co under the Material Contract.

4.6 Effect of Transfer

On and after the Transfer Effective Date:

- (a) the Design-Builder will owe its obligations under the Material Contract whether arising before, on or after such date, to the Proposed Substitute; and
- (b) if the Owner has entered into a Step-in Undertaking, the Owner will be released from the Step-in Undertaking, provided that all obligations of the Owner under the Step-in Undertaking which have accrued up to the Transfer Effective Date have been fully and unconditionally discharged.

The Owner and the Design-Builder will use reasonable efforts to agree to any amendments to the Material Contract reasonably necessary to reflect the fact that the Project Agreement may have terminated at the time of the Transfer Effective Date.

4.7 Termination After Transfer

After the Transfer Effective Date the Design-Builder will only be entitled to exercise its rights of termination under the Material Contract:

- (a) in respect of any Project Co Event of Default arising after that date in accordance with the Material Contract; or
- (b) if the Proposed Substitute does not discharge the obligations and liabilities referred to in Section 4.5(b)(2) assumed by it under the Transfer Agreement which relate to matters arising prior to the end of any Step-in Period within 15 Business Days following the Transfer Effective Date.

5. RIGHTS AND OBLIGATIONS UNDER THE MATERIAL CONTRACT

5.1 Rights of Termination

If:

- (a) no Step-in Notice or Proposed Transfer Notice is given before a Termination Notice expires or within 15 Business Days after termination of the Project Agreement by the Owner;
- (b) a Step-in Undertaking is not issued on or before the Proposed Step-in Date;
- (c) the Step-In Notice is withdrawn or, pursuant to Section 3.7, is deemed to have been withdrawn;
- (d) the Step-In Period ends before the occurrence of the Transfer Effective Date;
- (e) in the absence of a Step-in Undertaking, the Design-Builder reasonably withholds its consent to a transfer pursuant to a Proposed Transfer Notice, in accordance with Section 4.3, and does not subsequently grant consent to a transfer in accordance with Section 4.4 on or before the Proposed Transfer Date;
- (f) in the absence of a Step-in Undertaking, a Transfer Agreement is not entered into on the Proposed Transfer Date;
- (g) the Design-Builder is entitled to terminate the Material Contract under Section 3.8 or 4.7; or
- (h) the Owner exercises its right to Step-out under Section 3.9, then on the Step-out Date,

the Design-Builder may:

- (i) exercise all of its rights under the Material Contract and act upon any and all grounds for termination available to it in relation to the Material Contract whenever occurring; and
- (j) pursue any and all claims and exercise any and all rights and remedies against Project Co.

5.2 Project Co's Obligations to Continue

Until completion of a transfer pursuant to Section 4.5, Project Co will continue to be liable for all its obligations and liabilities, whenever occurring, under or arising from the Material Contract notwithstanding:

- (a) the service of a Step-in Notice or the issue of a Step-in Undertaking or the expiry of the Step-in Period or the release of a Step-in Undertaking;
- (b) the service of a Proposed Transfer Notice; or
- (c) any other provision of this Agreement.

6. REVOCATION OF NOTICES

A Termination Notice and a Step-in Notice may each be revoked (in writing to the recipient) by the party giving them before the expiry of their respective notice periods. Upon any such revocation, the rights and obligations of the parties will be construed as if the relevant notice had not been given.

7. [INTENTIONALLY DELETED]

8. ASSIGNMENT

8.1 Binding on Successors and Assigns

This Agreement will be binding on and will enure to the benefit of the parties and their respective successors and permitted assigns.

8.2 Restriction on Assignment

No party will assign or transfer any part of its respective rights or obligations under this Agreement without the prior consent of the others (such consent not to be unreasonably withheld or delayed), provided that:

- (a) the Owner will be entitled, without the consent of any other party, to transfer all its rights and obligations hereunder, to any Person to whom it assigns or otherwise disposes of the benefit of the Project Agreement in accordance with the Project Agreement; and
- (b) the Design-Builder will assign or transfer all its rights and obligations under, this Agreement to any Person to whom it, respectively, assigns, or transfers all its rights and obligations under, the Material Contract in accordance with the terms of the Material Contract and the Project Agreement).

9. GENERAL

9.1 Notices

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

if to the Owner:

Providence Health Care Society
c/o St. Paul's Hospital
1081 Burrard Street
Vancouver, BC V6Z 1Y6

Attention: Office of the CEO ▼
E-mail: officeofthceo@providencehealth.bc.ca

if to the Design-Builder:

▼

Attention: ▼
E-mail: ▼

if to Project Co:

▼

Attention: ▼
E-mail: ▼

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

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

9.2 Entire Agreement

Unless otherwise stated in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement. No party has relied on any representation except as expressly set out in this Agreement.

9.3 Waiver

The failure of any party to exercise any contractual right or remedy will not constitute a waiver thereof and no waiver will be effective, unless it is communicated in writing to the other party. A waiver of any right or remedy arising from a breach of this Agreement will not constitute a waiver of any right or remedy arising from any other breach of this Agreement.

9.4 No Partnership or Agency

Nothing in this Agreement will be construed as creating a partnership or as constituting the Design-Builder as an agent of the Owner. The Design-Builder will not hold itself out as having any authority or power to bind the Owner in any way.

9.5 Conflicting Agreements

If there is any conflict or inconsistency between the provisions of this Agreement and the Project Agreement, the provisions of the Project Agreement will prevail.

9.6 Remedies Cumulative

The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

9.7 Counterparts

This Agreement may be executed in any number of counterparts, all of which when taken together will constitute one and the same instrument.

9.8 Joint and Several

If the Design-Builder is comprised of more than one legal entity, the obligations and liabilities of the Design-Builder under this Agreement will be the obligations and liabilities of each legal entity comprising the Design-Builder, jointly and severally with each other such legal entity.

9.9 Disputes

Any dispute between any of the parties with respect to any of the subject matters of this Agreement or any disagreement between any of the parties with respect to any matter that, by the express terms of this Agreement, is to be agreed upon by the parties will be resolved in accordance with, and the parties will comply with, the Dispute Resolution Procedure, provided that, for greater certainty, the parties acknowledge that, during a Step-in Period or after the Transfer Effective Date, any dispute with respect to any of the subject matters of the Material Contract will be resolved in accordance with the applicable dispute resolution procedure thereunder.

[signature pages follow]

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

PROVIDENCE HEALTH CARE SOCIETY

Per: _____
Name:
Title:

[DESIGN-BUILDER]

Per: _____
Name:
Title:

PROJECT CO

Per: _____

Name:

Title: