

**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:

"**Asset Register**" has the meaning set out in Section 7.3 of this Schedule;

"**Certificate of Service Commencement**" has the meaning set out in Section 13.3(a) of this Schedule;

"**Certificate of Total Completion**" has the meaning set out in Section 13.7(a) of this Schedule;

"**Commissioning Plan**" has the meaning set out in Section 12.3 of this Schedule;

"**Construction Period Joint Committee**" has the meaning set out in Section 2.6(a) of this Schedule;

"**CSRC**" means the Clinical Support and Research Centre to be constructed adjacent to the Facility;

"**Deficiency**" has the meaning set out in Section 13.1 of this Schedule;

"**Deficiency Deadline**" has the meaning set out in Section 13.5 of this Schedule;

"**Equipment Move Plan**" has the meaning set out in Section 12.4 of this Schedule;

"**Facility Threat and Risk Assessment**" has the meaning set out in Section 4.9 of this Schedule;

"**Geotechnical Reports**" means:

- (a) GeoPacific Consultants Ltd. "Geotechnical Investigation Report - Proposed New St. Paul's Main Hospital Building, 1002 Station Street, Vancouver, BC" dated July 14, 2017; and
- (b) PGL Environmental Consultants "Preliminary Hydrogeological Study" dated February 2019;

"**Hazardous Substance Reports**" means:

- (a) PGL Environmental Consultants "Stage 1 Preliminary Site Investigation" dated March 2019;
- (b) PGL Environmental Consultants "Stage 2 Preliminary and Detailed Site Investigation" dated April 2019;
- (c) PGL Environmental Consultants "Stage 1 Preliminary Investigation" dated June 2016; and
- (d) PGL Environmental Consultants "Stage 2 Preliminary and Detailed Site Investigation, Screening Level Risk Assessment, and Remediation Plan" dated February 2020;

"**IMIT**" or "**IM/IT**" means information management and information technology;

"**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**;

"**LEED Certifier**" means the Canada Green Building Council or other organization authorized by the Canada Green Building Council to administer and award LEED Gold Certification;

"**LEED Gold Certification**" means the award of LEED Gold certification from the LEED Certifier under the LEED Rating System;

"**LEED Rating System**" means LEED v4 for Building Design + Construction (**BD+C**); Healthcare;

"**PDS**" has the meaning set out in Section 6.17 of this Schedule;

"**Permanent PDS Record**" has the meaning set out in Section 6.17(b)(4) of this Schedule;

"**Phasing Plan**" has the meaning set out in Section 6.9(a) 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 Monitor**" has the meaning set out in Section 14.1 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;

"**Representative**" has the meaning set out in Section 2.1 of this Schedule;

"**Reviewed Drawings and Specifications**" has the meaning set out in Section 6(a) of Appendix 2C [User Consultation and Design Review];

"**Site**" means the areas identified as a Work Area on Appendix 2H [Site Plan] and such other areas that Project Co may be permitted to access for purposes of Construction in accordance with a Work Plan pursuant to Section 6.10 of this Schedule;

"**Submittal**" has the meaning set out in Appendix 2C [User Consultation and Design Review];

"**Submittal Schedule**" has the meaning set out in Appendix 2C [User Consultation and Design Review];

"**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(a) of this Schedule; and

"**Work Plan**" has the meaning set out in Section 6.10 of this Schedule.

## **2. PARTIES' REPRESENTATIVES**

### **2.1 Appointment of Representatives**

Each party will within 5 Business Days of the Effective Date designate in writing an individual (the "**Representative**") to be the party's single point of contact with respect to the Design and the Construction. Project Co's Representative will 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 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 individual appointed as the party's Representative. If for any reason a party's 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. Any replacement Representative will be an individual with similar expertise and experience to the previous Representative and will be acceptable to the other party, acting reasonably.

### **2.3 Authority of Representatives**

From time to time, the Owner may by notice in writing to Project Co change the signing authority of the Owner's Representative and appoint or remove one or more other individuals having signing authority. Subject to the foregoing, a party's 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 Owner. Notwithstanding the above, a party's 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 2C [User Consultation and Design Review].

### **2.5 Owner Not Responsible for Design or Construction**

The Owner's review, acceptance, approval or confirmation of compliance with respect to any aspect of the Design or the Construction, including pursuant to Appendix 2C [User Consultation and Design Review], will be for the Owner's benefit only, and no review, acceptance, approval or confirmation of compliance by the Owner's Representative or other representative of the Owner 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 Joint Committee**

- (a) Not less than 20 Business Days after the Effective Date, the Owner and Project Co will establish, and will maintain until Service Commencement is achieved, a joint liaison committee (the "**Construction Period Joint Committee**") consisting of the Representatives, the Independent Certifier, the Quality Monitor 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 Owner 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 Site (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 on an alternating basis from one meeting to the next by a representative of the Owner or a representative of Project Co.
- (f) Project Co will keep minutes of all recommendations and meetings of the Construction Period Joint Committee in accordance with Schedule 14 [Records and Reports] and circulate such minutes to the parties promptly within five Business Days of the making of the recommendation or the holding of the meeting.

## **2.7 Key Individuals Involvement**

The Key Individuals (as set out in Schedule 17 [Key Individuals]) will attend the relevant Construction Period meetings with the Owner. The Owner may postpone any meetings if the Key Individuals are not available to attend.

## **3. INDEPENDENT CERTIFIER**

### **3.1 Appointment**

The parties will cooperate to jointly appoint a Person (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 Owner and Project Co (and who will be impartial to the parties),

to provide certification services for the benefit of the parties. 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 Owner 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 Owner;
- (b) within 10 Business Days of receiving the candidate names, the Owner will notify Project Co of the candidates acceptable to the Owner, 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 Owner, acting reasonably, or if for any reason an Independent Certifier is not appointed within 40 Business Days of the Effective Date (or within 20 Business Days of the date of termination of the Independent Certifier's appointment, if applicable), 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**

The parties will require the Independent Certifier to:

- (a) consult with Project Co, the Owner, the Quality Monitor, the Design-Builder, and others involved in the Design;
- (b) conduct monthly inspections of the Construction; and

- (c) raise any quality concerns and investigate those, if any, identified by Project Co and/or the Owner,

as the Independent Certifier determines is required for purposes of the Independent Certifier's functions under this Agreement and, no later than the 10th day of each month, prepare and deliver to the Owner and Project Co a monthly written report containing a description of:

- (d) the Design and Construction completed in the previous month; and
- (e) the progress of the Design and Construction relative to the Updated Project Schedule, with an overview analysis of variances and investigations of quality concerns.

### **3.4 Payment Certificates**

The Independent Certifier, will, within 10 Business Days of receipt of Project Co's application for payment:

- (a) accept and certify the amount set out in the application for payment; or
- (b) adjust the amount of any payment to reflect the Design and Construction satisfactorily performed in accordance with this Agreement and the Reviewed Drawings and Specifications as of the date of the application for payment and/or adjust the amount of any payment to reflect applicable Deductions incurred by Project Co in the previous month, and in any preceding months but not yet deducted, and certify the amount of the Construction Payment.

If the Independent Certifier amends the application for payment, the Independent Certifier will promptly notify Project Co in writing and give reasons for the amendment.

### **3.5 Service Commencement and Total Completion**

The parties will require the Independent Certifier to perform the obligations of the Independent Certifier described in Section 13 of this Schedule.

### **3.6 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 and Construction meetings during the Construction Period except to the extent Project Co and the Owner 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.

### **3.7 No Responsibility for Design or Construction**

Nothing in this Agreement (including this Schedule) or in the parties' agreement with the Independent Certifier 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 health care facility that at Service Commencement:
    - (A) is complete and operational and fit for the Intended Uses; and
    - (B) takes into account any planned building or structure, as described in the Design and Construction Specifications; and
  - (3) to reflect and capture the benefits to the Owner 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**

Without limiting the other requirements of this Agreement, Project Co will perform the Design and Construction to the standards as required by Section 2.4 of Schedule 3 [Design and Construction Specifications] and taking into account the guidelines referenced in that Section.

### **4.3 Defects in Design or Construction**

Without limiting Project Co's obligations to correct Defects and Construction Latent Defects pursuant to Section 9.16 of this Agreement, Project Co will correct any Defect that becomes apparent during Construction.

### **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**

Except as expressly provided otherwise in this Agreement, Project Co will obtain all Permits required for the Design and Construction. Project Co will:

- (a) keep the Owner's Representative fully informed of the details of all discussions and negotiations with Governmental Authorities with respect to all Permits for which it is responsible;
- (b) upon request from the Owner's Representative, provide to the Owner copies of all documentation and correspondence with a Government Authority relating to such Permits; and
- (c) provide reasonable advance notice to the Owner of any meetings with the City or other Governmental Authorities (where practicable) and upon request by the Owner permit a representative of the Owner to attend any such meetings.

Except as expressly provided in Section 5.2 of this Schedule in relation to Appendix 3U [Allocation of CD-1 Rezoning Report Appendix B], 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 Owner will provide Project Co with such information within the Owner's possession, and co-operate with Project Co, as Project Co may reasonably require in relation to all Permits for which Project Co is responsible.

#### **4.6 LEED Gold Certification**

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

- (a) Project Co acknowledges that the Facility has been registered in LEED online under the LEED Rating System and that the project name in LEED online is New St. Paul's Hospital with project ID 1000115570. In addition, the Facility has registered under the pilot credit EApc95 - Alternative Energy Performance Metric, and pilot credit IPpc98 Assessing and Planning for Resilience.
- (b) Project Co will use the LEED Certifier's split review certification process.
- (c) Project Co may substitute LEED V4.1 where allowed by LEED and subject to the Owner's approval.
- (d) Project Co will, subject to this Section 4.6, achieve all necessary prerequisites, credits and points under the LEED Rating System required to achieve LEED Gold Certification and except as set out in Schedule 3 [Design and Construction Specifications], may in its discretion determine which of the credits and points to pursue. The Owner will provide reasonable cooperation to Project Co to assist Project Co in achieving LEED Gold Certification.
- (e) Project Co will achieve the LEED credits/points listed as mandatory in Schedule 3 [Design and Construction Specifications] and credits/points listed as not permitted in Schedule 3 [Design and Construction Specifications] are not to be included in the LEED strategy.
- (f) All prerequisites required to achieve LEED Gold Certification are mandatory.

- (g) 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 for the Facility, then Project Co will forthwith notify the Owner of such change and such change will be a Change pursuant to Schedule 6 [Changes].
- (h) Project Co will compile and submit the required documents for certification.
- (i) If for any reason Project Co fails to obtain LEED Gold Certification for the Facility within 24 months of the Service Commencement Date then Project Co will, upon written demand from the Owner, immediately pay to the Owner \$100,000 for every point less than the number of points required to obtain LEED Gold Certification, to a maximum payment amount of \$500,000.
- (j) Upon payment of amounts, if any, owing under this Section 4.6 Project Co will have no further obligations or liabilities in respect of obtaining LEED Gold Certification, except to provide the Owner with such information and administrative assistance as the Owner may reasonably require in relation to obtaining LEED Gold Certification, and for greater certainty the failure to obtain LEED Gold Certification will not be a Project Co Event of Default.

#### 4.7 LEED Project Checklist

As a condition of Service Commencement Project Co will deliver to the Owner:

- (a) a LEED project checklist, generally in accordance with the LEED Certifier's requirements, together with a written confirmation that, in Project Co's judgment:
  - (1) the LEED credits/points specified in Schedule 3 [Design and Construction Specifications] will be achieved for the Facility; and
  - (2) LEED Gold Certification will be achieved for the Facility as required by Section 4.6 of this Schedule; and
- (b) a written opinion from a LEED accredited professional that Project Co's confirmation under Section 4.7(a) above is reasonable.

#### 4.8 Energy

Without limiting the Design and Construction Specifications, Project Co will comply with the requirements of Appendix 2D [Energy].

#### 4.9 Facility Threat and Risk Assessment

Project Co will, by the date specified in Schedule 3 [Design and Construction Specifications], deliver to the Owner a comprehensive threat and risk assessment report for the Facility ("**Facility Threat and Risk Assessment**") identifying specific risks and vulnerabilities to people, property and the Owner associated with the Facility and the surrounding community, and describing how the Design will mitigate these risks and vulnerabilities, including with reference to post-disaster management and security. The Owner may provide comments on the Facility Threat and Risk Assessment within 15 Business Days of receiving it. Project Co will, acting reasonably, take account of the Owner's comments in finalizing the Facility Threat and Risk Assessment and deliver to the Owner a copy of the final Facility Threat and Risk Assessment within 15 Business Days of receiving the Owner's comments. Project Co will implement the risk mitigation strategies described in the Facility Threat and Risk Assessment in developing the Design.

#### 4.10 Invitation to Submit Financial Proposal

Project Co acknowledges the terms of the letter from the Owner dated August 18, 2020 inviting Project Co to submit a financial submission, together with the acknowledgement and agreement of Project Co.

### 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 "life cycle" cost issues at all stages of Facility "life cycle";
- (c) includes consideration of "constructability" at all phases of Design, as appropriate; and
- (d) includes consideration of efficient and cost-effective operation of the Facility and maintenance, renewal and replacement of building systems and components.

#### 5.2 Zoning Approval

The Owner has obtained re-zoning of the Site to permit the Construction of the Facility. Subject to the following paragraph, Project Co will be fully responsible to obtain and perform the obligations of all permits and approvals required for the Construction of the Facility, including the "Development Permit" and any "Development Variance Permit" and any related "Services Agreements", as may be required by the City. This Section 5.2 does not modify Project Co's other obligations with respect to Permits and Encumbrances pursuant to this Agreement, including as set out in Section 4.5 of this Schedule and Section 3.2 of Schedule 7 [Lands].

The parties acknowledge and agree that:

- (a) Part 1 of Appendix 3U [Allocation of CD-1 Rezoning Report Appendix B] (hereinafter for this Section 5.2 "**Appendix 3U**") allocates the responsibilities of the parties for those conditions of approval of the form of development identified in that Appendix;
- (b) Parts 2 and 3 of Appendix 3U allocate the responsibilities of the parties for the Encumbrances identified in that Appendix;
- (c) the responsibilities of Project Co are limited to this Project only, such that Project Co will in preparing the required documentation take into account the Owner's responsibilities contained in Appendix 3U only up to and including the time that the Development Permit

is issued in relation to parcel 1A, after which, Project Co's sole responsibility will be to provide updates necessary from Project Co's Design and Construction that affect any previous Project Co's responsibilities under Appendix 3U, if applicable, and all other responsibilities shall be the responsibility of the Owner;

- (d) the initial Project Schedule sets out certain milestone dates for the responsibilities set out in Appendix 3U, with all revisions to the milestone dates and any additional milestone dates to be agreed by the parties, acting reasonably;
- (e) each party will perform its responsibilities in accordance with Appendix 3U by the applicable agreed milestone dates; and
- (f) without limiting Project Co's rights to make a claim for a Compensation Event described in paragraph (a) of the definition of "Compensation Event" in relation to the Owner's responsibilities hereunder, Project Co is relieved from the responsibilities otherwise allocated to Project Co under Section 3.2 of Schedule 7 [Lands] and Sections 4.5 and this Section 5.2 of this Schedule 2 [Design and Construction Protocols] to the extent that the Owner is allocated responsibility under Appendix 3U.

Except in relation to the allocation of responsibilities under Appendix 3U, this Section 5.2 does not modify Project Co's other obligations with respect to Permits and Encumbrances pursuant to this Agreement, including as set out in Section 4.5 of this Schedule and Section 3.2 of Schedule 7 [Lands].

### 5.3 Design Process

Without limiting Project Co's obligation to comply with the requirements set out in Schedule 3 [Design and Construction Specifications], including Section 2.5, Project Co will undertake the Design:

- (a) in accordance with Appendix 2C [User Consultation and Design Review], including providing Submittals to the Owner in accordance with the Submittal Schedule and undertaking consultation with representatives of the Facility Users (the "**User Consultation Group**") in accordance with Appendix 2C [User Consultation and Design Review]; and
- (b) in phases progressively, with each phase capturing the information and detail of a previous phase, as follows:
  - (1) Design and Construction Documents - 30%;
  - (2) Design and Construction Documents - 50%;
  - (3) Design and Construction Documents - 70%;
  - (4) Design and Construction Documents - 90%; and
  - (5) Design and Construction Documents - 100%.

Project Co will only issue drawings and specifications for construction purposes based on Reviewed Drawings and Specifications as described in Appendix 2C [User Consultation and Design Review].

### 5.4 Design Change

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

- (a) revisions to drawings, specifications, equipment and additional Design requested by the Owner under the processes described in Section 5 of this Schedule and in Appendix 2C [User Consultation and Design Review] are not Changes and will be completed at Project Co's cost (except to the extent that any such requested revision would constitute a material change to the Design and Construction Specifications, the terms of Schedule 6 [Changes] will apply and such revision will not be implemented except under a Change Certificate issued by the Owner); and
- (b) if and to the extent the Owner 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 this Agreement) then such variation will be a Change and the terms of Schedule 6 [Changes] will apply.

### **5.5 Mock-Ups and In-Situ Prototype Rooms**

Project Co will provide and make available to the Owner for review the mock-ups and in-situ prototype rooms described in Section 2.6 of Schedule 3 [Design and Construction Specifications].

The purpose of the mock-ups and prototypes is to illustrate the Design and neither party may rely on the mock-ups and prototypes.

### **5.6 Ownership of Design**

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

- (a) the Owner 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 Owner, or will cause the Design-Builder and all Sub-Contractors to grant to the Owner, an irrevocable perpetual license giving the Owner the non-exclusive right to use the Design, including any of the documents and information listed in Section 6.23 of this Schedule:
  - (1) in connection with the Facility; and
  - (2) for reference purposes in connection with other operations, projects and facilities of the Owner; and
- (c) Project Co will execute and deliver, or cause to be executed and delivered, any and all further and other documents as the Owner may reasonably request to effect and record the license referred to in Section 5.6(b) of this Schedule.

### **5.7 Record of Adjustments to Design and Construction**

The parties wish to create a single record of net zero cost adjustments to the Design and Construction that are reflected in the Reviewed Drawings and Specifications, but which do not constitute Changes for which there are adjustments to payments or the Target Service Commencement Date. Project Co will maintain a list of all such adjustments, to be referred to as "Adds/Omits" or other name agreed to by the parties. Project Co will provide a copy of such list, and proposed updates to the list, together with each of the phases of Design set out in Section 5.3 above, and will modify the list for reasonable comments made by the Owner. The parties intend to agree on documentation to reflect such adjustments and may for convenience set out such adjustments in a Change Certificate. Unless otherwise agreed, at least 90 days prior to the Service Commencement Date, Project Co will provide the Owner with a draft Change Report, without adjustments to the Contract Price or payments or to the Target Service Commencement Date, setting out such

adjustments, and the parties will seek to agree on final documentation prior to the Service Commencement Date. For convenience in preparing and maintaining a record of adjustments, the parties will also seek to agree on such documentation on a preliminary basis at two reasonable times prior to Project Co providing the Owner with such draft Change Report. This Section 5.7 will not limit Project Co's responsibilities to provide the documentation set out in Section 6.23 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 Owner's Representative for review under Appendix 2C [User Consultation and Design Review].

Any Changes during the Construction will be subject to the terms of Schedule 6 [Changes].

### **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. Trades and other workers will be licensed or registered as required by applicable Law or Good Industry Practice.

### **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 Owner, the Owner's Representative or any other representative or agent of the Owner, to the Quality Monitor or to the Independent Certifier.

### **6.5 Existing Utilities and Services**

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

Project Co will relocate any existing utilities and services that conflict with 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;
- (d) existing utilities and services on the Site;
- (e) tie-in points for systems;
- (f) all facilities and utilities requiring demolition and disposal; and
- (g) geotechnical conditions.

### **6.7 Hazardous Substance Reports**

The Owner has made available the Hazardous Substance Reports for Project Co's reference for the purpose of Sections 2.7.3 of Schedule 3 [Design and Construction Specifications]. Except as provided in that Section, Project Co acknowledges that the Owner makes no representation whatsoever as to the accuracy or completeness of any information in the Hazardous Substance Reports.

### **6.8 Geotechnical Reports**

The Owner has made available the Geotechnical Reports. The Owner makes no representation whatsoever as to the accuracy or completeness of any information in the Geotechnical Reports and Project Co specifically acknowledges that the Owner assumes and accepts no responsibility that the geotechnical information, as may be available in the Geotechnical Reports, is accurate or completely describes actual site conditions including geotechnical or soil conditions (including presence of boulders, rock, low-strength soil and voids) and ground water conditions (including presence of underground streams or water table conditions) that may affect the Design or Construction or other responsibilities of Project Co under this Agreement.

### **6.9 Site Issues**

Project Co will:

- (a) carry out the Construction in accordance with a phasing plan (the "**Phasing Plan**") that includes the details for Project Co's phasing of all parts of the Construction, including:
  - (1) provide painted hoarding with visible access to the construction site appropriate for all ages;
  - (2) Site preparation;
  - (3) Construction of the Facility, including:
    - (A) the requirements and timing for construction and commissioning (including all systems and equipment);
    - (B) temporary signage plans during construction;
    - (C) providing temporary safe and convenient handicapped accessible pedestrian and vehicle access routes/walkways, where required and
    - (D) addressing all requirements of the Design and Construction Specifications;
  - (4) Construction in Work Areas set out in the Site Plan as follows:

- (A) Work Area A is the site for the Health Campus;
  - (B) Work Area B is the roadworks and associated utilities which include improvements Project Co is required to complete by the City. The City will demolish the existing Strand building, which is located on a property neighbouring the Site and which protrudes into Work Area B and may therefore affect road construction. The parties acknowledge that the City has not confirmed when such demolition will occur;
  - (C) Work Area C is the roadworks and associated utilities which include improvements Project Co is required to complete by the City. Construction in Work Area C is subject to the requirement of the City that access along Work Area C will be maintained throughout the Construction Period, and the Owner and Project Co will work with the City to allow for full road closure for completion of the Construction in Work Area C and possible phasing options for utility and road construction, such road closure and phasing options being subject to the City's consent; and
  - (D) Work Area D is the plaza and Health Care Boulevard access which include improvements Project Co is required to complete. Project Co's Construction in Work Area D is subject to access coordination, scheduling and approval by the Owner. This Work Area D is expected to become an active construction site for the CSRC during the 3rd quarter of 2023, and the Owner will work with Project Co to schedule access for completion of the Construction and allow access and possible phasing options through Work Area D;
- (5) the link between the Facility and the CSRC as set out in Section 6.21 of this Schedule; and
  - (6) anything else required to be included in the Phasing Plan by Schedule 3 [Design and Construction Specifications].

Project Co will submit the Phasing Plan to the Owner not less than 30 days after the Effective Date and will not proceed until the Phasing Plan has received the notation "Reviewed" under Appendix 2C [User Consultation and Design Review];

- (b) comply with the reviewed Phasing Plan;
- (c) construct the Facility within the Site;
- (d) perform all Construction activities within the Work Areas identified in Appendix 2H [Site Plan] except pursuant to a Work Plan in accordance with Section 6.10 of this Schedule;
- (e) cause Project Co Persons, Construction workers and suppliers to enter or exit the Site only at the access routes approved by the Owner;
- (f) take reasonable steps to ensure that Construction workers or suppliers do not interfere with regular vehicle circulation routes;
- (g) provide a 24-hour hotline (and post the phone number in a prominent location on the Site) for:
  - (1) Owner staff to notify Project Co of any Construction related emergencies; and

- (2) neighbours and passers-by to contact Project Co;  
and Project Co will respond to any phone calls made on the hotline within 1 hour;
- (h) provide a community liaison officer to provide a single point of contact regarding construction and development issues; and
- (i) from the commencement of Construction until Service Commencement, provide a high quality colour webcam service with one or more webcams that are linked to the Owner's public website for the Project and that provide frequently refreshed high quality images showing the Construction activities at the Site.

#### 6.10 Work Plans

If Project Co performs any Construction on the Lands outside of the areas identified as the Work Areas on Appendix 2H [Site Plan] or if Project Co performs any works after Service Commencement, without limiting any other provisions of this Agreement, including the Design and Construction Specifications, Project Co will:

- (a) for work after Service Commencement only, comply with Appendix 2I [Standard Contractor Rules] and all other policies and requirements of the Owner;
- (b) at least seven days before undertaking any such work, deliver to the Owner and obtain the Owner's approval of a work plan ("**Work Plan**") clearly identifying:
  - (1) any activity that may interfere with or disrupt the occupants of the Facility or the Owner's operations on and adjacent to the Site, including a description of the nature, timing and extent of interference or disruption;
  - (2) the steps Project Co intends to take to minimize the extent of such interference or disruption;
  - (3) the temporary measures that the Owner will be required to take to accommodate the interference or disruption; and
  - (4) any specific reporting relationships between Project Co and the staff desirable or required to coordinate the interference or disruption,

unless the Owner, at its discretion, notifies Project Co in writing that a Work Plan will not be required for particular work;

- (c) prior to delivering a Work Plan, consult with the Owner and, upon reasonable request, the Owner will make appropriate staff available for such consultation to determine the Work Plan that minimizes interference or disruption to the occupants of the Facility and the Owner's operations on and adjacent to the Site;
- (d) for any work after Service Commencement, not proceed with any work in the Facility or any proposed shutdown of services in or to the Facility without:
  - (1) the Owner's prior written approval of a Work Plan under this Section 6.10, such approval not to be unreasonably withheld or delayed; or
  - (2) advance written notice from the Owner confirming that a Work Plan is not required; and

- (e) undertake the Construction in accordance with the Work Plan approved by the Owner.

#### 6.11 The Owner's Access to the Site

The Owner will have the following rights to access the Site or the Facility and to grant access to the Site or the Facility:

- (a) 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 Owner's Representative and its delegates and any other Person designated by the Owner will have access at all reasonable times during normal working hours to:
  - (1) attend the Site and view the Construction and any test or investigation being carried out in respect of the Construction;
  - (2) access the Site for all reasonable purposes of the Owner;
  - (3) use the site trailer/office referred to in Section **Error! Reference source not found.** of this Schedule; and
  - (4) 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.
- (b) The Owner's Representative and its delegates will have the right to attend all monthly progress meetings and Site meetings, including meetings between Project Co and the Design-Builder or its Sub-Contractors.
- (c) Project Co will cooperate with the Owner to arrange for tours of the Site at reasonable times during Construction, in a way that does not interfere with the progress of the Construction.
- (d) As set out in Section 8.6 of Appendix 2E [Equipment and Furniture], the Facility will be made available continuously by Project Co to the Owner at least six months prior to the Target Service Commencement Date for the purposes of Installation of Category E Equipment. The Facility will also be made available continuously by Project Co to the Owner at least ten months prior to the Target Service Commencement Date for purposes of Section 5.5.16.4 of Schedule 3 [Design and Construction Specifications]. When the Facility is so available, Project Co will provide the Owner with a designated route from the staging and storage space described in Section 8.7 of Appendix 2E [Equipment and Furniture], including access to elevators, as may be reasonably required for the purposes of such installation of the Owner's IMIT.

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

#### 6.12 Inspection

Prior to the Service Commencement Date, Project Co will, upon request by the Owner's Representative including detailed reasons for the request, open up for inspection by the Owner's Representative any part of the work on the Facility which the Owner's 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 3.6 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 Owner; 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 6.12(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 Owner, provided that Project Co proceeding in accordance with the Owner's position will be a Compensation Event if the relevant matter in Dispute is determined in favour of Project Co.

#### **6.13 Builders Lien Act and Builders Liens**

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

- (a) the Owner 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 Owner under this Agreement;
- (d) if it is determined that any builders lien holdback is required to be retained by the Owner, then Project Co agrees that it is making and will make all of its required holdbacks as agent for the Owner;
- (e) Project Co will indemnify the Owner from any damages, costs, claims and expenses of any kind, including actual solicitors costs, arising from the failure of the Owner 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.

#### **6.14 Safety**

Project Co will

- (a) 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; and

- (b) immediately notify the Owner of any accident and will provide the Owner with all accident reports within 48 hours.

### **6.15 Protection of Property**

Project Co will:

- (a) protect the Owner's property (and any third party's property) from damage caused by the Construction, including buildings, roadways, drainage systems, landscaping, surfaces, services and infrastructure; and
- (b) promptly repair any damage to property caused by Project Co in undertaking the Construction, including any damage caused by site settlement or ground vibration.

### **6.16 Survey and Monitoring**

Project Co will:

- (a) prior to the start of any Construction (including stockpiling of materials), conduct pre-construction surveys of the Site all adjacent properties, infrastructure and roadways (including all underground services and installations) within a radius required by the Owner and in a form and detail satisfactory to the Owner, acting reasonably, which will include field observations of existing conditions, with spot elevations by a British Columbia Land Surveyor (BCLS) registered surveyor at locations that will be accessible throughout and following construction for ongoing settlement monitoring and which will meet the requirements set out in Section 6.17 (Photographic Documentation of Construction) , and deliver a copy of the pre-construction survey reports to the Owner; and
- (b) conduct monitoring surveys at monthly intervals throughout the Construction Period until the structure is complete, and deliver monitoring surveys to the Owner in a form and detail satisfactory to the Owner, acting reasonably.

### **6.17 Photographic Documentation of Construction**

Project Co will provide a photo documentation service ("**PDS**") of construction progress and as-built conditions for the Facility in accordance with the requirements of this Section.

- (a) Required Elements
  - (1) The PDS will combine inspection-grade digital photography with an indexing, navigation and storage system to capture actual conditions throughout the Construction Period, including at critical milestones determined in consultation with the Owner. The PDS will incorporate the architectural, civil, mechanical and electrical drawings, making such drawings interactive using an on-line interface. For all PDS documentation referenced, indexing and navigation will be organized by both time (date-stamped) and location, and will use the Owner's naming conventions for identifying locations.
  - (2) The PDS documentation will include a pre-construction site survey providing overlapping photo documentation of the Site and its immediately surrounding areas to carefully memorialize conditions as at the Effective Date before the Construction commences.

- (3) Construction progress will be tracked through the PDS at regular intervals, monthly as a minimum. The PDS will capture:
    - (A) a general overview of both the exterior and interior construction of the Facility, including all elevations and major site features; and
    - (B) interior improvements by each area, including:
      - (i) overlapping images of all in-floor/ceilings utilities within the building envelope;
      - (ii) the mechanical, electrical, plumbing and all other systems prior to pre-insulation, sheet rock or dry wall installation and overlapping images of all finished systems located in the walls and ceilings of the Facility; and
      - (iii) all interior walls, ceilings and floors in their post-inspection, completed condition, prior to occupancy.
  - (4) The PDS will capture all miscellaneous events that do not fit into the regular photo path, such events including the arrival of materials on site, with these miscellaneous events dated and inserted into a separate section in the navigation structure of the PDS.
- (b) Hosting Requirements and End Product:
- (1) All PDS documentation will be made accessible at all times on-line, through the use of any standard internet connection, to the Owner or any Owner Persons. The PDS will enable multiple-user access, simultaneously, online and access will be secure and accomplished through password protection.
  - (2) Project Co will provide redundant server back-up of the PDS documentation for the period from the Effective Date until the Service Commencement Date.
  - (3) Project Co will make available to the Owner or Owner Persons, at the cost of Project Co, any necessary technical support related to the use of the PDS.
  - (4) On or before the Service Commencement Date, Project Co will provide to the Owner final copies of the PDS documentation (the "Permanent PDS Record") with the indexing and navigation system embedded and active, in an electronic media format, typically a DVD or external hard-drive. On-line access will be deleted and all records removed from the hosting sites upon delivery of the Permanent PDS Record.

#### **6.18 Dust, Noise and Vibration**

- (a) Without limiting Schedule 3 [Design and Construction Specifications], Project Co will carry out its Construction to minimize dust, noise, vibration, noxious odours and fumes.
- (b) Project Co will discuss with the Owner any expected vibration from the Construction activities, will plan operations to minimize disruption to the Owner's activities, and will carry out its Construction activities, so that dust, noise, vibration, noxious odours and fumes do not unreasonably and adversely affect use of properties in the vicinity of the Site or, after Service Commencement, the Owner's Activities.

### **6.19 Signage**

Project Co may erect signage at the Site during Construction to identify Project Co and the Design-Builder provided such signs are acceptable to the Owner's Representative, acting reasonably. Project Co will erect such signage or screening as is reasonably required by the Owner.

### **6.20 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
- (c) provide the Owner with a 24 by 60 foot site trailer/office for the Owner's use for the duration of the Construction Period. The Owner will be responsible for furniture, fixtures, and equipment fit-out for the site trailer/office. Project Co will provide the following to accommodate an anticipated occupancy of 5 to 10 staff:
  - (1) four (4) offices;
  - (2) meeting space to accommodate eight (8) people;
  - (3) open area for cubicles;
  - (4) one (1) washroom dedicated for the Owner's use;
  - (5) a kitchenette;
  - (6) heating and air conditioning; and
  - (7) electrical and telecommunications services.

### **6.21 Co-ordination with the CSRC**

Project Co acknowledges that the following will apply with respect to the development or construction of the CSRC:

- (a) construction of the CSRC will include construction of links between the Facility and the CSRC, and the CSRC developer or contractor and any of its sub-contractors will be able to access the Site and the Facility for the purposes of construction of the CSRC links. For greater certainty, the CSRC developer or contractor, and not Project Co, is responsible for the design and construction of the CSRC links;
- (b) Project Co will cooperate with and coordinate the Construction with the concurrent construction activities related to the CSRC;
- (c) Project Co will ensure that performance of the Construction is carried out in accordance with the Project Schedule so that the CSRC developer or contractor or sub-contractors are not delayed in their work;

- (d) Project Co will promptly report to the Owner any apparent deficiencies in the CSRC developer or contractor or sub-contractors' work that could affect the Facility as soon as they come to Project Co's attention, and will confirm such report in writing promptly; and
- (e) where a Change is required as a result of the coordination and connection of the CSRC with the Facility, such Change will be made in accordance with Schedule 6 [Changes].

## 6.22 Project Meetings

Without limiting the obligations pursuant to Section 2.6 of this Schedule in respect of the Construction Period Joint Committee, at the Owner's request, Project Co's Representative will attend meetings to update the Owner 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 Owner.

## 6.23 Project Records

Notwithstanding any other provision of this Agreement:

- (a) **Record 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 in Revit and "CAD" or other electronic format), including all final shop drawings, so as to produce accurate and complete record documents for the Facility, including any revisions permitted under this Agreement to the requirements of the Design and Construction Specifications, the Proposal Extracts (Design and Construction) or other provisions of this Agreement;
  - (2) as requested from time to time during the Construction, make available such record drawings and specifications in hard copy and Revit and "CAD" or other electronic format to the Owner's Representative for review to permit the Owner's Representative to monitor Project Co's compliance with the requirements of this Section and for the Owner's operational and other use;
  - (3) provide three full-size hard copies and two electronic copies in ".dwg" and ".pdf" format of the completed record drawings, BIM (Building Information Model) and specifications on or before Service Commencement; and
  - (4) within 60 days following Service Commencement, provide electronic copies of the final record drawings and specifications of all floors of the Facility.

Project Co will submit all electronic copies in compliance with the standards established by the Owner from time to time for electronic copies.

- (b) **Maintenance Manuals:** Project Co will:
  - (1) on or before Service Commencement, make available all maintenance manuals, specifications, warranties and related information, in written and electronic form, for all the equipment and systems that have been included in the Design and Construction of the Facility for review by the Owner's 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 process;

- (d) Minutes of Meetings: Project Co will retain minutes of all meetings between the Owner and Project Co relating to the Design and Construction. Project Co will circulate such minutes to the Owner's Representative for review and comment within the time period specified in this Agreement for the particular meeting or if no time period is specified then 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) Monitoring Results: Project Co will retain all survey and monitoring records obtained in connection with Section 6.16 (Survey and Monitoring);
- (g) Utility Plans: Project Co will retain utility plans for the Facility and the Site;
- (h) Landscape and Irrigation Plans: Project Co will retain landscape and irrigation plans for the Facility and the Site;
- (i) Copies of all Permits: Project Co will retain copies of all Permits for the Construction and occupation of the Facility; and
- (j) 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.
- (k) Project Binder: Project Co will prepare and provide to the Owner a set of complete and organized electronic project binder documentation which will include the following:
  - (1) commissioning reports satisfactory to the Owner;
  - (2) all inspections, certifications, guarantees and warranties;
  - (3) maintenance manuals and operating instructions;
  - (4) certification by all testing, cleaning or inspection authorities or associations;
  - (5) copies of all warranties and guarantees from Subcontractors; and
  - (6) all other documentation that is reasonably required by the Owner or by any party on behalf of the Owner to operate and maintain the Facility.

The project binder will be updated as new documents become available with all documentation for Construction completed up to the date the binder is updated. Project Co will provide and update electronic files on a flashdrive, unless directed to use a different format by the Owner, acting reasonably.

#### **6.24 Apprentices on Public Projects in British Columbia**

- (a) Project Co acknowledges that Project Co and its Design-Builder have obtained a copy of and have reviewed the Ministry of Advanced Education, Skills and Training policy set out in Apprentices on Public Projects Policy and Procedure Guidelines, Date: July, 2015, Update: March, 2016 available at [https://www2.gov.bc.ca/assets/gov/business/economic-development/assets/apprentices-on-public-projects/policy\\_and\\_procedure\\_guidelines.pdf](https://www2.gov.bc.ca/assets/gov/business/economic-development/assets/apprentices-on-public-projects/policy_and_procedure_guidelines.pdf) (in this Section the "**Apprenticeship Policy**").

- (b) Unless defined in this Agreement, capitalized terms in this Section 6.24 have the meaning given in the Apprenticeship Policy.
- (c) Project Co agrees that the Apprenticeship Policy applies to this Agreement and Project Co will, subject to the reasonable assistance of the Owner, comply with the requirements of the Apprenticeship Policy.
- (d) Project Co agrees that the Owner requires Project Co to apply the Apprenticeship Policy to the Design-Builder and the Sub-Contractors and Sub-Contracts (of all tiers) valued at \$500,000 or more.
- (e) Project Co acknowledges that the requirements of the Apprenticeship Policy and this Section 6.24 include:
  - (1) using Registered Apprentice(s) in respect of the Design-Build Agreement and Sub-Contracts for Specified Trades valued at \$500,000 or more;
  - (2) reporting in Form A: Confirmation of Intent to Use Registered Apprentices as soon as practicable and at least 5 days prior to commencement of work and completing all supplementary forms (Form A) as required;
  - (3) reporting in Form B: Apprentice Utilization Report quarterly and upon completion of the work under the applicable Design-Build Agreement or Sub-Contract; and
  - (4) complying with applicable requirements in relation to Personal Information.
- (f) Project Co further acknowledges that under the Apprenticeship Policy the Owner may, or may permit the Ministry, to exercise all provisions of the Apprenticeship Policy applicable to the Contracting Authority or the Province (whether through the Ministry or otherwise) provisions that permit the Contracting Authority:
  - (1) to delay the start of work on the Project until the Owner has confirmed, through the Ministry, that Registered Apprentices will be used on the Project; and
  - (2) to delay issue of final payment in relation to the applicable work until the final Form B is submitted.
- (g) Project Co represents that all work to which the Apprenticeship Policy applies will be performed by the Design-Builder or Sub-Contractors and not by Project Co itself, and that Project Co will ensure that the provisions of this Section 6.24 are incorporated into the Design-Build Agreement and applicable Sub-Contracts.
- (h) Project Co and the Owner acknowledge that any change to the Apprenticeship Policy will, if required by the Owner to be implemented for purposes of this Agreement, be implemented as a Change under Schedule 6 [Changes].

## **7. EQUIPMENT SUPPLY AND INSTALLATION**

### **7.1 Design and Construction Requirements**

The parties will comply with Appendix 2E [Equipment and Furniture].

Without limiting Appendix 2E [Equipment and Furniture], 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 all electrical and plumbing connections, structural support, seismic

restraints and space for efficient access, all to the tolerances and specifications as may be specified and required by the manufacturers or suppliers of such Equipment (which may be of a higher standard than specified in Schedule 3 [Design and Construction Specifications]).

Any items of equipment or systems referred to in the Design and Construction Specifications that are not specifically listed in the Equipment List referred to in Appendix 2E [Equipment and Furniture] are the sole responsibility of Project Co to be supplied and included as part of the Facility.

## 7.2 Asset Tagging

Project Co will, in consultation with the Owner, affix an Owner approved asset identification tag to each piece of equipment installed in the Facility, including:

- (a) all Equipment; and
- (b) all electrical, mechanical, communications and electronic safety and security equipment.

Each asset identification tag will include a unique numerical identifier.

## 7.3 Asset Register

Project Co will prepare and provide to the Owner an asset register of all equipment installed in the Facility (the "**Asset Register**"), including:

- (a) all Equipment; and
- (b) all electrical, mechanical, communications and electronic safety and security equipment.

Project Co will prepare the Asset Register to the Owner's requirements and ASHRAE Guideline 4 and CSA Z8002. The Asset Register will meet all of the requirements set out in Schedule 3 [Design and Construction Specifications].

For each item of equipment recorded on the Asset Register, Project Co will, as applicable, record the following information:

- (c) make, model and device type;
- (d) equipment item number, equipment item description and Equipment Category (if applicable);
- (e) asset tag number;
- (f) serial number;
- (g) purchase order or equipment purchase contract identifier;
- (h) equipment supplier and contact information for the equipment supplier;
- (i) installed location (room number);
- (j) date installed;
- (k) maintenance schedule and tasks;
- (l) anticipated replacement date or timeframe;

- (m) warranty start date and expiry date;
- (n) required utility, HVAC, medical gas or other connections;
- (o) such requirements of the CMMS for data and hierarchy as the Owner notifies Project Co of from time to time; and
- (p) any other information required by the Owner.

## **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 appoint a qualified expert in quality management ("**Project Co's Quality Consultant**") to develop, implement and oversee a Quality Assurance Program and Quality Assurance Plan. Project Co will not permit Project Co's Quality Consultant to perform any role in the Design and Construction except for the role described in this Section 8.

### **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; and
    - (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 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 develop a reasonable quality assurance plan (the "**Quality Assurance Plan**") that describes the implementation of the Quality Assurance Program in accordance with the following:

- (a) Project Co will deliver to the Owner a draft of the Quality Assurance Plan (that is based on the preliminary quality assurance plan included in the Proposal Extracts (Design and Construction) but specifically modified for the Project) not less than 20 Business Days after the Effective Date;
- (b) the Owner will provide its comments, if any, on the draft to Project Co within 20 Business Days of receipt of the draft;

- (c) Project Co will deliver an updated, revised draft of the Quality Assurance Plan to the Owner not less than 20 Business Days after receiving the Owner's comments;
- (d) the Owner will, within 15 Business Days of receipt of the revised draft, advise Project Co whether the Owner accepts the Quality Assurance Plan, and if the Owner does not accept it the Owner will provide its reasons for such non-acceptance in sufficient detail to allow Project Co to address them;
- (e) if the Owner does not accept the Quality Assurance Plan, the parties will, acting reasonably, diligently work together with a view to revising the Quality Assurance Plan to address the Owner's reasons for non-acceptance; and
- (f) if the Owner has not accepted the Quality Assurance Plan by the date that is 90 Business Days after the Effective Date, Project Co may refer the dispute to the Dispute Resolution Procedure to determine whether Project Co's proposed Quality Assurance Plan is reasonable.

Project Co will promptly implement and strictly comply with the Quality Assurance Plan developed under this Section.

## **8.6 Reporting**

Project Co will deliver to the Owner 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. The report will include all supporting documentation including field reviews, photographs, reports and other material.

## **8.7 Quality Review by the Owner**

The Owner 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 Owner, upon request from the Owner, all records of the Quality Assurance Program and the Quality Assurance Plan to permit the Owner to be satisfied that Project Co is following its Quality Assurance Plan.

## **9. WORKERS COMPENSATION**

### **9.1 Evidence of WorkSafe BC Compliance**

Project Co will provide evidence, satisfactory to the Owner's Representative, of compliance by Project Co and the Design-Builder 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 Owner's Representative acting reasonably.

### **9.2 Indemnity for WorkSafe BC 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 Owner from any cost, loss, liability or obligation which the Owner 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 Owner, the Owner's 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 WorkSafe BC (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 Owner and perform on behalf of the Owner the obligations which the Owner 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 WorkSafe BC 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 15<sup>th</sup> day of each month, in consultation with the Owner 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) best estimates of the following:
  - (1) the start and completion dates for the Design phases described in Section 5.3 of this Schedule and including the dates for submittal and review of Submittals and dates for consultation with User Consultation Groups;

- (2) the commencement of Construction; and
  - (3) the planned start and completion dates of the major activities of Construction; and
- (c) the Target Service Commencement Date, which (except to the extent necessary to reflect adjustments made in accordance with Section 10.2(a) of this Schedule) may not be updated or otherwise changed unless the Owner, in its discretion, consents.

Project Co will deliver an updated Project Schedule monthly to the Owner, the Quality Monitor 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 Owner 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. Project Co acknowledges that the Owner will rely on the Target Service Commencement Date as set out in the Project Schedule (as may be adjusted under Section 10.2 of this Schedule).

## **11. DELAYS AND ACCELERATION**

### **11.1 Acceleration to Recover Project Co Delays**

If at any time the Owner, acting reasonably, determines that Project Co is behind the Updated Project Schedule and will not achieve Service Commencement by the Target Service Commencement Date, then the Owner may deliver notice to Project Co's Representative to use its best efforts, at Project Co's own cost and at no cost to the Owner, 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 Acceleration to Advance Service Commencement**

Without prejudice to the Owner's rights under Section 11.1 of this Schedule, if at any time the Owner determines that it requires the Construction to proceed in advance of the Updated Project Schedule then the Owner may give written notice to Project Co to provide the Owner with a written proposal to accelerate the Construction, including cost estimates and an estimate of the time saved. If the Owner acting reasonably decides to proceed with the acceleration then:

- (a) the Owner will notify Project Co in writing;
- (b) Project Co will implement the directed acceleration in accordance with its proposal;
- (c) the Owner will reimburse Project Co for costs that were described in Project Co's proposal and reasonably incurred by Project Co (but not for any other costs); and
- (d) if the acceleration involves a Change (other than to the Updated Project Schedule) then such Change will be made in accordance with Schedule 6 [Changes].

## **12. COMMISSIONING AND OPERATIONAL READINESS**

### **12.1 Testing and Commissioning**

Project Co will perform all testing and commissioning of the Facility in accordance with Schedule 3 [Design and Construction Specifications], including to demonstrate to the Owner's Representative that the Facility equipment and systems, including all major systems, are operating so that the Owner may occupy the Facility for its Intended Uses.

Project Co will be responsible for arranging, delivery and costs for all fuel, propane, natural gas, and any other energy source required prior to Service Commencement.

### **12.2 Equipment and Systems 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 all equipment and systems described in the Design and Construction Specifications and any other communication systems, and will provide sufficient training and education to the Owner staff to enable the Owner to properly utilize such equipment and systems, including any training and education with respect to Equipment required under Appendix 2E [Equipment and Furniture]. The Owner will identify the relevant Owner staff and make such staff available for training at reasonable times before the Service Commencement Date. All training will be completed before the Service Commencement Date unless agreed by the Owner, acting reasonably. Training may be after Service Commencement if required by the Owner, or at the request of Project Co with the consent of the Owner, acting reasonably.

### **12.3 Commissioning Plan**

Project Co will, in consultation with the Owner and in accordance with Schedule 3 [Design and Construction Specifications], prepare and deliver to the Owner's Representative, the Independent Certifier and the Quality Monitor a detailed plan (the "**Commissioning Plan**") setting out the testing, commissioning, training and other activities Project Co intends to carry out to satisfy Sections 12.1 and 12.2 of this Schedule and together with the requirements for commissioning and the Commissioning Plan set out in Schedule 3 [Design and Construction Specifications] and to achieve Service Commencement.

### **12.4 Equipment Move Plan**

Project Co will prepare and deliver to the Owner's Representative a detailed plan (the "**Equipment Move Plan**") setting out the coordination, planning, preparation, relocation, installation, testing, commissioning, training and other activities Project Co will carry out to satisfy Section 9 of Appendix 2E [Equipment and Furniture], including:

- (a) a description of the specific equipment, room by room furniture layouts, Equipment Cut Sheets, Room Data Sheets for the room locations of the Category G2 Equipment to be disconnected, removed, relocated, installed, tested and commissioned and the associated commissioning requirements;
- (b) supporting documentation, including as appropriate:
  - (1) manufacturer's specifications;
  - (2) identification of all equipment and systems that require or are provided with redundancy or spare capacity and that will include complete successful demonstration in real time under full stress conditions; and
  - (3) identification of post-disaster requirements and protocols for all equipment and systems to be commissioned;

- (c) the name of the specialized healthcare equipment relocater and the commissioning agent and the names of other Persons to be involved in relocation, installation, testing, commissioning and training;
- (d) a description of Project Co's system for managing records of equipment inventory, installation, tests, commissioning, inspections, quality assurance and training;
- (e) a general description of Project Co's relocation plans and any other transition plans required in order to coordinate the move, installation and commissioning of Category G2 Equipment to the Facility;
- (f) a schedule, related to the Project Schedule, showing:
  - (1) the timing of all planning, disconnecting, removal, moving, installation, testing and commissioning and training;
  - (2) a matrix of all equipment and systems, including all integrated equipment and systems, and how they integrate with each other, along with an overview of the procedures that will be followed to demonstrate that integration of all equipment and systems has been and will be achieved; and
  - (3) the Equipment Move Plan and schedule must be developed in consultation with the Owner and in consideration to minimize any clinical operational impacts;
- (g) Project Co will deliver a preliminary draft of the Equipment Move Plan to the Owner not less than 18 months before the Target Service Commencement Date;
- (h) the Owner will provide its comments, if any, on the preliminary draft to Project Co within 30 Business Days of receipt of the preliminary draft;
- (i) Project Co will deliver an updated, revised draft of the Equipment Move Plan to the Owner not less than 40 Business Days after receipt of the Owner's comments on the preliminary draft;
- (j) the Owner will, within 20 Business Days of receipt of the revised draft, advise Project Co whether the Owner accepts the Equipment Move Plan, and if the Owner does not accept it the Owner will provide its reasons for such non-acceptance in sufficient detail to allow Project Co to address them;
- (k) if the Owner does not accept the Equipment Move Plan, the parties will, acting reasonably, diligently work together with a view to revising the Equipment Move Plan to address the Owner's reasons for non-acceptance; and
- (l) if the Owner has not accepted the Equipment Move Plan by the date that is 6 months before the Target Service Commencement Date, Project Co may refer the Dispute to the Dispute Resolution Procedure to determine whether Project Co's proposed Equipment Move Plan is reasonable.

The Equipment Move Plan must be reasonable having regard to the requirements of this Schedule and will be developed and finalized as part of the Commissioning Plan.

## **12.5 Equipment Checklist**

Prior to Service Commencement, Project Co will provide an online or cloud-based checklist for the purposes of tracking Equipment in each area or room.

## 13. COMPLETION

### 13.1 Deficiency List

Prior to and as a condition of issuance of the Certificate of Service Commencement, Project Co will, in cooperation with the Owner's Representative, the Quality Monitor and the Independent Certifier, prepare a complete list of Defects that are apparent upon inspection of the Facility at that time (the "**Deficiencies**") and deliver to the Owner's Representative the list of Deficiencies.

Subject to the right of Project Co to refer matters to the Dispute Resolution Procedure as set out below, the list of Deficiencies will include all items required by the Owner to be included on such list.

The Owner or Project Co may refer matters relating to the accuracy or completeness of the list of Deficiencies to the Dispute Resolution Procedure.

### 13.2 Advance Notice of Application for Service Commencement

Project Co acknowledges that the Independent Certifier will need sufficient time to complete any inspections, consult with the Owner and the Quality Monitor, and consider the list of Deficiencies, and accordingly Project Co will:

- (a) at least 30 days (but no more than 60 days) before the Target Service Commencement Date, deliver to the Independent Certifier, the Owner's Representative and the Quality Monitor a notice setting out:
  - (1) a description of all outstanding Design and Construction to be completed by Project Co prior to Service Commencement; and
  - (2) a list of all Defects that Project Co is aware of at the time of the notice; and
- (b) assist the Independent Certifier to make any advance inspections requested by the Independent Certifier.

### 13.3 Application for Certificate of Service Commencement

If Project Co believes it has achieved the requirements for Service Commencement and complied with Section 13.2 of this Schedule then Project Co may apply to the Independent Certifier (with a copy to the Owner's Representative and the Quality Monitor) for a Certificate of Service Commencement. No later than 5 Business Days after application by Project Co for a Certificate of Service Commencement, the parties will require the Independent Certifier to, in cooperation with Project Co's Representative, the Owner's Representative and the Quality Monitor, make an inspection of the Facility, review the basis for Project Co's application for Service Commencement, and then within a further 5 Business Days, with respect to an application for a Certificate of Service Commencement:

- (a) if Service Commencement has been achieved, issue a certificate indicating that Service Commencement has been achieved (a "**Certificate of Service Commencement**"), together with comments on the list of Deficiencies (if any); or
- (b) if Service Commencement has not been achieved, provide Project Co and the Owner's Representative with a list of all incomplete Design and Construction that must be completed prior to Service Commencement.

A Certificate of Service 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.

### 13.4 No Early Service Commencement

Notwithstanding any other provision of this Schedule, Project Co is not entitled to achieve Service Commencement prior to the Target Service Commencement Date in effect as of the Effective Date, which Target Service Commencement Date for greater certainty is June 25, 2026. For purposes of this Section 13.4, that date is not subject to change for any reason, including for the occurrence of any Supervening Event.

### 13.5 Correction of Deficiencies

Upon issuance of the Certificate of Service Commencement:

- (a) the Owner may withhold from payments due to Project Co the amounts specified in Section 2.6(a) (Holdbacks) of Schedule 8 [Payments] with respect to correction of Deficiencies;
- (b) Project Co will proceed expeditiously to correct each Deficiency by the date that is 30 days after the Service Commencement Date with respect to the Deficiencies, or such later date as may be reasonably required to provide sufficient time to correct the Deficiency and that is agreed by the Owner, acting reasonably (each Deficiency having its own "**Deficiency Deadline**");
- (c) when performing the work to correct Deficiencies, Project Co will comply with Appendix 21 [Standard Contractor Rules];
- (d) Project Co will perform the work to correct Deficiencies pursuant to a Work Plan and at times and in a manner which causes as little inconvenience to the occupants of the Facility and the Owner's operations on and adjacent to the Site as is reasonably possible; and
- (e) Project Co will correct, at its own cost, or pay the Owner for any damage resulting from the work specified in the list of Deficiencies.

Nothing in this Section 13 limits Project Co's responsibilities for correction of Defects that are identified after the preparation of the list of Deficiencies.

### 13.6 Owner's Right to Correct Deficiencies

The Owner may carry out, or have others carry out, the work to correct Deficiencies at Project Co's cost if:

- (a) Project Co does not complete the work by the Deficiency Deadline and if the Owner gives notice to Project Co and Project Co does not correct the Deficiency within a reasonable time, not to exceed 14 days, unless the nature of the Deficiency is such that it cannot be corrected within such time and the Owner, acting reasonably, agrees to an extension of such time; or
- (b) the nature of the work is such that it creates a risk to the health or safety of any occupant or user of the Facility, or risk of damage to the Facility, the environment or any property and the Owner gives notice to Project Co within a reasonable time after the commencement or completion of the rectification work.

If the Owner carries out or has others carry out the work pursuant to this Section 13.6 Project Co remains responsible for the work.

### 13.7 Total Completion

If Project Co believes it has achieved the requirements for Total Completion then Project Co may apply to the Independent Certifier (with a copy to the Owner's Representative and the Quality Monitor) for a Certificate of Total Completion. No later than 5 Business Days after application by Project Co for the Certificate of Total Completion, the parties will require the Independent Certifier to, in cooperation with Project Co's Representative, the Owner's Representative and the Quality Monitor, make an inspection of the Facility, review the basis for Project Co's application for Total Completion and then within a further 5 Business Days, with respect to an application for a Certificate of Total Completion:

- (a) if Total Completion has been achieved, issue a certificate indicating that Total Completion has been achieved (a "**Certificate of Total Completion**"); or
- (b) if Total Completion has not been achieved, provide Project Co, the Owner's Representative and the Quality Monitor with the reasons for disapproval of the application. In the event of a disapproval, Project Co will rectify all matters that prevent the issuance of the Certificate of Total Completion and the Independent Certifier will within 5 Business Days after notice from Project Co of rectification, inspect the Facility and review the basis for issuance and approve or disapprove of the application, and so on, until such time as the Independent Certifier determines that Total Completion has been achieved, and at such time will issue a Certificate of Total Completion.

Project Co will be responsible for all costs of additional reviews required by Section 13.7(b), such costs to be deducted from the monies due to Project Co, where any additional review undertaken by the Independent Certifier pursuant to this Section reveals that previously identified deficiencies have not been corrected in a manner satisfactory to the Independent Certifier.

## 14. QUALITY MONITOR

### 14.1 Appointment and Scope

The Owner will engage a Person to act as a quality monitor (the "**Quality Monitor**") for the Project. The Quality Monitor will perform, without limitation, the following services, duties and responsibilities:

- (a) Project Scribe:
  - (1) chair and keep minutes of regular meetings, which will take place at least monthly, with the Owner, Project Co and the Independent Certifier;
  - (2) conduct field reviews at least monthly;
  - (3) prepare and provide to the Owner, Project Co and the Independent Certifier a monthly status report, which report will focus on progress with the Design and Construction, including any recommendations or observations for implementation and which will also identify any Compliance Failure Events in the previous month; and
  - (4) oversee and track risks and issues pertaining to the Design and Construction and to commissioning;
- (b) Interpreter of this Agreement and involvement in Disputes/claims:
  - (1) advise the Owner and Project Co on contract issues, including interpretation of the provisions of this Agreement, claims and Disputes;

- (2) assist the Owner and Project Co to reach agreement on the occurrence and effect of a Supervening Event pursuant to Section 8.2(h) of this Agreement and document such agreement;
  - (3) actively manage and facilitate resolution of any disagreements between the Owner and Project Co; and
  - (4) perform high level reviews of Submittals to identify Compliance Failure Events; and
- (c) Project Oversight:
- (1) review and monitor the Project Schedule, the schedule relating to Project Co's responsibilities for Equipment, and the schedule for commissioning;
  - (2) oversee the work of the commissioning agent, retained by Project Co pursuant to Schedule 3 [Design and Construction Specifications];
  - (3) review the Commissioning Plan for quality and completeness and monitor implementation of the Commissioning Plan;
  - (4) oversee the determination of the Deficiencies, the Deficiency Deadlines, the estimated costs to correct the Deficiencies and the correction of Deficiencies;
  - (5) oversee the correction of any Defects during the Warranty Period pursuant to Section 9.16 of this Agreement, including to provide the Owner and Project Co with an assessment of any claims; and
  - (6) oversee the Equipment Cash Allowance.

For greater clarity, where the Quality Monitor oversees any work as set out in this Section, this does not relieve Project Co or the Owner of any of their respective obligations under this Agreement or affect any of their respective rights in connection with such work.

#### **14.2 Replacement of Quality Monitor**

If the Quality Monitor's engagement is terminated, the Owner will engage a new Quality Monitor to provide the Quality Monitor's services. The Owner will notify Project Co in writing before appointing a new Quality Monitor and the Owner will not appoint any person to be the new Quality Monitor to whom Project Co may reasonably object.

#### **14.3 Permitted Access**

Project Co will give the Quality Monitor access to the Design and Construction work as the Quality Monitor 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 Quality Monitor to attend all Design and Construction meetings during the Construction Period except to the extent Project Co and the Owner expressly otherwise agree; and
- (d) keep the Quality Monitor 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.

#### **14.4 No Responsibility for Design or Construction**

Nothing in this Agreement (including this Schedule) or in any agreement between the parties and the Quality Monitor will be interpreted as giving the Quality Monitor 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 Quality Monitor may give with respect to Design or Construction.

### **15. COMPLIANCE FAILURE EVENTS**

#### **15.1 Compliance Failure Events**

Project Co will comply with the requirements of Appendix 2B [Compliance Failure Events] and the Owner will be entitled to make Deductions for any failure to comply in accordance with the Performance Indicators included in that Appendix.

### **16. POST SERVICE COMMENCEMENT SERVICES**

#### **16.1 Training**

In addition to the training provided for under Section 12.2 of this Schedule, Project Co will, in accordance with Schedule 3 [Design and Construction Specifications] provide the Owner staff with training for a period of two years following the Service Commencement Date. The calculation of the Deficiency Holdback will include a calculation based on the reasonably estimated costs to provide such training after the Service Commencement Date, provided however that the amount included in the Deficiency Holdback for such training will be a single amount and not two times the reasonably estimated costs to provide the training.

#### **16.2 Warranty Point of Contact**

Project Co will designate an individual to act as the point of contact for the Owner for all warranty related matters during the Warranty Period.