

**PROJECT AGREEMENT  
(Execution Version)**

**WILLIAM OSLER HEALTH SYSTEM**

**CONFIDENTIAL**

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Schedule 4 - Lenders’ Direct Agreement

Schedule 5 - Direct Agreements

Schedule 6 - Independent Certifier Agreement

Schedule 7 - Intentionally Deleted

Schedule 8 - Intentionally Deleted

Schedule 9 - Key Individuals

Schedule 10 - Review Procedure

Schedule 11 - Design Quality Plan and Construction Quality Plan

Schedule 12 - Service Quality Plan Outline

Schedule 13 - Project Co Proposal Extracts

Schedule 14	-	Outline Commissioning Program
Schedule 15	-	Output Specifications
Schedule 16	-	Title Encumbrances
Schedule 17	-	Intentionally Deleted
Schedule 18	-	Communications Protocol
Schedule 19	-	Intentionally Deleted
Schedule 20	-	Payment Mechanism
Schedule 21	-	Intentionally Deleted
Schedule 22	-	Variation Procedure
Schedule 23	-	Compensation on Termination
Schedule 24	-	Expiry Transition Procedure
Schedule 25	-	Insurance and Performance Security Requirements
Schedule 26	-	Record Provisions
Schedule 27	-	Dispute Resolution Procedure
Schedule 28	-	Refinancing
Schedule 29	-	Standby Letter of Credit
Schedule 30	-	Insurance Trust Agreement
Schedule 31	-	Project Co Information
Schedule 32	-	Financial Model Extracts
Schedule 33	-	Trust Account Agreement
Schedule 34	-	Works Report Requirements
Schedule 35	-	Intentionally Deleted
Schedule 36	-	Energy Matters
Schedule 37	-	Access Coordination Agreement

THIS PROJECT AGREEMENT is made as of the 26<sup>th</sup> day of May, 2014.

**BETWEEN:**

**WILLIAM OSLER HEALTH SYSTEM, a non-share capital corporation incorporated under the laws of Ontario.**

**(“Osler”)**

**AND:**

**PLENARY HEALTH PEEL LP, [REDACTED]**

**(“Project Co”)**

**WHEREAS:**

- A. Osler, with the assistance of IO, wishes to procure a new hospital in Brampton, Ontario.
- B. Osler will provide the Hospital Services at the Facility and Project Co will provide the Project Operations, which include the design, construction, financing and maintenance of the Facility (the “**Project**”).
- C. Osler and Project Co wish to enter into this project agreement (the “**Project Agreement**”), which sets out the terms and conditions upon which Osler shall transfer to Project Co the responsibility to perform the Project Operations, and how Project Co shall perform the Project Operations.
- D. The overriding priorities of Osler in entering into and implementing this Project Agreement are the health and safety of the patients and staff of the Facility and their healthcare needs, and the provision of first-rate healthcare services and Project Co recognizes and understands that the health and safety of the patients and staff of the Facility is, at all times, paramount.
- E. The Project will proceed as an alternative financing and procurement project and complies with the principles set out in MOI’s *Building a Better Tomorrow: An Infrastructure Planning, Financing and Procurement Framework for Ontario’s Public Sector* (the “**IPFP Framework**”).
- F. The IPFP Framework establishes 5 fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
  - 1. The public interest is paramount.
  - 2. Value for money must be demonstrable.
  - 3. Appropriate public control/ownership must be preserved.
  - 4. Accountability must be maintained.

5. All processes must be fair, transparent and efficient.
- G. The IPFP Framework states that, consistent with the principle of appropriate public ownership/control, public ownership of assets will be preserved in the hospital sector.
- H. MOHLTC is responsible for the development, coordination, maintenance, and funding of health services, including a balanced and integrated system of hospitals, nursing homes, laboratories, ambulances, other health facilities and providers to meet the health needs of the people of Ontario.
- I. There are a number of statutes which govern the operation and administration of hospitals in Ontario. Under the *Public Hospitals Act* (Ontario), certain actions of hospitals can only be undertaken with the approval of the Minister of Health and Long-Term Care. Subsection 4(3) of the *Public Hospitals Act* (Ontario) states that no additional building or facilities shall be added to a hospital until the plans therefore have been approved by the Minister. Under subsection 4(2) of the *Public Hospitals Act* (Ontario), no institution, building or other premises or place shall be operated or used for the purposes of a hospital unless the Minister has approved the operation and or use of the premises or place for that purpose.
- J. The Minister of Health and Long-Term Care has powers to protect the public interest regarding matters relevant to the quality of the management and administration of a hospital, the proper management of the health care system in general, the availability of financial resources for the management and delivery of health care services, the accessibility of services in the community where the hospital is located and the quality of care and treatment of patients.
- K. Project Co recognizes and understands that Osler is a public hospital under the *Public Hospitals Act* (Ontario) and is, therefore, subject to a highly regulated legal and operational environment.
- L. With a view to ensuring that both Parties are able to properly and effectively discharge their respective duties, functions and responsibilities under Applicable Law, it is the intent that Osler and Project Co work collaboratively, responsibly and cooperatively throughout the Project Term.

**NOW THEREFORE** in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions and Interpretation**

- (a) This Project Agreement shall be interpreted in accordance with Schedule 1 – Definitions and Interpretation.
- (b) This Project Agreement is comprised of this executed agreement and the following documents, all of which are hereby incorporated by reference into and form part of this Project Agreement:

Schedule No.	Description
Schedule 1	- Definitions and Interpretation

Schedule 2	-	Completion Documents
Schedule 3	-	Custody Agreement
Schedule 4	-	Lenders' Direct Agreement
Schedule 5	-	Direct Agreements
Schedule 6	-	Independent Certifier Agreement
Schedule 7	-	Intentionally Deleted
Schedule 8	-	Intentionally Deleted
Schedule 9	-	Key Individuals
Schedule 10	-	Review Procedure
Schedule 11	-	Design Quality Plan and Construction Quality Plan
Schedule 12	-	Service Quality Plan Outline
Schedule 13	-	Project Co Proposal Extracts
Schedule 14	-	Outline Commissioning Program
Schedule 15	-	Output Specifications
Schedule 16	-	Title Encumbrances
Schedule 17	-	Intentionally Deleted
Schedule 18	-	Communications Protocol
Schedule 19	-	Intentionally Deleted
Schedule 20	-	Payment Mechanism
Schedule 21	-	Intentionally Deleted
Schedule 22	-	Variation Procedure
Schedule 23	-	Compensation on Termination
Schedule 24	-	Expiry Transition Procedure
Schedule 25	-	Insurance and Performance Security Requirements
Schedule 26	-	Record Provisions
Schedule 27	-	Dispute Resolution Procedure
Schedule 28	-	Refinancing
Schedule 29	-	Standby Letter of Credit
Schedule 30	-	Insurance Trust Agreement
Schedule 31	-	Project Co Information
Schedule 32	-	Financial Model Extracts
Schedule 33	-	Trust Account Agreement
Schedule 34	-	Works Report Requirements
Schedule 35	-	Intentionally Deleted
Schedule 36	-	Energy Matters
Schedule 37	-	Access Coordination Agreement

- (c) The documents comprising this Project Agreement are complementary and what is called for by any one of them shall be interpreted as if called for by all, except in the event of ambiguities, conflicts or inconsistencies, in which case Section 1.2 shall apply.
- (d) Except for those parts of Project Co's proposal which are incorporated by reference into this Project Agreement by the Project Co Proposal Extracts, on Financial Close, the Request for Proposals and Project Co's proposal shall be superseded entirely by this Project Agreement and rendered null and void, and shall not be relied upon or used by Project Co, Osler or anyone else (including anyone pursuant to Schedule 27 – Dispute Resolution Procedure or any arbitral body or any court) in any way to interpret or qualify the scope of the Project Operations, any obligations or liabilities of Project Co, or anything else contained in this Project Agreement.



- (e) Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of Osler, no consent, approval or satisfaction of Osler or the Osler Representative shall be unreasonably withheld or delayed.
- (f) Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of Project Co, no consent, approval or satisfaction of Project Co or the Project Co Representative shall be unreasonably withheld or delayed.

**1.2 Conflict of Terms**

- (a) In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Project Agreement, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:
  - (i) the provisions of amendments in writing to this Project Agreement signed by the Parties and Variation Confirmations shall govern and take precedence only over those specific provisions of this Project Agreement expressly amended thereby;
  - (ii) any provision establishing a higher standard of safety, reliability, durability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service;
  - (iii) the body of this Project Agreement;
  - (iv) Schedule 1 Definitions and Interpretation;
  - (v) Schedule 27 Dispute Resolution Procedure;
  - (vi) Schedule 20 Payment Mechanism;
  - (vii) Schedule 15 Output Specifications;
  - (viii) Schedule 25 Insurance and Performance Security Requirements;
  - (ix) Schedule 22 Variation Procedure;
  - (x) Schedule 10 Review Procedure;
  - (xi) Schedule 14 Outline Commissioning Program;
  - (xii) Schedule 11 Design Quality Plan and Construction Quality Plan;
  - (xiii) Schedule 28 Refinancing;
  - (xiv) Schedule 23 Compensation on Termination;
  - (xv) Schedule 26 Record Provisions;
  - (xvi) Schedule 24 Expiry Transition Procedure;

- (xvii) the other Schedules in the order in which they are listed in Section 1.1(b); and
  - (xviii) Schedule 13 Project Co Proposal Extracts.
- (b) Subject to Section 1.2(a), if the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Project Operations, the provision that applies to the specific part of the Project Operations shall govern for that specific part of the Project Operations.
- (c) If any ambiguity, conflict or inconsistency is not readily resolved by the foregoing provisions of this Section 1.2, then Project Co or Osler, upon discovery of same, shall immediately give notice to the Osler Representative. The Osler Representative shall, within 10 Business Days after such notice, make a determination of which provision governs and give notice of such determination, in writing, to Project Co.
- (d) Osler and Project Co shall comply with the determination of the Osler Representative pursuant to this Section 1.2 unless Osler or Project Co disputes the decision of the Osler Representative in which event such Dispute may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

### **1.3 Conflict of Documents**

- (a) In the event of any ambiguity, conflict or inconsistency between the provisions of this Project Agreement and the Lenders’ Direct Agreement, the provisions of the Lenders’ Direct Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.

## **2. COMMERCIAL CLOSE AND FINANCIAL CLOSE**

### **2.1 Effective Date**

- (a) The provisions of Sections 1 to 11, 13, 15 to 23, 27, 28, 32, 34 to 36 and 48 to 59, and Schedules 1 to 3, 7, 9 to 11, 13, 16 to 19, 21, 22, 25 to 27 and 29 will come into effect on the date of this Project Agreement. All other provisions of this Project Agreement will come into effect only on Financial Close. The provisions of this Project Agreement will terminate on the Termination Date.

### **2.2 Standby Letter of Credit**

- (a) On the date of this Project Agreement, Project Co shall deliver, or cause to be delivered, to Osler an irrevocable standby letter of credit (the “**Standby Letter of Credit**”) in the amount of \$[REDACTED] substantially in the form of Schedule 29 – Standby Letter of Credit.
- (b) Unless the Standby Letter of Credit is drawn by Osler in accordance with the provisions of this Project Agreement, Osler shall release and deliver the Standby Letter of Credit to Project Co on Financial Close.

- (c) Project Co shall ensure that the Standby Letter of Credit (and any replacement therefor) is renewed prior to its expiry date if, as at such date, Financial Close will not, or may reasonably be expected not to, have occurred.

### **2.3 Financial Close**

- (a) No later than 30 days prior to the Financial Close Target Date, Project Co will deliver to Osler drafts of all documents referred to in Section 1 of Schedule 2 – Completion Documents.
- (b) On or before the Financial Close Target Date:
  - (i) Project Co shall deliver to Osler the documents referred to in Section 1 of Schedule 2 – Completion Documents; and
  - (ii) Osler shall deliver to Project Co the documents referred to in Section 2 of Schedule 2 – Completion Documents.
- (c) If Project Co fails to deliver to Osler any of the documents referred to in Section 1 of Schedule 2 – Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by Osler of its obligations under Section 2.3(b)(ii)) and Osler does not waive such requirement, Osler will be entitled to draw on the Standby Letter of Credit, in full or in part, to retain the proceeds thereof as liquidated damages and may terminate this Project Agreement in its entirety by written notice having immediate effect. The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that Osler will suffer as a result of the happening of the specified event and would be difficult or impossible to quantify such damages upon the happening of the specified event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by Osler as a result of Project Co not achieving Financial Close. The Parties agree that such liquidated damages shall be payable whether or not Osler incurs or mitigates its damages, and that Osler shall not have any obligation to mitigate any such damages.
- (d) As contemplated under Section 10.3.2 of the Request for Proposals, Project Co shall, no later than 10 days following written instruction from IO at Financial Close, pay the Design and Bid Fee amount plus, for clarity, any applicable HST to each of the eligible unsuccessful Proponents (as that term is defined in the Request for Proposals), as directed by IO. If Project Co is directed to pay the Design and Bid Fee to fewer than two Proponents, then Project Co shall revise the Financial Model prior to Financial Close to reflect such change.
- (e) If Osler fails to deliver to Project Co any of the documents referred to in Section 2 of Schedule 2 – Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by Project Co of its obligations under Section 2.3(b)(i)) and Project Co does not waive such requirement, Project Co will be entitled to the return of

the Standby Letter of Credit and to terminate this Project Agreement in its entirety by written notice having immediate effect.

## **2.4 Disruption in Financial Markets**

- (a) If Financial Close cannot be achieved by the Financial Close Target Date by reason solely of a Severe Market Disruption, subject to Project Co's obligation to renew the Standby Letter of Credit, pursuant to Section 2.2, the Financial Close Target Date will be extended until the date falling 10 Business Days (or such other period as the Parties agree, acting reasonably) after the date on which such Severe Market Disruption ceases.
- (b) If a Severe Market Disruption exists, then, at any time before such Severe Market Disruption ceases and prior to Financial Close, Osler may in its sole discretion either:
  - (i) terminate this Project Agreement in its entirety by written notice having immediate effect; or
  - (ii) direct Project Co to assign to IO and IO will assume:
    - (A) the Project Agreement, and all of Project Co's right, title and interest in the Project Data, the Intellectual Property Rights and the Project Co Permits, Licences, Approvals and Agreements; and
    - (B) those contracts between Project Co and any Project Co Party which IO elects to be assigned.
- (c) If Osler exercises its rights pursuant to Section 2.4(b), and, provided Project Co has, if directed, delivered the assignments provided for in (ii)(A) and (B) above, Project Co will be entitled to the return of its Standby Letter of Credit and to payment of an amount equal to the Design and Bid Fee pursuant to Section 10.3.2 of the Request for Proposals plus [REDACTED]% of such fee. Osler's obligation to return the Standby Letter of Credit and to pay such fee shall be contingent on the receipt of a waiver, in form and substance satisfactory to Osler, that such fee represents full and final satisfaction of any obligation or liability of Osler, IO and any other Government Entity to Project Co and any Project Co Parties in connection with the Project Agreement and the Request for Proposals.

## **3. SCOPE OF AGREEMENT**

### **3.1 Scope of Agreement**

- (a) Project Co shall undertake the Project and perform the Project Operations in accordance with and subject to the provisions of this Project Agreement.
- (b) Project Co shall exercise its rights and perform its obligations at its own cost and risk without recourse to Osler, except as otherwise provided in this Project Agreement. Project Co shall not have recourse to any Government Entity with respect to the subject matter of this Project Agreement.

#### 4. BUSINESS OPPORTUNITIES

##### 4.1 Business Opportunities

- (a) Project Co acknowledges that Osler reserves the right to all commercial and other opportunities (including, for greater certainty, all retail and parking operations) in the Facility and at the Site (“**Business Opportunities**”). Osler may, as set out in this Project Agreement, grant rights in the Business Opportunities to Project Co.
- (b) To encourage the development of Business Opportunities, Project Co may, from time to time, propose Business Opportunities for Osler’s consideration. All such proposals shall describe the Business Opportunity in full with the expected financial and other advantages to both Parties. Osler may accept any such proposal in its sole discretion and subject to such terms and conditions as Osler may require.
- (c) Notwithstanding that Project Co has proposed a Business Opportunity to Osler for its consideration, Project Co acknowledges that Osler reserves the right to proceed with such Business Opportunity or any similar Business Opportunity with Project Co or with any third party, and may initiate a separate procurement process for the development of any Business Opportunity.
- (d) In determining whether to accept any proposal in respect of a Business Opportunity, Osler shall consult with and take into account the views of MOHLTC, and shall, if so required by MOHLTC, submit the relevant proposal to MOHLTC for consideration.

#### 5. REPRESENTATIONS AND WARRANTIES

##### 5.1 Project Co Representations and Warranties

- (a) Project Co represents and warrants to Osler that as of the date of this Project Agreement:
  - (i) Project Co is a [REDACTED] and has all the requisite power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder;
  - (ii) [REDACTED];
  - (iii) Project Co and the Project Co Parties, collectively, have extensive experience and are knowledgeable in the design, construction and maintenance of hospital facilities and have the required ability, experience, skill and capacity to perform the Project Operations in a timely and professional manner as set out in this Project Agreement;
  - (iv) Project Co has the requisite power, authority and capacity to execute and deliver and perform this Project Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;

- (v) no steps or proceedings have been taken or are pending to supersede or amend the constating documents, articles or by-laws of Project Co in a manner that would impair or limit its ability to perform the obligations of Project Co under this Project Agreement;
- (vi) this Project Agreement has been duly authorized, executed, and delivered by Project Co and constitutes a legal, valid, and binding obligation of Project Co, enforceable against Project Co in accordance with its terms, subject only to:
  - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
  - (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (vii) the execution, delivery, and performance by Project Co of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
  - (A) its constating, formation or organizational documents, including any by-laws;
  - (B) Applicable Law; or
  - (C) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (viii) no Project Co Event of Default has occurred and is continuing;
- (ix) all of the information regarding Project Co set out in Schedule 31 – Project Co Information is true and correct in all material respects;
- (x) there are no actions, suits, proceedings, or investigations pending or threatened against Project Co or, to Project Co's knowledge, any Project Co Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement, and Project Co has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment;
- (xi) Project Co has carefully reviewed the whole of this Project Agreement, and all other documents made available to Project Co by or on behalf of Osler, and, to Project Co's knowledge, nothing contained herein or therein inhibits or prevents Project Co from completing the Works or performing the Project Operations in accordance with this Project Agreement in a good and safe manner so as to achieve and satisfy the requirements of this Project Agreement;

- (xii) Project Co is able to meet its obligations as they generally become due;
- (xiii) Project Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada) and its HST registration number is [REDACTED];
- (xiv) the Scheduled Substantial Completion Date is a realistic date and is achievable by Project Co performing the Works in accordance with this Project Agreement;
- (xv) Project Co is not a Non-Resident;
- (xvi) no Restricted Person has Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or [REDACTED] or in relation to the operation, management and ownership of the Project; and
- (xvii) to the knowledge of Project Co, no Restricted Person has directly or indirectly an Economic Interest in Project Co, [REDACTED] or the Project.

## **5.2 Osler Representations and Warranties**

- (a) Osler represents and warrants to Project Co that as of the date of this Project Agreement:
  - (i) Osler is a non-share capital corporation incorporated and validly existing under the laws of the Province of Ontario, is in good standing with the Ministry of Government and Consumer Services of Ontario with respect to the filing of annual reports, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder;
  - (ii) Osler has the requisite power, authority and capacity to execute, deliver and perform this Project Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;
  - (iii) no steps or proceedings have been taken or are pending to supersede or amend its constating documents, letters patent or by-laws in a manner that would impair or limit its ability to perform its obligations under this Project Agreement;
  - (iv) this Project Agreement has been duly authorized, executed, and delivered by Osler and constitutes a legal, valid, and binding obligation of Osler, enforceable against Osler in accordance with its terms, subject only to:
    - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and

- (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (v) the execution, delivery, and performance by Osler of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
  - (A) its constating or organizational documents;
  - (B) Applicable Law; or
  - (C) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vi) no Osler Event of Default has occurred and is continuing;
- (vii) to the knowledge of Osler, there are no actions, suits, proceedings, or investigations pending or threatened in writing against Osler or, to Osler's knowledge, any Osler Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) of which Osler has received written notice and that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of Osler or in any impairment of its ability to perform its obligations under this Project Agreement, and Osler has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment;
- (viii) Osler is able to meet its obligations as they generally become due;
- (ix) Osler has rights of use and access to, on and over the Site and the Facility or has the requisite power to obtain such rights that are sufficient to enable Osler to grant or to cause to be granted to Project Co the licence rights contemplated in Section 14.1;
- (x) Osler has rights of use and access to, on and over the Site subject only to the Title Encumbrances; and
- (xi) the contemplated uses of the Facility are permitted by the existing official plan, zoning and other land use restrictions.

## **6. BACKGROUND INFORMATION**

### **6.1 No Liability**

- (a) Except as expressly provided in Sections 6.4, 16.2 and 16.3 Osler, any Osler Party or any Government Entity shall not be liable to Project Co or any Project Co Party for, and Project Co or any Project Co Party shall not seek to recover from Osler, any Osler Party or any Government Entity, any damages, losses, costs, liabilities or expenses which may arise (whether in contract,



tort or otherwise) from the adoption, use or application of the Background Information by, or on behalf of, Project Co or any Project Co Party.

## **6.2 No Warranty**

- (a) Except as expressly provided in Sections 6.4, 16.2 and 16.3:
  - (i) neither Osler nor any Government Entity gives any warranty or undertaking of whatever nature in respect of the Background Information and, specifically (but without limitation), neither Osler nor any Government Entity warrants that the Background Information represents all of the information in its possession or power (either during the conduct of the procurement process for the Project or at the time of execution and delivery of this Project Agreement) relevant or material to or in connection with the Project or the obligations of Project Co under this Project Agreement or under any of the Project Documents; and
  - (ii) neither Osler nor any Government Entity shall be liable to Project Co or any Project Co Party in respect of any failure, whether before, on or after the execution and delivery of this Project Agreement:
    - (A) to disclose or make available to Project Co or any Project Co Party any information, documents or data;
    - (B) to review or update the Background Information; or
    - (C) to inform Project Co or any Project Co Party of any inaccuracy, error, omission, defect or inadequacy in the Background Information.

## **6.3 No Claims**

- (a) Project Co acknowledges and confirms that:
  - (i) it has conducted its own analysis and review of the Background Information and has, before the execution and delivery of this Project Agreement, satisfied itself as to the accuracy, completeness and fitness for purpose of any such Background Information upon which it places reliance; and
  - (ii) except as expressly provided in Sections 6.4, 16.2 and 16.3, it shall not be entitled to and shall not, and shall ensure that no Project Co Party shall, make any claim against Osler, any Osler Party or any Government Entity (whether in contract, tort or otherwise), including, without limitation, any claim in damages, for extensions of time or for additional payments under this Project Agreement on the grounds:
    - (A) of any misunderstanding or misapprehension in respect of the Background Information; or
    - (B) that the Background Information was incorrect or insufficient,

nor shall Project Co be relieved from any of its obligations under this Project Agreement on any such ground.

#### 6.4 Technical Reports

- (a) Osler agrees that, if at the date of this Project Agreement, except as disclosed in any Background Information or as otherwise disclosed by Osler or any Osler Party or known by Project Co or any Project Co Party, any of the information in the Technical Reports is, to the actual knowledge of Osler, incorrect or there is relevant information in the possession or control of Osler that would make any of the information in the Technical Reports incorrect, then, to the extent that such incorrect information materially adversely interferes with Project Co's ability to perform the Project Operations or materially adversely affects Project Co's cost of performing the Project Operations, such incorrect information shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (b) For the purposes of Section 6.4(a), “**to the actual knowledge of Osler**” means to the actual knowledge of the President and Chief Executive Officer or the Vice President of Development and Information Technology of Osler.

### 7. PROJECT DOCUMENTS

#### 7.1 Project Documents

- (a) Project Co shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which it is a party, and shall ensure that each Project Co Party shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which such Project Co Party is a party, so as to ensure that other parties to such Project Documents shall not be entitled to terminate same. In the event that Project Co receives a notice of default under any of the Project Documents, it shall promptly, and, in any event, no later than 2 Business Days after receipt thereof, deliver a copy of such notice of default to Osler.

#### 7.2 Ancillary Documents

- (a) Project Co shall not:
  - (i) terminate or agree to the termination of all or part of any Ancillary Document, except pursuant to Sections 30.3, 42.5, 56.3 and 57.2 or otherwise to prevent or cure a Project Co Event of Default (provided that commercially reasonable alternative measures would not prevent or cure such Project Co Event of Default);
  - (ii) make or agree to any amendment, restatement or other modification of any Ancillary Document that materially adversely affects Project Co's ability to perform its obligations under this Project Agreement or that has the effect of increasing any liability of Osler, whether actual or potential;
  - (iii) breach its obligations (or waive or allow to lapse any rights it may have) or permit others to breach their obligations (or waive or allow to lapse any rights they may have) under any Ancillary Document, that materially adversely affect Project Co's ability to perform

its obligations under this Project Agreement or that have the effect of increasing any liability of Osler, whether actual or potential; or

- (iv) enter into, or permit the entry into by any other person of, any agreement replacing all or part of any Ancillary Document, except in the circumstances referenced in Section 7.2(a)(i),

without the prior written consent of Osler, not to be unreasonably withheld or delayed, provided that, where consent is requested pursuant to Section 7.2(a)(i) or 7.2(a)(iv), such consent shall not be withheld, and shall be provided within a reasonable time, where the relevant matter referred to in Section 7.2(a)(i) or 7.2(a)(iv) will not materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or have the effect of increasing any liability of Osler, whether actual or potential. In the event of termination or agreement to the termination of all or part of any Ancillary Document as described in Section 7.2(a)(i) or any agreement replacing all or part of any Ancillary Document as described in Section 7.2(a)(iv), Project Co shall, to the extent applicable, comply with all provisions herein applicable to changes in Project Co Parties, including Section 56.3.

### **7.3 Changes to Lending Agreements and Refinancing**

- (a) Subject to the terms of the Lenders' Direct Agreement, Project Co shall not terminate, amend or otherwise modify the Lending Agreements, or waive or exercise any of its rights under the Lending Agreements, if, at the time such action is contemplated and effected, it would materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or the Project Documents or have the effect of increasing any liability of Osler, whether actual or potential, unless:
  - (i) such action is a Permitted Borrowing; or
  - (ii) such action is a Refinancing, other than a Mandatory Refinancing, effected in accordance with the provisions of Schedule 28 – Refinancing.

### **7.4 Compliance with Lending Agreements**

- (a) Project Co shall keep the Lending Agreements in good standing to the extent necessary to perform its obligations under this Project Agreement and the Project Documents, and shall ensure that none of the terms and conditions of the Lending Agreements shall prevent Project Co from performing its obligations under this Project Agreement or the Project Documents.

## **8. OSLER RESPONSIBILITIES**

### **8.1 General**

- (a) Osler shall, at its own cost and risk:
  - (i) perform all of its obligations under, and observe all provisions of, this Project Agreement in compliance with Applicable Law;

- (ii) obtain, maintain, and, as applicable, renew the Osler Permits, Licences, Approvals and Agreements which may be required for the performance of the Project Operations;
  - (iii) comply with all Permits, Licences, Approvals and Agreements in accordance with their terms;
  - (iv) cooperate with Project Co in the fulfillment of the purposes and intent of this Project Agreement, provided, however, that Osler shall not be under any obligation to perform any of Project Co's obligations under this Project Agreement;
  - (v) perform or cause to be performed the Hospital FM Services in accordance with Good Industry Practice and the performance standards to be established by the Facilities Management Committee pursuant to this Project Agreement; and
  - (vi) perform all of its obligations under, and observe all provisions of, the Osler Development Accountability Agreement.
- (b) During the Operational Term, Osler shall use or permit the use of the Facility for the predominant purpose of the Hospital Services or any other healthcare related purpose, and for ancillary uses compatible with the foregoing.
- (c) Osler shall, and shall cause all Osler Parties to, take reasonable steps to minimize undue interference with the provision of the Project Operations by Project Co or any Project Co Party.
- (d) Nothing in this Project Agreement shall in any way fetter the right, authority and discretion of Osler or any Government Entity in fulfilling its statutory or other functions under Applicable Law, and Project Co understands and agrees that nothing in this Project Agreement shall preclude Osler's board of directors from performing, discharging or exercising its duties, responsibilities and powers under Applicable Law. Project Co further agrees that it shall comply, and shall cause all relevant Project Co Parties to comply, with all written directions issued by or on behalf of Osler's board of directors from time to time, subject to Section 36.1(b).

## **9. PROJECT CO RESPONSIBILITIES**

### **9.1 Other Business**

- (a) Project Co shall not engage in any activities which are not specifically related to, required by and conducted for the purpose of the Project without the prior written consent of Osler, in its sole discretion.

### **9.2 General**

- (a) Project Co shall, at its own cost and risk:
- (i) perform all of its obligations under, and observe all provisions of, this Project Agreement in compliance with Applicable Law;
  - (ii) perform all Project Operations:

- (A) in compliance with Applicable Law;
  - (B) in compliance with all Permits, Licences, Approvals and Agreements and so as to preserve the existence and continued effectiveness of any such Permits, Licences, Approvals and Agreements;
  - (C) so as to satisfy the Output Specifications;
  - (D) in accordance with Good Industry Practice;
  - (E) in a manner consistent with the Quality Plans and the Project Co Proposal Extracts;
  - (F) in a timely and professional manner;
  - (G) with due regard to the health and safety of persons and property;
  - (H) subject to the other provisions of this Project Agreement, in a manner which will not impair the ability of Osler, any of the Osler Parties or any Government Entity to comply with Applicable Law;
  - (I) subject to the other provisions of this Project Agreement, in a manner which will not impair the performance of the Hospital Services; and
  - (J) in accordance with all other terms of this Project Agreement; and
- (iii) cooperate with Osler in the fulfillment of the purposes and intent of this Project Agreement, provided however that Project Co shall not be under any obligation to perform any of Osler's obligations under this Project Agreement.

### **9.3 Project Co Parties**

- (a) Project Co shall not be relieved of any liability or obligation under this Project Agreement by the appointment of any Project Co Party, and Project Co shall cause each Project Co Party, to the extent such Project Co Party performs or is specified hereunder to perform the Project Operations, to comply with the obligations of Project Co hereunder in the same manner and to the same extent as Project Co.

### **9.4 Permits, Licences, Approvals and Agreements**

- (a) Project Co shall, at its own cost and risk:
- (i) obtain, maintain, and, as applicable, renew all Project Co Permits, Licences, Approvals and Agreements which may be required for the performance of the Project Operations;
  - (ii) assume the obligations of Project Co under the Osler Permits, Licences, Approvals and Agreements as set out in Appendix 1 – Osler and Project Co Responsibility Table of Schedule 1 – Definitions and Interpretation, including, without limitation, the

administration of all Osler Security Deposits which are subject to being released and returned to Osler and the administration of the renewal or replacement of the Osler Security Deposits if and as required, and Project Co shall cooperate with Osler and any other person, perform the obligations under the Permits, Licences, Approvals and Agreements for which Project Co is responsible which are conditions for the release to Osler of any such Osler Security Deposits, and take all such necessary actions to have such Osler Security Deposits released and returned to Osler; and

- (iii) comply with all Permits, Licences, Approvals and Agreements in accordance with their terms.
- (b) Where any Permits, Licences, Approvals and Agreements have requirements that may impose any conditions, liabilities or obligations on Osler or any Osler Party, Project Co shall not obtain or renew such Permits, Licences, Approvals and Agreements without the prior written consent of Osler not to be unreasonably withheld or delayed, provided that neither Osler nor any Osler Party shall be responsible for obtaining or for the failure of Project Co to obtain any Permit, Licence, Approval or Agreement or for the failure of Project Co to renew any Osler Permit, Licence, Approval or Agreement. Osler shall comply, or shall require compliance, with any conditions, liabilities or obligations as are imposed on Osler or any Osler Party by the requirements of any Permit, Licence, Approval or Agreement obtained with Osler consent under this Section 9.4(b).
- (c) Osler shall provide Project Co with such information and administrative assistance as Project Co may reasonably require in relation to the Permits, Licences, Approvals and Agreements. In respect of Section 9.4(a)(ii), Osler shall: (i) provide Project Co with relevant information and copies of notices received under the applicable Osler Permits, Licences, Approvals and Agreements and (ii) execute any documents under the applicable Osler Permits, Licences, Approvals and Agreements, which Applicable Law dictates that only Osler can execute.

## 9.5 Safety During the Works Phase

- (a) From Financial Close until the Final Completion Date, Project Co shall:
  - (i) comply with the Safety Plan;
  - (ii) keep the Site, the Works and the Facility in a safe and orderly state, as appropriate in accordance with Good Industry Practice, to avoid danger to persons on the Site, in the Facility and in the immediate vicinity of the Site;
  - (iii) take such measures as are reasonable in accordance with Good Industry Practice to prevent access to the Site and the Facility of any persons or creatures not entitled to be there;
  - (iv) comply with Applicable Law relating to health and safety, including without limitation the *Occupational Health and Safety Act* (Ontario) and all regulations thereto;
  - (v) perform, or cause a Project Co Party to perform, all of the obligations of the “constructor”, and indemnify Osler, each Osler Party and each Government Entity

against any and all of the liabilities of the “constructor”, under the *Occupational Health and Safety Act* (Ontario) and all regulations thereto; and

- (vi) provide Osler with a certificate of good standing from the WSIB or any successor thereto once every 90 days.

## 9.6 Additional Works

- (a) Osler reserves the right to carry out Additional Works. Osler may, at any time during the performance of the Works, assign the methods and means of construction of the Additional Works and/or the coordination and scheduling of the Additional Works and/or the safety training in respect of the Additional Works to Project Co.
- (b) In connection with the Additional Works, Osler shall:
  - (i) cause Additional Contractors to comply with the instructions of Project Co relating to matters of health and safety on the Site, and, to the extent such matters have been assigned to Project Co pursuant to Section 9.6(a), the methods and means of construction, and coordination and scheduling of the Additional Works with (A) the Works during the performance of the Works, and (B) at the request of Osler, with the Project Co Services during the performance of the Project Co Services as Osler considers appropriate taking into account the nature of the Additional Works and the potential for impact on the Project Co Services;
  - (ii) enter into separate contracts with Additional Contractors containing terms and provisions which are consistent with the terms and provisions of this Project Agreement and which require Additional Contractors to comply with all directions of Project Co in respect of any matter regarding health and safety on the Site, methods and means of construction and coordination and scheduling of the Additional Works to the extent such matters have been assigned to Project Co pursuant to Section 9.6(a);
  - (iii) ensure that insurance coverage is provided in respect of the Additional Works as would be required by a prudent owner similarly situated and that such insurance is coordinated with the insurance coverage of Project Co as it affects the Works and the Project Co Services to provide seamless insurance coverage to Project Co and Osler (including, if appropriate, naming Osler and Project Co as additional insured’s and/or loss payees) and in any event, such insurance shall provide for commercial general liability insurance of not less than \$[REDACTED]; and
  - (iv) take all necessary steps to avoid labour disputes or other disputes on the Project arising from the Additional Works.
- (c) In connection with the Additional Works, Project Co shall, to the extent Osler has assigned to Project Co any or all of the matters referred to in Section 9.6(a) and subject to the performance by Osler of its obligation under Sections 9.6(b)(i) and 9.6(b)(ii), during the performance of the Works, and at the request of Osler, during the performance of the Project Co Services as Osler considers appropriate taking into account the nature of the Additional Works and the potential for impact on the Project Co Services:

- (i) provide for the methods and means of construction (where applicable) of the Additional Works and the coordination and scheduling of the Additional Works with the Works and the Project Co Services to be performed under this Project Agreement;
  - (ii) afford Additional Contractors reasonable opportunity to introduce and store their products and use their construction machinery and equipment to execute the Additional Works;
  - (iii) participate with Osler and Additional Contractors in reviewing their construction schedules when directed to do so by Osler;
  - (iv) where all or part of the performance of the Works in accordance with the Project Agreement or Project Co Services is affected by or depends upon, the completion and/or proper execution of the Additional Works, promptly report to Osler in writing any readily apparent deficiencies in the Additional Works, prior to proceeding with the affected Works and/or the applicable Project Co Services. Failure by Project Co to so report shall invalidate any claims against Osler by reason of such readily apparent deficiencies; and
  - (v) assume overall responsibility for compliance by the Additional Contractors and Additional Works with all aspects of Applicable Law relating to health and safety at the Site prior to Substantial Completion and assume and exercise the responsibilities of the 'constructor' under the *Occupational Health and Safety Act* (Ontario) in accordance with such Act.
- (d) If, in respect of Additional Works carried out prior to Substantial Completion:
- (i) any Additional Contractors cause any damage to the Works;
  - (ii) Project Co incurs any additional costs or there is any delay in the Works Schedule as a result of any Additional Contractors not complying with the instructions of Project Co regarding coordination, scheduling and/or safety and/or method and means of construction; or
  - (iii) if Project Co incurs any additional costs or there is any delay in the Works Schedule as a result of any Additional Works,

then, provided such delay in the Works Schedule or additional costs is not as a result of Project Co's failure to perform its obligations under Sections 9.6(c)(i), 9.6(c)(ii), 9.6(c)(iii) or 9.6(c)(v) or any act or omission of Project Co or a Project Co Party, any such delay in the Works Schedule or additional costs in respect of the Works shall, subject to and in accordance with Section 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event.

- (e) Claims, disputes, and other matters in question between Project Co and Additional Contractors (except to the extent they involve claims, disputes and other matters between Project Co and Osler pursuant to this Agreement) shall be dealt with in substantially the same manner as contemplated in Schedule 27 – Dispute Resolution Procedure, provided the Additional Contractors are subject to binding reciprocal obligations in the contracts between Osler and the



Additional Contractors. Project Co shall be deemed to have consented to arbitration of any dispute with any other contractor whose contract with Osler contains a binding reciprocal agreement to arbitrate.

- (i) Project Co shall have a period of 10 Business Days following notice from Osler of Osler's intention to carry out Additional Works including a reasonable description of such Additional Works to request a Variation if such Additional Works are (A) reasonably expected to void a warranty in favour of Project Co from a Project Co Party or equipment supplier and given in accordance with Good Industry Practice, or (B) reasonably expected to have a material negative effect on Project Co's ability to perform any of the Project Operations, including a delay in the Works or additional costs in respect of the Works;
- (ii) if Project Co has requested a Variation in accordance with Section 9.6(e)(i), Osler shall, within 10 Business Days of such request, either issue a Variation Enquiry or give notice to Project Co that it does not agree that a Variation is required;
- (iii) either Party may refer the question of whether a Variation is required pursuant to Section 9.6(e) for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and where Osler has given notice to Project Co that it does not agree that a Variation is required, Osler shall, within 10 Business Days of a subsequent agreement or of a determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
  - (A) Osler shall not be entitled to withdraw any such Variation Enquiry unless Osler determines not to proceed with the Additional Works or to proceed only in a manner that the Additional Works will not result in a warranty becoming void (as contemplated in Section 9.6(e)(i)) or will not result in any material adverse effect (including material additional costs) on Project Co's ability to perform any of the Project Operations and Project Co has agreed with such conclusion, or the Parties otherwise agree; and
  - (B) the Parties shall, without prejudice to their respective obligations under this Project Agreement, use commercially reasonable efforts to mitigate any adverse effects of such Additional Works, including, with respect to any increase in costs arising from any void warranty.
- (f) Placing, installing, applying or connecting the Additional Works performed by Additional Contractors, on and to the Works performed by Project Co will not relieve Project Co from its obligations under the Project Agreement with respect to the Works, except to the extent expressly described in any Variation Confirmation.

## **10. REPRESENTATIVES**

### **10.1 The Osler Representative**

- (a) Subject to the limitations set out in Section 10.1(d), the Osler Representative shall exercise the functions and powers identified in this Project Agreement as functions or powers to be performed

- by the Osler Representative and such other functions and powers of Osler under this Project Agreement as Osler may notify Project Co from time to time.
- (b) Osler may, from time to time by written notice to Project Co, change the Osler Representative. Such change shall have effect on the later of the date of delivery of such notice and the date specified in such notice.
  - (c) During any period when no Osler Representative has been appointed, or when the Osler Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the Osler Representative's functions under this Project Agreement, Osler shall perform or may, by written notice to Project Co, promptly appoint an alternative Osler Representative to perform the functions which would otherwise be performed by the Osler Representative. Upon receipt of such written notice, Project Co and the Project Co Representative shall be entitled to treat any act of such alternative Osler Representative which is permitted by this Project Agreement as being authorized by Osler, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.
  - (d) The Osler Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement or to authorize a Variation.
  - (e) Subject to the limitations set out in Sections 10.1(a) and 10.1(d), unless otherwise notified in writing, Project Co and the Project Co Representative shall be entitled to treat any act of the Osler Representative which is authorized by this Project Agreement as being authorized by Osler, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.

## **10.2 The Project Co Representative**

- (a) Subject to the limitations set out in Section 10.2(d), the Project Co Representative shall have full authority to act on behalf of Project Co for all purposes of this Project Agreement.
- (b) Project Co may change the Project Co Representative with the prior written consent of Osler, not to be unreasonably withheld or delayed.
- (c) During any period when the Project Co Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the Project Co Representative's functions under this Project Agreement, Project Co shall perform or may, by written notice to Osler, promptly appoint an alternative Project Co Representative to perform the functions which would otherwise be performed by the Project Co Representative, provided that, Project Co must seek Osler's consent in accordance with Section 10.2(b) if such alternative Project Co Representative is in place for more than 180 days. Upon receipt of such written notice, Osler and the Osler Representative shall be entitled to treat any act of such alternative Project Co Representative which is permitted by this Project Agreement as being authorized by Project Co, and Osler and the Osler Representative shall not be required to determine whether authority has in fact been given.
- (d) The Project Co Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement.

- (e) Subject to the limitations set out in Section 10.2(d), unless otherwise notified in writing, Osler and the Osler Representative shall be entitled to treat any act of the Project Co Representative which is authorized by this Project Agreement as being authorized by Project Co, and Osler and the Osler Representative shall not be required to determine whether authority has in fact been given.

### **10.3 Communications to Representatives**

- (a) At the time that a Party appoints or changes the appointment of the Osler Representative or the Project Co Representative, as applicable, that Party shall also provide the other Party with contact information for delivery of communications to such representative. Communications to such representative shall not constitute notices to the Party appointing such representative.

### **10.4 Key Individuals**

- (a) The individuals who are critical to the performance of the Works are identified in Part A of Schedule 9 – Key Individuals. Project Co shall use commercially reasonable efforts to ensure that the persons identified in Part A of Schedule 9 – Key Individuals remain involved in the Works in the capacity set out in Part A of Schedule 9 – Key Individuals and, in particular, will not, for the duration of the Works, require or request any such person to be involved in any other project on behalf of Project Co or any Project Co Party if, in the opinion of Osler acting reasonably, such involvement would have a material adverse effect on the Works.
- (b) Subject to the following sentence of this Section 10.4(b), the individuals who are critical to the performance of the Project Co Services are identified in Part B of Schedule 9 – Key Individuals. Project Co shall use commercially reasonable efforts to ensure that persons identified or to be identified in Part B of Schedule 9 – Key Individuals remain involved in the Project Co Services in the capacity set out in Schedule 9 – Key Individuals and, in particular, will not, for the duration of the Project Co Services, require or request any such person to be involved in any other project on behalf of Project Co or any Project Co Party if, in the opinion of Osler, acting reasonably, such involvement would have a material adverse effect on the Project Co Services.
- (c) If Project Co considers it necessary to replace any individual identified in Schedule 9 – Key Individuals, Project Co shall provide Osler with relevant information on the proposed replacement and shall consult with Osler before finalizing the appointment of such replacement. Project Co shall not replace any of the individuals identified in Schedule 9 – Key Individuals without the prior written consent of Osler, which consent shall not be withheld or delayed where the proposed replacement is suitably qualified and experienced.
- (d) If Osler determines, acting reasonably, that it is in the best interests of Osler that any individual identified in Schedule 9 – Key Individuals be replaced, Osler shall notify Project Co (including a detailed explanation of the reasons for such determination), and, within 30 days of receipt by Project Co of such notice, Project Co shall provide Osler with relevant information on the proposed replacement and shall consult with Osler before finalizing the appointment of such replacement. Project Co shall not replace any of the individuals identified in Schedule 9 – Key Individuals without the prior written consent of Osler, which consent shall not be withheld or delayed where the proposed replacement is suitably qualified and experienced.

## 11. WORKS COMMITTEE

### 11.1 Establishment

- (a) The Parties shall, within 30 days following Financial Close, establish a committee (the “**Works Committee**”) consisting of:
- (i) 1 representative appointed by IO from time to time;
  - (ii) the following 3 representatives appointed by Osler:
    - (A) the Osler Representative; and
    - (B) 2 other representatives appointed by Osler from time to time.
  - (iii) the following 3 representatives appointed by Project Co:
    - (A) the Project Co Representative;
    - (B) 1 representative of the Construction Contractor; and
    - (C) such other representative appointed by Project Co from time to time.
- (b) The Independent Certifier and the Design Compliance Consultant shall be entitled to, but not required to, attend meetings as non-voting members of the Works Committee. Members of the Works Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and provide briefings to the Works Committee.
- (c) The Osler Representative shall be the chairperson of the Works Committee.

### 11.2 Function and Role

- (a) The Works Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Works. The Works Committee shall interface with the Facilities Management Committee and the Equipment Steering Committee as and when required.
- (b) The Works Committee shall be responsible for receiving and reviewing all matters related to the Works, including:
- (i) any design, construction and commissioning issues;
  - (ii) the Works Schedule;
  - (iii) any issues arising from reports or documents provided by Project Co or the Independent Certifier;
  - (iv) any quality assurance and safety issues;

- (v) the Works Reports;
  - (vi) the recommendations of the Transition Subcommittee;
  - (vii) any special matters referred to the Works Committee by Osler, IO or Project Co;
  - (viii) any community and media relations issues in accordance with Schedule 18 – Communications Protocol;
  - (ix) monitoring the Final Commissioning Program;
  - (x) Project Co’s level of participation in programs organized by At-Risk Youth Organizations and Veteran Organizations; and
  - (xi) any other issues pertaining to the Works.
- (c) Subject to Section 11.2(d), any unanimous decision of the Works Committee shall be final and binding on the Parties. If the Works Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (d) The Works Committee shall not have authority to make decisions with respect to or approve:
- (i) any amendment to or waiver of any provision of this Project Agreement;
  - (ii) any change to a major milestone date set out in the Works Schedule, the Scheduled Substantial Completion Date or the Scheduled Final Completion Date;
  - (iii) any Variation;
  - (iv) any change that may materially adversely affect Project Co’s ability to achieve Substantial Completion by the Scheduled Substantial Completion Date or Final Completion by the Scheduled Final Completion Date; or
  - (v) any matter with respect to which Osler has a right of consent or in respect of which Osler may exercise discretion pursuant to this Project Agreement.

**11.3 Term of Works Committee**

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

**11.4 Replacement of Committee Members**

- (a) IO and Osler shall be entitled to replace any of their respective representatives on the Works Committee by written notice to Project Co. Osler will use commercially reasonable efforts to deliver prior written notice of any such replacement to Project Co. Project Co may replace any of

its representatives on the Works Committee with the prior written consent of Osler, not to be unreasonably withheld or delayed.

## **11.5 Procedures and Practices**

- (a) The members of the Works Committee may:
  - (i) adopt such procedures and practices for the conduct of the activities of the Works Committee as they consider appropriate from time to time;
  - (ii) invite to any meeting of the Works Committee such other persons as the members of the Works Committee may agree;
  - (iii) exclude from any meeting of the Works Committee such persons (other than members of the Works Committee) as the members of the Works Committee may agree; and
  - (iv) receive and review reports from any person or organization agreed to by the members of the Works Committee.
- (b) Once established, the Works Committee shall meet at least once each month from Financial Close until the Final Completion Date, unless otherwise agreed by the members of the Works Committee or the Parties.
- (c) Either the Project Co Representative or the Osler Representative may convene a special meeting of the Works Committee at any time. Special meetings of the Works Committee may be convened on not less than 5 Business Days' notice to all members of the Works Committee identifying the agenda items to be discussed at the special meeting, provided that, in an Emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- (d) Unless otherwise agreed by the members of the Works Committee, the Works Committee shall meet at the Site, the Facility or another location in Brampton, Ontario. Meetings of the Works Committee may be held by means of such telephonic, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting, provided that each member of the Works Committee must attend in person at least once each calendar quarter.
- (e) Two representatives of Osler (one of whom shall be the Osler Representative), two representatives of Project Co (one of whom shall be the Project Co Representative) and the representative of IO (or a delegate thereof) shall constitute a quorum at any meeting of the Works Committee. A quorum of members may exercise all the powers of the Works Committee. The members shall not transact business at a meeting of the Works Committee unless a quorum is present.
- (f) Minutes of all meetings, recommendations and decisions of the Works Committee, including those made by telephone or other form of communication, shall be recorded and maintained by Osler. Osler shall circulate copies of such minutes within 5 Business Days of the holding of the

meeting or the making of the recommendation or decision. Unless Project Co notifies Osler and IO within 5 Business Days of receipt of the minutes that Project Co disagrees with the contents of the minutes, Project Co, Osler and IO shall be deemed to have approved such minutes. Osler shall maintain a complete set of all minutes of the meetings of the Works Committee and shall make such minutes available for inspection by Project Co during regular business hours.

## **12. FACILITIES MANAGEMENT COMMITTEE**

### **12.1 Establishment**

- (a) The Parties shall, not later than the earlier of (i) 18 months prior to the Scheduled Substantial Completion Date, or, (ii) such earlier date as requested by Osler, acting reasonably, establish a committee (the “**Facilities Management Committee**”) consisting of:
  - (i) for the period from the establishment of the Facilities Management Committee until the Final Completion Date, 1 representative appointed by IO from time to time;
  - (ii) 2 senior representatives of Osler, one of whom shall be the Osler Representative, appointed by Osler from time to time; and
  - (iii) 2 senior representatives of Project Co, one of whom shall be the Project Co Representative, appointed by Project Co from time to time.
- (b) Members of the Facilities Management Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and provide briefings to the Facilities Management Committee.
- (c) The Osler Representative shall be the chairperson of the Facilities Management Committee.

### **12.2 Function and Role**

- (a) The Facilities Management Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Project Operations, both prior to and during the Operational Term. The Facilities Management Committee shall interface with the Works Committee as and when required, and shall form the Utilities Management Subcommittee to receive and review all matters related to the Utilities Management Services.
- (b) The Facilities Management Committee shall be responsible for receiving and reviewing all matters related to the Project Operations (excluding the Works), both prior to and during the Operational Term, including:
  - (i) the transition from the Existing Facilities to the Facility;
  - (ii) any joint review of the Project Co Services and the Output Specifications;
  - (iii) the recommendations of the Utilities Management Subcommittee;
  - (iv) any changes to Service Quality Plans;

- (v) any performance issues;
  - (vi) the development and modification of performance standards for the Hospital FM Services, which performance standards shall be based on the Project Co Proposal Extracts and Good Industry Practice;
  - (vii) any interface issues between the Project Co Services and the Hospital FM Services;
  - (viii) any special matter referred to the Facilities Management Committee by Osler, IO or Project Co;
  - (ix) any community and media relations issues in accordance with Schedule 18 – Communications Protocol; and
  - (x) any other issues pertaining to the Project Operations (excluding the Works).
- (c) Subject to Section 12.2(d), any unanimous decision of the Facilities Management Committee shall be final and binding on the Parties. If the Facilities Management Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (d) The Facilities Management Committee shall not have authority to make decisions with respect to or approve:
- (i) any amendment to or waiver of any provision of this Project Agreement;
  - (ii) any Variation;
  - (iii) any change that may materially adversely affect Project Co’s ability to perform the Project Co Services or Osler’s ability to perform the Hospital Services; or
  - (iv) any matter with respect to which Osler has a right of consent pursuant to this Project Agreement.

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

- (a) IO and Osler shall be entitled to replace any of their respective representatives on the Facilities Management Committee by written notice to Project Co. Osler will use commercially reasonable efforts to deliver prior written notice of any such replacement to Project Co. Project Co may replace any of its representatives on the Facilities Management Committee with the prior written consent of Osler, not to be unreasonably withheld or delayed.

### **12.4 Procedures and Practices**

- (a) The members of the Facilities Management Committee may:
- (i) adopt such procedures and practices for the conduct of the activities of the Facilities Management Committee as they consider appropriate from time to time;



- (ii) invite to any meeting of the Facilities Management Committee such other persons as the members of the Facilities Management Committee may agree;
  - (iii) exclude from any meeting of the Facilities Management Committee such persons as the members of the Facilities Management Committee may agree; and
  - (iv) receive and review reports from any person or organization agreed to by the members of the Facilities Management Committee.
- (b) Once established, the Facilities Management Committee shall meet at least once each month during the Operational Term, unless otherwise agreed by the members of the Facilities Management Committee or the Parties.
- (c) Any member of the Facilities Management Committee may convene a special meeting of the Facilities Management Committee at any time. Special meetings of the Facilities Management Committee may be convened on not less than 5 Business Days' notice to all members of the Facilities Management Committee identifying the agenda items to be discussed at the special meeting, provided that, in an Emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- (d) Unless otherwise agreed by the members of the Facilities Management Committee, the Facilities Management Committee shall meet at the Facility or another location in Brampton, Ontario. Meetings of the Facilities Management Committee may be held by means of such telephonic, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting, provided that each member of the Facilities Management Committee must attend in person at least once each calendar quarter.
- (e) One representative of Osler, one representative of Project Co and, for the period from the establishment of the Facilities Management Committee until the Final Completion Date, the representative of IO (or a delegate thereof) shall constitute a quorum at any meeting of the Facilities Management Committee. A quorum of members may exercise all the powers of the Facilities Management Committee. The members shall not transact business at a meeting of the Facilities Management Committee unless a quorum is present.
- (f) Minutes of all meetings, recommendations and decisions of the Facilities Management Committee, including those made by telephone or other form of communication, shall be recorded and maintained by Osler. Osler shall circulate copies of such minutes within 5 Business Days of the holding of the meeting or the making of the recommendation or decision. Unless Project Co notifies Osler within 5 Business Days of receipt of the minutes that Project Co disagrees with the contents of the minutes, Project Co, Osler and IO shall be deemed to have approved such minutes. Osler shall maintain a complete set of all minutes of the meetings of the Facilities Management Committee and shall make such minutes available for inspection by Project Co during regular business hours.

### 13. QUALITY ASSURANCE

#### 13.1 Quality Plans and Systems

- (a) Project Co shall cause all of the Project Operations to be the subject of quality management systems, which shall include the following:
  - (i) a Design Quality Plan and a Construction Quality Plan, which may be incorporated into one document; and
  - (ii) a Service Quality Plan for each Project Co Service,  
(collectively, the “**Quality Plans**”).
- (b) All Quality Plans shall be consistent with the requirements of the Output Specifications, the Final Commissioning Program and Accreditation Canada (such reference being applicable only to the Service Quality Plans), or any equivalent standard which is generally recognized as having replaced it, but Project Co shall not require accreditation with such standard.
- (c) The Design Quality Plan is attached as part of Schedule 11 – Design Quality Plan and Construction Quality Plan.
- (d) The Construction Quality Plan shall, at a minimum, comply with the requirements of the outline of the Construction Quality Plan attached as part of Schedule 11 – Design Quality Plan and Construction Quality Plan. Project Co shall submit its proposed Construction Quality Plan to Osler within 60 days following Financial Close.
- (e) The Service Quality Plan for each Project Co Service shall, at a minimum, comply with the requirements of the outline of the Service Quality Plan attached as Schedule 12 – Service Quality Plan Outline. Project Co shall submit its proposed Service Quality Plan for each Project Co Service not less than 90 days prior to the Substantial Completion Date.
- (f) All Quality Plans shall be subject to review by Osler pursuant to Schedule 10 – Review Procedure, and Project Co shall not be entitled to implement or cause the implementation of any Quality Plan unless and until Project Co is entitled to proceed with such implementation pursuant to Schedule 10 – Review Procedure.
- (g) Project Co shall implement the Quality Plans, shall perform and cause to be performed the Project Operations in compliance with the Quality Plans, including by causing:
  - (i) the Construction Contractor to implement the Design Quality Plan and the Construction Quality Plan; and
  - (ii) the Service Provider to implement the Service Quality Plans.
- (h) Where any aspect of the Project Operations is performed by more than one Project Co Party, then this Section 13, in so far as relevant or appropriate to the activities to be performed by such Project Co Party, shall apply in respect of each of them and references in this Section 13 to such

Project Co Party, including the Construction Contractor or the Service Provider, shall be construed accordingly.

### **13.2 Changes to Plans**

- (a) Project Co shall submit to Osler, in accordance with Schedule 10 – Review Procedure, any changes to any of the Quality Plans required to comply with Section 13.1, and shall amend such Quality Plans as required pursuant to Schedule 10 – Review Procedure.

### **13.3 Quality Manuals and Procedures**

- (a) If any Quality Plan refers to, relies on or incorporates any quality manual or procedure, then such quality manual or procedure or the relevant parts of it shall be submitted to Osler at the time that the relevant Quality Plan, or part thereof or change thereto, is submitted in accordance with Schedule 10 – Review Procedure, and the contents of such quality manual or procedure shall be taken into account in the consideration of the relevant Quality Plan, or part thereof or change thereto, in accordance with Schedule 10 – Review Procedure.

### **13.4 Quality Monitoring**

- (a) Without limiting Osler's other rights pursuant to this Project Agreement, including Sections 29 and 34, Osler may, from time to time, directly or indirectly, perform periodic monitoring, spot checks and auditing of Project Co's quality management systems, including all relevant Quality Plans and any quality manuals and procedures. Project Co shall ensure that Osler also has the right to perform periodic monitoring, spot checks and auditing of both the Construction Contractor's and the Service Provider's quality management systems.
- (b) Project Co shall cooperate, and shall cause the Construction Contractor and the Service Provider to cooperate, with Osler in monitoring quality management systems and shall provide Osler with all information and documentation reasonably required in connection with Osler's rights under this Section 13.4.

## **14. LICENCE**

### **14.1 Licence to Site**

- (a) Effective from the date of Financial Close until the Termination Date and subject to this Section 14, Osler hereby grants or has caused to be granted, and shall continuously until the Termination Date grant or cause to be granted, to Project Co and all Project Co Parties such non-exclusive licence rights of use and access to, on and over the Site and Facility, except such rights set out as a Project Co responsibility to obtain under the Permits, Licences, Approvals and Agreements tables attached as Appendix 1 to Schedule 1 – Definitions and Interpretation, as are required by Project Co and such Project Co Parties sufficient (subject to Project Co performing its obligations described in the Permits, Licences, Approvals and Agreements tables attached as Appendix 1 to Schedule 1 – Definitions and Interpretation) to allow Project Co and such Project Co Parties to perform the Project Operations.

- (b) In consideration for the licence granted pursuant to Section 14.1(a), Project Co shall provide the Project Operations subject to and in accordance with this Project Agreement.
- (c) Without derogating from any of Osler's rights hereunder, in particular, its rights of access to the Site prior to the Substantial Completion Date for purposes of the Hospital Commissioning, Osler acknowledges that, in respect of the Project Operations, Project Co and the Project Co Parties require, and Osler shall provide access to the Site and the Facility without material interference by Osler or any Osler Party from the date of Financial Close until the Termination Date.
- (d) Except as may be provided in the Permits, Licences, Approvals and Agreements, none of the rights granted pursuant to this Section 14.1 shall extend beyond the boundaries of the Site, or to any lands other than the Site, other than easements and similar interests of Osler which benefit the Site, obtained after the date of this Project Agreement, to the extent the same are necessary for the Project Operations.
- (e) The licence provided in this Section 14.1 shall automatically terminate as of the Termination Date.
- (f) Project Co acknowledges that on and after the Phase 2 Commencement Date, the Phase 2 Site shall be development lands for another facility that would connect with the Facility in the manner contemplated in the Output Specifications and that such lands will be designated as a separate construction site and that road access to the Site by Project Co may be required to be shared with any Phase 2 Contractor and its personnel. Osler acknowledges that the Phase 2 Commencement Date shall not occur prior to the Scheduled Substantial Completion Date. In the event that Substantial Completion is not achieved on or before the Scheduled Substantial Completion Date and the Phase 2 Commencement Date also occurs prior to Substantial Completion, Project Co shall be required to negotiate and coordinate any access it requires to the Phase 2 Site with the applicable Phase 2 Contractor(s) pursuant to the Access Coordination Agreement.
- (g) Following the Phase 2 Commencement Date, Project Co in exercising its rights under Section 14.1(a) and 14.1(c) will do so in a manner which does not materially interfere with the access to the Phase 2 Site by other persons during the performance of the Project Operations. The Project Co Parties shall (i) work cooperatively with any Phase 2 Contractor identified by Osler to prevent material adverse interference with the respective access rights of either Project Co or any Phase 2 Contractor and to grant any Phase 2 Contractor the required access to the Phase 1 Shared Area and the Temporary Construction Impact Zone as set out in the Output Specifications; and (ii) Project Co shall enter into the Access Coordination Agreement with Osler and any Phase 2 Contractor at such times as may be identified by Osler from time to time.
- (h) Osler shall include an obligation in its third party agreements with any Phase 2 Contractor that during Project Co's performance of the Project Operations: (i) the Phase 2 Contractor shall not materially interfere with the access of Project Co to the Site, (including the Phase 1 Shared Area) and an agreement by the Phase 2 Contractor to not use an entrance off of the Lynch St. Extension for the purposes of construction on the Phase 2 Site), and (ii) that any Phase 2 Contractor shall enter into the Access Coordination Agreement with Osler and Project Co to grant Project Co reasonable access to the Phase 2 Site, including the Phase 2 Shared Area.

- (i) Without limiting the foregoing, Project Co shall, and Osler shall so direct any Phase 2 Contractor to, cooperate and coordinate the performance of the Project Operations with the activities on the Phase 2 Site, including the connection of the new facility with the Facility through the Phase 1 Shared Area as set out in the Output Specifications. Project Co shall also cause the Design Team to attend meetings with any Phase 2 Contractor as Osler may request on or before the fifth anniversary of the Substantial Completion Date. In addition, Project Co acknowledges that, notwithstanding Section 14.2(b), the interaction with such Phase 2 Contractor(s) as contemplated by the foregoing provisions under this Section 14.1, shall not, in any event, be cause for justifiable delay by Project Co in performance hereunder pursuant to Section 37.1(a)(vi) nor support any claim for additional compensation nor any other further cause of action against Osler.

#### **14.2 Non-exclusive Licence/Development of Site**

- (a) Project Co acknowledges and agrees that the rights granted to Project Co and the Project Co Parties hereunder shall be non-exclusive and that Osler and any person authorized by Osler may occupy and possess the Site and Facility, including for the purposes of the Hospital Services. In exercising such rights Project Co shall not, and shall require that the Project Co Parties shall not, compromise patient care and safety and, except as permitted under this Project Agreement, disrupt the performance of the Hospital Services.
- (b) Without limiting Section 14.2(a), Project Co acknowledges that Osler may from time to time use or develop (including by way of subdivision or expansion), or permit the use or development of, portions of the Site or the Facility. To the extent that such use or development materially adversely interferes with Project Co's licence rights hereunder or materially adversely interferes with Project Co's ability to perform the Project Operations, such use or development shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation. Notwithstanding the foregoing, Project Co acknowledges and agrees that the development activities of the Phase 2 Contractor(s) on the Phase 2 Site, the Phase 1 Shared Area and the Temporary Construction Impact Zone shall not entitle Project Co to a Variation.

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

- (a) For purposes related to the provision of Clinical Services or to patient safety Osler may limit or restrict Project Co's and each Project Co Party's access to designated portions of the Site or the Facility unless a person seeking access obtains the prior written consent of Osler, which consent may be subject to such reasonable conditions as are imposed by Osler.

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

- (a) Project Co acknowledges that Osler reserves and retains (i) all rights to designate the name for the Facility and any part of the Facility; (ii) all rights to signage in relation to the Site and the Facility; and (iii) all rights, Trade-Marks, naming or branding regarding the Facility or any part of the Facility. It is agreed, however, that, with the prior written consent of Osler, not to be unreasonably withheld or delayed and which may take into consideration any applicable governmental guidelines, including the guidelines set out in Schedule 18 – Communications Protocol, Project Co, the Project Co Parties and the Senior Lenders may, for the period prior to Substantial Completion, erect and maintain signage which may include such parties' logos and

trade names identifying their respective roles in connection with the development and construction of the Project.

#### **14.5 No Interest in Land**

- (a) Project Co agrees that, in accordance with the principles of the IPFP Framework, it acquires no estate, right, title or ownership interest in the Site or the Facility or any other interest in land pursuant to this Project Agreement or otherwise.

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

- (a) If Osler mortgages, charges or otherwise encumbers the Site, Osler shall notify Project Co and, at the request of Project Co, provide Project Co with an agreement, in form satisfactory to Project Co, acting reasonably, executed by the mortgagee of the Site permitting Project Co and the Lenders' Agent to access and use the Site under the licence granted pursuant to this Section 14 and the Lenders' Direct Agreement, respectively, free from interference from the mortgagee or any person claiming by or through the mortgagee. This Section 14.6 shall not apply in respect of any portion of the Site used or developed pursuant to Section 14.2(b) if neither the licence granted pursuant to this Section 14 nor the Project Operations pertain to such portion of the Site.

### **15. TITLE ENCUMBRANCES**

#### **15.1 Title Encumbrances**

- (a) Project Co shall perform all obligations under the Title Encumbrances for or on behalf of Osler, other than:
  - (i) obligations under any Title Encumbrance which Project Co is not legally capable of performing for or on behalf of Osler;
  - (ii) obligations under any Title Encumbrance added after the date of this Project Agreement unless such obligations are provided in the Output Specifications as obligations of Project Co or the Parties agree that such obligations are obligations of Project Co;
  - (iii) obligations under any Title Encumbrance which the City of Brampton may formally relieve or waive, with the consent of Osler, with respect to any Development Approval; and
  - (iv) obligations under the Title Encumbrances that Appendix 1 – Permits, Licences, Approvals and Agreements of Schedule 1 – Definitions and Interpretation provide for Osler performing.
- (b) All Project Operations performed by or on behalf of Project Co, whether before, during or after the completion of the Works, shall be performed in a manner which does not breach the Title Encumbrances or any of the Development Approvals.
- (c) Subject to Encumbrances that Project Co shall remove pursuant to Section 15.2, no act or omission by Project Co or any Project Co Party shall give rise to a right for any person to obtain

title to or any interest in the Site or any part of it, except in accordance with the terms of this Project Agreement.

## **15.2 No Site Encumbrances**

- (a) Project Co shall not create, incur, permit or suffer to exist any Encumbrance to be filed, issued or registered against the Site or any part thereof or any interest therein due to an act or omission of Project Co or any Project Co Party.
- (b) In the event that the Site or any part thereof or any interest therein becomes subject to any Encumbrance due to an act or omission of Project Co or any Project Co Party and has not been consented to in writing by Osler, Project Co shall immediately take all steps necessary to remove, vacate or discharge such Encumbrance. If such Encumbrance is not removed, vacated or discharged within 10 Business Days of the filing, issuance or registration of such Encumbrance then, without prejudice to any other rights or remedies it may have, Osler will be at liberty to take whatever steps it deems necessary and appropriate to remove, vacate or discharge the Encumbrance, including payment of any amount owing or claimed thereunder, and seek immediate recovery from Project Co of the amount of any such payment and any associated costs, including legal costs (on a full indemnity basis), all of which shall be payable on demand.

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

- (a) The Parties acknowledge that the foregoing provisions of Section 15.2 shall apply to claims for lien made upon or against the Site pursuant to the CLA and shall also apply to claims made against Osler or the holdback under the CLA as though such a claim were an Encumbrance against the Site as referred to therein.
- (b) Project Co shall withhold from each Subcontractor the holdbacks required under the CLA and shall deal with such holdbacks in accordance with the CLA.
- (c) Project Co shall, as a condition of final payment under any Subcontract for which lien rights or rights in respect of the holdback may be claimed under the CLA, require that a certificate of completion under Section 33(1) of the CLA for such Subcontract be issued and the relevant Subcontractor provide statutory declarations or other assurances confirming that all those engaged by the Subcontractor have been paid in accordance with Applicable Law.
- (d) Project Co shall follow the requirements of the CLA and Good Industry Practice for posting and advertising certificates of completion when issued.

## **16. SITE CONDITION**

### **16.1 Acceptance of Site Condition**

- (a) Subject to Sections 6.4, 16.2, and 16.3, Project Co acknowledges and agrees that it has inspected all matters relating to the Site, including the Background Information, prior to executing this Project Agreement and agrees to accept the Site and the Site Conditions on an “as is, where is” basis. Without limiting the generality of the foregoing, but subject to Sections 6.4, 16.2, and 16.3, Project Co shall not be entitled to make any claim of any nature whatsoever against Osler or

any Osler Party on any grounds relating to the Site, including the fact that incorrect or insufficient information on any matter relating to the Site was given to it by any person, whether or not Osler or an Osler Party, unless the relevant person has given Project Co an express written entitlement to rely on information relating to the Site provided by such person to Project Co.

- (b) Subject to Sections 6.4, 16.2, and 16.3, Project Co acknowledges and agrees that it has and shall be deemed to have:
- (i) performed all necessary Site due diligence and investigations and inspected and examined the Site and its surroundings;
  - (ii) satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the level and quantity of groundwater, the form and nature of the Site, the loadbearing and other relevant properties of the Site, the risk of injury or damage to property affecting the Site, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, work and materials necessary for the execution and delivery of the Works;
  - (iii) satisfied itself as to the presence of any Contamination on, in or under the Site, or migrating to or from the Site;
  - (iv) satisfied itself as to the adequacy of the rights of access to, from and through the Site and any accommodation it may require for the purposes of fulfilling its obligations under this Project Agreement;
  - (v) satisfied itself as to the possibility of interference by persons of any description whatsoever with access to or use of, or rights in respect of, the Site; and
  - (vi) satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties.
- (c) Project Co further acknowledges and agrees that, other than as referred to or contained in this Project Agreement, no representations or warranties have been made, nor documentation delivered to Project Co or any Project Co Party, which would indicate that Project Co would be unable to perform the Project Operations in a lawful manner.

## **16.2 Contamination**

- (a) Osler shall be responsible for Contamination on, in or under, or migrating to or from, the Site, except for any such Contamination:
- (i) that was described in, or was properly inferable, readily apparent or readily discoverable from the Environmental Reports and Designated Substance Reports or the Geotechnical Reports;
  - (ii) that could have been properly inferable, readily apparent or readily discoverable on the basis of reasonable, normal course and industry standard investigations, inspections or other due diligence; or



- (iii) that is caused by Project Co or any Project Co Party.
- (b) Upon the discovery of any Contamination, other than Designated Substance Contamination, for which Osler is responsible pursuant to Section 16.2(a), Project Co shall immediately inform the Osler Representative and shall comply with Applicable Law in respect thereof at Osler's cost pursuant to Section 16.2(d).
- (c) In the event that Osler wishes Project Co to perform actions which are in addition to any required pursuant to Section 16.2(b), then Osler shall issue an instruction to Project Co specifying what action Osler requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at Osler's cost pursuant to Section 16.2(d).
- (d) If Sections 16.2(b) and 16.2(c) require Project Co to perform any alteration, addition, demolition, extension or variation in the Project Operations as a result of Contamination, other than Designated Substance Contamination in respect of which Section 16.4 shall apply, for which Osler is responsible pursuant to Section 16.2(a) and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation:
  - (i) in the Works shall, subject to and in accordance with Section 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event; and
  - (ii) in the Project Co Services shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.

**16.3 Items of Geological, Historical or Archaeological Interest or Value**

- (a) As between the Parties, all fossils, artefacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which may be found on or at the Site are or shall be the sole and absolute property of Osler.
- (b) Upon the discovery of any item referred to in Section 16.3(a) during the course of the Works, Project Co shall:
  - (i) immediately inform the Osler Representative of such discovery;
  - (ii) take all steps not to disturb the item and, if necessary, cease any Works in so far as performing such Works would endanger the item or prevent or impede its excavation;
  - (iii) take all necessary steps to preserve and ensure the preservation of the item in the same position and condition in which it was found; and
  - (iv) comply, and ensure compliance by all Project Co Parties, with Applicable Law and all requirements of Governmental Authorities with respect to such discovery, including the *Funeral, Burial and Cremation Services Act, 2002* and the Heritage Guidelines and Protocols.

- (c) In the event that Osler wishes Project Co to perform actions which are in addition to any required pursuant to Section 16.3(b), then Osler shall issue an instruction to Project Co specifying what action Osler requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions.
- (d) If Sections 16.3(b) and 16.3(c) require Project Co to perform any alteration, addition, demolition, extension or variation in the Works as a result of such discovery and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation in the Works shall, subject to and in accordance with Section 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event.

#### **16.4 Designated Substance Contamination Remediation Work**

- (a) In the event Project Co discovers Designated Substance Contamination for which Project Co is not responsible pursuant to Section 16.2(a), Project Co shall immediately notify the Osler Representative and shall, in accordance with the requirements set forth in the Output Specifications, remediate any such Designated Substance Contamination (the “**Designated Substance Contamination Remediation Work**”).
- (b) Notwithstanding anything to the contrary set forth in this Project Agreement, the Designated Substance Contamination Remediation Work shall form part of the Works for all purposes of this Project Agreement.
- (c) Subject to Section 16.4(d) and Section 37(a)(xi), any delay in the performance of the Works as the result of the performance of any Designated Substance Contamination Remediation Work shall not constitute a Delay Event under Section 37 or a Compensation Event pursuant to Section 38.
- (d) Notwithstanding Section 16.4(c), in the event that the invoices and corresponding payments approved by Osler in respect of the Designated Substance Contamination Remediation Work in accordance with Section 18.12 exceed the Cash Allowance Amount, then such Designated Substance Contamination Remediation Work relating to the amount in excess of the Cash Allowance Amount shall constitute a Delay Event (only to the extent that such Designated Substance Contamination Work directly resulted in a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date) and a Compensation Event.

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

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

- (a) Subject to Section 17.2, Project Co shall be responsible for all Financial Obligations under or in respect of all Permits, Licences, Approvals and Agreements including to the City of Brampton, any Utility Company, any Governmental Authority or any other third party in respect of the Works, including:

- (i) any development charges relating to the Works, the Facility or the Site;
  - (ii) any engineering administration and inspection fees required in respect of works or services required to be performed;
  - (iii) any security deposits and letters of credit required under any Permits, Licences, Approvals and Agreements; and
  - (iv) any other amounts payable under any Project Co Permits, Licences, Approvals and Agreements.
- (b) The Parties agree that any refund, partial rebate or credit granted by the City of Brampton, any applicable Utility Company, any applicable Governmental Authority or any other third party relating to the Financial Obligations referred to in Section 17.1(a) shall be for the benefit of Osler to the extent such Financial Obligations were paid by Osler and shall be for the benefit of Project Co to the extent such Financial Obligations were paid by Project Co.

## **17.2 Osler Financial Obligations**

- (a) Osler shall be responsible for all Financial Obligations required under the Osler Permits, Licences, Approvals and Agreements that are expressly described in Appendix 1 – Permits, Licences, Approvals and Agreements to Schedule 1 – Definitions and Interpretation as being the responsibility of Osler.

## **18. DESIGN AND CONSTRUCTION OBLIGATIONS**

### **18.1 Overall Responsibility**

- (a) Project Co shall perform and complete the Works:
- (i) so as to satisfy the Output Specifications;
  - (ii) in accordance with the Project Co Proposal Extracts;
  - (iii) in accordance with the Design Data;
  - (iv) in accordance with the Works Schedule; and
  - (v) in accordance with the other terms and conditions of this Project Agreement.
- (b) Without prejudice to Section 18.1(a), but subject to the provisions of Section 26, Schedule 20 – Payment Mechanism and Schedule 24 – Expiry Transition Procedure, if, at any time during the Project Term, any of the Works carried out by or on behalf of Project Co do not fully satisfy the Output Specifications and/or any other term or condition of this Project Agreement (other than the Project Co Proposal Extracts), Project Co shall, at its own cost and expense, rectify the Works, the Facility and any part thereof so that:

- (i) the Works, the Facility and all parts thereof shall, at all times, comply with and satisfy in full the Output Specifications and the other terms and conditions of this Project Agreement (other than the Project Co Proposal Extracts); and
- (ii) the Works, the Facility and all parts thereof will, at all times, be able to meet the structural, mechanical, electrical and other performance standards set out in the Output Specifications.

## **18.2 Complete and Operational Facility**

- (a) Project Co shall design, engineer, construct and commission the Facility so as to provide Osler a complete and operational Facility in accordance with the Output Specifications and the Project Co Proposal Extracts, and that will allow Project Co to perform the Project Co Services, all in accordance with and subject to the terms of this Project Agreement.

## **18.3 Development of Design**

- (a) Project Co shall, at its own cost, develop and complete the design of the Facility and all Design Data in accordance with the requirements of this Project Agreement, including Schedule 10 – Review Procedure and this Section 18.3.
- (b) The further development of the design and the process by which it is progressed must fully comply with the requirements of this Project Agreement.
- (c) The Parties agree that Appendix A to Schedule 10 – Review Procedure is an initial list of Design Data and other items that will require design review, which Design Data and other items shall include design, procurement and construction documentation (to a scale required by the Osler Representative) for each of the following:
  - (i) staged 50% and 100% design development documentation, being design development drawings, reports, schedules and specifications progressed from the date of this Project Agreement with extensive user group input, showing all architectural, engineering and landscape design information sufficient to allow for the development of working drawings (the “**Design Development Submittals**”);
  - (ii) 50% working drawing documentation, being construction drawings, reports, schedules and specifications progressed from the Design Development Submittals, showing all architectural, engineering and landscape design information in accordance with the requirements of this Project Agreement;
  - (iii) 80% working drawing documentation, being construction drawings, reports, schedules and specifications progressed from the Design Development Submittals, showing all architectural, engineering and landscape design information in accordance with the requirements of this Project Agreement (collectively, with the documentation submitted pursuant to Section 18.3(c)(ii), the “**Construction Document Submittals**”);
  - (iv) Permit, Licence and Approval drawings (phased, if applicable); and

- (v) all other documentation required pursuant to Schedule 10 – Review Procedure.
- (d) Project Co shall submit to the Osler Representative for review in accordance with Schedule 10 – Review Procedure all Design Data and other items listed in Section 18.3(c).
- (e) The Design Data and other items listed in Section 18.3(c) must contain, at a minimum, the following additional information:
  - (i) identification of the stage of design or construction to which the documentation relates;
  - (ii) all design or construction drawings and specifications necessary to enable the Osler Representative to make an informed decision as to whether Project Co is permitted to proceed pursuant to Schedule 10 – Review Procedure;
  - (iii) for each stage of the design or construction documentation, a schedule identifying all changes to the relevant documentation that has occurred from the previous stage of design or construction documentation; and
  - (iv) where changes have been submitted, an indication of how the changes meet the requirements of this Project Agreement.
- (f) All design review meetings held by Project Co which Osler wishes to attend shall be held in Brampton, Ontario unless Osler otherwise agrees in writing.
- (g) If Project Co commences or permits the commencement of the next level of design or construction of any part or parts of the Facility prior to being entitled to proceed in accordance with Schedule 10 – Review Procedure and it is subsequently determined in accordance with Schedule 10 – Review Procedure or Schedule 27 – Dispute Resolution Procedure that the design or construction does not comply with this Project Agreement, then Project Co shall forthwith, at its own cost and risk, undo, remove from the Site, replace and restore, as applicable, any parts of the design or construction that do not comply with this Project Agreement.
- (h) Subject to Section 18.6, neither Osler nor any Osler Party will have any liability:
  - (i) if a document submitted by Project Co and reviewed by Osler or the Osler Representative results in non-compliance with this Project Agreement by Project Co or a breach by Project Co of Applicable Law; or
  - (ii) for any loss or claim arising due to some defect in any documents, drawings, specifications or certificates submitted by Project Co.
- (i) Project Co and Osler will cooperate with each other in the design review process. Notwithstanding such cooperation by Osler, such review shall not, except as provided in Section 18.6, constitute acceptance of the Works, and Project Co shall remain solely responsible for compliance in full with all requirements of this Project Agreement.

- (j) Project Co shall allow the Osler Representative, at any time, a reasonable opportunity to view any items of Design Data, which shall be made available to the Osler Representative as soon as practicable following receipt of a written request from the Osler Representative.
- (k) Project Co shall cause the Construction Contractor to establish and maintain a computerized design database by which Project Co can upload design documents as required by IO. Project Co and Osler shall have access to such computerized design database remotely by computer to view drawings comprised within the Design Data and to electronically store and print copies of such Design Data.

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

- (a) Within 10 Business Days of the date of this Project Agreement, Project Co and the Design Team shall attend a start-up meeting (the “**Start-Up Meeting**”) with Osler to set out the design development process in greater detail.
- (b) The agenda for the Start-Up Meeting shall include the following:
  - (i) Project Co’s plan to develop a successful long-term partnership with Osler for the purpose of supporting Osler in achieving its vision, mission and core values;
  - (ii) Project Co’s plan to ensure that the Works are completed in accordance with the requirements set forth in this Project Agreement;
  - (iii) Project Co’s process to ensure optimum design quality;
  - (iv) Project Co’s approach to a fully integrated interior design process that includes every element of interior finishes, furniture, fixtures, equipment, occupant signage and wayfinding;
  - (v) a proposed schedule of Works Submittals which is consistent with the Works Schedule and which provides for a progressive and orderly flow of Works Submittals from Project Co to the Osler Representative to allow sufficient time for review of each Works Submittal by the Osler Representative, taking into account both the resources available to the Osler Representative to conduct such review and whether delay in the review of the subject matter of the Works Submittal will have a material impact on Project Co’s ability to progress future anticipated Works Submittals and the Works in accordance with the Works Schedule;
  - (vi) Project Co’s approach to timing, construction, adjustment and user feedback on required mock-ups; and
  - (vii) a communication process that includes an electronic data room and the use of a computerized document tracking system that has the capacity to report, on request, the status of all design and construction documentation, and that takes into account the document security protocol described in Section 49.5(f).

## 18.5 Design Workshops

- (a) In order to obtain user input in the preparation of, and prior to submitting, the Design Development Submittals and the Construction Document Submittals, the Parties will hold user group design workshops (the “**Design Workshops**”) upon the following terms:
- (i) the Project Co Representative shall arrange the Design Workshops in consultation with the Osler Representative;
  - (ii) the Parties shall cooperate to develop a reasonable schedule for the Design Workshops respecting user availability issues inherent in an operating health care facility and the scheduling parameters set out in Section 18.5(a)(iii) and shall incorporate such schedule into the Works Schedule;
  - (iii)
    - (A) each Osler clinical user group shall require a minimum 2 rounds of meetings prior to the 50% Design Development Submittal; a minimum of 2 meetings between 50% and 100% Design Development Submittal, and a minimum of 1 meeting between 100% Design Development Submittal and 50% Construction Document Submittal;
    - (B) there shall be a minimum of ten (10) Business Days between Design Workshops involving the same Osler clinical user group unless otherwise agreed to by Osler;
    - (C) no more than nine (9) Osler clinical user groups shall meet with Project Co in any given week;
    - (D) there shall be no more than one (1) meeting involving the same Osler clinical user groups in the same week unless otherwise agreed to by Osler in its sole discretion; and
    - (E) the above criteria are for planning purposes only; actual user group availability shall be determined by Osler post Financial Close.
  - (iv) Project Co shall circulate to the Osler Representative an agenda for each of the Design Workshops no later than 10 Business Days prior to the relevant Design Workshop;
  - (v) the Design Workshops shall be held in person, except where otherwise agreed by the Parties, acting reasonably;
  - (vi) Project Co shall maintain minutes of the Design Workshops, including possible design solutions and changes in design, and, within 2 Business Days after each Design Workshop, Project Co shall provide to the Osler Representative a copy of the minutes, together with a copy of any notes, comments, sketches, drawings, tracings, lay-outs, plans or diagrams prepared at the Design Workshop;
  - (vii) Osler and Project Co agree that the subject matter of the Design Workshops shall not be regarded as Submittals to which Schedule 10 – Review Procedure applies, and that Osler shall not be bound by the input provided in connection with the Design Workshops;

- (viii) Project Co shall submit to Osler the Design Development Submittals or the Construction Document Submittals, as applicable, for review pursuant to Schedule 10 – Review Procedure; and
  - (ix) the Parties agree that, with respect to the Design Development Submittals and the Construction Document Submittals, the period for review shall be 15 Business Days rather than the 10 Business Days prescribed in Section 2.2 of Schedule 10 – Review Procedure.
- (b) Prior to the 50% Design Development Submittals, the Parties will hold Design Workshops with respect to the following matters and any other Design Workshops required by Project Co, acting reasonably:
- (i) departmental layouts;
  - (ii) cross-functional issues related to:
    - (A) vertical/horizontal circulation diagrams;
    - (B) elevator configuration;
    - (C) materials management strategy; and
    - (D) food services delivery;
  - (iii) exterior elevations;
  - (iv) room layouts;
  - (v) millwork/modular systems furniture;
  - (vi) Equipment;
  - (vii) information/communication technology;
  - (viii) exterior colour/material presentation;
  - (ix) interior colour/material presentation; and
  - (x) Plant layouts and functionality.
- (c) Prior to the 100% Design Development Submittals, the Parties will hold Design Workshops with respect to the following matters and any other Design Workshops required by Project Co, acting reasonably:
- (i) physical mock-ups for Osler user review as outlined in Schedule 10 to the Project Agreement.
  - (ii) room and millwork/modular casework interior elevations;



- (iii) door/hardware/security functionality;
  - (iv) Utilities and proposed Plant;
  - (v) In-Contract Equipment coordination;
  - (vi) interior and exterior materials/finishes; and
  - (vii) Plant layouts and functionality.
- (d) Prior to the 50% Construction Documents Submittals, the Parties will hold Design Workshops with respect to the following matters and any other Design Workshops required by Project Co, acting reasonably:
- (i) millwork details;
  - (ii) ceiling details; and
  - (iii) Equipment coordination details.
- (e) The purpose of the Design Workshops is to facilitate the incorporation of Osler input, involvement and feedback into the Design Data prior to submission of such Design Data in accordance with Schedule 10 – Review Procedure.

## **18.6 Clinical Functionality**

- (a) Osler confirms that, as at the date of this Project Agreement, it has reviewed the Site master plan, and blocking and stacking diagrams submitted by Project Co and that, subject to any qualifications or comments noted thereon, such Submittals satisfy the Output Specifications in respect of Clinical Functionality, so far as can reasonably be determined given the level of detail in the Submittals.
- (b) With each of the Design Development Submittals, Project Co shall submit to Osler, for its review pursuant to Schedule 10 – Review Procedure, a draft report (each a “**Clinical Functionality Report**”) to specifically identify, with reference to the Output Specifications, such matters of Clinical Functionality that Project Co wishes Osler to review and consider as part of the Design Development Submittals. Each Clinical Functionality Report shall demonstrate how the Output Specifications are satisfied in respect of Clinical Functionality.
- (c) With the Construction Document Submittals, Project Co shall submit to Osler, for its review pursuant to Schedule 10 – Review Procedure, a final Clinical Functionality Report, and Osler shall confirm that, subject to any qualifications or comments noted thereon, such Construction Document Submittals satisfy the Output Specifications in respect of Clinical Functionality, so far as can reasonably be determined given the level of detail in the Construction Document Submittals.

- (d) Each Clinical Functionality Report must be prepared in accordance with the technical submission requirements set out in MOHLTC's Capital Planning Manual and must address the way in which the Design Data meets the following requirements of Clinical Functionality:
- (i) MOHLTC's "OASIS" requirements of operational efficiency, accessibility, safety and security, infection prevention and control, and sustainability;
  - (ii) expansion/ flexibility;
  - (iii) internal adjacencies;
  - (iv) internal zoning and material/staff flow;
  - (v) hours of operation; and
  - (vi) Plant.

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

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

### **18.8 General Construction Obligations**

- (a) Project Co is responsible for all construction means, methods and techniques used to undertake the Works and must provide everything (including labour, plant, equipment and materials) necessary for the construction and commissioning of the Facility, and other performance of the Works.
- (b) Project Co shall in a timely and professional manner and in accordance with the requirements of this Project Agreement:
- (i) construct the Works diligently, expeditiously and in a thorough and workman-like manner;
  - (ii) ensure that no works other than the Works under this Project Agreement are constructed on the Site by Project Co or any person for whom Project Co is responsible at law;

- (iii) protect the Works from all of the elements, casualty and damage;
- (iv) in respect of plant, equipment and materials incorporated in the Works, use plant, equipment and materials that:
  - (A) are of a kind that are consistent with the Output Specifications;
  - (B) are new, of good quality and are used, handled, stored and installed in accordance with Applicable Law and Good Industry Practice with respect to health and safety so as not to be hazardous or dangerous; and
  - (C) where they differ from the Output Specifications, have been substituted with Osler's prior written consent in accordance with Section 18.9.
- (c) Without limiting Project Co's obligations pursuant to Section 9.5 or Project Co's indemnity pursuant to Section 53.1, Project Co shall, at all times throughout the progress of the Works, be responsible for maintaining and securing the Site to prevent access onto the Site and the Facility of any persons not entitled to be there as determined by Project Co acting reasonably, and the licence granted to Project Co pursuant to Section 14.1 shall include rights for Project Co to do so.
- (d) Project Co shall:
  - (i) participate in at least one At-Risk Youth Organization program and at least one Veteran Organization program or ensure that at least one of its Subcontractors participates in at least one of each such program (for greater certainty, between Project Co and its Subcontractors, there must be participation in at least one At-Risk Youth Organization program and at least one Veteran Organization program in connection with the Project);
  - (ii) incorporate the participants of such programs in performing the Works; and
  - (iii) provide monthly updates to the Works Committee describing Project Co's and/or Subcontractor's level of participation in such programs.
- (e) At Financial Close Project Co shall provide a new construction site office located on the Site for use by IO and or Osler, which shall remain in place until Final Completion or such other time as may be mutually agreed by IO and or Osler and Project Co. In addition, Project Co shall provide for, and maintain in operation, a basic videoconferencing setup in the new construction office on the Site. At a minimum, the setup shall include:
  - (i) a high definition resolution, 36-inch screen with split-screen capability,
  - (ii) a document camera capable of viewing large-format drawings, and
  - (iii) all other peripheral equipment (e.g. codecs, computer graphics and audio inputs operating simultaneously with the document camera, microphone(s), etc.) required for its operation. Project Co shall also maintain, at a minimum, a 1.5 Mbps dedicated multiprotocol label-switching network connection appropriate for videoconferencing. The site office shall

satisfy the following requirements, in each case, in form and substance satisfactory to IO and or Osler, acting reasonably:

- (A) the site office shall be approximately 3000mm x 6000mm and equipped with 3 desks, 3 chairs, 1-5 tier lateral filing cabinets, 2 wall mounted shelves minimum 300 mm deep and 1500 mm wide, 1 photocopier/facsimile, 2 computers sufficient to operate CAD, complete with internet access (high-speed) and include proper lighting, minimum 4 duplex power outlets, 2 telephone lines and a dedicated internet connection; and
- (B) the site office shall include air conditioning and heating units.

### **18.9 Substitutions**

- (a) Whenever equipment, components, materials, supplies, tools, and other items are specified or otherwise described in this Project Agreement by using the name or catalogue or model number of a particular manufacturer, fabricator, vendor or distributor, or any other material name or description, the naming or identification of the item is intended to establish the type and the minimum function and quality required, and equipment, components, materials, supplies, tools, and other items of other manufacturers, fabricators, vendors or distributors shall not be substituted without the prior written consent of Osler, in its sole discretion.

### **18.10 Change in Standards**

- (a) Where this Project Agreement requires Project Co to comply with a technical standard in respect of the design and construction of the Facility, and that standard has changed between the date of this Project Agreement and the date that such compliance is required, then Project Co shall give notice to Osler of such change. If, after such notice, Osler requires compliance with the changed standard (rather than the standard applicable as of the date of this Project Agreement), then, to the extent such change impacts the Works and would not have otherwise been taken into account by compliance with Good Industry Practice, such changed standard shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation. If Osler does not require compliance with the changed standard, then Project Co shall continue to comply with the standard applicable as of the date of this Project Agreement, without a Variation therefor. This Section 18.10 shall not apply where a change in a technical standard is also a Change in Law.

### **18.11 Works Submittals**

- (a) Any and all items, documents and anything else required or specified by this Project Agreement in respect of the Works to be submitted to, reviewed or otherwise processed by Osler prior to Substantial Completion, including any and all subsequent revisions, amendments and changes thereto, shall be subject to review by Osler pursuant to Schedule 10 – Review Procedure. The first document to be submitted by Project Co for review by Osler pursuant to Schedule 10 – Review Procedure shall be the draft document control and security protocol described in Section 49.5(f).

## 18.12 Cash Allowance Items

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

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

## **19. OSLER ACCESS AND MONITORING**

### **19.1 Osler Access During the Works Phase**

- (a) Subject to Section 19.1(b) but without limiting any of Osler's rights in respect of the Site, Project Co acknowledges and agrees that Osler and the Osler Parties shall, prior to Substantial

Completion, have unrestricted access to the Site, the Facility and any workshop where materials, plant or equipment are being manufactured, prepared or stored at all reasonable times during normal working hours.

- (b) In exercising their access rights under Section 19.1(a), Osler and the Osler Parties shall:
- (i) provide reasonable prior notice appropriate to the circumstances (other than for any offices or other facilities provided at the Site for Osler's own use);
  - (ii) comply with all relevant safety procedures and any reasonable directions with regard to site safety that may be issued by or on behalf of the Project Co Representative from time to time; and
  - (iii) if required by Project Co, be accompanied by a representative of Project Co or a Project Co Party.

## **19.2 Increased Monitoring**

- (a) If, at any stage, Osler is of the opinion, acting reasonably, that there are defects in the Works or that Project Co has failed to comply, in any material respect, with the requirements of this Project Agreement (including the Output Specifications and the Project Co Proposal Extracts), Osler may, without prejudice to any other right or remedy available to it, by notice to Project Co, increase the level of monitoring of Project Co from that set out in this Project Agreement to such level as Osler considers reasonable taking into account the nature of the relevant defect or failure until such time as Project Co shall have demonstrated, to Osler's satisfaction, that it is capable of performing and will perform, in all material respects, its obligations related to the Works under this Project Agreement. Project Co will compensate Osler for any reasonable costs incurred as a result of such increased monitoring.

## **19.3 Right to Open Up**

- (a) Osler shall have the right, at any time prior to the Final Completion Date to request Project Co to open up and inspect (or allow Osler to inspect) any part or parts of the Works, or to require testing of any part or parts of the Works, where Osler reasonably believes that such part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data) relevant to such part or parts of the Works, and Project Co shall comply with such request. When Osler makes such a request, Osler shall include reasonably detailed reasons with such request.
- (b) If the inspection shows that the relevant part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data) relevant to such part or parts of the Works, Project Co shall rectify all such defects and non-compliance diligently and at no cost to Osler and Project Co shall not be entitled to any additional compensation or extension of time in relation thereto.

- (c) If the inspection shows that the relevant part or parts of the Works is or are not defective and that Project Co has complied with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data) relevant to such part or parts of the Works, the exercise by Osler of its rights pursuant to this Section 19.3 shall, subject to and in accordance with Section 37, be treated as a Delay Event and, subject to and in accordance with Section 38, be treated as a Compensation Event.

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

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

### **20. WORKS SCHEDULE AND WORKS REPORT**

#### **20.1 Completion of Works**

- (a) Project Co shall complete the Works in accordance with this Project Agreement and achieve:
  - (i) Substantial Completion by the Scheduled Substantial Completion Date; and
  - (ii) Final Completion by the Scheduled Final Completion Date.

#### **20.2 The Works Schedule**

- (a) Within 45 days after the date of Financial Close, Project Co shall prepare and submit to Osler and the Independent Certifier a detailed, computerized draft schedule using Primavera 5.0 or other software compatible with Primavera 5.0 that supports the completion of the Works in accordance with Section 20.1.
- (b) Osler shall provide Project Co with comments on the draft schedule in accordance with Schedule 10 – Review Procedure, provided that the period for review of such draft schedule shall be 20 Business Days rather than the 10 Business Days prescribed in Section 2.2 of Schedule 10 – Review Procedure. Project Co shall revise the draft schedule to the extent required by Schedule 10 – Review Procedure within 30 days of receipt of any comments from Osler.
- (c) When agreed by the Parties, the draft schedule shall become the Works Schedule.
- (d) The Works Schedule shall be prepared in accordance with Good Industry Practice for a large complex project and shall be in sufficient detail so as to enable the Osler Representative and, if applicable, the Independent Certifier, to monitor the progress of the Works, including all commissioning activities, and the likely future progress of the Works. Given the size and complexity of the Project, the Works Schedule shall include no fewer than 1,000 activities.
- (e) Without limiting the generality of Section 20.2(d), the Works Schedule shall, at a minimum, include:
  - (i) major milestone events;



- (ii) the dates that key decisions must be made by Osler to support the progress of the Works;
- (iii) a detailed and editable procurement, delivery, installation, training and commissioning schedule for all Not-In-Contract Equipment and In-Contract Equipment;
- (iv) all design related activities, including the proposed date for each of the Design Workshops;
- (v) the proposed date for each Works Submittal;
- (vi) all construction activities, including subcontract work and Cash Allowance work, both on and off the Site;
- (vii) all procurement activities undertaken by the Construction Contractor with respect to materials and equipment, including timelines for Shop Drawings, manufacturing periods and dates of delivery to the Site;
- (viii) all Project Co Commissioning and Hospital Commissioning activities;
- (ix) a detailed plan for the Transition;
- (x) the manpower requirements for each activity, including subcontract work;
- (xi) a manpower histogram, both overall and by trade;
- (xii) a cumulative “S”-curve showing planned percent completion for each month from the commencement of the Works until the Scheduled Final Completion Date; and
- (xiii) projected Construction Contract cash flows.

**20.3 Failure to Maintain Schedule**

- (a) Without limiting any other provision of this Project Agreement but subject to Section 37, if, at any time:
  - (i) the actual progress of the Works has significantly fallen behind the Works Schedule; or
  - (ii) Osler is of the opinion that:
    - (A) the actual progress of the Works has significantly fallen behind the Works Schedule; or
    - (B) Project Co will not achieve Substantial Completion by the Longstop Date,

Project Co shall be required:

- (iii) within 5 Business Days of receipt of notice from Osler, to produce and deliver to each of the Osler Representative and the Independent Certifier:

- (A) a report identifying the reasons for the delay; and
- (B) a plan showing the steps that are to be taken by Project Co to eliminate or reduce the delay to:
  - (I) achieve Substantial Completion by the Scheduled Substantial Completion Date; or
  - (II) if Substantial Completion will not be achieved by the Scheduled Substantial Completion Date, achieve Substantial Completion by the Longstop Date; and
- (iv) to bring the progress of the Works back on schedule in accordance with the plan delivered under Section 20.3(a)(iii)(B) and approved by the Osler Representative.
- (b) Project Co shall notify the Osler Representative if, at any time, the actual progress of the Works is significantly ahead of the Works Schedule.

#### 20.4 Notification of Early Substantial Completion

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

All costs associated with any such modifications to this Project Agreement shall be borne by Project Co.

#### 20.5 Works Report

- (a) Project Co shall continuously monitor the progress of the Works in relation to the Works Schedule and, within 15 Business Days following the end of each calendar month from Financial Close until the Final Completion Date, Project Co shall provide to the Osler Representative and the Independent Certifier a works report (each, a "**Works Report**"), which will include:
  - (i) an executive summary describing the general status of the Works and progress made over the relevant month;

- (ii) an updated Works Schedule, in both summary and detailed formats;
- (iii) a narrative description of any Disputes related to the Works, including any action that has taken place over the relevant month to resolve such Disputes;
- (iv) in accordance with Section 22.2, a LEED progress report; and
- (v) an update on those matters set out in Schedule 34 – Works Report Requirements;

all in form and substance satisfactory to Osler, acting reasonably. For greater certainty, for all updates and revisions to the Works Schedule, Project Co must provide a revised critical path reflecting the updated/revised Works Schedule.

- (b) Project Co shall use and interact with, and ensure that the Construction Contractor uses and interacts with the On-line (web-based) Project Management (“OCPM”) software system specified by IO. It is contemplated that the OCPM software system will automate certain aspects of the processes identified in Schedule 10 – Review Procedure, Schedule 11 – Design Quality Plan and Construction Quality Plan, Schedule 12 – Service Quality Plan Outline, Schedule 22 – Variation Procedure, and Schedule 34 – Works Report Requirements and other processes as determined by IO in its sole discretion.

## **21. EQUIPMENT**

### **21.1 Equipment Steering Committee**

- (a) The Parties shall, within 30 days following Financial Close, establish a committee (the “**Equipment Steering Committee**”) consisting of:
  - (i) 1 representative appointed by IO from time to time;
  - (ii) 4 representatives of Osler; and
  - (iii) 2 representatives of Project Co, one of whom shall be the Project Co Representative, appointed by Project Co from time to time.
- (b) Members of the Equipment Steering Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and provide briefings to the Equipment Steering Committee.
- (c) The Equipment Steering Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Not-In-Contract Equipment, including the interaction between Not-In-Contract Equipment commissioning and Plant commissioning.
- (d) The primary role of the Equipment Steering Committee shall be to oversee and coordinate the procurement and installation of all Not-In-Contract Equipment in a timely and efficient manner and in accordance with the Works Schedule and Equipment Procurement Sub-Plan. Project Co

and the Equipment Steering Committee will work co-operatively with any equipment consultant retained by Osler.

- (e) 3 representatives of Osler, one of whom shall be the Director of Planning and Programming, one representative of Project Co and the representative of IO (or a delegate thereof) shall constitute a quorum at any meeting of the Equipment Steering Committee. A quorum of members may exercise all the powers of the Equipment Steering Committee. The members shall not transact business at a meeting of the Equipment Steering Committee unless a quorum is present.
- (f) The members of the Equipment Steering Committee may adopt such other procedures and practices for the conduct of the activities of the Equipment Steering Committee as they consider appropriate from time to time.

### **21.2 Osler Equipment Responsibilities**

- (a) Osler shall be responsible for determining the method of procurement, quantity, make, model, vendor and any terms and conditions of financing for all Not-In-Contract Equipment based upon tenders, quotations or proposals obtained by Project Co.
- (b) Osler shall be responsible for any decontamination of Existing Equipment, as required under Applicable Law or at Osler's sole discretion, prior to the decommissioning of such Existing Equipment (as designated in Section C of Part 5 of Schedule 15 – Output Specifications) by Project Co.
- (c) Osler shall enter into all purchase orders and other contracts with respect to the Not-In-Contract Equipment, and shall approve, acting reasonably, the selection of, and the entering into of all purchase orders and other contracts with respect to, the In-Contract Equipment.
- (d) For greater certainty:
  - (i) Osler, and not Project Co, shall be liable as “purchaser” to the vendor under every purchase order, contract and manufacturer's installation invoice related to the Not-In-Contract Equipment, and shall make all payments related thereto in accordance with the relevant invoice terms; and
  - (ii) Project Co, and not Osler, shall be liable as “purchaser” to the vendor under every purchase order, contract and manufacturer's installation invoice related to the In-Contract Equipment, and shall make all payments related thereto in accordance with the relevant invoice terms.

### **21.3 Osler Procured Equipment**

- (a) Osler shall select all Osler Procured Equipment;
- (b) Osler shall directly procure the Osler Procured Equipment and shall be liable as “purchaser” to the vendor and under every purchase order and other related contract including manufacturer's installation invoice related to the Osler Procured Equipment; and

- (c) Osler, not Project Co, shall make all payments in respect of the Osler Procured Equipment in accordance with this Project Agreement and the relevant invoice terms.

#### **21.4 Project Co Equipment Responsibilities**

- (a) Project Co shall be responsible for (including, for clarity, in response to any alternatives to any Osler Procured Equipment identified and/or selected by the Osler Representative from time to time):
  - (i) completing the design of the Facility to accommodate all Equipment and Existing Equipment;
  - (ii) the production of floor layouts showing all Equipment and Existing Equipment and the production of all Design Data associated with the layouts and servicing of all Equipment and Existing Equipment;
  - (iii) revising, coordinating and finalizing the plan to procure, transfer, install and commission, as applicable, all Equipment and Existing Equipment based on the development of Project Co's Design Data and the latest information available from the Osler Representative, including, but not limited to, updating the lists of Not-In-Contract Equipment in Part 5 of Schedule 15 – Output Specifications;
  - (iv) all costs and expenses associated with the commissioning of Equipment save and except for the costs and expenses associated with the commissioning of certain In-Contract Equipment and Not-In-Contract Equipment designated in Part 5 of Schedule 15 – Output Specifications as being the responsibility of Osler;
  - (v) procuring all new Equipment in accordance with Section 21.5;
  - (vi) conducting a physical inventory of all Existing Equipment and physically tagging all inventoried items;
  - (vii) reviewing all Facility floor layouts to determine where inventoried Existing Equipment can be suitably used in the Facility, subject to Osler's approval, and reviewing same with Osler and the Equipment Steering Committee;
  - (viii) subject to Section 21.2(b), decommissioning (where applicable), deinstalling, disconnecting and transferring all Existing Equipment as designated in Section C of Part 5 of Schedule 15 – Output Specifications;
  - (ix) providing all structural, mechanical, electrical and information and communications technology building system services to produce a complete working system for all Equipment and Existing Equipment, as applicable;
  - (x) expediting, delivering, unpacking, offloading, handling and storing all Equipment;

- (xi) coordinating, scheduling and completing the installation or reinstallation, as applicable, of all Equipment and Existing Equipment in accordance with manufacturer's instructions and Schedule 15 – Output Specifications; and
  - (xii) coordinating, scheduling and completing the commissioning of all Equipment and Existing Equipment in accordance with the Final Commissioning Program.
- (b) For the purpose of achieving Substantial Completion, all Equipment and Existing Equipment, must be successfully commissioned by Project Co in accordance with the Final Commissioning Program. Provided that, in respect of any item of Equipment, such requirements shall be waived by Osler (or, in the case of Osler Procured Equipment, may be waived by Osler in its sole discretion) if, despite having used commercially reasonable efforts to do so, Project Co is unable to complete the procurement, installation or commissioning of such item of Equipment or Existing Equipment referred to in this Section 21.4(b) due to a delay in the performance of any of its obligations by an equipment vendor or manufacturer.
- (c) If the commissioning of any Equipment or Existing Equipment or any part thereof has been waived by Osler pursuant to Section 21.4(b), until such time as Project Co has completed the procurement, installation and commissioning of all Equipment and Existing Equipment, as required, in accordance with this Section 21, Osler may withhold from any payment or payments due to Project Co a holdback amount equal to the greater of the Equipment Procurement Fee and \$[REDACTED].

## **21.5 Project Co Procurement Responsibilities**

- (a) Project Co shall act as purchasing and procurement manager for Osler and shall:
- (i) in consultation with the Equipment Steering Committee, finalize the lists of Not-In-Contract Equipment in Section 5 of Part 5 of Schedule 15 – Output Specifications based on the development of Project Co's Design Data and the latest information available from the Osler Representative and update the budget for Not-In-Contract Equipment for approval by the Equipment Steering Committee;
  - (ii) in consultation with the Equipment Steering Committee, review the building system requirements for the Equipment and the Existing Equipment, as applicable, and lay out the Equipment and the Existing Equipment, as applicable, onto the design drawings for reconciliation with the services and space designed prior to purchasing or moving any Equipment or Existing Equipment;
  - (iii) in respect of Not-In-Contract Equipment, in consultation with the Equipment Steering Committee, establish procurement processes that are fair, open and competitive, all in accordance with any applicable Osler policies, Osler buying agreements, and good purchasing and procurement practices;
  - (iv) in respect of Not-In-Contract Equipment, comply with such procurement processes;

- (v) in consultation with the Equipment Steering Committee, prepare tenders, quotations or requests for proposal (the “**Equipment Procurement Documentation**”), which shall, subject to Section 21.2(a), be in form and substance satisfactory to Osler and Project Co;
  - (vi) manage the procurement of all Equipment including:
    - (A) providing advice to the Equipment Steering Committee in respect of the evaluation of tenders, quotations or proposals from Not-In-Contract Equipment vendors;
    - (B) assisting the Equipment Steering Committee in the review of the tenders, quotations or proposals from Not-In-Contract Equipment vendors by clearly delineating the costs and performance of the Not-In-Contract Equipment, the training methods and values, the testing and calibration protocols, the acceptable end results and the party responsible for such testing, be it the vendor, a third party or individuals engaged by Project Co;
    - (C) assisting the Equipment Steering Committee with the selection of tenders, quotations or proposals from Not-In-Contract Equipment vendors;
    - (D) the entering into by Project Co of all purchase orders and other contracts with respect to the In-Contract Equipment, as approved by Osler, such approval not to be unreasonably withheld;
    - (E) the entry by Osler of all purchase orders and other contracts with respect to the Not-In-Contract Equipment; and
    - (F) in respect of Not-In-Contract Equipment, providing such documentation as Osler requires, acting reasonably, to discharge its obligations under this Section 21;
  - (vii) in accordance with the Equipment Procurement Documentation, act as a single point of contact for all Equipment vendors;
  - (viii) test and calibrate any Equipment not tested and calibrated by vendors and coordinate the acceptance testing of all Equipment as designated in Section 5 of Part 5 of Schedule 15 – Output Specifications; and
  - (ix) for a one-year period following Substantial Completion, coordinate and manage any warranty issues with the Equipment vendors.
- (b) Based on the tenders, quotations and proposals received from Not-In-Contract Equipment vendors, Project Co shall make recommendations to the Equipment Steering Committee for the procurement of each item of Not-In-Contract Equipment. Each such recommendation shall include the following information:
- (i) item description, item number, and quantities;
  - (ii) the manufacturer, model number, vendor, specifications and options for the item;

- (iii) an analysis and recommendation as to which make, model number and vendor of the item provides the overall best value for Osler, and any other benefits of the recommendation;
  - (iv) an analysis of the effect of the items on the overall design of the Facility and the relevant areas within the Facility;
  - (v) details of the warranties, vendor installation, service agreements, training, supplies, spare parts and start-up consumables included with the items by the relevant manufacturer or vendor;
  - (vi) details of training for all applicable Osler staff;
  - (vii) Not-In-Contract Equipment acceptance testing procedures (including, without limitation, the results and guidelines for acceptance) proposed by the relevant Not-In-Contract Equipment vendor;
  - (viii) the dates and times when the items shall be delivered to the Site;
  - (ix) all costs, with a breakdown of applicable HST and net of all direct or indirect discounts, rebates, refunds, charge-backs, credits, price adjustments or any other allowances obtained across all categories of Not-In-Contract Equipment that effectively reduce the net selling price of such Not-In-Contract Equipment;
  - (x) the total amounts and timing of cash flows required to implement the recommendation and the full details of the calculation of such amounts;
  - (xi) whether the procurement is a purchase, a lease, part of a managed equipment program, based on usage pricing or any other arrangement, and the terms and timing of payments thereof;
  - (xii) any Taxes applicable to the items;
  - (xiii) if so requested by the Osler Representative, a copy of each quote or proposal and all other relevant information in respect of the items and such other documentation as Osler may reasonably require, all of which shall be provided on a fully transparent and open basis to the Osler Representative; and
  - (xiv) if no tenders, quotations and proposals are available or have been received by Project Co, an alternate recommended course of action for procurement by Project Co, including possible substitutes for such items.
- (c) In response to any recommendation made by Project Co in accordance with Section 21.5(b), Osler may do any of the following with respect of some or all of the items:
- (i) instruct Project Co to proceed with the procurement;
  - (ii) withdraw the requirement for Project Co to proceed with the procurement;



- (iii) increase or decrease the quantities of any item, require the procurement of other items in substitution for such items or otherwise change the items to be procured or the terms on which such items are to be procured; or
- (iv) reject any Not-In-Contract Equipment vendor or item.
- (d) Project Co shall provide to the Osler Representative, as soon as reasonably practicable following a request therefor, such additional information as Osler may require in respect of any recommendation made by Project Co in accordance with Section 21.5(b).

## **21.6 Minimizing Disruptions**

- (a) Project Co shall perform all of its obligations under this Section 21 so as to minimize, to the greatest extent reasonably possible, any disruption of the Project Operations or the performance of the Hospital Services. Project Co acknowledges and agrees that such activities may require work outside of normal working hours in order to accommodate the efficient operation of the Facility.

## **21.7 Equipment Training**

- (a) For and in respect of each item of Not-In-Contract Equipment procured by Project Co and operated by Osler, Project Co shall, in accordance with Schedule 14 – Outline Commissioning Program, provide or arrange for adequate, appropriate and timely training in the item’s proper operation and maintenance for all applicable Osler staff.
- (b) Osler shall make its staff available for training purposes in accordance with the Works Schedule and the Final Commissioning Program, as applicable.

## **21.8 Scheduling of Equipment Procurement and Installation**

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

**21.9 Maintenance of Equipment**

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

**22. LEADERSHIP IN ENERGY & ENVIRONMENTAL DESIGN**

**22.1 LEED Design and Construction Obligations**

- (a) Project Co shall perform the Works so as to achieve the prerequisites and credits required to achieve the LEED-NC Silver Rating and, in so doing, Project Co shall at a minimum achieve the LEED-NC credits identified as mandatory in Section 3.1.5.3 of Part 3 of Schedule 15 – Output Specifications.

**22.2 LEED Progress Reports**

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

**22.3 LEED Certification**

- (a) Project Co shall cause the Project to be registered with CaGBC on behalf of Osler. Project Co shall verify that the Project is registered with CaGBC within 60 days following Financial Close and confirm to Osler that Project Co is satisfied that the registration is valid, and is effective as of the date that it was made.
- (b) If there is a change in the requirements for achievement of LEED-NC Silver Rating under the LEED-NC Rating System, and Project Co is required by the CaGBC to comply with such change, then Project Co shall notify Osler of such change and such change shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (c) Project Co shall apply to the CaGBC to obtain LEED-NC Silver Rating for the Facility as soon as possible.
- (d) In the event that:
  - (i) Project Co fails to obtain the LEED-NC credits identified as mandatory in Section 3.1.5.3 of Part 3 of Schedule 15 – Output Specifications; or
  - (ii) LEED-NC Silver Rating is not obtained within 24 months after the Substantial Completion Date;

other than as a direct result of any act or omission of Osler or any Osler Party, Project Co shall pay to Osler liquidated damages in the amount of \$[REDACTED]. The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that Osler will suffer as a result of the happening of either of the specified events and would be difficult or impossible to quantify upon the

happening of either of the specified events. Such payment shall constitute full and final settlement of any and all damages that may be claimed by Osler as a result of a failure by Project Co to obtain the minimum number of points required pursuant to Section 22.3(d)(i) or to achieve LEED-NC Silver Rating and, for greater certainty, a failure by Project Co to obtain any of the mandatory prerequisites or credits set out in Section 22.1(a) or to achieve LEED-NC Silver Rating shall not result in a Project Co Event of Default. The Parties agree that such liquidated damages shall be payable whether or not Osler incurs or mitigates its damages, and that Osler shall not have any obligation to mitigate any such damages.

#### **22.4 Greenhouse Gas Credits**

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

#### **22.5 Energy Matters**

- (a) Each of Project Co and Osler shall comply with the provisions of Schedule 36 – Energy Matters.

### **23. INDEPENDENT CERTIFIER**

#### **23.1 Appointment**

- (a) On or prior to Financial Close, the Parties shall appoint an independent and suitably qualified and experienced consultant to act as the Independent Certifier for the purposes of this Project Agreement and shall enter into an agreement with the Independent Certifier substantially in the form of Schedule 6 – Independent Certifier Agreement. If the Parties are unable to agree upon the Independent Certifier within such period of time, then the determination of the Independent Certifier shall be made in the same manner as the identification of a replacement Independent Certifier under Section 23.7(b).
- (b) Neither Party shall, without the prior written consent of the other Party, enter into any agreement with the Independent Certifier in connection with the Project other than the Independent Certifier Agreement, and Project Co shall ensure that no Project Co Party enters into any separate agreement with the Independent Certifier in connection with the Project.

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

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

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

- (a) Neither Osler nor Project Co shall without the other's prior written approval (not to be unreasonably withheld or delayed):
  - (i) waive, settle, compromise or otherwise prejudice any rights or claims which the other may from time to time have against the Independent Certifier; or

- (ii) vary the terms of the Independent Certifier Agreement or the service performed or to be performed by the Independent Certifier.
- (b) The Parties shall perform their respective obligations arising under or in connection with the Independent Certifier Agreement.

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

- (a) The Parties acknowledge that the Independent Certifier shall provide certain services and reports to Project Co, the Lenders and the Project Co Parties in addition to performing the functions of the Independent Certifier under this Project Agreement. The Parties may agree to terminate the Independent Certifier Agreement upon 30 days' notice to the Independent Certifier. If such notice is given, then, pursuant to Section 23.7, a new Independent Certifier will be appointed. The Parties agree that, notwithstanding the 30 days' notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed.

#### **23.5 Cooperation**

- (a) The Parties agree to cooperate with each other generally in relation to all matters within the scope of or in connection with the Independent Certifier Agreement. All instructions and representations issued or made by either of the Parties to the Independent Certifier shall be simultaneously copied to the other and both Parties shall be entitled to attend all inspections performed by or meetings involving the Independent Certifier.

#### **23.6 Payment of Independent Certifier**

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

#### **23.7 Replacement**

- (a) In the event of the Independent Certifier's engagement being terminated otherwise than for full performance, the Parties shall liaise and cooperate with each other in order to appoint a replacement consultant to act as the Independent Certifier as soon as reasonably practicable. The identity of any such replacement shall be as agreed by the Parties and the terms of his/her appointment shall, unless otherwise agreed, be as set out in the Independent Certifier Agreement.
- (b) In the event the Parties fail to agree upon the identity of a replacement Independent Certifier within 5 Business Days of the original Independent Certifier's appointment being terminated, then a replacement Independent Certifier shall be chosen as follows:
  - (i) each Party shall, within 5 Business Days thereafter, select 3 suitably qualified and experienced replacements that would be acceptable to that Party, and shall provide notice thereof to the other Party, with a ranking of preference for replacements;
  - (ii) if the Parties have both selected a common replacement, then such common replacement shall be the Independent Certifier, and if there is more than one common replacement,

then the common replacement with the highest overall ranking (calculated by adding together the ordinal rank assigned by both Parties) shall be selected, and in the event of a tie, the lowest-cost of such tied replacements shall be selected; and

- (iii) if the Parties have not selected a common replacement, then the determination of the new replacement may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

## **24. COMMISSIONING AND COMPLETION**

### **24.1 Commissioning Activities**

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

### **24.2 Final Commissioning Program**

- (a) Project Co shall prepare a draft of the Final Commissioning Program in respect to the Project Co Commissioning and the Hospital Commissioning and shall provide a copy thereof to the Independent Certifier, the Osler Commissioning Agent and the Osler Representative not less than 365 days prior to the Scheduled Substantial Completion Date.
- (b) The Final Commissioning Program shall:
  - (i) describe the requirements, and the timing and sequence of such requirements, necessary in order that the Project Co Commissioning shall be completed to achieve:
    - (A) Substantial Completion on or before the Scheduled Substantial Completion Date; and
    - (B) Final Completion on or before the Scheduled Final Completion Date;
  - (ii) describe the requirements, and the timing and sequence of such requirements, of the Hospital Commissioning activities;
  - (iii) comply with all requirements of the Outline Commissioning Program and include all details, including for all appendices, required to be completed in the Outline Commissioning Program;
  - (iv) be consistent with the Outline Commissioning Program and impose no greater or more onerous obligations on Osler than those set out in the Outline Commissioning Program, unless otherwise agreed to by Osler;
  - (v) include the names of the individuals or companies proposed to perform all Project Co Commissioning;

- (vi) include a schedule of each of the Project Co Commissioning Tests and the Hospital Commissioning Tests proposed to be performed and the timeframe for completion, with start and end dates;
  - (vii) include a schedule of meetings to be held between the Parties to coordinate the performance of the Project Co Commissioning and the Hospital Commissioning;
  - (viii) provide for the re-verification of systems following the Hospital Commissioning; and
  - (ix) list the approvals required from any Governmental Authority, manufacturer or other person that are necessary to meet the requirements of the Final Commissioning Program or Applicable Law.
- (c) Osler shall provide Project Co with comments on the draft Final Commissioning Program in accordance with Schedule 10 – Review Procedure, and Project Co shall revise the draft Final Commissioning Program to the extent required by Schedule 10 – Review Procedure within 30 days of receipt of any comments from Osler.
- (d) When agreed by the Parties, the Final Commissioning Program shall replace the Outline Commissioning Program.

### 24.3 Commencement of Project Co Commissioning

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

### 24.4 Substantial Completion Certificate

- (a) Project Co shall give the Independent Certifier and the Osler Representative at least 10 Business Days’ notice prior to the date upon which Project Co anticipates all requirements for Substantial Completion shall be satisfied.
- (b) Project Co shall give the Independent Certifier and the Osler Representative notice (the “**Substantial Completion Notice**”) upon the satisfaction of all requirements for Substantial Completion, which Substantial Completion Notice shall describe, in reasonable detail, the

satisfaction of the requirements for Substantial Completion, together with Project Co's opinion as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied.

- (c) Osler shall, within 5 Business Days after receipt of the Substantial Completion Notice, provide the Independent Certifier and Project Co with Osler's opinion as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Substantial Completion Certificate should not be issued.
- (d) Within 5 Business Days after Project Co's receipt of Osler's opinion pursuant to Section 24.4(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Substantial Completion Certificate have been satisfied, having regard for the opinions of both Project Co and Osler, to determine whether any Minor Deficiencies exist, and to issue to Osler and to Project Co either:
  - (i) the Substantial Completion Certificate, confirming the date of issue as the Substantial Completion Date and setting out the Minor Deficiencies List (if applicable) in accordance with Section 24.8; or
  - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Substantial Completion Certificate.
- (e) Where the Independent Certifier has issued a report in accordance with Section 24.4(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, Project Co shall, within 5 Business Days after receipt of such report, provide the Independent Certifier and the Osler Representative with:
  - (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
  - (ii) the schedule for completion of all such rectification actions; and
  - (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions,

and Project Co shall perform all such additional rectification actions and Project Co Commissioning in a timely manner. Upon completion thereof, Project Co may give a further Substantial Completion Notice and Sections 24.4(c) to (e), inclusive, shall be repeated until the Substantial Completion Certificate has been issued.

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

## 24.5 Operation and Maintenance Manuals

- (a) Project Co shall prepare and deliver to Osler all necessary operation and maintenance manuals for the Facility 30 days prior to the Substantial Completion Date. From and after such date and throughout the remainder of the Project Term, Project Co shall prepare and keep current, and at all reasonable times make available to Osler, such operation and maintenance manuals and all other such manuals prepared from time to time for the Facility.

## 24.6 Hospital Commissioning

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

## 24.7 Countdown Notice

- (a) Project Co shall deliver a notice (the “**Countdown Notice**”) to Osler and the Independent Certifier specifying the date (which, for greater certainty, will be on or before the Scheduled Substantial Completion Date) on which Project Co anticipates that Substantial Completion will be achieved (the “**Anticipated Substantial Completion Date**”).
- (b) The Countdown Notice shall be delivered not less than 180 days prior to the Anticipated Substantial Completion Date. If Project Co fails to deliver the Countdown Notice not less than 180 days prior to the Scheduled Substantial Completion Date, the Anticipated Substantial Completion Date shall be deemed to be the same date as the Scheduled Substantial Completion Date.
- (c) Project Co acknowledges and agrees that Osler requires a minimum of 180 days notice prior to the Anticipated Substantial Completion Date to prepare for the Hospital Commissioning.



- (d) In accordance with Section 20.4(a), the Anticipated Substantial Completion Date shall not be earlier than the Scheduled Substantial Completion Date without the prior written consent of Osler, in its sole discretion.

#### **24.8 Minor Deficiencies**

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

#### **24.9 Rectification of Minor Deficiencies**

- (a) Project Co shall, in consultation with the Osler Representative and so as to minimize, to the greatest extent reasonably possible, any disruption of the Project Operations or the performance of the Hospital Services, complete and rectify all Minor Deficiencies within 45 days of the issuance of the Minor Deficiencies List or such other period as the Independent Certifier may specify in the Minor Deficiencies List.
- (b) Project Co acknowledges and agrees that the completion and rectification of Minor Deficiencies may require work outside of normal working hours in order to accommodate the efficient operation of the Facility.

#### **24.10 Failure to Rectify Minor Deficiencies**

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

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

Osler may:

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

#### 24.11 Final Completion Certificate

- (a) Project Co shall give the Independent Certifier and the Osler Representative at least 10 Business Days' notice prior to the date upon which Project Co anticipates all requirements for Final Completion shall be satisfied.
- (b) Project Co shall give the Independent Certifier and the Osler Representative notice (the "**Final Completion Notice**") upon the satisfaction of all requirements for Final Completion, which Final Completion Notice shall describe, in reasonable detail:
  - (i) the items of minor work of a seasonal nature that cannot be completed prior to the Final Completion Date, if any, and the time for completion of such work as agree between Osler and Project Co, each acting reasonably; and
  - (ii) the satisfaction of the requirements for Final Completion, including the completion and rectification of all Minor Deficiencies other than any outstanding seasonal work identified in the Final Completion Notice, together with Project Co's opinion as to whether the conditions for issuance of the Final Completion Certificate have been satisfied.
- (c) Osler shall, within 5 Business Days after receipt of the Final Completion Notice, provide the Independent Certifier and Project Co with Osler's opinion as to whether the conditions for issuance of the Final Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Final Completion Certificate should not be issued.

- (d) Within 5 Business Days after Project Co's receipt of Osler's opinion pursuant to Section 24.11(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Final Completion Certificate have been satisfied, having regard for the opinions of both Project Co and Osler, and to issue to Osler and to Project Co either:
- (i) the Final Completion Certificate, confirming the date of issue as the Final Completion Date; or
  - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Final Completion Certificate.
- (e) Where the Independent Certifier has issued a report in accordance with Section 24.11(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, Project Co shall, within 5 Business Days after receipt of such report, provide the Independent Certifier and the Osler Representative with:
- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
  - (ii) the schedule for completion of all such rectification actions; and
  - (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions,
- and Project Co shall perform all such additional rectification actions and Project Co Commissioning in a timely manner. Upon completion thereof, Project Co may give a further Final Completion Notice and Sections 24.11(c) to (e), inclusive, shall be repeated until the Final Completion Certificate has been issued.
- (f) Any Dispute in relation to the Independent Certifier's decision to issue or not to issue the Final Completion Certificate may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (g) If, within 30 days after the time specified in the Final Completion Notice for completion of seasonal work, Project Co has failed to complete such seasonal work, Osler may engage others to perform the work necessary to complete the seasonal work, at the risk and cost of Project Co. Project Co shall pay to Osler the costs incurred by Osler to complete such seasonal work within 10 Business Days of presentation of an invoice for such costs.

#### **24.12 Effect of Certificates/Use**

- (a) The issue of the Substantial Completion Certificate and the Final Completion Certificate, any taking over or use by Osler of any part of the Facility under the terms of this Project Agreement, and any commencement of any Hospital Services shall, in no way:

- (i) limit the obligations of Project Co under this Project Agreement including in respect of any defects, deficiencies or items of outstanding work existing or discovered prior to or after the date of any of such certificates or the date of the Minor Deficiencies List; or
- (ii) be construed as an approval by Osler of the Works or the way in which they have been carried out.

### **24.13 Transition**

- (a) Subject to Section 24.13(b), Project Co shall, in cooperation with the Transition Subcommittee:
  - (i) plan, coordinate, manage and execute the physical transition to the Facility, including, without limitation:
    - (A) the transfer and installation of all Existing Equipment and furnishings, with the exception of computers, telephones and printers (the latter to be Osler's responsibility), in accordance with the Final Commissioning Program; and
    - (B) the physical transition of certain operations and activities of the Existing Facilities, including the associated contents of the Existing Facilities as identified by Osler.

in each case as set out in the document entitled "Move Parameters" in the Background Information (collectively, the "**Transition**"). For clarity, the Transition shall be carried out by Project Co in accordance with the applicable requirements of Schedule 11 – Design Quality Plan and Construction Quality Plan.

- (b) Osler shall be responsible for and at all times maintain absolute control over, if applicable, the transportation of patients, Existing Equipment connected to patients and items currently in use for the direct provision of care to such patients, from the Existing Facilities to the Facility. Osler shall at all times maintain absolute control over all decisions relating to patient care and shall, in its sole discretion, approve of the timing of the transportation of patients, Existing Equipment connected to patients and items currently in use for the direct provision of care to such patients.
- (c) Project Co shall, at least 18 months prior to Substantial Completion, prepare and submit to Osler a list of prospective candidates (each a "**Transition Advisor Candidate**") for appointment as Transition Advisor, each of which must have experience planning and executing hospital relocation assignments of similar size, scope and complexity.
- (d) Subject to Section 24.13(c), Project Co shall conduct a competitive bid process for the selection of the Transition Advisor from among the Transition Advisor Candidates. Project Co shall consult with Osler in the design and implementation of such competitive bid process, including the development of the evaluation criteria, and shall accommodate any reasonable request of Osler with respect thereto. Osler shall be entitled to participate in the evaluation and selection of the successful Transition Advisor Candidate for appointment as Transition Advisor.

#### 24.14 Transition Subcommittee

- (a) The Parties shall, within 180 days following Financial Close, establish a transition subcommittee of the Works Committee (the “**Transition Subcommittee**”) consisting of 3 representatives of each Party. The Transition Advisor shall be entitled to, but not required to, attend meetings of the Transition Subcommittee. Members of the Transition Subcommittee may invite, on prior notice to all members, such other advisors and consultants as they require from time to time to attend meetings and provide briefings to the Transition Subcommittee.
- (b) The Transition Subcommittee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Transition, including issues related to decanting from the Existing Facilities to the Facility and the transfer and installation of all Existing Equipment.
- (c) The primary role of the Transition Subcommittee shall be to oversee and coordinate the Transition in a timely and efficient manner and in accordance with the Works Schedule and the Final Commissioning Program.
- (d) The Transition Subcommittee shall be responsible for receiving and reviewing all matters related to the Transition and shall make recommendations to the Works Committee, which the Works Committee may accept or reject in its sole discretion.
- (e) The members of the Transition Subcommittee may adopt such procedures and practices for the conduct of the activities of the Transition Subcommittee as they consider appropriate from time to time.
- (f) Unless otherwise agreed, the Transition Subcommittee shall operate only until the Final Completion Date.

#### 25. PROJECT CO SERVICE OBLIGATIONS

##### 25.1 Overall Responsibility

- (a) Project Co shall, following the Substantial Completion Date, perform the Project Co Services:
  - (i) so as to satisfy the Output Specifications; and
  - (ii) in accordance with the other terms of this Project Agreement.

##### 25.2 Commencement of Services

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

##### 25.3 Coordination and No Disruption to Osler

- (a) Project Co shall perform the Project Co Services so as to coordinate with the operations of Osler and the Osler Parties on the Site and in the Facility and shall use commercially reasonable efforts

not to adversely interfere with the operations of Osler and any Osler Party, including the performance of the Hospital Services.

#### **25.4 No Closure of Facility**

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

#### **25.5 Equipment for Project Co Services**

- (a) Project Co will procure, deliver, install, commission, maintain, repair, decommission, upgrade and replace any equipment required by Project Co to provide the Project Co Services.

### **26. MAINTENANCE**

#### **26.1 Maintenance Plans**

- (a) No later than 90 days prior to the Substantial Completion Date, Project Co shall submit to the Osler Representative for review pursuant to Schedule 10 – Review Procedure, the Scheduled Maintenance Plan for the first Contract Year and the Five Year Maintenance Plan for the first 5 Contract Years, and shall update such plans as provided for in the Output Specifications annually thereafter.
- (b) Project Co shall perform the Maintenance Work as identified in the Scheduled Maintenance Plan, and, without limiting Project Co’s other obligations in respect of the performance of the Project Operations, shall undertake all Maintenance Work:
  - (i) in accordance with the Output Specifications;
  - (ii) at the times scheduled for such Maintenance Work;
  - (iii) in accordance with Good Industry Practice;
  - (iv) in a manner that allows the Facility to remain operational at all times;
  - (v) otherwise in accordance with the Scheduled Maintenance Plan; and
  - (vi) in a consistent manner with the Lifecycle Replacement Schedule, as such may be updated from time to time in accordance with the terms of the Project Agreement.

For clarity, the Scheduled Maintenance Plan shall take into consideration the anticipated lifecycle replacement cycles of elements of the Facility following the expiry of the Operational Term and facilitate good operating condition of the Facility (and its part thereof) to reasonably meet the Anticipated Replacement Year indicated for each of the relevant elements of the Facility set out in Appendix A to Schedule 24 – Expiry Transition Procedure.

## 26.2 Revisions to Scheduled Maintenance Plan

- (a) No later than 30 days prior to the commencement of any calendar quarter, Project Co may submit to the Osler Representative a revision to the applicable Scheduled Maintenance Plan for the Contract Year in which the relevant calendar quarter year falls showing the effect of the proposed changes. If Project Co is entitled to proceed with such changes pursuant to Schedule 10 – Review Procedure, then the Scheduled Maintenance Plan as so amended shall become the Scheduled Maintenance Plan in respect of that calendar quarter year.
- (b) Without limiting the comments that may be made pursuant to Schedule 10 – Review Procedure in relation to the submission of any Scheduled Maintenance Plan, Osler, acting reasonably, may comment “**Reviewed as Noted**” or “**Rejected**” on any revision to any Scheduled Maintenance Plan pursuant to this Section 26.2 on the grounds that:
  - (i) performing the Scheduled Maintenance in the period or at the times suggested would (on the balance of probabilities) materially interfere with the performance of the Hospital Services and such material interference could be avoided or mitigated by Project Co rescheduling the Scheduled Maintenance;
  - (ii) performing the Scheduled Maintenance in the period or at the times suggested would (on the balance of probabilities) materially adversely affect the safety of patients, volunteers or other users of the Facility and such material adverse effect could be avoided or mitigated by Project Co rescheduling the Scheduled Maintenance; or
  - (iii) the period for performing the Scheduled Maintenance would (on the balance of probabilities) exceed the period reasonably required for the relevant work.

## 26.3 Osler Change in Timing

- (a) Notwithstanding the establishment of or entitlement to proceed with any Scheduled Maintenance Plan, the Osler Representative may, at any time and from time to time, require Project Co to accelerate or defer any Scheduled Maintenance by giving written notice to Project Co not less than 15 Business Days prior to the scheduled date for performing such Scheduled Maintenance, which notice shall set out the time and periods at or during which Osler requires the Scheduled Maintenance to be performed.
- (b) Within 5 Business Days after receipt by Project Co of a notice referred to in Section 26.3(a), Project Co shall notify Osler of the amount of any additional reasonable costs which it estimates it shall incur as a direct consequence of such acceleration or deferral (the “**Estimated Increased Maintenance Costs**”). Osler shall, within 5 Business Days after receipt by Osler of notification of the amount of the Estimated Increased Maintenance Costs, at its option, either confirm or withdraw its request to accelerate or defer the Scheduled Maintenance. If Osler does not respond within 5 Business Days, the request shall be deemed to have been withdrawn. Osler shall reimburse Project Co for any reasonable costs actually incurred by Project Co as a consequence of such acceleration or deferral up to, but not exceeding, the amount of the Estimated Increased Maintenance Costs.

**26.4 Unscheduled Maintenance Work**

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

**26.5 Emergency Maintenance Work**

- (a) If, as a result of an Emergency, the need arises for Unscheduled Maintenance Work, Project Co may perform such Unscheduled Maintenance Work, provided that Project Co shall notify the Osler Representative as soon as possible (and in any event within 2 Business Days of the occurrence of the Emergency) of the reasons for and extent of the Unscheduled Maintenance Work.
- (b) Project Co shall use commercially reasonable efforts to minimize the duration of such Unscheduled Maintenance Work and its impact upon the performance of the Hospital Services. Project Co acknowledges and agrees that Unscheduled Maintenance Work may require work outside of normal working hours in order to accommodate the efficient operation of the Facility.
- (c) Nothing in this Section 26.5 shall prevent Osler from making any adjustments to the Monthly Service Payments in accordance with Schedule 20 – Payment Mechanism.

**26.6 Other Maintenance Work**

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

**26.7 Plant Services Information Management System**

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



**26.8 Performance Audits**

- (a) If Osler reasonably believes that Project Co is in breach of its obligations with respect to Maintenance Work, including:
- (i) under this Section 26;
  - (ii) under the Output Specifications; or
  - (iii) in respect of any defects, deficiencies or items of outstanding work that should have been completed as part of the Works,

then Osler may cause to be performed, by an arm's length consultant appointed by Osler, a performance audit, inspection and survey of the Facility to assess whether the Facility has been and is being maintained by Project Co in accordance with Project Co's obligations (the "**Performance Audit**").

- (b) Osler shall notify Project Co in writing at least 10 Business Days prior to the date that Osler wishes to cause a Performance Audit to be undertaken. Osler shall, acting in good faith, consider any reasonable request by Project Co for the Performance Audit to be performed on an alternative date if such request is made by Project Co in writing at least 5 Business Days prior to the date originally requested by Osler, on the basis that performing the Performance Audit on the date originally requested by Osler would materially prejudice Project Co's ability to provide the Project Co Services.
- (c) When causing any Performance Audit to be undertaken, Osler shall use commercially reasonable efforts to minimize any disruption caused to the provision of the Project Co Services. The cost of a Performance Audit, except where Section 26.8(d) applies, shall be borne by Osler. Project Co shall provide Osler, at no additional cost or charge, with any reasonable assistance required by Osler from time to time during the Performance Audit.
- (d) If a Performance Audit shows that Project Co has not performed or is not performing its obligations in any material respect, Osler shall:
- (i) provide Project Co with a written notice of non-compliance;
  - (ii) provide Project Co with instructions regarding rectification or Maintenance Work required to be performed by Project Co in order for Project Co to perform its obligations;
  - (iii) specify a reasonable period of time within which Project Co must perform such rectification or Maintenance Work; and
  - (iv) be entitled to exercise all rights pursuant to Section 30.
- (e) If a Performance Audit shows that Project Co has not performed or is not performing its obligations in any material respect, Project Co shall:

- (i) perform any rectification or Maintenance Work required by Osler within a reasonable period of time specified by Osler, and be responsible for any costs incurred in performing such rectification or Maintenance Work; and
  - (ii) pay or reimburse Osler for the costs of the Performance Audit and any administrative costs incurred by Osler in relation to the Performance Audit.
- (f) Nothing in this Section 26.8 shall limit or restrict Osler's rights hereunder to perform any other performance audits, inspections and surveys at its own cost and expense.
- (g) Osler's right to cause a Performance Audit to be undertaken may not be exercised more than once every 180 days unless any Performance Audit performed in the preceding 12 month period shows that Project Co has not performed or is not performing its obligations in any material respect.

**27. HUMAN RESOURCES**

**27.1 [Intentionally Deleted]**

**27.2 [Intentionally Deleted]**

**27.3 [Intentionally Deleted]**

**27.4 [Intentionally Deleted]**

**27.5 Admittance of Personnel**

- (a) For purposes of patient and public (including worker) safety at the Site and/or Facility, Osler shall have the right to refuse admittance to, or order the removal from the Site and/or the Facility of any person employed by (or acting on behalf of) Project Co, or any Project Co Party, whose presence, in the reasonable opinion of Osler, is likely to have an adverse effect on the performance of the Hospital Services or who, in the reasonable opinion of Osler, is not a fit and proper person to be at the Site and/or the Facility for any reason, including a failure to comply with any applicable hospital policy or any immediate obligation of Osler to ensure the safety and well-being of persons at the Site and/or the Facility.

**27.6 Confirmation of Action**

- (a) Any action taken under Section 27.5 shall promptly be confirmed by Osler to Project Co and, for greater certainty, shall not relieve Project Co of any of its obligations under this Project Agreement.

**27.7 Notification of Personnel**

- (a) If and when so requested by Osler, Project Co shall, within 3 Business Days of such request, provide a list of the names of all persons it expects may require admission, in connection with this Project Agreement, to any premises occupied by Osler, specifying the capacities in which those persons are concerned with this Project Agreement and, subject to Applicable Law, giving such other particulars as Osler may reasonably require.

### 27.8 Finality as to Admission

- (a) Any decision of Osler made pursuant to Section 27.5 shall be final and conclusive.

### 27.9 Adherence to Policies

- (a) Project Co shall ensure that it and all Project Co Parties comply at all times with Osler's policies applicable to public health statutory requirements and any regulations, policies or directions set by any Governmental Authority (as may be amended from time to time, collectively, "**Hospital Public Health Requirements Policies**").

### 27.10 Change in Hospital Public Health Requirements Policies

- (a) Osler shall notify Project Co of any proposed change in Hospital Public Health Requirements Policies as soon as practicable. Notwithstanding anything else in this Project Agreement, any change in Hospital Public Health Requirements Policies shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation if and to the extent such change constitutes or necessitates a change in the Output Specifications or increases the Direct Costs to Project Co of providing the Project Co Services.
- (b) Project Co may, within 90 days of becoming aware of same, notify Osler, in writing, that a change in Hospital Public Health Requirements Policies either constitutes or necessitates a change in the Output Specifications or increases the Direct Costs to Project Co of providing the Project Co Services. Within 15 Business Days of receipt of such notice, Osler shall respond to Project Co indicating whether or not it agrees that such a change has occurred and either constitutes or necessitates a change in the Output Specifications or increases the Direct Costs to Project Co of providing the Project Co Services. If it does agree, Osler shall initiate the procedure set out in Schedule 22 - Variation Procedure as soon as reasonably practicable. If it does not agree, Osler shall not issue a Variation Enquiry and the matter may be referred for resolution in accordance with Schedule 27 - Dispute Resolution Procedure.
- (c) For greater certainty, where an immediate change to Hospital Public Health Requirements Policies is required in the interest of patient and public (including worker) safety, such change shall be effective notwithstanding that the procedure in Schedule 22 - Variation Procedure, if applicable in the circumstances, is not yet complete.

### 27.11 Staff Competency

- (a) Project Co shall ensure that:
  - (i) there shall at all times be a sufficient number of competent persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the provision of the Project Co Services with the requisite level of skill and experience to perform the Project Co Services in accordance with this Project Agreement. For greater certainty, this obligation shall include ensuring that there are a sufficient number of such skilled and experienced persons employed or engaged by Project Co or any Project Co Party to cover periods of holiday, sickness, other absence, and anticipated and actual peaks in demand for each of the Project Co Services; and

- (ii) all persons employed or engaged by Project Co or any Project Co Party (including all relevant grades of supervisory staff) engaged in the provision of the Project Co Services receive such training and supervision as Project Co determines is necessary to ensure the proper performance of this Project Agreement and compliance with all health and safety legislation, rules, procedures and requirements and Authority Requirements and Hospital Public Health Requirements Policies.

### **27.12 Convictions**

- (a) Project Co (to the extent permitted by Applicable Law) shall, and shall cause each Project Co Party to, ensure that all potential employees (including, for greater certainty, permanent, temporary, full-time and part-time employees) and persons who may otherwise perform any of the Project Co Services:
  - (i) are questioned concerning their Relevant Convictions; and
  - (ii) are required to complete and deliver to Project Co a criminal records search form.

### **27.13 Effect of Convictions**

- (a) For the purposes of public and patient safety, Project Co (to the extent permitted by Applicable Law) shall, and shall cause each Project Co Party to, ensure that no person who discloses any Relevant Convictions, or who is found to have any Relevant Convictions following the completion of a criminal records search, in either case of which Project Co or a Project Co Party is aware or ought to be aware, is allowed access to the Site and/or the Facility to perform any of the Project Co Services, without the prior written consent of Osler, in its sole discretion.

### **27.14 Notification of Convictions**

- (a) To the extent permitted by Applicable Law, Project Co shall ensure that Osler is kept advised at all times of any person employed or engaged by Project Co or any Project Co Party in the provision of any of the Project Co Services who, subsequent to the commencement of such employment or engagement, receives a Relevant Conviction of which Project Co or a Project Co Party becomes aware or whose previous Relevant Convictions become known to Project Co or a Project Co Party. Project Co shall use commercially reasonable efforts to obtain, or to cause all Project Co Parties to obtain, all consents as may be required by Applicable Law or otherwise authorizing the disclosure of such information to Osler as contemplated in this Section 27.

### **27.15 Disciplinary Action**

- (a) Osler, acting reasonably, may notify Project Co of any Project Co or Project Co Party employee who engages in misconduct or in the opinion of Osler, is incompetent or negligent in the performance of duties or whose presence or conduct on the Site or at work otherwise constitutes a threat to the health and/or safety of any of the users of the Site and/or the Facility. Upon investigation, Project Co may institute, or cause the relevant Project Co Party to institute, disciplinary proceedings, which shall be in accordance with the requirements of Applicable Law, and shall notify Osler in writing of the outcome of any disciplinary action taken in respect of such person to the extent such notification is permitted by Applicable Law.

**27.16 Management Contact Information**

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

**27.17 Health Screening**

- (a) Project Co shall ensure (to the extent permitted by Applicable Law) that all employees (including, for greater certainty, permanent, temporary, full-time and part-time employees) and persons who may otherwise perform any of the Project Co Services undergo pre-employment health screening in accordance with Hospital Public Health Requirements Policies (including a medical examination, if necessary by a qualified occupational health professional) to establish, in each case, that the relevant person does not pose, at that time, any danger to the health of other persons.
- (b) For the protection of the health of the patients and public (including workers), Project Co shall also ensure (to the extent permitted by Applicable Law) that all employees (including, for greater certainty, permanent, temporary, full-time and part-time employees) and persons who may otherwise perform any of the Project Co Services shall undergo such medical screening, examination or treatment and provide confirmation of such testing to Osler during the currency of this Project Agreement, when reasonably requested to do so by Osler, as required to ensure that Osler is able to comply with Applicable Law and in respect of the health and well-being any Osler Party, their respective workers, patients, volunteers and visitors to the Facility. Project Co shall take reasonable precautions to ensure that all permanent, temporary, full-time and part-time employees any other persons that may perform any of the Project Co Services are, at all times, in such medical condition that they do not pose a risk, threat or danger to the health and/or well being of any Osler Party, their respective workers, patients, volunteers and visitors to the Facility.

**27.18 Retention of Screening Records**

- (a) Project Co agrees that (to the extent permitted by Applicable Law) it shall hold, and shall ensure that the relevant Project Co Party holds, records of all screenings, examinations or treatments referred to in this Section 27 in strict confidence and shall produce, and shall ensure that the relevant Project Co Party produces, such records (subject to requirements under Applicable Law) for inspection by Osler upon request by the Osler Representative, provided that no such inspection shall take place unless required by Applicable Law or the relevant employee or person has given his written consent to such inspection (to the extent such consent is required by Applicable Law).

**27.19 Report on Screening**

- (a) For the purpose of public and patient safety, Project Co shall (to the extent permitted by Applicable Law) inform Osler, or ensure that Osler is informed, upon reasonable request by the Osler Representative, of the outcome of each and every medical screening examination or treatment referred to in Section 27.17 with reference to the purpose of the screening, examination or treatment concerned and shall provide Osler, or ensure that Osler is provided, with all such other information referred to in Section 27.18, subject to requirements of Applicable Law.

**27.20 Health Risks**

- (a) The Osler Representative may (acting reasonably) refuse admittance to, or order the removal from, the Facility of any person employed or engaged in the provision of any Project Co Service for whom a report as referred to in Section 27.19 has not been received or whose presence poses or is reasonably believed to pose a risk to the health and/or well-being of any Osler Party, their respective workers, patients, volunteers or visitors to the Facility, and such action, which shall forthwith be confirmed in writing by Osler, shall not relieve Project Co of any of its obligations under this Project Agreement. In complying with any such directive, Project Co shall not be required to breach Applicable Law.

**27.21 Orientation Procedure**

- (a) Project Co shall not cause, authorize or permit any person engaged or employed by Project Co or any Project Co Party in the delivery of the Project Co Services to commence the performance of their obligations until they have completed an appropriate orientation program designed to acquaint the person with relevant information about the operation of Osler and, where required by Applicable Law, including any pre-employment health screening.

**27.22 Labour Disruption**

- (a) Project Co shall accept, and shall ensure that each Project Co Party accepts, that the *Hospital Labour Disputes Arbitration Act* (Ontario) applies to the Project Co Services, and, if necessary, shall seek a declaration from the Ontario Labour Relations Board confirming the application of the *Hospital Labour Disputes Arbitration Act* (Ontario) to the Project Co Services so that strikes, lockouts, and labour disruptions do not interfere with the provision of the Project Co Services or the Hospital Services.
- (b) In the event that the Ontario Labour Relations Board does not issue a declaration confirming that *Hospital Labour Disputes Arbitration Act* (Ontario) is applicable, then Project Co shall take, and shall ensure that each Project Co Party takes, commercially reasonable steps available within the purview of applicable labour legislation in the Province of Ontario to ensure that strikes, lockouts, and labour disruptions, to the maximum degree possible and permissible, do not interfere with the provision of the Project Co Services or the Hospital Services.

**28. GOODS, EQUIPMENT, CONSUMABLES AND MATERIALS****28.1 Standards**

- (a) Project Co shall cause the goods, equipment, consumables and materials used or supplied by it or any Subcontractor in connection with the Project Co Services to be:
- (i) of good quality, fit for their intended purpose and maintained in a safe, serviceable and clean condition in accordance with the Output Specifications and Good Industry Practice;
  - (ii) of the type specified in the Output Specifications, if applicable; and
  - (iii) in compliance with Applicable Law,

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

- (b) Project Co shall cause sufficient stocks of goods, consumables, equipment and materials to be held in compliance with its obligations under this Project Agreement.

## **28.2 Hazardous Substances and Materials**

- (a) Except to the extent required pursuant to the Output Specifications, Project Co shall not bring, install, keep, maintain or use in or on the Facility, or cause, authorize or permit any Project Co Party to bring, install, keep, maintain or use, any substances, materials, equipment or apparatus, which is likely to cause or in fact causes:
  - (i) material damage to the Facility;
  - (ii) dust, noise or vibration or any other nuisance to the owners or occupiers of any property adjoining or near to the Facility;
  - (iii) the generation, accumulation or migration of any Hazardous Substance in an unlawful manner whether within or outside the Facility; or
  - (iv) an adverse effect on the health or well-being of any Osler Party, patients, volunteers or visitors to the Facility,

and shall use commercially reasonable efforts to ensure, by directions to staff and otherwise, that all materials, equipment or apparatus in or on the Facility are operated and stored so as to minimize noise and vibration likely to cause annoyance or disturbance and the unlawful generation or migration of any Hazardous Substance.

- (b) Except for articles or things commonly used or generated in hospitals, Project Co shall not bring, install, keep, maintain or use, or cause, authorize or permit any person to bring, install, keep, maintain or use in or on the Facility any Hazardous Substance or hazardous equipment without the prior written consent of Osler and unless Project Co has complied with Applicable Law.
- (c) Where applicable, Project Co shall comply with any applicable Osler policies and Applicable Law regarding WHMIS and the transportation of Hazardous Substances, including:
  - (i) maintaining a library of MSDS on the Site and making MSDS labels available to all workers and Osler, and making and posting workplace labels where applicable, for all materials designated hazardous by Applicable Law relating to WHMIS; and
  - (ii) ensuring that Hazardous Substances shipped by Project Co or any Project Co Party are shipped in accordance with Applicable Law governing the transportation of Hazardous Substances,
- (d) Osler shall make available to Project Co, on request by Project Co, a list of Hazardous Substances prepared by Osler as required by Applicable Law regarding WHMIS and the transportation of Hazardous Substances.

- (e) Project Co shall:
- (i) ensure that all Hazardous Substances and hazardous materials and equipment used or stored on the Site by Project Co or any Project Co Party are kept in accordance with Applicable Law, Good Industry Practice, properly and securely labelled and stored, under appropriate supervision and used only by appropriately trained and competent staff; and
  - (ii) prevent the unlawful generation, accumulation, discharge, emission and migration of any Hazardous Substance, whether at or from the Facility or into any conducting media or device serving the Facility, including to:
    - (A) prevent any claims relating to Contamination arising or any circumstances likely to result in any claims relating to Contamination arising; and
    - (B) prevent any adverse effect on the health or well-being of any person, including any Osler Party, patients, volunteers or visitors to the Facility,in so far as such Hazardous Substance is, or should be, under the control of Project Co or any Project Co Party pursuant to this Project Agreement.
- (f) This Section 28.2 applies from and after Substantial Completion, and shall not extend to Hazardous Substances or hazardous equipment, materials or apparatus that are produced, brought, installed, kept, maintained or used in relation to the Hospital Services, except to the extent that such Hazardous Substances or hazardous equipment, materials or apparatus are, or should be, the responsibility of Project Co or under the control of Project Co under this Project Agreement.
- (g) For greater certainty, in the event of a claim relating to Contamination caused by the unlawful generation, accumulation, discharge, emission and migration of any Hazardous Substance, each Party shall bear a proportion of liability based on that Party's degree of fault as agreed by the Parties or determined in accordance with Schedule 27 – Dispute Resolution Procedure.

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

- (a) Osler shall notify Project Co of any proposed change in any applicable Osler policies regarding WHMIS and the transportation of Hazardous Substances as soon as practicable. Notwithstanding anything else in this Project Agreement, any change in such policies (other than a change arising as a result of a Change in Law, which, if applicable shall be addressed in accordance with Section 35) shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation if and to the extent such change constitutes or necessitates a change in the Output Specifications or increases the Direct Costs to Project Co of providing the Project Co Services.
- (b) Project Co may, within 90 days of becoming aware of same, notify Osler, in writing, that a change in any applicable Osler policies regarding WHMIS and the transportation of Hazardous Substances (other than a change arising as a result of a Change in Law, which, if applicable shall be addressed in accordance with Section 35) either constitutes or necessitates a change in the Output Specifications or increases the Direct Costs to Project Co of providing the Project Co Services. Within 15 Business Days of receipt of such notice, Osler shall respond to Project Co indicating whether or not it agrees that such a change has occurred and either constitutes or



necessitates a change in the Output Specifications or increases the Direct Costs to Project Co of providing the Project Co Services. If it does agree, Osler shall initiate the procedure set out in Schedule 22 – Variation Procedure as soon as reasonably practicable. If it does not agree, Osler shall not issue a Variation Enquiry and the matter may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

- (c) For greater certainty, where an immediate change to any applicable Osler policies regarding WHMIS and the transportation of Hazardous Substances is required in the interest of patient and public (including worker) safety, such change shall be effective notwithstanding that the procedure in Schedule 22 - Variation Procedure, if applicable in the circumstances, is not yet complete.

## **29. MONITORING**

### **29.1 Monitoring of Performance**

- (a) Project Co shall monitor the performance of the Project Co Services in the manner and at the frequencies set out in the Output Specifications, the Performance Monitoring Program and the Payment Mechanism, and shall compile and at all times maintain records which are accurate and complete of such monitoring and performance. In addition to Project Co's obligations, as set out in the Output Specifications, the Performance Monitoring Program and the Payment Mechanism, Project Co shall, as reasonably requested by Osler, provide the Osler Representative with relevant particulars of any aspects of Project Co's performance which fail to meet the requirements of this Project Agreement.
- (b) Osler may, at any and all reasonable times, observe, inspect, monitor, audit and take any steps reasonably necessary to satisfy itself as to the adequacy of the monitoring, including performing sample checks.

### **29.2 Failure Points**

- (a) In each Payment Period, Project Co shall measure the performance of the Project Co Services, and based on the performance of the Project Co Services in the applicable Payment Period, Failure Points may be awarded in respect of a Project Co Service in accordance with the Payment Mechanism.

### **29.3 Warning Notices**

- (a) Without prejudice to Osler's rights under Section 42 and any other rights under this Project Agreement, if Project Co accrues, during the Operational Term, more than:
  - (i) An aggregate of [REDACTED] Failure Points in respect of Availability Failures;
  - (ii) An aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of Utilities Management Services, Environmental and Sustainability Services, Emergency Management Services, Cleaning Services, Waste Management & Recycling Services, Security & Surveillance Services,

Plant Services, Lifecycle Replacement and Refurbishment Services, and Special Projects Services;

- (iii) An aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of General Management Services;
- (iv) An aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of Roads and Grounds Maintenance Services;
- (v) An aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of Parking Services; or
- (vi) An aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of FM Help Desk Services;

in any 1 Payment Period then Osler may give a Warning Notice to Project Co setting out the matter or matters giving rise to such notice and stating that it is a “**Warning Notice**”.

#### 29.4 Monitoring Notices

- (a) Without prejudice to Osler’s rights under Section 42 and any other rights under this Project Agreement, if Project Co accrues, during the Operational Term, more than:
  - (i) An aggregate of [REDACTED] Failure Points in respect of Availability Failures;
  - (ii) An aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of Utilities Management Services, Environmental and Sustainability Services, Emergency Management Services, Cleaning Services, Waste Management & Recycling Services, Security & Surveillance Services, Plant Services, Lifecycle Replacement and Refurbishment Services, and Special Projects Services;
  - (iii) An aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of General Management Services;
  - (iv) An aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of Roads and Grounds Maintenance Services;
  - (v) An aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of Parking Services; or
  - (vi) An aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of FM Help Desk Services;

in any rolling 3 Payment Periods, Osler may, by notice (a “**Monitoring Notice**”) to Project Co require Project Co to increase the level of Project Co’s monitoring of its own performance of its

- obligations under this Project Agreement in respect of the relevant Project Co Service until such time as Project Co shall have demonstrated to the reasonable satisfaction of Osler that it is performing, and is capable of continuing to perform, its obligations under this Project Agreement in respect of the relevant Project Co Service.
- (b) Osler may give a Warning Notice pursuant to Section 29.3 despite the issuance of a Monitoring Notice in respect of the same matter where a further breach occurs or the original breach has not been remedied within a reasonable period, and whether or not the previous Monitoring Notice remains in effect.
- (c) If a Monitoring Notice is given, then:
- (i) such Monitoring Notice shall specify in reasonable detail the additional measures to be taken by Project Co in monitoring its own performance;
  - (ii) if Project Co, acting reasonably, objects to any of the specified measures on the grounds that they are excessive or that Osler was not entitled to give the Monitoring Notice, Project Co shall, within 3 Business Days of the receipt of the Monitoring Notice, notify Osler in writing of the matters objected to and any changes necessary in order to prevent prejudice to Project Co's performance of its obligations under this Project Agreement;
  - (iii) if Project Co gives Osler a notice under Section 29.4(c)(ii), the measures to be taken by Project Co shall be agreed between the Parties or, in the absence of agreement within 10 Business Days of Osler's receipt of such notice, may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure;
  - (iv) if Project Co fails to increase Project Co's monitoring as provided herein, Osler may perform such monitoring save where Project Co, acting in good faith, is pursuing a Dispute pursuant to Section 29.4(c)(iii);
  - (v) if it is determined in accordance with Schedule 27 – Dispute Resolution Procedure that Osler was entitled to give the applicable Monitoring Notice, Project Co shall bear its own costs and reimburse Osler for any reasonable costs and expenses incurred by or on behalf of Osler in relation to the giving of such Monitoring Notice; and
  - (vi) if it is determined in accordance with Schedule 27 – Dispute Resolution Procedure that Osler was not entitled to give the applicable Monitoring Notice, Osler shall bear its own costs and reimburse Project Co for any reasonable costs and expenses incurred by or on behalf of Project Co in relation to the giving of such Monitoring Notice.
- (d) In respect of any Monitoring Notice, if Project Co shall have demonstrated to the reasonable satisfaction of Osler that Project Co has performed its obligations under this Project Agreement for a period of 90 consecutive days and during such period has not received a Warning Notice or Monitoring Notice in respect of the same or similar Project Co Service, Project Co may apply for the withdrawal of such Monitoring Notice. If Osler is satisfied, acting reasonably, that Project Co has satisfied the aforesaid requirements, it shall, within 10 Business Days of receipt of such application, withdraw such Monitoring Notice and cease to perform or require the performance of the increased monitoring implemented in respect of such Monitoring Notice.

- (e) If it is determined in accordance with Schedule 27 – Dispute Resolution Procedure that Osler was not entitled to give any Monitoring Notice, Osler shall promptly withdraw such Monitoring Notice and cease to perform or require the performance of the increased monitoring implemented in respect of such Monitoring Notice.

**30. OSLER’S REMEDIAL RIGHTS**

**30.1 Exercise of Remedial Rights**

- (a) Osler may exercise all rights set out in this Section 30 at any time and from time to time if:
- (i) Osler, acting reasonably, considers that a breach by Project Co of any obligation under this Project Agreement, or any act or omission on the part of Project Co or any Project Co Party:
- (A) does or can reasonably be expected to create a serious threat to the health, safety or security of any user of any part of or the whole of the Facility, including employees, patients, volunteers and visitors to the Facility and members of the public;
  - (B) does or can reasonably be expected to result in a materially adverse interruption in the provision of one or more of the Project Co Services;
  - (C) does or can reasonably be expected to materially prejudice Osler’s ability to provide the Hospital Services; or
  - (D) may potentially compromise Osler’s reputation or integrity or the nature of the Province’s health care system, so as to affect public confidence in that system,

provided that:

- (E) in respect of a breach by Project Co of any obligation under this Project Agreement, or any act or omission on the part of Project Co or any Project Co Party, which can reasonably be expected to cause any of the consequences set out in Sections 30.1(a)(i)(A), 30.1(a)(i)(B) or 30.1(a)(i)(C), Osler shall not exercise its rights under this Section 30 unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of notice from Osler or, if such breach, act or omission cannot reasonably be cured within such 5 Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter, provided that Project Co shall not be entitled to a cure period if any of the consequences set out in Sections 30.1(a)(i)(A), 30.1(a)(i)(B) and 30.1(a)(i)(C) actually occur; and
- (F) in respect of Section 30.1(a)(i)(D), Osler shall not exercise its rights under this Section 30 unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of notice from Osler or, if such breach, act or omission cannot reasonably be cured within such 5 Business Day period, Project

Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter;

- (ii) Project Co accrues, in any 1 Payment Period during the Operational Term, more than:
  - (A) An aggregate of [REDACTED] Failure Points in respect of Availability Failures;
  - (B) An aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of Utilities Management Services, Environmental and Sustainability Services, Emergency Management Services, Cleaning Services, Waste Management & Recycling Services, Security & Surveillance Services, Plant Services, Lifecycle Replacement and Refurbishment Services and Special Projects Services;
  - (C) An aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of General Management Services;
  - (D) An aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of Roads and Grounds Maintenance Services;
  - (E) An aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of Parking Services; or
  - (F) An aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of FM Help Desk Services.
- (iii) while a Monitoring Notice is in effect that is not being disputed by Project Co, acting in good faith, Project Co receives a Warning Notice in respect of the same or similar Project Co Service;
- (iv) if, pursuant to Section 26.8, a Performance Audit that is not being disputed by Project Co, acting in good faith, shows that Project Co has not performed or is not performing its obligations and Project Co has failed to perform the rectification or Maintenance Work as provided pursuant to Section 26.8(e)(i);
- (v) a labour dispute materially affects or can reasonably be expected to materially affect the Project Operations or the Hospital Services;
- (vi) Osler has received a notice under the Service Provider's Direct Agreement that entitles Osler to exercise step-in rights thereunder; or
- (vii) Project Co has failed to comply with any written direction issued by or on behalf of Osler's board of directors.

**30.2 Emergency**

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

**30.3 Rectification**

- (a) Without prejudice to Osler's rights under Section 42 and any other rights under this Project Agreement, in any of the circumstances set out in Sections 30.1 or 30.2, Osler may, by written notice, require Project Co to take such steps as Osler, acting reasonably, considers necessary or expedient to mitigate, rectify or protect against such circumstance, including, if applicable, the termination and replacement of each Subcontractor, and Project Co shall use commercially reasonable efforts to comply with Osler's requirements as soon as reasonably practicable.
- (b) If Osler gives notice to Project Co pursuant to Section 30.3(a) and either:
- (i) Project Co does not either confirm, within 5 Business Days of such notice or such shorter period as is appropriate in the case of an Emergency or in the event Osler is entitled to exercise step-in rights under the Service Provider's Direct Agreement, that it is willing to take the steps required in such notice or present an alternative plan to Osler to mitigate, rectify and protect against such circumstances that Osler may accept or reject acting reasonably; or
  - (ii) Project Co fails to take the steps required in such notice or accepted alternative plan within such time as set out in such notice or accepted alternative plan or within such longer time as Osler, acting reasonably, shall think fit,

then Osler may take such steps as it considers to be appropriate, acting reasonably, including, if applicable, exercising step-in rights under the Service Provider's Direct Agreement and requiring the termination and replacement of each Subcontractor, either itself or by engaging others (including a third party) to take any such steps, and may perform or obtain the performance of the relevant Project Co Services to the standards required by this Project Agreement, and the provisions of Section 39, including Section 39.1(a)(v) and Section 39.2, shall apply.

- (c) Notwithstanding the foregoing provisions of this Section 30.3, in the event of an Emergency, the notice under Section 30.3(a) shall be given as promptly as possible having regard to the nature of the Emergency and Osler may, prior to Project Co's confirmation under Section 30.3(b)(i), take such steps as are appropriate having regard to the nature of the Emergency.
- (d) Where Osler considers it to be necessary to do so, the steps which Osler may take pursuant to this Section 30.3 subsequent to the provision of the notice under Section 30.3(a) unless the notice is given at a later time as provided in Section 30.3(c), may, at Osler's option, include the partial or total suspension of Project Co's right and obligation to deliver any part of the Project Co Services having regard to the circumstances in question (without any extension of the Project Term or suspension of any other Project Co Services), and the provisions of Section 39, including Section

39.1(a)(v) and Section 39.2, shall apply, but such suspension shall be only for so long as, as applicable:

- (i) the circumstances referred to in Section 30.1 or 30.2 subsist; or
- (ii) in respect of any such circumstances relating to Project Co's performance of the Project Co Services, until such time as Project Co shall have demonstrated to the reasonable satisfaction of Osler that, notwithstanding such circumstances, Project Co has taken such steps, including, if applicable, the termination and replacement of each Subcontractor, as are required pursuant to this Section 30.3 and as are necessary to be capable of performing its obligations in respect of the relevant Project Co Services to the required standard in accordance with this Project Agreement, and thereafter Project Co shall perform its obligations as aforesaid.

### **30.4 Costs and Expenses**

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

### **30.5 Reimbursement Events**

- (a) In this Section 30.5, a "**Reimbursement Event**" means:
  - (i) an act or omission of Project Co or any Project Co Party or a breach of any obligation under this Project Agreement, but only to the extent such act, omission or breach is caused by Osler or a Osler Party;
  - (ii) a labour dispute involving employees of Osler or any Osler Party that materially affects or can reasonably be expected to materially affect the Project Operations or the Hospital Services; or
  - (iii) an Emergency that is not caused or contributed to by an act or omission of Project Co or any Project Co Party or a breach by Project Co or any Project Co Party of any obligation under this Project Agreement.
- (b) If Osler either takes steps itself or requires Project Co to take steps in accordance with this Section 30 as a result of a Reimbursement Event:
  - (i) Osler shall reimburse Project Co for the reasonable costs and expenses incurred by Project Co in relation to the exercise of Osler's rights pursuant to this Section 30 that would not otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement; and

- (ii) subject to Section 30.5(c), Osler shall bear all costs and expenses incurred by Osler in relation to the exercise of Osler's rights pursuant to this Section 30.
- (c) If, in exercising its rights pursuant to this Section 30, Osler performs any part of the Project Co Services either itself or by engaging others, Osler shall be entitled to deduct from any Monthly Service Payment the reasonable cost of performing such Project Co Services. If Osler makes such a deduction, then Project Co shall be relieved of its reimbursement obligations under Section 30.4(a)(ii) up to the amount that is equal to that deduction.

### **30.6 Reimbursement if Improper Exercise of Rights**

- (a) If Osler exercises its rights pursuant to this Section 30, but Osler was not entitled to do so, Osler shall reimburse Project Co for the reasonable costs and expenses directly incurred by Project Co over and above those that would otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement and that are directly and reasonably incurred by Project Co in complying with those written requirements of Osler issued as a result of Osler having exercised such rights.
- (b) Project Co acknowledges and agrees that Project Co has no right to require a determination of whether or not Osler is entitled to exercise its rights pursuant to this Section 30 before taking any such action that Osler may require and Project Co shall comply with all of Osler's requirements. Only concurrently with or after complying with Osler's requirements shall Project Co be entitled to refer any Dispute for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

## **31. PAYMENT**

### **31.1 Lump Sum Payments**

- (a) Osler shall pay to Project Co the Substantial Completion Payment plus, for clarity, applicable HST on the Payment Commencement Date. Osler and Project Co each acknowledge and agree that the purpose of the Substantial Completion Payment is to assist Project Co with a portion of the direct costs of construction incurred by Project Co in respect of the Facility.
- (b) On the later of the Payment Commencement Date and the date on which Project Co has completed the procurement, installation and commissioning of all Equipment in accordance with Section 21, Osler shall pay to Project Co the Equipment Procurement Fee.
- (c) On the later of the Payment Commencement Date and the date on which Project Co has completed the Transition, including, for greater certainty, the transfer and installation of all Existing Equipment, in accordance with Section 24, Osler shall pay to Project Co the Transition Services Fee.

### **31.2 Monthly Service Payments**

- (a) Subject to and in accordance with this Project Agreement, including this Section 31 and Schedule 20 – Payment Mechanism, Osler shall pay to Project Co the all-inclusive Monthly Service Payments for the performance of all of the Project Operations.



### **31.3 Payment Adjustments**

- (a) Project Co acknowledges and agrees that:
  - (i) the amount of any Monthly Service Payment may be adjusted pursuant to Schedule 20 – Payment Mechanism; and
  - (ii) such adjustments are integral to the provisions of this Project Agreement.
- (b) If, for any reason, any adjustment (including a Deduction) made pursuant to Schedule 20 – Payment Mechanism is invalid and unenforceable, and an Applicable Law that is a Change in Law is enacted that permits the Province to recover or to cause such adjustment to be enforceable, such Change in Law (only to the extent that it permits Osler to recover or to cause such adjustment to be enforceable) shall be deemed to not be a Relevant Change in Law and Project Co shall not be entitled to any compensation hereunder for such Change in Law.

### **31.4 Payment Commencement**

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

### **31.5 Adjustments to Payment Periods**

- (a) The Annual Service Payment payable in respect of each of the first Contract Year and the last Contract Year shall be adjusted in accordance with Schedule 20 – Payment Mechanism.

### **31.6 Invoicing and Payment Arrangements**

- (a) Within 5 Business Days following the end of each Payment Period, Project Co shall issue to Osler an invoice for the amount of the Monthly Service Payment, owing by Osler to Project Co for such Payment Period, with such adjustments as provided in the Payment Adjustment Report issued in the previous Payment Period.
- (b) Project Co shall comply with all requirements of Schedule 20 – Payment Mechanism in respect of invoices and shall include with each invoice such supporting documentation as Osler may reasonably require in connection with payments hereunder.
- (c) Each invoice shall be in a form agreed by the Parties, acting reasonably, and shall include as a minimum:
  - (i) the Monthly Service Payment, payable in respect of the applicable Payment Period;

- (ii) any adjustments set out in the Payment Adjustment Report issued in the previous Payment Period that have been approved by Osler;
  - (iii) any other adjustments to reflect overpayments and underpayments, as agreed between the Parties or determined in accordance with Schedule 27 – Dispute Resolution Procedure;
  - (iv) any amount owing to Osler under this Project Agreement;
  - (v) any amount owing to Project Co under this Project Agreement; and
  - (vi) the net amount owing by Osler to Project Co, or by Project Co to Osler, as applicable.
- (d) HST shall be shown separately on all invoices from Project Co, together with Project Co’s HST registration number.
- (e) Each monthly invoice delivered during the period from the Substantial Completion Date until 45 days following the Final Completion Date shall include up-to-date copies of the parcel registers for the Site.
- (f) Upon agreement of the Parties, the form of invoice may be changed from time to time.
- (g) The Osler Representative shall review each invoice submitted in accordance with this Section 31.6, and, within 5 Business Days of receiving such invoice, Osler shall pay the amount stated in such invoice. Any such payment shall be subject to adjustment pursuant to Section 31.6(k).
- (h) Osler shall not be obligated to make any payment to Project Co unless all conditions precedent applicable to such payment under this Project Agreement have been satisfied by Project Co. Further, Osler shall not be obligated to pay an invoice delivered by Project Co after the second Payment Period following the Payment Commencement Date until Project Co has delivered the Payment Adjustment Report referred to in Section 31.6(i) for the previous Payment Period. In the event that Project Co delivers any Payment Adjustment Report later than the stipulated date in Section 31.6(i), Osler’s obligation to pay the invoice issued by Project Co for the immediately following Payment Period shall be extended by the number of days by which Project Co was late in delivering the applicable Payment Adjustment Report to Osler.
- (i) Within 5 Business Days following the end of each Payment Period, Project Co shall also submit to Osler:
- (i) a Performance Monitoring Report in respect of the Payment Period just ended; and
  - (ii) a report (a “**Payment Adjustment Report**”) setting out any adjustments required between the actual Monthly Service Payment determined by Project Co to be owing by Osler to Project Co in respect of the Payment Period just ended and the amount that was paid by Osler during such Payment Period, including details of:
    - (A) all Deductions in relation to Availability Failures;
    - (B) all Deductions in relation to Quality Failures;

- (C) all Deductions in relation to Service Failures; and
  - (D) any Gainshare Adjustment or Painshare Adjustment.
- (j) Project Co shall include with each Payment Adjustment Report such supporting documentation as is reasonably required to substantiate and confirm the adjustments set out in each Payment Adjustment Report.
- (k) Within 10 Business Days of receipt by Osler of the Payment Adjustment Report, the Osler Representative shall:
- (i) determine and advise Project Co that the Payment Adjustment Report is approved by Osler, in which case the adjustments set out therein will be reflected by Project Co in the invoice next issued by Project Co; or
  - (ii) if Osler disputes Project Co's entitlement to any part of the amounts set out therein, notify Project Co in writing of that part of the amounts (insofar as at the time of such notice Osler is reasonably able to quantify it) which Osler disputes and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. In such event, Osler shall withhold payment of any disputed amount pending agreement or determination of Project Co's entitlement to the disputed amount in accordance with Section 31.9.
- (l) In respect of all invoices issued by Project Co for payment from and after the Payment Commencement Date through to the Payment Period ending no less than 45 days following the date of the Final Completion Certificate, Project Co shall cause its solicitors to:
- (i) subsearch title to the Site as at noon of the day that each payment is due; and
  - (ii) promptly send to Osler
    - (A) a Notice, and
    - (B) a statutory declaration from an officer of Project Coconfirming no liens pursuant to the CLA have been registered against the Site in connection with the Works.

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

### **31.7 Electronic Invoicing**

- (a) Project Co shall cooperate with the reasonable requirements of Osler's finance department, and shall submit its invoices and all other documentation relating to this Project Agreement in a form and with the structure and content as is reasonably required to be compatible with Osler's information systems.

### 31.8 Final Payment Periods

- (a) At the beginning of each of the final 3 Payment Periods immediately prior to the Expiry Date, Osler shall estimate, acting reasonably, the adjustments to the Monthly Service Payment for each such Payment Period. Osler may withhold the amounts that it has reasonably estimated for such adjustments from amounts paid to Project Co during each of the final 3 Payment Periods.
- (b) Within 10 Business Days of receipt by Osler of the applicable Payment Adjustment Report for each of the final 3 Payment Periods, the Osler Representative shall either:
  - (i) determine and advise Project Co that the Payment Adjustment Report is approved by Osler and perform a reconciliation between the amount payable based on such Payment Adjustment Report and the amount Osler previously paid in respect of the applicable Payment Period. Based on such reconciliation, either Osler or Project Co shall pay to the other Party the amount properly owing in accordance with such reconciliation; or
  - (ii) if Osler disputes Project Co's entitlement to any part of the amounts set out therein, notify Project Co in writing of that part of the amounts (insofar as at the time of such notice Osler is reasonably able to quantify it) which Osler disputes and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. In such event, the Osler Representative shall perform a reconciliation between the undisputed amount payable based on such Payment Adjustment Report and the amount Osler previously paid in respect of the applicable Payment Period. Based on such reconciliation, either Osler or Project Co shall pay to the other Party the amount properly owing in accordance with such reconciliation, provided that Osler shall withhold payment of any disputed amount pending agreement or determination of Project Co's entitlement to the disputed amount in accordance with Section 31.9.

### 31.9 Disputes

- (a) If Osler, acting in good faith, disputes all or any part of a Payment Adjustment Report and/or the Monthly Service Payments payable thereunder, it shall notify Project Co in writing of that part of the amounts (insofar as at the time of such notice Osler is reasonably able to quantify it) which Osler disputes and submit to Project Co such supporting documentation as is reasonably required to substantiate and confirm such claim. The Parties shall use commercially reasonable efforts to resolve the Dispute in question within 10 Business Days of the aforesaid notice of the Dispute. If they fail to so resolve the Dispute within such period, the Dispute may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure. Following resolution of the Dispute, any amount which has been paid by Osler that is determined not to have been payable shall be paid forthwith by Project Co to Osler and Project Co shall indemnify Osler from and against any damages suffered or incurred resulting from such overpayment by Osler as provided for at Section 53.1(e) on the basis that the due date was the date of the overpayment by Osler. Following resolution of the Dispute, any amount which has been withheld by Osler that is determined to have been payable shall be paid forthwith by Osler to Project Co and Osler shall indemnify Project Co from and against any damages suffered or incurred resulting from such withholding by Osler as provided for at Section 53.2(c) on the basis that the due date was the date upon which such amount became payable to Project Co.

### **31.10 Payments**

- (a) Unless specific timeframes are stipulated for payment of any amounts owing or payable by one Party to the other Party under this Project Agreement, such amounts shall be due within 30 days of receipt or deemed receipt of an invoice therefor.
- (b) Project Co shall maintain, or cause to be maintained, all holdbacks required pursuant to the CLA and shall only release holdbacks on being satisfied that no claims for lien can be claimed in respect of the Subcontracts for which holdbacks are to be released.

### **31.11 Manner of Payment**

- (a) All payments under this Project Agreement shall be made in Canadian dollars and shall be electronically transferred, quoting the invoice number or description against which payment is made, in immediately available funds on the due date to a single bank account located in Canada as may be designated by the recipient from time to time by written notice to the other Party.
- (b) If the due date is not a Business Day, then the electronic transfer shall be made on the Business Day immediately succeeding such day.

### **31.12 Intentionally Deleted**

### **31.13 Set-Off**

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

### **31.14 Effect of Payment**

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

### **31.15 Audit of Performance of Project Operations**

- (a) Without limiting Osler's rights and Project Co's obligations pursuant to Section 34.2, at any time and from time to time until 180 days after the Termination Date, Osler may give notice to Project Co requiring an audit of any matter relating to performance of the Project Operations and

payments by or to Osler within the 7 year period prior to the date of such notice, including any Payment Adjustment Reports, and any other records, reports, information, documents or data relating to performance and payments to verify their accuracy, correctness and completeness.

- (b) Osler shall appoint an auditor to perform and complete such audit at Osler's cost and expense and pursuant to terms of reference determined by Osler.
- (c) Within a reasonable time following receipt of a notice referred to in Section 31.15(a), Project Co shall make available to Osler's auditor, any Payment Adjustment Reports, and any other records, reports, information, documents or data relating to performance and payments.
- (d) Osler shall notify Project Co of the results of the audit, and if Osler's auditor discovers any inaccuracy, incorrectness or incompleteness, then, subject to Project Co's right to dispute the same in accordance with Schedule 27 – Dispute Resolution Procedure:
  - (i) Project Co shall:
    - (A) remedy any such inaccuracy, incorrectness or incompleteness and issue a revision to the applicable Payment Adjustment Report or other record, report, information, document or data; and
    - (B) where the inaccuracy, incompleteness or incorrectness has resulted in any material overpayment by Osler, reimburse Osler for all costs relating to the auditor and audit to a maximum amount that is the lesser of:
      - (I) the actual costs relating to the auditor and audit; or
      - (II) an amount equal to the amount of any overpayment;
  - (ii) where the inaccuracy, incompleteness or incorrectness has resulted in any overpayment, whether or not material, by Osler, Project Co shall reimburse Osler for the amount of such overpayment, and, further, shall indemnify Osler from and against any damages suffered or incurred resulting from such overpayment by Osler as provided for at Section 53.1(e) on the basis that the due date was the date of the overpayment by Osler; and
  - (iii) where the inaccuracy, incompleteness or incorrectness has resulted in any underpayment, whether or not material, by Osler, Osler shall pay Project Co the amount of such underpayment and, further, shall indemnify Project Co from and against any damages suffered or incurred resulting from such underpayment by Osler as provided for at Section 53.2(c) on the basis that the due date was the date of the underpayment by Osler.

### **31.16 No Other Entitlement**

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

**32. TAXES**

**32.1 Taxes**

- (a) All amounts specified in this Project Agreement, including, for clarity, any compensation on termination, are expressed exclusive of any Taxes payable pursuant to Applicable Law by Osler. For clarity, Osler shall not be required to pay any interest and/or penalties that are imposed on or assessed against Project Co or any Project Co Party for non-compliance with Applicable Law. Except as specified in Sections 32.1(c) and 32.1(d), if Project Co is required by Applicable Law to collect any such Taxes from Osler, Osler shall pay such Tax to Project Co simultaneously with the amount to which such applicable Tax relates or applies.
- (b) All amounts specified in this Project Agreement, including, for clarity, any compensation on termination, include any Taxes payable pursuant to Applicable Law by Project Co and all Project Co Parties.
- (c) Osler shall pay, when due and payable, all property taxes or payments in lieu of property taxes that are assessed in respect of ownership or use of the Site or Facility.
- (d) Within 3 weeks of the end of the month in which Substantial Completion occurs, Osler shall pay to Project Co all HST payable in accordance with paragraph 168(3)(c) of the Excise Tax Act (Canada) in respect of the construction of the Facility (the “Section 32.1(d) Payment”) for remittance to the Canada Revenue Agency, which amount will be set out in an invoice issued by Project Co to Osler upon the occurrence of Substantial Completion and shall reflect the capital cost of the Facility as set out in the Financial Model, which will serve as a reasonable estimate of the full consideration for Substantial Completion. For clarity, the calculation of the amount of the Section 32.1(d) Payment to be made by Osler to Project Co in accordance with the foregoing shall have deducted from it the HST amounts already paid by Osler to Project Co on account of the Substantial Completion Payment.
- (e) Subject to Section 32.1(f), in each Monthly Service Payment invoice provided by Project Co to Osler, Project Co shall show on a distinct line of the invoice the Monthly Previously Paid HST Amount used to determine the amount of unpaid HST payable by Osler on such Monthly Service Payment. For clarity, a Monthly Previously Paid HST Amount must be credited to Osler on each Monthly Service Payment invoice.
- (f) Osler shall pay all applicable HST properly payable in accordance with the Excise Tax Act (Canada) by Osler upon and in connection with payments by Osler to Project Co under this Project Agreement.

**32.2 Changes in Scope of HST**

- (a) If, as a result of a Change in Law, the provision of any goods or services by Project Co in connection with the performance of the Project Operations that was not subject to HST as at the date of this Project Agreement becomes subject to HST, Osler will pay to Project Co the amount of such HST as may be exigible from time to time thereafter in connection with the provision of such goods or services by Project Co.

**32.3 [Intentionally Deleted.]****32.4 Changes in Project Co's and/or Project Co Party's Taxes**

- (a) Notwithstanding Section 32.1(b), Osler shall pay to Project Co from time to time, (i) the lesser of the amounts equal to any Irrecoverable Tax incurred by any Project Co Party and the amounts paid by Project Co to any Project Co Party on account of Irrecoverable Tax, and (ii) the amounts equal to any Irrecoverable Tax incurred by Project Co, to the extent such Irrecoverable Tax results from a Change in Law. For clarity, any amounts payable by Osler to Project Co shall be paid by Osler to Project Co within 60 days following the final day of the calendar month in which the Irrecoverable Tax was incurred by Project Co or any Project Co Party, and any amounts payable by Project Co to Osler shall be paid by Project Co to Osler within 60 days following the final day of the calendar month in which the Recoverable Tax was incurred by Project Co or any Project Co Party.
- (b) For the purposes of this Section 32.4, the term “**Irrecoverable Tax**” means any Taxes payable pursuant to Applicable Law by Project Co or any Project Co Party (other than Taxes based on or measured by income or profit of Project Co or the Project Co Party or a capital tax based on or measured by the capital of Project Co or the Project Co Party) in respect of the supply of any property or service to Osler which is consumed, used, or supplied, or to be consumed, used, or supplied by Project Co or the Project Co Party exclusively in the course of carrying out the Works or otherwise performing the Project Operations to the extent that Project Co or the Project Co Party is unable to recover or be credited with input tax credits, refunds, rebates, or exemptions of such Taxes.
- (c) For the purposes of this Section 32.4, the term “**Recoverable Tax**” means any Taxes payable pursuant to Applicable Law by Project Co or any Project Co Party (other than Taxes based on or measured by income or profit of Project Co or the Project Co Party or a capital tax based on or measured by the capital of Project Co or the Project Co Party) in respect of the supply of any property or service to Osler which is consumed, used, or supplied, or to be consumed, used, or supplied by Project Co or the Project Co Party exclusively in the course of carrying out the Works or otherwise performing the Project Operations to the extent that Project Co or the Project Co Party is able to recover or be credited with input tax credits, refunds, rebates, or exemptions of such Taxes. For clarity, Recoverable Tax does not include the amount of the recapture of input tax credits in respect of the provincial component of HST on energy, meals and entertainment, road vehicles, and telecommunications as such recapture is phased out under the Applicable Law as at the date hereof.

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

- (a) Project Co shall, at Osler's request and cost, assist Osler in applying for and obtaining all remissions and credits of Taxes to which Osler is entitled.
- (b) Osler may apply for a global or general exemption, waiver, remission or refund of some or all Taxes which may otherwise be applicable in relation to this Project Agreement. Project Co shall, at Osler's cost, assist Osler in making any applications for such global or general exemption, waiver, remission or refund and shall provide Osler with such documentation as Osler may reasonably require to support such application and, in any event, shall provide such consent as



Osler may require. Any exemption, waiver, remission, refund or other recovery of Taxes obtained by Osler through such application shall accrue to the sole benefit of Osler.

- (c) Project Co will provide Osler with any information reasonably requested by Osler from time to time in relation to any Taxes chargeable by Project Co in accordance with this Project Agreement and payable by Osler to Project Co from time to time.

### 32.6 Residency – *Income Tax Act (Canada)*

- (a) Project Co shall not undertake any action or transaction that, if undertaken, would cause or result in Project Co becoming a Non-Resident without Osler’s prior written consent, which consent may be withheld in Osler’s sole discretion.

### 32.7 Taxes – General

- (a) Project Co shall not, without the prior written consent of Osler (which consent may be withheld in its sole discretion), undertake any action or transaction that, if undertaken, would cause Osler to have (or result in Osler having) any obligation to deduct, withhold or remit any Taxes that are required by Applicable Law to be deducted, withheld or remitted from any amounts paid or credited to Project Co or any Project Co Party under this Project Agreement or under any other Project Document.

### 32.8 Taxes – Indemnity

- (a) If (i) Project Co becomes a Non-Resident, or (ii) Osler is or becomes required by Applicable Law to deduct or withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by Osler under the Project Agreement or under any of the Project Documents, then Osler shall be entitled to make any applicable deductions or withholdings required by Applicable Law from any amount paid or credited or to be paid or credited to Project Co or Project Co Party on or after the date on which (A) Project Co or the Project Co Party becomes a Non-Resident and at all times while it remains a Non-Resident; or (B) Osler is required by Applicable Law to deduct or withhold amounts in respect of any such amounts, in each case, in respect of all Taxes that are required by Applicable Law to be deducted or withheld from amounts paid or credited to a Non-Resident or otherwise as required by Applicable Law; and all amounts paid or credited by Osler under this Project Agreement or under any other Project Document to Project Co or a Project Co Party shall be paid or credited net of such deductions or withholdings.
- (b) If (i) Project Co becomes a Non-Resident, or (ii) Osler is or becomes required by Applicable Law to deduct or withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Project Co or a Project Co Party by Osler under the Project Agreement or under any of the Project Documents, Project Co shall, in each case, indemnify and hold harmless Osler for (A) the full amount of all Taxes (“**Indemnifiable Taxes**”) that arise, are imposed on or are required to be paid by Osler in respect of any amounts paid or credited by Osler to Project Co or any Project Co Party under this Project Agreement or under any other Project Document as a result of either of the foregoing items less any amount withheld or deducted by Osler in respect of such Taxes, and (B) any liability payable or incurred in connection with Indemnifiable Taxes (including penalties, interest and reasonable expenses associated with Taxes compliance,

reporting and contesting such liability for Indemnifiable Taxes, including reasonable professional expenses payable or incurred in connection therewith) arising from or with respect to Indemnifiable Taxes, whether or not they were correctly or legally asserted (“**Associated Liabilities**”). Payment under this indemnification shall be made within 30 days from the date Osler makes written demand for it. A certificate containing reasonable detail as to the amount of Indemnifiable Taxes and Associated Liabilities submitted to Project Co by Osler shall be conclusive evidence, absent manifest error, of the amount due from Project Co to Osler. Osler shall be entitled to exercise its rights of set-off under Section 31.13 against any amounts owing under this indemnification.

### **33. FINANCIAL MODEL**

#### **33.1 Appointment of Custodian**

- (a) On or prior to Financial Close, the Parties shall appoint a suitably qualified and experienced person to act as the Custodian for the purposes of this Project Agreement, and shall enter into an agreement with the Custodian substantially in the form of Schedule 3 – Custody Agreement.

#### **33.2 Delivery and Use of Financial Model**

- (a) In accordance with Schedule 2 – Completion Documents, Project Co shall deliver copies of the Financial Model (1 printed copy and 2 copies on CD-ROM) to Osler and the Custodian to be held in custody on terms to be agreed by the Parties.
- (b) Following the approval by Osler of any amendment to the Financial Model, Project Co shall promptly deliver copies of the revised Financial Model, in the same form as the original Financial Model (or such other form as may be agreed by the Parties from time to time), to Osler and the Custodian.
- (c) The Parties shall instruct the Custodian to keep both a hard copy and an electronic copy of all versions of the Financial Model.
- (d) Project Co hereby grants to Osler an irrevocable, royalty free perpetual, non-exclusive and transferable licence, including the right to grant sub-licences, to use the Financial Model or any revised Financial Model for any purpose in connection with this Project Agreement, whether during or after the Project Term.
- (e) For greater certainty, Project Co acknowledges and agrees that Osler shall not be liable to Project Co for, and Project Co shall not seek to recover from Osler or any Osler Party, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) as a result of any errors in the Financial Model.

### **34. RECORDS, INFORMATION AND AUDIT**

#### **34.1 Records Provisions**

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

### 34.2 Information and General Audit Rights

- (a) Project Co shall provide and shall cause the Subcontractors to provide, to Osler all information, reports, documents, records and the like, including as referred to in Schedule 26 – Record Provisions, in the possession of, or available to, Project Co as Osler may reasonably require from time to time for any purpose in connection with this Project Agreement, other than Sensitive Information. Project Co shall use commercially reasonable efforts to ensure that, for such purpose, all such information, reports, documents, records and the like in the possession of, or available to, the Construction Contractor and the Service Provider shall be available to Project Co and Project Co shall include relevant terms in all Subcontracts to this effect.
- (b) Project Co shall also provide to Osler, and shall require each Subcontractor, including the Construction Contractor and the Service Provider, to provide to Osler (at Osler’s reasonable cost), all information, reports, documents, records and the like required to be provided pursuant to Section 34.2(a) which subsequently come into the possession of, or become available to, Project Co or each Subcontractor, as Osler may reasonably require from time to time to enable Osler to provide reports, notices, returns and the like pursuant to Applicable Law, including information and documentation pertaining to the physical condition of the Facility, health and safety, fire safety, emergency preparedness, environmental matters, employees and human resources related matters and patient care, other than Sensitive Information.
- (c) Project Co shall promptly after receipt provide Osler with a copy of any material notice, order, direction, requirement or other similar communication received by it or by any Subcontractor from any Governmental Authority in relation to any of the Project Operations, the Hospital Services or the Facility, and Project Co shall include relevant terms in all Subcontracts to this effect.
- (d) Project Co shall promptly notify Osler of any actions, suits, proceedings, or investigations commenced, pending or threatened against Project Co or, to Project Co’s knowledge, any Subcontractor at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement.
- (e) All information, reports, documents and records in the possession of, or available to, Project Co, including as referred to in Schedule 26 – Record Provisions, which are required to be provided to or available to Osler hereunder, shall be subject and open to inspection and audit by Osler at any time and from time to time, which inspection and audit shall take place during normal business hours and at Project Co’s normal places of business unless Osler and Project Co otherwise agree. Osler shall also have the right to monitor and audit the performance of any and all parts of the Works or Project Co Services wherever located, and Project Co shall cooperate with, and shall require each Subcontractor to cooperate with, and provide access to the representatives of Osler monitoring and auditing such parts of the Works or Project Co Services, including providing them with access and copies (at Osler’s reasonable cost) of all relevant information, reports, documents and records pertaining to the performance of such parts of the Works or Project Co Services. Except as otherwise provided herein, all of Osler’s costs for the inspections, audits and monitoring shall be borne by Osler.

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

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

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

## **35. CHANGES IN LAW**

### **35.1 Performance after Change in Law**

- (a) Following any and all Changes in Law, Project Co shall perform the Project Operations in accordance with the terms of this Project Agreement, including in compliance with Applicable Law.

### **35.2 Works Change in Law**

- (a) On the occurrence of a Works Change in Law:
  - (i) either Party may give notice to the other of the need for a Variation as a result of such Works Change in Law;
  - (ii) the Parties shall meet within 10 Business Days of such notice to consult with respect to the effect of the Works Change in Law and to reach an agreement on whether a Variation is required as a result of such Works Change in Law, and, if the Parties have not, within 10 Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Works Change in Law has occurred or the effect of any Works

Change in Law for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and

- (iii) Osler shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
  - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Works Change in Law;
  - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences, Approvals and Agreements required in respect of the Variation;
  - (C) Osler shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
  - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Works Change in Law as soon as reasonably practicable; and
  - (E) Project Co shall not be entitled to any payment or other compensation or relief from performance of its obligations under this Project Agreement in respect of any Works Change in Law or associated Variation other than as established pursuant to Schedule 22 – Variation Procedure.

### **35.3 Relevant Change in Law**

- (a) On the occurrence of a Relevant Change in Law, either Party shall be entitled to seek compensation for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Project Operations so as to put such Party in no better and no worse position than it would have been in had the Relevant Change in Law not occurred. Any such compensation shall be calculated in accordance with this Section 35.3.
- (b) On the occurrence of a Relevant Change in Law:
  - (i) either Party may give notice to the other of the need for a Variation as a result of such Relevant Change in Law;
  - (ii) the Parties shall meet within 10 Business Days of such notice to consult with respect to the effect of the Relevant Change in Law and to reach an agreement on whether a Variation is required as a result of such Relevant Change in Law, and, if the Parties have not, within 10 Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Relevant Change in Law has occurred or the effect of any Relevant Change in Law for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and

- (iii) Osler shall, within 10 Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
  - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Relevant Change in Law;
  - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences, Approvals and Agreements required in respect of the Variation;
  - (C) Osler shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
  - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Relevant Change in Law as soon as reasonably practicable;
  - (E) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement:
    - (I) use commercially reasonable efforts to mitigate the adverse effects of any Relevant Change in Law and take commercially reasonable steps to minimize any increase in costs arising from such Relevant Change in Law; and
    - (II) use commercially reasonable efforts to take advantage of any positive or beneficial effects of any Relevant Change of Law and take commercially reasonable steps to maximize any reduction in costs arising from such Relevant Change in Law; and
  - (F) any entitlement to compensation payable shall be in accordance with this Section 35.3, and any calculation of compensation shall take into consideration, inter alia:
    - (I) any failure by a Party to comply with Section 35.3(b)(iii)(E);
    - (II) the extent to which a Party has been, or shall be, compensated in respect of such Change in Law as a result of any indexation or adjustment of the Monthly Service Payments under this Project Agreement;
    - (III) any increase or decrease in its costs resulting from such Relevant Change in Law; and
    - (IV) any amount which Project Co recovers under any insurance policy (or would recover if it complied with its obligations to insure under this Project Agreement or the terms of any policy of insurance required under this Project Agreement) which amount, for greater certainty, shall not

include the amount of any excess or deductibles or any amount above the maximum insured amount applicable to any such insurance policy.

- (c) Project Co shall not be entitled to any payment or compensation or, except as provided in Section 37 or otherwise in this Project Agreement, relief in respect of any Relevant Change in Law, or the consequences thereof, other than in accordance with this Section 35.3, and Section 38 shall be construed accordingly.
- (d) In relation to a Relevant Change in Law that results in a net increase or decrease in costs incurred by Project Co in delivery of the Project Operations, taking into consideration, inter alia, Section 35.3(b)(iii)(E), if the cost impact of such Relevant Change in Law in a given Contract Year (in aggregate with all other such Relevant Changes in Law that have a cost impact in the same Contract Year) amounts to less than \$[REDACTED] (index linked) in that Contract Year, neither Osler nor Project Co shall be entitled to any payment or compensation pursuant to this Section 35.3 or otherwise in respect of the cost impact of that Relevant Change in Law in that Contract Year, or, except as provided in Section 37 or otherwise in this Project Agreement, any other relief in respect of such Relevant Change in Law in that Contract Year.

## 36. VARIATIONS

### 36.1 Variation Procedure

- (a) Except as otherwise expressly provided in this Project Agreement, Schedule 22 – Variation Procedure shall apply in respect of Variations and Small Works.
- (b) For greater certainty, Project Co shall, subject to and in accordance with Schedule 22 – Variation Procedure, be entitled to a Variation if a written direction issued by or on behalf of Osler’s board of directors to Project Co or any Project Co Party results in a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Project Operations, including in relation to the whole or any part of the Works or the Project Co Services.
- (c) Without limiting Project Co’s obligations pursuant to Section 9.3 and Schedule 22 – Variation Procedure, Project Co shall include in each Subcontract, or shall otherwise cause each Project Co Party to comply with, the Variation Procedure, to the extent that the Variation Procedure requires Project Co to minimize the cost and impact of Variations, including Variations as to scope of Project Co Services.

### 36.2 Innovation and Value Engineering

- (a) Project Co acknowledges that Osler at all times desires to reduce the Monthly Service Payments and the overall cost to Osler of the Facility and the Project Co Services, and Project Co agrees to cooperate, explore and work with Osler in investigating and considering innovation and value engineering and other cost saving measures.
- (b) If an innovation and value engineering proposal is at any time and from time to time originated and initiated solely by Project Co, Project Co may make a proposal (the “**Innovation Proposal**”) by notice to Osler.

- (c) The Parties agree that the subject of an Innovation Proposal shall not include:
- (i) any Variation Enquiry initiated by Osler;
  - (ii) any Variation resulting from a Change in Law; or
  - (iii) any change to the Clinical Services.
- (d) The Innovation Proposal must:
- (i) set out sufficient detail to enable Osler to evaluate the Innovation Proposal in full;
  - (ii) specify Project Co's reasons and justification for proposing the Innovation Proposal;
  - (iii) request Osler to consult with Project Co with a view to deciding whether to agree to the Innovation Proposal and, if so, what consequential changes Osler requires as a result;
  - (iv) indicate any implications of the Innovation Proposal, including a difference between the existing and the proposed requirements of this Project Agreement, and the comparative advantages of each to Project Co and Osler;
  - (v) indicate, in particular, whether an increase or decrease to the Monthly Service Payments is proposed, and, if so, give a detailed cost estimate of such proposed change;
  - (vi) indicate if there are any dates by which a decision by Osler must be made;
  - (vii) indicate the capital cost of the Innovation Proposal, including the cost of financing; and
  - (viii) include such other information and documentation as may be reasonably requested by Osler to fully evaluate and consider the Innovation Proposal.
- (e) Osler shall, acting in good faith, evaluate the Innovation Proposal, taking into account all relevant issues, including whether:
- (i) a change in the Monthly Service Payments will occur;
  - (ii) the Innovation Proposal affects the quality of the Works, the Facility or the Project Co Services, or the likelihood of successful completion of the Works or delivery of the Project Co Services;
  - (iii) the Innovation Proposal will benefit or interfere with the efficient operation of the Facility or the performance of the Hospital Services;
  - (iv) the Innovation Proposal will interfere with the relationship between Osler and third parties;
  - (v) the financial strength of Project Co is sufficient to deliver the changed Works or perform the changed Project Co Services, as applicable;



- (vi) the residual value of the Facility is affected;
  - (vii) the Innovation Proposal will change the Lifecycle Payment;
  - (viii) the Innovation Proposal materially affects the risks or costs to which Osler is exposed; or
  - (ix) any other matter Osler considers relevant.
- (f) Osler may request clarification or additional information regarding the Innovation Proposal, and may request modifications to the Innovation Proposal.
- (g) Osler may, in its sole discretion, accept or reject any Innovation Proposal.
- (h) If Osler accepts the Innovation Proposal, with or without modification, the relevant Innovation Proposal shall be documented and evidenced by a written Variation Confirmation, together with any other documents necessary to amend this Project Agreement or any relevant Project Documents to give effect to the Innovation Proposal.
- (i) Unless Osler specifically agrees to an increase in the Monthly Service Payments in accepting an Innovation Proposal pursuant to Section 36.2(h), there shall be no increase in the Monthly Service Payments as a result of an Innovation Proposal.
- (j) If, after taking into account the agreed implementation and reasonably allocated development costs incurred by Project Co in connection with the Innovation Proposal and any other uses of the Innovation Proposal by Project Co, the Innovation Proposal causes or will cause the costs of Project Co and/or of each Subcontractor to decrease, the net savings in the costs of Project Co and/or each Subcontractor will be shared equally by Project Co and Osler, and Osler's share of the net savings shall, if the Parties agree, be reflected in either a lump sum payment or in a reduction of the Monthly Service Payments.
- (k) If an Innovation Proposal causes or will cause the costs of Osler to decrease, the net savings in the costs of Osler will be shared as follows:
- (i) equally by Project Co and Osler for the first 5 years following the implementation of the Innovation Proposal; and
  - (ii) thereafter, Osler shall be entitled to the full benefit of the net savings in costs (if applicable),

and Project Co's share of the net savings shall, at Osler's sole option, be reflected in either a lump sum payment or in an increase in the Monthly Service Payments.

### **37. DELAY EVENTS**

#### **37.1 Definition**

- (a) For the purposes of this Project Agreement, "**Delay Event**" means any of the following events or circumstances only to the extent, in each case, that it causes a delay in achieving Substantial

Completion by the Scheduled Substantial Completion Date or a delay in achieving Final Completion by the Scheduled Final Completion Date:

- (i) the implementation of a Variation to the extent Project Co has identified such delay in its Estimate and such delay has been documented in the Variation Confirmation;
- (ii) any breach by Osler of any of Osler's obligations under this Project Agreement (including any delay by Osler in giving access to the Site pursuant to Section 14.1, any obstruction of the rights afforded to Project Co under Section 14.1, any delay by Osler in carrying out its obligations set forth in Section 21.8(b) or any delay by Osler in carrying out its obligations set forth in Schedule 10 – Review Procedure), except to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party;
- (iii) an opening up of the Works pursuant to Section 19.3 where such Works are not subsequently found to be defective or not in compliance with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data), unless such opening up of the Works was reasonable in the light of other defects or non-compliance previously discovered by Osler in respect of the same or a similar component of the Works or subset of the Works;
- (iv) a requirement pursuant to Sections 16.2(b) or 16.2(c) for Project Co to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, upon the discovery of Contamination, which alteration, addition, demolition, extension or variation in the Works, or suspension or delay in the performance of the Works, would not otherwise be required under this Project Agreement;
- (v) a requirement pursuant to Sections 16.3(b) or 16.3(c) for Project Co to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, upon the discovery of any fossils, artefacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which alteration, addition, demolition, extension or variation in the Works, or suspension or delay in the performance of the Works, would not otherwise be required under this Project Agreement;
- (vi) subject to compliance by Project Co with the provisions of Section 9.6, the execution of Additional Works on the Site by Additional Contractors;
- (vii) a requirement pursuant to Section 13.1 of Schedule 27 – Dispute Resolution Procedure for Project Co to proceed in accordance with the direction of Osler during the pendency of a Dispute, which Dispute is subsequently determined in Project Co's favour;
- (viii) an event of Force Majeure;
- (ix) a Relief Event;
- (x) a Relevant Change in Law; or

- (xi) an event described in Section 16.4(d).

### **37.2 Consequences of a Delay Event**

- (a) Project Co shall provide written notice to the Osler Representative and the Independent Certifier within 5 Business Days of becoming aware of the occurrence of a Delay Event. Project Co shall, within 10 Business Days after such notification, provide further written details to the Osler Representative and the Independent Certifier which shall include:
  - (i) a statement of which Delay Event the claim is based upon;
  - (ii) details of the circumstances from which the Delay Event arises;
  - (iii) details of the contemporary records which Project Co shall maintain to substantiate its claim for extra time;
  - (iv) details of the consequences (whether direct or indirect, financial or non-financial) which such Delay Event may have upon the Scheduled Substantial Completion Date, and
  - (v) details of any measures which Project Co proposes to adopt to mitigate the consequences of such Delay Event.
- (b) As soon as possible but in any event within 3 Business Days of Project Co receiving, or becoming aware of, any supplemental information which may further substantiate or support Project Co's claim, Project Co shall submit further particulars based on such information to the Osler Representative and the Independent Certifier.
- (c) The Osler Representative shall, after receipt of written details under Section 37.2(a), or of further particulars under Section 37.2(b), be entitled by written notice to require Project Co to provide such further supporting particulars as the Osler Representative may reasonably consider necessary. Project Co shall afford the Osler Representative and the Independent Certifier reasonable facilities for investigating the validity of Project Co's claim, including, without limitation, on-site inspection.
- (d) Subject to the provisions of this Section 37, the Osler Representative shall allow Project Co an extension of time equal to the delay caused by the Delay Event and shall fix a revised Scheduled Substantial Completion Date, or a revised Scheduled Final Completion Date, as applicable, as soon as reasonably practicable and in any event within 10 Business Days of the later of:
  - (i) the date of receipt by the Osler Representative of Project Co's notice given in accordance with Section 37.2(a) and the date of receipt of any further particulars (if such are required under Section 37.2(c)), whichever is later; and
  - (ii) the date of receipt by the Osler Representative of any supplemental information supplied by Project Co in accordance with Section 37.2(b) and the date of receipt of any further particulars (if such are required under Section 37.2(c)), whichever is later.

- (e) For the avoidance of doubt, there shall be no extension to the Project Term as a result of any delay caused by a Delay Event.
- (f) If:
  - (i) the Osler Representative declines to fix a revised Scheduled Substantial Completion Date or a revised Scheduled Final Completion Date, as applicable;
  - (ii) Project Co considers that a different Scheduled Substantial Completion Date or Final Completion Date should be fixed; or
  - (iii) there is a dispute as to whether a Delay Event has occurred,

then Project Co shall be entitled to refer the matter for determination by the Independent Certifier. The decision of the Independent Certifier may be disputed by either Party and referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

### **37.3 Mitigation**

- (a) If Project Co is (or claims to be) affected by a Delay Event, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps:
  - (i) to eliminate or mitigate the consequences of such event upon the performance of its obligations under this Project Agreement;
  - (ii) to continue to perform its obligations under this Project Agreement to the extent possible notwithstanding the Delay Event; and
  - (iii) to resume performance of its obligations under this Project Agreement affected by the Delay Event as soon as practicable.
- (b) To the extent that Project Co does not comply with its obligations under this Section 37.3, such failure shall be taken into account in determining Project Co’s entitlement to an extension of time pursuant to this Section 37.

## **38. COMPENSATION EVENTS**

### **38.1 Definition**

- (a) For the purposes of this Project Agreement, “**Compensation Event**” means any event referred to in Sections 37.1(a)(ii), 37.1(a)(iii), 37.1(a)(iv), 37.1(a)(v), 37.1(a)(vi), 37.1(a)(vii) and 37.1(a)(xi) as a direct result of which Project Co has incurred loss or expense, whether or not any of these events has also caused a delay.

### 38.2 Consequences of a Compensation Event

- (a) If a Compensation Event occurs, Project Co's sole right to compensation shall be as set out in this Section 38. For greater certainty, except as aforesaid, no other Delay Event shall entitle Project Co to receive any compensation, except as otherwise provided in:
- (i) Schedule 22 – Variation Procedure, in the case of a Delay Event referred to in Section 37.1(a)(i);
  - (ii) Section 41, in the case of a Delay Event referred to in Section 37.1(a)(viii);
  - (iii) Section 40, in the case of a Delay Event referred to in Section 37.1(a)(ix); and
  - (iv) Section 35, in the case of a Delay Event referred to in Section 37.1(a)(x).
- (b) Subject to Sections 38.3 and 38.4, if it is agreed, or determined in accordance with Schedule 27 – Dispute Resolution Procedure, that there has been a Compensation Event, Project Co shall be entitled to such compensation as would place Project Co in no better and no worse position than it would have been in had the relevant Compensation Event not occurred. For greater certainty, in respect of a Compensation Event that is also a Delay Event, such compensation will include amounts which, but for the Delay Event, would have been paid by Osler to Project Co. Project Co shall promptly provide the Osler Representative with any information the Osler Representative may require in order to determine the amount of such compensation.
- (c) If Osler is required to compensate Project Co pursuant to this Section 38.2, then Osler may either pay such compensation as a lump sum payment or payments at times and in a manner to be agreed with Project Co, acting reasonably, or, alternatively, Osler may request Project Co to agree to an adjustment to the Monthly Service Payments. If Project Co agrees to an adjustment to the Monthly Service Payments, then the provisions of Schedule 22 – Variation Procedure shall apply.

### 38.3 Mitigation

- (a) If Project Co is (or claims to be) affected by a Compensation Event, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps to minimize the amount of compensation due in accordance with this Section 38 in relation to any Compensation Event.
- (b) To the extent that Project Co does not comply with its obligations under this Section 38.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 38.

### 38.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 38 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this

Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

### 39. EXCUSING CAUSES

#### 39.1 Definition

- (a) For the purposes of this Project Agreement, “**Excusing Cause**” means any of the following events or circumstances if it occurs after the Substantial Completion Date and to the extent, in each case, that it interferes adversely with, or causes a failure of, the performance of the Project Co Services:
- (i) the implementation of a Variation to the extent Project Co has identified any impact on the Project Co Services in its Estimate and such impact has been documented in the Variation Confirmation;
  - (ii) any breach by Osler of any of Osler’s obligations under this Project Agreement (including any obstruction of the rights afforded to Project Co under Section 14.1), except to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party;
  - (iii) any deliberate or negligent act or omission of Osler or any Osler Party or any failure by Osler or any Osler Party (having regard to the interactive nature of the activities of Osler and Project Co) to take commercially reasonable steps to perform its activities in a manner which minimizes undue interference with Project Co’s performance of the Project Co Services, except to the extent:
    - (A) any such act, omission or failure is caused, or contributed to, by Project Co or any Project Co Party;
    - (B) Osler or the Osler Party is acting in accordance with a recommendation or instruction of Project Co or any Project Co Party;
    - (C) any such act, omission or failure was contemplated in Schedule 15 – Output Specifications or was otherwise provided for in this Project Agreement; or
    - (D) the consequences of any such act, omission or failure would have been prevented by the proper performance of Project Co’s obligations under this Project Agreement;
  - (iv) the outbreak or the effects of any outbreak of Medical Contamination, except to the extent that such Medical Contamination, or the effects of such Medical Contamination, are caused, or contributed to, by Project Co or any Project Co Party, including any failure by Project Co or any Project Co Party to comply with procedures or instructions relating to control of infection or to take commercially reasonable steps to mitigate the effects of such Medical Contamination, provided that neither Project Co nor any Project Co Party shall be deemed to have caused, or contributed to, an outbreak of Medical Contamination

if such Medical Contamination was caused, or contributed to, by an employee of Project Co or any Project Co Party who was unaware of his or her condition;

- (v) the implementation of any action taken by Osler, or any suspension of Project Co's obligation to deliver all or any part of the Project Co Services, or the compliance by Project Co with instructions given by Osler, in each case in the circumstances referred to in Section 30;
- (vi) the performance of any Small Works in accordance with the terms of this Project Agreement during the period of time agreed between Osler and Project Co;
- (vii) any official or unofficial strike, lockout, work to rule or other labour-related action involving employees of Osler or any Osler Party;
- (viii) any breach by Osler of its obligation to perform the Hospital FM Services in accordance with this Project Agreement to the extent that such breach has a material adverse effect on Project Co's ability to perform the Project Co Services;
- (ix) the performance of any Scheduled Maintenance in accordance with the Scheduled Maintenance Plan and any acceleration of Scheduled Maintenance pursuant to Section 26.3, provided that:
  - (A) improperly performed Scheduled Maintenance and the effects thereof shall not constitute an Excusing Cause; and
  - (B) where the Scheduled Maintenance continues beyond the period set out in the Scheduled Maintenance Plan or beyond the period required for its accelerated performance pursuant to Section 26.3 (except where the continuation was due to an Excusing Cause other than as set out in this Section 39.1(a)(ix)), Failure Points may accrue from the time the Scheduled Maintenance was due to have been completed in accordance with the Scheduled Maintenance Plan or Section 26.3, as applicable; or
- (x) the occurrence of any Contamination for which Osler is responsible pursuant to Section 16.2.

### **39.2 Consequences of an Excusing Cause**

- (a) Provided that the effect of an Excusing Cause is claimed by Project Co, in writing, within 10 Business Days of the date on which Project Co or any Project Co Party became aware of the occurrence of such Excusing Cause, then (subject to Sections 39.3 and 39.4):
  - (i) any failure by Project Co to perform, and any poor performance of, any affected Project Co Services shall not constitute a breach of this Project Agreement by Project Co, no Failure Points shall accrue in respect of such failure and Project Co shall be relieved of its obligations to perform such Project Co Services for the duration and to the extent prevented by such Excusing Cause;

- (ii) any interference shall be taken into account in measuring the performance of any affected Project Co Services in accordance with the Performance Monitoring Program, which shall be operated as though the relevant Project Co Services had been performed free from such adverse interference;
- (iii) any interference shall be taken into account in operating the Payment Mechanism, which shall be operated as though any Availability Failure, Quality Failure or Service Failure resulting from such interference had not occurred, so that Project Co shall be entitled to payment under this Project Agreement as if there had been no such interference with the Project Co Services, provided however that Project Co shall not be entitled to any additional compensation, except as may be provided hereunder for compensation on termination of this Project Agreement, if this Project Agreement is terminated as provided herein;
- (iv) this Section 39.2 shall not limit Osler's entitlement to reimbursement pursuant to Section 30.4;
- (v) Osler shall reimburse Project Co for all incremental Direct Costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) incurred by Project Co as a result of any Excusing Cause referred to in Section 39.1(a)(ii), 39.1(a)(iii), 39.1(a)(vii), 39.1(a)(viii) or 39.1(a)(x), including costs arising from any steps taken to cure or mitigate against such events, together with any applicable margin for overhead and profit on such Direct Costs as set out in Schedule 22 – Variation Procedure; and
- (vi) the Monthly Service Payments payable by Osler shall be reduced by any savings in Direct Costs arising from Project Co being relieved of its obligations to perform the Project Co Services as otherwise provided herein, together with any applicable margin for overhead and profit on such Direct Costs as set out in Schedule 22 – Variation Procedure.

### **39.3 Mitigation**

- (a) If Project Co is (or claims to be) affected by an Excusing Cause, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps:
  - (i) to eliminate or mitigate the consequences of such event upon the performance of its obligations under this Project Agreement;
  - (ii) to continue to perform its obligations under this Project Agreement to the extent possible notwithstanding the Excusing Cause; and
  - (iii) to resume performance of its obligations under this Project Agreement affected by the Excusing Cause as soon as practicable.
- (b) To the extent that Project Co does not comply with its obligations under this Section 39.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 39.



### 39.4 Insured Exposure

- (a) The compensation payable to Project Co pursuant to this Section 39 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

## 40. RELIEF EVENTS

### 40.1 Definition

- (a) For the purposes of this Project Agreement, “**Relief Event**” means any of the following events or circumstances to the extent, in each case, that it causes any failure by a Party to perform any of its obligations under this Project Agreement:
- (i) fire, explosion, lightning, storm, tempest, hurricane, tornado, flood, bursting or overflowing of water tanks, apparatus or pipes, ionizing radiation (to the extent it does not constitute Force Majeure), earthquake, riot or civil commotion;
  - (ii) failure by any Utility Company, local authority or other like body to perform works or provide services;
  - (iii) accidental loss or damage to the Works and/or the Facility or any roads servicing the Site;
  - (iv) without prejudice to any obligation of Project Co to provide stand-by power facilities in accordance with this Project Agreement, failure or shortage of power, fuel or transport;
  - (v) blockade or embargo falling short of Force Majeure;
  - (vi) any official or unofficial strike, lockout, work to rule or other labour-related action generally affecting the hospital, construction, building maintenance or facilities management industry (or a significant sector of that industry) in the Province of Ontario; or
  - (vii) any civil disobedience or protest action, including any action taken by any person or persons protesting or demonstrating against the carrying out of any part of the Project Operations or the construction and/or operation of hospitals in general,

provided, in each case, that such event does not arise (directly or indirectly) as a result of any act or omission of the Party claiming relief and/or (i) in the case of Project Co claiming relief, as a result of any act or omission of any Project Co Party and (ii) in the case of Osler claiming relief, as a result of any act or omission of any Osler Party.

### 40.2 Consequences of a Relief Event

- (a) Subject to Section 40.3:

- (i) no right of termination, other than either Party's right to terminate this Project Agreement pursuant to Section 44.1, shall arise under this Project Agreement by reason of any failure by a Party to perform any of its obligations under this Project Agreement; and
- (ii) as soon as the events or circumstances constituting a Relief Event have ceased, any Failure Points accrued in respect of any failure by Project Co to perform any of its obligations under this Project Agreement shall be cancelled and any related Warning Notices and Monitoring Notices shall be withdrawn,

but only to the extent that such failure to perform is caused by the occurrence of a Relief Event (it being acknowledged and agreed by the Parties that all other rights and obligations of the Parties under this Project Agreement remain unaffected by the occurrence of a Relief Event). For greater certainty, Osler shall be entitled to make Deductions in accordance with Schedule 20 – Payment Mechanism notwithstanding the cancellation of Failure Points pursuant to Section 40.2(a)(ii).

- (b) In respect of a Relief Event that is also a Delay Event pursuant to Section 37.1(a)(ix):
  - (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 37; and
  - (ii) in respect of a Relief Event referred to in Section 40.1(a)(v), 40.1(a)(vi) or 40.1(a)(vii), on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the Osler Default Termination Sum, Non-Default Termination Sum or Prohibited Acts Termination Sum (and as a part thereof) in accordance with Schedule 23 – Compensation on Termination, Osler shall pay to Project Co an amount equal to the Senior Debt Service Amount accrued and paid or that became payable in accordance with the Lending Agreements during the period of the delay by Project Co or any Project Co Party to the Senior Lenders up to and including such date, together with interest thereon at the rate payable on the Senior Debt Amount, which, but for the Delay Event, would have been paid by Osler to Project Co.
- (c) If a Relief Event occurs prior to the Substantial Completion Date, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 40.2(b)(ii) and 46.
- (d) During a Relief Event which occurs on or after the Substantial Completion Date, the provisions of Schedule 20 – Payment Mechanism will continue to be in full force and effect.
- (e) Subject to Section 46, Project Co's sole right to payment or otherwise in relation to the occurrence of a Relief Event shall be as provided in this Section 40.

### **40.3 Mitigation and Process**

- (a) Where a Party is (or claims to be) affected by a Relief Event, such Party shall take commercially reasonable steps to mitigate the consequences of the Relief Event upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by the Relief Event as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform.

- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 40.3, such failure shall preclude such Party's entitlement to relief pursuant to this Section 40.
- (c) The Party claiming relief shall give written notice to the other Party within 5 Business Days of such Party becoming aware of the relevant Relief Event. Such initial notice shall give sufficient details to identify the particular event claimed to be a Relief Event.
- (d) A subsequent written notice shall be given by the Party claiming relief to the other Party within a further 5 Business Days of the initial notice, which notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including, without limitation, the effect of the Relief Event on the ability of the Party to perform, the action being taken in accordance with Section 40.3(a), the date of the occurrence of the Relief Event, and an estimate of the period of time required to overcome the Relief Event and/or its effects.
- (e) The Party claiming relief shall notify the other as soon as the consequences of the Relief Event have ceased and of when performance of its affected obligations can be resumed.
- (f) If, following the issue of any notice referred to in Section 40.3(d), the Party claiming relief receives or becomes aware of any further information relating to the Relief Event and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

#### **40.4 Insured Exposure**

- (a) The compensation payable to Project Co pursuant to this Section 40 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

### **41. FORCE MAJEURE**

#### **41.1 Definition**

- (a) For the purposes of this Project Agreement, "**Force Majeure**" means any of the following events or circumstances which directly causes either Party to be unable to perform all or a material part of its obligations under this Project Agreement:
  - (i) war, civil war, armed conflict, terrorism, acts of foreign enemies or hostilities;
  - (ii) nuclear or radioactive contamination of the Works, the Facility and/or the Site, unless Project Co or any Project Co Party is the source or cause of the contamination;
  - (iii) chemical or biological contamination of the Works, the Facility and/or the Site from any event referred to in Section 41.1(a)(i);
  - (iv) pressure waves caused by devices traveling at supersonic speeds; or

- (v) the discovery of any fossils, artefacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which, as a result of Applicable Law, requires the Works to be abandoned.

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

- (a) Subject to Section 41.3, the Party claiming relief shall be relieved from liability under this Project Agreement to the extent that, by reason of the Force Majeure, it is not able to perform its obligations under this Project Agreement.
- (b) In respect of an event of Force Majeure that is also a Delay Event pursuant to Section 37.1(a)(viii):
  - (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 37; and
  - (ii) where such Delay Event causes a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date, on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the Osler Default Termination Sum, Non-Default Termination Sum or Prohibited Acts Termination Sum (and as a part thereof) in accordance with Schedule 23 – Compensation on Termination, Osler shall pay to Project Co an amount equal to the Senior Debt Service Amount and the Junior Debt Service Amount accrued and paid or that became payable in accordance with the Lending Agreements during the period of delay by Project Co or any Project Co Party to the Lenders up to and including such date, together with interest thereon at the rate or rates payable on the principal amount of debt funded under the Lending Agreements, which, but for the Delay Event, would have been paid by Osler to Project Co.
- (c) If an event of Force Majeure occurs prior to the Substantial Completion Date, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 41.2(b)(ii), 41.2(d) and 46.
- (d) During an event of Force Majeure which occurs on or after the Substantial Completion Date, the provisions of Schedule 20 – Payment Mechanism will be suspended, and Osler shall pay to Project Co, for each Payment Period, the Senior Debt Service Amount, the Junior Debt Service Amount and an amount which reflects the cost to Project Co of the Project Co Services provided to Osler, provided that, during such Payment Period, the amount paid to Project Co pursuant to this Section 41.2(d) shall never be more than the Maximum Service Payment.
- (e) Subject to Section 46, Project Co's sole right to payment or otherwise in relation to the occurrence of an event of Force Majeure shall be as provided in this Section 41.

#### **41.3 Mitigation and Process**

- (a) Where a Party is (or claims to be) affected by an event of Force Majeure, such Party shall take commercially reasonable steps to mitigate the consequences of such event of Force Majeure upon the performance of its obligations under this Project Agreement, shall resume performance of its

obligations affected by the event of Force Majeure as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform.

- (b) To the extent that the Party claiming relief does not comply with its obligations under Section 41.3(a), such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Section 41.
- (c) The Party claiming relief shall give written notice to the other Party within 5 Business Days of such Party becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.
- (d) A subsequent written notice shall be given by the Party claiming relief to the other Party within a further 5 Business Days of the initial notice, which notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including, without limitation, the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Section 41.3(a), the date of the occurrence of the event of Force Majeure, and an estimate of the period of time required to overcome the event of Force Majeure and its effects.
- (e) The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and of when performance of its affected obligations can be resumed.
- (f) If, following the issue of any notice referred to in Section 41.3(d), the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

#### **41.4 Insured Exposure**

- (a) The compensation payable to Project Co pursuant to this Section 41 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

#### **41.5 Modifications**

- (a) The Parties shall use commercially reasonable efforts to agree to any modifications to this Project Agreement which may be equitable having regard to the nature of an event or events of Force Majeure. Schedule 27 – Dispute Resolution Procedure shall not apply to a failure of Osler and Project Co to reach agreement pursuant to this Section 41.5.

**42. PROJECT CO DEFAULT****42.1 Project Co Events of Default**

- (a) For the purposes of this Project Agreement, “**Project Co Event of Default**” means any one or more of the following events or circumstances:
- (i) the occurrence of any of the following events other than as a consequence of a breach by Osler of its payment obligations hereunder:
    - (A) Project Co admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors, or a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or any other like person is appointed by or on behalf of or at the instance of a creditor of Project Co with respect to Project Co or any of the property, assets or undertaking of Project Co, or any creditor of Project Co takes control, or takes steps to take control, of Project Co or any of Project Co’s assets, or any proceedings are instituted against Project Co that result in Project Co being declared or ordered bankrupt or in administration, liquidation, winding-up, reorganization, compromise, arrangement, adjustment, protection, relief or composition of it or with respect to it or its debts or obligations, or any such proceedings are instituted by Project Co seeking any such result, or any such proceedings are instituted by a person other than Project Co, Osler, a Osler Party or a person related to any of them seeking such result and such proceedings have or will have a material adverse effect on the performance of the Hospital Services (where such proceedings have not been withdrawn, stayed, discharged, or are otherwise of no further effect, within 90 days of being instituted), under Applicable Law (including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies’ Creditors Arrangement Act* (Canada)) relating to bankruptcy, insolvency or reorganization of or relief with respect to debtors or debtors’ obligations or assets or other similar matters, or seeking the appointment of a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or like person for it or with respect to any of its assets, or any resolutions are passed or other corporate actions of Project Co are taken to authorize any of the actions set forth in this Section 42.1(a)(i)(A);
    - (B) Project Co ceases performing a substantial portion of its business, or a substantial portion of such business is suspended or is not being performed, whether voluntarily or involuntarily, that has or will have a material adverse effect on Project Co’s ability to perform its obligations under this Project Agreement;
    - (C) if any execution, sequestration, extent or other process of any court becomes enforceable against Project Co or if a distress or analogous process is levied against any property of Project Co that materially adversely affects Project Co’s ability to perform its obligations hereunder; or

- (D) Project Co shall suffer any event, or any event or set of circumstances occurs or comes about, analogous to the foregoing events or sets of circumstances set out in this Section 42.1(a)(i) in any jurisdiction in which it is incorporated or resident and such event or set of circumstances would, if set out in Section 42.1(a)(i)(A), (B) or (C), constitute a Project Co Event of Default;
- (ii) Project Co failing to achieve Substantial Completion within 365 days after the Scheduled Substantial Completion Date (the “**Longstop Date**”);
- (iii) Project Co either:
  - (A) failing to deliver a rectification plan under Section 20.3(a)(iii)(B);
  - (B) delivering a rectification plan under Section 20.3(a)(iii)(B) which indicates that Project Co will not achieve Substantial Completion by the Longstop Date; or
  - (C) delivering a rectification plan under Section 20.3(a)(iii)(B) that is not acceptable to the Independent Certifier, acting reasonably, as to the matters set out in Section 20.3(a)(iii)(B)(II);
- (iv) Project Co making any representation or warranty herein that is false or misleading when made, and that has or will have at any time a material adverse effect on the performance of Project Operations or the Hospital Services, or that may compromise Osler’s reputation or integrity or the nature of the Province’s health care system, so as to affect public confidence in that system, and, in the case of a false or misleading representation or warranty that is capable of being remedied, such breach is not remedied within 10 Business Days of receipt of notice of the same from Osler;
- (v) Project Co committing a breach of Sections 49 or 50;
- (vi) Project Co committing a breach of its obligations under this Project Agreement (other than a breach that is otherwise referred to in Sections 42.1(a)(i) to (iv) inclusive or 42.1(a)(vii) to (xviii) inclusive) which has or will have a material adverse effect on the performance of the Hospital Services, other than where such breach is a consequence of a breach by Osler of its obligations under this Project Agreement, and upon becoming aware of such breach Project Co failing to remedy such breach in accordance with all of the following:
  - (A) Project Co shall:
    - (I) immediately commence and thereafter diligently continue to remedy the breach and to mitigate any adverse effects on Osler and the performance of the Hospital Services;
    - (II) put forward, within 5 Business Days of receipt of notice of such breach from Osler, a reasonable plan and schedule for diligently remedying the breach and mitigating its effect, which plan and schedule shall specify in reasonable detail the manner in which, and the latest date by which, such

- breach is proposed to be remedied, which latest date shall in any event be within 60 days of notice of such breach, or if such breach is not capable of being rectified in such period then such longer period as is reasonable in the circumstances; and
- (III) thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; and
- (B) upon Project Co failing to comply with any of the provisions of Section 42.1(a)(vi)(A):
- (I) Project Co shall continue to diligently remedy the breach and to mitigate any adverse effects on Osler and the performance of the Hospital Services;
- (II) Project Co shall, within 3 Business Days after notice from Osler, submit a plan and schedule, which Osler shall have no obligation to accept, for remedying the breach and mitigating its effect within such period, if any, acceptable to Osler, in its sole discretion, and thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder; and
- (III) for greater certainty, Project Co failing to comply with any of the provisions of this Section 42.1(a)(vi)(B), or Osler, in its sole discretion, not accepting the plan and schedule submitted by Project Co pursuant to that Section, shall constitute a Project Co Event of Default;
- (vii) Project Co wholly abandoning the Works for a period which exceeds 3 Business Days from receipt by Project Co of a written request to return to the Site, other than as a consequence of a breach by Osler of its obligations under this Project Agreement;
- (viii) Project Co ceasing to provide any Project Co Service in accordance with this Project Agreement which are necessary for the performance of the Hospital Services, other than as a consequence of a breach by Osler of its obligations under this Project Agreement;
- (ix) Project Co failing to comply with Sections 56.1 or 56.3;
- (x) the occurrence of any Change in Ownership or Change in Control which is prohibited by Section 56.4;
- (xi) Project Co being awarded a total of [REDACTED] or more Failure Points in any rolling 3 Payment Periods during the Operational Term;
- (xii) Project Co being awarded a total of [REDACTED] or more Failure Points in any rolling 6 Payment Periods during the Operational Term;



- (xiii) Project Co being awarded a total of [REDACTED] or more Failure Points in any rolling 12 Payment Periods during the Operational Term;
- (xiv) Project Co failing to remove an Encumbrance that arose due to an act or omission of Project Co or any Project Co Party (other than a Title Encumbrance and any Encumbrance derived through Osler) within 45 days of the earlier of:
  - (A) the registration of such Encumbrance against title to the Site or any part thereof; and
  - (B) the date on which Project Co or any Project Co Party knew, or ought to have known, about the existence of the Encumbrance;
- (xv) Project Co failing to pay any sum or sums due to Osler under this Project Agreement, which sum or sums are not being disputed by Project Co in accordance with Schedule 27 – Dispute Resolution Procedure and which sum or sums, either singly or in aggregate, exceed(s) \$[REDACTED] (index linked), and such failure continues for 30 days from receipt by Project Co of a notice of non-payment from Osler;
- (xvi) Project Co failing to comply with Section 57;
- (xvii) Project Co failing to comply with Section 7.3 or Schedule 28 – Refinancing;
- (xviii) Project Co failing to obtain any bond, security or insurance required to be obtained by or on behalf of Project Co pursuant to this Project Agreement or any such bond, security or insurance being vitiated or otherwise ceasing to be in full force and effect or in material compliance with the requirements set out in this Project Agreement, other than as a consequence of a breach by Osler of its obligations under this Project Agreement, and:
  - (A) in respect of insurance, such breach by Project Co is not remedied within 10 Business Days of the occurrence of the breach; and
  - (B) in respect of a bond or security, such breach by Project Co is not remedied within 5 Business Days of Project Co becoming aware of such breach;
- (xix) Project Co failing to comply with any determination, order or award made against Project Co in accordance with Schedule 27 – Dispute Resolution Procedure;
- (xx) at any time after the Substantial Completion Date, Project Co committing a breach of its obligations under this Project Agreement (other than as a consequence of a breach by Osler of its obligations under this Project Agreement) which results in a criminal conviction or a conviction under the *Occupational Health and Safety Act* (Ontario) against Project Co or any Project Co Party or Osler (an “**H&S Conviction**”) provided however that:
  - (A) an H&S Conviction of Project Co, a Project Co Party or Osler shall not constitute a Project Co Event of Default if, within 90 days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any

further judicial process), the involvement in the Project Operations of each relevant Project Co Party (which in the case of an individual director, officer or employee shall be deemed to include the Project Co Party of which that person is a director, officer or employee) is terminated in accordance with Section 56.3 or Project Co takes such other disciplinary action against each such Project Co Party as is acceptable to Osler, in its sole discretion; and

- (B) in determining whether to exercise any right of termination for a Project Co Event of Default pursuant to this Section 42.1(a)(xx)(B), Osler shall:
  - (I) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing the act leading to the H&S Conviction; and
  - (II) give all due consideration, where appropriate, to action other than termination of this Project Agreement; or

(xxi) Project Co failing to comply with Sections 27.9, 27.11, or 27.22.

## **42.2 Notification of Occurrence**

- (a) Project Co shall, promptly upon Project Co becoming aware of the occurrence, notify Osler of the occurrence, and details, of any Project Co Event of Default and of any event or circumstance which is likely, with the passage of time, giving of notice, determination of any condition, or otherwise, to constitute or give rise to a Project Co Event of Default.

## **42.3 Right to Termination**

- (a) On the occurrence of a Project Co Event of Default, or at any time after Osler becomes aware of a Project Co Event of Default, and, if the occurrence of a Project Co Event of Default is disputed by Project Co in good faith, then following confirmation in accordance with Schedule 27 – Dispute Resolution Procedure that a Project Co Event of Default has occurred, Osler may, subject to Section 42.4, terminate this Project Agreement in its entirety by written notice having immediate effect, such notice to be given to Project Co, and to any person specified in the Lenders’ Direct Agreement to receive such notice.

## **42.4 Remedy Provisions**

- (a) In the case of a Project Co Event of Default referred to in Sections 42.1(a)(i)(B), 42.1(a)(i)(C), 42.1(a)(i)(D) (where the Project Co Event of Default referred to in Section 42.1(a)(i)(D) is analogous to a Project Co Event of Default referred to in Section 42.1(a)(i)(B) or 42.1(a)(i)(C)), 42.1(a)(iii), 42.1(a)(iv), 42.1(a)(vii), 42.1(a)(viii), 42.1(a)(ix), 42.2(a)(x) (where the Project Co Event of Default referred to in Section 42.1(a)(x) is capable of being remedied), 42.1(a)(xv), 42.1(a)(xvii), 42.1(a)(xviii) (where the Project Co Event of Default referred to in Section 42.1(a)(xviii) is not in respect of insurance), 42.1(a)(xix), 42.1(a)(xx), or 42.1(a)(xxi), Osler shall, prior to being entitled to terminate this Project Agreement, give notice of default to Project Co, and to any person specified in the Lenders’ Direct Agreement to receive such notice, and Project Co shall:

- (i) within 5 Business Days of such notice of default, put forward a reasonable plan and schedule for diligently remedying the Project Co Event of Default, which schedule shall specify in reasonable detail the manner in, and the latest date by which, such Project Co Event of Default is proposed to be remedied, which latest date shall, in any event, be within 30 days of the notice of default, or if such breach is not capable of being remedied in such period then such longer period as is acceptable to Osler, acting reasonably; and
  - (ii) thereafter, perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder.
- (b) Where Project Co puts forward a plan and schedule in accordance with Section 42.4(a)(i) that has a date for the Event of Default to be remedied that is beyond 30 days from the notice of default, Osler shall have 5 Business Days from receipt of the same within which to notify Project Co that Osler does not accept such longer period in the plan and schedule and that the 30 day limit will apply, failing which Osler shall be deemed to have accepted the longer period in the plan and schedule.
- (c) If a Project Co Event of Default, of which a notice of default was given under Section 42.4(a), occurs and:
- (i) Project Co fails to immediately commence and thereafter diligently continue to remedy the Project Co Event of Default and to mitigate any adverse effects on Osler and the performance of the Hospital Services; or
  - (ii) Project Co fails to put forward a plan and schedule pursuant to Section 42.4(a)(i); or
  - (iii) such Project Co Event of Default is not remedied within 30 days of such notice of default or such longer period as is established pursuant to the plan and schedule established pursuant to Sections 42.4(a) and (b); or
  - (iv) where Project Co puts forward a plan and schedule pursuant to Section 42.4(a)(i) and Project Co fails to perform its obligations thereunder necessary to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations,
- then Osler may terminate this Project Agreement in its entirety by written notice with immediate effect, such notice to be given to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such notice.
- (d) Notwithstanding that Osler may give the notice referred to in Section 42.4(a), and without prejudice to the other rights of Osler in this Section 42.4, at any time during which a Project Co Event of Default is continuing, Osler may, at Project Co's risk and expense, take such steps as Osler considers appropriate, either itself or by engaging others (including a third party) to take such steps, to perform or obtain the performance of Project Co's obligations under this Project Agreement or to remedy such Project Co Event of Default.

- (e) Upon the occurrence of a Project Co Event of Default that Project Co has remedied pursuant to this Section 42.4, such occurrence of a Project Co Event of Default shall thereafter cease to be a Project Co Event of Default and Osler shall not be entitled to terminate this Project Agreement for that occurrence of a Project Co Event of Default.

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

- (a) Osler may, acting reasonably, require Project Co to terminate the Service Contract and ensure that a replacement Service Provider is appointed in accordance with Section 56.3 to provide the Project Co Services within 60 days:
- (i) as an alternative to termination of this Project Agreement pursuant to Sections 42.3 or 42.4, in any circumstance in which Osler could exercise such right of termination, if the Project Co Event of Default was caused, or contributed to, by the Service Provider or otherwise relates to the Project Co Services; or
  - (ii) if Project Co accrues, in any rolling 6 Payment Periods during the Operational Term, more than:
    - (A) An aggregate of [REDACTED] Failure Points in respect of Availability Failures;
    - (B) An aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of Utilities Management Services, Environmental and Sustainability Services, Emergency Management Services, Cleaning Services, Waste Management & Recycling Services, Security & Surveillance Services, Plant Services, Lifecycle Replacement and Refurbishment Services and Special Projects Services;
    - (C) An aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of General Management Services;
    - (D) An aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of Roads and Grounds Maintenance Services;
    - (E) An aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of Parking Services; or
    - (F) An aggregate of [REDACTED] Failure Points in respect of Quality Failures and/or Service Failures in respect of any one or more of FM Help Desk Services;

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

- (b) If Osler exercises its rights under this Section 42.5, Project Co shall, within 5 Business Days, put forward a proposal for the interim management or provision of the Project Co Services, until such

time as a replacement Service Provider can be engaged by Project Co. If Project Co fails to do so, or if its proposal is not reasonably likely to give adequate provision of the Project Co Services and the Parties cannot agree within a further 3 Business Days to a plan for the interim management or provision of the Project Co Services, then, without prejudice to the other rights of Osler in this Section 42.5, Osler itself may perform, or engage others (including a third party) to perform, the Project Co Services and Section 30.4 shall apply, *mutatis mutandis*, to the Project Co Services. Any Dispute in respect of the interim management or provision of the Project Co Services may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

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

#### 42.6 Osler's Costs

- (a) Project Co shall reimburse Osler for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by Osler in exercising its rights under this Section 42, including any relevant increased administrative expenses. Osler shall take commercially reasonable steps to mitigate such costs.

#### 42.7 No other Rights to Terminate

- (a) Osler shall have no right or entitlement to terminate this Project Agreement, or to accept any repudiation of this Project Agreement, and shall not purport to exercise any such right or entitlement except as set forth in Sections 42 and 44.

### 43. OSLER DEFAULT

#### 43.1 Osler Events of Default

- (a) For the purposes of this Project Agreement, “**Osler Event of Default**” means any one or more of the following events or circumstances:
  - (i) Osler failing to pay any sum or sums due to Project Co under this Project Agreement, which sum or sums are not being disputed by Osler in accordance with Schedule 27 – Dispute Resolution Procedure and which sum or sums, either singly or in aggregate, exceed(s) \$[REDACTED] (index linked), and:
    - (A) in respect of the Substantial Completion Payment, such failure continues for 10 Business Days;
    - (B) subject to Section 43.1(a)(i)(C), in respect of any Monthly Service Payment, such failure continues for 30 days;

- (C) in respect of any 3 Monthly Service Payments in any rolling 9 month period, such failure continues for 15 Business Days in respect of each such Monthly Service Payment; or
- (D) in respect of any other payment due and payable by Osler to Project Co under this Project Agreement, such failure continues for 90 days,

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

- (ii) Osler committing a material breach of its obligations under Section 14 (other than as a consequence of a breach by Project Co of its obligations under this Project Agreement), which breach materially adversely affects the ability of Project Co to perform its obligations under this Project Agreement for a continuous period of not less than 60 days; or
- (iii) an act of any Governmental Authority which renders it impossible for Project Co to perform all or substantially all of its obligations under this Project Agreement (other than as a consequence of a breach by Project Co of its obligations under this Project Agreement) for a continuous period of not less than 60 days (for greater certainty, the non-issuance of, or the imposition of any conditions or limitations in, any of the Project Co Permits, Licences, Approvals and Agreements shall not constitute an “act of any Governmental Authority”).

### **43.2 Project Co’s Options**

- (a) On the occurrence of an Osler Event of Default and while the same is continuing, Project Co may give notice to Osler of the occurrence of such Osler Event of Default, which notice will specify the details thereof, and, at Project Co’s option and without prejudice to its other rights and remedies under this Project Agreement, may:
  - (i) suspend performance of the Works and the Project Co Services until such time as Osler has remedied such Osler Event of Default; or
  - (ii) if such Osler Event of Default has not been remedied within 30 days of receipt by Osler of notice of the occurrence of such Osler Event of Default, terminate this Project Agreement in its entirety by notice in writing having immediate effect.

### **43.3 Project Co’s Costs**

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

#### 43.4 No Other Rights to Terminate

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

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

##### 44.1 Termination for Relief Event

- (a) Subject to Section 44.1(b), if a Relief Event occurs and the effects of the Relief Event continue for 180 days from the date on which the Party affected gives notice to the other Party pursuant to Section 40.3(c), either Party may, at any time thereafter, terminate this Project Agreement by written notice to the other Party having immediate effect, provided that the effects of the Relief Event continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.
- (b) Neither Party shall be entitled to exercise its right to terminate this Project Agreement in accordance with Section 44.1(a) if Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, an amount which, together with the Monthly Service Payment, is equal to or greater than [REDACTED]% of the Maximum Service Payment for the relevant Payment Period.

##### 44.2 Termination for Force Majeure

- (a) If an event of Force Majeure occurs and the Parties, having used commercially reasonable efforts, have failed to reach agreement on any modification to this Project Agreement pursuant to Section 41.5 within 180 days from the date on which the Party affected gives notice to the other Party as set out therein, either Party may, at any time thereafter, terminate this Project Agreement by written notice to the other Party having immediate effect, provided that the effects of the event of Force Majeure continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.

##### 44.3 Termination for Convenience

- (a) Osler shall, in its sole discretion and for any reason whatsoever, be entitled to terminate this Project Agreement at any time on 180 days' written notice to Project Co. Such written notice shall include confirmation that Osler has, in respect of such termination, obtained the prior written consent of MOHLTC.
- (b) In the event of notice being given by Osler in accordance with this Section 44.3, Osler shall, at any time before the expiration of such notice, be entitled to direct Project Co to refrain from commencing, or allowing any third party to commence, the Works, or any part or parts of the Works, or the Project Co Services, or any element of the Project Co Services, where such Works or Project Co Services have not yet been commenced.

#### **44.4 Automatic Expiry on Expiry Date**

- (a) This Project Agreement shall terminate automatically on the Expiry Date.
- (b) Project Co shall not be entitled to any compensation due to termination of this Project Agreement on expiry of the Project Term on the Expiry Date.

### **45. EFFECT OF TERMINATION**

#### **45.1 Termination**

- (a) Notwithstanding any provision of this Project Agreement, upon the service of a notice of termination or termination on the Expiry Date pursuant to Section 44.4, this Section 45 shall apply in respect of such termination.

#### **45.2 Continued Effect – No Waiver**

- (a) Notwithstanding any breach of this Project Agreement by a Party, the other Party may elect to continue to treat this Project Agreement as being in full force and effect and to enforce its rights under this Project Agreement without prejudice to any other rights which such other Party may have in relation to such breach. The failure of either Party to exercise any right under this Project Agreement, including any right to terminate this Project Agreement and any right to claim damages, shall not be deemed to be a waiver of such right for any continuing or subsequent breach.

#### **45.3 Continuing Performance**

- (a) Subject to any exercise by Osler of its rights to perform, or to seek, pursuant to this Project Agreement, a third party to perform, the obligations of Project Co, the Parties shall continue to perform their obligations under this Project Agreement (including, if applicable, pursuant to Schedule 23 – Compensation on Termination), notwithstanding the giving of any notice of default or notice of termination, until the termination of this Project Agreement becomes effective in accordance with this Section 45.

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

- (a) On the service of a notice of termination, or termination on the Expiry Date pursuant to Section 44.4:
  - (i) if termination is prior to the Substantial Completion Date, in so far as any transfer shall be necessary to fully and effectively transfer such property to Osler as shall not already have been transferred to Osler pursuant to Section 52.1, Project Co shall transfer to, and there shall vest in, Osler, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through Osler), such part of the Works and Facility as shall have been constructed and such items of the Plant and Equipment as shall have been procured by Project Co, and, if Osler so elects:



- (A) all plant, equipment and materials (other than those referred to in Section 45.4(a)(i)(B)) on or near the Site shall remain available to Osler for the purposes of completing the Works; and
  - (B) all construction plant and equipment shall remain available to Osler for the purposes of completing the Works, subject to payment by Osler of the Construction Contractor's reasonable charges;
- (ii) if termination is prior to the Substantial Completion Date, Project Co shall deliver to Osler (to the extent such items have not already been delivered to Osler) one complete set of all Project Data and Intellectual Property relating to the design, construction and completion of the Works and the Facility;
  - (iii) in so far as title shall not have already passed to Osler pursuant to Section 52.1 or Section 45.4(a)(i), Project Co shall hand over to, and there shall vest in, Osler, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through Osler), the Facility together with all other assets and rights capable of being transferred that are necessary for the performance of the Project and the Project Operations and all facilities and equipment, including the Equipment, and to the extent that any such assets or rights are not capable of being transferred by Project Co to Osler, Project Co shall enter into agreements or make other arrangements in order to permit the use of the assets or rights by Osler in order to enable it, or its designated agents or subcontractors, to continue to perform the activities which would have otherwise been performed by Project Co if this Project Agreement had not been terminated;
  - (iv) if Osler so elects, Project Co shall ensure that any of the Subcontracts between Project Co and each Subcontractor (including the Construction Contract and the Service Contract), any other instrument entered into between any such Subcontractor and Project Co for securing the performance by such Subcontractor of its obligations in respect of the Project Operations or to protect the interests of Project Co, shall be novated or assigned to Osler or its nominee, provided that where termination occurs other than as a result of a Project Co Event of Default, the consent of the relevant Subcontractor shall be required, and further provided that any such novation or assignment of a Subcontract with the Construction Contractor or the Service Provider shall be made by Osler pursuant to, and subject to, the terms of the applicable Direct Agreement;
  - (v) Project Co shall, or shall ensure that any Project Co Party shall, offer to sell (and if Osler so elects, execute such sale) to Osler at a fair value (determined as between a willing vendor and willing purchaser, with any Disputes as to such fair value being resolved in accordance with Schedule 27 – Dispute Resolution Procedure), free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through Osler), all or any part of the stocks of material and other assets, road vehicles, spare parts and other moveable property owned by Project Co or any Project Co Parties and dedicated to or predominantly used in respect of the Facility, and reasonably required by Osler in connection with the operation of the Facility or the provision of the Project Co Services;

- (vi) Project Co shall deliver to Osler (to the extent such items have not already been delivered to Osler) one complete set of:
  - (A) the most recent As Built Drawings in the format that Osler, acting reasonably, considers most appropriate at the time showing all alterations made to the Facility since the Substantial Completion Date;
  - (B) the most recent maintenance, operation and training manuals for the Facility; and
  - (C) the Plant Services Information Management System, fully updated;
- (vii) Project Co shall use commercially reasonable efforts to assign, or otherwise transfer, to Osler, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through Osler), the benefit of all manufacturers' warranties, including all documentation in respect thereof, in respect of mechanical and electrical plant and equipment used or made available by Project Co under this Project Agreement and included in the Facility;
- (viii) Project Co shall deliver to Osler all information, reports, documents, records and the like referred to in Section 34, including as referred to in Schedule 26 – Record Provisions, except where such are required by Applicable Law to be retained by Project Co or the Project Co Parties (in which case complete copies shall be delivered to Osler);
- (ix) [Intentionally Deleted]; and
- (x) in the case of the termination of this Project Agreement on the Expiry Date in accordance with Section 44.4, the Facility and elements of the Facility shall be in the condition required in accordance with Section 47 and Schedule 24 – Expiry Transition Procedure.

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

- (a) Subject to Section 48, all information obtained by Project Co, including the As Built Drawings and other technical drawings and data, supplier agreements and contracts, utilities consumption information, environmental and technical reports, static building information, lease, licence and subletting data and contracts, asset condition data, standard operating procedures, processes and manuals and all other information directly related to the Project Operations accumulated over the course of the Project Term shall be the property of Osler and upon termination of this Project Agreement shall be provided or returned to Osler, as applicable, in electronic format acceptable to Osler, acting reasonably, where it exists in electronic format, and in its original format, when not in electronic format.

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

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

**45.7 Transitional Arrangements**

- (a) On the termination of this Project Agreement for any reason, for a reasonable period both before and after any such termination, Project Co shall, subject to the continued provision of Project Co Services pursuant to Sections 3.2 and 3.3 of Schedule 23 – Compensation on Termination if applicable:
- (i) cooperate fully with Osler and any successors providing to Osler services in the nature of any of the Project Co Services or any part of the Project Co Services in order to achieve a smooth transfer of the manner in which Osler obtains services in the nature of the Project Co Services and to avoid or mitigate, in so far as reasonably practicable, any inconvenience or any risk to the health and safety of the users of the Facility, including employees, patients, volunteers and visitors to the Facility and members of the public;
  - (ii) as soon as practicable remove from the Site all property belonging to Project Co or any Project Co Party that is not acquired by Osler pursuant to Section 45.4 or otherwise, and, if Project Co has not done so within 60 days after any notice from Osler requiring it to do so, Osler may, without being responsible for any loss, damage, costs or expenses, remove and sell any such property and shall hold any proceeds, less all costs incurred to the credit of Project Co;
  - (iii) forthwith deliver to the Osler Representative:
    - (A) all keys to, and any pass cards and other devices used to gain access to any part of the Facility; and
    - (B) to the extent transferable and without prejudice to Osler's rights pursuant to Section 48, any copyright licences for any computer programs, or licences to use the same, used in connection with the operation of the Facility; and
  - (iv) as soon as practicable vacate the Site and, without limiting Project Co's obligations under Schedule 24 – Expiry Transition Procedure, shall leave the Site and the Facility in a safe, clean and orderly condition.
- (b) If Osler wishes to conduct a competition prior to the Expiry Date with a view to entering into an agreement for the provision of services, which may or may not be the same as, or similar to, the Project Co Services or any of them, following the expiry of this Project Agreement, Project Co shall, subject to payment of Project Co's reasonable costs, cooperate with Osler fully in such competition process, including by:
- (i) providing any information which Osler may reasonably require to conduct such competition, including all information contained in the Plant Services Information Management System, other than Sensitive Information; and
  - (ii) assisting Osler by allowing any or all participants in such competition process unrestricted access to the Site and the Facility.

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

- (a) On completion of Project Co's obligations pursuant to this Section 45, this Project Agreement shall terminate and, except as provided in Section 45.9, all rights and obligations of Osler and Project Co under this Project Agreement shall cease and be of no further force and effect.

#### **45.9 Survival**

- (a) Except as otherwise provided in this Project Agreement, termination of this Project Agreement shall be without prejudice to, and shall not affect:

- (i) all representations, warranties and indemnities under this Project Agreement; and
- (ii) Sections 1.2, 1.3, 5, 6, 7, 15.2, 16.1, 16.2(a), 16.3(a), 23.6, 24.12, 26.8, 29.4, 30, 31.6, 31.8, 31.13, 31.14, 31.15, 32, 33, 34, 42.6, 43.3, 44.4, 45, 46, 47, 48, 49, 50, 52, 53, 54, 55, 57.3, 58.1, 59.4, 59.8, 59.9, 59.10, 59.11, 59.12 of this Project Agreement, Schedule 23 – Compensation on Termination, Sections 2, 4 and 5 of Schedule 24 – Expiry Transition Procedure, Sections 1.2 to 1.8 of Schedule 26 – Record Provisions, Schedule 27 – Dispute Resolution Procedure and any other provisions of this Project Agreement which are expressed to survive termination or which are required to give effect to such provisions which survive termination or to such termination or the consequences of such termination,

all of which shall survive the termination of this Project Agreement, including for termination on the Expiry Date pursuant to Section 44.4.

### **46. COMPENSATION ON TERMINATION**

#### **46.1 Compensation on Termination**

- (a) If this Project Agreement is terminated in accordance with the terms hereof, then Schedule 23 – Compensation on Termination shall apply and Osler shall pay Project Co any applicable compensation on termination.

#### **46.2 Full and Final Settlement**

- (a) Except as otherwise provided in Section 46.2(b), any compensation paid pursuant to this Section 46, including pursuant to Schedule 23 – Compensation on Termination in the total amount owing thereunder, shall be in full and final settlement of any claims, demands and proceedings of Project Co and Osler, and each shall be released from all liability to the other in relation to any breaches or other events leading to such termination of this Project Agreement, and the circumstances leading to such breach or termination, and Project Co and Osler shall be precluded from exercising all other rights and remedies in respect of any such breach or termination whether in contract, tort, restitution, statute, at common law or otherwise.
- (b) Section 46.2(a) shall be without prejudice to:

- (i) any liability of either Party to the other, including under the indemnities contained in this Project Agreement, that arose prior to the Termination Date (but not from the termination itself or the events leading to such termination) to the extent such liability has not already been set off pursuant to Section 31.13 or taken into account pursuant to Schedule 23 – Compensation on Termination in determining or agreeing upon the Osler Default Termination Sum, Adjusted Highest Qualifying Tender Price, Adjusted Estimated Fair Value, Non-Default Termination Sum, Prohibited Acts Termination Sum or any other termination sum, as the case may be;
- (ii) any liabilities arising under or in respect of any breach by either Party of their obligations under Section 45.9 of this Project Agreement, or the Sections referred to therein, which did not lead to such termination and which arises or continues after the Termination Date.

#### **47. EXPIRY TRANSITION PROCEDURE**

##### **47.1 Expiry Transition**

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

#### **48. INTELLECTUAL PROPERTY**

##### **48.1 Representation and Warranty**

- (a) Project Co represents, warrants and covenants to Osler and agrees that:
  - (i) Project Co is and shall be the sole and exclusive owner of the Project Data and the Intellectual Property Rights or has and shall have the right to provide the licences granted to Osler herein;
  - (ii) Project Co has and shall have the right to provide the assignments granted to Osler herein; and
  - (iii) the Project Data and the Intellectual Property Rights and their use by the Osler Parties do not and shall not infringe, and are not and shall not be a misappropriation of, any third party Intellectual Property Rights, and, as of the date of this Project Agreement, Project Co has not received any alleged infringement or misappropriation notices from third parties regarding the Project Data or the Intellectual Property Rights.

##### **48.2 Delivery of Project Data and Intellectual Property Rights**

- (a) Project Co shall make all Project Data and Intellectual Property Rights available to, and upon request shall deliver to, Osler free of charge all Project Data, and shall obtain all necessary licences, permissions and consents to ensure that Project Co shall make the Project Data and Intellectual Property Rights available to and deliver the Project Data to Osler on the aforesaid terms of this Section 48.2, for any and all of the Approved Purposes.

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

- (a) Project Co:
- (i) hereby grants to Osler an irrevocable, worldwide, royalty free, perpetual, non-exclusive and transferable licence, including the right to grant sub-licences, to use the Project Data and the Intellectual Property Rights for any and all of the Approved Purposes;
  - (ii) shall, at Project Co's cost, where any Intellectual Property Rights are or become vested in the Construction Contractor or the Service Provider, obtain the grant of an equivalent licence to that referred to in Section 48.3(a)(i), provided that such licence may, in respect of the Construction Contractor's and the Service Provider's Intellectual Property Rights that are proprietary and subject to trademark or copyright, be limited to the term of the relevant Subcontract; and
  - (iii) shall, at Project Co's cost, where any Intellectual Property Rights are or become vested in a third party (other than the Construction Contractor or the Service Provider), obtain the grant of an equivalent licence to that referred to in Section 48.3(a)(i), provided that Project Co is able to obtain such licence from such third party on reasonable commercial terms and conditions.
- (b) In this Section 48.3 and Section 48.5(a), "use" includes any and all acts of copying, modifying, adapting, translating, incorporating with other materials, creating derivative works and otherwise using the Project Data and Intellectual Property Rights.

### 48.4 Jointly Developed Materials

- (a) To the extent any data, documents, drawings, reports, plans, software, formulae, calculations or designs or any other materials are developed jointly by Project Co and Osler pursuant to this Project Agreement or in relation to the Facility, the Site or Project Operations (the "**Jointly Developed Materials**"), then the Parties hereby acknowledge and agree that Osler shall be the sole and exclusive owner of all right, title and interest in and to the Jointly Developed Materials, any Intellectual Property associated therewith and any and all improvements, modifications and enhancements thereto. Project Co shall, at the request of Osler, execute such further agreements and cause the Project Co Parties to execute any and all assignments, waivers of moral rights and other documents as may be reasonably required to fulfill the intent of this provision.
- (b) Osler hereby grants Project Co a royalty free, non-exclusive and non-transferable licence, with a right to grant sub-licences to each Subcontractor, to use the Jointly Developed Materials during the Project Term for the sole purposes of Project Co or any Subcontractor performing its obligations under this Project Agreement or its Subcontract, as applicable.
- (c) Upon termination of this Project Agreement, all rights and licences whatsoever granted to Project Co in the Jointly Developed Materials shall automatically terminate, and Project Co shall return any and all Jointly Developed Materials in the custody or possession of Project Co to Osler.

**48.5 Maintenance of Data**

- (a) To the extent that any of the data, materials and documents referred to in this Section 48 are generated by, or maintained on, a computer or similar system, Project Co shall procure for the benefit of Osler, either at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable Osler or its nominee to access and otherwise use (as such term is defined in Section 48.3(b)), subject to the payment by Osler of any relevant fee, such data, materials and documents for the Approved Purposes.
- (b) Without limiting the obligations of Project Co under Section 48.5(a), Project Co shall ensure the back up and storage in safe custody of the data, materials and documents referred to in this Section 48 in accordance with Good Industry Practice. Project Co shall submit to the Osler Representative Project Co's proposals for the back up and storage in safe custody of such data, materials and documents and Osler shall be entitled to object if the same is not in accordance with Good Industry Practice. Project Co shall comply, and shall cause all Project Co Parties to comply, with all procedures to which the Osler Representative has not objected. Project Co may vary its procedures for such back up and storage subject to submitting its proposals for change to the Osler Representative, who shall be entitled to object on the basis set out above. Any Disputes in connection with the provisions of this Section 48.5(b) may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure with reference to Good Industry Practice.

**48.6 Claims**

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

**48.7 Osler Trade-Marks**

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

**48.8 Confidential Information**

- (a) It is expressly acknowledged and agreed that nothing in this Section 48 shall be deemed to create or convey to a Party any right, title, or interest in and/or to the Confidential Information of the other Party.

**48.9 Government Use of Documents**

- (a) The Parties hereby disclaim any right, title or interest of any nature whatsoever they each may have in or to this Project Agreement that might prohibit or otherwise interfere with MOI's, IO's, MOHLTC's or the Province's ability to use this Project Agreement in any manner desired by MOI, IO, MOHLTC or the Province.
- (b) Each of the Parties hereby consents to the use by MOI, IO, MOHLTC and/or the Province of this Project Agreement, and any portion thereof, subject to compliance with FIPPA and to the removal by Osler (in consultation with Project Co) of any information supplied in confidence to MOI, IO, MOHLTC and/or the Province by either Party in circumstances where disclosure may be refused under section 17(1) of FIPPA.

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

- (a) Subject to Sections 49.1(b), 49.1(c) and 49.2, but notwithstanding anything else in this Project Agreement to the contrary, Project Co acknowledges and agrees that, in accordance with the transparency and accountability principles of the IPFP Framework, Osler has a right to disclose or publish (including on websites) this Project Agreement, any or all terms hereof, including any or all contractual submissions and other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) as Osler, in its sole discretion, may consider appropriate. In exercising its discretion, Osler will be guided by the principles set out in Sections 49.1(b) and 49.1(c).
- (b) Osler will not disclose portions of this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) which would be exempt from disclosure under section 17(1) of FIPPA.
- (c) Notwithstanding Section 49.1(b), but subject to Section 49.2, where a compelling public interest in the disclosure of the information clearly outweighs the public interest in limiting the disclosure of the information supplied by Project Co (or any Project Co Party), Osler may disclose such information.

**49.2 Redaction**

- (a) Prior to disclosing or publishing this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party), Osler shall provide to Project Co a redacted version of this Project Agreement or other documents or information to be disclosed or published, on the basis that the information so redacted constitutes information which should not be disclosed pursuant to Section



49.1(b). The Parties acknowledge and agree that the Annual Service Payment, but not the breakdown thereof, may be disclosed.

- (b) If Project Co, acting in good faith, contends that any of the information not redacted constitutes information that falls within the scope of Section 49.1(b) and, accordingly, would be exempt from disclosure under FIPPA, the dispute may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, and Osler shall not disclose any information in dispute until a determination is made. Any such determination shall be made with reference to the text and principles of FIPPA.

### **49.3 Disclosure to Government**

- (a) Project Co acknowledges and agrees that Osler will be free to disclose any information, including Confidential Information, to MOI, IO, MOHLTC and/or the Province, and, subject to compliance with FIPPA, MOI, IO, MOHLTC and/or the Province will be free to use, disclose or publish (including on websites) the information on such terms and in such manner as MOI, IO, MOHLTC and/or the Province see fit.
- (b) For greater certainty, the Parties acknowledge and agree that, subject only to the removal of any information which the Parties are (or would be) entitled to refuse to disclose pursuant to section 17(1) of FIPPA, this Project Agreement, any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) are public documents and information and, as such, may be disclosed by MOI, IO, MOHLTC and/or the Province.

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

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

### **49.5 Use and Disclosure of Confidential Information**

- (a) Except as authorized hereunder, each Party shall hold in confidence, not disclose and not permit any person any manner of access to, whether directly or indirectly, any Confidential Information of the other Party, provided that this Section 49 shall not restrict either Party from disclosing such Confidential Information to its professional advisors, to the extent necessary, to enable that Party to perform, to cause to be performed, or to enforce, its rights or obligations under this Project Agreement.
- (b) Project Co may:
  - (i) disclose in confidence to the Lenders and prospective Lenders, including any trustee of the Lenders, and their respective professional advisors such Confidential Information as is reasonably required by the Lenders in connection with the raising or syndication of the financing or any sub-participation in the financing of the Project Operations or which Project Co is obliged to supply by the terms of the Lending Agreements; and

- (ii) disclose in confidence to any Project Co Party and their professional advisors, such Confidential Information as is necessary for the performance by that Project Co Party of that Project Co Party's obligations under this Project Agreement.
- (c) Project Co acknowledges that MOI, IO, MOHLTC and/or the Province may use the Project Co Confidential Information for purposes not specific to the Project, but for other general governmental purposes, such as development of the Province's alternate procurement and financing policies and framework. MOI, IO, MOHLTC and/or the Province will advise Project Co prior to using any Project Co Confidential Information for non-Project purposes.
- (d) Subject to the foregoing, neither Party shall use, or directly or indirectly cause, authorize or permit any other person to use, any Confidential Information of the other Party except for the purposes of this Project Agreement, as permitted by this Project Agreement or as authorized by the disclosing Party in writing.
- (e) Each Party shall protect all Confidential Information of the disclosing Party with the same degree of care as it uses to prevent the unauthorized use, disclosure, publication, or dissemination of its own confidential information of a similar nature or character, but in no event less than a reasonable degree of care.
- (f) Without limiting the generality of Section 49.5, Project Co shall comply with the document control and security protocol submitted by Project Co pursuant to Section 18.11 and approved by Osler, which protocol shall prescribe limitations on the use, disclosure and storage of this Project Agreement and any other Confidential Information specified by Osler.

#### **49.6 Exceptions**

- (a) Information of a Party (the "**Proprietor**") other than Personal Information will not be considered to be Confidential Information in the following circumstances:
  - (i) the Proprietor advises the other Party to whom the information has been disclosed (the "**Confidant**") that the information is not required to be treated as Confidential Information;
  - (ii) the information is as of the date of this Project Agreement, or becomes at any time thereafter, generally available to or accessible by the public through no fault or wrongdoing of the Confidant;
  - (iii) the information is a matter of public record or in the public domain;
  - (iv) the information was in the possession of the Confidant prior to its disclosure and the Confidant came into possession of such information without being in breach of this Project Agreement;
  - (v) the information is received by the Confidant on a non-confidential basis from a source other than the Proprietor, provided that to the best of the Confidant's knowledge such source is not bound by a confidentiality agreement with the Proprietor or otherwise

prohibited from disclosing the information to the Confidant by a contractual, legal or fiduciary obligation;

- (vi) the information was independently developed by the Confidant without access to the Confidential Information, as evidenced by written records;
- (vii) the information is required to be disclosed pursuant to Applicable Law, provided that the Confidant provides the Proprietor with reasonable notification and an opportunity to contest such requirement prior to disclosure;
- (viii) the information is disclosed to Osler upon a termination of this Project Agreement, pursuant to Section 45 or is otherwise required by Osler for the purposes of performing (or having performed) the Project Operations, including the design or construction of the Facility, the operation, maintenance or improvement of the Facility, or any other operations or services the same as, or similar to, the Project Operations; or
- (ix) the information would not be exempt from disclosure under FIPPA.

#### **49.7 Survival of Confidentiality**

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

#### **49.8 Communications Protocol**

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

### **50. PERSONAL INFORMATION**

#### **50.1 General**

- (a) Project Co acknowledges the importance of maintaining the confidentiality and privacy of Personal Information.
- (b) Project Co shall, and shall require each Project Co Party to, only collect, hold, process, use, store and disclose Personal Information with the prior consent of Osler and only to the extent necessary to perform Project Co's obligations under this Project Agreement.
- (c) Project Co shall, and shall require each Project Co Party to, at all times treat Personal Information as strictly confidential and shall comply with all applicable requirements of the Output Specifications and the requirements of Applicable Law, including FIPPA and the *Personal Health Information Protection Act, 2004* (Ontario).
- (d) Project Co shall take all necessary and appropriate action, and shall require each Project Co Party to take all necessary and appropriate action, against any person who fails to comply with this Section 50.

- (e) Project Co shall allow Osler on reasonable notice to inspect the measures of Project Co and each Project Co Party to protect Personal Information.

**50.2 Protection of Patient Information**

- (a) Project Co shall take all necessary steps, including the appropriate technical and organizational and physical security measures, and shall require each Project Co Party to take all necessary steps and to include provisions in Subcontracts to require each Project Co Party and other Project Co Parties to take all necessary steps, such that Project Co, the Project Co Parties, and its and their staff shall protect, secure and keep confidential any Patient Information.
- (b) Project Co shall keep confidential, and shall require each Project Co Party to keep confidential and to include provisions in all Subcontracts to require all Project Co Parties to keep confidential, all Patient Information that any of them may encounter or obtain during the course of their duties.
- (c) Osler may from time to time require that Project Co and any Project Co Party or members of its or their staff execute and deliver within 2 Business Days of such request an agreement satisfactory to Osler, acting reasonably, requiring such person to keep Patient Information confidential.
- (d) This Section 50.2 shall not limit Section 50.1.

**50.3 Survival**

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

**51. INSURANCE AND PERFORMANCE SECURITY**

**51.1 General Requirements**

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

**51.2 No Relief from Liabilities and Obligations**

- (a) Neither compliance nor failure to comply with the insurance provisions of this Project Agreement shall relieve Project Co or Osler of their respective liabilities and obligations under this Project Agreement.

**52. TITLE**

**52.1 Title**

- (a) Title to each item and part of the Facility and the Equipment, including any materials, supplies, equipment, facilities, parts and any other deliverable or component items, but not the risk of loss or damage or destruction thereto or thereof, shall pass to Osler (or as Osler may direct) upon the receipt of such item on the Site, provided however that title to items of tangible personal property (personal property that can be seen, weighed, measured, felt or touched or that is in any way

perceptible to the senses and includes computer programs, natural gas and manufactured gas) that comprise the Facility or are to be affixed or attached to the Facility prior to Substantial Completion shall pass to Osler (or as Osler may direct) at the time that such items are included in the Facility or affixed or attached to the Facility.

**53. INDEMNITIES**

**53.1 Project Co Indemnities to Osler**

(a) Project Co shall indemnify and save harmless Osler and its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:

- (i) a failure by Project Co to achieve Substantial Completion by the Scheduled Substantial Completion Date;
- (ii) any physical loss of or damage to all or any part of the Site and the Facility, or to any equipment, assets or other property related thereto;
- (iii) the death or personal injury of any person;
- (iv) any physical loss of or damage to property or assets of any third party; or
- (v) any other loss or damage of any third party,

in each case, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance or any breach of this Project Agreement by Project Co or any act or omission of Project Co or any Project Co Party, except to the extent caused, or contributed to, by:

- (vi) the breach of this Project Agreement by Osler; or
- (vii) in respect of Section 53.1(a)(i) any deliberate or negligent act or omission of Osler or any Osler Party; or
- (viii) in respect of Sections 53.1(a)(ii), 53.1(a)(iii), 53.1(a)(iv) or 53.1(a)(v), any act or omission of Osler or any Osler Party; or
- (ix) a deliberate or negligent act or omission of a Hospital Service User that results in undue interference with Project Co's performance of the Project Co Services and Project Co has been unable to take commercially reasonable steps necessary to prevent, negate or mitigate the undue interference due to acting in accordance with a recommendation or instruction of Osler or an appropriate Osler Party, except to the extent:
  - (A) any such deliberate or negligent act or omission is caused or contributed to by Project Co or any Project Co Party; or

- (B) Hospital Service User is acting in accordance with a direction, recommendation or instruction of Project Co or any Project Co Party.
- (b) Project Co shall indemnify and save harmless Osler and its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by Project Co herein.
- (c) Project Co shall indemnify and save harmless Osler and its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, arising out of, or involving or relating to any one or more of the following:
  - (i) the performance by Project Co of this Project Agreement not in accordance with or in breach of the requirements of any Permits, Licences, Approvals and Agreements, Applicable Law or requirements of Governmental Authorities, or the failure of Project Co to obtain all necessary Project Co Permits, Licences, Approvals and Agreements in accordance with this Project Agreement; or
  - (ii) any Contamination on, in or under, or migrating to or from, the Site, except for Contamination for which Osler is responsible pursuant to Section 16.2(a) or Section 16.4;except to the extent that such Direct Losses are caused, or contributed to, by the breach of this Project Agreement by Osler or by any act or omission of Osler or any Osler Party.
- (d) Without prejudice to Osler's rights under Section 42 and any other rights under this Project Agreement, if Osler exercises its step-in rights under the Construction Contractor's Direct Agreement or the Service Provider's Direct Agreement, Project Co shall indemnify Osler for all obligations of Project Co assumed by Osler under the Construction Contract or the Service Contract, as the case may be, and for all reasonable costs and expenses incurred by Osler in relation to the exercise of Osler's rights.
- (e) Project Co shall indemnify Osler for damages suffered or incurred on account of (i) any payment not duly made by Project Co pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by Project Co; or (iii) an amount determined as payable by Project Co to Osler under Schedule 27 – Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from the day after the date on which payment was due, the day on which overpayment was made by Osler, or from the date identified (if any) applicable to an amount determined as payable by Project Co to Osler under Schedule 27 – Dispute Resolution Procedure, up to and including the date of payment.

### **53.2 Osler Indemnities to Project Co**

- (a) Osler shall indemnify and save harmless Project Co and the Project Co Parties and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:

- (i) the death or personal injury of any person arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance or breach of this Project Agreement by Osler or any act or omission of Osler or any Osler Party, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party;
- (ii) any physical loss of or damage to all or any part of any property or assets of Project Co or any Project Co Party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by Osler or any deliberate or negligent act or omission of Osler or any Osler Party, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party; and
- (iii) any physical loss of or damage to property or assets of any third party, or any other loss or damage of any third party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by Osler or any deliberate or negligent act or omission of Osler or any Osler Party, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party,

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

- (b) Osler shall indemnify and save harmless Project Co and its directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by Osler herein.
- (c) Osler shall indemnify Project Co for damages suffered or incurred on account of (i) any payment not duly made by Osler pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by Osler; or (iii) an amount determined as payable by Osler to Project Co under Schedule 27 – Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from the day after the date on which payment was due, the day on which overpayment was made by Project Co, or from the date identified (if any) applicable to an amount determined as payable by Osler to Project Co under Schedule 27 – Dispute Resolution Procedure, up to and including the date of payment.

### 53.3 Conduct of Claims

- (a) This Section 53.3 shall apply to the conduct of claims, made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Project Agreement. The party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and the Party giving the indemnity is referred to as the “**Indemnifier**”.
- (b) If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this

Section 53, the Beneficiary shall give written notice to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.

- (c) Subject to Sections 53.3(d), 53.3(e) and 53.3(f), on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all, but not part only, of the liability arising out of the claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary's reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and Beneficiary.
- (d) With respect to any claim conducted by the Indemnifier:
- (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
  - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;
  - (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
  - (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
  - (v) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which this Section 53.3 relates.
- (e) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Project Agreement if:
- (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 53.3(c);
  - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days of the notice from the Beneficiary under Section 53.3(b) or notifies the Beneficiary that the Indemnifier does not intend to take conduct of the claim; or



- (iii) the Indemnifier fails to comply in any material respect with Section 53.3(d).
- (f) The Beneficiary shall be free at any time to give notice to the Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section 53.3(c) applies. For greater certainty, Project Co acknowledges and agrees that where Osler is the Beneficiary, Osler may retain or take over such conduct in any matter involving patient, clinical or research confidentiality or any matter involving public policy. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section 53.3(f), then the Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.
- (g) If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the “**Recovery Amount**”) which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
  - (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
  - (ii) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity,

provided that there shall be no obligation on the Beneficiary to pursue any Recovery Amount and that the Indemnifier is repaid only to the extent that the Recovery Amount, aggregated with any sum recovered from the Indemnifier, exceeds the loss sustained by the Beneficiary except, however, that if the Beneficiary elects not to pursue a Recovery Amount, the Indemnifier shall be entitled to require an assignment to it of the right to do so.

- (h) Any person taking any of the steps contemplated by this Section 53.3 shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Project Agreement.

#### **53.4 Mitigation – Indemnity Claims**

- (a) For greater certainty, Section 59.4 applies to any indemnity given under this Project Agreement and any such indemnity shall not extend to Direct Losses which could have been reduced or avoided by the Beneficiary complying with such Section.

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

#### **54.1 Indirect Losses**

- (a) Subject to Section 54.1(b), without prejudice to Osler’s rights under the Payment Mechanism, or the Parties’ rights in respect of payments provided for herein, the indemnities under this Project

Agreement shall not apply and there shall be no right to claim damages for breach of this Project Agreement, in tort or on any other basis whatsoever, to the extent that any loss claimed by either Party is:

- (i) for punitive, exemplary or aggravated damages;
- (ii) for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity; or
- (iii) is a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by either Party,

(collectively, “**Indirect Losses**”).

- (b) With respect to the indemnity in Section 53.1(a)(i) only, the exceptions in Sections 54.1(a)(ii) and 54.1(a)(iii) shall not apply as a result of, or in relation to, Osler’s loss of use of the Facility or a portion thereof, which for the purposes of Section 53.1(a)(i), shall be Direct Losses.

#### **54.2 No Liability in Tort**

- (a) Subject to the indemnities provided herein, Osler and the Osler Parties shall not be liable in tort to Project Co or any Project Co Party, and neither Project Co nor any Project Co Party shall be liable in tort to Osler or any Osler Party in respect of any negligent act or omission of any such person relating to or in connection with this Project Agreement and no such person shall bring such a claim.

#### **54.3 Sole Remedy**

- (a) Subject to:
  - (i) any other rights of Osler expressly provided for in this Project Agreement; and
  - (ii) Osler’s right to claim, on or after termination of this Project Agreement, the amount of its reasonable costs, losses, damages and expenses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of this Project Agreement by Project Co except to the extent that the same has already been recovered by Osler pursuant to this Project Agreement or has been taken into account to reduce any compensation payable by Osler pursuant to Section 46,

the sole remedy of Osler in respect of a failure to provide the Project Co Services in accordance with this Project Agreement shall be the operation of the Payment Mechanism.

- (b) Nothing in Section 54.3(a) shall prevent or restrict the right of Osler to seek injunctive relief or a decree of specific performance or other discretionary remedies of a court of competent jurisdiction.
- (c) Notwithstanding any other provision of this Project Agreement, and except to the extent recovered under any of the insurances required pursuant to Schedule 25 – Insurance and

Performance Security Requirements, neither Party shall be entitled to recover compensation or make a claim under this Project Agreement, or any other agreement in relation to the Project, in respect of any loss that it has incurred (or any failure of the other Party) to the extent that the Party has already been compensated in respect of that loss or failure pursuant to this Project Agreement, or otherwise.

#### **54.4 Maximum Liability**

- (a) Subject to Section 54.4(b), the maximum aggregate liability of each Party in respect of all claims under Section 53 shall not exceed \$[REDACTED]. This limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to performance security or policies maintained in accordance with Schedule 25 – Insurance and Performance Security Requirements. This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.
- (b) Project Co’s maximum aggregate liability in respect of all claims under Section 53.1(a)(i) shall not exceed \$[REDACTED]. This limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to performance security or policies maintained in accordance with Schedule 25 – Insurance and Performance Security Requirements. This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.
- (c) Nothing in this Section 54.4 shall restrict, limit, prejudice or in any other way impair the rights and/or remedies of the Parties under any other provision of this Project Agreement.

#### **55. DISPUTE RESOLUTION PROCEDURE**

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

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

##### **56.1 Project Co Assignment**

- (a) Project Co shall not assign, transfer, charge, dispose of or otherwise alienate any interest in this Project Agreement, the Construction Contract, the Service Contract or any agreement entered into in connection with this Project Agreement without the prior written consent of Osler, not to be unreasonably withheld or delayed, provided however that no assignment, transfer, charge, disposition or other alienation shall be permitted to a person where that person or its Affiliates is a Restricted Person or a person whose standing or activities are inconsistent with Osler’s role as a hospital, or may compromise Osler’s reputation or integrity or the nature of the Province’s health care system, so as to affect public confidence in that system.
- (b) Section 56.1(a) shall not apply to the grant of any security for any loan made to Project Co under the Lending Agreements provided that any grantee of such security shall enter into the Lenders’ Direct Agreement in relation to the exercise of its rights, if Osler so requires.

**56.2 Osler Assignment**

- (a) Osler may assign, transfer, dispose of or otherwise alienate any interest in this Project Agreement or any agreement in connection with this Project Agreement to which Project Co and Osler are parties:
- (i) to the Local Health Integration Network;
  - (ii) to any public hospital under the *Public Hospitals Act* (Ontario) to whom MOHLTC, exercising its statutory rights, would be entitled to transfer same;
  - (iii) to any successor of Osler, where such successor arises as a result of a direction or approval under the *Public Hospitals Act* (Ontario) or a reorganization of the delivery of health services initiated by the Province; or
  - (iv) to any person that is regulated and funded by the Province as a healthcare institution and is approved by MOHLTC as a transferee of same,

provided that:

- (v) the person to whom any such assignment, transfer, disposition or other alienation is made has the legal capacity, power and authority to accept such sale, assignment, transfer, disposition or other alienation and agrees in writing with Project Co to perform, all the obligations of Osler hereunder and under any agreement in connection with this Project Agreement to which Project Co and Osler are parties; and
  - (vi) MOHLTC confirms to the assignee its commitment to fund the assignee on terms and conditions no less favourable than those set out in the Osler Development Accountability Agreement.
- (b) Osler shall not be released of any of its obligations under this Project Agreement except upon an assignment, transfer, disposition or other alienation of its interest in this Project Agreement in accordance with this Section 56.2.

**56.3 Subcontractors**

- (a) Project Co shall not subcontract any interest in this Project Agreement, the Construction Contract or the Service Contract, and shall not permit the Construction Contractor or the Service Provider to subcontract any interest in the Construction Contract or Service Contract, to a Restricted Person, or any Affiliate thereof, or a person whose standing or activities are inconsistent with Osler's role as a hospital, or may compromise Osler's reputation or integrity or the nature of the Province's health care system, so as to affect public confidence in that system.
- (b) Project Co shall not terminate, agree to the termination of or replace the Construction Contractor or the Service Provider unless Project Co has complied with Sections 7.2(a), 56.3(c) and 56.3(d) or received the prior written consent of Osler, not to be unreasonably withheld or delayed.

- (c) Subject to Section 56.3(d), if either the Construction Contract or the Service Contract shall at any time lapse, terminate or otherwise cease to be in full force and effect, whether by reason of expiry, default or otherwise, with the effect that the Construction Contractor or the Service Provider, as the case may be, shall cease to act in relation to the Project, Project Co shall forthwith appoint a replacement, subject to Osler's prior written consent, acting reasonably, as to the suitability of the replacement.
- (d) It is a condition of replacement of the Construction Contractor or Service Provider that, and Project Co shall require that, any replacement enter into a contract upon the same or substantially similar terms as the person so replaced and into a direct agreement on the same terms as the Direct Agreement entered into by the person so replaced, unless any material variations are approved by Osler, acting reasonably.

#### **56.4 Changes in Ownership and Control**

- (a) No Change in Ownership of Project Co, or any person owning, directly or indirectly, beneficially or otherwise, any of the shares or units of or any other ownership interest in Project Co or any such person, shall be permitted:
  - (i) where the person acquiring the ownership interest is a Restricted Person or a person whose standing or activities are inconsistent with Osler's role as a hospital, or may compromise Osler's reputation or integrity or the nature of the Province's health care system, so as to affect public confidence in that system; or
  - (ii) if such Change in Ownership would have a material adverse effect on the performance of the Project Operations or the Hospital Services.
- (b) No Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or in relation to the operation, management and ownership of the Project, shall be permitted where the person with or acquiring Direct or Indirect Power or Control is a Restricted Person or a person whose standing or activities are inconsistent with the Province's reputation or integrity.
- (c) Prior to the third anniversary following the Substantial Completion Date, Osler shall be entitled to receive a [REDACTED]% share of any Excess Equity Gain arising from a Change in Ownership of Project Co.
- (d) Subject to Sections 56.4(a), (b) and (c), (i) no Change in Control of Project Co, or any person owning, directly or indirectly, beneficially or otherwise, any of the shares or units or any other ownership interest in Project Co or any such person, or (ii) no acquisition of Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or in relation to the operation, management and ownership of the Project, shall be permitted without the prior written consent of Osler, not to be unreasonably withheld or delayed.
- (e) This Section 56.4 shall not apply to a Change in Ownership or Change in Control or acquisition of Direct or Indirect Power or Control of persons whose equity securities or ownership units or any other ownership interests are listed on a recognized stock exchange.

- (f) Whether or not Project Co is required to obtain Osler's consent to a Change in Ownership or Change in Control or acquisition of Direct or Indirect Power or Control pursuant to this Section 56.4, Project Co shall provide timely notice to Osler of any proposed Change in Ownership or Change in Control or acquisition of Direct or Indirect Power or Control of Project Co, or any person owning, directly or indirectly, beneficially or otherwise, any of the shares or units or any other ownership interest in Project Co or any such person, as the case may be, within 5 Business Days of such Change in Ownership or Change in Control or acquisition of Direct or Indirect Power or Control, and such notification shall include a statement identifying all such owners, or persons with an ownership interest in Project Co, as the case may be, and their respective holdings of such ownership interest in Project Co, prior to and following any such Change in Ownership or Change in Control or acquisition of Direct or Indirect Power or Control.

## 56.5 Osler Due Diligence

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

## 57. PROHIBITED ACTS

### 57.1 Definition

- (a) The term "**Prohibited Act**" means:
- (i) offering, giving or agreeing to give to Osler or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, any gift or consideration of any kind as an inducement or reward:
    - (A) for doing or not doing, or for having done or not having done, any act in relation to the obtaining or performance of this Project Agreement or any other agreement with Osler or any public body in connection with the Project; or
    - (B) for showing or not showing favour or disfavour to any person in relation to this Project Agreement or any other agreement with Osler or any public body in connection with the Project;

provided that this Section 57.1(a)(i) shall not apply to Project Co or any Project Co Party (or anyone employed by or acting on their behalf) providing consideration to Osler or any public body in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with Osler or any public body in connection with the Project;

- (ii) entering into this Project Agreement or any other agreement with Osler or any public body in connection with the Project if a commission or a fee has been paid or has been agreed to be paid by Project Co, or on its behalf or to its knowledge, Osler or any public body (or anyone employed by or acting on their behalf), or to any family member of such person, unless, before the relevant agreement is entered into, particulars of any such

commission or fee have been disclosed in writing to Osler, provided that this Section 57.1(a)(ii) shall not apply to a fee or commission paid by Project Co or any Project Co Party (or anyone employed by or acting on their behalf) to Osler or any public body pursuant to an agreement where such fee or commission is paid in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with Osler or any public body in connection with the Project without contravening the intent of this Section 57;

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

## **57.2 Remedies**

- (a) If Project Co or any Project Co Party (or anyone employed by or acting on their behalf) commits any Prohibited Act, then Osler shall be entitled to act in accordance with the following:
  - (i) if the Prohibited Act is committed by Project Co or by an employee acting under the direction of a director or officer of Project Co, then Osler may give written notice to Project Co and Section 42 shall apply;
  - (ii) if the Prohibited Act is committed by an employee of Project Co acting independently of a direction of a director or officer of Project Co, then Osler may give written notice to Project Co and Section 42 shall apply, unless, within 30 days of receipt of such notice, Project Co terminates the employee's employment and ensures that the relevant part of the Project Operations shall be performed by another person;
  - (iii) if a Prohibited Act is committed by a Project Co Party or by an employee of that Project Co Party not acting independently of a direction of a director or officer of that Project Co Party, then Osler may give written notice to Project Co and Section 42 shall apply, unless, within 30 days of receipt of such notice, Project Co terminates the relevant Subcontract and ensures that the relevant part of the Project Operations shall be performed by another person, where relevant, in accordance with Section 56.3;
  - (iv) if the Prohibited Act is committed by an employee of a Project Co Party acting independently of a direction of a director or officer of that Project Co Party, then Osler may give notice to Project Co and Section 42 shall apply, unless, within 30 days of receipt of such notice, Project Co causes the termination of the employee's employment and ensures that the relevant part of the Project Operations shall be performed by another person; and
  - (v) if the Prohibited Act is committed on behalf of Project Co or a Project Co Party by a person not specified in Sections 57.2(a)(i) to 57.2(a)(iv), then Osler may give notice to Project Co and Section 42 shall apply, unless, within 30 days of receipt of such notice, Project Co causes the termination of such person's employment or the appointment of

their employer and, if necessary, ensures that the relevant part of the Project Operations shall be performed by another person.

- (b) Any notice of termination under this Section 57.2 shall specify:
  - (i) the nature of the Prohibited Act;
  - (ii) the identity of the person whom Osler believes has committed the Prohibited Act; and
  - (iii) the date of termination in accordance with the applicable provisions of this Project Agreement.
- (c) Without prejudice to its other rights or remedies under this Section 57.2, Osler shall be entitled to recover from Project Co any Direct Loss sustained in consequence of any breach of this Section 57.

**57.3 Permitted Payments**

- (a) Nothing contained in this Section 57 shall prevent Project Co or any other person from paying any proper commission, fee or bonus whether to its employees within the agreed terms of their employment or otherwise, and such commission fee or bonus shall not constitute a Prohibited Act.

**57.4 Notification**

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

**57.5 Replacement of Project Co Party**

- (a) Where Project Co is required to replace any Project Co Party pursuant to this Section 57, the party replacing such Project Co Party shall from the time of the replacement be deemed to be a Project Co Party and the provisions of this Project Agreement shall be construed accordingly.

**58. NOTICES**

**58.1 Notices to Parties**

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

If to Project Co: **[REDACTED]**

Fax No.: **[REDACTED]**

Attn.: **[REDACTED]**



If to Osler: [REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

## 58.2 Notices to Representatives

- (a) In addition to the notice requirements set out in Section 58.1, where any Notice is to be provided or submitted to the Osler Representative or the Project Co Representative it shall be provided or submitted by sending the same by registered mail, facsimile or by hand, as follows:

If to Project Co Representative: [REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to Osler Representative: [REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

## 58.3 Facsimile

- (a) Where any Notice is provided or submitted to a Party via facsimile, an original of the Notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 58.3.

## 58.4 Change of Address

- (a) Either Party to this Project Agreement may, from time to time, change any of its contact information set forth in Sections 58.1 or 58.2 by prior Notice to the other Party, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such Notice unless a later effective date is given in such Notice.

## 58.5 Deemed Receipt of Notices

- (a) Subject to Sections 58.5(b), 58.5(c) and 58.5(d):
- (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.

- (b) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 58.
- (c) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (d) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

### **58.6 Service on Osler**

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

## **59. GENERAL**

### **59.1 Amendments**

- (a) This Project Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Project Agreement.

### **59.2 Waiver**

- (a) No waiver made or given by a Party under or in connection with this Project Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by either Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

### **59.3 Relationship Between the Parties**

- (a) The Parties are independent contractors. This Project Agreement is not intended to and does not create or establish between the Parties, or between Osler and any Project Co Party, any relationship as partners, joint venturers, employer and employee, master and servant, or (except as provided in this Project Agreement), of principal and agent, and does not create or establish

any relationship whatsoever between Osler and any representative or employee of Project Co or the Project Co Parties.

(b) The Parties further agree that:

- (i) except as expressly provided in this Project Agreement, neither Party shall be, or be deemed to be, an agent of the other Party, and neither Party shall have authority hereunder to represent it that is an agent of the other Party, or to accept any order, or enter into any contract or agreement, or make any representations or warranties of any kind to any person, or to assume or create any obligation, express or deemed, on behalf of or binding, or purportedly binding upon, the other Party;
- (ii) neither Party shall be required to make or pay employment benefits, contributions for Employment Insurance, Canada Pension Plan, WSIB or other similar levies with respect to any persons employed or engaged by the other Party;
- (iii) except as otherwise expressly provided in this Project Agreement, each Party shall be free from the control of the other Party as to the manner in which it shall perform its obligations, or cause same to be performed, under this Project Agreement; and
- (iv) any person which a Party may engage as an agent, employee, subcontractor or otherwise, to perform such Party's obligations under this Project Agreement, as permitted hereby, shall, unless the Parties otherwise agree in writing, be engaged by such Party to act solely on behalf of such Party, and such person shall not act, or be deemed to act, on behalf of the Party that did not engage its services.

#### **59.4 General Duty to Mitigate**

- (a) Osler and Project Co shall at all times take commercially reasonable steps to minimize and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Project Agreement.

#### **59.5 Actual Knowledge**

- (a) Without limitation to its actual knowledge and/or such knowledge which it, at law, may from time to time, be deemed to have, Project Co and Osler shall, for all purposes of this Project Agreement, be deemed to have such knowledge in respect of the Project as is actually held (or ought reasonably to be held) by their respective directors, officers, senior management and their respective Representatives. For clarity, except as expressly set out to the contrary, a reference in this Project Agreement to the "knowledge" of Project Co or of Osler, shall be construed in a manner consistent with the foregoing sentence.

#### **59.6 Entire Agreement**

- (a) Except where provided otherwise in this Project Agreement, this Project Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Project Agreement.

**59.7 No Reliance**

- (a) Each of the Parties acknowledge that:
  - (i) it has not entered into this Project Agreement on the basis of and does not rely, and has not relied, upon any statement or representation, whether negligent or innocent, or warranty or other provision, whether oral, written, express or implied, made or agreed to by any person, whether a Party to this Project Agreement or not, except those expressly made, given or repeated in this Project Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be those expressly provided for in this Project Agreement; and
  - (ii) this Section 59.7 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Project Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Project Agreement.

**59.8 Severability**

- (a) Each provision of this Project Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Project Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Project Agreement. If any such provision of this Project Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Project Agreement as near as possible to its original intent and effect.

**59.9 Enurement**

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

**59.10 Governing Law and Jurisdiction**

- (a) This Project Agreement, and each of the documents contemplated by or delivered under or in connection with this Project Agreement, shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) Subject to Schedule 27 – Dispute Resolution Procedure, both Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

**59.11 Cumulative Remedies**

- (a) Except as otherwise set forth in this Project Agreement, the rights, powers and remedies of each Party set forth in this Project Agreement are cumulative and are in addition to and without prejudice to any other right, power or remedy that may be available to such Party under this Project Agreement.

**59.12 Further Assurance**

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

**59.13 Costs**

- (a) Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Project Agreement.

**59.14 Language of Agreement**

- (a) Each of the parties acknowledges having requested and being satisfied that this Project Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en declare satisfaite.
- (b) For greater certainty, all correspondence, notices, drawings, test reports, certificates, specifications, information, operating and maintenance instructions, name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Project Agreement shall be in English.

**59.15 Proof of Authority**

- (a) Osler and Project Co each reserve the right to require any person executing this Project Agreement on behalf of the other Party to provide proof, in a form acceptable to Osler or Project Co, as applicable, that they have the requisite authority to execute this Project Agreement on behalf of and to bind Osler or Project Co, as applicable.

**59.16 Counterparts**

- (a) This Project Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original, faxed form, or pdf, provided that any Party providing its signature in faxed form or by pdf shall promptly forward to the other Party an original signed copy of this Project Agreement which was so faxed or electronically delivered.

**59.17 Government Entities as Third Party Beneficiaries**

- (a) The provisions of Sections 2.4(c), 3.1(b), 6.1, 6.2(a), 6.3(a), 8.1(d), 9.2(a)(ii), 9.5(a), 48.9, and 49 and each other provision of the Project Agreement which is to the benefit of a Government Entity are:
- (i) intended for the benefit of each Government Entity and, if set out in the relevant Section, each Government Entity’s directors, officers, employees, board appointees, agents and representatives, and shall be enforceable by each of such persons and his or her heirs, executors, administrators and other legal representatives (collectively, the “**Third Party Beneficiaries**”); and
  - (ii) are in addition to, and not in substitution for, any other rights that the Third Party Beneficiaries may have by contract or otherwise.
- (b) Osler shall hold the rights and benefits of Sections 2.4(c), 3.1(b), 6.1, 6.2(a), 6.3(a), 8.1(d), 9.2(a)(ii), 9.5(a), 48.9, and 49 and each other provision of the Project Agreement which is to the benefit of a Government Entity in trust for and on behalf of the Third Party Beneficiaries and Osler hereby accepts such trust and agrees to hold the benefit of and enforce performance of such covenants on behalf of the Third Party Beneficiaries.

*Remainder of this Page Intentionally Left Blank*

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

**WILLIAM OSLER HEALTH SYSTEM**

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

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

I/We have authority to bind the corporation.

**PLENARY HEALTH PEEL LP, [REDACTED]**

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

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

I/We have authority to bind the corporation.

**[SIGNATURE PAGE FOR PROJECT AGREEMENT]**

## SCHEDULE 1

## DEFINITIONS AND INTERPRETATION

1. **Definitions.** In the Project Agreement, unless the context otherwise requires:
- 1.1 “**Access Coordination Agreement**” means the agreement to be entered into between Project Co, Osler and such Phase 2 Contractors as may be identified from time to time in the form set out in Schedule 37 - Access Coordination Agreement.
- 1.2 “**Accessibility Condition**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.3 “**Account Trustee**” has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.4 “**Accreditation Canada**” means the Canadian Council on Health Services Accreditation.
- 1.5 “**Actual Relevant Insurance Cost**” has the meaning given in Section 7.1 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.6 “**Ad-Hoc Services**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.7 “**Ad-Hoc Services Request**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.8 “**Additional Contractors**” means any independent contractor (not being, for the avoidance of doubt, the Construction Contractor, the Service Provider or Project Co) or Osler’s own forces, engaged by Osler to carry out the Additional Works.
- 1.9 “**Additional Works**” means those works in relation to the Facility which are not Works or Project Co Services and which are to be carried out by an Additional Contractor, including works or services to be performed either before or after Substantial Completion.
- 1.10 “**Adjusted Annual Energy Target**” has the meaning given in Schedule 36 – Energy Matters.
- 1.11 “**Adjusted Estimated Fair Value**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.12 “**Adjusted Highest Qualifying Tender Price**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.13 “**Affiliate**” means an “**affiliate**” as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto, and, in the case of Project Co, shall include each of its unitholders, shareholders, partners or owners, as the case may be.



- 1.14 “**Ancillary Documents**” means the Construction Contract, the Service Contract, the Facility Co-ordination Agreement, the Performance Security, the Equity Commitment Agreement and the Project Co Partnership Agreement.
- 1.15 “**Annual Energy Target**” has the meaning given in Schedule 36 – Energy Matters.
- 1.16 “**Annual Review Date**” has the meaning given in Schedule 36 – Energy Matters.
- 1.17 “**Annual Service Payment**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.18 “**Anticipated Replacement Year**” means the year, as indicated in Appendix A to Schedule 24 - Expiry Transition Procedure, in which the element of the Facility is expected to be replaced.
- 1.19 “**Anticipated Substantial Completion Date**” has the meaning given in Section 24.7(a) of the Project Agreement.
- 1.20 “**Applicable Law**” means:
- (a) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
  - (b) any Authority Requirement; and
  - (c) any judgment of a relevant court of law, board, arbitrator or administrative agency which is a binding precedent in the Province of Ontario,
- in each case, in force in the Province of Ontario, or otherwise binding on Project Co, any Project Co Party, Osler or any Osler Party and, in particular, shall include the *Public Hospitals Act* (Ontario).
- 1.21 “**Appointed Representative**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.22 “**Appointed Representative Notice**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.23 “**Approved Purposes**” means:
- (a) Osler and the Osler Parties performing the Hospital Services (and their operations relating to the performance of the Hospital Services), their obligations under the Project Agreement and/or any other activities in connection with the Facility and the Site;

- (b) following termination of the Project Agreement, the design, construction and/or maintenance of the Facility, and/or the performance of any other operations the same as, or similar to, the Project Operations; and
  - (c) the development by MOHLTC and/or the Province of best practices for healthcare facilities in Ontario.
- 1.24 “**Area Weighting Percentage**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.25 “**Areas of Work within R.O.W.**” means the part labelled “AREAS OF WORK WITHIN R.O.W.” on the conceptual drawing attached hereto as Appendix 3 to this Schedule 1 - Definitions and Interpretation.
- 1.26 “**As Built Drawings**” means drawings prepared by Project Co in a format and with content and details that Osler, acting reasonably, considers appropriate.
- 1.27 “**Associated Liabilities**” has the meaning given in Section 32.8(b) of the Project Agreement.
- 1.28 “**ASHRAE**” means the American Society for Heating Refrigeration and Air-Conditioning Engineers.
- 1.29 “**At-Risk Youth Organizations**” means not-for-profit organizations that provide employment and training opportunities in the construction industry to at-risk youth (typically youth that reside in “priority investment” or under-resourced status communities, as determined by the applicable municipal authority) and which:
- (a) offer eligible youth intensive training programs composed of in-class training and apprenticeships;
  - (b) allow participants to develop valuable construction industry trades and skills;
  - (c) upon graduation attempt to place participants in full-time careers in the construction industry; and
  - (d) depend on the partnership and support from industry employers and organizations to place program graduates.
- 1.30 “**Authority Requirements**” means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority.
- 1.31 “**Availability Condition**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.32 “**Availability Failure**” has the meaning given in Schedule 20 – Payment Mechanism.

- 1.33 “**Availability Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.34 “**Average Unit Cost**” has the meaning given in Schedule 36 – Energy Matters.
- 1.35 “**Background Information**” means any and all drawings, reports (including the Environmental Reports and Designated Substance Reports and the Geotechnical Reports), studies, data, documents, or other information, given or made available to Project Co or any Project Co Party by Osler or any Osler Party, or which was obtained from or through any other sources to the date of the Project Agreement.
- 1.36 “**Base Case Equity IRR**” means [REDACTED]%, which, for greater certainty, is calculated on an after-tax basis.
- 1.37 “**Base Date**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.38 “**Base Relevant Insurance Cost**” has the meaning given in Section 7.1(b) of Schedule 25 – Insurance and Performance Security Requirements.
- 1.39 “**Bedding-In Period**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.40 “**Beneficiary**” has the meaning given in Section 53.3(a) of the Project Agreement.
- 1.41 “**Building Code**” means the regulations made under Section 34 of the *Building Code Act, 1992* (Ontario), as amended or replaced from time to time.
- 1.42 “**Building Permit**” means the building permit issued by the City of Brampton with respect to the construction of the Facility on the Site.
- 1.43 “**Business Day**” means any day other than a Saturday, a Sunday, a statutory holiday in the Province of Ontario or any day on which banks are not open for business in the City of Brampton, Ontario.
- 1.44 “**Business Opportunities**” has the meaning given in Section 4.1(a) of the Project Agreement.
- 1.45 “**CaGBC**” means the Canadian Green Building Council.
- 1.46 “**Canadian and Industry Standards**” means, at the applicable time, those standards, practices, methods and procedures applicable to Good Industry Practice.
- 1.47 “**Canadian GAAP**” shall be deemed to be the generally accepted accounting principles, from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable as at the date on which such calculation is made or required to be made in accordance with generally accepted accounting principles, as such

- principles may be amended or varied by International Financial Reporting Standards then in effect in Canada, in any case consistently applied from one period to the next.
- 1.48 “**Capital Expenditure**” means capital expenditure as interpreted in accordance with Canadian GAAP.
- 1.49 “**Cash Allowance Account**” means [REDACTED].
- 1.50 “**Cash Allowance Amount**” means \$[REDACTED].
- 1.51 “**Cash Allowance Items**” means the Designated Substance Contamination Remediation Work.
- 1.52 “**Change in Control**” means, with respect to a person:
- (a) any Change in Ownership, where the effect of such change is to result in control of the decisions made by or on behalf of such person subsequently being with a different entity or entities than prior to such change;
  - (b) any other change in respect of the power to elect a majority of the directors of the person or otherwise control the decisions made on behalf of such person; or
  - (c) any other change of direct or indirect power or authority, through any contractual right or other power or interest with or over a person, to influence, direct, cause to change or prevent from changing the approval of a decision, direction of the management, actions or policies of such person.
- 1.53 “**Change in Law**” means the coming into effect or repeal (without re-enactment or consolidation) in Ontario of any Applicable Law, or any amendment or variation of any Applicable Law, including any judgment of a relevant court of law which changes binding precedent in Ontario in each case after the date of the Project Agreement.
- 1.54 “**Change in Ownership**” means, with respect to a person, any change in ownership, whether beneficial or otherwise, of any of the shares or units or any other ownership interest of such person, or in the direct or indirect power to vote or transfer any of the shares or units or any other ownership interest of such person.
- 1.55 “**CLA**” means the *Construction Lien Act* (Ontario).
- 1.56 “**Clinical Functionality**” means the ability of the Facility to enable Osler to carry out the Clinical Services in a manner that meets Osler’s operating requirements as set out in the functional program represented in the Output Specifications approved by MOHLTC.
- 1.57 “**Clinical Functionality Report**” has the meaning given in Section 18.6(b) of the Project Agreement.

- 1.58 “**Clinical Services**” means the direct and/or indirect provision of medical and healthcare services at the Facility to or for the benefit of persons requesting or requiring such services, including all management and administrative operations in support thereof.
- 1.59 “**Commissioning Tests**” means all commissioning tests:
- (a) described in Schedule 14 – Outline Commissioning Program;
  - (b) required by Applicable Law, Canadian and Industry Standards or CSA Standards;
  - (c) recommended by the manufacturer of any part of the Plant, Equipment, or Existing Equipment as set out in Part 5 of Schedule 15 - Output Specifications; and
  - (d) required to be included in the Final Commissioning Program by the Independent Certifier, the Osler Commissioning Agent or the Osler Representative during its development pursuant to Section 24.2 of the Project Agreement.
- 1.60 “**Common Terms Agreement**” means the common terms, intercreditor and collateral trust agreement dated on or about the date of the Project Agreement and made between, among others, Project Co, [REDACTED], the Lenders’ Agent, in its capacity as collateral trustee, Alberta Treasury Branches, as lender, and the other lenders party thereto.
- 1.61 “**Compensation Date**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.62 “**Compensation Event**” has the meaning given in Section 38.1(a) of the Project Agreement.
- 1.63 “**Confidant**” has the meaning given in Section 49.6(a)(i) of the Project Agreement.
- 1.64 “**Confidential Information**” means all confidential and proprietary information which is supplied by or on behalf of a Party, whether before or after the date of the Project Agreement, but excluding Patient Information.
- 1.65 “**Construction Contract**” means the design-build agreement between Project Co and the Construction Contractor dated on or about the date of the Project Agreement.
- 1.66 “**Construction Contractor**” means PCL Constructors Canada Inc., engaged by Project Co to perform the Works and any substitute building contractor engaged by Project Co as may be permitted by the Project Agreement.
- 1.67 “**Construction Contractor’s Direct Agreement**” means the direct agreement between Osler, Project Co, the Construction Contractor and the Construction Guarantor in the form set out in Schedule 5-1 – Construction Contractor’s Direct Agreement.

- 1.68 “**Construction Document Submittals**” has the meaning given in 18.3(c)(iii) of the Project Agreement.
- 1.69 “**Construction Guarantor**” means PCL Construction Group Inc.
- 1.70 “**Construction Quality Plan**” means such document included in Schedule 11 – Design Quality Plan and Construction Quality Plan.
- 1.71 “**Contamination**” means the presence of any Hazardous Substance in the environment, except Hazardous Substances present in the environment in concentrations below applicable standards as set by Applicable Laws. If Contamination is present in soil, surface water or groundwater, then the soil, surface water or groundwater, as applicable, containing the Contamination shall also be deemed to be Contamination for the purposes of the Project Agreement. For greater certainty, Contamination includes Designated Substance Contamination.
- 1.72 “**Contract Day**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.73 “**Contract Month**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.74 “**Contract Year**” means the period of 12 calendar months that commences on April 1<sup>st</sup> of each calendar year and ends on the next ensuing March 31<sup>st</sup>, provided that:
- (a) the first Contract Year shall be such period that commences on the Payment Commencement Date and ends on the next ensuing March 31<sup>st</sup>; and
  - (b) the final Contract Year shall be such period that commences on the April 1<sup>st</sup> that precedes the date on which the Project Agreement expires or is terminated, for whatever reason, and ends on the expiry or termination of the Project Agreement.
- 1.75 “**Countdown Notice**” has the meaning given in Section 24.7(a) of the Project Agreement.
- 1.76 “**CPI**” means CPI-XFET, as published by Statistics Canada from time to time, or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 27 – Dispute Resolution Procedure, most closely resembles such index.
- 1.77 “**CPI<sub>n</sub>**” is the value of CPI on April 1<sup>st</sup> of the relevant Contract Year “n”, to be determined by reference to the relevant index in the month of February most recently preceding the indexation date.
- 1.78 “**CPI<sub>0</sub>**” is the value of CPI on the Base Date, to be determined by reference to the relevant index in the month immediately preceding the Base Date.

- 1.79 “**CSA Standard**” means, at the applicable time, the Canadian Standards Association standards.
- 1.80 “**Custodian**” means the person appointed as the Custodian pursuant to the Custody Agreement and as may be permitted pursuant to the Project Agreement.
- 1.81 “**Custody Agreement**” means the custody agreement between Project Co, Osler, the Custodian and the Lenders’ Agent in the form set out in Schedule 3 – Custody Agreement.
- 1.82 “**Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.83 “**Delay Event**” has the meaning given in Section 37.1(a) of the Project Agreement.
- 1.84 “**Design and Bid Fee**” has the meaning given in the Request for Proposals.
- 1.85 “**Design Compliance Consultant**” means Cannon Design Limited.
- 1.86 “**Design Data**” means all drawings, reports, documents, plans, software, formulae, calculations and other data prepared by Project Co relating to the design, construction or testing of the Facility, but excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction.
- 1.87 “**Design Development Submittals**” has the meaning given in Section 18.3(c)(i) of the Project Agreement.
- 1.88 “**Design Quality Plan**” means such document included in Schedule 11 – Design Quality Plan and Construction Quality Plan.
- 1.89 “**Design Team**” means RTKL Associates Inc., engaged by Project Co to design the Facility and any substitute design team engaged by Project Co as may be permitted by the Project Agreement.
- 1.90 “**Design Workshops**” has the meaning given in Section 18.5(a) of the Project Agreement.
- 1.91 “**Designated Substance**” means the chemical agents prescribed as Designated Substances under the regulations to the *Occupational Health and Safety Act* (Ontario) or any other Applicable Law.
- 1.92 “**Designated Substance Contamination**” means the presence of any Designated Substances in, on, under, or affixed to or part of other materials in, the Site.
- 1.93 “**Designated Substance Contamination Remediation Work**” has the meaning given in Section 16.4(a) of the Project Agreement.

- 1.94 “**Development Agreements**” means, collectively, NOAC and the Site Plan Agreement.
- 1.95 “**Development Approval**” means development permits, building permits, zoning approvals and any other planning or development permit, consent or applicable Permits, Licences, Approvals and Agreements required from time to time for construction of the Facility.
- 1.96 “**Direct Agreements**” means the Construction Contractor’s Direct Agreement and the Service Provider’s Direct Agreement.
- 1.97 “**Direct Cost**” has the meaning given in Schedule 22 -Variation Procedure.
- 1.98 “**Direct Losses**” means all damage, losses, liabilities, penalties, fines, assessments, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on a substantial indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law, except Indirect Losses.
- 1.99 “**Direct or Indirect Power or Control**” means the direct or indirect power or control over the decisions, management, actions or policies of a person, including through the direct or indirect power or control over the decisions, management, actions or policies of any persons having direct or indirect power or control over the decisions, management, actions or policies of any other person, whether through:
- (a) ownership, beneficial or otherwise, of greater than [REDACTED] ([REDACTED]%) percent of any of the shares, units or equity interests of a person;
  - (b) the direct or indirect power to vote any of the shares, units or equity interests of a person where an individual’s ownership, beneficial or otherwise, is equal to or exceeds [REDACTED] ([REDACTED]%) percent of the voting securities, units or equity interests of such person; or
  - (c) the direct or indirect power or authority to influence or direct the approval of a decision, the management, actions or policies of a person or to prevent the approval of a decision, the management, actions or policies of a person through any contractual right or other power or interest with or over a person.
- 1.100 “**Discount Rate**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.101 “**Discriminatory Change in Law**” means any Change in Law the effect of which is to discriminate directly against or impose additional Taxes which apply specifically to:
- (a) hospitals whose design, construction, financing and facilities management are procured by a contract similar to the Project Agreement in relation to other similar hospitals;



- (b) the Facility in relation to other hospitals;
- (c) Project Co in relation to other persons; or
- (d) persons undertaking projects for design, construction, financing and facilities management that are procured by a contract similar to the Project Agreement in relation to other persons undertaking similar projects procured on a different basis,

except that such Change in Law shall not be a Discriminatory Change in Law:

- (e) where it is in response to any act or omission on the part of Project Co which contravenes Applicable Law (other than an act or omission rendered illegal by virtue of the Discriminatory Change in Law itself);
- (f) solely on the basis that its effect on Project Co is greater than its effect on other companies; or
- (g) where such Change in Law is a change in Taxes that affects companies generally.

1.102 “**Dispute**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.

1.103 “**Dispute Resolution Procedure**” means the procedure set out in Schedule 27 – Dispute Resolution Procedure.

1.104 “**Distribution**” has the meaning given in Schedule 28 – Refinancing.

1.105 “**Economic Interest**” means any right to receive, directly or indirectly and whether in cash or in kind, a payment, repayment, fee, interest, dividend distribution, redemption or any other consideration of benefit or value to the recipient of any nature whatsoever, but excluding wages, salaries or other employment-related benefits.

1.106 “**Eastern Ave Extension**” means the part labelled “EASTERN AVE EXTENSION” on the conceptual drawing attached hereto as Appendix 3 to this Schedule 1 - Definitions and Interpretation.

1.107 “**Elevator Availability Failure**” has the meaning given in Schedule 20 – Payment Mechanism.

1.108 “**Elevator Availability Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.

1.109 “**Emergency**” means any situation, event, occurrence, or multiple occurrences

- (a) that:

- (i) constitutes or may constitute a hazard to or jeopardizes or may jeopardize the health and/or safety of any persons or the safety of any part or the whole of the Facility;
- (ii) causes or may cause damage or harm to property, buildings and/or equipment; or
- (iii) materially interferes with or prejudices or may materially interfere with or prejudice the safe operation of the Facility, any part of the Site, the conduct of the Project Operations and/or the conduct of the Hospital Services;

and which, in the opinion of Osler, requires immediate action to prevent and/or mitigate the occurrence (or risk of the occurrence) of the foregoing; or,

- (b) which gives rise to an emergency, as determined by any statutory body including (notwithstanding the generality of the foregoing) the police, the armed forces, fire or ambulance services.

1.110 **“Emergency Maintenance Work”** is a type of Unscheduled Maintenance Work and is described in Section 26.5(a) of the Project Agreement.

1.111 **“Employee Termination Payments”** has the meaning given in Schedule 23 – Compensation on Termination.

1.112 **“Encumbrance”** means any mortgage, lien, pledge, judgment, execution, charge, security interest, restriction, claim or encumbrance of any nature whatsoever, including claims of the Workplace Safety and Insurance Board, Canada Revenue Agency, and other Governmental Authorities.

1.113 **“Energy”** has the meaning given in Schedule 36 – Energy Matters.

1.114 **“Energy Consumption”** has the meaning given in Schedule 36 – Energy Matters.

1.115 **“Energy Year”** has the meaning given in Schedule 36 – Energy Matters.

1.116 **“Environmental and Sustainability Services”** means those environmental and sustainability services to be carried out pursuant to the Environmental and Sustainability Services Specification.

1.117 **“Environmental and Sustainability Services Specification”** means Section 8 of Part 4 of Schedule 15 – Output Specifications.

1.118 **“Environmental Reports and Designated Substance Reports”** means the following reports:

- (a) Phase I Environmental Site Assessment dated May 2009 prepared by MMM Group Limited;
  - (b) Phase II Environmental Site Assessment dated May 2009 prepared by MMM Group Limited;
  - (c) Environmental Closure Report dated May 2013 prepared by MMM Group Limited; and
  - (d) Train Noise and Vibration Report dated January 22, 2013 prepared by Swallow Acoustic Consultants Limited.
- 1.119 “**Equipment**” means the Not-In-Contract Equipment and the In-Contract Equipment and for clarity does not include the Existing Equipment.
- 1.120 “**Equipment List**” means the equipment list set out in Part 5 of Schedule 15 – Output Specifications.
- 1.121 “**Equipment Procurement Documentation**” has the meaning given in Section 21.5(a)(v) of the Project Agreement.
- 1.122 “**Equipment Procurement Fee**” means \$[REDACTED].
- 1.123 “**Equipment Steering Committee**” has the meaning given in Section 21.1(a) of the Project Agreement.
- 1.124 “**Equity Capital**” means the aggregate (without double counting) of all subscribed share capital, shareholder loans and other contributed capital of Project Co, excluding, for greater certainty, any amounts advanced to Project Co under the Lending Agreements which has a fixed return without equity participation, step-up rights or rights to share in Project Co’s excess cash flow and a coupon equal to or less than [REDACTED]% of the coupon payable to the Senior Lenders.
- 1.125 “**Equity Commitment Agreement**” means the equity commitment agreement between [REDACTED].
- 1.126 “**Equity IRR**” has the meaning given in Schedule 28 – Refinancing.
- 1.127 “**Equity Provider**” means [REDACTED].
- 1.128 “**Equity Sale IRR**” means the Equity IRR calculated to the date of any sale of Equity Capital calculated by taking into account the full Implied Equity Value, together with all Distributions paid in respect of the Equity Capital, and the actual timing of payment of all such amounts.
- 1.129 “**Escalation Factor**” has the meaning given in Schedule 20 – Payment Mechanism.

- 1.130 “**Escrow Account**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.131 “**Estimate**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.132 “**Estimated Fair Value**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.133 “**Estimated Increased Maintenance Costs**” has the meaning given in Section 26.3(b) of the Project Agreement.
- 1.134 “**Event**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.135 “**Excess Equity Gain**” means an amount equal to the greater of zero and the difference between:
- (a) the amount paid in consideration of the percentage of Equity Capital (as at Financial Close) sold in a particular sale of Equity Capital; and
  - (b) the Threshold Equity Sale Amount.
- 1.136 “**Excusing Cause**” has the meaning given in Section 39.1(a) of the Project Agreement.
- 1.137 “**Exempt Refinancing**” has the meaning given in Schedule 28 – Refinancing.
- 1.138 “**Exercise Date**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.139 “**Existing Equipment**” means the equipment, furniture and fixtures designated as “transferrable equipment” and in Part 5 of Schedule 15 – Output Specifications, and the Osler Procured Equipment.
- 1.140 “**Existing Facilities**” means the facilities located at the following addresses:
- (a) 9445 Airport Road, Brampton, ON L6S 6E7;
  - (b) 2100 Bovaird Dr E, Brampton, ON L6R 3J7;
  - (c) 301 - 118 Queen St. W, Brampton, ON L6W 2B2; and
  - (d) 200 - 30A Kennedy Rd S, Brampton ON L6W 3E2.
- 1.141 “**Expert**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.142 “**Expiry Date**” means the 30th anniversary of the original Scheduled Substantial Completion Date, without taking into account any extensions to such date pursuant to Section 37 of the Project Agreement.

- 1.143 “**Expiry Lifecycle Costs**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.144 “**Expiry Transition Amount**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.145 “**Expiry Transition Procedure**” means the procedure for Expiry Transition described in Schedule 24 – Expiry Transition Procedure.
- 1.146 “**Expiry Transition Requirements**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.147 “**Expiry Transition Security**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.148 “**Expiry Transition Works**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.149 “**Expiry Transition Works Costs**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.150 “**Facilities Management Committee**” has the meaning given in Section 12.1(a) of the Project Agreement.
- 1.151 “**Facility**” means:
- (a) all buildings, facilities and other structures;
  - (b) the Plant;
  - (c) all site services, utilities, roadways and parking areas required to support such buildings, facilities and structures;
  - (d) all supporting systems, infrastructure and improvements; and
  - (e) all other works, improvements, and demolitions to occur on the Site,
- in each case required to meet the Output Specifications and the requirements under the Permits, Licences, Approvals and Agreements and whether or not in the course of construction, installation or completion.
- 1.152 “**Facility Condition Report**” has the meaning given in Schedule 24 – Expiry Transition Procedure.

- 1.153 “**Facility Co-ordination Agreement**” means the facility co-ordination agreement made between Project Co, the Construction Contractor and the Service Provider dated on or about the date of the Project Agreement.
- 1.154 “**Failure Event**” means a Quality Failure, an Availability Failure, or a Service Failure.
- 1.155 “**Failure Points**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.156 “**Failure Type**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.157 “**Final Commissioning Program**” means the program to be jointly developed and agreed by Osler and Project Co in accordance with Section 24.2 of the Project Agreement.
- 1.158 “**Final Completion**” means the completion of the Works in accordance with the Project Agreement, including completion of all Minor Deficiencies, other than any minor work that is seasonal in nature and cannot be completed by the Final Completion Date.
- 1.159 “**Final Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 24.11(d) of the Project Agreement.
- 1.160 “**Final Completion Date**” means the date on which Final Completion is achieved as evidenced by the Final Completion Certificate, as such date shall be stated therein.
- 1.161 “**Final Completion Notice**” has the meaning given in Section 24.11(b) of the Project Agreement.
- 1.162 “**Final Facility Condition Report**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.163 “**Financial Close**” means the first date that funding is available under the Lending Agreements.
- 1.164 “**Financial Close Target Date**” means the 28<sup>th</sup> day of May, 2014 as such date may be extended in accordance with the provisions of the Project Agreement.
- 1.165 “**Financial Model**” means the computer spreadsheet model for the Project incorporating statements of Project Co’s cashflows including all expenditure, revenues, financing and taxation of the Project Operations together with the profit and loss accounts and balance sheets for Project Co throughout the Project Term accompanied by details of all assumptions, calculations and methodology used in their compilation and any other documentation necessary or desirable to operate the model.
- 1.166 “**Financial Obligations**” means the obligation to pay any application fees, third party fees, costs or charges (including all applicable Taxes thereon), the provision of any letters

of credit, instruments of guarantee, bonds or security deposits, or any other financial security obligations save and except for the Osler Security Deposits.

- 1.167 “**FIPPA**” means the Freedom of Information and Protection of Privacy Act (Ontario).
- 1.168 “**Five Year Maintenance Plan**” means the rolling plan to be prepared by or on behalf of Project Co for the maintenance of the Facility in accordance with Part 4 of Schedule 15 – Output Specifications and the other provisions of the Project Agreement during each five year period.
- 1.169 “**FM Help Desk**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.170 “**FM Help Desk Services**” means those help desk services to be carried out pursuant to the FM Help Desk Services Specification.
- 1.171 “**FM Help Desk Services Specification**” means Section 6 of Part 4 of Schedule 15 – Output Specifications.
- 1.172 “**Force Majeure**” has the meaning given in Section 41.1(a) of the Project Agreement.
- 1.173 “**Functional Area**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.174 “**Functional Part**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.175 “**Functional Unit**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.176 “**Gainshare Adjustment**” has the meaning given in Schedule 36 – Energy Matters.
- 1.177 “**General Management Services**” means those general management services to be carried out pursuant to the General Management Services Specification.
- 1.178 “**General Management Services Specification**” means Section 4 of Part 4 of Schedule 15 – Output Specifications.
- 1.179 “**Geotechnical Reports**” means the following geotechnical reports:
- (a) Preliminary Geotechnical Investigation for Peel Memorial Hospital Report dated September 22, 2009 prepared by Coffey Geotechnics Inc.;
  - (b) Geotechnical Comments Letter dated January 4, 2013 prepared by Coffey Geotechnics Inc.;
  - (c) Full Geotechnical Report dated July 2013 prepared by Conestoga-Rovers and Associates;
  - (d) Updated Hydrogeological Assessment Final Report dated April 2014 prepared by Conestoga-Rovers and Associates;

- (e) Geo-exchange Thermal Conductivity Report: Peel Memorial Centre for Integrated Health and Wellness dated November 12, 2013 prepared by Clean Energy Developments Corp.;
  - (f) Summary of Follow-Up Soil Analytical Results for Peel Memorial Centre for Integrated Health and Wellness dated October 29, 2013 prepared by Conestoga-Rovers and Associates; and
  - (g) Peel Memorial Hospital Abatement and Demolition Civil Closure Summary Report dated August 26, 2013 prepared by MMM Group Limited.
- 1.180 “**Gigajoule**” has the meaning given in Schedule 36 – Energy Matters.
- 1.181 “**Good Industry Practice**” means using standards, practices, methods and procedures to a good commercial standard, conforming to Applicable Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.
- 1.182 “**Government Entity**” means any one or more of the Province, IO, MOI, and the MOHLTC.
- 1.183 “**Governmental Authority**” means MOHLTC, the Local Health Integration Network and any other federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over Osler, any aspect of the performance of the Project Agreement or the operation of the Facility or the Hospital Services, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.
- 1.184 “**Grounds**” means all external elements of the Facility.
- 1.185 “**H&S Conviction**” has the meaning given in Section 42.1(a)(xx) of the Project Agreement.
- 1.186 “**Hazardous Substances**” means any contaminant, pollutant, dangerous substance, toxic substance, liquid waste, industrial waste, gaseous waste, hauled liquid waste, hazardous material, or hazardous substance as defined or identified pursuant to any Applicable Law.
- 1.187 “**Health Specific Change in Law**” means any Change in Law which principally affects or principally relates only to the provision or operation of healthcare premises.
- 1.188 “**Heritage Guidelines and Protocols**” means those heritage guidelines posted as Background Information.



- 1.189 “**Hospital Commissioning**” means the commissioning activities to be carried out by Osler in accordance with the Final Commissioning Program.
- 1.190 “**Hospital Commissioning Period**” means the period during which Osler is performing the Hospital Commissioning.
- 1.191 “**Hospital Commissioning Tests**” means all commissioning tests required to be performed by Osler pursuant to the Final Commissioning Program.
- 1.192 “**Hospital FM Services**” means all services and activities, other than the Clinical Services, provided or performed at the Facility by Osler or any Osler Party from time to time, including select general management services, select helpdesk services, food services (patient), clinical engineering services, environmental services (including housekeeping, waste management and laundry/linen), materials management services (including purchasing, stores, distribution, portering, transportation and central processing), protection services, parking services, information management services, learning centre services, main public facilities services, site administration services, staff facilities services and volunteer/auxiliary services.
- 1.193 “**Hospital Public Health Requirements Policies**” has the meaning attributed to it in Section 27.9 of the Project Agreement.
- 1.194 “**Hospital Service User**” means any person lawfully present at the Facility for any purpose, including to make use of or be benefited by the Hospital Services (and such term shall exclude Project Co, any Osler Party or any Project Co Party save where such person is present at the Facility solely to make use of or be benefited by the Hospital Services).
- 1.195 “**Hospital Services**” means the Clinical Services and the Hospital FM Services.
- 1.196 “**HST**” means the value-added tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.
- 1.197 “**HVAC**” means heating, ventilation and air conditioning.
- 1.198 “**Implied Equity Value**” means the amount paid in consideration of a percentage of Equity Capital divided by the percentage of Equity Capital (as at Financial Close) sold in a particular sale of Equity Capital.
- 1.199 “**Improvements**” means structures, buildings, installations, fixtures, services and other such improvements.
- 1.200 “**In-Contract Equipment**” means all equipment, furniture and fixtures in respect to which Project Co is to be the purchaser as specified in Part 5 of Schedule 15 – Output Specifications.
- 1.201 “**Indemnifier**” has the meaning given in Section 53.3(a) of the Project Agreement.

- 1.202 “**Independent Certifier**” means the person appointed as the Independent Certifier pursuant to the Independent Certifier Agreement and as may be permitted pursuant to the Project Agreement.
- 1.203 “**Independent Certifier Agreement**” means the contract entered into between Project Co, Osler and the Independent Certifier in substantially the form attached hereto as Schedule 6 – Independent Certifier Agreement.
- 1.204 “**Independent Inspector**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.205 “**Indirect Losses**” has the meaning given in Section 54.1(a) of the Project Agreement.
- 1.206 “**Initial APAP Due Date**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.207 “**Initial Period**” has the meaning given in Schedule 36 – Energy Matters.
- 1.208 “**Innovation Proposal**” has the meaning given in Section 36.2(b) of the Project Agreement.
- 1.209 “**Insurance Adjustment**” has the meaning given in Section 7.3 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.210 “**Insurance Cost Differential**” has the meaning given in Section 7.1 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.211 “**Insurance Review Date**” has the meaning given in Section 7.1 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.212 “**Insurance Review Period**” has the meaning given in Section 7.1 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.213 “**Insurance Trust Agreement**” means the insurance trust agreement to be entered into between Osler, the Lenders’ Agent, Project Co and the Account Trustee in the form set out in Schedule 30 – Insurance Trust Agreement.
- 1.214 “**Intellectual Property**” means in connection with a specified subject matter, on a worldwide basis, all registered or unregistered Trade-Marks, trade names, patents, copyrights, trade secrets, designs, rights of publicity, mask work rights, utility models and other industrial or intangible property rights of a similar nature, all grants and registrations worldwide in connection with the foregoing and all other rights with respect thereto existing other than pursuant to grant or registration; all applications for any such grant or registration, all rights of priority under international conventions to make such applications and the right to control their prosecution, and all amendments, continuations, divisions and continuations-in-part of such applications; and all corrections, reissues, patents of addition, extensions and renewals of any such grant, registration or right.

- 1.215 “**Intellectual Property Rights**” means all Intellectual Property in or associated with the Project Data and all Intellectual Property which, or the subject matter of which, is at any time before or after the date of the Project Agreement created, brought into existence, acquired, used or intended to be used by Project Co, any Project Co Party or by other third parties (for such third parties’ use by or on behalf of or for the benefit of Project Co) for any or all of the purposes of:
- (a) the Works, including the design and construction of the Facility (excluding Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction);
  - (b) the Project Co Services, including the operation, maintenance, improvement and testing of the Facility;
  - (c) any other Project Operations; or
  - (d) the Project Agreement.
- 1.216 “**Invoice Date**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.217 “**IO**” means Ontario Infrastructure and Lands Corporation, a non-share capital corporation continued and amalgamated under the *Ontario Infrastructure and Lands Corporation Act, 2011*, S.O. 2011, c. 9, Schedule 32, as amended and includes any successors thereto or persons exercising delegated power and the Minister’s authority, as agent for Her Majesty the Queen in Right of Ontario, as represented by the Minister of Infrastructure.
- 1.218 “**IPFP Framework**” has the meaning given in Recital E of the Project Agreement.
- 1.219 “**Irrecoverable Tax**” has the meaning given in Section 32.4(b) of the Project Agreement.
- 1.220 “**Joint Insurance Cost Report**” has the meaning given in Section 7.2 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.221 “**Joint Technical Review**” means an assessment conducted by the Parties every 5 years to assess the performance and effectiveness of the Scheduled Maintenance, Unscheduled Maintenance, Small Works and Variations completed over the previous period and the work planned and scheduled for the upcoming five-year period in accordance with the Lifecycle Replacement Schedule and Part 4 of Schedule 15 – Output Specifications.
- 1.222 “**Jointly Developed Materials**” has the meaning given in Section 48.4(a) of the Project Agreement.
- 1.223 “**Junior Debt Amount**” has the meaning given in Schedule 23 – Compensation on Termination.

- 1.224 “**Junior Debt Makewhole**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.225 “**Junior Debt Service Amount**” means, for any period, the principal and interest payable by Project Co or any Project Co Party to the Junior Lenders in the normal course under the Lending Agreements.
- 1.226 “**Junior Lenders**” means any and all Subordinated Noteholders (as defined in the Common Terms Agreement).
- 1.227 “**LEED**” means Leadership in Energy & Environmental Design.
- 1.228 “**LEED-NC Rating System**” means CaGBC’s Leadership in Energy and Environmental Design for New Construction and Major Renovations (NC) 1.0 with Addenda (2007).
- 1.229 “**LEED-NC Silver Rating**” means the achievement of a “Silver” rating from the CaGBC, with respect to the CaGBC’s Leadership in Energy and Environmental Design for New Construction and Major Renovations (NC) 1.0 with Addenda (2007).
- 1.230 “**Lenders**” means all or any of the persons acting at all times at arm’s length to Project Co and each Project Co Party who provide financing to Project Co in respect of the Project Operations under the Lending Agreements, including, without limitation, the Senior Lenders and the Junior Lenders and, where the context so permits, prospective financiers or lenders, and for greater clarity, excludes any Affiliate of Project Co or of a Project Co Party.
- 1.231 “**Lenders’ Agent**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.232 “**Lenders’ Direct Agreement**” means the direct agreement to be entered into between Osler, the Lenders’ Agent and Project Co in the form set out in Schedule 4 – Lenders’ Direct Agreement.
- 1.233 “**Lending Agreements**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.234 “**Lifecycle Payment**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.235 “**Lifecycle Replacement and Refurbishment Services**” means those lifecycle replacement and refurbishment services to be carried out pursuant to the Lifecycle Replacement and Refurbishment Services Specification.
- 1.236 “**Lifecycle Replacement and Refurbishment Services Specification**” means Section 16 of Part 4 of Schedule 15 – Output Specifications.
- 1.237 “**Lifecycle Replacement Schedule**” means a program, updated from time to time as required by the Project Agreement and agreed to by Osler, for the planned or scheduled

- replacement, refreshment or refurbishment of equipment and elements of the Facility (except for such equipment and elements of the Facility that Osler is responsible for replacing, refreshing or refurbishing pursuant to the terms of the Project Agreement) that have reached the end of their useful service life during the Project Term, as set out in Appendix A to Schedule 24 – Expiry Transition Procedure.
- 1.238 “**Liquid Market**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.239 “**Local Health Integration Network**” means the Central West Local Health Integration Network.
- 1.240 “**Longstop Date**” has the meaning given in Section 42.1(a)(ii) of the Project Agreement.
- 1.241 “**Lynch St Extension**” means the part labelled “LYNCH ST EXTENSION” on the conceptual drawing attached hereto as Appendix 3 to this Schedule 1 - Definition and Interpretation.
- 1.242 “**Maintenance Requisition**” means a requisition for Unscheduled Maintenance.
- 1.243 “**Maintenance Work**” means any work performed or required to be performed after Substantial Completion for maintenance or repair of the Facility in accordance with the requirements of the Project Agreement.
- 1.244 “**Major Quality Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.245 “**Major Quality Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.246 “**Major Service Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.247 “**Major Service Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.248 “**Mandatory Refinancing**” has the meaning given in Schedule 28 – Refinancing.
- 1.249 “**Market Value Availability Deduction Amount**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.250 “**Maximum Service Payment**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.251 “**Medical Contamination**” means a disease carrying agent which cleaning and prevention of infection or contamination techniques in use in accordance with Good Industry Practice and the Project Agreement cannot substantially prevent or cannot substantially remove with the result that:

- (a) it is unsafe to admit patients or staff to the relevant area or to use the area for the purpose for which it is intended; and
  - (b) the area cannot be made safe for the admission of patients or staff.
- 1.252 “**Medium Quality Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.253 “**Medium Quality Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.254 “**Medium Service Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.255 “**Medium Service Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.256 “**Minimum Agreed Availability Conditions**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.257 “**Minimum Unavailability Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.258 “**Mini-Perm Financing**” has the meaning given in Schedule 28 – Refinancing.
- 1.259 “**Minor Deficiencies**” means any defects, deficiencies and items of outstanding work (including in relation to seasonal work) arising from or related to the work required to achieve Substantial Completion and that would not materially impair Osler’s use and enjoyment of the Facility (including the Hospital Commissioning) or the performance of the Hospital Services by Osler or the performance of the Project Co Services by Project Co.
- 1.260 “**Minor Deficiencies List**” has the meaning given in Section 24.8(a) of the Project Agreement.
- 1.261 “**Minor Quality Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.262 “**Minor Quality Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.263 “**Minor Service Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.264 “**Minor Service Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.

- 1.265 “**MOHLTC**” means Her Majesty the Queen in Right of Ontario as represented by the Minister of Health and Long-Term Care, and includes any successors thereto or persons exercising delegated power under the Minister’s authority.
- 1.266 “**MOI**” means Her Majesty the Queen in Right of Ontario as represented by the Minister of Infrastructure, and includes any successors thereto or persons exercising delegated power under the Minister’s authority.
- 1.267 “**Monitoring Notice**” has the meaning given in Section 29.4(a) of the Project Agreement.
- 1.268 “**Monitoring Period**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.269 “**Monthly Energy Report**” has the meaning given in Schedule 36 – Energy Matters.
- 1.270 “**Monthly Previously Paid HST Amount**” means a monthly HST amount to be determined as provided for below which in the aggregate is equal to the amount of the Section 32.1(d) Payment. The amount of each Monthly Previously Paid HST Amount shall be:
- (a) the amount of the Section 32.1(d) Payment amortized on a straight line basis over the Monthly Service Payments due over the remainder of the Operational Term following the payment of the Section 32.1(d) Payment, subject to an alternative basis on which to amortize the remaining unapplied Section 32.1(d) Payment as provided for by Applicable Law in which case Osler shall determine the Monthly Previously Paid HST Amount in accordance with such Applicable Law, provided that Osler may, at any time, proceed to obtain an advance ruling under the Excise Tax Act (Canada) (or rely upon an existing advance ruling under the Excise Tax Act (Canada)) in respect to some other basis for amortizing the remaining unapplied Section 32.1(d) Payment over the Monthly Service Payments due over the remainder of the Operational Term, and in such event, the remaining unapplied Section 32.1(d) Payment may be amortized over the Monthly Service Payments in a manner provided for in the advance ruling if Osler so determines in its sole discretion;
  - (b) communicated by Osler to Project Co in writing at the same time that Osler pays Project Co the Section 32.1(d) Payment; and
  - (c) credited to Osler in each Monthly Service Payment invoice sent by Project Co to Osler following the payment of the Section 32.1(d) Payment.
- 1.271 “**Monthly Service Payment**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.272 “**MSDS**” means the material safety data sheets prescribed by the applicable WHMIS legislation.

- 1.273 “**Municipal Strips**” means the part labelled “MUNICIPAL STRIPS” on the conceptual drawing attached hereto as Appendix 3 to this Schedule 1 - Definitions and Interpretation.
- 1.274 “**New Agreement**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.275 “**New Project Co**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.276 “**NOAC**” means the Notice of Approval Conditions issued by the City of Brampton with respect to Osler’s application for Site Plan Approval.
- 1.277 “**No Cost Measures**” means energy saving measures, including those related to good housekeeping, involving no material additional expenditure and/or no Capital Expenditure.
- 1.278 “**No Default Payment Compensation Amount**” means, with respect to an amount and a specified period of time, (i) such amount multiplied by (ii) such period of time in days divided by the actual number of days in the current year multiplied by (iii) the rate of interest per annum in effect on each such day quoted by the Bank of Nova Scotia time to time as its reference rate for Canadian Dollar demand loans made to its commercial customers in Canada and which it refers to as its “prime rate”, as such rate may be changed by it from time to time.
- 1.279 “**Non-Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.280 “**Non-Resident**” means a person that is, at the relevant time, a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).
- 1.281 “**Normal Wear and Tear**” means wear and tear that is reasonable given the use and age of the Facility (or any element thereof), and consistent with wear and tear that could reasonably be expected to exist at a similar facility (or any element thereof), operating in a similar environment and in similar circumstances, but not including any degradation in the functionality and operability of the Facility (or any element thereof) that will result in the Facility or any element thereof (subject to the exceptions specified in Section 2.2 of Schedule 24 – Expiry Transition Procedure) failing to meet the Output Specifications, or failing to comply with Applicable Law.
- 1.282 “**Notice**” has the meaning given in Section 58.1(a) of the Project Agreement
- 1.283 “**Notice of Dispute**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.



- 1.284 “**Not-In-Contract Equipment**” means all equipment, furniture and fixtures in respect to which Osler is to be the purchaser as specified in Part 5 of Schedule 15 – Output Specifications.
- 1.285 “**Occupancy Permit**” means all Permits, Licences, Approvals and Agreements required for the occupancy of the Facility as a health care facility in compliance with Applicable Law.
- 1.286 “**OCPM**” has the meaning given in Section 20.5(b) of the Project Agreement.
- 1.287 “**Operational Term**” means the period from the Substantial Completion Date until the end of the Project Term.
- 1.288 “**Osler**” has the meaning given in the preamble to the Project Agreement.
- 1.289 “**Osler Commissioning Agent**” means the person appointed by Osler as its commissioning agent.
- 1.290 “**Osler Default Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.291 “**Osler Development Accountability Agreement**” means the development accountability agreement between MOHLTC and Osler dated on or about the date of Financial Close with respect to, among other things, the terms and conditions of funding for Osler’s obligations related to the Project.
- 1.292 “**Osler Event of Default**” has the meaning given in Section 43.1(a) of the Project Agreement.
- 1.293 “**Osler Funding and Approval Letter**” means the funding and approval letter from MOHLTC to Osler dated on or about the date of Financial Close with respect to, among other things, the terms and conditions of funding by MOHLTC of certain of Osler’s obligations related to the Project and MOHLTC’s approval of the Project.
- 1.294 “**Osler Party**” means any of Osler’s agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged in respect of the Hospital Services, but excluding Project Co, any Project Co Party and any Phase 2 Contractor, and the “**Osler Parties**” shall be construed accordingly.
- 1.295 “**Osler Permits, Licences, Approvals and Agreements**” means those Osler permits, licences, approvals and agreements including those Development Approvals and Development Agreements which are the responsibility of Osler to obtain as set out in Appendix 1 – Permits, Licences, Approvals and Agreements to this Schedule 1 – Definitions and Interpretation.

- 1.296 “**Osler Procured Equipment**” means the equipment designated in the column labelled “Osler Procured Equipment” in Part 5 of Schedule 15 – Output Specifications and the procurement of which Osler is responsible pursuant to Section 21.3 of the Project Agreement.
- 1.297 “**Osler Quality Framework**” means the quality reporting framework that serves to coordinate quality monitoring and reporting of information to enhance patient care, meet Canadian Council on Health Services Accreditation and MOHLTC reporting requirements, streamline communication and allow for timely access to information on quality data and indicators within the Osler.
- 1.298 “**Osler Representative**” means the person designated as such by Osler on or prior to the date of Financial Close and any permitted replacement.
- 1.299 “**Osler Security Deposits**” means any and all letters of credit, securities, prepaid fees, deposits and similar instruments paid or posted by, or on behalf of, Osler in connection with the Project Operations including, but not limited to, those instruments listed in Appendix 2 – Osler Security Deposits of this Schedule 1 – Definitions and Interpretation.
- 1.300 “**Osler Trade-Marks**” means any and all Trade-Marks used by Osler in any manner whatsoever.
- 1.301 “**Osler Work**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.302 “**Outline Commissioning Program**” means the schedule setting out the standards, specifications, procedures and other requirements for the performance and completion of the commissioning activities of the Parties outlined in Schedule 14 – Outline Commissioning Program.
- 1.303 “**Output Specifications**” means Schedule 15 – Output Specifications of the Project Agreement.
- 1.304 “**Painshare Adjustment**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.305 “**Parking Services**” means those parking services to be carried out pursuant to the Parking Services Specification.
- 1.306 “**Parking Services Specification**” means Section 14 of Part 4 of Schedule 15 – Output Specifications.
- 1.307 “**Partnership Lands**” means the part labelled “PARTNERSHIP LANDS” on the conceptual drawing attached hereto as Appendix 3 to this Schedule 1 - Definitions and Interpretation.
- 1.308 “**Party**” means either Osler or Project Co, and “**Parties**” means both Osler and Project Co, but, for greater certainty, such definitions do not include IO, MOHLTC or MOI.

- 1.309 “**Party Representative**” and “**Party Representatives**” have the meanings given in Schedule 27 – Dispute Resolution Procedure.
- 1.310 “**Patient Information**” means Personal Information of patients, clients, and other users and recipients of the Hospital Services.
- 1.311 “**Payment Adjustment Report**” has the meaning given in Section 31.6(i)(ii) of the Project Agreement.
- 1.312 “**Payment Commencement Date**” means the date that is 2 Business Days after the Substantial Completion Date.
- 1.313 “**Payment Compensation Amount**” means, with respect to an amount and a specified period of time, (i) such amount multiplied by (ii) such period of time in days divided by the actual number of days in the current year multiplied by (iii) the rate of interest per annum in effect on each such day equal to [REDACTED]% over the rate of interest per annum quoted by the Bank of Nova Scotia from time to time as its reference rate for Canadian Dollar demand loans made to its commercial customers in Canada and which it refers to as its “prime rate”, as such rate may be changed by it from time to time.
- 1.314 “**Payment Mechanism**” means Schedule 20 – Payment Mechanism.
- 1.315 “**Payment Periods**” means the payment periods of one calendar month (as adjusted in this definition) established by Osler for each Contract Year, provided that the first Payment Period in the first Contract Year, and the last Payment Period in the last Contract Year may be a shorter period as a result of the timing of the Payment Commencement Date and the Expiry Date within the Payment Periods otherwise established in accordance with the foregoing.
- 1.316 “**Performance Audit**” has the meaning given in Section 26.8(a) of the Project Agreement.
- 1.317 “**Performance Guarantees**” means the guarantees to Project Co in respect of the Construction Contract and the Service Contract provided by the Construction Guarantor and the Service Guarantor, respectively.
- 1.318 “**Performance Indicator**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.319 “**Performance Monitoring**” means those performance monitoring services to be carried out pursuant to Part 4 of Schedule 15 – Output Specifications.
- 1.320 “**Performance Monitoring Period**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.321 “**Performance Monitoring Program**” has the meaning given in Part 4 of Schedule 15 – Output Specifications.

- 1.322 “**Performance Monitoring Report**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.323 “**Performance Security**” means the performance security required pursuant to Article 19 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.324 “**Permanent Repair**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.325 “**Permanent Repair Deadline**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.326 “**Permits, Licences, Approvals and Agreements**” means the Osler Permits, Licences, Approvals and Agreements and the Project Co Permits, Licences, Approvals and Agreements.
- 1.327 “**Permitted Borrowing**” means:
- (a) any advance to Project Co under the Lending Agreements;
  - (b) any additional financing approved by Osler in accordance with Section 1.9 of Schedule 22 – Variation Procedure to the Project Agreement; and
  - (c) any amendment, waiver or exercise of a right under the Lending Agreements made during the Step-In Period that does not increase Osler’s liabilities under the Project Agreement whether actual or contingent, present or future, known or unknown.
- 1.328 “**Personal Information**” means all personal information (as the term “**personal information**” is defined in the FIPPA) in the custody or control of Project Co or its Project Co Parties other than personal information of the employees of Project Co or its Project Co Parties and other than personal information that is wholly unrelated to the Project Operations and not derived directly or indirectly from Osler in respect of the Project.
- 1.329 “**Phase 1 Hoarding Area**” means the part labelled “PHASE 1 HOARDING AREA” on the conceptual drawing attached hereto as Appendix 3 to this Schedule 1 - Definitions and Interpretation, located on the Partnership Lands.
- 1.330 “**Phase 1 Shared Area**” means the parts labelled “PHASE 1 SHARED AREA” on the conceptual drawing attached hereto as Appendix 3 to this Schedule 1 - Definitions and Interpretation in respect of which the Phase 2 Contractor shall require access in accordance with the Access Coordination Agreement.
- 1.331 “**Phase 2 Commencement Date**” means the date on which development activities on the Phase 2 Site commence as stated in a written notice from Osler to Project Co.

- 1.332 “**Phase 2 Contractor**” means the contractor or contractors engaged by Osler to provide development and construction services in respect of the Phase 2 Site.
- 1.333 “**Phase 2 Shared Area**” means the part labelled “PHASED 2 SHARED AREA” on the conceptual drawing attached hereto as Appendix 3 to this Schedule 1 - Definitions and Interpretation in respect of which Project Co shall require access in accordance with the Access Coordination Agreement.
- 1.334 “**Phase 2 Site**” means the part labelled “PHASE 2 SITE” on the conceptual drawing attached hereto as Appendix 3 to this Schedule 1 - Definitions and Interpretation.
- 1.335 “**Plant**” means all buildings, building services, infrastructure, building fabric, and mechanical and electrical services, which are required to meet the operational needs of Osler as defined in Schedule 15 – Output Specifications.
- 1.336 “**Plant Services**” means those plant services to be carried out pursuant to the Plant Services Specification.
- 1.337 “**Plant Services Information Management**” has the meaning given in Section 15 of Part 4 of Schedule 15 - Output Specifications.
- 1.338 “**Plant Services Specification**” means Section 15 of Part 4 of Schedule 15 – Output Specifications.
- 1.339 “**Post Termination Service Amount**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.340 “**Pre-Existing Environmental Site Conditions**” means the environmental condition of the Site as set out in the Environmental Reports and Designated Substance Reports.
- 1.341 “**Prohibited Act**” has the meaning given in Section 57.1(a) of the Project Agreement.
- 1.342 “**Prohibited Acts Termination Sum**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.343 “**Project**” has the meaning given in Recital B of the Project Agreement.
- 1.344 “**Project Agreement**” has the meaning given in Recital C of the Project Agreement.
- 1.345 “**Project Agreement Arbitration**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.346 “**Project Co**” means Plenary Health Peel LP.

- 1.347 “**Project Co Commissioning**” means the commissioning activities to be carried out by Project Co prior to the issuance of the Substantial Completion Certificate in accordance with the Final Commissioning Program.
- 1.348 “**Project Co Commissioning Authority**” means the person appointed by Project Co as its commissioning agent.
- 1.349 “**Project Co Commissioning Tests**” means all Commissioning Tests required to be performed by Project Co pursuant to the Final Commissioning Program.
- 1.350 “**Project Co Event of Default**” has the meaning given in Section 42.1(a) of the Project Agreement.
- 1.351 “**Project Co Group**” means Project Co and [REDACTED] together with any person or group of persons, who, either individually or collectively, have Direct or Indirect Power or Control of Project Co or [REDACTED].
- 1.352 “**Project Co Limited Partnership Agreement**” means [REDACTED].
- 1.353 “**Project Co Party**” means:
- (a) the Construction Contractor;
  - (b) the Service Provider;
  - (c) any person engaged by Project Co, the Construction Contractor, and/or the Service Provider from time to time as may be permitted by the Project Agreement to procure or manage the provision of the Project Operations (or any of them); and
  - (d) in respect of each of the above, their subcontractors of any tier, agents, employees, officers and directors,
- and “**Project Co Parties**” shall be construed accordingly.
- 1.354 “**Project Co Permits, Licences, Approvals and Agreements**” means all permissions, consents, approvals, certificates, permits, licences, agreements and authorizations to be obtained and/or performed by Project Co in accordance with the Project Agreement and as required by Applicable Law, and all necessary consents and agreements from and with any third parties (including all Development Approvals and Development Agreements and the approval of the Fire Marshal of Ontario), needed to perform the Project Operations in accordance with the Project Agreement, including those permits, licences, approvals and agreements which are the responsibility of Project Co to obtain and/or perform as set out in Appendix 1 – Permits, Licences, Approvals and Agreements but other than any Osler Permits, Licences, Approvals and Agreements.

- 1.355 “**Project Co Proposal Extracts**” means the documents attached as Schedule 13 – Project Co Proposal Extracts.
- 1.356 “**Project Co Representative**” means the person designated as such by Project Co on or prior to the date of the Project Agreement and any permitted replacement.
- 1.357 “**Project Co Services**” means the services to be performed by Project Co and referred to in Part 4 of Schedule 15 – Output Specifications, as such services may from time to time be varied in accordance with the Project Agreement, but specifically excluding the Hospital Services.
- 1.358 “**Project Co Variation Notice**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.359 “**Project Data**” means:
- (a) all Design Data;
  - (b) all drawings, reports, documents, plans, software, formulae, calculations and other data relating to the provision of the Project Co Services; and
  - (c) any other materials, documents and or data acquired, brought into existence or used in relation to the Project Operations or the Project Agreement,
- other than the Jointly Developed Materials and Background Information and other than Intellectual Property Rights of third parties, such as CAD software, that is used only in the process of design and construction.
- 1.360 “**Project Documents**” means the Ancillary Documents and the Lending Agreements.
- 1.361 “**Project Insurance Change**” has the meaning given in Section 7.1 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.362 “**Project Operations**” means:
- (a) the performance of the Works;
  - (b) the delivery of the Project Co Services; and
  - (c) the performance of all other obligations of Project Co under the Project Agreement.
- 1.363 “**Project Term**” means the period commencing on the date of the Project Agreement and expiring at midnight on the Termination Date.

- 1.364 “**Proposed Peel Paramedic Station Lands**” means the part labelled “PROPOSED PEEL PARAMEDIC STATION LANDS” on the conceptual drawing attached hereto as Appendix 3 to this Schedule 1 - Definitions and Interpretation.
- 1.365 “**Proprietor**” has the meaning given in Section 49.6(a) of the Project Agreement.
- 1.366 “**Province**” means Her Majesty the Queen in Right of Ontario.
- 1.367 “**Qualification Criteria**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.368 “**Qualifying Bank**” has the meaning in Schedule 28 – Refinancing.
- 1.369 “**Qualifying Bank Transaction**” has the meaning in Schedule 28 – Refinancing.
- 1.370 “**Qualifying Refinancing**” has the meaning given in Schedule 28 – Refinancing.
- 1.371 “**Qualifying Tender**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.372 “**Qualifying Tenderer**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.373 “**Quality Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.374 “**Quality Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.375 “**Quality Plans**” has the meaning given in Section 13.1(a) of the Project Agreement.
- 1.376 “**Recoverable Tax**” has the meaning given in Section 32.4(c) of the Project Agreement
- 1.377 “**Recovery Amount**” has the meaning given in Section 53.3(g) of the Project Agreement.
- 1.378 “**Rectification**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.379 “**Rectification Costs**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.380 “**Rectification Time**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.381 “**Refinancing**” has the meaning given in Schedule 28 – Refinancing.
- 1.382 “**Refinancing Financial Model**” has the meaning given in Schedule 28 – Refinancing.
- 1.383 “**Refinancing Gain**” has the meaning given in Schedule 28 – Refinancing.



- 1.384 “**Reimbursement Event**” has the meaning given in Section 30.5(a) of the Project Agreement.
- 1.385 “**Relevant Change in Law**” means a Discriminatory Change in Law or a Health Specific Change in Law.
- 1.386 “**Relevant Conviction**” means a conviction under the Criminal Code (Canada) for which no pardon has been granted.
- 1.387 “**Relevant Insurance**” has the meaning given in Section 7.1 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.388 “**Relevant Insurance Inception Date**” has the meaning given in Section 7.1 of Schedule 25 – Insurance and Performance Security Requirements.
- 1.389 “**Relief Events**” has the meaning given in Section 40.1(a) of the Project Agreement.
- 1.390 “**Remedial Period**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.391 “**Replacement Lifecycle**” means the cycle, expressed in years, for which a material or system or any other element of the Facility is expected to remain in good condition (Normal Wear and Tear excepted) and, in operating order consistent with the performance requirements outlined in the Output Specifications (Normal Wear and Tear excepted), before requiring complete replacement.
- 1.392 “**Request for Payment Approval**” has the meaning given in Section 18.12(d) of the Project Agreement.
- 1.393 “**Request for Proposals**” means the request for proposals issued in respect of the Project on June 4, 2013.
- 1.394 “**Rescue Refinancing**” has the meaning given in Schedule 28 – Refinancing.
- 1.395 “**Response**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.396 “**Response Time**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.397 “**Restricted Person**” means any person who, or any member of a group of persons acting together, any one of which:
- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada or Ontario;
  - (b) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;

- (c) in the case of an individual, he or she (or in the case of a legal entity, any of the members of its board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence, other than a suspended sentence, for any criminal offence or for any offence under any Provincial statute, other than offences under the *Highway Traffic Act* (Ontario) or corresponding legislation in any other jurisdiction, or under any municipal laws, less than five years prior to the date at which the consideration of whether such individual is a “**Restricted Person**” is made hereunder;
  - (d) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
  - (e) is subject to a material claim of Osler or the Province under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a “**Restricted Person**” is made hereunder, and which (in respect of any such pending claim, if it were to be successful) would, in Osler’s view, in either case, be reasonably likely materially to affect the ability of Project Co to perform its obligations under the Project Agreement; or
  - (f) has a material interest in the production of tobacco products.
- 1.398 “**Return Date**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.399 “**Review Procedure**” means the procedure set out in Schedule 10 – Review Procedure.
- 1.400 “**Revised Facility Condition Report**” has the meaning given in Schedule 24 – Expiry Transition Procedure.
- 1.401 “**Roads and Grounds Maintenance Services**” means those roads and grounds maintenance services to be carried out pursuant to the Roads and Grounds Maintenance Services Specification.
- 1.402 “**Roads and Grounds Maintenance Services Specification**” means Section 11 of Part 4 of Schedule 15 – Output Specifications.
- 1.403 “**Safety Condition**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.404 “**Safety Plan**” means the safety plan included in the Project Co Proposal Extracts.
- 1.405 “**Schedule**” means a schedule to the Project Agreement.
- 1.406 “**Scheduled Final Completion Date**” means October 31, 2016.

- 1.407 “**Scheduled Maintenance**” means all preventive, planned, scheduled and/or frequency-based maintenance and other work (other than Unscheduled Maintenance) which Project Co is required to perform in accordance with the Project Agreement (including for clarity, Part 4 of Schedule 15 – Output Specifications) and the Scheduled Maintenance Plan along with the performance of any replacement, refreshment and/or refurbishment of building systems, equipment and fixtures in accordance with the Lifecycle Replacement Schedule, all to ensure that building components, equipment and fixtures will achieve their expected design or service life, and will provide reliable functionality within the defined performance parameters.
- 1.408 “**Scheduled Maintenance Plan**” means the plan to be prepared by or on behalf of Project Co for the maintenance of the Facility in accordance with Part 4 of Schedule 15 – Output Specifications and the other provisions of the Project Agreement during each Contract Year, which plan shall be based, in part, on the Project Co Proposal Extracts.
- 1.409 “**Scheduled Substantial Completion Date**” means August 31, 2016, as such date may be extended pursuant to Section 37 of the Project Agreement.
- 1.410 “**Seasonal Bedding-In Period**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.411 “**Section 32.1(d) Payment**” means payment of the HST payable by Osler to Project Co under Section 32.1(d) of the Project Agreement (pursuant to paragraph 168(3)(c) of the *Excise Tax Act* (Canada))
- 1.412 “**Security**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.413 “**Security & Surveillance Services**” means those security and surveillance services to be carried out pursuant to the Security & Surveillance Services Specification.
- 1.414 “**Security & Surveillance Services Specification**” means Section 13 of Part 4 of Schedule 15 – Output Specifications.
- 1.415 “**Security Documents**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.416 “**Senior Debt Amount**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.417 “**Senior Debt Makewhole**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.418 “**Senior Debt Service Amount**” means, for any period, the principal and interest payable by Project Co or any Project Co Party to the Senior Lenders in the normal course under the Lending Agreements.

- 1.419 “**Senior Lenders**” means the Senior Creditors (as defined in the Common Terms Agreement).
- 1.420 “**Sensitive Information**” means financial or commercial information which would, if disclosed to a competitor of Project Co or any Project Co Party, give that competitor a competitive advantage over Project Co or such Project Co Party and thereby prejudice the business of Project Co or such Project Co Party.
- 1.421 “**Service Contract**” means the facility maintenance and services agreement between Project Co and the Service Provider dated on or about the date of the Project Agreement.
- 1.422 “**Service Failure**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.423 “**Service Failure Deduction**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.424 “**Service Failure Performance Indicator**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.425 “**Service Guarantor**” means Honeywell International Inc.
- 1.426 “**Service Provider**” means Honeywell Limited engaged by Project Co to perform the Project Co Services and any substitute service provider engaged by Project Co as may be permitted by the Project Agreement.
- 1.427 “**Service Provider’s Direct Agreement**” means the direct agreement between Osler, Project Co, the Service Provider and the Service Guarantor, in the form set out in Schedule 5-2 – Service Provider’s Direct Agreement.
- 1.428 “**Service Quality Plan**” means such plan to be developed pursuant to the Output Specifications and the Final Commissioning Program.
- 1.429 “**Service Standards**” means the performance standards ascribed to each Project Co Service in Part 4 of Schedule 15 – Output Specifications.
- 1.430 “**Service Submittal**” has the meaning given in Section 11.1 of Schedule 10 – Review Procedure.
- 1.431 “**Severe Market Disruption**” means any occurrence of exceptional circumstances in financial markets in Europe, the United States of America and/or Canada, which:
- (a) result in the suspension or cessation of all or substantially all lending activity in national or relevant international capital or interbank markets; and
  - (b) adversely affect access by Project Co to such markets.

1.432 “**Shop Drawings**” means drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are to be provided by Project Co to illustrate details of a portion of the Works, indicating materials, methods of construction and attachment or anchorage, erection diagrams, connections, explanatory notes and other information necessary for completion of the Works.

1.433 “**Site**” means:

- (a) From Financial Close to the Substantial Completion Date, those lands within the black boundary shown on the conceptual drawing attached hereto as Appendix 3 to this Schedule 1 - Definitions and Interpretation and the Areas of Work Within R.O.W., save and except:
  - i. the Partnership Lands (save and except for the Phase 1 Hoarding Area); and
  - ii. the Proposed Peel Paramedic Station Lands.
- (b) From the Substantial Completion Date until the Phase 2 Commencement Date, those lands described in subsection (a) above (and subject to the rights described therein), save and except for the following lands:
  - i. the Municipal Strips, so long as the Municipal Strips are either (i) dedicated as a part of the public highway; or (ii) an easement is granted in favour of the Site to allow for continued access and egress from the Site to a public highway; and
  - ii. the Phase 1 Hoarding Area.

Notwithstanding the foregoing, the Site shall be subject to the following rights:

- A. A right in favour of the tenant of the Proposed Peel Paramedic Station Lands over the lands located just south of the Proposed Peel Paramedic Station Lands for the purposes of access and egress to and from the Proposed Peel Paramedic Station Lands in common with other users of the Site; and
  - B. The rights of the public to use the Lynch St Extension and the Eastern Ave Extension as if such roads were public highways.
- (c) From the Phase 2 Commencement Date until Osler provides notice to Project Co that substantial completion of the Phase 2 Site has been achieved, those lands described in subsection (b) above (and subject to the rights described therein), save and except for the following lands:
- i. the Phase 2 Site; and

- ii. the Temporary Construction Impact Zone.
  - (d) From and after the date that Osler provides notice to Project Co that substantial completion of the Phase 2 Site has been achieved, those lands described in subsection (c) above, save and except that the Temporary Construction Impact Zone shall revert to being part of the Site.
- 1.434 “**Site Conditions**” means the condition of the Site, including the physical, geophysical, climatic, ecological, environmental, geotechnical and archaeological conditions.
- 1.435 “**Site Plan Agreement**” or “**SPA**” means the Site Plan Agreement between Osler and the City of Brampton to be registered against title to the Site in favour of the City of Brampton.
- 1.436 “**Site Plan Approval**” means the approval of plans and drawings by the applicable Governmental Authority in accordance with Section 41 of the *Planning Act*.
- 1.437 “**Small Works**” means any works, including facilities and equipment, of a minor nature that are requested by Osler to be performed having an individual cost or aggregate cost with other linked works, including facilities and equipment, of a minor nature, not exceeding \$[REDACTED] (index linked), or as otherwise agreed from time to time, but excluding any works, including facilities and equipment, which will increase the likelihood of a Failure Event occurring, will increase the cost to Project Co of performing the Project Operations or will materially hinder Project Co in the performance of the Project Co Services.
- 1.438 “**Special Projects Services**” means those special projects services to be carried out pursuant to the Special Projects Services Specification.
- 1.439 “**Special Projects Services Specification**” means Section 17 of Part 4 of Schedule 15 – Output Specifications.
- 1.440 “**Specific Services Specification**” means any one of the General Management Services Specification, the Plant Services Specification, the Environmental And Sustainability Services Specification, the FM Help Desk Services Specification, the Utilities Management Services Specification, the Roads and Grounds Maintenance Services Specification, the Security & Surveillance Services Specification, Emergency Management Services, Cleaning Services, Waste Management and Recycling, Parking, Lifecycle Replacement and Refurbishment, Special Project Services, and Ad Hoc Services.
- 1.441 “**Standby Letter of Credit**” has the meaning given in Section 2.2(a) of the Project Agreement.
- 1.442 “**Start-Up Meeting**” has the meaning given in Section 18.4(a) of the Project Agreement.

- 1.443 “**Step-In Period**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.444 “**Subcontractor**” means any subcontractor of Project Co engaged by or through Project Co to perform any of the Project Operations, including the Construction Contractor, the Service Provider, any Supplier or consultant, and any subcontractor of any other subcontractor at any tier.
- 1.445 “**Subcontractor Losses**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.446 “**Subcontracts**” means the contracts entered into by or between Project Co and any Subcontractor or between any Subcontractor at any tier, including the Construction Contractor and the Service Provider, and any other Subcontractor at any tier in relation to any aspect of the Project Operations.
- 1.447 “**Submittal**” means either a Works Submittal or a Service Submittal.
- 1.448 “**Substantial Completion**” means the point at which the Facility has been completed in accordance with the Project Agreement; the Occupancy Permit has been issued; a certificate of substantial performance of the Works is published pursuant to Section 32(1) of the CLA; and all requirements for Substantial Completion described in the Final Commissioning Program, other than in respect of Minor Deficiencies, have been satisfied.
- 1.449 “**Substantial Completion Certificate**” means the certificate to be issued by the Independent Certifier in accordance with Section 24.4(d) of the Project Agreement.
- 1.450 “**Substantial Completion Date**” means the date on which Substantial Completion is achieved as evidenced by the Substantial Completion Certificate, as such date shall be stated therein.
- 1.451 “**Substantial Completion Notice**” has the meaning given in Section 24.4(b) of the Project Agreement.
- 1.452 “**Substantial Completion Payment**” means \$[REDACTED].
- 1.453 “**Suitable Substitute**” has the meaning given in Schedule 4 – Lenders’ Direct Agreement.
- 1.454 “**Supplier**” means a person who supplies to Project Co, or to any Subcontractor any equipment, materials, supplies or services as part of, or for, the Project Operations.
- 1.455 “**Taxes**” means any and all taxes, levies, imposts, duties, fees, withholdings, assessments, deductions or charges whatsoever, imposed, assessed, levied or collected by any Governmental Authority, together with interest thereon and penalties with respect thereto, and includes all HST except where stated to the contrary.

- 1.456 “**Technical Reports**” means the Environmental Reports and Designated Substance Reports and the Geotechnical Reports.
- 1.457 “**Temporary Alternative Accommodation**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.458 “**Temporary Construction Impact Zone**” means the parts labelled “TEMPORARY CONSTRUCTION IMPACT ZONE” on the conceptual drawing attached hereto as Appendix 3 to this Schedule 1 – Definitions and Interpretation.
- 1.459 “**Temporary Repair**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.460 “**Tender Costs**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.461 “**Tender Process**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.462 “**Tender Process Monitor**” has the meaning given in Schedule 23 – Compensation on Termination.
- 1.463 “**Termination Date**” means the earlier of the Expiry Date and such earlier date, if any, on which termination of the Project Agreement takes effect in accordance with its terms.
- 1.464 “**Third Party Arbitration**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.465 “**Third Party Beneficiaries**” has the meaning given in Section 59.17(a)(i) of the Project Agreement.
- 1.466 “**Third Party Litigation**” has the meaning given in Schedule 27 – Dispute Resolution Procedure.
- 1.467 “**Threshold Equity Sale Amount**” means the amount which, if paid in consideration of the percentage of Equity Capital (as at Financial Close) sold in a particular sale of Equity Capital, would result in an Implied Equity Value that, if received in full on the day of the sale of Equity Capital, taken together with all Distributions paid in respect of the Equity Capital, and taking account of the actual timing of payment of all such amounts, would result in an Equity Sale IRR equal to the Threshold Equity Sale IRR.
- 1.468 “**Threshold Equity Sale IRR**” means [REDACTED]%.
- 1.469 “**Title Encumbrances**” means the Encumbrances listed in Schedule 16 – Title Encumbrances and any other Encumbrance consented to by Osler and reasonably required in connection with the development of the Facility and the Project Operations.



- 1.470 “**Trade-Marks**” means any registered or unregistered mark, trade-mark, service mark, distinguishing guise, logo, insignia, seal, design or symbol.
- 1.471 “**Transition**” has the meaning given in Section 24.13(a) of the Project Agreement.
- 1.472 “**Transition Advisor**” means the Transition Advisor Candidate appointed in accordance with Section 24.13 to act as Transition Advisor.
- 1.473 “**Transition Advisor Candidate**” has the meaning given in Section 24.13(c) of the Project Agreement.
- 1.474 “**Transition Services Fee**” means \$[REDACTED] as such amount may be increased or decreased by Variation, subject to and in accordance with Schedule 22 – Variation Procedure, as a result of a material increase or decrease in the amount of Existing Equipment.
- 1.475 “**Transition Subcommittee**” has the meaning given in Section 24.14(a) of the Project Agreement.
- 1.476 “**Trust Account Agreement**” means the trust account agreement to be entered into between Osler, Project Co and the Trustee in the form set out in Schedule 33 – Trust Account Agreement.
- 1.477 “**Trustee**” has the meaning given in Schedule 33 – Trust Account Agreement.
- 1.478 “**Unavailable**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.479 “**Uninsurable Risk**” has the meaning given in Section 8.1 of Schedule 25 – Insurance and Performance Security Requirements to the Project Agreement.
- 1.480 “**Unit of Energy**” has the meaning given in Schedule 36 – Energy Matters.
- 1.481 “**Unit Weighting Percentage**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.482 “**Unscheduled Maintenance**” means all Ad-Hoc Services, Emergency Maintenance, first response maintenance and/or other maintenance that is not scheduled (and excludes Scheduled Maintenance) to the Site, the Facility and the Equipment, which includes the response to malfunctions and provision of minor repairs, adjustments and general maintenance as follows:
- (a) first response to equipment malfunctions and assessment of the problem (e.g., initial assessment of rolling stock, operator error, utility problem, minor or major failure), and required response;

- (b) performance of minor repairs and general maintenance, including filter changes, topping-up fluids, adjustments, resets, clearing blockages, minor carpentry and replacing minor parts such as rollers, wheels, pulley and hoses; and
  - (c) in the case of repairs that cannot be resolved under the immediately preceding subsection, arranging for and overseeing third party service representatives to make necessary repairs provided that Project Co has obtained approval from Osler, acting reasonably, for such third party repairs.
- 1.483 “**Unscheduled Maintenance Work**” has the meaning given in Section 26.4(a) of the Project Agreement.
- 1.484 “**Use Condition**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.485 “**Use Parameters**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.486 “**Utilities**” means energy/power supplies and waste recovery, including electricity, natural gas/fuel oil, water, sanitary waste, storm water, heat, steam, and bulk medical gas compounds.
- 1.487 “**Utilities Management Services**” means those utilities management services to be carried out pursuant to the Utilities Management Services Specification.
- 1.488 “**Utilities Management Services Specification**” means Section 7 of Part 4 of Schedule 15 – Output Specifications.
- 1.489 “**Utilities Management Subcommittee**” has the meaning given in Schedule 36 – Energy Matters.
- 1.490 “**Utility Company**” means any company or companies designated by Project Co to provide Utilities.
- 1.491 “**Utility User(s)**” means those persons using Utilities at the Facility or on the Site.
- 1.492 “**Variation**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.493 “**Variation Confirmation**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.494 “**Variation Directive**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.495 “**Variation Enquiry**” has the meaning given in Schedule 22 – Variation Procedure.
- 1.496 “**Variation Procedure**” means the procedure set out in Schedule 22 – Variation Procedure.

- 1.497 “**Veteran Organizations**” means not-for-profit organizations that provide employment and training opportunities in the construction industry to current and former members of the Canadian forces (the “**Veterans**”) and which:
- (a) attempt to place Veterans in apprenticeship programs where they learn construction trade and journeyman skills and transition to civilian careers;
  - (b) connect Veterans with eligible employers registered with the organization who offer employment opportunities; and
  - (c) depend on the partnership and support from industry employers and organizations to place program participants.
- 1.498 “**Warning Notice**” has the meaning given in Section 29.3(a) of the Project Agreement.
- 1.499 “**Waste Management & Recycling Services**” means those waste management & recycling services to be carried out pursuant to the Waste Management & Recycling Services Specification.
- 1.500 “**Waste Management & Recycling Services Specification**” means Section 12 of Part 4 of Schedule 15 – Output Specifications.
- 1.501 “**WHMIS**” means the system for the labelling and warning of Hazardous Substances used in the workplace, commonly referred to as a workplace hazardous materials information system, prescribed by Applicable Law over the delivery, storage and use of Hazardous Substances in the Province of Ontario.
- 1.502 “**Works**” means the design, construction, installation, testing, commissioning and completion of the Facility, including rectification of any Minor Deficiencies, and any other activities required to enable or facilitate the commencement of the Project Co Services, including all work under the Permits, Licences, Approvals and Agreements, save and except for (i) all work which is expressly described in Appendix 1 – Permits, Licences, Approvals and Agreements to this Schedule 1 – Definitions and Interpretation as being the responsibility of Osler and (ii) the Hospital Commissioning.
- 1.503 “**Works Change in Law**” means any Change in Law that:
- (a) is not a Relevant Change in Law;
  - (b) occurs after the date of the Project Agreement;
  - (c) requires Project Co to perform any work of alteration, addition, demolition, extension or variation in the quality or function of the Facility which is not Works, Maintenance Work or capital replacement work which Project Co would otherwise be required to perform in order to comply with its obligations under the Project Agreement; and

- (d) was not reasonably foreseeable at the date of the Project Agreement by an experienced contractor carrying out activities and/or performing design and/or other operations similar to those to be carried out and/or performed by any Project Co Party in relation to the Project.
- 1.504 “**Works Committee**” has the meaning given in Section 11.1(a) of the Project Agreement.
- 1.505 “**Works Report**” has the meaning given in Section 20.5(a) of the Project Agreement.
- 1.506 “**Works Schedule**” has the meaning given in Section 20.2(c) of the Project Agreement.
- 1.507 “**Works Submittal**” has the meaning given in Section 1.1 of Schedule 10 – Review Procedure.
- 1.508 “**WSIB**” means the Ontario Workplace Safety and Insurance Board that is responsible for administering the *Workplace Safety and Insurance Act, 1997* (Ontario).

## 2. Interpretation

The Project Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- 2.1 The tables of contents, headings, marginal notes and references to them in the Project Agreement are for convenience of reference only, shall not constitute a part of the Project Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, the Project Agreement.
- 2.2 Except where the context requires otherwise (irrespective of whether some, but not all, references in a Schedule specifically refer to that Schedule or to other portions of the Project Agreement) references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement are references to such Sections, Clauses, Paragraphs, or Subparagraphs of, Schedules to, or divisions of the Project Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- 2.3 Except where the context requires otherwise, references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement followed by a number are references to the whole of the Section, Clause, Paragraph, Subparagraphs, Schedule or other division of the Project Agreement as applicable, bearing that number, including all subsidiary provisions containing that same number as a prefix.
- 2.4 Except where the context requires otherwise, references in the Output Specifications to specific Parts, Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Output Specifications shall be construed such that each such reference on a page of the Output Specifications will be read to be preceded by and to include the

- prefix Section number or other reference at the top of the applicable page, and all cross-references to any Section in Schedule 15 – Output Specifications shall be interpreted to include the applicable prefix Section number or other reference.
- 2.5 The Schedules to the Project Agreement are an integral part of the Project Agreement and a reference to the Project Agreement includes a reference to the Schedules.
- 2.6 All references in the Project Agreement to a Schedule shall be to a Schedule of the Project Agreement.
- 2.7 All capitalized terms used in a Schedule shall have the meanings given to such terms in Schedule 1, unless stated otherwise in a particular Schedule in which case such definition shall have the meaning given to it in that Schedule solely for the purposes of that Schedule.
- 2.8 The language of the Output Specifications and other documents comprising the Project Agreement is in many cases written in the imperative for brevity. Clauses containing instructions, directions or obligations are directed to Project Co and shall be construed and interpreted as if the words “Project Co shall” immediately preceded the instructions, directions or obligations.
- 2.9 Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- 2.10 Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- 2.11 Unless otherwise provided in the Project Agreement, all accounting and financial terms used in the Project Agreement shall be interpreted and applied in accordance with Canadian GAAP.
- 2.12 References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of the Project Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- 2.13 References to any Applicable Law, including any statutes or other Applicable Law specifically referred to herein, whether or not amendments or successors to such Applicable Law are referred to herein, are to be construed as references to that Applicable Law as from time to time amended or to any Applicable Law covering the

- same or similar subject matter from time to time replacing, extending, consolidating or amending the same.
- 2.14 References to a statute shall include all regulations, by-laws, ordinances and orders made under or pursuant to the statute.
- 2.15 References to persons shall include their successors and assigns. References to a public organization shall include their successors and assigns, and if a public organization ceases to exist or ceases to perform its functions without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization.
- 2.16 A reference in the Project Agreement or in any Project Document to any right, power, obligation or responsibility of any Governmental Authority shall be deemed to be a reference to the Governmental Authority that, pursuant to Applicable Laws has such right, power, obligation or responsibility at the relevant time.
- 2.17 References to a deliberate act or omission or deliberate or negligent act or omission of Osler or any Osler Party shall be construed having regard to the interactive nature of the activities of Osler, the Osler Parties and Project Co and further having regard to:
- (a) acts contemplated by the Output Specifications;
  - (b) acts or omissions in the ordinary course of the Hospital Services and expressly or reasonably inferred from the Output Specifications to be taken into account by Project Co in the performance of the Project Co Services; or
  - (c) acts otherwise provided for in the Project Agreement.
- 2.18 The words in the Project Agreement shall bear their natural meaning.
- 2.19 Each of Project Co's and Osler's respective obligations shall be construed as separate obligations owed to the other.
- 2.20 References containing terms such as:
- (a) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to the Project Agreement taken as a whole; and
  - (b) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".

- 2.21 In construing the Project Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach apply to the construction of the Project Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- 2.22 Where the Project Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.23 Where the Project Agreement states that an obligation shall be performed “no later than” or “by” a prescribed number of days before a stipulated date or event or “by” a date which is a prescribed number of days before a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.24 Where the Project Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.25 Any reference to time of day or date means the local time or date in Brampton, Ontario.
- 2.26 Unless otherwise indicated, time periods will be strictly construed.
- 2.27 Whenever the terms “will” or “shall” are used in the Project Agreement in relation to Project Co or Osler they shall be construed and interpreted as synonymous and to read “Project Co shall” or “Osler shall” as the case may be.
- 2.28 Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.
- 2.29 Unless otherwise identified in the Project Agreement, all units of measurement in any documents submitted by Project Co to Osler shall be in accordance with the SI system of units.
- 2.30 Terms not defined herein and used in the Project Agreement which have a technical meaning commonly understood by the health care sector in Ontario will be construed as having that meaning unless the context otherwise requires.
- 2.31 Save where expressly stated otherwise, references to amounts or sums expressed to be “indexed” or “index linked” are references to amounts or sums which require adjustment to reflect the effects of inflation. Such adjustment shall be calculated in accordance with the following formula:

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

- 2.32 The terms “properly inferable”, “readily apparent” and “readily discoverable” as used in this Project Agreement, shall be interpreted by taking into consideration Project Co’s and any Project Co Party’s experience and the investigations, inspections and examinations of the Background Information and of the Site carried out by Project Co or by any Project Co Party during the Request for Proposals process or other due diligence; and by taking into consideration reasonable, normal course and industry standard investigations, inspections or other due diligence; in each case in accordance with Good Industry Practice.



APPENDIX 1

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

OSLER AND PROJECT CO PLAA RESPONSIBILITY TABLE

**NOTE 1:** Where both Osler & Project Co are identified as having the same responsibility, please refer to the Comment column for an explanation.

**NOTE 2:** The following Responsibility Table is based on a set of Illustrative Design drawings and reports dated November 30, 2012, prepared by Cannon Design Limited, Montgomery Sisam Architects Inc., and MMM Group Limited referenced in Section Part 1.2.3 of Schedule 15 Output Specifications Part B. Project Co is responsible for satisfying itself with respect to compliance with the Illustrative Plans and Schedule and any changes thereto.

**NOTE 3:** The following Responsibility Table is for the purpose of the performance of the Works.

Permits, Licenses, Approvals and Agreements		Osler Obligation to Obtain / Execute Identified by an X	Osler Obligation to Perform, Identified by an X	Project Co Obligation to Obtain Identified by an X	Project Co Obligation to Perform Identified by an X	Comments
<b>I. PLANNING -DEVELOPMENT AGREEMENTS/APPROVALS</b>						
1	Stage 1 Master Site Plan Agreement	X	X	X	X	Osler’s obligations in connection with the Stage 1 Master Site Plan Agreement will be limited to executing the agreement and performing the following obligations:

Permits, Licenses, Approvals and Agreements	Osler Obligation to Obtain / Execute Identified by an X	Osler Obligation to Perform, Identified by an X	Project Co Obligation to Obtain Identified by an X	Project Co Obligation to Perform Identified by an X	Comments
					<p>1. Section 6.1(a): Fulfillment of any legal requirements associated with provision of transit into site, public use of community park, private vs. public lanes/sharrows (including any potential on-site notifications).</p> <p>2. Section 6.1(b): Property dedications along Centre Street, John Street and Trueman Street to achieve street right-of-way as set out in Official Plan.</p> <p>3. Section 6.1(d): Road improvements along John Street, Trueman Street, Lynch Street, Queen Street to support transit service into the Lands, including any traffic signals as may be required. This includes the provision of full traffic signals at the intersection of Queen St. and Trueman St. and increased radii at the following five intersection corners:</p> <p>NE and NW corners at the intersection of Centre and John Streets, SW corner at the</p>

	Permits, Licenses, Approvals and Agreements	Osler Obligation to Obtain / Execute Identified by an X	Osler Obligation to Perform, Identified by an X	Project Co Obligation to Obtain Identified by an X	Project Co Obligation to Perform Identified by an X	Comments
						<p>intersection of Lynch and John Streets, SW corner at the intersection of Lynch and Queen Streets, and SE corner at the intersection of Queen and Trueman Streets.</p> <p>Except to the extent identified above, Project Co will be responsible for all obligations under the Stage 1 Master Site Plan Agreement.</p>
2	Pre-Consultation Stage 2 Site Plan Application			X	X	Identify initial issues, submission requirements (reports, plans).
3	Stage 2 Detailed Site Plan Application – Phase 1			X	X	<p>Full submission required in accordance with City requirements as set out in City policies including, but not limited to Site Plan Manual, Landscape Guidelines for the Site Plan Approval Process, Region of Peel CPTED Manual.</p> <p>A Stage 2 Detailed Site Plan approval is required to obtain issuance of full Building</p>

Permits, Licenses, Approvals and Agreements	Osler Obligation to Obtain / Execute Identified by an X	Osler Obligation to Perform, Identified by an X	Project Co Obligation to Obtain Identified by an X	Project Co Obligation to Perform Identified by an X	Comments	
						Permits.
4	Submission of Necessary Technical Reports to Support Stage 2 Detailed Site Plan Approval - Phase 1			X	X	To be identified through Pre-consultation and initial review of Detailed Site Plan – Phase 1.
5	Minor Variances			X	X	Required to obtain any necessary minor variance approvals to support Phase 1, including application submission, fees, related drawings, attendance at Committee of Adjustment hearings.
6	Stage 2 Detailed Site Plan Approval Drawings – Phase 1			X	X	Approval of full set of SPA drawings required.
7	Stage 2 Detailed Site Plan Agreement – Phase 1	X		X	X	<p>The Stage 2 site plan review process will establish security amounts and other requirements for development to be included in the Stage 2 Detailed Site Plan Agreement.</p> <p>Osler’s obligation shall be limited to the execution of the Stage 2 Detailed Site Plan Agreement only. All other Stage 2 work</p>

	Permits, Licenses, Approvals and Agreements	Osler Obligation to Obtain / Execute Identified by an X	Osler Obligation to Perform, Identified by an X	Project Co Obligation to Obtain Identified by an X	Project Co Obligation to Perform Identified by an X	Comments
						obligations to obtain and perform shall be with Project Co.
<b>II OTHER PERMITS, LICENSES AND AGREEMENTS</b>						
1	Building Permits (including any related permits such as foundation, demolition, plumbing, and mechanical)			X	X	
2	Sign Permit			X	X	Note: There is not a Sign Variance process in the City of Brampton. An amendment to the Sign By-law would be required if it is desired to implement non-complying signage.
3	Road Occupancy Permits			X	X	Required to obtain permits for undertaking works in public-right-of way
4	Other Encroachment Agreements (incl. tie backs, crane swing)			X	X	Required to obtain agreements and pay any associated fees for works within City-owned lands.

Permits, Licenses, Approvals and Agreements		Osler Obligation to Obtain / Execute Identified by an X	Osler Obligation to Perform, Identified by an X	Project Co Obligation to Obtain Identified by an X	Project Co Obligation to Perform Identified by an X	Comments
5	Temporary road closures of any municipal roads as required to complete works associated with Phase 1			X	X	
6	Provision of any construction management plans that may be required by the City			X	X	
7	Any required curb cut permits			X	X	
8	Any required permits and approvals from the Region of Peel, Canadian National Railways, GO Transit and other agencies and utilities to support implementation of Phase 1			X	X	
9	Ontario Fire Marshall Approval			X	X	
10	Ontario Ministry of the			X	X	

	Permits, Licenses, Approvals and Agreements	Osler Obligation to Obtain / Execute Identified by an X	Osler Obligation to Perform, Identified by an X	Project Co Obligation to Obtain Identified by an X	Project Co Obligation to Perform Identified by an X	Comments
	Environment Approval					
11	All other Permits, Licenses, Approvals and Agreements			X	X	Project Co shall be responsible for application and payment of fees for all permits required. Application forms, fees, procedures and timelines are available through the City of Brampton.
<b>III FEES, LEVIES, CHARGES AND COSTS</b>						
1	All fees and charges related to obtaining all planning approvals to allow for release of Building Permits for Phase 1, including application fees, legal, administration fees, securities for proposed works and fees/licensing related to any encroachments			X	X	
2	All applicable fees related to obtaining Building Permits, including application and administration fees, cash-in-lieu of parkland, development			X	X	Osler's obligations in respect of this item are limited to paying any development charges levied by the City of Brampton under the Development Charges Act, 1997.

Permits, Licenses, Approvals and Agreements	Osler Obligation to Obtain / Execute Identified by an X	Osler Obligation to Perform, Identified by an X	Project Co Obligation to Obtain Identified by an X	Project Co Obligation to Perform Identified by an X	Comments	
	charges, other required levies, service connection fees, associated and necessary for the release of building permits for the Phase 1 development					All other obligations to obtain and perform shall be with Project Co.



**APPENDIX 2**  
**OSLER SECURITY DEPOSITS**

[NIL]

**APPENDIX 3**

[REDACTED]

TOR01: 5650248: v1

**SCHEDULE 2**

**COMPLETION DOCUMENTS**

In this Schedule 2, “certified” shall mean that the relevant document is certified as a true and complete copy in full force and effect and unamended as of the date of the relevant certificate by an officer or director of the relevant corporation.

**1. Documents to be delivered by Project Co**

Unless an original document is specifically required, a certified copy of each of the following documents (in each case, executed by the parties to such agreement other than Osler and in form and substance satisfactory to Osler, acting reasonably) is to be delivered by Project Co to Osler on or prior to the date hereof:

- 1.1 an original of this Project Agreement;
- 1.2 an original of the Custody Agreement;
- 1.3 an original of the Lenders’ Direct Agreement;
- 1.4 an original of the Construction Contractor’s Direct Agreement;
- 1.5 an original of the Service Provider’s Direct Agreement;
- 1.6 an original of the Independent Certifier Agreement;
- 1.7 an original of the Insurance Trust Agreement;
- 1.8 an original of the Trust Account Agreement;
- 1.9 an original notice of appointment of the Project Co Representative;
- 1.10 an original of the release by Project Co of Infrastructure Ontario, MOI, MOHLTC and the Province in the form attached as Appendix A to this Schedule 2;
- 1.11 an original of the acknowledgement and undertaking in the form attached as Appendix B to this Schedule 2;
- 1.12 the Lending Agreements;
- 1.13 an original of the Construction Contract;
- 1.14 an original of the Service Contract;
- 1.15 a certificate of insurance and draft policies of insurance for the insurances required to be taken out by the Construction Contractor for the period prior to the Substantial Completion Date in accordance with this Project Agreement;

- 1.16 one (1) printed copy of the Financial Model (as revised pursuant to Section 2.3(d) of the Project Agreement, if applicable) and two (2) copies on CD-ROM;
- 1.17 a certificate of an officer of Project Co certifying:
  - (a) a true copy of the Financial Model audit report dated May 26, 2014 prepared by Wolrige Mahon Corporate Finance Inc.; and
  - (b) that the Financial Model algorithms have not changed from the audit report referred to in (a) above;
- 1.18 a certificate of an officer of Project Co substantially in the form attached as Appendix C to this Schedule 2;
- 1.19 a certificate of an officer of the Construction Contractor substantially in the form attached as Appendix C to this Schedule 2;
- 1.20 a certificate of an officer of the Service Provider substantially in the form attached as Appendix C to this Schedule 2;
- 1.21 a certificate of an officer of the Construction Guarantor substantially in the form attached as Appendix C to this Schedule 2;
- 1.22 a certificate of an officer of the Service Guarantor substantially in the form attached as Appendix C to this Schedule 2;
- 1.23 an original of the opinion from counsel to Project Co, the Construction Contractor, the Service Provider, the Construction Guarantor, the Service Guarantor and such other Project Co Parties as Osler may reasonably require substantially in the form attached as Appendix D to this Schedule 2 and otherwise acceptable to Osler and its counsel;
- 1.24 the Project Co constating documentation, for example, the Project Co Partnership Agreement;
- 1.25 originals of the Performance Guarantees;
- 1.26 an original of the Final Energy Target Letter (as defined in Part 1 of Schedule 3 to the RFP); and
- 1.27 such other documents as the parties may agree, each acting reasonably.

**2. Documents to be delivered by Osler**

Unless an original document is specifically required, a certified copy of each of the following documents (in each case, where Osler is a party to such document, executed by Osler and, if applicable, any Osler Party or Governmental Authority) is to be delivered by Osler to Project Co on or prior to the date hereof:

- 2.1 an original of this Project Agreement;
- 2.2 an original of the Custody Agreement;
- 2.3 an original of the Lenders' Direct Agreement;
- 2.4 original of the Construction Contractor's Direct Agreement;
- 2.5 an original of the Service Provider's Direct Agreement;
- 2.6 an original of the Independent Certifier Agreement;
- 2.7 an original of the Insurance Trust Agreement;
- 2.8 an original of the Trust Account Agreement;
- 2.9 an original notice of appointment of the Osler Representative;
- 2.10 a copy of the Osler Development Accountability Agreement;
- 2.11 a copy of the Osler Funding and Approval Letter;
- 2.12 a certificate of an officer of Osler substantially in the form attached as Appendix E to this Schedule 2;
- 2.13 an original of the opinion from counsel to Osler substantially in the form attached as Appendix F to this Schedule 2;
- 2.14 a final and executed reliance letter that has been delivered to Osler from:
  - (a) MMM Group in respect of those Environmental Reports and Designated Substance Reports prepared by MMM Group;
  - (b) Coffey Geotechnics Inc. in respect of those Geotechnical Reports prepared by Coffey Geotechnics Inc.;
  - (c) Clean Energy Developments Corp. in respect of those Geotechnical Reports prepared by Clean Energy Developments Corp.;

- (d) Conestoga-Rovers and Associates in respect of those Geotechnical Reports prepared by Conestoga-Rovers and Associates; and
- (e) Swallow Acoustic Consultants Ltd. in respect of those Environmental Reports and Designated Substance Reports prepared by Swallow Acoustic Consultants Ltd.;

2.15 such other documents as the parties may agree, each acting reasonably.

**APPENDIX A**

**FORM OF RELEASE**

**TO:** Ontario Infrastructure and Lands Corporation (“**Infrastructure Ontario**”)

**AND TO:** Her Majesty the Queen in Right of Ontario as represented by the Minister of Infrastructure (“**MOI**”)

**AND TO:** Her Majesty the Queen in Right of Ontario as represented by the Minister of Health and Long-Term Care (“**MOHLTC**”)

**AND TO:** Her Majesty the Queen in Right of Ontario (the “**Province**”)

**RE:** Project agreement (as amended, supplemented or modified from time to time, the “**Project Agreement**”) dated the 26<sup>th</sup> day of May, 2014 between William Osler Health System (“**Osler**”) and Plenary Health Peel LP (“**Project Co**”)

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In consideration of Osler entering into the Project Agreement, the undersigned hereby acknowledges and agrees that Infrastructure Ontario, MOI, MOHLTC and the Province have no obligations or liabilities to Project Co or any other person arising out of or in connection with the Project Agreement of any nature or kind whatsoever, including, without limitation, any obligations for payments or other covenants on the part of Osler contained in the Project Agreement, and hereby releases Infrastructure Ontario, MOI, MOHLTC and the Province from and against any and all claims, demands, causes of action, judgments, costs and liability of any nature or kind whatsoever arising out of or in connection with the Project Agreement and all matters relating thereto, including, without limitation, any act or omission of Osler, its employees, officers, directors or agents.

*Remainder of this Page Intentionally Left Blank*

**DATED** this 28<sup>th</sup> day of May, 2014.

**PLENARY HEALTH PEEL LP, [REDACTED]**

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

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

I/We have authority to bind the corporation.



**APPENDIX B**

**FORM OF UNDERTAKING AND ACKNOWLEDGEMENT**

- TO:** William Osler Health System, a non-share capital corporation incorporated under the laws of Ontario  
  
 (“Osler”)
- AND TO:** Her Majesty the Queen in Right of Ontario as represented by the Minister of Health and Long-Term Care (“MOHLTC”)
- RE:** Project agreement (as amended, supplemented or modified from time to time, the “**Project Agreement**”) dated the 26<sup>th</sup> day of May, 2014 between Osler and Plenary Health Peel LP (“**Project Co**”)

- 
1. The undersigned acknowledges that:
    - (a) The Project will proceed as an alternative financing and procurement project under the MOI’s *ReNew Ontario* infrastructure investment plan, and complies with the principles set out in the IPFP Framework.
    - (b) The IPFP Framework establishes five fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
      - (i) The public interest is paramount.
      - (ii) Value for money must be demonstrable.
      - (iii) Appropriate public control/ownership must be preserved.
      - (iv) Accountability must be maintained.
      - (v) All processes must be fair, transparent and efficient.
    - (c) The IPFP Framework states that, consistent with the principle of appropriate public ownership/control, public ownership of assets will be preserved in the hospital sector.
  2. The undersigned undertakes to comply with the *Public Hospitals Act* (Ontario) and all regulations thereunder in any direction or order issued by MOHLTC or the Local Health Integration Network to Osler to the extent that the direction or order affects the Project Operations.
  3. Capitalized terms used but not defined herein have the respective meanings ascribed thereto in the Project Agreement.

***Remainder of this Page Intentionally Left Blank***

**DATED** this 28<sup>th</sup> day of May, 2014.

**PLENARY HEALTH PEEL LP, [REDACTED]**

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

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

I/We have authority to bind the corporation.

APPENDIX C

FORM OF PROJECT CO/PROJECT CO PARTY OFFICER’S CERTIFICATE

CERTIFICATE OF AN OFFICER OF

[•]

(THE “CORPORATION”)

**TO: WILLIAM OSLER HEALTH SYSTEM (“Osler”)**  
**AND TO: ONTARIO INFRASTRUCTURE AND LANDS CORPORATION**  
**AND TO: BORDEN LADNER GERVAIS LLP**  
**AND TO: DAVIES WARD PHILLIPS & VINEBERG LLP**  
**AND TO: GOWLING LAFLEUR HENDERSON LLP**  
**AND TO: BNY TRUST COMPANY OF CANADA, as Collateral Trustee**  
**AND TO: FASKEN MARTINEAU DUMOULIN**

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I, [•], being the [•] of the Corporation and an authorized signatory of the Corporation and being duly authorized by the Corporation to deliver this certificate, hereby make the following certifications and confirmations for and on behalf of the Corporation and without incurring personal liability and that the same may be relied upon by you without further inquiry:

1. Constating Documents
  - (a) The Corporation is a subsisting corporation duly incorporated under the laws of **[the Province of Ontario]**.
  - (b) Attached hereto as **Schedule “A”** are true and complete copies of the articles, together with all amendments thereto, of the Corporation (the “**Articles**”). The Articles are in full force and effect on the date hereof and no other articles have been issued and no proceeding has been taken or is contemplated to the date hereof to authorize the Corporation to amend, surrender or cancel the Articles.
  - (c) Attached hereto as **Schedule “B”** are true and complete copies of the by-laws of the Corporation (the “**By-laws**”) enacted on or before the date hereof. The By-laws have been in full force and effect from and after the date thereof as set out therein and are in full force and effect, unamended as of the date hereof. No proceeding has been taken to the date hereof to authorize the Corporation to amend the By-laws and neither the directors nor the shareholders of the Corporation have passed, confirmed or consented to any resolutions amending or varying the By-laws.

- (d) Attached hereto as **Schedule “C”** is a true and complete copy of a unanimous shareholders’ agreement between the shareholders of the Corporation and the Corporation (the “**Unanimous Shareholders’ Agreement**”) executed on or before the date hereof. The Unanimous Shareholders’ Agreement has been in full force and effect from and after the date thereof as set out therein and is in full force and effect, unamended as of the date hereof.
- (e) The minute books and corporate records of the Corporation made available to [●] are the original minute books and corporate records of the Corporation and contain all minutes of meetings, resolutions and proceedings of the shareholders and directors of the Corporation to the date hereof and there have been no meetings, resolutions or proceedings authorized or passed by the shareholders or directors of the Corporation to the date hereof not reflected in such minute books and corporate records. Such minute books and corporate records are true, complete and correct in all material respects and there are no changes, additions or alterations necessary to be made thereto to make such minute books and corporate records true, complete and correct in all material respects.
- (f) At the date hereof, no winding-up, liquidation, dissolution, insolvency, bankruptcy, amalgamation, arrangement, reorganization or continuation proceedings in respect of the Corporation have been commenced or are being contemplated by the Corporation, and the Corporation has no knowledge of any such proceedings having been commenced or contemplated in respect of the Corporation by any other party.
- (g) At the date hereof, the Corporation is up-to-date in the filing of all returns and other documents required to be filed by it by governmental authorities, including under corporate, securities and tax legislation, and no notice of any proceedings to cancel its certificate of incorporation or otherwise to terminate its existence has been received by the Corporation.
- (h) Pursuant to the Unanimous Shareholders’ Agreement, the powers of the directors of the Corporation to manage the business and affairs of the Corporation, whether such powers arise from the [***Business Corporations Act (Ontario)*** (the “**Act**”), the Articles or the By-laws of the Corporation, or otherwise, are restricted to the fullest extent permitted by law, and, in accordance with the Act and the Unanimous Shareholders’ Agreement, the shareholders of the Corporation have and enjoy and may exercise and perform all the rights, powers, and duties of the directors of the Corporation to manage the business and affairs of the Corporation.
- (i) There are no provisions in the Articles, By-laws, Unanimous Shareholders’ Agreement or in any other agreement binding on the Corporation which:
  - (i) restrict or limit the powers of the Corporation to enter into:

- (1) a certain project agreement with Osler made as of May 26, 2014 (as the same may be amended, supplemented, restated or otherwise modified from time to time, the “**Project Agreement**”) pursuant to which the Corporation will design, build, finance and maintain a new hospital facility;
  - (2) a lenders’ direct agreement between the Corporation, Osler and the Lenders’ Agent;
  - (3) a direct agreement between PCL Constructors Canada Inc. (the “**Construction Contractor**”), the Corporation, the Construction Guarantor and Osler;
  - (4) a direct agreement between Honeywell Limited (the “**Service Provider**”), the Corporation, the Service Guarantor and Osler; and
  - (5) **[NTD: List other documents delivered at Financial Close.]**, (collectively, the “Documents”); or
- (ii) restrict or limit the authority of the directors or shareholders of the Corporation by resolution to delegate the powers set out in subparagraph (i) to a director or an officer of the Corporation.

2. Resolutions

- (a) Annexed hereto, forming part hereof and marked as **Schedule “D”** are true and complete copies of the resolutions of the [**directors/shareholders**] of the Corporation (the “**Resolutions**”), which have been duly and validly passed in accordance with applicable law, constituting authority and approval for the Corporation, *inter alia*, to enter into the Documents. The Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same are in full force and effect, unamended as of the date hereof.
- (b) The authorization, execution and delivery of each Document contemplated in the Resolutions, and the performance by the Corporation of its obligations thereunder, do not constitute or result in a violation or breach or default under:
  - (i) the Articles, By-laws or the Unanimous Shareholders’ Agreement;
  - (ii) to the best of my knowledge and belief after due diligence, any order of any Canadian or Ontario governmental body by which it is bound;
  - (iii) to the best of my knowledge and belief after due diligence, the terms of any agreement or instrument under which any of its property or assets is bound; or

- (iv) to the best of my knowledge and belief after due diligence, any writ, judgment, injunction, determination or award which is binding on the Corporation or any of its properties.
- (c) To the best of my knowledge and belief after due diligence, there is no claim, action, suit, proceedings, arbitration, investigation or inquiry before any governmental agency, court or tribunal, foreign or domestic, or before any private arbitration tribunal, pending or threatened against the Corporation, or involving its properties or business. To the best of my knowledge and belief after due diligence, no administrative or court decree is outstanding in respect of the Corporation or its assets.
- (d) To the best of my knowledge and belief after due diligence, no consent, approval or other order of any Canadian or Ontario governmental authority which has not been obtained is required to permit the Corporation to execute and deliver the Documents.

**3. No Breach or Default**

Neither the execution and delivery by the Corporation of the Documents nor the consummation of the transactions therein contemplated nor the fulfilment or compliance with the terms thereof will contravene or result in a breach of any of the terms, conditions or provisions of, or constitute a default under the Articles, By-laws, Unanimous Shareholders’ Agreement or under any other agreement binding on the Corporation.

**4. Specimen Signatures**

The persons whose names are set forth below are, at the date hereof, officers and/or directors of the Corporation, duly elected or appointed to the office or offices set forth opposite their respective names and authorized to execute the Documents on behalf of the Corporation. The signatures set forth opposite their respective names are the true signatures of those persons:

NAME	POSITION	SIGNATURE
_____	_____	_____
		_____
		_____
		_____
		_____
		_____

5. Capital

Listed below are all of the issued and outstanding shares in the capital of the Corporation and the registered owner of such shares:

**ISSUED SHARES**

---

**REGISTERED OWNER**

---

Attached hereto as **Schedule “E”** are true copies of all certificates in respect of such issued and outstanding shares. The Corporation has issued no securities, including (without limitation) securities convertible or exchangeable into shares and/or securities in respect of debt, other than such issued and outstanding shares as are listed above.

DATED this 26<sup>th</sup> day of May, 2014.

---

Name:

Title:

APPENDIX D

FORM OF PROJECT CO/PROJECT CO PARTY OPINION

May 28, 2014

William Osler Health System  
2100 Bovaird Drive  
Brampton, Ontario  
L6R 3J7

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

Borden Ladner Gervais LLP  
40 King Street West, 44<sup>th</sup> Floor  
Toronto, Ontario  
M5H 3Y4

Dear Sirs/Mesdames:

**Re: William Osler Health System - Peel Memorial Centre for Integrated Health and Wellness Project**

---

We have acted as counsel to Plenary Health Peel LP (“**Project Co**”), PCL Constructors Canada Inc. (the “**Construction Contractor**”) and Honeywell Limited (the “**Service Provider**”) in connection with the alternative financing and procurement transaction whereby Project Co has agreed to enter into a design, build, finance and maintain agreement for a new hospital facility in Brampton, Ontario. [NTD: Additional parties to be added depending on consortium structure and/or the financing package.]

This opinion is being delivered to William Osler Health System (“**Osler**”), Ontario Infrastructure and Lands Corporation and their counsel pursuant to Section 1.25 of Schedule 2 to the project agreement made as of May 26, 2014 between Osler and Project Co (as the same may be amended, supplemented, restated or otherwise modified from time to time, the “**Project Agreement**”).

All capitalized terms used but not otherwise defined in this opinion shall have the respective meanings ascribed thereto in the Project Agreement.

In our capacity as counsel to Project Co, the Construction Contractor and the Service Provider, we have participated in the preparation and negotiation, and have examined an executed copy, of each of the following documents (unless otherwise indicated, all documents are dated as of May 28, 2014):

1. the Project Agreement; and
2. the following project documents (collectively, the “Implementation Documents”):
  - (a) the Construction Contract;



- (b) the Service Contract;
- (c) the Lenders’ Direct Agreement;
- (d) the Construction Contractor’s Direct Agreement;
- (e) the Service Provider’s Direct Agreement;
- (f) the Lending Agreements; and
- (g) the Performance Guarantees.

The Project Agreement and the Implementation Documents are hereinafter collectively referred to as the “**Documents**”, and each is individually referred to as a “**Document**”. [NTD: **Additional documents to be added depending on consortium structure and/or the financing package.**]

We are qualified to practise law in the Province of Ontario. We have made no investigation of the laws of any jurisdiction other than Ontario, and the opinions expressed below are confined to the laws of Ontario and the federal laws of Canada applicable therein as at the date hereof.

We do not act as corporate counsel to [**Project Co, the Construction Contractor or the Service Provider**], nor have we participated in the general maintenance of their corporate records and corporate proceedings. Therefore, in expressing certain of the opinions below, we have, where indicated, relied exclusively, and without any independent investigation or enquiry, on certificates of public officials and a certificate of an officer of each of Project Co, the Construction Contractor and the Service Provider dated as of the date hereof (the “**Officer’s Certificates**”) as to certain factual matters.

### **Searches and Reliance**

We have conducted, or have caused to be conducted, the searches identified in Schedule “A” (the “**Searches**”) for filings or registrations made in those offices of public record listed in Schedule “A”. The Searches were conducted against the current name and all former names of Project Co, the Construction Contractor and the Service Provider (including, in each case, both the English and French versions, if any). The results of the Searches are set out in Schedule “A”.

We have also made such investigations and examined originals or copies, certified or otherwise identified to our satisfaction, of such certificates of public officials and of such other certificates, documents and records as we have considered necessary or relevant for purposes of the opinions expressed below, including, without limitation, the Officer’s Certificates.

We have relied exclusively, and without any independent investigation or enquiry, on the Officer’s Certificates and the certificates of public officials with respect to certain factual matters.

In connection with the opinions set forth in paragraphs 1, 2 and 3 below, we have relied exclusively on Certificates of Status issued by the [Ministry of Government Services (Ontario)] of even date, copies of which are attached as Schedule “B”.

In connection with the opinions set forth in paragraphs 5, 8, 11, 17 and 20 below, we have relied exclusively, and without any independent investigation or enquiry, upon the opinion of [●] dated [●], 2014 (the “CC Opinion”), a copy of which has been delivered to you. To the extent that the CC Opinion contains assumptions, qualifications, limitations or definitions, or is expressed as relying on any certificate(s) or other documents identified therein, the opinions herein expressed in reliance on the CC Opinion should be read as incorporating the identical assumptions, qualifications, limitations, definitions and reliances.

In connection with the opinions set forth in paragraphs 6, 9, 12, 18 and 21 below, we have relied exclusively, and without any independent investigation or enquiry, upon the opinion of [●] dated [●], 2014 (the “SP Opinion”), a copy of which has been delivered to you. To the extent that the SP Opinion contains assumptions, qualifications, limitations or definitions, or is expressed as relying on any certificate(s) or other documents identified therein, the opinions herein expressed in reliance on the SP Opinion should be read as incorporating the identical assumptions, qualifications, limitations, definitions and reliances.

### **Assumptions**

For the purposes of the opinions expressed herein, we have assumed:

1. The genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as certified, true, conformed, photostatic or notarial copies or facsimiles thereof and the authenticity of the originals of such certified, true, conformed, photostatic or notarial copies or facsimiles.
2. Each of the parties (other than Project Co, the Construction Contractor and the Service Provider) to each of the Documents is and was, at all relevant times, a subsisting corporation, partnership, limited partnership, limited liability company or trust, as applicable, under the laws of its jurisdiction of formation.
3. Each of the parties (other than Project Co, the Construction Contractor and the Service Provider) has (and had) the corporate power, authority and capacity to own its property and assets and to carry on its business as such business is now (or as was then) being carried on by it, has (or had) all requisite corporate power, authority and capacity to execute and deliver each Document to which it is party and to perform its obligations thereunder, has taken all necessary corporate action, as applicable, to authorize the execution and delivery of each Document to which it is a party and the performance of its obligations thereunder, and has duly executed and delivered each Document to which it is a party and each Document to which it is a party is a legal, valid and binding obligation of such party enforceable against it in accordance with its terms.

**William Osler Health System**

4. The completeness, truth and accuracy of all facts set forth in the Officer's Certificates.
5. The completeness, truth and accuracy of all facts set forth in official public records and certificates and other documents supplied by public officials.
6. Value has been given by each of the parties (other than Project Co, the Construction Contractor and the Service Provider) to Project Co, the Construction Contractor and the Service Provider.

**Opinions**

Based upon and subject to the foregoing, and to the qualifications, exceptions and limitations hereinafter expressed, we are of the opinion that, as of the date hereof:

*Incorporation and Existence*

1. Project Co is a corporation incorporated under the laws of **[the Province of Ontario]** and has not been dissolved.
2. The Construction Contractor is a corporation incorporated under the laws of **[the Province of Ontario]** and has not been dissolved.
3. The Service Provider is a corporation incorporated under the laws of **[the Province of Ontario]** and has not been dissolved.

*Corporate Power and Capacity*

4. Project Co has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Project Agreement, and to enter into and perform its obligations under each of the Documents to which it is a party.
5. The Construction Contractor has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Documents, and to enter into and perform its obligations under each of the Documents to which it is a party.
6. The Service Provider has the corporate power and capacity to own or lease its properties and assets, to carry on its business as it is currently being conducted and as it is contemplated to be conducted under the Documents, and to enter into and perform its obligations under each of the Documents to which it is a party.

*Corporate Authorization*

7. Project Co has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.
8. The Construction Contractor has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.
9. The Service Provider has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.

*Execution and Delivery*

10. Project Co has duly executed and delivered each of the Documents to which it is a party.
11. The Construction Contractor has duly executed and delivered each of the Documents to which it is a party.
12. The Service Provider has duly executed and delivered each of the Documents to which it is a party.

*Enforceability*

13. Each of the Documents to which Project Co is a party constitutes a legal, valid and binding obligation of Project Co, enforceable against it in accordance with its terms.
14. Each of the Documents to which the Construction Contractor is a party constitutes a legal, valid and binding obligation of the Construction Contractor, enforceable against it in accordance with its terms.
15. Each of the Documents to which the Service Provider is a party constitutes a legal, valid and binding obligation of the Service Provider, enforceable against it in accordance with its terms.

*No Breach or Default*

16. The execution and delivery by Project Co of the Documents to which it is a party does not, and the performance by Project Co of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which Project Co is subject.

17. The execution and delivery by the Construction Contractor of the Documents to which it is a party does not, and the performance by the Construction Contractor of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which the Construction Contractor is subject.
18. The execution and delivery by the Service Provider of the Documents to which it is a party does not, and the performance by the Service Provider of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its articles, by-laws or unanimous shareholders' agreement, or (ii) the provisions of any law, statute, rule or regulation to which the Service Provider is subject.

*Regulatory Approvals*

19. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by Project Co of the Documents to which it is a party and the performance of its obligations thereunder.
20. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by the Construction Contractor of the Documents to which it is a party and the performance of its obligations thereunder.
21. No authorization, consent, permit or approval of, or other action by, or filing with or notice to, any governmental agency or authority, regulatory body, court, tribunal or other similar entity having jurisdiction is required in connection with the execution and delivery by the Service Provider of the Documents to which it is a party and the performance of its obligations thereunder.

**Qualifications**

Our opinions herein are subject to the following qualifications and reservations, namely:

1. The enforceability of any Document and the rights and remedies set out therein or any judgment arising out of or in connection therewith is subject to and may be limited by any applicable bankruptcy, reorganization, winding-up, insolvency, moratorium or other laws of general application affecting creditors' rights from time to time in effect.
2. The enforceability of each of the Documents and the rights and remedies set out therein is subject to and may be limited by general principles of equity, and no opinion is given as to any specific remedy that may be granted, imposed or rendered, including equitable

- remedies such as those of specific performance and injunction, or the availability of equitable defences.
3. The enforceability of any Document will be subject to the limitations contained in the *Limitations Act, 2002* (Ontario), and we express no opinion as to whether a court may find any provision of any Document to be unenforceable as an attempt to vary or exclude a limitation period under that Act.
  4. Pursuant to the *Currency Act* (Canada), a judgment in money rendered by a Court in the Province of Ontario must be awarded in Canadian currency and such judgment may be based on a rate of exchange in effect other than the day of payment of the judgment.
  5. To the extent that a particular contractual provision is characterized by a Court as a penalty and not as a genuine pre-estimate of damages, it will not be enforceable.
  6. A Court may not treat as conclusive those certificates and determinations which the Documents state are to be so treated.
  7. A receiver or receiver and manager appointed pursuant to the provisions of any Document, for certain purposes, may not be treated by a Court as being solely the agent of Project Co notwithstanding any agreement to the contrary.
  8. The ability to recover or claim for certain costs or expenses may be subject to judicial discretion.
  9. With respect to any provisions of the Documents pursuant to which the parties to such Documents are permitted or required to submit a dispute arising out of such Documents to arbitration, we express no opinion as to the enforceability of such arbitration provisions in all circumstances since under the *Arbitration Act, 1991* (Ontario) a court of competent jurisdiction in Ontario may, in its discretion and upon certain grounds, refuse to stay judicial proceedings in which event an arbitration under such arbitration provisions may not be commenced or continued. In addition, the *Arbitration Act, 1991* (Ontario) provides that a court may hear an appeal of an arbitration award on a question of law, or set aside an arbitration award or declare it invalid, in each case on certain prescribed grounds.
  10. Any requirement in any of the Documents that interest be paid at a higher rate after than before default may not be enforceable.
  11. The effectiveness of provisions which purport to relieve a person from a liability or duty otherwise owed may be limited by law, and provisions requiring indemnification or reimbursement may not be enforced by a Court, to the extent that they relate to the failure of such person to perform such duty or liability.

12. No opinion is expressed as to the enforceability of any provision contained in any Document which purports to sever from the Document any provision therein which is prohibited or unenforceable under applicable law without affecting the enforceability or validity of the remainder of the document.
13. No opinion is expressed regarding any waiver of service of process, presentment, demand, protest or notice of dishonour which may be contained in any of the Documents.
14. Any award of costs is in the discretion of a Court of competent jurisdiction.
15. The enforceability of rights of indemnity set out in the Documents may be limited under applicable law to the extent that they directly or indirectly relate to liabilities imposed by law on Osler for which it would be contrary to public policy to require Project Co to indemnify Osler or to the extent that they constitute the indirect enforcement of a foreign revenue or penal law.
16. We express no opinion as to the enforceability by any person who is not a party to the Documents of any provision therein that purports to bind or affect or confer a benefit on such person.

This opinion is being delivered solely in connection with the transaction addressed herein and may not be relied upon by any person other than the addressees, and their successors and permitted assigns, or for any purpose other than the transaction addressed herein.

Yours very truly,

**DAVIES WARD PHILLIPS & VINEBERG LLP**

APPENDIX E

FORM OF OSLER OFFICER'S CERTIFICATE

Certificate of an Officer of  
William Osler Health System  
(the "Corporation")

TO: BORDEN LADNER GERVAIS LLP  
AND TO: PLENARY HEALTH PEEL LP ("Project Co")  
AND TO: DAVIES WARD PHILLIPS & VINEBERG LLP  
AND TO: BNY TRUST COMPANY OF CANADA  
AND TO: FASKEN MARTINEAU DUMOULIN LLP

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We, [REDACTED] of the Corporation and being duly authorized by the Corporation to deliver this certificate, hereby make the following certifications and confirmations for and on behalf of the Corporation and without incurring personal liability and that the same may be relied upon by you without further inquiry:

1. Constating Documents
  - (a) The Corporation is a non-share capital corporation formed under the *Corporations Act* (Ontario) (Corporation No. 1300695).
  - (b) Attached hereto as **Schedule "A"** are true and complete copies of the letters patent, together with all amendments thereto, of the Corporation (the "**Letters Patent**"). The Letters Patent are in full force and effect on the date hereof and no other letters patent have been issued and no proceeding has been taken or is contemplated to the date hereof to authorize the Corporation to amend, surrender or cancel the Letters Patent.
  - (c) Attached hereto as **Schedule "B"** are true and complete copies of the by-laws of the Corporation (the "**By-laws**") enacted on or before the date hereof. The By-laws have been in full force and effect from and after the date thereof as set out therein and are in full force and effect, unamended as of the date hereof. No proceeding has been taken to the date hereof to authorize the Corporation to amend the By-laws and neither the directors nor the members of the Corporation have passed, confirmed or consented to any resolutions amending or varying the By-laws.



- (d) The minute books and corporate records of the Corporation made available to Borden Ladner Gervais LLP are the original minute books and corporate records of the Corporation and contain all minutes of meetings, resolutions and proceedings of the members and directors of the Corporation to the date hereof and there have been no meetings, resolutions or proceedings authorized or passed by the members or directors of the Corporation to the date hereof not reflected in such minute books and corporate records. Such minute books and corporate records are true, complete and correct in all material respects and there are no changes, additions or alterations necessary to be made thereto to make such minute books and corporate records true, complete and correct in all material respects.
- (e) At the date hereof, no winding-up, liquidation, dissolution, insolvency, bankruptcy, amalgamation, arrangement, reorganization or continuation proceedings in respect of the Corporation have been commenced or are being contemplated by the Corporation, and the Corporation has no knowledge of any such proceedings having been commenced or contemplated in respect of the Corporation by any other party.
- (f) At the date hereof, the Corporation is up-to-date in the filing of all returns and other documents required to be filed by it by governmental authorities, including under corporate, securities and tax legislation, and no notice of any proceedings to cancel its certificate of incorporation or otherwise to terminate its existence has been received by the Corporation.
- (g) There are no provisions in the Letters Patent, By-laws, or in any other agreement binding on the Corporation which:
  - (i) restrict or limit the powers of the Corporation to enter into:
    - (1) a certain project agreement with Project Co made as of May 26, 2014 (as the same may be amended, supplemented, restated or otherwise modified from time to time, the “**Project Agreement**”) pursuant to which Project Co will design, build, finance and maintain a new hospital facility;
    - (2) a lenders’ direct agreement between the Corporation, Project Co and the Lenders’ Agent;
    - (3) a direct agreement between PCL Constructors Canada Inc. (the “**Construction Contractor**”), Project Co, the Construction Guarantor and the Corporation;

- (4) a direct agreement between Honeywell Limited (the “**Service Provider**”), Project Co, the Service Guarantor and the Corporation; and
  - (5) a development accountability agreement between the Corporation and Her Majesty the Queen in Right of Ontario as represented by the Minister of Health and Long-Term Care (“MOHLTC”) (collectively, the “Documents”); or
- (ii) restrict or limit the authority of the directors or members of the Corporation by resolution to delegate the powers set out in subparagraph (i) to a director or an officer of the Corporation.

2. Corporate Authorization

The Corporation has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents.

3. Resolutions

- (a) Annexed hereto, forming part hereof and marked as **Schedule “C”** are true and complete copies of the resolutions of the directors of the Corporation (the “**Resolutions**”), which have been duly and validly passed in accordance with applicable law, constituting authority and approval for the Corporation, *inter alia*, to enter into the Documents. The Resolutions are the only resolutions of the Corporation pertaining to the subject matter thereof and the same are in full force and effect, unamended as of the date hereof. The Resolutions constitute the only corporate action necessary to authorize the execution and delivery of, and the performance of the Corporation’s obligations under, each of the Documents.
- (b) The authorization, execution and delivery of each Document contemplated in the Resolutions, and the performance by the Corporation of its obligations thereunder, do not constitute or result in a violation or breach or default under:
  - (i) the Letters Patent or By-laws;
  - (ii) to the best of my knowledge and belief after due diligence, any order of any Canadian or Ontario governmental body by which it is bound;
  - (iii) to the best of my knowledge and belief after due diligence, the terms of any agreement or instrument under which any of its property or assets is bound; or

- (iv) to the best of my knowledge and belief after due diligence, any writ, judgment, injunction, determination, award which is binding on the Corporation or any of its properties.
- (c) To the best of my knowledge and belief after due diligence, there are no actions, suits, proceedings, or investigations, pending or threatened in writing against the Corporation at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) of which the Corporation has received written notice and that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of the Corporation or in any impairment of its ability to perform its obligations under the Documents, and the Corporation has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect of impairment.
- (d) To the best of my knowledge and belief after due diligence, no consent, approval or other order of any Canadian or Ontario governmental authority is required to permit the Corporation to execute and deliver the Documents, other than the following consents and approvals, which have been obtained:
  - (i) the development accountability agreement between the Corporation and MOHLTC; and
  - (ii) the funding and approval letter from MOHLTC to the Corporation with respect to, among other things, the terms and conditions of funding by MOHLTC of certain of the Corporation's obligations related to the Project and MOHLTC's approval of the Project.

4. Execution and Delivery

The Corporation, by its authorized signing officers, has duly authorized and delivered each of the Documents.

5. No Breach or Default

Neither the execution and delivery by the Corporation of the Documents nor the consummation of the transactions therein contemplated nor the fulfilment or compliance with the terms thereof will contravene or result in a breach of any of the terms, conditions or provisions of, or constitute a default under:

- (a) the Letters Patent or By-laws;
- (b) any other agreement binding on the Corporation;

- (c) any law, statute, rule or regulation to which the Corporation is subject; or
- (d) any regulatory approval described in Section 3(d) above.

**6. Specimen Signatures**

The persons whose names are set forth below are, at the date hereof, officers and/or directors of the Corporation, duly elected or appointed to the office or offices set forth opposite their respective names and authorized to execute the Documents on behalf of the Corporation. The signatures set forth opposite their respective names are the true signatures of those persons:

<u>NAME</u>	<u>POSITION</u>	<u>SIGNATURE</u>
[REDACTED]	[REDACTED]	_____
[REDACTED]	[REDACTED]	_____
		_____
		_____

DATED this 28<sup>th</sup> day of May, 2014.

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Name: [REDACTED]

Title: [REDACTED]

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Name: [REDACTED]

Title: [REDACTED]

APPENDIX F

FORM OF OSLER OPINION

May 28, 2014

PLENARY HEALTH PEEL LP

BNY TRUST COMPANY OF CANADA

DAVIES WARD PHILLIPS & VINEBERG  
LLP

FASKEN MARTINEAU DUMOULIN  
LLP

Dear Sirs/Mesdames:

**Re: William Osler Health System - Peel Memorial Centre for Integrated Health and Wellness Project**

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We have acted as project counsel to William Osler Health System (“Osler”), in connection with the alternative financing and procurement transaction whereby Osler and Plenary Health Peel LP (“Project Co”) have agreed to enter into a design, build, finance and maintain agreement for a new hospital facility in Brampton, Ontario.

This opinion is being delivered to Project Co, **BNY Trust Company of Canada** (as agent for and on behalf of the Lenders, the “**Lenders’ Agent**”), each of the Lenders from time to time party to the Lending Agreements, and their respective counsel pursuant to Section 2.13 of Schedule 2 to the project agreement made as of May 26, 2014 between Osler and Project Co (as the same may be amended, supplemented, restated or otherwise modified from time to time, the “**Project Agreement**”).

All capitalized terms used but not otherwise defined in this opinion shall have the respective meanings ascribed thereto in the Project Agreement.

In our capacity as project counsel to Osler, we have participated in the preparation and negotiation, and have examined an executed copy, of each of the following documents (unless otherwise indicated, all such documents are dated as of May 28, 2014):

1. the Project Agreement; and
2. the following project documents (collectively, the “**Implementation Documents**”):
  - (a) the Lenders’ Direct Agreement;
  - (b) the Construction Contractor’s Direct Agreement;
  - (c) the Service Provider’s Direct Agreement; and

- (d) the Osler Development Accountability Agreement.

The Project Agreement and the Implementation Documents are hereinafter collectively referred to as the “**Documents**”, and each is individually referred to as a “**Document**”.

We are qualified to practise law in the Province of Ontario. We have made no investigation of the laws of any jurisdiction other than Ontario, and the opinions expressed below are confined to the laws of Ontario and the federal laws of Canada applicable therein as at the date hereof.

We do not act as corporate counsel to Osler, nor have we participated in the general maintenance of its corporate records and corporate proceedings. Therefore, in expressing certain of the opinions below, we have, where indicated, relied exclusively, and without any independent investigation or enquiry, on certificates of public officials and a certificate of an officer of Osler dated as of the date hereof (the “**Officer’s Certificate**”) as to certain factual matters.

### **Searches and Reliance**

We have conducted, or have caused to be conducted, the searches identified in Schedule “A” (the “**Searches**”) for filings or registrations made in those offices of public record listed in Schedule “A”. The Searches were conducted against the current name and all former names of Osler (including, both the English and French versions, if any). The results of the Searches are set out in Schedule “A”.

We have also made such investigations and examined originals or copies, certified or otherwise identified to our satisfaction, of such certificates of public officials and of such other certificates, documents and records as we have considered necessary or relevant for purposes of the opinions expressed below, including, without limitation, the Officer’s Certificate.

In connection with the opinion set forth in paragraph 1 below, we have relied exclusively on a Certificate of Status issued by the Ministry of Government Services (Ontario) of even date, a copy of which is attached as Schedule “B”.

In connection with the opinion set forth in paragraph 2 below, we have relied in part on the Officer’s Certificate, and in part on the list maintained by the Minister of Health and Long-Term Care under subsection 32.1(2) of the *Public Hospitals Act* (Ontario), a copy of which is attached as Schedule “C”.

In connection with the opinions set forth in paragraphs 3, 4 and 6, as to factual matters, including the accuracy and completeness of the documents made available for review, we have relied exclusively on the Officer’s Certificate.

### **Assumptions**

For the purposes of the opinion expressed herein, we have assumed:

1. The genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as certified, true, conformed, photostatic or notarial copies or facsimiles thereof and the authenticity of the originals of such certified, true, conformed, photostatic or notarial copies or facsimiles.
2. Each of the parties (other than Osler) to each of the Documents is and was, at all relevant times, a subsisting corporation, partnership, limited partnership, limited liability company or trust, as applicable, under the laws of its jurisdiction of formation.
3. Each of the parties (other than Osler) has (and had) the corporate power, authority and capacity to own its property and assets and to carry on its business as such business is now (or as was then) being carried on by it, has (or had) all requisite corporate power, authority and capacity to execute and deliver each Document to which it is party and to perform its obligations thereunder, has taken all necessary corporate action, as applicable, to authorize the execution and delivery of each Document to which it is a party and the performance of its obligations thereunder, and has duly executed and delivered each Document to which it is a party, and each Document to which it is a party is a legal, valid and binding obligation of such party enforceable against it in accordance with its terms.
4. The completeness, truth and accuracy of all facts set forth in the Officer's Certificate.
5. The completeness, truth and accuracy of all facts set forth in official public records and certificates and other documents supplied by public officials.
6. Value has been given by each of the parties (other than Osler) to Osler.
7. Osler has obtained or will obtain all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorizations to be obtained by Osler in connection with the entering into and performance by Osler of its obligations under the Documents to which it is a party, including, without limitation, any approvals of the Minister of Health and Long-Term Care.

### **Opinions**

Based upon and subject to the foregoing, and subject to the qualifications, exceptions and limitations hereinafter expressed, we are of the opinion that, as of the date hereof:

#### *Incorporation and Existence*

1. Osler is a non-share capital corporation formed under the *Corporations Act* (Ontario) (Corporation No. 1300695) and has not been dissolved.



*Corporate Power and Capacity*

2. Osler is a public hospital under the *Public Hospitals Act* (Ontario), and has the corporate power and capacity to carry on its undertakings in accordance with the *Public Hospitals Act* (Ontario), including to own or lease its properties and assets, and to enter into and perform its obligations under each of the Documents to which it is a party.

*Corporate Authorization*

3. Osler has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.

*Execution and Delivery*

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

*Enforceability*

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

*No Breach or Default*

6. The execution and delivery by Osler of the Documents to which it is a party does not, and the performance by Osler of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its letters patent or by-laws, or (ii) the provisions of any law, statute, rule or regulation to which Osler is subject.

**Qualifications**

Our opinions herein are subject to the following qualifications and reservations, namely:

1. The enforceability of any Document and the rights and remedies set out therein or any judgment arising out of or in connection therewith is subject to and may be limited by any applicable bankruptcy, reorganization, winding-up, insolvency, moratorium or other laws of general application affecting creditors' rights from time to time in effect.
2. The enforceability of any Document will be subject to the limitations contained in the *Limitations Act, 2002* (Ontario), and we express no opinion as to whether a court may find any provision of any Document to be unenforceable as an attempt to vary or exclude a limitation period under that Act.

3. Pursuant to the *Currency Act* (Canada), a judgment in money rendered by a Court in the Province of Ontario must be awarded in Canadian currency and such judgment may be based on a rate of exchange in effect other than the day of payment of the judgment.
4. To the extent that a particular contractual provision is characterized by a Court as a penalty and not as a genuine pre-estimate of damages, it will not be enforceable.
5. A Court may not treat as conclusive those certificates and determinations which the Documents state are to be so treated.
6. A receiver or receiver and manager appointed pursuant to the provisions of any Document, for certain purposes, may not be treated by a Court as being solely the agent of another party, notwithstanding any agreement to the contrary.
7. The ability to recover or claim for certain costs or expenses may be subject to judicial discretion.
8. With respect to any provisions of the Documents pursuant to which the parties to such Documents are permitted or required to submit a dispute arising out of such Documents to arbitration, we express no opinion as to the enforceability of such arbitration provisions in all circumstances since under the *Arbitration Act, 1991* (Ontario) a court of competent jurisdiction in Ontario may, in its discretion and upon certain grounds, refuse to stay judicial proceedings in which event an arbitration under such arbitration provisions may not be commenced or continued. In addition, the *Arbitration Act, 1991* (Ontario) provides that a court may hear an appeal of an arbitration award on a question of law, or set aside an arbitration award or declare it invalid, in each case on certain prescribed grounds.
9. Any requirement in any of the Documents that interest be paid at a higher rate after than before default may not be enforceable.
10. The effectiveness of provisions which purport to relieve a person from a liability or duty otherwise owed may be limited by law, and provisions requiring indemnification or reimbursement may not be enforced by a Court, to the extent that they relate to the failure of such person to perform such duty or liability.
11. No opinion is expressed as to the enforceability of any provision contained in any Document which purports to sever from the Document any provision therein which is prohibited or unenforceable under applicable law without affecting the enforceability or validity of the remainder of the document.
12. No opinion is expressed regarding any waiver of service of process, presentment, demand, protest or notice of dishonour which may be contained in any of the Documents.

13. Any award of costs is in the discretion of a Court of competent jurisdiction.
14. The enforceability of rights of indemnity set out in the Documents may be limited under applicable law to the extent that they directly or indirectly relate to liabilities imposed by law on Project Co for which it would be contrary to public policy to require Osler to indemnify Project Co or to the extent that they constitute the indirect enforcement of a foreign revenue or penal law.
15. The enforceability of each of the Documents, and any of the obligations of Osler under any of the Documents to which it is a party, is subject to and may be limited by public policy, or by general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing, the inherent jurisdiction of the Crown in its role as *parens patriae* and the inherent jurisdiction of the court in matters of charity, the role of the Public Guardian and Trustee as overseer of Osler as a trustee under the *Trustee Act* (Ontario) and the possible unavailability of specific performance, injunctive relief or other equitable remedies. Without limiting the generality of the foregoing, the availability of any particular remedy is subject to the discretion of the court.
16. Any approval given or deemed to have been given under the *Public Hospitals Act* (Ontario) in respect of a hospital may be suspended by the Minister of Health and Long-Term Care or revoked by the Lieutenant Governor in Council if the Minister of Health in Council, as the case may be, considers it in the public interest to do so.

This opinion is being delivered solely in connection with the transaction addressed herein and may not be relied upon by any person other than the addressees, and their successors and permitted assigns, or for any purpose other than the transaction addressed herein.

Yours very truly,

**BORDEN LADNER GERVAIS LLP**

**SCHEDULE 3**

**CUSTODY AGREEMENT**

**THIS AGREEMENT** is made as of the 28<sup>th</sup> day of May, 2014.

**BETWEEN:**

**WILLIAM OSLER HEALTH SYSTEM**, a non-share capital corporation incorporated under the laws of Ontario.

(“**Osler**”)

**AND:**

**PLENARY HEALTH PEEL LP, [REDACTED]**

(“**Project Co**”)

**AND:**

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

(the “**Custodian**”)

**AND:**

**BNY TRUST COMPANY OF CANADA**, in its capacity as collateral trustee under the Common Terms Agreement

(the “**Lenders’ Agent**”)

**WHEREAS:**

- A. Osler and Project Co (collectively, the “**PA Parties**” and each, a “**PA Party**”) have entered into the Project Agreement.
- B. Pursuant to the terms of the Project Agreement, the PA Parties wish to appoint the Custodian, and the Custodian wishes to accept such appointment, to perform certain services in connection with the Project Agreement.
- C. The PA Parties and the Custodian wish to enter into this Custody Agreement in order to record the terms by which the Custodian shall perform such services.

**NOW THEREFORE** in consideration of the mutual covenants and agreements of the PA Parties and the Custodian herein contained and for other good and valuable consideration, the

receipt and sufficiency of which are hereby acknowledged, the PA Parties and the Custodian covenant and agree as follows:

## **1. Definitions**

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

- (a) "**Common Terms Agreement**" has the meaning given in the Project Agreement.
- (b) "**Custodian**" has the meaning given in the preamble.
- (c) "**Lenders' Agent**" has the meaning given in the preamble.
- (d) "**Material**" means hard and electronic copies of the Financial Model.
- (e) "**Osler**" has the meaning given in the preamble.
- (f) "**Osler Signatory**" has the meaning given in Section 6(a)(i).
- (g) "**PA Parties**" means both Osler and Project Co, and "**PA Party**" means either Osler or Project Co, as the context requires.
- (h) "**Party**" means Osler, the Custodian, Project Co or the Lenders' Agent, and "**Parties**" means Osler, the Custodian, Project Co and the Lenders' Agent.
- (i) "**Project Agreement**" means the project agreement made on or about the 26<sup>th</sup> day of May, 2014 between Osler and Project Co.
- (j) "**Project Co**" has the meaning given in the preamble.
- (k) "**Project Co Signatory**" has the meaning given in Section 6(a)(ii).
- (l) "**Step-Out Date**" has the meaning given in Section 14(e).

## **2. Interpretation**

This Custody Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Custody Agreement are for convenience of reference only, shall not constitute a part of this Custody Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Custody Agreement.

- (b) Unless the context otherwise requires, references to specific Sections, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Paragraphs, Subparagraphs, or divisions of this Custody Agreement and the terms “Section” and “Section” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Custody Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Custody Agreement shall bear their natural meaning.
- (g) References containing terms such as:
  - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Custody Agreement taken as a whole; and
  - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (h) In construing this Custody Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this Custody Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Custody Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the

last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.

- (j) Where this Custody Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Brampton, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Custody Agreement they shall be construed and interpreted as synonymous and to read “shall”.

### **3. Project Co’s Duties and Warranties**

- (a) Osler will, together with Project Co, verify the identity and consistency of two copies of the Material, which shall be delivered by Project Co to the Custodian on the date of this Custody Agreement.
- (b) Project Co shall at all times ensure that the Material as delivered to the Custodian is capable of being used to generate the latest version of the Financial Model issued to Osler and shall deliver further copies of the Material to the Custodian as and when necessary.
- (c) Upon creation of any new versions of the Financial Model and within 30 days from receipt of a notice served upon it by the Custodian under the provisions of Section 4(a)(v), the replacement copy of the Material shall be verified by the PA Parties in accordance with Section 3(a) and delivered by Project Co to the Custodian.
- (d) Project Co warrants that:
  - (i) it owns the Intellectual Property Rights in the Material and has authority to enter into this Custody Agreement;
  - (ii) the use of the Materials by Osler under the terms of this Custody Agreement shall not infringe any Intellectual Property Rights of any person; and
  - (iii) the Material delivered under Section 3(a) shall contain all information in human-readable form and on suitable media to enable a reasonably skilled programmer or analyst to understand, maintain and correct the Material without the assistance of any other person.

### **4. Custodian’s Duties**

- (a) The Custodian shall:

- (i) hold in safe custody all versions of the Financial Model delivered to it pursuant to the terms hereof, and the provisions of this Custody Agreement shall apply (with any necessary changes being made) to any revised Financial Model;
  - (ii) hold the Material in a safe and secure environment;
  - (iii) inform Project Co and Osler of the receipt of any copy of the Material;
  - (iv) at all times retain a copy of the latest verified deposit of the Material; and
  - (v) promptly notify Project Co and Osler if it becomes aware at any time during the term of this Custody Agreement that any copy of the Material held by it has been lost, damaged or destroyed.
- (b) The Custodian shall not be responsible for procuring the delivery of the Material in the event of failure by Project Co to do so.
- (c) In accordance with Section 10, the Custodian shall allow the PA Parties, the Lenders' Agent, and the auditor retained by the Lenders' Agent to inspect and audit the Financial Model from time to time.

## **5. Payment**

- (a) In consideration of the Custodian performing the services contemplated by this Custody Agreement, Project Co shall pay the Custodian's fees as agreed from time to time between the Custodian and Project Co.

## **6. Release Events**

- (a) The Custodian shall hold the Material to the order of the PA Parties and shall honour the instructions and signatures of:
- (i) the President and CEO and designated signing officers of Osler or such other person nominated by it and notified to the Custodian and Project Co in writing (the "**Osler Signatory**"); and
  - (ii) the President, any Vice President and designated signing officers of the general partner of Project Co or such other person nominated by it and notified to the Custodian and Osler in writing (the "**Project Co Signatory**");

and shall, subject to Section 6(b), upon receiving signed joint instructions from the Osler Signatory and the Project Co Signatory, release one copy of the Material to the person either named in such instructions or previously identified in writing by the Osler Signatory and the Project Co Signatory.



- (b) The PA Parties each agree that they shall give joint instructions to the Custodian for the release of the Material, in accordance with Section 6(a), on each occasion that the Material is required to be released pursuant to the Project Agreement or that the Material must be released to allow the Material to be maintained and/or corrected.
- (c) The Custodian shall release the Material to a duly authorized officer of Osler on any termination of the Project Agreement prior to the Expiry Date.

**7. Records**

- (a) The PA Parties shall be entitled, at reasonable hours and upon giving the Custodian reasonable notice, to inspect any records kept by the Custodian in accordance with this Custody Agreement.

**8. Confidentiality**

- (a) The Material shall remain the confidential property of Project Co and, in the event that the Custodian provides a copy of the Material to Osler, Osler shall be permitted to use the Material only in accordance with the intellectual property and confidentiality obligations in the Project Agreement.
- (b) The Custodian agrees for itself, its directors, officers, employees, subcontractors and agents, to maintain all information and/or documentation in whatever form coming into its possession or to its knowledge under or in connection with this Custody Agreement in strictest confidence and secrecy. The Custodian further agrees not to make use of such information and/or documentation other than for the purposes of this Custody Agreement and will not disclose or release it other than in accordance with the terms of this Custody Agreement.
- (c) In the event that the Material is released under Section 6, Osler shall:
  - (i) use the Material only for the purpose of understanding, maintaining and correcting the Financial Model exclusively on behalf of Osler;
  - (ii) not use the Material for any other purpose nor disclose it to any person, save such of its employees or contractors who need to know the same in order to understand, maintain and correct the Financial Model exclusively on behalf of Osler;
  - (iii) hold all media containing the Material in a safe and secure environment when not in use; and
  - (iv) forthwith destroy the same should Osler cease to be entitled to use the Financial Model.

- (d) The Parties acknowledge that federal and/or provincial legislation that addresses the protection of individuals' personal information (collectively, "**Privacy Laws**") may apply to obligations and activities under this Custody Agreement. Despite any other provision of this Custody Agreement, no Party shall take or direct any action that would contravene, or cause the other to contravene, applicable Privacy Laws. Project Co, the Lenders' Agent and Osler shall, prior to transferring or causing to be transferred personal information to the Custodian, obtain and retain required consents of the relevant individuals to the collection, use and disclosure of their personal information, or shall have determined that such consents either have previously been given upon which the Parties can rely or are not required under the Privacy Laws. The Custodian shall use commercially reasonable efforts to ensure that its services hereunder comply with Privacy Laws. Specifically, the Custodian agrees: (a) to have a designated chief privacy officer; (b) to maintain policies and procedures to protect personal information and to receive and respond to any privacy complaint or inquiry; (c) to use personal information solely for the purposes of providing its services under or ancillary to this Custody Agreement and not to use it for any other purpose except with the consent of or direction from Project Co or Osler or the individual involved; (d) not to sell or otherwise improperly disclose personal information to any third party; and (e) to employ administrative, physical and technological safeguards to reasonably secure and protect personal information against loss, theft, or unauthorized access, use or modification.

**9. Intellectual Property Rights**

- (a) The release of the Material to Osler and to the Custodian will not act as an assignment of any Intellectual Property Rights that Project Co possesses in the Material.

**10. Inspection**

- (a) Subject to the following provisions of this Section 10, the Custodian shall bear no obligation or responsibility to any person, firm, company or entity whatsoever to determine the existence, relevance, completeness, accuracy, effectiveness or any other aspect of the Financial Model.
- (b) The PA Parties shall be entitled, at reasonable hours and upon giving the Custodian reasonable notice, to inspect and audit or to procure the inspection and audit of the Financial Model in accordance with this Section 10.
- (c) The Custodian shall, upon receiving duly signed instructions from both of the PA Parties (but only upon receiving such instructions), provide facilities for Osler and/or Project Co and/or such person identified in the duly signed written instructions to inspect and audit the Financial Model.
- (d) The Custodian shall maintain a record of any inspection and audit made pursuant to Section 10(b), including details of the person who made the inspection and/or audit and the date of the same.

**11. Custodian's Liability**

- (a) The Custodian shall not be liable for any loss or damage caused to Project Co or Osler either jointly or severally except to the extent that such loss or damage is caused by the negligent acts or omissions of or a breach of any contractual duty by the Custodian, its employees, agents or sub-contractors, and in such event, the Custodian's total liability in respect of all claims arising under or by virtue of this Custody Agreement shall not (except in the case of claims for personal injury or death) exceed the sum of \$[REDACTED] (index-linked).
- (b) The Custodian shall in no circumstances be liable to Project Co or Osler for indirect or consequential loss of any nature whatsoever whether for loss of profit, loss of business or otherwise.
- (c) Subject to complying with the provisions of Section 6, and save in the case of manifest error, the Custodian shall be protected in acting upon any written request, waiver, consent, receipt or other document furnished to it pursuant to this Custody Agreement, not only in assuming its due execution and the validity and effectiveness of its provisions but also as to the truth and acceptability of any information contained in it, which the Custodian in good faith believes to be genuine and what it purports to be.
- (d) The duties, responsibilities and obligations of the Custodian shall be limited to those expressly set forth herein and no duties, responsibilities or obligations shall be inferred or implied. The Custodian shall not be subject to, nor required to comply with, any other agreement between or among any or all of the other Parties or to which any Party is a party, even though reference thereto may be made herein, or to comply with any direction or instruction (other than those contained herein or delivered in accordance herewith). The Custodian shall not be required to expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder except ordinary corporate costs incurred in the performance of such duties.
- (e) If at any time the Custodian is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Material (including, but not limited to, orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of property), the Custodian is authorized to comply therewith in any manner as it or its legal counsel deems appropriate, acting reasonably; provided that the Custodian, when so served, shall promptly notify Project Co and Osler, in writing, of such process and the Custodian's intended action in order to provide Project Co and Osler a reasonable opportunity to intervene or challenge such process in a court or tribunal of competent jurisdiction.
- (f) The Custodian may consult with legal counsel at the expense of Project Co and Osler as to any matter relating to this Custody Agreement, and the Custodian shall not incur any liability in acting in good faith in accordance with any advice from such counsel. All

reasonable fees and disbursements incurred by the Custodian shall be added to the fees otherwise payable hereunder.

- (g) The Custodian shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Custodian (including, but not limited to, any act or provision of any present or future law or regulation or governmental authority, any act of God or war, or the unavailability of any wire or communication facility).
- (h) The Custodian shall not be responsible in any respect for the form or content of the Material delivered to it hereunder.
- (i) In the event of any ambiguity or uncertainty hereunder or in any notice, instruction or other communication received by the Custodian hereunder, the Custodian shall notify Project Co and Osler in writing of such ambiguity or uncertainty and request instructions to eliminate such ambiguity or uncertainty. The Custodian may, acting reasonably, refrain from taking any action other than to retain possession of the Material, unless the Custodian receives written instructions, signed by Project Co and Osler, which eliminates such ambiguity or uncertainty.
- (j) In the event of any dispute between or conflicting claims by or among the PA Parties and/or any other person or entity with respect to the Material, the Custodian shall be entitled, acting reasonably, to refuse to comply with any and all claims, demands or instructions with respect to the Material so long as such dispute or conflict shall continue, and the Custodian shall promptly notify Project Co and Osler of its intention to do so. In such circumstances, the Custodian shall not be or become liable in any way to Project Co or Osler for failure or refusal to comply with such conflicting claims, demands or instructions. The Custodian shall be entitled to refuse to act until, acting reasonably, either (i) such conflicting or adverse claims or demands shall have been determined by a final order, judgment or decree of a court of competent jurisdiction, which order, judgment or decree is not subject to appeal, or settled by agreement between the conflicting parties as evidenced in writing satisfactory to the Custodian or (ii) the Custodian shall have received security or an indemnity satisfactory to it acting reasonably sufficient to hold it harmless from and against any and all losses which it may incur by reason of so acting. The Custodian may, in addition, elect, acting reasonably, to commence an interpleader action or seek other judicial relief or orders as it may deem, acting reasonably, necessary, including, without limiting the generality of the foregoing, depositing all or any part of the Material into court. The costs and expenses (including reasonable attorneys' fees and expenses) incurred in connection with such proceeding shall be paid by, and shall be deemed a joint and several obligation of, Project Co and Osler.
- (k) Each of Project Co and Osler shall provide to the Custodian an incumbency certificate setting out the names and sample signatures of persons authorized to give instructions to

the Custodian hereunder. The Custodian shall be entitled to rely on such certificate until a revised certificate is provided to it hereunder. The Custodian shall be entitled to refuse to act upon any instructions given by a party which are signed by any person other than a person described in the incumbency certificate provided to it pursuant to this section.

- (l) The Custodian shall be entitled to rely, and act upon, on any direction, order, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile transmission.
- (m) This Section 11 shall survive the termination of this Custody Agreement.

## **12. Indemnity**

- (a) Save for any claim falling within the provisions of Section 11(a), Project Co and Osler, on a joint and several basis, shall be liable for and shall indemnify and hold harmless the Custodian, and its officers, directors and employees, from and against any and all claims, losses, liabilities, costs, damages or expenses (including reasonable attorneys' fees and expenses) arising from or in connection with or related to this Custody Agreement or acting as Custodian hereunder (including, but not limited to, losses incurred by the Custodian in connection with its successful defence of any claim of negligence or willful misconduct on its part), provided, however, that nothing contained herein shall require the Custodian to be indemnified for losses caused by its negligence or willful misconduct.

## **13. Termination**

- (a) The Custodian may terminate this Custody Agreement for failure by Project Co to pay any outstanding fee provided for herein within 30 days of receipt of written notice in respect thereof.
- (b) The Custodian may terminate this Custody Agreement by giving 120 days prior written notice to Project Co and Osler. In that event, Project Co and Osler shall appoint a mutually acceptable new custodian on terms similar to those contained in this Custody Agreement.
- (c) If the Custodian is not notified of the new custodian within the notice period given in Section 13(b), the Custodian will destroy the Material.
- (d) Osler may terminate this Custody Agreement by giving 30 days prior written notice to the Custodian and Project Co.
- (e) Project Co may, with the prior written consent of Osler, terminate this Custody Agreement by giving 30 days prior written notice to the Custodian and Osler.
- (f) This Custody Agreement shall terminate upon release of the Material to Osler in accordance with Section 6(c).

- (g) Upon termination under the provisions of Sections 13(d) or 13(e), the Custodian will deliver the Material to Project Co. If the Custodian is unable to trace Project Co within 60 days of writing to the last registered address notified by Project Co to the Custodian, the Custodian will destroy the Material.
- (h) Upon termination under the provisions of Section 13(a), the Material will be available for collection by Project Co from the Custodian for 60 days from the date of termination. After such 60-day period, the Custodian will destroy the Material.
- (i) The Custodian may forthwith terminate this Custody Agreement and destroy the Material if it is unable to trace Project Co within 60 days of writing to the last registered address notified by Project Co to the Custodian having used all reasonable endeavours to do so.
- (j) The provisions of Sections 8, 11 and 12 shall continue in full force and effect after termination of this Custody Agreement.
- (k) The Agreement shall terminate on the Expiry Date, at which time Project Co will write to the Custodian requesting the release of the Materials to it. The Custodian agrees that it will notify Osler of Project Co's request and, failing receipt of any notice of objection from Osler within 30 days of the receipt of the notice by Osler, it shall release the Materials to Project Co.
- (l) On termination of this Custody Agreement, Project Co shall remain liable to the Custodian for payment in full of any fee which has become due but which has not been paid as at the date of termination.

**14. Step-In Rights**

- (a) The Custodian shall, from time to time:
  - (i) permit Osler to perform or discharge any obligation of Project Co under this Custody Agreement, where Project Co is in breach of the same;
  - (ii) permit Project Co to perform or discharge any obligation of Osler under this Custody Agreement, where Osler is in breach of the same; and
  - (iii) following notification by the Lenders' Agent (who at the same time shall provide a copy of any such notification to Osler), permit the Lenders' Agent or another person specified in such notice with effect from the date specified in the same to perform or discharge all the obligations of Project Co under this Custody Agreement, provided that the Lenders' Agent shall have the benefit of and be entitled to enforce against the Custodian any and all of the Custodian's obligations to Project Co under this Custody Agreement and the Custodian undertakes to perform such obligations in favour of the Lenders' Agent.

- (b) Project Co consents to the performance or discharge of its obligations by Osler pursuant to Section 14(a)(i).
- (c) Osler consent to the performance or discharge of their obligations by Project Co pursuant to Section 14(a)(ii).
- (d) The PA Parties consent to the performance or discharge of Project Co’s obligations by the Lenders’ Agent pursuant to Section 14(a)(iii).
- (e) Osler or the Lenders’ Agent shall be entitled to terminate the Lenders’ Agent’s obligations pursuant to Section 14(a)(iii) on giving the Custodian prior notice (Osler or the Lenders’ Agent at the same time shall provide a copy of any such notification to Osler) of at least 15 Business Days. On and from the date of expiry of such notice (the “**Step-Out Date**”), the Lenders’ Agent shall be automatically released from all obligations pursuant to this Custody Agreement, except for any which have fallen due for performance or discharge on or before the Step-Out Date and which have not been fully and unconditionally performed or discharged.
- (f) The occurrence of the Step-Out Date shall not affect the continuation of Project Co’s obligations towards the Custodian under this Custody Agreement.
- (g) The Lenders’ Agent is a Party to this Custody Agreement solely for the purposes of taking the benefit of its rights under Section 4(c) of this Custody Agreement and this Section 14 and shall have no rights or obligations or liabilities hereunder, except pursuant to the operation of Section 4(c) of this Custody Agreement and this Section 14.

**15. Assignment**

- (a) This Custody Agreement shall be binding on, and enure to the benefit of, the Custodian, Project Co and Osler and their respective successors and permitted transferees and assigns.
- (b) Project Co may assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person to whom Project Co assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 56.1 of the Project Agreement.
- (c) Osler may assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person to whom Osler assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 56.2 of the Project Agreement.
- (d) The Custodian shall not, without the prior written consent of the PA Parties assign, transfer or otherwise dispose of the benefit of this Custody Agreement to any person.
- (e) The Custodian acknowledges that Project Co has granted a security interest over its rights under this Custody Agreement to the Lenders’ Agent.

**16. Notices**

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

If to Osler: [REDACTED]

Tel: [REDACTED]  
Fax: [REDACTED]  
Attn: [REDACTED]

If to Project Co: [REDACTED]

Fax: [REDACTED]  
Attn.: [REDACTED]

If to the Custodian: [REDACTED]

Fax: [REDACTED]  
Attn.: [REDACTED]

If to the Lenders’ Agent: [REDACTED]

Fax: [REDACTED]  
Attn.: [REDACTED]

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party’s failure to comply with this Section 16(b).
- (c) Any Party to this Custody Agreement may, from time to time, change any of its contact information set forth in Section 16(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party’s receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 16(e), 16(f) and 16(g):
- (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;



- (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 16.
- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

**17. Amendments**

- (a) This Custody Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Custody Agreement.

**18. Waiver**

- (a) No waiver made or given by a Party under or in connection with this Custody Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

**19. Relationship Between the Parties**

- (a) The Parties are independent contractors. This Custody Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint

venturers, trustee and beneficiary, employer and employee, master and servant, or principal and agent.

**20. Entire Agreement**

- (a) Except where provided otherwise in this Custody Agreement, this Custody Agreement and the Project Agreement constitute the entire agreement between the Parties in connection with the subject matter of this Custody Agreement and supersede all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Custody Agreement.

**21. Severability**

- (a) Each provision of this Custody Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Custody Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Custody Agreement. If any such provision of this Custody Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Custody Agreement as near as possible to its original intent and effect.

**22. Enurement**

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

**23. Governing Law and Jurisdiction**

- (a) This Custody Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Custody Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

**24. Further Assurance**

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

**25. Language of Agreement**

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

**26. Proof of Authority**

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

**27. Counterparts**

- (a) This Custody Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to such Party an original signed copy of this Custody Agreement which was so faxed.

***Remainder of this Page Intentionally Left Blank***

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

**WILLIAM OSLER HEALTH SYSTEM**

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

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

I/We have authority to bind the corporation.

**PLENARY HEALTH PEEL LP, [REDACTED]**

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

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

I/We have authority to bind the corporation.

**COMPUTERSHARE TRUST COMPANY OF  
CANADA**

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

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

I/We have authority to bind the corporation.

**BNY TRUST COMPANY OF CANADA**

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

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

I/We have authority to bind the corporation.

**SCHEDULE 4**

**LENDERS' DIRECT AGREEMENT**

**THIS AGREEMENT** is made as of the 28<sup>th</sup> day of May, 2014.

**BETWEEN:**

**WILLIAM OSLER HEALTH SYSTEM**, a non-share capital corporation incorporated under the laws of Ontario.

(“Osler”)

- AND -

**BNY TRUST COMPANY OF CANADA**, in its capacity as collateral trustee under the Common Terms Agreement

(the “Lenders’ Agent”)

- AND -

**PLENARY HEALTH PEEL LP, [REDACTED]**

(“Project Co”)

**WHEREAS:**

- A. Osler and Project Co have entered into the Project Agreement.
- B. The overriding priorities of Osler in entering into and implementing the Project Agreement are the health and safety of the patients of the Facility, their healthcare needs and the provision of first-rate healthcare services.
- C. Under the Lending Agreements, financing is to be provided to Project Co by the Lenders to finance the Project Operations, conditional on, among other things, Project Co granting the Security to the Lenders’ Agent.
- D. The Lenders’ Agent has agreed to enter into this lenders’ direct agreement (the “Lenders’ Direct Agreement”) with Osler in relation to the Security, the exercise of its rights under the Security Documents and the remedying of breaches by Project Co under the Project Agreement.
- E. Project Co, the Lenders’ Agent and the Lenders recognize and understand that Osler is a public hospital under the *Public Hospitals Act* (Ontario) and is, therefore, subject to a highly regulated legal and operational environment.

F. With a view to ensuring that Osler is able to properly and effectively discharge its duties, functions and responsibilities under Applicable Law, Project Co, the Lenders' Agent and the Lenders commit to working collaboratively, responsibly and cooperatively with Osler throughout the Project Term.

**NOW THEREFORE** in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

**1. Definitions**

In this Lenders' Direct Agreement, unless the context otherwise requires:

- (a) **"Affiliate"** has the meaning given in the Project Agreement.
- (b) **"Appointed Representative"** means any of the following to the extent so identified in an Appointed Representative Notice:
  - (i) the Lenders' Agent, any Lender or any of their Affiliates;
  - (ii) a receiver or receiver and manager of Project Co appointed under the Security Documents;
  - (iii) a trustee in bankruptcy or court-appointed receiver of Project Co;
  - (iv) an administrator of Project Co;
  - (v) a person directly or indirectly owned or controlled by the Lenders' Agent and/or any of the Lenders; or
  - (vi) any other person approved by Osler (such approval not to be unreasonably withheld or delayed).
- (c) **"Appointed Representative Notice"** has the meaning given in Section 8(b).
- (d) **"Business Day"** has the meaning given in the Project Agreement.
- (e) **"Common Terms Agreement"** has the meaning given in the Project Agreement.
- (f) **"Construction Contract"** has the meaning given in the Project Agreement.
- (g) **"Construction Contractor"** has the meaning given in the Project Agreement.
- (h) **"Default Notice"** has the meaning given in Section 7(b)(i).
- (i) **"Direct Agreements"** has the meaning given in the Project Agreement.

- (j) “**Enforcement Action**” means any acceleration of amounts due and owing to the Lenders under any of the Lending Agreements and/or any enforcement proceeding or enforcement action commenced or taken under any of the Security Documents.
- (k) “**Enforcement Event**” means an event of default as defined in the Lending Agreements, or any other event which permits an Enforcement Action.
- (l) “**Exercise Date**” has the meaning given in Section 12(b).
- (m) “**Facility**” has the meaning given in the Project Agreement.
- (n) “**Failure Points**” has the meaning given in the Project Agreement.
- (o) “**Funding Account**” means [REDACTED].
- (p) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (q) “**Indebtedness Notice**” has the meaning given in Section 7(b)(ii).
- (r) “**Lender Representative**” means a representative (which may be the Lenders’ Agent) acting as agent or trustee for and on behalf of all of the lenders lending to a Suitable Substitute.
- (s) “**Lenders**” has the meaning given in the Project Agreement.
- (t) “**Lenders’ Agent**” has the meaning given in the preamble.
- (u) “**Lenders’ Direct Agreement**” means this lenders’ direct agreement.
- (v) “**Lending Agreements**” has the meaning given in the Project Agreement.
- (w) “**Longstop Date**” has the meaning given in the Project Agreement.
- (x) “**Monitoring Notice**” has the meaning given in the Project Agreement.
- (y) “**Notice Period**” means the period starting on the date of delivery of a Default Notice and ending 120 days later.
- (z) “**Novation Date**” has the meaning given in Section 10(a).
- (aa) “**Novation Notice**” has the meaning given in Section 10(a).
- (bb) “**Osler**” has the meaning given in the preamble.



- (cc) **“Osler Project Documents”** means the Project Agreement and all other documents to which both Osler and Project Co are parties pursuant to or in connection with the Project Agreement.
- (dd) **“Party”** means any of Osler, Project Co or the Lenders’ Agent, and **“Parties”** means all of Osler, Project Co and the Lenders’ Agent.
- (ee) **“person”** has the meaning given in the Project Agreement.
- (ff) **“Proceeds Account”** means [REDACTED].
- (gg) **“Project”** has the meaning given in the Project Agreement.
- (hh) **“Project Agreement”** means the project agreement made on or about the 26<sup>th</sup> day of May, 2014 between Osler and Project Co.
- (ii) **“Project Co”** has the meaning given in the preamble.
- (jj) **“Project Co Event of Default”** has the meaning given in the Project Agreement.
- (kk) **“Project Co Party”** has the meaning given in the Project Agreement.
- (ll) **“Project Documents”** has the meaning given in the Project Agreement.
- (mm) **“Project Operations”** has the meaning given in the Project Agreement.
- (nn) **“Province”** has the meaning given in the Project Agreement.
- (oo) **“Refinancing”** has the meaning given in the Project Agreement.
- (pp) **“Restricted Person”** has the meaning given in the Project Agreement.
- (qq) **“Scheduled Substantial Completion Date”** has the meaning given in the Project Agreement.
- (rr) **“Security”** means the security interests granted by Project Co to the Lenders’ Agent pursuant to the Security Documents.
- (ss) **“Security Documents”** means all documents pursuant to which security is granted to the Lenders (or any trustee or agent thereof, including the Lenders’ Agent) pursuant to or in connection with the Lending Agreements, including but not limited to:  
  
[REDACTED].
- (tt) **“Service Contract”** has the meaning given in the Project Agreement.

- (uu) “**Service Provider**” has the meaning given in the Project Agreement.
- (vv) “**Step-In Date**” means the date on which Osler receives a Step-In Notice from the Lenders’ Agent.
- (ww) “**Step-In Notice**” means the notice given by the Lenders’ Agent to Osler pursuant to Section 8(a) stating that the Lenders’ Agent is exercising its step-in rights under this Lenders’ Direct Agreement.
- (xx) “**Step-In Period**” means the period from the Step-In Date up to and including the earlier of:
  - (i) the Step-Out Date;
  - (ii) the Termination Date (provided that Osler has complied with its obligations in Section 7 of this Lenders’ Direct Agreement);
  - (iii) the date that a transfer of Project Co’s rights and obligations under the Osler Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective; and
  - (iv) if the Step-In Date occurs prior to the Substantial Completion Date, the earlier of:
    - A. the date falling 180 days after the Longstop Date, or
    - B. the date falling two years after the Step-In Date.
- (yy) “**Step-Out Date**” means the date falling 30 days after the date on which Osler receives a Step-Out Notice.
- (zz) “**Step-Out Notice**” has the meaning given in Section 9(a).
- (aaa) “**Subsequent Indebtedness Notice**” has the meaning given in Section 7(c).
- (bbb) “**Substantial Completion Date**” has the meaning given in the Project Agreement.
- (ccc) “**Suitable Substitute**” means a person, approved in writing by Osler in accordance with Sections 10(b) and 10(c), which:
  - (i) has the legal capacity, power and authority to become a party to and perform the obligations of Project Co under the Osler Project Documents; and
  - (ii) employs individuals having the appropriate qualifications, experience and technical competence, and having the resources available to it (including

committed financial resources and subcontracts) that are sufficient to enable it to perform the obligations of Project Co under the Osler Project Documents.

- (xx) “**Termination Date**” has the meaning given in the Project Agreement.
- (ddd) “**Warning Notice**” has the meaning given in the Project Agreement.
- (eee) “**Works**” has the meaning given in the Project Agreement.

## **2. INTERPRETATION**

This Lenders’ Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Lenders’ Direct Agreement are for convenience of reference only, shall not constitute a part of this Lenders’ Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Lenders’ Direct Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Lenders’ Direct Agreement.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Lenders’ Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Lenders’ Direct Agreement shall bear their natural meaning.
- (g) References containing terms such as:

- (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Lenders’ Direct Agreement taken as a whole; and
  - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (h) In construing this Lenders’ Direct Agreement, the rule known as the *ejusdem generis rule* shall not apply nor shall any similar rule or approach to the construction of this Lenders’ Direct Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Lenders’ Direct Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Lenders’ Direct Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Lenders’ Direct Agreement they shall be construed and interpreted as synonymous and to read “shall”.

### 3. CONFLICT OF DOCUMENTS

In the event of any ambiguity, conflict or inconsistency between the provisions of this Lenders’ Direct Agreement, the Project Agreement and either of the Direct Agreements, the provisions of this Lenders’ Direct Agreement shall prevail and govern to the extent of such ambiguity, conflict or inconsistency.

**4. TERM**

- (a) This Lenders' Direct Agreement shall terminate automatically on the earliest of:
  - (i) the date on which all amounts which may be or become owing to the Lenders under the Lending Agreements have been irrevocably paid in full;
  - (ii) the Termination Date (provided that Osler has complied with its obligations in Section 7 of this Lenders' Direct Agreement); and
  - (iii) the date that any transfer of Project Co's rights and obligations under the Osler Project Documents to a Suitable Substitute pursuant to Section 10 becomes effective and the agreements contemplated in Section 10(e)(iii) are executed and delivered by the parties thereto.
- (b) Within 30 days following its occurrence, the Lenders' Agent shall provide notice to Osler of the date referred to in Section 4(a)(i).

**5. AGREEMENTS AND SECURITY**

- (a) Project Co and the Lenders' Agent shall not amend or modify the Lending Agreements, or any of them, except where Project Co is permitted to do so pursuant to Section 7.3(a) of the Project Agreement.
- (b) Project Co represents and warrants that the Lending Agreements have been entered into and negotiated on an arm's length basis.
- (c) Project Co and Osler shall not amend or modify the Osler Project Documents (other than in accordance with the terms of those agreements) without the prior written consent of the Lenders' Agent, not to be unreasonably withheld or delayed, which consent shall not be withheld if the relevant amendment or modification shall not (i) materially adversely affect the ability of the Lenders to exercise their rights under the Security, (ii) materially adversely affect the value of the Security, or (iii) increase the liability of the Lenders or Project Co under the relevant agreement. The Lenders' Agent shall respond to any request for consent under this Section 5(c) within 30 days of receipt thereof.
- (d) Project Co acknowledges and consents to the arrangements set out in this Lenders' Direct Agreement, and agrees not to do or omit to do anything that may prevent any other Party from enforcing its rights under this Lenders' Direct Agreement.
- (e) The Lenders' Agent acknowledges having received a copy of the Project Agreement.

- (f) Osler acknowledges having received copies of the Lending Agreements, and confirms that they are in form and substance satisfactory to Osler as at the date of Financial Close.
- (g) Osler acknowledges notice of and consents to the Security, and confirms that it has not received notice of any other security interest granted over Project Co's rights under any of the Osler Project Documents.
- (h) Osler agrees that any enforcement by the Lenders' Agent of a security interest in the Equity Capital of Project Co granted in favour of the Lenders' Agent as part of the Security following an Enforcement Event shall not constitute a Change in Ownership, Change in Control or Project Co Event of Default under the Project Agreement.
- (i) Project Co and the Lenders' Agent hereby authorize and instruct Osler (and Osler agrees) to pay the Substantial Completion Payment to the Funding Account and all other sums payable to Project Co under the Project Agreement to the Proceeds Account and Project Co and Osler agree that upon the occurrence of an Enforcement Event, if so directed in writing by the Lenders' Agent upon giving reasonable notice, Osler shall pay any sum which it is obliged to pay to Project Co under the Project Agreement to a bank account specified by the Lenders' Agent.
- (j) Osler shall provide the Lenders' Agent with copies of any Warning Notice, Monitoring Notice or notice of default given to Project Co under the Project Agreement at the same time such notice is given to Project Co.
- (k) Prior to the irrevocable payment in full of all amounts owing to the Lenders under the Lending Agreements, Osler shall not take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of Project Co or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to Project Co.

**6. ENFORCEMENT OF SECURITY BY LENDERS' AGENT**

- (a) The Lenders' Agent shall promptly notify Osler of any Enforcement Event, any Enforcement Action, any notice from the Lenders to Project Co to accelerate the maturity of any amounts owing by Project Co to the Lenders under the Lending Agreements or any notice from the Lenders to Project Co to demand repayment of any amounts owing by Project Co to the Lenders under the Lending Agreements.
- (b) The Lenders' Agent may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Security Documents to a successor agent in accordance with the terms of the Lending Agreements except where:

- (i) such assignment, transfer or other disposition would constitute a Refinancing and the provisions of Schedule 28 - Refinancing to the Project Agreement have not been complied with in connection therewith; or
  - (ii) the person to whom such assignment, transfer or other disposition is to be made, or an Affiliate of such person, is a Restricted Person or a person whose standing or activities are inconsistent with Osler's role as a hospital, or may compromise Osler's reputation or integrity or the nature of the Province's health care system, so as to affect public confidence in that system.
- (c) Any Lender may assign, transfer or otherwise dispose of any right, title or interest it may have in, or rights or obligations it may have pursuant to, the Lending Agreements in accordance with the terms of the Lending Agreements.

**7. TERMINATION OF PROJECT AGREEMENT BY OSLER**

- (a) Subject only to the rights expressly afforded to the Lenders' Agent pursuant to, and the restrictions set forth in, this Section 7, Osler may, at any time, serve notice terminating the Project Agreement if it is entitled to do so under the terms of the Project Agreement.
- (b) At any time other than during the Step-In Period (with the restriction on termination during the Step-In Period set out in Section 7(d)), Osler shall not exercise any right it may have to terminate or serve notice terminating the Project Agreement for a Project Co Event of Default unless:
  - (i) Osler promptly delivers written notice (a "**Default Notice**") to the Lenders' Agent setting out the Project Co Event of Default in reasonable detail;
  - (ii) not later than 30 days after the date of a Default Notice, Osler delivers written notice (an "**Indebtedness Notice**") to the Lenders' Agent setting out:
    - A. all amounts owed by Project Co to Osler and any other existing liabilities and unperformed obligations of Project Co to Osler of which Osler is aware (having made reasonable enquiry), in each case, as of the date on which Osler sent the Default Notice; and
    - B. all amounts which will become owing by Project Co to Osler and any other liabilities and obligations of Project Co to Osler of which Osler is aware (having made reasonable enquiry), in each case, on or before the end of the Notice Period; and

- (iii) the Notice Period has expired and the Lenders' Agent has not delivered a Step-In Notice.
- (c) At any time after Osler sends an Indebtedness Notice but before Osler receives a Step-In Notice, if Osler discovers amounts that have become owing by Project Co to Osler or any other liabilities or obligations of Project Co to Osler that have come due but which were not included in the Indebtedness Notice, Osler shall deliver written notice (a "**Subsequent Indebtedness Notice**") to the Lenders' Agent setting out those amounts, liabilities or obligations.
- (d) During the Step-In Period, Osler shall not terminate the Project Agreement on grounds:
  - (i) that the Lenders' Agent has served a Step-In Notice or enforced any Security Document; or
  - (ii) arising prior to the Step-In Date of which Osler was aware (having made due inquiry) and whether or not continuing at the Step-In Date unless:
    - A. the grounds arose prior to the Substantial Completion Date, and the Substantial Completion Date does not occur on or before the date falling 180 days after the Longstop Date; or
    - B. the grounds arose after the Substantial Completion Date, and neither the Appointed Representative nor Project Co, as the case may be, is diligently proceeding to cure any breach of the Project Agreement that:
      - (1) arose prior to the Step-In Date;
      - (2) is continuing and capable of being cured; and
      - (3) would have entitled Osler to terminate the Project Agreement; or
    - C. the grounds (whenever they first arose) did not give rise to any right to terminate the Project Agreement until after the Step-In Date; or
  - (iii) arising solely in relation to Project Co.
- (e) Osler shall be entitled to terminate the Project Agreement by written notice to Project Co and the Appointed Representative:



- (i) if any amount referred to in Section 7(b)(ii)A has not been paid to Osler on or before the Step-In Date;
- (ii) if any amount referred to in Section 7(b)(ii)B has not been paid on or before the last day of the Notice Period;
- (iii) if amounts included in a Subsequent Indebtedness Notice have not been paid on or before the date falling 30 days after the date on which the Subsequent Indebtedness Notice is delivered to the Lenders' Agent; or
- (iv) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement, provided that, except as otherwise provided in Section 10, Failure Points and/or Warning Notices that arose prior to the Step-In Date shall not be taken into account during the Step-In Period but such Failure Points and Warning Notices (to the extent applicable under the terms of the Project Agreement) shall be taken into account after the Step-Out Date.

**8. STEP-IN RIGHTS**

- (a) Subject to Section 8(b) and without prejudice to rights of the Lenders' Agent to enforce the Security, the Lenders' Agent may give Osler a Step-In Notice at any time:
  - (i) during which a Project Co Event of Default is subsisting (whether or not a Default Notice has been served);
  - (ii) during the Notice Period; or
  - (iii) during which an Enforcement Event is subsisting.
- (b) At least 5 Business Days before the Lenders' Agent delivers a Step-In Notice, the Lenders' Agent shall deliver written notice (an “**Appointed Representative Notice**”) to Osler of:
  - (i) its intention to deliver a Step-In Notice; and
  - (ii) the identity of its proposed Appointed Representative.
- (c) Upon issuance of a Step-In Notice, the Appointed Representative shall assume, jointly with Project Co, all of Project Co's rights under the Osler Project Documents.
- (d) During the Step-In Period, Osler shall deal with the Appointed Representative instead of Project Co in connection with all matters related to the Osler Project

Documents. Project Co agrees to be bound by all such dealings between Osler and the Appointed Representative to the same extent as if they had been between Osler and Project Co.

**9. STEP-OUT RIGHTS**

- (a) The Appointed Representative may, at any time during the Step-In Period, deliver written notice (a “**Step-Out Notice**”) to Osler to terminate the Step-In Period on the Step-Out Date.
- (b) On expiry of the Step-In Period:
  - (i) the rights and obligations of the Appointed Representative in relation to Osler under the Osler Project Documents arising prior to the expiry of the Step-In Period will be assumed by Project Co to the exclusion of the Appointed Representative;
  - (ii) Osler will no longer deal with the Appointed Representative and will deal with Project Co in connection with all matters related to the Osler Project Documents; and
  - (iii) the Appointed Representative and Osler shall be and hereby are released from all obligations and liabilities to one another under the Osler Project Documents.
- (c) There will not be more than one Step-In Period in respect of any one Default Notice.

**10. NOVATION TO SUITABLE SUBSTITUTE**

- (a) Subject to Section 10(b), at any time:
  - (i) after an Enforcement Event has occurred;
  - (ii) during the Notice Period; or
  - (iii) during the Step-In Period,

the Lenders’ Agent may deliver to Osler and any Appointed Representative written notice (a “**Novation Notice**”) that it wishes to transfer Project Co’s rights and obligations under the Osler Project Documents to a proposed transferee, together with all information reasonably necessary for Osler to decide whether the proposed transferee is a Suitable Substitute. The Novation Notice shall specify a Business Day not less than 30 days from the date on which Osler receives the Novation Notice (“**Novation Date**”) for the transfer of Project Co’s rights and

obligations under the Osler Project Documents to the proposed transferee in accordance with the provisions of Section 10(e).

- (b) Osler shall promptly notify the Lenders' Agent of any additional information it requires in order to assess whether the proposed transferee is a Suitable Substitute. Osler shall notify the Lenders' Agent, in writing, as to whether the person to whom the Lenders' Agent proposes to transfer Project Co's rights and liabilities under the Osler Project Documents is approved by Osler as a Suitable Substitute, on or before the date falling 30 days after the later of the date of receipt by Osler of the Novation Notice and the date of receipt of any additional information requested by Osler. For greater certainty, if Osler fails to respond within such period, Osler shall be deemed not to have approved the proposed transferee.
- (c) Osler shall not unreasonably withhold or delay its approval of a proposed transferee as a Suitable Substitute, but it shall, without limitation, be reasonable for Osler to withhold its approval if:
  - (i) there are unremedied breaches under the Project Agreement which are capable of being remedied by the Appointed Representative or the Suitable Substitute and there is no rectification plan acceptable to Osler, acting reasonably, in respect of such breaches;
  - (ii) the proposed transferee is a Restricted Person or other person who is not permitted to be a Project Co Party pursuant to the Project Agreement; or
  - (iii) the proposed security interests to be granted by the Suitable Substitute to the Lender Representative are materially different from the Security, materially adversely affect the ability of the Suitable Substitute to perform under the Osler Project Documents or have the effect of increasing any liability of Osler, whether actual or potential.
- (d) If Osler withholds its approval of a proposed transferee as a Suitable Substitute in accordance with Section 10(c), the Lenders' Agent may give one or more subsequent Novation Notices pursuant to the provisions of Section 10(a) containing changed particulars relating to the same proposed transferee or particulars relating to another proposed transferee which the Lenders' Agent has good cause to believe will be acceptable to Osler, acting reasonably, provided that only one Novation Notice may be outstanding at any one time.
- (e) On the Novation Date:
  - (i) Project Co and Osler will be released from their obligations under the Osler Project Documents to each other, and the Suitable Substitute and Osler will assume those same obligations towards each other;

- (ii) each of the rights of Project Co against Osler under the Osler Project Documents and the rights of Osler against Project Co under the Osler Project Documents will be cancelled, and the Suitable Substitute and Osler will acquire those same rights against each other;
- (iii) the Parties will enter into, and the Lenders' Agent shall cause the Suitable Substitute and the Lender Representative to enter into, all such agreements or other documents as are reasonably necessary to give effect to the foregoing, including:
  - A. an agreement between Osler and the Suitable Substitute, on substantially the same terms as the Project Agreement; and
  - B. an agreement among Osler, the Suitable Substitute and the Lender Representative on substantially the same terms as this Lenders' Direct Agreement;
- (iv) any Failure Points and Warning Notices that arose prior to the Novation Date shall be cancelled, provided that, where Osler was entitled to make Deductions under Schedule 20 - Payment Mechanism arising from such Failure Points and Warning Notices and those Deductions have not yet been made against any payments to Project Co preceding the Novation Date, those outstanding Deductions shall still apply; and
- (v) any subsisting ground for termination by Osler of the Project Agreement will be deemed to have no effect and any subsisting Default Notice will be automatically revoked.

## **11. TRANSFERS**

Osler shall, at Project Co's cost and expense, take whatever action the Lenders' Agent, the Appointed Representative or a Suitable Substitute may reasonably require for perfecting any assumption or transfer of or release pursuant to Sections 8, 9 or 10, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Lenders' Agent, the Appointed Representative or the Suitable Substitute reasonably requires.

## **12. DIRECT AGREEMENTS**

- (a) Notwithstanding any provision in the Direct Agreements, Osler hereby undertakes that it will not exercise any rights it may have under or arising out of any of the Direct Agreements, except as provided in Sections 12(b) to 12(f) inclusive.
- (b) Following termination of the Project Agreement (other than as a result of a novation pursuant to this Lenders' Direct Agreement) in accordance with this

Lenders' Direct Agreement, Osler shall from such date (the "**Exercise Date**") be entitled to exercise its rights under the Direct Agreements to step in to and/or novate the Construction Contract and/or the Service Contract in accordance with the Direct Agreements.

- (c) Following the Exercise Date, Osler shall not do anything to prejudice the rights which are not transferred to it pursuant to the Direct Agreements.
- (d) Where all amounts which may be or become owing by Project Co to the Lenders under the Lending Agreements have been irrevocably paid in full, the Lenders' Agent shall promptly release and discharge all Security in respect of any Construction Contract or Service Contract assumed or novated by Osler pursuant to a Direct Agreement.
- (e) Notwithstanding the terms of the Direct Agreements and any other provisions of this Section 12, each of the Construction Contractor and the Service Provider (and any guarantors thereof) shall remain responsible, and be liable, to Project Co in respect of all costs, claims, damages, losses and liabilities which shall have arisen out of or in connection with the Construction Contract and/or the Service Contract in respect of the period prior to the Exercise Date.
- (f) Without prejudice to Sections 12(a) to 12(e) inclusive, Osler shall not, prior to the date on which this Lenders' Direct Agreement terminates:
  - (i) claim, recover, retain or receive (or seek to claim, recover, retain or receive) any amount under the Direct Agreements (and/or the Construction Contract and/or the Service Contract) from the Construction Contractor or the Service Provider;
  - (ii) take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of the Construction Contractor and/or the Service Provider or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to the Construction Contractor and/or the Service Provider; or
  - (iii) compete with the rights of the Lenders' Agent on a winding-up or other insolvency or bankruptcy of the Construction Contractor or the Service Provider, nor claim to be subrogated to any rights of the Lenders' Agent or any Lender.

Osler agrees and undertakes that if it receives any amount in contravention of the provisions of this Section 12(f), it will immediately turn the same over to the Lenders' Agent for the account of the Lenders' Agent and the Lenders and, pending such payment, hold the same in trust for the Lenders' Agent and the Lenders.

**13. ASSIGNMENT**

- (a) No Party to this Lenders' Direct Agreement may assign, transfer or otherwise dispose of any part of its rights or obligations under this Lenders' Direct Agreement save as provided in this Section 13.
- (b) Project Co may assign, transfer or otherwise dispose of the benefit of this Lenders' Direct Agreement to any person to whom Project Co assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 56.1 of the Project Agreement and the provisions of the Lending Agreements, and shall provide written notice to Osler and the Lenders' Agent of such assignment, transfer or other disposition. Such assignee, as a condition precedent to any such assignment, transfer or other disposition, shall assume the obligations and acquire the rights of Project Co under this Lenders' Direct Agreement pursuant to an assumption agreement with, and in form and substance satisfactory to, Osler and the Lenders' Agent, each acting reasonably. Osler and the Lenders' Agent shall, at Project Co's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.
- (c) Osler may assign, transfer or otherwise dispose of the whole or part of this Lenders' Direct Agreement to any person to whom Osler assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 56.2 of the Project Agreement, and shall provide written notice to Project Co and the Lenders' Agent of such assignment, transfer or other disposition.
- (d) The Lenders' Agent may only assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement as permitted by the Lending Agreements, and shall provide written notice to Project Co and Osler of such assignment, transfer or other disposition; provided that, notwithstanding any provision to the contrary in the Lending Agreements, the Lenders' Agent may not assign, transfer or otherwise dispose of any interest in this Lenders' Direct Agreement to a Restricted Person. The Lenders' Agent, as a condition precedent to any such assignment, transfer or other disposition, shall cause the assignee to enter into a new agreement with Project Co and Osler on substantially the same terms as this Lenders' Direct Agreement and Project Co and Osler shall enter into such new agreement with the assignee. Project Co and Osler shall, at the Lenders' Agent's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

**14. NOTICES**

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Lenders' Direct Agreement shall be in writing (whether or not "written notice" or "notice in writing" is specifically

required by the applicable provision of this Lenders' Direct Agreement) and served by sending the same by registered mail or by hand, as follows:

If to Osler: [REDACTED]

Tel: [REDACTED]  
Fax: [REDACTED]  
Attn: [REDACTED]

If to Project Co: [REDACTED]

Fax: [REDACTED]  
Attn.: [REDACTED]

If to the Lenders' Agent: [REDACTED]

Fax: [REDACTED]  
Attn.: [REDACTED]

- (b) Any Party to this Lenders' Direct Agreement may, from time to time, change any of its contact information set forth in Section 14(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (c) Subject to Sections 14(d) and 14(e):
  - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing; and
  - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered.
- (d) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made by personal delivery in accordance with this Section 14.
- (e) If any notice delivered by hand is so delivered either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next following Business Day.

**15. AMENDMENTS**

This Lenders' Direct Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Lenders' Direct Agreement.

**16. WAIVER**

- (a) No waiver made or given by a Party under or in connection with this Lenders' Direct Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

**17. RELATIONSHIP BETWEEN THE PARTIES**

The Parties are independent contractors. This Lenders' Direct Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Lenders' Direct Agreement, of principal and agent.

**18. ENTIRE AGREEMENT**

Except where provided otherwise in this Lenders' Direct Agreement, this Lenders' Direct Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Lenders' Direct Agreement.

**19. SEVERABILITY**

Each provision of this Lenders' Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Lenders' Direct Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Lenders' Direct Agreement. If any such provision of this Lenders' Direct Agreement is invalid, unenforceable or



illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Lenders' Direct Agreement as near as possible to its original intent and effect.

**20. ENUREMENT**

This Lenders' Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

**21. GOVERNING LAW AND JURISDICTION**

- (a) This Lenders' Direct Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Lenders' Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

**22. DISPUTE RESOLUTION PROCEDURE**

The Parties agree that the dispute resolution procedure provided for in Schedule 27 - Dispute Resolution Procedure to the Project Agreement shall not apply to any dispute under this Lenders' Direct Agreement.

**23. FURTHER ASSURANCE**

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Lenders' Direct Agreement.

**24. LANGUAGE OF AGREEMENT**

Each Party acknowledges having requested and being satisfied that this Lenders' Direct Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.

**25. COUNTERPARTS**

This Lenders' Direct Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form

shall promptly forward to such Party an original signed copy of this Lenders' Direct Agreement which was so faxed.

**26. CONFIDENTIALITY**

The Lenders' Agent agrees to comply with the obligations imposed on Project Co by the provisions of Section 49 of the Project Agreement, *mutatis mutandis*, provided that the Lenders' Agent will be permitted to disclose to any relevant regulatory authority only such Confidential Information as is necessary for the Lenders' Agent to comply with Applicable Law.

***Remainder of this Page Intentionally Left Blank***

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

**WILLIAM OSLER HEALTH SYSTEM**

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

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

I/We have authority to bind the corporation.

**PLENARY HEALTH PEEL LP, [REDACTED]**

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

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

I/We have authority to bind the corporation.

**BNY TRUST COMPANY OF CANADA,** as  
Collateral Trustee

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

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

I/We have authority to bind the corporation.

**SCHEDULE 5-1**

**CONSTRUCTION CONTRACTOR’S DIRECT AGREEMENT**

**THIS AGREEMENT** is made as of the 28<sup>th</sup> day of May, 2014.

**BETWEEN:**

**WILLIAM OSLER HEALTH SYSTEM**, a non-share capital corporation incorporated under the laws of Ontario.

(“**Osler**”)

- **AND** -

**PLENARY HEALTH PEEL LP, [REDACTED]**

(“**Project Co**”)

- **AND** -

**PCL CONSTRUCTORS CANADA INC.**, a corporation incorporated under the laws of Alberta.

(the “**Construction Contractor**”)

- **AND** -

**PCL CONSTRUCTION GROUP INC.**, a corporation incorporated under the laws of Alberta.

(the “**Construction Guarantor**”)

**WHEREAS:**

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

**NOW THEREFORE** in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

## 1. DEFINITIONS

In this Construction Contractor's Direct Agreement, unless the context otherwise requires:

- (a) “**Business Day**” has the meaning given in the Project Agreement.
- (b) “**Construction Contract**” has the meaning given in the Project Agreement.
- (c) “**Construction Contractor**” has the meaning given in the preamble.
- (d) “**Construction Guarantor**” has the meaning given in the preamble.
- (e) “**Default Notice**” has the meaning given in Section 5(a).
- (f) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (g) “**Lenders**” has the meaning given in the Project Agreement.
- (h) “**Lenders' Direct Agreement**” has the meaning given in the Project Agreement.
- (i) “**Osler**” has the meaning given in the preamble.
- (j) “**Party**” means Osler, the Construction Contractor, the Construction Guarantor or Project Co, and “**Parties**” means Osler, the Construction Contractor, the Construction Guarantor and Project Co.
- (k) “**Project**” has the meaning given in the Project Agreement.
- (l) “**Project Agreement**” means the project agreement made on or about the 26<sup>th</sup> day of May, 2014 between Osler and Project Co.
- (m) “**Project Co**” has the meaning given in the preamble.
- (n) “**Step-In Notice**” has the meaning given in Section 6(a).
- (o) “**Substitute**” has the meaning given in Section 6(a).
- (p) “**Works**” has the meaning given in the Project Agreement.

## 2. INTERPRETATION

This Construction Contractor's Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Construction Contractor's Direct Agreement are for convenience of reference only, shall not constitute a part of this Construction

Contractor’s Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Construction Contractor’s Direct Agreement.

- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Construction Contractor’s Direct Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Construction Contractor’s Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Construction Contractor’s Direct Agreement shall bear their natural meaning.
- (g) References containing terms such as:
  - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Construction Contractor’s Direct Agreement taken as a whole; and
  - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (h) In construing this Construction Contractor’s Direct Agreement, the rule known as the *ejusdem generis rule* shall not apply nor shall any similar rule or approach to the construction of this Construction Contractor’s Direct Agreement and,

accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.

- (i) Where this Construction Contractor’s Direct Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Construction Contractor’s Direct Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Construction Contractor’s Direct Agreement they shall be construed and interpreted as synonymous and to read “shall”.

**3. CONFLICT IN DOCUMENTS**

- (a) In the event of ambiguities, conflicts or inconsistencies between or among this Construction Contractor’s Direct Agreement, the Project Agreement and the Construction Contract, this Construction Contractor’s Direct Agreement shall prevail.
- (b) In the event of ambiguities, conflicts or inconsistencies between or among this Construction Contractor’s Direct Agreement and the Lenders’ Direct Agreement, the Lenders’ Direct Agreement shall prevail.

**4. AGREEMENTS**

- (a) Project Co and the Construction Contractor shall not amend, modify, or depart from the terms of the Construction Contract without the prior written consent of Osler, acting reasonably, which consent shall not be withheld or delayed where such amendment, modification or departure does not materially and adversely affect the ability of Project Co to perform its obligations under this Construction Contractor’s Direct Agreement and does not have the effect of increasing any liability of Osler, whether actual or potential. Project Co and the Construction



Contractor shall provide to Osler a written copy of all such amendments, modifications or departures. The Parties acknowledge and agree that this Section 4(a) shall not apply to Variations provided for under the Project Agreement.

- (b) Each of the Parties acknowledges having received a copy of the Project Agreement and the Construction Contract.
- (c) If the Construction Contractor gives Project Co any notice of any default(s) under the Construction Contract that may give the Construction Contractor a right to terminate the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder, then the Construction Contractor shall concurrently provide Osler with a copy of such notice and set out in reasonable detail the default(s).

**5. NO TERMINATION BY CONSTRUCTION CONTRACTOR WITHOUT DEFAULT NOTICE**

The Construction Contractor shall not exercise any right it may have to terminate the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder unless:

- (a) the Construction Contractor first delivers a written notice (a "**Default Notice**") to Osler setting out in reasonable detail the default(s) on which the Construction Contractor intends to rely in terminating the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder; and
- (b) within a period of 5 Business Days of Osler receiving the Default Notice:
  - (i) the default(s) on which the Construction Contractor intends to rely in terminating the Construction Contract or to treat it as having been repudiated by Project Co or to discontinue the Construction Contractor's performance thereunder have not been remedied; and
  - (ii) the Construction Contractor has not received a Step-In Notice from Osler, provided that if, within such period of 5 Business Days, Osler agrees to pay the Construction Contractor's reasonable costs of continued performance, such period of 5 Business Days shall be extended to 45 days.

**6. STEP-IN RIGHTS**

- (a) Osler may at any time:

- (i) within 5 Business Days or, if such period has been extended in accordance with Section 5, 45 days of Osler receiving a Default Notice; or
- (ii) if Osler has not received a Default Notice and if Osler's right to terminate the Project Agreement has arisen and is continuing,

deliver a notice (a "**Step-In Notice**") electing to replace Project Co under the Construction Contract either with Osler or a third party designated by Osler in the Step-In Notice (the "**Substitute**"), provided that Osler can demonstrate to the Construction Contractor, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the Construction Contract.

- (b) Subject to Section 6(d), upon receipt by the Construction Contractor of a Step-In Notice:
  - (i) Project Co and the Construction Contractor will be deemed to be released from their existing and future obligations under the Construction Contract to each other (except with respect to any and all indemnities from Project Co or the Construction Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and Osler or the Substitute, as applicable, and the Construction Contractor will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);
  - (ii) the existing and future rights of Project Co against the Construction Contractor under the Construction Contract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from Project Co or the Construction Contractor to the other in respect of the period prior to the receipt of the Step-In Notice), and Osler or the Substitute, as applicable, and the Construction Contractor will be deemed to acquire those same existing and future rights against each other (except in respect of the aforesaid indemnities), subject to any applicable credit from the Construction Contractor to Osler if Osler pays for the Construction Contractor's reasonable costs of continued performance pursuant to Section 5;
  - (iii) any guarantee, bond, covenant, letter of credit or similar performance security in favour of Project Co from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of the Construction Contractor to be performed, observed or carried out by the Construction Contractor as contained in, referred to, or inferred from the Construction Contract shall be assigned, novated or granted, as required by Osler or the Substitute, as applicable, each acting reasonably, to Osler or the Substitute, as applicable, and the Construction Contractor shall cause such assignment, novation or grant on substantially the same

terms and conditions as the original guarantee, bond, covenant, letter of credit or similar performance security, provided however that where Project Co shall continue to hold, or shall continue to be entitled to or have rights under, such guarantee, bond, covenant, letter of credit or similar performance security as security for any obligations of the Construction Contractor, the assignment, novation or grant of the guarantee, bond, covenant, letter of credit or similar performance security to the extent of any such obligations to Project Co shall be conditional on the satisfaction of those obligations to Project Co; and

- (iv) at Osler 's request, the Construction Contractor shall enter into, and shall cause the Construction Guarantor and any other guarantor, covenantor or surety under any guarantee, bond, covenant, letter of credit or similar performance security referred to in Section 6(b)(iii) to enter into, and Osler shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including, without limitation, an agreement between Osler or the Substitute, as applicable, and the Construction Contractor, acceptable to Osler and the Construction Contractor, each acting reasonably, on substantially the same terms as the Construction Contract.
- (c) Subject to Section 6(d), Project Co shall, at its own cost, cooperate fully with Osler and the Substitute in order to achieve a smooth transfer of the Construction Contract to Osler or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Construction Contract, ongoing supervisory activities and scheduling.
- (d) The rights granted by Sections 6(b) and 6(c) shall be of no force or effect if, at any time the Construction Contractor receives a Step-In Notice, the Construction Contractor has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the Construction Contract that it is or has validly exercised those step-in rights. If the Construction Contractor receives any such notice on the same day as a Step-In Notice, the Step-In Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Step-In Notice shall be effective.
- (e) If Osler gives a Step-In Notice within the time provided hereunder at any time after the Construction Contractor has terminated the Construction Contract or treated it as having been repudiated by Project Co or discontinued the Construction Contractor's performance thereunder in accordance with the terms of this Construction Contractor's Direct Agreement, the Construction Contractor agrees that the Construction Contract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and Osler shall pay the Construction Contractor's reasonable costs for re-commencing the obligations it has under the Construction Contract and the Construction

Contractor shall be entitled to reasonable compensation and/or relief for re-commencing such obligations, having regard to the additional costs and delays incurred as a result of having terminated the Construction Contract or having treated it as being repudiated by Project Co or having discontinued its performance thereunder.

**7. CONSTRUCTION CONTRACTOR LIABILITY**

- (a) The liability of the Construction Contractor hereunder shall not be modified, released, diminished or in any way affected by:
  - (i) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or for Osler, or by any failure or omission to carry out any such inspection, investigation or enquiry; or
  - (ii) the appointment by Osler of any other person to review the progress of or otherwise report to Osler in respect of the Project, or by any action or omission of such person whether or not such action or omission might give rise to any independent liability of such person to Osler,

provided always that nothing in this Section 7 shall modify or affect any rights which the Construction Contractor might have otherwise had to claim contribution from any other person whether under statute or common law.

- (b) In the event Osler delivers a Step-In Notice, the Construction Contractor shall have no greater liability to Osler or any Substitute than it would have had to Project Co under the Construction Contract, and the Construction Contractor shall be entitled in any proceedings by Osler or any Substitute to rely on any liability limitations in the Construction Contract.

**8. PROJECT CO AS PARTY**

Project Co acknowledges and agrees that the Construction Contractor shall not be in breach of the Construction Contract by complying with its obligations hereunder.

**9. CONSTRUCTION GUARANTOR AS PARTY**

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

**10. ASSIGNMENT**

- (a) Project Co shall not, without the prior written consent of Osler, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Construction Contractor’s Direct Agreement except to the extent entitled to do so under the Project Agreement.
- (b) Osler may assign or otherwise dispose of the benefit of the whole or part of this Construction Contractor’s Direct Agreement to any person to whom Osler may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 56.2 of the Project Agreement but only in conjunction therewith, and shall provide written notice to Project Co and the Construction Contractor of such assignment or disposition.
- (c) The Construction Contractor shall not, without the prior written consent of Osler and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Construction Contractor’s Direct Agreement except as may be permitted under the Construction Contract.

**11. NOTICES**

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

If to Osler: [REDACTED]

Tel: [REDACTED]  
Fax: [REDACTED]  
Attn: [REDACTED]

If to Project Co: [REDACTED]

Fax: [REDACTED]  
Attn.: [REDACTED]

If to the Construction Contractor: [REDACTED]

Fax: [REDACTED]  
Attn.: [REDACTED]

If to the Construction Guarantor: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 11(b).
- (c) Any Party to this Construction Contractor's Direct Agreement may, from time to time, change any of its contact information set forth in Section 11(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 11(e), 11(f) and 11(g):
  - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 11.
- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

## **12. AMENDMENTS**

This Construction Contractor's Direct Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the

Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Construction Contractor's Direct Agreement.

**13. WAIVER**

- (a) No waiver made or given by a Party under or in connection with this Construction Contractor's Direct Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

**14. RELATIONSHIP BETWEEN THE PARTIES**

The Parties are independent contractors. This Construction Contractor's Direct Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Construction Contractor's Direct Agreement, of principal and agent.

**15. ENTIRE AGREEMENT**

Except where provided otherwise in this Construction Contractor's Direct Agreement, this Construction Contractor's Direct Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Construction Contractor's Direct Agreement.

**16. SEVERABILITY**

Each provision of this Construction Contractor's Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Construction Contractor's Direct Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Construction Contractor's Direct Agreement. If any such provision of this Construction Contractor's Direct Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Construction Contractor's Direct Agreement as near as possible to its original intent and effect.

**17. ENUREMENT**

This Construction Contractor's Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

**18. GOVERNING LAW AND JURISDICTION**

- (a) This Construction Contractor's Direct Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Construction Contractor's Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

**19. FURTHER ASSURANCE**

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Construction Contractor's Direct Agreement.

**20. LANGUAGE OF AGREEMENT**

Each Party acknowledges having requested and being satisfied that this Construction Contractor's Direct Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en declare satisfaite.

**21. COUNTERPARTS**

This Construction Contractor's Direct Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to such Party an original signed copy of this Construction Contractor's Direct Agreement which was so faxed.

*Remainder of this Page Intentionally Left Blank*



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

**WILLIAM OSLER HEALTH SYSTEM**

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

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

I/We have authority to bind the corporation.

**PLENARY HEALTH PEEL LP [REDACTED]**

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

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

I/We have authority to bind the corporation.

**PCL CONSTRUCTORS CANADA INC.**

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

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

I/We have authority to bind the corporation.

**PCL CONSTRUCTION GROUP INC.**

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

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

I/We have authority to bind the corporation.

**SCHEDULE 5-2**

**SERVICE PROVIDER’S DIRECT AGREEMENT**

**THIS AGREEMENT** is made as of the 28<sup>th</sup> day of May, 2014.

**BETWEEN:**

**WILLIAM OSLER HEALTH SYSTEM**, a non-share capital corporation incorporated under the laws of Ontario.

(“**Osler**”)

- **AND** -

**PLENARY HEALTH PEEL LP, [REDACTED]**

(“**Project Co**”)

- **AND** -

**HONEYWELL LIMITED**, a corporation incorporated under the laws of Canada.

(the “**Service Provider**”)

- **AND** -

**HONEYWELL INTERNATIONAL INC.**, a corporation incorporated under the laws of Delaware.

(the “**Service Guarantor**”)

**WHEREAS:**

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

**NOW THEREFORE** in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

## 1. DEFINITIONS

In this Service Provider's Direct Agreement, unless the context otherwise requires:

- (a) “**Business Day**” has the meaning given in the Project Agreement.
- (b) “**Default Notice**” has the meaning given in Section 5(a).
- (c) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (d) “**Lenders**” has the meaning given in the Project Agreement.
- (e) “**Lenders' Direct Agreement**” has the meaning given in the Project Agreement.
- (f) “**Osler**” has the meaning given in the preamble.
- (g) “**Party**” means Osler, the Service Provider, the Service Guarantor or Project Co, and “**Parties**” means Osler, the Service Provider, the Service Guarantor and Project Co.
- (h) “**Project**” has the meaning given in the Project Agreement.
- (i) “**Project Agreement**” means the project agreement made on or about the 26<sup>th</sup> day of May, 2014 between Osler and Project Co.
- (j) “**Project Co**” has the meaning given in the preamble.
- (k) “**Project Co Services**” has the meaning given in the Project Agreement.
- (l) “**Service Contract**” has the meaning given in the Project Agreement.
- (m) “**Service Guarantor**” has the meaning given in the preamble.
- (n) “**Service Provider**” has the meaning given in the preamble.
- (o) “**Step-In Notice**” has the meaning given in Section 6(a).
- (p) “**Substitute**” has the meaning given in Section 6(a).

## 2. INTERPRETATION

This Service Provider's Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Service Provider's Direct Agreement are for convenience of reference only, shall not constitute a part of this Service Provider's Direct

Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Service Provider’s Direct Agreement.

- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Service Provider’s Direct Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Service Provider’s Direct Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Service Provider’s Direct Agreement shall bear their natural meaning.
- (g) References containing terms such as:
  - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Service Provider’s Direct Agreement taken as a whole; and
  - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (h) In construing this Service Provider’s Direct Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Service Provider’s Direct Agreement and, accordingly,

general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.

- (i) Where this Service Provider’s Direct Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Service Provider’s Direct Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Service Provider’s Direct Agreement they shall be construed and interpreted as synonymous and to read “shall”.

**3. CONFLICT IN DOCUMENTS**

- (a) In the event of ambiguities, conflicts or inconsistencies between or among this Service Provider’s Direct Agreement, the Project Agreement and the Service Contract, this Service Provider’s Direct Agreement shall prevail.
- (b) In the event of ambiguities, conflicts or inconsistencies between or among this Service Provider’s Direct Agreement and the Lenders’ Direct Agreement, the Lenders’ Direct Agreement shall prevail.

**4. AGREEMENTS**

- (a) Project Co and the Service Provider shall not amend, modify, or depart from the terms of the Service Contract without the prior written consent of Osler, acting reasonably, which consent shall not be withheld or delayed where such amendment, modification or departure does not materially and adversely affect the ability of Project Co to perform its obligations under this Service Provider’s Direct Agreement and does not have the effect of increasing any liability of Osler, whether actual or potential. Project Co and the Service Provider shall provide a

written copy of all such amendments, modifications or departures. The Parties acknowledge and agree that this Section 4(a) shall not apply to Variations provided for under the Project Agreement.

- (b) Each of the Parties acknowledges having received a copy of the Project Agreement and the Service Contract.
- (c) If the Service Provider gives Project Co any notice of any default(s) under the Service Contract that may give the Service Provider a right to terminate the Service Contract or to treat it as having been repudiated by Project Co or to discontinue the Service Provider's performance thereunder, then the Service Provider shall concurrently provide Osler with a copy of such notice and set out in reasonable detail the default(s).

**5. NO TERMINATION BY SERVICE PROVIDER WITHOUT DEFAULT NOTICE**

The Service Provider shall not exercise any right it may have to terminate the Service Contract or to treat it as having been repudiated by Project Co or to discontinue the Service Provider's performance thereunder unless:

- (a) the Service Provider first delivers a written notice (a "**Default Notice**") to Osler setting out in reasonable detail the default(s) on which the Service Provider intends to rely in terminating the Service Contract or to treat it as having been repudiated by Project Co or to discontinue the Service Provider's performance thereunder; and
- (b) within the period ending 30 days after the Service Provider notifies Osler of the expiry of any relevant period for the exercise of step-in or similar rights by the Lenders, or, if the Lenders have no such step-in or similar rights, then 30 days after the later of Osler receiving Default Notice or the expiry of the applicable cure period under the Service Contract:
  - (i) the default(s) on which the Service Provider intends to rely in terminating the Service Contract or to treat it as having been repudiated by Project Co or to discontinue the Service Provider's performance thereunder have not been remedied; and
  - (ii) the Service Provider has not received a Step-In Notice from Osler,

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

**6. STEP-IN RIGHTS**

- (a) Osler may at any time:
- (i) within the period referred to in Section 5(b); or
  - (ii) if Osler has not received a Default Notice and if Osler's right to terminate the Project Agreement has arisen and is continuing,

deliver a notice (a "**Step-In Notice**") electing to replace Project Co under the Service Contract either with Osler or a third party designated by Osler in the Step-In Notice (the "**Substitute**"), provided that Osler can demonstrate to the Service Provider, acting reasonably, that the Substitute shall have sufficient financial resources, or shall be supported by a satisfactory guarantee, to carry out the obligations of the Substitute under the Service Contract.

- (b) Subject to Section 6(d), upon receipt by the Service Provider of a Step-In Notice:
- (i) Project Co and the Service Provider will be deemed to be released from their existing and future obligations under the Service Contract to each other (except with respect to any and all indemnities from Project Co or the Service Provider to the other in respect of the period prior to the receipt of the Step-In Notice), and Osler or the Substitute, as applicable, and the Service Provider will be deemed to assume those same existing and future obligations towards each other (except in respect of the aforesaid indemnities);
  - (ii) the existing and future rights of Project Co against the Service Provider under the Service Contract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from Project Co or the Service Provider to the other in respect of the period prior to the receipt of the Step-In Notice), and Osler or the Substitute, as applicable, and the Service Provider will be deemed to acquire those same existing and future rights against each other (except in respect of the aforesaid indemnities), subject to any applicable credit from the Service Provider to Osler if Osler pays for the Service Provider's reasonable costs of continued performance pursuant to Section 5;
  - (iii) any guarantee, bond, covenant, letter of credit or similar performance security in favour of Project Co from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of the Service Provider to be performed, observed or carried out by the Service Provider as contained in, referred to, or inferred from the Service Contract shall be assigned, novated or granted, as required by Osler or the Substitute, as applicable, each acting reasonably, to Osler or



the Substitute, as applicable, and the Service Provider shall cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond, covenant, letter of credit or similar performance security, provided however that where Project Co shall continue to hold, or shall continue to be entitled to have rights under, such guarantee, bond, covenant, letter of credit or similar performance security as security for any obligations of the Service Provider, the assignment, novation or grant of the guarantee, bond, covenant, letter of credit or similar performance security to the extent of any such obligations to Project Co shall be conditional on the satisfaction of those obligations to Project Co; and

- (iv) at Osler's request, the Service Provider shall enter into, and shall cause the Service Guarantor and any other guarantor, covenantor or surety under any guarantee, bond, covenant, letter of credit or similar performance security referred to in Section 6(b)(iii) to enter into, and Osler shall or shall cause the Substitute to enter into, as applicable, all such agreements or other documents as reasonably necessary to give effect to the foregoing, including, without limitation, an agreement between Osler or the Substitute, as applicable, and the Service Provider, acceptable to Osler and the Service Provider, each acting reasonably, on substantially the same terms as the Service Contract.
- (c) Subject to Section 6(d), Project Co shall, at its own cost, cooperate fully with Osler and the Substitute in order to achieve a smooth transfer of the Service Contract to Osler or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Service Contract, ongoing supervisory activities and scheduling.
- (d) The rights granted by Sections 6(b) and 6(c) shall be of no force or effect if, at any time the Service Provider receives a Step-In Notice, the Service Provider has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the Service Contract that it is or has validly exercised those step-in rights. If the Service Provider receives any such notice on the same day as a Step-In Notice, the Step-In Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Step-In Notice shall be effective.
- (e) If Osler gives a Step-In Notice within the time provided hereunder at any time after the Service Provider has terminated the Service Contract or treated it as having been repudiated by Project Co or discontinued the Service Provider's performance thereunder in accordance with the terms of this Service Provider's Direct Agreement, the Service Provider agrees that the Service Contract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and Osler shall pay the Service Provider's reasonable

costs for re-commencing the obligations it has under the Service Contract and the Service Provider shall be entitled to reasonable compensation and/or relief for re-commencing such obligations, having regard to the additional costs and delays incurred as a result of having terminated the Service Contract or having treated it as being repudiated by Project Co or having discontinued its performance thereunder.

**7. SERVICE PROVIDER LIABILITY**

- (a) The liability of the Service Provider hereunder shall not be modified, released, diminished or in any way affected by:
  - (i) any independent inspection, investigation or enquiry into any matter which may be made or carried out by or for Osler, or by any failure or omission to carry out any such inspection, investigation or enquiry;
  - (ii) the appointment by Osler of any other person to review the progress of or otherwise report to Osler in respect of the Project, or by any action or omission of such person whether or not such action or omission might give rise to any independent liability of such person to Osler,

provided always that nothing in this Section 7 shall modify or affect any rights which the Service Provider might have otherwise had to claim contribution from any other person whether under statute or common law.

- (b) In the event Osler delivers a Step-In Notice, the Service Provider shall have no greater liability to Osler or any Substitute than it would have had to Project Co under the Service Contract, and the Service Provider shall be entitled in any proceedings by Osler or any Substitute to rely on any liability limitations in the Service Contract.

**8. PROJECT CO AS PARTY**

Project Co acknowledges and agrees that the Service Provider shall not be in breach of the Service Contract by complying with its obligations hereunder.

**9. SERVICE GUARANTOR AS PARTY**

The Service Guarantor agrees with Osler that the Service Guarantor has entered into a guarantee or covenant referred to in Section 6(b)(iii), hereby consents to the assignment, novation or grant (including any conditional assignment, novation or grant) as provided herein immediately upon receipt by the Service Provider of a Step-In Notice and without the requirement of any further action on the part of Osler, and agrees that the Service Guarantor shall in accordance with Section 6 enter into all such agreements or other documents as reasonably

necessary to give effect to the foregoing. The Service Guarantor enters into this Service Provider’s Direct Agreement solely for the purposes of this Section 9.

**10. ASSIGNMENT**

- (a) Project Co shall not, without the prior written consent of Osler, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Service Provider’s Direct Agreement except to the extent entitled to do so under the Project Agreement.
- (b) Osler may assign or otherwise dispose of the benefit of the whole or part of this Service Provider’s Direct Agreement to any person to whom Osler may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 56.2 of the Project Agreement but only in conjunction therewith, and shall provide written notice to Project Co and the Service Provider of such assignment or disposition.
- (c) The Service Provider shall not, without the prior written consent of Osler and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Service Provider’s Direct Agreement, except as may be permitted under the Service Contract.

**11. NOTICES**

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

If to Osler: [REDACTED]

Tel: [REDACTED]

Fax: [REDACTED]

Attn: [REDACTED]

If to Project Co: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

If to the Service Provider: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

If to the Service Guarantor: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 11(b).
- (c) Any Party to this Service Provider's Direct Agreement may, from time to time, change any of its contact information set forth in Section 11(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 11(e), 11(f) and 11(g):
  - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 11.
- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report

(maintained by the sender) indicates that the transmission of such notice was successful.

**12. AMENDMENTS**

This Service Provider's Direct Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Service Provider's Direct Agreement.

**13. WAIVER**

- (a) No waiver made or given by a Party under or in connection with this Service Provider's Direct Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

**14. RELATIONSHIP BETWEEN THE PARTIES**

The Parties are independent contractors. This Service Provider's Direct Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Service Provider's Direct Agreement, of principal and agent.

**15. ENTIRE AGREEMENT**

Except where provided otherwise in this Service Provider's Direct Agreement, this Service Provider's Direct Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Service Provider's Direct Agreement.

**16. SEVERABILITY**

Each provision of this Service Provider's Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Service Provider's Direct Agreement is declared invalid, unenforceable or illegal by the courts of a competent

jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Service Provider's Direct Agreement. If any such provision of this Service Provider's Direct Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Service Provider's Direct Agreement as near as possible to its original intent and effect.

**17. ENUREMENT**

This Service Provider's Direct Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

**18. GOVERNING LAW AND JURISDICTION**

- (a) This Service Provider's Direct Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Service Provider's Direct Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

**19. FURTHER ASSURANCE**

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Service Provider's Direct Agreement.

**20. LANGUAGE OF AGREEMENT**

Each Party acknowledges having requested and being satisfied that this Service Provider's Direct Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.

**21. COUNTERPARTS**

This Service Provider's Direct Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form

shall promptly forward to such Party an original signed copy of this Service Provider's Direct Agreement which was so faxed.

*Remainder of this Page Intentionally Left Blank*

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

**WILLIAM OSLER HEALTH SYSTEM**

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

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

I/We have authority to bind the corporation.

**PLENARY HEALTH PEEL LP, [REDACTED]**

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

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

I/We have authority to bind the corporation.



**HONEYWELL LIMITED**

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

I have authority to bind the corporation.

**HONEYWELL INTERNATIONAL INC.**

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

I have authority to bind the corporation.

**SCHEDULE 6**

**INDEPENDENT CERTIFIER AGREEMENT**

**THIS AGREEMENT** is made as of the 28<sup>th</sup> day of May, 2014.

**BETWEEN:**

**WILLIAM OSLER HEALTH SYSTEM**, a non-share capital corporation incorporated under the laws of Ontario.

(“**Osler**”)

**AND:**

**PLENARY HEALTH PEEL LP, [REDACTED]**

(“**Project Co**”)

**AND:**

**ALTUS GROUP LIMITED**, a corporation incorporated under the laws of Ontario

(the “**Independent Certifier**”)

**WHEREAS:**

- A. Osler and Project Co (collectively, the “**PA Parties**” and each, a “**PA Party**”) have entered into the Project Agreement.
- B. Pursuant to the terms of the Project Agreement, the PA Parties wish to appoint the Independent Certifier, and the Independent Certifier wishes to accept such appointment, to perform certain services in connection with the Project Agreement.
- C. The PA Parties and the Independent Certifier wish to enter into this Independent Certifier Agreement in order to record the terms by which the Independent Certifier shall perform such services.

**NOW THEREFORE** in consideration of the mutual covenants and agreements of the PA Parties and the Independent Certifier herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the PA Parties and the Independent Certifier covenant and agree as follows:

## 1. DEFINITIONS

### 1.1 Definitions

- (a) In this Independent Certifier Agreement, including the recitals and appendices, unless the context indicates a contrary intention, terms which are defined in the Project Agreement (and not otherwise defined in this Independent Certifier Agreement) shall have meanings given to them in the Project Agreement and the following terms shall have the following meanings:
- (i) **“Certification Services”** means:
    - (A) all of the functions and obligations described in the Project Agreement as being the responsibility of the Independent Certifier;
    - (B) all of the functions and obligations conferred on the Independent Certifier under this Independent Certifier Agreement, including the functions described in Appendix A to this Independent Certifier Agreement; and
    - (C) all other things or tasks which the Independent Certifier must do to comply with its obligations under this Independent Certifier Agreement.
  - (ii) **“Certification Services Variation”** is any change to the Certification Services.
  - (iii) **“Contract Material”** means all material:
    - (A) provided to the Independent Certifier or created or required to be created by either PA Party; and
    - (B) provided by or created or required to be created by the Independent Certifier as part of, or for the purpose of, performing the Certification Services,  
  
including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).
  - (iv) **“Fee”** means the fees payable by Osler and Project Co to the Independent Certifier for the Certification Services, as such fees are specified and made payable in Appendix B to this Independent Certifier Agreement.
  - (v) **“Intellectual Property”** means any and all intellectual property rights, whether subsisting now or in the future, including rights of any kind in inventions, patents, copyright, trademarks, service marks, industrial designs, integrated circuit topography rights, applications for registration of any of the foregoing, and know-how, trade secrets, confidential information and trade or business names.

- (vi) “**PA Parties**” means both Osler and Project Co, and “**PA Party**” means either Osler or Project Co, as the context requires.
- (vii) “**Project Agreement**” means that certain project agreement made on or about the date hereof between Osler and Project Co with respect to the design, construction, financing and facilities management of the Facility.

## **2. INTERPRETATION**

### **2.1 Interpretation**

- (a) In this Independent Certifier Agreement, unless the context indicates a contrary intention:
  - (i) words denoting the singular number include the plural and vice versa;
  - (ii) words denoting individuals include corporations and vice versa;
  - (iii) headings are for convenience only and do not affect interpretation;
  - (iv) references to Clauses, Sections or Parts are references to Clauses, Sections or Parts of this Independent Certifier Agreement;
  - (v) references to this Independent Certifier Agreement or any contract, agreement or instrument are deemed to include references to this Independent Certifier Agreement or such other contract, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
  - (vi) references to any party to this Independent Certifier Agreement includes its successors or permitted assigns;
  - (vii) words denoting any gender include all genders;
  - (viii) references to any legislation or to any section or provision of any legislation include any statutory modification or re-enactment of any statutory provision substituted for legislation, section or provision, and ordinances, by laws, regulations and other statutory instruments issued under that legislation, section or provision;
  - (ix) a reference to “\$” is to Canadian currency;
  - (x) the terms “including” and “include” mean “including” or “include” (as applicable) without limitation;
  - (xi) if a word or phrase is defined, then other parts of speech and grammatical forms of that word or phrase have a corresponding meaning; and

(xii) unless otherwise indicated, all time periods will be strictly construed.

## **2.2 Obligations and Exercise of Rights by PA Parties**

- (a) The obligations of the PA Parties under this Independent Certifier Agreement shall be several.
- (b) Except as specifically provided for in this Independent Certifier Agreement or the Project Agreement, the rights of the PA Parties under this Independent Certifier Agreement shall be jointly exercised by the PA Parties.

## **3. ROLE OF THE INDEPENDENT CERTIFIER**

### **3.1 Engagement**

- (a) The PA Parties hereby appoint the Independent Certifier, and the Independent Certifier hereby accepts such appointment, to carry out the Certification Services in accordance with this Independent Certifier Agreement. The Independent Certifier shall perform the Certification Services in accordance with this Independent Certifier Agreement.
- (b) Nothing in this Independent Certifier Agreement will be interpreted as giving the Independent Certifier any responsibility for performance of the design or construction, or for the certifications of the professionals of record.
- (c) Neither PA Party shall, without the prior written consent of the other PA Party, enter into any separate agreement with the Independent Certifier in connection with the Project, and Project Co shall ensure that no Project Co Party enters into any separate agreement with the Independent Certifier in connection with the Project.
- (d) The Independent Certifier shall make such observations and evaluations of any Works pursuant to a Variation in order to certify any monthly progress payment to Project Co of the value of work performed, provided the Independent Certifier shall be entitled to a Certification Services Variation Order pursuant to Sections 9.4 and 9.5 of this Schedule 6.

### **3.2 Acknowledgement of Independent Certifier**

- (a) The Independent Certifier hereby acknowledges in favour of the PA Parties that it has received a copy of the Project Agreement.

### **3.3 Standard of Care**

- (a) The Independent Certifier must exercise the standard and skill, care and diligence in the performance of the Certification Services that would be expected of an expert professional experienced in providing services in the nature of the Certification Services for projects similar to the Project.

### **3.4 Duty of Independent Judgment**

- (a) In exercising its Certification Services, the Independent Certifier must:
- (i) act impartially, honestly and independently in representing the interests of both PA Parties in accordance with the terms of the Project Agreement and this Independent Certifier Agreement;
  - (ii) act reasonably and professionally;
  - (iii) act in a timely manner:
    - (A) in accordance with the times prescribed in this Independent Certifier Agreement and the Project Agreement; or
    - (B) where no times are prescribed, within 10 days or such earlier time so as to enable the PA Parties to perform their respective obligations under the Project Agreement; and
  - (iv) act in accordance with the joint directions of the PA Parties provided that the directions are not inconsistent with the other terms of this Independent Certifier Agreement or the terms of the Project Agreement and do not vary or prejudice the Independent Certifier's authority or responsibilities or the exercise by the Independent Certifier of its professional judgment under this Independent Certifier Agreement.
- (b) Although the Independent Certifier may take account of any opinions or representations made by the PA Parties, the Independent Certifier shall not be bound to comply with any opinions or representations made by either of them in connection with any matter on which the Independent Certifier is required to exercise its professional judgment.
- (c) The Independent Certifier acknowledges that the PA Parties may rely on the Certification Services, including determinations, findings and certifications made by the Independent Certifier, and accordingly, the Independent Certifier will use its best skill and judgment in providing the Certification Services.

### **3.5 Authority to Act**

- (a) The Independent Certifier:
- (i) is an independent consultant and is not, and must not purport to be, a partner, joint venturer or agent of either PA Party;
  - (ii) other than as expressly set out in this Independent Certifier Agreement or the Project Agreement, has no authority to give any directions to a PA Party or its officers, directors, members, employees, contractors, consultants or agents; and

- (iii) has no authority to waive or alter any terms of the Project Agreement, nor to discharge or release a party from any of its obligations under the Project Agreement unless jointly agreed by the PA Parties in writing.

### **3.6 Knowledge of the PA Parties' Requirements**

- (a) The Independent Certifier warrants that:
  - (i) it has informed and will be deemed to have informed itself fully of the requirements of the Project Agreement;
  - (ii) it will inform itself fully of the requirements of such other documents and materials as may become relevant from time to time to the performance of the Certification Services;
  - (iii) without limiting Sections 3.6(a)(i) or 3.6(a)(ii), it has and will be deemed to have informed itself fully of all time limits and other requirements for any Certification Service which the Independent Certifier carries out under the Project Agreement and this Independent Certifier Agreement;
  - (iv) it has and will be deemed to have informed itself completely of the nature of the work necessary for the performance of the Certification Services and the means of access to and facilities at the Facility and Site including restrictions on any such access or protocols that are required; and
  - (v) it has satisfied itself as to the correctness and sufficiency of its proposal for the Certification Services and that the Fee covers the cost of complying with all of the obligations under this Independent Certifier Agreement and of all matters and things necessary for the due and proper performance and completion of the Certification Services.

### **3.7 Co-ordination and Information by Independent Certifier**

- (a) The Independent Certifier must:
  - (i) fully cooperate with the PA Parties;
  - (ii) carefully co-ordinate the Certification Services with the work and services performed by the PA Parties;
  - (iii) without limiting its obligations under Sections 3.4 and 3.7(a)(ii), perform the Certification Services so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the PA Parties; and
  - (iv) provide copies to the PA Parties of all reports, communications, certificates and other documentation that it provides to either PA Party.

### **3.8 Conflict of Interest**

- (a) The Independent Certifier warrants that:
- (i) at the date of this Independent Certifier Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Independent Certifier Agreement, and the Independent Certifier further warrants that it has not been retained as a technical advisor to the Lenders or as an advisor to either of the PA Parties or any of their respective related entities in respect of the Project Agreement (including, but not limited to, acting as a transaction advisor to either PA Party); and
  - (ii) if, during the term of this Independent Certifier Agreement, any such conflict or risk of conflict of interest arises, the Independent Certifier will notify the PA Parties immediately in writing of that conflict or risk of conflict and take such steps as may be required by either of the PA Parties to avoid or mitigate that conflict or risk.

### **3.9 Independent Certifier Personnel**

- (a) The Independent Certifier shall make reasonable efforts to ensure that the individuals listed in Appendix C remain involved in the performance of the Certification Services and, in particular, will not, for the duration of this Independent Certifier Agreement, require or request any such person to be involved in any other project on behalf of the Independent Certifier if, in the reasonable opinion of the PA Parties, such involvement would have a material adverse effect on the performance of the Certification Services.
- (b) The Independent Certifier shall ensure that its personnel providing the Certification Services in respect of the Commissioning Tests, the Outline Commissioning Program and the Final Commissioning Program shall:
- (i) possess a current professional designation of not less than membership in Professional Engineers Ontario, the Ontario Association of Certified Engineering Technicians and Technologists or such similar professional designation recognized in North America;
  - (ii) have demonstrated competence in the commissioning of healthcare facilities and in having completed or monitored the commissioning for an acute health care facility of more than 50,000 sq. ft.;
  - (iii) have an understanding of the appropriate CSA standards, including CSA Standard Z318.0-05 – Commissioning of Health Care Facilities, commissioning for healthcare facilities as well as other applicable standards such as ASHRAE and NACBB; and



- (iv) have an understanding of the commissioning process and the reports to be provided pursuant to this Agreement and the Project Agreement, including not only the start-up procedures but also the pre-commissioning and post-commissioning activities.
- (c) The Independent Certifier shall furnish Osler with evidence satisfactory to Osler of any such personnel's compliance with the foregoing requirements within a reasonable time prior to the proposed commencement of the Certification Services in respect of the Commissioning Tests, the Outline Commissioning Program and the Final Commissioning Program.

### **3.10 Minimize Interference**

- (a) The Independent Certifier shall perform the Certification Services in such a way as to minimize any undue interference with the progress of the Works.

## **4. ROLE OF THE PA PARTIES**

### **4.1 Assistance**

- (a) The PA Parties agree to cooperate with and provide reasonable assistance to the Independent Certifier to familiarize the Independent Certifier with all necessary aspects of the Project to enable the Independent Certifier to carry out its obligations under this Independent Certifier Agreement.

### **4.2 Instructions in Writing**

- (a) Unless otherwise provided in this Independent Certifier Agreement or the Project Agreement, all instructions to the Independent Certifier by the PA Parties shall be given in writing and accepted or endorsed by both of the PA Parties.

### **4.3 Information and Services**

- (a) The PA Parties shall make available to the Independent Certifier, as soon as practicable from time to time, all information, documents and particulars necessary for the Independent Certifier to carry out the Certification Services, including such information, documents and particulars required in order for the Independent Certifier to determine whether Substantial Completion and Final Completion have occurred, and shall provide copies of all such information, documents and particulars to the other party hereto.

### **4.4 Additional Information**

- (a) If any information, documents or particulars are reasonably required to enable the Independent Certifier to perform the Certification Services and have not been provided by the PA Parties, then:

- (i) the Independent Certifier must give notice in writing to the Project Co Representative or the Osler Representative, as the case may be, of the details of the information, documents or particulars demonstrating the need and the reasons why they are required; and
- (ii) Project Co or Osler, as the case may be, must arrange the provision of the required information, documents or particulars.

#### **4.5 Right to Enter and Inspect**

- (a) Upon giving reasonable notice to the Project Co Representative, the Independent Certifier (and any person authorized by it) may enter and inspect the Site, Facility or Works at any reasonable time in connection with the exercise or proposed exercise of rights under this Independent Certifier Agreement, subject to:
  - (i) observance of the reasonable rules of Project Co as to safety and security for the Site, the Facility and the Works;
  - (ii) not causing unreasonable delay to the carrying out of the Works by reason of its presence at the Site, the Facility and the Works; and
  - (iii) not causing any damage to the Site, the Facility or the Works.

#### **4.6 PA Parties Not Relieved**

- (a) Neither PA Party shall be relieved from performing or observing its obligations, or from any other liabilities, under the Project Agreement as a result of either the appointment of, or any act or omission by, the Independent Certifier.

#### **4.7 PA Parties not Liable**

- (a) On no account will a PA Party be liable to another PA Party for any act or omission by the Independent Certifier whether under or purportedly under a provision of the Project Agreement, this Independent Certifier Agreement or otherwise, provided that any such act or omission shall not extinguish, relieve, limit or qualify the nature or extent of any right or remedy of either PA Party against or any obligation or liability of either PA Party to the other PA Party which would have existed regardless of such act or omission.

### **5. CERTIFICATION QUALITY PLAN**

#### **5.1 Certification Quality Plan**

- (a) The Independent Certifier must:
  - (i) develop and implement a certification quality plan identifying the processes and outcomes of the Certification Services that complies with all requirements of the

Independent Certifier's quality assurance accreditation, and is otherwise satisfactory to each of the Osler Representative and the Project Co Representative;

- (ii) within 14 days after the date of this Independent Certifier Agreement, provide such certification quality plan to each of the Osler Representative and the Project Co Representative;
- (iii) if satisfactory to each of the Osler Representative and the Project Co Representative, implement such certification quality plan; and
- (iv) if not satisfactory to each of the Osler Representative and the Project Co Representative, within 7 days after receiving notice thereof from either PA Party to that effect, revise and resubmit the certification quality plan to each of the Osler Representative and the Project Co Representative, and implement it if satisfactory to each of the Osler Representative and the Project Co Representative.

## **5.2 Certification Quality Plan not to Relieve Independent Certifier**

- (a) The Independent Certifier will not be relieved of any responsibilities or obligations in respect of the performance of the Certification Services and will remain solely responsible for them notwithstanding:
  - (i) the obligation of the Independent Certifier to develop and implement a certification quality plan; or
  - (ii) any comment or direction upon, review or acceptance of, approval to proceed with or request to vary any part of the certification quality plan by either the Osler Representative or the Project Co Representative.

## **6. SUSPENSION**

### **6.1 Notice**

- (a) The Certification Services (or any part) may be suspended at any time by the PA Parties:
  - (i) if the Independent Certifier fails to comply with its obligations under this Independent Certifier Agreement, immediately by the PA Parties giving joint notice in writing to the Independent Certifier; or
  - (ii) in any other case, by the PA Parties giving 7 days joint notice in writing to the Independent Certifier.

### **6.2 Costs of Suspension**

- (a) The Independent Certifier will:

- (i) subject to the Independent Certifier complying with Article 9, be entitled to recover the extra costs incurred by the Independent Certifier by reason of a suspension directed under Section 6.1(a)(ii) valued as a Certification Services Variation under Section 9; and
- (ii) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Section 6.1(a)(i).

### **6.3 Recommencement**

- (a) The Independent Certifier must immediately recommence the carrying out of the Certification Services (or any part) on receipt of a joint written notice from the PA Parties requiring it to do so.

## **7. INSURANCE AND LIABILITY**

### **7.1 Independent Certifier’s Professional Indemnity Insurance**

- (a) The Independent Certifier must have in place at all times during the term of this Independent Certifier Agreement:
  - (i) professional liability insurance:
    - (A) in the amount of \$[REDACTED] per claim and \$[REDACTED] in the aggregate, a deductible of not more than \$[REDACTED] per claim and from an insurer and on terms satisfactory to each of the PA Parties; and
    - (B) covering liability which the Independent Certifier might incur as a result of a breach by it of its obligations owed by the Independent Certifier in a professional capacity to the PA Parties, or either of them, under or in connection with this Independent Certifier Agreement or the provision of the Certification Services; and
  - (ii) comprehensive general liability insurance in the amount of \$[REDACTED] per claim and in the aggregate, no deductible for personal injury or bodily injury, a deductible of not more than \$[REDACTED] per occurrence for property damage and from an insurer and on terms satisfactory to each of the PA Parties.
- (b) The Independent Certifier must provide copies of its insurance policies to each of the PA Parties upon execution of this Independent Certifier Agreement, and, at least 5 Business Days prior to the expiry date of any such insurance policy, the Independent Certifier must provide evidence of the renewal of any such insurance policy satisfactory to the PA Parties, acting reasonably.

## **7.2 Workers' Compensation Insurance**

- (a) The Independent Certifier must, at its own cost and at all times during the term of this Independent Certifier Agreement, insure its liability (including its common law liability) as required under any applicable workers compensation statute or regulation in relation to its employees engaged in the Certification Services.

## **8. PAYMENT FOR SERVICES**

### **8.1 Payment of Fee**

- (a) In consideration of the Independent Certifier performing the Certification Services in accordance with this Independent Certifier Agreement, each PA Party shall pay one-half of the Fee to the Independent Certifier in accordance with the payment schedule specified in Appendix B.
- (b) The obligation of each PA Party to pay one-half of the Fee to the Independent Certifier is a several obligation, and neither PA Party shall have any liability in respect of the non-payment by the other PA Party of any fees or costs payable by such other PA Party under this Independent Certifier Agreement.
- (c) The Fee includes all taxes (except for HST), overheads and profit, all labour and materials, insurance costs, travel, hospitality, and incidental expenses (except for food expenses which are to be excluded), and all other overhead including any fees or other charges required by law to perform the Certification Services.
- (d) The PA Parties acknowledge and agree that if any approved amount due and payable by the PA Parties to the Independent Certifier in excess of \$[REDACTED] is outstanding for more than 60 days, the Independent Certifier shall not have any obligation to make any certification under the Project Agreement.

## **9. CERTIFICATION SERVICES VARIATIONS**

### **9.1 Notice of Certification Services Variation**

- (a) If the Independent Certifier believes, other than a “Certification Services Variation Order” under Section 9.4(c), that any direction by the PA Parties constitutes or involves a Certification Services Variation it must:
  - (i) within 7 days after receiving the direction and before commencing work on the subject matter of the direction, give notice to the PA Parties that it considers the direction constitutes or involves a Certification Services Variation; and
  - (ii) within 21 days after giving the notice under Section 9.1(a)(i), submit a written claim to each of the Osler Representative and the Project Co Representative

which includes detailed particulars of the claim, the amount of the claim and how it was calculated.

- (b) Regardless of whether the Independent Certifier considers that such a direction constitutes or involves a Certification Services Variation, the Independent Certifier must continue to perform the Certification Services in accordance with this Independent Certifier Agreement and all directions, including any direction in respect of which notice has been given under this Section 9.1.

## **9.2 No Adjustment**

- (a) If the Independent Certifier fails to comply with Section 9.1, the Fee will not be adjusted as a result of the relevant direction.

## **9.3 External Services**

- (a) In the event that external personnel or consultants are required for expert opinion with respect to a Certification Services Variation, then, with the prior written approval of the PA Parties, any additional fees relating to such external personnel or consultants will be payable by the PA Parties at the agreed upon amount.

## **9.4 Certification Services Variation Procedure**

- (a) The Osler Representative and the Project Co Representative may jointly issue a document titled “Certification Services Variation Price Request” to the Independent Certifier which will set out details of a proposed Certification Services Variation which the PA Parties are considering.
- (b) Within 7 days after the receipt of a “Certification Services Variation Price Request”, the Independent Certifier must provide each of the Osler Representative and the Project Co Representative with a written notice in which the Independent Certifier sets out the effect which the proposed Certification Services Variation will have on the Fee.
- (c) Each of the Osler Representative and the Project Co Representative may then jointly direct the Independent Certifier to carry out a Certification Services Variation by written document titled “Certification Services Variation Order” which will state either that:
  - (i) the Fee is adjusted as set out in the Independent Certifier’s notice; or
  - (ii) the adjustment (if any) to the Fee will be determined under Section 9.5.

## **9.5 Cost of Certification Services Variation**

- (a) Subject to Section 9.2, the Fee will be adjusted for all Certification Services Variations or suspensions under Section 6.1(a)(ii) carried out by the Independent Certifier by:

- (i) the amount (if any) stated in the “Certification Services Variation Order” in accordance with Section 9.4(c);
  - (ii) if Section 9.5(a)(i) is not applicable, an amount determined pursuant to the fee schedule in Appendix B; or
  - (iii) where such rates or prices are not applicable, a reasonable amount to be agreed between the PA Parties and the Independent Certifier or, failing agreement, determined by the Osler Representative and the Project Co Representative jointly.
- (b) Any reductions in the Fee shall be calculated on the same basis as any increases.

## **10. TERM AND TERMINATION**

### **10.1 Term**

- (a) Subject to earlier termination, this Independent Certifier Agreement will commence on the date of the Project Agreement and continue in full force until:
- (i) the completion of the Works and the performance of the Certification Services set forth herein; or
  - (ii) such other date as may be mutually agreed between the PA Parties and the Independent Certifier.

### **10.2 Notice of Breach**

- (a) If the Independent Certifier commits a breach of this Independent Certifier Agreement, the PA Parties may give written notice to the Independent Certifier:
- (i) specifying the breach; and
  - (ii) directing its rectification in the period specified in the notice being a period not less than 7 days from the date of service of the notice.

### **10.3 Termination for Breach**

- (a) If the Independent Certifier fails to rectify the breach within the period specified in the notice issued under Section 10.2, the PA Parties may, without prejudice to any other rights of the PA Parties or either of them, immediately terminate this Independent Certifier Agreement.

### **10.4 Termination for Financial Difficulty or Change in Control**

- (a) The PA Parties may, without prejudice to any other rights which the PA Parties or either of them may have, terminate this Independent Certifier Agreement immediately if:

- (i) events have occurred or circumstances exist which, in the opinion of the PA Parties, may result in or have resulted in an insolvency or a Change in Control of the Independent Certifier; or
- (ii) the Independent Certifier has communications with its creditors with a view to entering into, or enters into, any form of compromise, arrangement or moratorium of any debts whether formal or informal, with its creditors.

**10.5 Termination for Convenience**

- (a) Notwithstanding anything to the contrary in this Independent Certifier Agreement, the PA Parties may, at any time, jointly terminate this Independent Certifier Agreement upon 30 days written notice to the Independent Certifier. The PA Parties and the Independent Certifier agree that, notwithstanding the 30 days' notice of termination, the Independent Certifier shall continue on a day-to-day basis thereafter until a new Independent Certifier is appointed.

**10.6 Independent Certifier's Rights upon Termination for Convenience**

- (a) Upon a termination under Section 10.5, the Independent Certifier will:
  - (i) be entitled to be reimbursed by the PA Parties for the value of the Certification Services performed by it to the date of termination; and
  - (ii) not be entitled to any damages or other compensation in respect of the termination and (without limitation) any amount in respect of:
    - (A) the lost opportunity to earn a profit in respect of the Certification Services not performed at the date of termination; and
    - (B) any lost opportunity to recover overheads from the turnover which would have been generated under this Independent Certifier Agreement but for it being terminated.

**10.7 Procedure upon Termination**

- (a) Upon completion of the Independent Certifier's engagement under this Independent Certifier Agreement or earlier termination of this Independent Certifier Agreement (whether under Section 10.3, 10.4 or 10.5 or otherwise), the Independent Certifier must:
  - (i) cooperate with the PA Parties with respect to the transition of the Certification Services to a replacement certifier;
  - (ii) deliver to the PA Parties all Contract Material and all other information concerning the Project held or prepared by the Independent Certifier during the execution of work under this Independent Certifier Agreement; and



- (iii) as and when required by the PA Parties, meet with them and such other persons nominated by them with a view to providing them with sufficient information to enable the PA Parties to execute the Project or the persons nominated to provide the Certification Services.

## **10.8 Effect of Termination**

- (a) Except as otherwise expressly provided in this Independent Certifier Agreement, termination of this Independent Certifier Agreement shall be without prejudice to any accrued rights and obligations under this Independent Certifier Agreement as at the date of termination (including the right of the PA Parties to recover damages from the Independent Certifier).

## **10.9 Survival**

- (a) Termination of this Independent Certifier Agreement shall not affect the continuing rights and obligations of the PA Parties and the Independent Certifier under Sections 7, 8, 10.6, 10.7, 10.8, 11, 12.7, 12.8 and this Section 10.9 or under any other provision which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

## **11. INDEMNITY**

### **11.1 PA Parties to Save Independent Certifier Harmless**

- (a) The PA Parties hereby indemnify and save the Independent Certifier completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any action taken by the Independent Certifier within the scope of its duties or authority hereunder.
- (b) The indemnity provided under this Section 11.1 shall not extend:
  - (i) to any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible (in respect of which the Independent Certifier shall indemnify the PA Parties, as referred to in Section 11.2);
  - (ii) to any action taken by the Independent Certifier outside the scope of authority set forth in this Independent Certifier Agreement, or any part or parts hereof; or
  - (iii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by the Independent Certifier.

- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.

### **11.2 Independent Certifier to Save PA Parties Harmless**

- (a) The Independent Certifier hereby indemnifies and saves the PA Parties, and their affiliated entities, subsidiaries and their respective directors, officers, employees, agents, permitted successors and assigns, completely harmless from any actions, causes of action, suits, debts, costs, damages, expenses, claims and demands whatsoever, at law or in equity, arising directly or indirectly in whole or in part out of any breach of this Independent Certifier Agreement, or any part or parts hereof, by the Independent Certifier, its employees, servants, agents or persons for whom it is in law responsible, or any negligent or unlawful act or omission or willful misconduct of the Independent Certifier, its employees, servants or persons for whom it is in law responsible.
- (b) The indemnity provided under this Section 11.2 to a PA Party shall not extend:
- (i) to any negligent or unlawful act or omission or willful misconduct of such PA Party, its employees, servants or persons for whom it is in law responsible (in respect of which such PA Parties shall indemnify the Independent Certifier, as referred to in Section 11.1); or
  - (ii) to any debt, cost, expense, claim or demand for which insurance proceeds are recoverable by such PA Party.
- (c) This indemnity shall survive the termination of this Independent Certifier Agreement.

## **12. GENERAL**

### **12.1 Entire Agreement**

- (a) Except where provided otherwise in this Independent Certifier Agreement, this Independent Certifier Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Independent Certifier Agreement.

### **12.2 Negation of Employment**

- (a) The Independent Certifier, its officers, directors, members, employees, servants and agents and any other persons engaged by the Independent Certifier in the performance of the Certification Services will not by virtue of this Independent Certifier Agreement or the performance of the Certification Services become in the service or employment of the PA Parties for any purpose.

- (b) The Independent Certifier will be responsible for all matters requisite as employer or otherwise in relation to such officers, directors, members, employees, servants and agents and other persons who are engaged by the Independent Certifier.

**12.3 Waiver**

- (a) No waiver made or given by a party under or in connection with this Independent Certifier Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the party giving such waiver, and delivered by such party to the other parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

**12.4 Notices**

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

If to Osler: [REDACTED]

Tel: [REDACTED]  
Fax: [REDACTED]  
Attn: [REDACTED]

If to Project Co: [REDACTED]

Fax: [REDACTED]  
Attn.: [REDACTED]

If to the Independent Certifier: [REDACTED]

Fax: [REDACTED]  
Attn.: [REDACTED]

- (b) Where any notice is provided or submitted to a party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a party's failure to comply with this Section 12.4(b).
- (c) Any party to this Independent Certifier Agreement may, from time to time, change any of its contact information set forth in Section 12.4(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 12.4(e), 12.4(f) and 12.4(g):
  - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 12.4.
- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

## **12.5 Transfer and Assignment**

- (a) The Independent Certifier:
  - (i) must not assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement without the prior written consent of the PA Parties, which each PA Party may give or withhold in its absolute discretion; and

- (ii) agrees that any assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the Independent Certifier from any obligation or liability under this Independent Certifier Agreement.
- (b) For the purposes of this Section 12.5, an assignment will be deemed to have occurred where there is a Change in Control of the Independent Certifier after the date of this Independent Certifier Agreement.
- (c) Each of the PA Parties may assign, transfer, mortgage, charge or encumber any right or obligation under this Independent Certifier Agreement in accordance with the terms of the Project Agreement.

## **12.6 Governing Laws and Jurisdictions**

- (a) This Independent Certifier Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The PA Parties and the Independent Certifier agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Independent Certifier Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

## **12.7 Confidentiality**

- (a) The Independent Certifier must ensure that:
  - (i) neither it nor any of its officers, directors, members, employees, servants and agents disclose, or otherwise make public, any Contract Material or any other information or material acquired in connection with or during the performance of the Certification Services without prior written approval of the PA Parties; and
  - (ii) no Contract Material is used, copied, supplied or reproduced for any purpose other than for the performance of the Certification Services under this Independent Certifier Agreement.
- (b) The PA Parties may at any time require the Independent Certifier to give and to arrange for its officers, directors, members, employees, servants and agents engaged in the performance of the Certification Services to give written undertakings, in the form of confidentiality agreements on terms required by the PA Parties, relating to the non-disclosure of confidential information, in which case the Independent Certifier must promptly arrange for such agreements to be made.

**12.8 Contract Material**

- (a) The PA Parties and the Independent Certifier agree that the Independent Certifier does not and will not have any rights, including any Intellectual Property, in any Contract Material provided to the Independent Certifier or created or required to be created by either PA Party.
- (b) As between the PA Parties and the Independent Certifier, all title and ownership, including all Intellectual Property, in and to the Contract Material created or required to be created by the Independent Certifier as part of, or for the purposes of performing the Certification Services, is hereby assigned jointly to the PA Parties on creation, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Contract Material, it will be assigned to the PA Parties on creation. In addition, to the extent that copyright may subsist in such Contract Material so created by the Independent Certifier, the Independent Certifier hereby waives all past, present and future moral rights therein and the Independent Certifier shall ensure that any agent or employee of Independent Certifier shall have waived all such moral rights. The PA Parties acknowledge and agree that as between the PA Parties, title, ownership and other rights to the foregoing shall be governed by the Project Agreement.
- (c) The Independent Certifier will do all such things and execute all such documents as reasonably requested by either of the PA Parties in order to confirm or perfect the assignment of Intellectual Property in the Contract Material referred to in Section 12.8(b).

**12.9 Amendment**

- (a) This Independent Certifier Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the PA Parties and the Independent Certifier and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Independent Certifier Agreement.

**12.10 Severability**

- (a) Each provision of this Independent Certifier Agreement shall be valid and enforceable to the fullest extent permitted by law. If the courts of a competent jurisdiction shall declare any provision of this Independent Certifier Agreement invalid, unenforceable or illegal, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Independent Certifier Agreement. If any such provision of this Independent Certifier Agreement is invalid, unenforceable or illegal, the parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Independent Certifier Agreement as near as possible to its original intent and effect.

**12.11 Enurement**

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

**12.12 Counterparts**

- (a) This Independent Certifier Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any party providing its signature in faxed form shall promptly forward to such party an original signed copy of this Independent Certifier Agreement which was so faxed.

*Remainder of this Page Intentionally Left Blank*

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

**WILLIAM OSLER HEALTH SYSTEM**

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

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

I/We have authority to bind the corporation.



**PLENARY HEALTH PEEL LP [REDACTED]**

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

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

I/We have authority to bind the corporation.

**ALTUS GROUP LIMITED**

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

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

I/We have authority to bind the corporation.

**APPENDIX A**

**CERTIFICATION SERVICES**

Without limiting the other provisions of this Independent Certifier Agreement and the Project Agreement, the Independent Certifier shall do the following:

- (a) Receive and monitor drawings and documents related to the development of the design as necessary for the Independent Certifier to be informed as to the progress of the Works and to provide an opinion in the event of a Dispute related to the development of the design.
- (b) Receive and monitor progress reports as necessary for the Independent Certifier to be informed as to the progress of the Works.
- (c) Review information relating to Delay Events and Compensation Events.
- (d) Review information relating to Variation Enquiries, Project Co Variation Notices, Variations, Estimates, claims for extension of time and compensation and consultation with the relevant party.
- (e) In accordance with Section 11.1(b) of the Project Agreement, attend meetings and participate, as necessary, in the activities of the Works Committee.
- (f) Review the draft Final Commissioning Program and the detailed tests, test methodology and expected test results proposed by Project Co and provide comments, including to report on the effectiveness of the Final Commissioning Program, to identify any errors or omissions, and to report any risks.
- (g) Monitor the Commissioning Tests (as indicatively described in Schedule 14 - Outline Commissioning Program to the Project Agreement) and other tests, including re-tests, to be performed as set out in the Final Commissioning Program or as otherwise required for Project Co to achieve Substantial Completion and Final Completion.
- (h) Prior to any certification, consider the views and comments of both Project Co and Osler in relation to the satisfaction of the conditions for certification.
- (i) Conduct inspections of the Works as necessary for the Independent Certifier to be satisfied that the Works are proceeding in accordance with the requirements of the Project Agreement.
- (j) Review relevant documentation, including floor area schedules, certificates and approvals, Permits, Licences, Approvals and Agreements, certifications, test results, quality assurance audits, letters of assurance from professionals, schedules of equipment and staff profile schedules provided to the Independent Certifier pursuant to the Project Agreement.

- (k) Monitor the requirements, progress and results of all Project Co Commissioning and Hospital Commissioning.
- (l) Upon receipt of notice from Project Co requesting the issuance of the Substantial Completion Certificate or the Final Completion Certificate, as applicable, consider such request and, within the time period set out in the Project Agreement and in accordance with the Project Agreement, either:
  - (i) issue the applicable certificate; or
  - (ii) issue a report detailing the matters that the Independent Certifier considers are required to be performed prior to issuing the applicable certificate.
- (m) Upon notice from Project Co that the matters required to be performed prior to issuing the applicable certificate have been completed, re-inspect the Works or re-consider the matters specified to be performed, and repeat the procedures in Section (k) of this Appendix A until the issuance of the applicable certificate.
- (n) Prepare, in consultation with Project Co and Osler, as soon as reasonably practicable and, in any event within, the time period specified in Section 24.8(a) of the Project Agreement, the Minor Deficiencies List, which Minor Deficiencies List will include an estimate of the cost and the time for rectifying the Minor Deficiencies and a schedule for the completion and rectification of the Minor Deficiencies.
- (o) Prior to Substantial Completion, review Project Co cash allowance expenditures against the installations in respect of the Cash Allowance Items and the Cash Allowance Amount.
- (p) After Substantial Completion, reconcile Project Co invoices for expenditure recovery against Osler budgets and the Cash Allowance Amount.
- (q) Review and observe installation of all FF&E, equipment, furniture, fixtures, information technology, communication equipment, telephone equipment and anything similar to the foregoing (together, the “**Equipment**”) into the Facility by Osler or any agent or contractor of Osler either before or after Substantial Completion and provide a report to Osler and Project Co identifying any damage to the Facility which has been caused as a result of the installation of such Equipment into the Facility by Osler, its contractors and/or agents.
- (r) Provide any determinations contemplated in the Project Agreement, which determinations may be subject to final resolution between the PA Parties pursuant to Schedule 27 - Dispute Resolution Procedure to the Project Agreement.
- (s) Participate in and give the PA Parties and their counsel reasonable cooperation, access and assistance (including providing or making available documents, information and

witnesses for attendance at hearings and other proceedings) in connection with any proceedings between the PA Parties that relate to the Certification Services.

- (t) Provide periodic reports to the PA Parties, copying Infrastructure Ontario, as follows:
  - (i) a progress report within fifteen Business Days after each month's end or as otherwise agreed by the PA Parties (the "**Monthly Report**"); and,
  - (ii) accompanying the Monthly Reports delivered for the months of May, August, November and December, a quarterly report (the "**Quarterly Report**") for the quarters ending June 30th, September 30th, December 31st and March 31<sup>st</sup> respectively, in substantially the form as that in Appendix D and that contains the following information confirmed to the best of the Independent Certifier's professional knowledge and judgment:
    - (A) the extent (expressed as a percentage) of completion of the Works as of the date of the Quarterly Report;
    - (B) the value of the Works completed as of the date of the Quarterly Report;
    - (C) the forecasted extent (expressed as a percentage) of completion of the Works as of the end of the applicable quarter and for the next four quarters; and
    - (D) the forecasted value of the Works anticipated to be completed as of the end of the applicable quarter and for the next four quarters.
- (u) Provide advice on other matters that may arise that both PA Parties may jointly require.

**APPENDIX B**

**INDEPENDENT CERTIFIER FEE**

**A. Disbursements and Expenses**

Total fixed fee and hourly rates shall be all inclusive and include all labour and materials, insurance costs, travel, hospitality, and incidental expenses (except for food expenses which are to be excluded), disbursements (examples: duplicating, delivery and communications) and all other overhead including any fees or other charges required by law.

The Independent Certifier shall not otherwise be reimbursed for any hospitality, food, travel or incidental expenses incurred.

**B. Total Fixed Fee for all Certification Services (other than Certification Services identified in item (u) of Appendix A to this Independent Certifier Agreement).**

The total fixed fee for all Certification Services (other than the Certification Services identified in item (u) of Appendix A to this Independent Certifier Agreement) shall not exceed, in aggregate, the total fixed fee of \$[REDACTED] Canadian Dollars (excluding HST) (the “**Total Fixed Fee**”), to be invoiced monthly at \$[REDACTED] Canadian Dollars each calendar month for 28 months.

The Total Fixed Fee for all Certification Services (other than the Certification Services identified in item (u) of Appendix A of this Independent Certifier Agreement) will be paid monthly in arrears, subject to the PA Parties receiving invoices reflecting the Certification Services which is in form and substance satisfactory to the PA Parties.

**C. Hourly Rate for Certification Services Contemplated in Item (u) of Appendix A to the Independent Certifier Agreement for each Independent Certifier Team Member.**

The provision of Certification Services identified in item (u) of Appendix A of this Independent Certifier Agreement must be pre-approved by Infrastructure Ontario, in its sole and absolute discretion and in writing. If Infrastructure Ontario, in its sole and absolute discretion, decides to proceed with such Certification Services, the Independent Certifier will be reimbursed at the following hourly rates (excluding HST) (the “**Hourly Rate**”):

<b>Independent Certifier Personnel</b>	<b>Hourly Rate</b>
Sr. Director	\$[REDACTED] Dollars Canadian per Hour
Director	\$[REDACTED] Dollars Canadian per Hour
Manager, IC Services	\$[REDACTED] Dollars Canadian per Hour
MEP Sr. Director	\$[REDACTED] Dollars Canadian per Hour
MEP Sr. Cost Consultant	\$[REDACTED] Dollars Canadian per Hour
IC, Certification Sr. Cost Consultant	\$[REDACTED] Dollars Canadian per Hour

The fee for the Certification Services identified in item (u) of Appendix A of this Independent Certifier Agreement will be payable monthly in arrears, subject to the PA Parties receiving invoices reflecting the performance of such Certification Services which is in form and substance satisfactory to the PA Parties.

APPENDIX C

INDEPENDENT CERTIFIER PERSONNEL

[REDACTED]	Manager, IC SERVICES, Team Leader
[REDACTED]	Director in Charge
[REDACTED]	Sr. Director
[REDACTED]	Sr. Director
[REDACTED]	Sr. Cost Consultant
[REDACTED]	Sr. Cost Consultant
[REDACTED]	Director
[REDACTED]	Building Condition Assessment

APPENDIX D

FORM OF QUARTERLY REPORT

[ON THE INDEPENDENT CERTIFIER'S LETTERHEAD]

[Date]

William Osler Health System  
2100 Bovaird Dr E  
Brampton, ON L6R 3J7  
Attention: [REDACTED]

and to:

Plenary Health Peel LP  
[REDACTED]  
Attention: [REDACTED]

with a copy to:

Ontario Infrastructure and Lands Corporation  
777 Bay Street  
6<sup>th</sup> Floor  
Toronto, Ontario  
M5G 2C8  
Attention: [REDACTED]

Dear [●] and [●]:

This report, for the quarter ending [●], is delivered to you pursuant to Section (t)(ii) of Appendix A of the Independent Certifier Agreement between William Osler Health System, Plenary Health Peel LP and us dated May 28, 2014 (the “**Agreement**”). Terms not otherwise defined herein have the meaning ascribed to them in the Agreement.

All values stated herein are based on the cost of the Works and are exclusive of HST. This report has taken into account the following information: **[insert particulars of sources of information (e.g., works reports, site visits) used to prepare the report]**.

Based on our analysis of the foregoing, we confirm the following to the best of our professional knowledge and judgment:

- As of the date hereof, the value of the Works is \$[●] and the Works are [●]% complete.



**William Osler Health System**

- At the end of this quarter, the value of the Works will be \$[●] and the Works will be [●]% complete.

We estimate that the value of the Works and the extent of their completion will be as follows for the next four quarters (not including the present quarter):

	[quarter end date]	[quarter end date]	[quarter end date]	[quarter end date]
\$				
%				

We have prepared this report for the specific use of William Osler Health System, Plenary Health Peel LP and the Province, as represented by its agent, the Ontario Infrastructure and Lands Corporation. This letter is not intended for general circulation, publication or reproduction for any other person or purpose without express written permission to each specific instance.

Yours truly,

**[Name and Signature of Independent Certifier]**

**SCHEDULE 7**

**INTENTIONALLY DELETED**

**SCHEDULE 8**

**INTENTIONALLY DELETED**

**SCHEDULE 9  
KEY INDIVIDUALS**

**A. Key Individuals - Works**

<b>Project Co Party</b>	<b>Position/Function</b>	<b>Name and Contact Information</b>
Design Team	Lead Architect	[REDACTED]
Design Team	Lead Mechanical Engineer	[REDACTED]
Design Team	Lead Electrical Engineer	[REDACTED]
Design Team	Lead Structural Engineer	[REDACTED]
Design Team	Sustainability/LEED Coordinator	[REDACTED]
Design Team	Civil Engineer	[REDACTED]
Construction Contractor	Design Manager	[REDACTED]
Construction Contractor	Site Superintendent	[REDACTED]
Construction Contractor	Construction Manager	[REDACTED]
Construction Contractor	Health and Safety Officer	[REDACTED]
Project Co	Project Co Project Manager	[REDACTED]
Project Co	Project Co Representative	[REDACTED]
Project Co	Equipment Coordinator	[REDACTED]
Project Co	Commissioning Authority	To be selected and approved by Osler no later than 20 months prior to Substantial Completion.
Project Co	Transition Advisor	To be selected in conjunction with Osler
Project Co	Procurement Coordinator	[REDACTED]

**B. Key Individuals – Services**

<b>Project Co Party</b>	<b>Position/Function</b>	<b>Name and Contact Information</b>
Service Provider	Site General Manager	[REDACTED]
Service Provider	Building Services Manager	[REDACTED]
Service Provider	Health and Safety Officer	[REDACTED]
Service Provider	Quality Assurance Manager	[REDACTED]
Service Provider	Energy Management Manager	[REDACTED]
Project Co	Project Co Representative	[REDACTED]

**SCHEDULE 10****REVIEW PROCEDURE****PART A – WORKS PHASE****1. WORKS SUBMITTALS**

- 1.1 The provisions of Part A of this Schedule 10 shall apply to the Design Development Submittals, the Construction Document Submittals, the Design Data and any and all items, documents and anything else required or specified by this Project Agreement, including all Works Submittals listed in Appendix A to this Schedule 10, in respect of the Works to be submitted to, reviewed or otherwise processed by Osler in accordance with the Review Procedure prior to Substantial Completion or after Substantial Completion in respect of the completion of Minor Deficiencies, including any and all subsequent revisions, amendments and changes thereto (collectively and individually, “**Works Submittal**” or “**Works Submittals**” as applicable in Part A of this Schedule 10).

**2. SCHEDULE FOR WORKS SUBMITTALS**

- 2.1 The Works Schedule shall provide for a progressive and orderly flow of Works Submittals from Project Co to the Osler Representative to allow sufficient time for review of each Works Submittal by the Osler Representative, taking into account both the resources necessary to be available to the Osler Representative to conduct such review and whether delay in the review of the subject matter of the Works Submittal shall have a material impact on Project Co’s ability to progress future anticipated Works Submittals and the Works in accordance with the Works Schedule.
- 2.2 The Works Schedule and any amendment to the Works Schedule shall allow a period of 10 Business Days (or such longer period as the Parties may agree) from the date of receipt for review of and response to each Works Submittal, provided that if Project Co has made major changes to the grouping and volume of Works Submittals, such period of time shall be adjusted by Project Co, acting reasonably, taking into account the factors set forth in Section 2.1 of this Schedule 10.
- 2.3 Project Co shall, in scheduling Works Submittals and in the performance of the Project Operations, allow adequate time prior to performing the Project Operations that are the subject of the Works Submittals, for review of the Works Submittals and for Project Co to make changes to Works Submittals that may be required if comments are received on the Works Submittals, such review and required changes to be in accordance with Part A of this Schedule 10.
- 2.4 If the Works Schedule indicates that a large number of Works Submittals will be made at one time, the Osler Representative may, at the Osler Representative’s discretion, request a longer period for review or a staggering of the Works Submittals, and Project Co shall

review and revise the Works Schedule accordingly, taking into account both the resources necessary to be available to the Osler Representative to conduct such review and whether delay in the review of the subject matter of the Works Submittal shall have a material impact on Project Co's ability to progress future anticipated Works Submittals and the Works in accordance with the Works Schedule.

- 2.5 Project Co shall submit all Works Submittals to Osler in accordance with the current Works Schedule.
- 2.6 If, at any time, Project Co submits an unusually large number or volume of Works Submittals not contemplated by the Works Schedule, such that the Osler Representative cannot review the Works Submittals within the time permitted in the Works Schedule, the Osler Representative will, within 5 Business Days of receipt of such Works Submittals, provide Project Co with an estimate of the time necessary for processing such Works Submittals.

**3. GENERAL REQUIREMENTS FOR WORKS SUBMITTALS**

- 3.1 Unless otherwise specified by the Osler Representative, Project Co shall issue 3 printed copies of all Works Submittals to Osler, together with an electronic copy in a format agreed by the Parties acting reasonably and one printed copy of each Works Submittal to the Independent Certifier.
- 3.2 Project Co shall compile and maintain a register of the date and contents of the submission of all Works Submittals and the date of receipt and content of all returned Works Submittals and comments thereon.
- 3.3 All Works Submittals shall be in English.
- 3.4 All Works Submittals required by this Project Agreement or by Applicable Law to be signed or sealed by persons with professional designations (including, where applicable, by registered professional architects or engineers) shall, where applicable, be so signed and sealed.
- 3.5 All Works Submittals shall include copies of all documents to be reviewed and shall clearly identify the purpose of the Works Submittal and Project Co's proposed course of action relating to the Works Submittal and the Project Operations that are the subject of the Works Submittal.
- 3.6 All Works Submittals shall, where applicable, refer to the relevant provisions of the Output Specifications, and to any Design Data that has previously been subject to review.
- 3.7 When Project Co submits a Clinical Functionality Report, Project Co shall specifically identify all elements of Clinical Functionality, including where applicable, references to the Output Specifications.

- 3.8 All Works Submittals shall be clearly identified as a Works Submittal and shall be delivered with appropriate covering documentation, which shall include a list of all attached Works Submittals and for each Works Submittal:
- (a) the document number(s) or drawing number(s);
  - (b) revision numbers (if applicable);
  - (c) document or drawing title(s);
  - (d) name of entity that prepared the Works Submittal;
  - (e) the Works Submittal history showing date and delivery information and/or log number of all previous submissions of that Works Submittal; and
  - (f) identification of any previous Works Submittal superseded by the current Works Submittal.

**4. COMMENTS**

- 4.1 The Osler Representative shall review and respond to each Works Submittal in accordance with the time periods specified in Section 2.2 of this Schedule 10. The Osler Representative shall return Works Submittals to Project Co with a copy to the Independent Certifier and assign one of the following 3 comments:
- (a) “REVIEWED”;
  - (b) “REVIEWED AS NOTED”; or
  - (c) “REJECTED”.
- 4.2 The comment “REVIEWED” will be assigned to those Works Submittals that, in the opinion of the Osler Representative, conform to the requirements of this Project Agreement. Project Co shall comply with and implement such Works Submittals.
- 4.3 The comment “REVIEWED AS NOTED” will be assigned to those Works Submittals that, in the opinion of the Osler Representative, generally conform to the requirements of this Project Agreement, but in which immaterial deficiencies have been found by the Osler Representative’s review. Project Co shall correct these Works Submittals and provide a copy of the corrected Works Submittals to the Osler Representative no later than twenty (20) Business Days after the comment has been provided to Project Co, or such other time period as determined by the Osler Representative, acting in its sole discretion and as set out in writing. Project Co shall comply with and implement such Works Submittals after correction, including in accordance with the comments. If at any time it is discovered that Project Co has not corrected the deficiencies on Works Submittals stamped “REVIEWED AS NOTED”, then Project Co will be required to



- modify the Works Submittals and Project Operations, including the Facility if applicable, as required to ensure that the Works comply with the Output Specifications and Project Co may be required, at the Osler Representative's discretion, to resubmit relevant Works Submittals. In such circumstances the Osler Representative shall act promptly in considering whether such deficiencies have been corrected. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 4.4 The comment "REJECTED" will be assigned to those Works Submittals that, in the opinion of the Osler Representative, contain significant deficiencies or do not generally conform with the requirements of this Project Agreement, including this Schedule 10. Project Co shall correct and re-submit these Works Submittals within 10 Business Days after the comment has been provided to Project Co, or such other time period, as determined by the Osler Representative, acting in its sole discretion and as set out in writing. The Osler Representative will then review such re-submitted Works Submittals and assign a comment to the corrected Works Submittal. The Works Submittals shall be corrected, revised and resubmitted as often as may be required to obtain a comment that permits Project Co to proceed. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 4.5 Where the Osler Representative issues the comment "REVIEWED AS NOTED" or "REJECTED", the Osler Representative shall provide reasons for the comment, referencing the particulars of the Section(s) of this Project Agreement that the Works Submittal fails to satisfy, and, if requested by the Project Co Representative, the Osler Representative shall meet with the Project Co Representative to discuss the reasons for the comment.
- 4.6 If, at any time after assigning any comment to a Works Submittal, the Osler Representative or Project Co discovers any significant deficiencies or any failure to conform to the requirements of this Project Agreement, the Osler Representative may revise the comment assigned to any Works Submittal. If the Parties agree or it is determined in accordance with Section 5 below that the revised comment is correct, Project Co shall make all such corrections to the Works Submittals and the Project Operations. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 4.7 For the purpose of facilitating and expediting the review and correction of Works Submittals, the Osler Representative and the Project Co Representative shall meet as may be mutually agreed to discuss and review any outstanding Works Submittals and any comments thereon.
- 4.8 Where a Works Submittal is voluminous, the Osler Representative at his or her discretion may elect to stamp only the cover page or first sheet of the Works Submittal with the appropriate comment, if any, and return to Project Co the cover page or first page together with individual pages or sheets on which comments are made, together with an

explanation of the status of all pages not returned to Project Co. Any pages returned without such an explanation as to their status shall be deemed to be “REVIEWED” by Osler.

- 4.9 In lieu of returning a Works Submittal, the Osler Representative may by letter notify Project Co of the comment assigned to the Works Submittal and if such comment is “REVIEWED AS NOTED” or “REJECTED” the letter shall contain comments in sufficient detail for Project Co to identify the correction sought.

## **5. DISPUTES**

- 5.1 If Project Co disputes any act of Osler or the Osler Representative in respect of a Works Submittal under this Part A, Project Co shall promptly notify the Osler Representative and the Independent Certifier of the details of such Dispute and shall submit the reasons why Project Co believes a different comment should be assigned, together with appropriate supporting documentation. The Osler Representative shall review the Works Submittal, the reasons and supporting documentation and within 5 Business Days after receipt thereof shall either confirm the original comment or notify Project Co of a revised comment. If the Osler Representative confirms the original comment, Project Co may request the Independent Certifier to resolve the Dispute and render a decision within 5 Business Days of such request.
- 5.2 If either Party is not satisfied, acting reasonably, with the resolution of the Independent Certifier, subject to Section 10.2 either Party may refer the matter for determination in accordance with Schedule 27 - Dispute Resolution Procedure.
- 5.3 Notwithstanding the provisions of Sections 5.1 and 5.2, the Osler Representative may direct that Project Co revise the Works Submittal in accordance with the comment of the Osler Representative and proceed to perform and complete the Works on the basis of such revised Works Submittal. For clarity, such direction shall be considered a Dispute and Project Co may proceed in accordance with Section 55 and Schedule 27 - Dispute Resolution Procedure of the Project Agreement.

## **6. EFFECT OF REVIEW**

- 6.1 Subject to Section 18.6 of this Project Agreement, any review and comment by Osler or the Osler Representative of any Works Submittals is for general conformity to the obligations and requirements of this Project Agreement, and any such review and comment shall not relieve Project Co of the risk and responsibility for the Project Operations and for meeting all of its obligations under and requirements of this Project Agreement, and shall not create any new or additional obligations or liabilities for Osler. Without limiting the generality of the foregoing any and all errors or omissions in Works Submittals or of any review and comment shall not exclude or limit Project Co’s obligations or liabilities in respect of the Works under this Project Agreement or exclude or limit Osler’s rights in respect of the Works under this Project Agreement.

**7. WORKS SUBMITTAL EXPLANATION**

- 7.1 At any time, the Osler Representative may, acting reasonably, require Project Co, the Project Parties and any other relevant personnel, at no additional cost to Osler, to explain to the Osler Representative and Osler's advisors the intent of Project Co's Works Submittals, including in relation to any design and any associated documentation and as to its satisfaction of the Output Specifications.

**8. REVISIONS**

- 8.1 Project Co shall ensure that Works Submittals keep the same, unique reference number throughout the review process, and that subsequent revisions of the same Works Submittal are identified by a sequential revision number. Correspondence related to such Works Submittal shall reference the reference number and revision number.
- 8.2 Re-submittals shall clearly show all revisions from the previous Works Submittal. Bound documents, including reports and manuals, shall contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. A consistent format for mark-ups of documents shall be used (e.g. deletions struck out and additions underscored). Revised portions of drawings shall be clearly marked (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and the revision number and description of the revision shall be included on the drawing.
- 8.3 All revisions on print media shall be initialled by hand by the individual designer, design checker and, where applicable, by the drafter and the drafting checker and shall identify the persons who initialled the Works Submittal. Electronic versions of the Works Submittal shall identify the persons who initialled the revisions to the printed version of the Works Submittal. All such revisions must be able to be integrated into the As Built Drawings.
- 8.4 Project Co shall keep all Design Data current, including a complete set of the most recently issued submittal documents available on site in the construction trailer for use by Osler and Osler representatives. If any Design Data is revised as part of a Works Submittal, all other Design Data relying on or based on that Design Data shall also be revised accordingly. All such revised Design Data shall also be submitted with the Works Submittal to which it relates.

**9. AUDIT BY THE OSLER REPRESENTATIVE**

- 9.1 Without limiting any other right under this Project Agreement, the Osler Representative shall have the right to audit all Works Submittals, including comparing all Works Submittals to previous Works Submittals.
- 9.2 If during an audit or at any other time it is discovered by Osler or Project Co (or resolved pursuant to Section 9.3 below) that any Works Submittals were not correctly

implemented, Project Co shall at its sole cost immediately take all necessary steps to correct and modify the applicable Works Submittals and the Project Operations to which they relate and shall advise the Osler Representative of all such corrections and modifications.

- 9.3 Any Dispute concerning the implementation of a Works Submittal, subject to Section 5.1 above, shall be referred in the first instance to the Independent Certifier for resolution.

**10. VARIATIONS**

- 10.1 No alteration or modification to the design, quality and quantity of the Project Operations arising from the development of detailed design or from the co-ordination of the design in connection with any Works Submittal shall be construed or regarded as a Variation.

- 10.2 If, having received comments from the Osler Representative on any Works Submittal, Project Co considers that compliance with those comments would amount to a Variation, Project Co shall, within 10 Business Days of receipt of and before complying with the comments, provide written notice to Osler of the same and, if it is agreed by the Parties that a Variation would arise if the comments were complied with, Osler may, at its election, (a) issue a Variation Enquiry and it shall be dealt with in accordance with Schedule 22 - Variation Procedure or (b) amend its comment on the Works Submittal. If the Parties do not agree that a Variation would arise if the comments were complied with, either party may proceed to resolve the matter in accordance with Section 5 including for clarity, the exercise by the Osler Representative of its right under Section 5.3. Subject to the foregoing sentence, any failure by Project Co to notify Osler in accordance with this Section 10.2 that Project Co considers compliance with any comments of the Osler Representative would amount to a Variation shall constitute an irrevocable acceptance by Project Co that any compliance with the Osler Representative's comments shall be without cost to Osler and without any extension of time.

**SCHEDULE 10**

**REVIEW PROCEDURE**

**PART B – SERVICES PHASE**

**11. SERVICE SUBMITTALS**

- 11.1 The provisions of Part B of this Schedule 10 shall apply to any and all items, documents and anything else required or specified by this Project Agreement, other than the Design Development Submittals, the Construction Document Submittals and the Design Data, to be submitted to, reviewed or otherwise processed by Osler in accordance with the Review Procedure after Substantial Completion except in respect of the completion of Minor Deficiencies, including any and all subsequent revisions, amendments and changes thereto (collectively and individually, “**Service Submittal**” or “**Service Submittals**” as applicable in Part B of this Schedule 10).
- 11.2 Project Co shall allow a period of 10 Business Days (or such longer period as the Parties may agree) from the date of receipt for review of and response to each Service Submittal.
- 11.3 Project Co shall, in scheduling Service Submittals and in the performance of the Project Operations, allow adequate time prior to performing the Project Operations that are the subject of the Service Submittals, for review of the Service Submittals and for Project Co to make changes to Service Submittals that may be required if comments are received on the Service Submittals, such review and required changes to be in accordance with Part B of this Schedule 10.

**12. GENERAL REQUIREMENTS FOR SERVICE SUBMITTALS**

- 12.1 Unless otherwise specified by the Osler Representative, Project Co shall issue 3 printed copies of all Service Submittals to Osler, together with an electronic copy in a format agreed by the Parties acting reasonably.
- 12.2 Project Co shall compile and maintain a register of the date and contents of the submission of all Service Submittals and the date of receipt and content of all returned Service Submittals and comments thereon.
- 12.3 All Service Submittals shall be in English.
- 12.4 All Service Submittals required by this Project Agreement or by Applicable Law to be signed or sealed by persons with professional designations (including, where applicable, by registered professional architects or engineers) shall, where applicable, be so signed and sealed.

- 12.5 All Service Submittals shall include copies of all documents to be reviewed and shall clearly identify the purpose of the Service Submittal and Project Co’s proposed course of action relating to the Service Submittal and the Project Operations that are the subject of the Service Submittal.
- 12.6 All Service Submittals shall, where applicable, refer to the relevant provisions of the Output Specifications.
- 12.7 All Service Submittals shall be clearly identified as a Service Submittal and shall be delivered with appropriate covering documentation, which shall include a list of all attached Service Submittals and for each Service Submittal:
- (a) the document number(s) or drawing number(s);
  - (b) revision numbers (if applicable);
  - (c) document or drawing title(s);
  - (d) name of entity that prepared the Service Submittal;
  - (e) the Service Submittal history showing date and delivery information and/or log number of all previous submissions of that Service Submittal; and
  - (f) identification of any previous Service Submittal superseded by the current Service Submittal.

**13. COMMENTS**

- 13.1 The Osler Representative shall review and respond to each Service Submittal in accordance with the time periods specified in Section 11.2 of this Schedule 10. The Osler Representative shall return Service Submittals to Project Co and assign one of the following 3 comments:
- (a) “REVIEWED”;
  - (b) “REVIEWED AS NOTED”; or
  - (c) “REJECTED”.
- 13.2 The comment “REVIEWED” will be assigned to those Service Submittals that, in the opinion of the Osler Representative, conform to the requirements of this Project Agreement. Project Co shall comply with and implement such Service Submittals.

- 13.3 The comment “REVIEWED AS NOTED” will be assigned to those Service Submittals that, in the opinion of the Osler Representative, generally conform to the requirements of this Project Agreement, but in which immaterial deficiencies have been found by the Osler Representative’s review. Project Co shall correct these Service Submittals and provide a copy of the corrected Service Submittals to the Osler Representative. Project Co shall comply with and implement such Service Submittals after correction, including in accordance with the comments. If at any time it is discovered that Project Co has not corrected the deficiencies on Service Submittals stamped “REVIEWED AS NOTED”, then Project Co will be required to modify the Service Submittals and Project Operations as required to ensure that the Project Operations comply with the Output Specifications and Project Co may be required, at the Osler Representative’s discretion, to resubmit relevant Service Submittals. In such circumstances the Osler Representative shall act promptly in considering whether such deficiencies have been corrected. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 13.4 The comment “REJECTED” will be assigned to those Service Submittals that, in the opinion of the Osler Representative, contain significant deficiencies or do not generally conform with the requirements of this Project Agreement, including this Schedule 10. Project Co shall correct and re-submit these Service Submittals within 10 Business Days after the comment has been provided to Project Co, or such longer period as Project Co may reasonably require, and (unless the Service Submittal is re-submitted within 5 Business Days) shall give the Osler Representative not less than 5 Business Days’ notice of when the Service Submittals shall be resubmitted. The Osler Representative will then review such re-submitted Service Submittals and assign a comment to the corrected Service Submittal. The Service Submittals shall be corrected, revised and resubmitted as often as may be required to obtain a comment that permits Project Co to proceed. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.
- 13.5 Where the Osler Representative issues the comment “REVIEWED AS NOTED” or “REJECTED”, the Osler Representative shall provide reasons for the comment, referencing the particulars of the Section(s) of this Project Agreement that the Service Submittal fails to satisfy, and, if requested by the Project Co Representative, the Osler Representative shall meet with the Project Co Representative to discuss the reasons for the comment.
- 13.6 If, at any time after assigning any comment to a Service Submittal, the Osler Representative or Project Co discovers any significant deficiencies or any failure to conform to the requirements of this Project Agreement, the Osler Representative may revise the comment assigned to any Service Submittal. If the Parties agree or it is determined in accordance with Section 14 below that the revised comment is correct, Project Co shall make all such corrections to the Service Submittals and the Project Operations. No extension of time will be given or additional compensation paid in respect of any such modification or re-submittal.

- 13.7 For the purpose of facilitating and expediting the review and correction of Service Submittals, the Osler Representative and the Project Co Representative shall meet as may be mutually agreed to discuss and review any outstanding Service Submittals and any comments thereon.
- 13.8 Where a Service Submittal is voluminous, the Osler Representative at his or her discretion may elect to stamp only the cover page or first sheet of the Service Submittal with the appropriate comment, if any, and return to Project Co the cover page or first page together with individual pages or sheets on which comments are made, together with an explanation of the status of all pages not returned to Project Co. Any pages returned without such an explanation as to their status shall be deemed to be “REVIEWED” by Osler.
- 13.9 In lieu of returning a Service Submittal, the Osler Representative may by letter notify Project Co of the comment assigned to the Service Submittal and if such comment is “REVIEWED AS NOTED” or “REJECTED” the letter shall contain comments in sufficient detail for Project Co to identify the correction sought.

#### **14. DISPUTES**

- 14.1 If Project Co disputes any act of Osler or the Osler Representative in respect of a Service Submittal under this Part B, Project Co shall promptly notify the Osler Representative of the details of such Dispute and shall submit the reasons why Project Co believes a different comment should be assigned, together with appropriate supporting documentation. The Osler Representative shall review the Service Submittal, the reasons and supporting documentation and within 5 Business Days after receipt thereof shall either confirm the original comment or notify Project Co of a revised comment.
- 14.2 If after such review by the Osler Representative Project Co disputes the comment on a Service Submittal, subject to Section 19.1, Project Co may refer the matter for determination in accordance with Schedule 27 - Dispute Resolution Procedure.

#### **15. EFFECT OF REVIEW**

- 15.1 Any review and comment by Osler or the Osler Representative of any Service Submittals is for general conformity to the obligations and requirements of this Project Agreement, and any such review and comment shall not relieve Project Co of the risk and responsibility for the Project Operations and for meeting all of its obligations under and requirements of this Project Agreement, and shall not create any new or additional obligations or liabilities for Osler. Without limiting the generality of the foregoing any and all errors or omissions in Service Submittals or of any review and comment shall not exclude or limit Project Co’s obligations or liabilities under this Project Agreement in respect of matters related to the Service Submittal or exclude or limit Osler’s rights under this Project Agreement in respect of matters related to the Service Submittal.



**16. SERVICE SUBMITTAL EXPLANATION**

- 16.1 At any time, the Osler Representative may, acting reasonably, require Project Co, the Project Co Parties and any other relevant personnel, at no additional cost to Osler, to explain to the Osler Representative and Osler's advisors the intent of Project Co's Service Submittals, including as to its satisfaction of the Output Specifications.

**17. REVISIONS**

- 17.1 Project Co shall ensure that Service Submittals keep the same, unique reference number throughout the review process, and that subsequent revisions of the same Service Submittal are identified by a sequential revision number. Correspondence related to such Service Submittal shall reference the reference number and revision number.
- 17.2 Re-submittals shall clearly show all revisions from the previous Service Submittal. Bound documents, including reports and manuals, shall contain a preface that clearly states how revisions are marked and the previous revision number against which the revisions have been marked. A consistent format for mark-ups of documents shall be used (e.g. deletions struck out and additions underscored). Revised portions of drawings shall be clearly marked (with appropriate means to visually distinguish between the parts of the drawing that are revised and the parts that are not revised) and the revision number and description of the revision shall be included on the drawing.
- 17.3 All revisions on print media shall be initialled by hand by the individual designer, design checker and, where applicable, by the drafter and the drafting checker and shall identify the persons who initialled the Service Submittal. Electronic versions of the Service Submittal shall identify the persons who initialled the revisions to the printed version of the Service Submittal.

**18. AUDIT BY THE OSLER REPRESENTATIVE**

- 18.1 Without limiting any other right under this Project Agreement, the Osler Representative shall have the right to audit all Service Submittals, including comparing all Service Submittals to previous Service Submittals.
- 18.2 If during an audit or at any other time it is discovered by Osler or Project Co that any Service Submittals were not correctly implemented, Project Co shall at its sole cost immediately take all necessary steps to correct and modify the applicable Service Submittals and the Project Operations to which they relate and shall advise the Osler Representative of all such corrections and modifications.

**19. VARIATIONS**

- 19.1 If, having received comments from the Osler Representative on any Service Submittal, Project Co considers that compliance with those comments would amount to a Variation, Project Co shall, within 10 Business Days of receipt of and before complying with the

comments, provide written notice to Osler of the same and, if it is agreed by the Parties, or is determined pursuant to Schedule 27 - Dispute Resolution Procedure, that a Variation would arise if the comments were complied with, Osler may at its election, either issue a Variation Enquiry and it shall be dealt with in accordance with Schedule 22 - Variation Procedure or amend its comment on the Service Submittal. Any failure by Project Co to notify Osler in accordance with this Section 19.1 that Project Co considers compliance with any comments of the Osler Representative would amount to a Variation shall constitute an irrevocable acceptance by Project Co that any compliance with the Osler Representative's comments shall be without cost to Osler and without any extension of time.

APPENDIX A

MINIMUM DESIGN AND CONSTRUCTION

SUBMITTAL REQUIREMENTS

1. MINIMUM SUBMITTAL REQUIREMENTS FOR THE 50% DESIGN DEVELOPMENT STAGE

Project Co shall provide the following Design Development Submittals to Osler for review and comment in accordance with this Schedule 10:

1.1 Design development documents in accordance with the requirements set forth in Section 18.3 of this Project Agreement, including:

- (a) Site plans (prepared at 1:500 scale) showing:
  - (i) Full ground floor plan (see description below for Floor/Roof Plans);
  - (ii) Full hard/soft landscape plan showing integration of landscaping features/areas with floor plan elements and entrances;
  - (iii) Treatment of main approach to public entrances, including treatment of safety features, lighting, etc.;
  - (iv) Vehicular drop-off and street right-of-way improvements;
  - (v) Additional Site features, including natural features, storm water management structures and design of outdoor spaces for patient, staff or visitor use; and
  - (vi) Vehicle access/egress driveways to and from Site, including parking entrance ramp, loading dock access and location, and service vehicle parking.
- (b) Site design features related to Sustainable Design requirements. Site servicing plan (prepared at 1:500) showing:
  - (i) Storm water management/storm sewer;
  - (ii) Sanitary sewer system;
  - (iii) Water mains - domestic use;
  - (iv) Water mains - firefighting;

- (v) Gas utilities;
  - (vi) Back-up fuel system;
  - (vii) Medical gases;
  - (viii) Hydro utilities; and
  - (ix) Communication systems incoming services.
- (c) Site Grading Plan (prepared at 1:500).
  - (d) Erosion and Sediment Control Plans for each Phase matching the Phasing Plan in Item 1.7 below (prepared at 1:500),
  - (e) Stormwater Management Report,
  - (f) Parking & Driveways Plan.
  - (g) Roadway Signage and Pavement Marking Plan.
  - (h) Drainage Plan (prepared at 1:500).
  - (i) Typical Site and landscape details (prepared at 1:10 scale).
  - (j) Architectural graphic floor plans (11x17- NTS) of every level, including penthouse(s) and Roof(s), for the Facility, showing:
    - (i) All architectural plans with room layouts, color coded with departments;
    - (ii) Egress diagrams;
    - (iii) Patient, staff and material management flows;
    - (iv) Departmental flows and important adjacencies; and
    - (v) Pandemic implementation plan indicating areas and system affected.
  - (k) Architectural composite floor plans (prepared at 1:200 scale) of every level, including penthouse(s) and Roof(s), for the Facility, showing:
    - (i) All grids , walls, doors, stairs, shafts, and envelope, with detail bubbles and tags indicating the plan breaks for 1:100 scale drawings;
    - (ii) Fire separation plans with zoning and fire compartment indicated; and
    - (iii) Security plans indicating different security zones.

- (l) Architectural floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), for the Facility, showing:
  - (i) All walls and partitions in actual thicknesses;
  - (ii) All program and non-program rooms/areas, developing preliminary room number system with a matrix to translate space allocation tables, Lists and Room Data Sheets numbering;
  - (iii) List of additional rooms not previously identified with additional sequential Room Codes as required;
  - (iv) Preliminary Doors, screens, glazing and windows;
  - (v) Floor finish indication of type only;
  - (vi) All millwork/systems furniture and workstation layouts (including filing storage units, shelving) for the clinical departments for which Enhanced Block Schematic Diagrams have been prepared;
  - (vii) All equipment for the clinical areas for which architectural plan details have been prepared, coordinated with the updated Equipment, ICAT and Food Services List;
  - (viii) Integration of structural, mechanical and electrical systems in terms of columns, service shafts, risers, etc., in sufficient detail to demonstrate that functional and net area requirements are compliant; and
  - (ix) Preliminary Building design features related to Sustainable Design Requirements.
- (m) Preliminary Space Development Floor plans, reflected ceiling plans, and select elevations (prepared at 1:50 scale) for key clinical areas listed below:
  - (i) Ambulatory Care
    - (A) Typical exam room; typical procedure room; typical treatment room/station; typical consultation room; typical outpatient waiting area for the outpatient clinics
    - (B) Typical key clinical rooms in each outpatient clinic including Seniors, Mental Health, Ambulatory Care, Ambulatory Procedure/Surgery, Dialysis, DL Respiratory/Neuro/Cardio (minor Procedure, Exam Room, Procedure/Treatment/Ortho Fracture Clinic - Open Treatment - Dialysis, Open Cubicles, Procedure Endo-Cysto, High Acuity/Stabilization, Procedure/Suture,

Gynecology, General Radiography, Ultrasound, Mammography, Immunochemistry Line, Echocardiography, EEG, EMG, etc.)

Minimum key spaces for each of the clinical zones are as follows:

- (1) Seniors
  - a. (zone 1-2b): Exam Room (enhanced) Reception, Classroom
  - b. (zone 3): Sub-waiting, Private Assessment, Exercise Therapy, SLP Room
  - c. (zone 5): work stations cluster
- (2) Mental Health
  - a. (zone 1): Waiting, Registration (Adults, Children, Adolescents), Clerical Workroom
  - b. (zone 2): Clinical Treatment, Workroom
  - c. (zone 3): Group Room, Family Coordination
  - d. (zone 4-1): Office Psychiatrist
  - e. (zone 4-2): Clinical Treatment
  - f. (zone 4-3): Counselling
  - g. (zone 5): Office
- (3) Ambulatory
  - a. Reception, waiting Area, Exam room, Minor Procedure, Team Work, Satellite Sub waiting, Childhood obesity, Treatment room open, Ortho Fracture, Exercise, Classroom, Kitchen, Team Resources.
- (4) Dialysis
  - a. Patient Waiting, Conference Room, Reception, Workstation, Open Treatment, APR treatment, Procedure Room, Tech. Room, Team Resource

- (5) Ambulatory Procedure
  - a. Reception, Outer Waiting, Family Waiting, Consultation Room, Change Room, Open Cubicle (including stage 1), Sub-waiting, Patient WR, Central Comm Centre, Procedure Endo, Cysto, Su-sterile Supply, Clean Supply, Staff WR, Procedure Room, Staff Facilities ( M, F), Conf. Room,
- (C) Typical Reception area in each of the clinical program areas,
- (D) Urgent Care: Detailed Layout
- (E) DI: Detailed Layout
- (F) Laboratory: Detailed Layout
- (G) Pharmacy; Detailed layout (Drug Dispensing and Order Entry; Compounding; Pre-packaging & Checking; Sterile Compounding; procurement; Receiving & Storage and Narcotic Storage and Control in Pharmacy Services)
- (ii) Administrative Services
  - (A) Key Spaces for each of the Administrative zones as follows:
    - (1) Leadership Team: (1) Office of CEO, VP, Director Meeting Room, Boardroom
    - (2) Finance: Workroom and typical cluster of workstations
    - (3) Medical Affair: Office of Chief of Staff
    - (4) Centre for Clinical Excellence: Infection Prevention/Control Office
    - (5) HR: Typical cluster of work stations
    - (6) Education: Large Meeting Room
    - (7) Conference and Teaching: Auditorium, Classroom, Training Room
    - (8) Staff: Lounge

- (9) Medical Staff: Communication Centre, Lounge
- (10) Health and Safety: reception
- (11) Volunteers: Work station
- (B) Key spaces for each of the Foundation zones as follows:
  - (1) Meeting/Workroom typical work station cluster
- (C) Key spaces for each of the public areas zones as follows:
  - (1) Main Entrance, Reception / Information, Seating Area, Children's Play, Garden wall Gift Shop, Pharmacy/Convenience Store, Coffee/ Desert, Retail Support, Cafeteria Seating, Hot Food, Sandwich, Donor Wall, Multi Faith Room.
  - (2) Parking: Kiosk Locations, Duress Station
  - (3) HIM/Central Registration: Team Resource Room, Registration Desks, Waiting Area
  - (4) Information Services: Reception, Shared office, Work Stations, Data Centre
  - (5) Contact Centre/ I.S. Service Desk: Work Stations, Service Desk
- (D) Key spaces for each of the Biomed zones as follows:
  - (1) Documents/CAD Room
  - (2) Maintenance: General Shop, General Deliveries Receiving / Staging, Plant Building, Control Room
  - (3) Engineering: Team Resource Room, General Deliveries Receiving
- (E) Key spaces for each of the Material Management zones as follows:
  - (1) Environmental: Sign –in workstation, Supply storage, Team resources, Call Centre: The entire suite
  - (2) MDR: Team resource Room, Assembly Packaging, Equipment Storage, Female Staff facilities



- (3) Material management: Staging Area, Loading Dock, Receiving, Stores, Distribution,
- (4) Administration: Reception, Work Area
- (F) Parking And Security
  - (1) Parking control booth
  - (2) Security: Service Counter, Carrels, Alarm Monitoring, CCTV Monitoring
- (n) Architectural reflected ceiling composite plans (prepared at 1:200 scale) of every level, for the Facility, showing:
  - (i) All grids , walls, ceiling types, services , shafts, and envelope, with detail bubbles and tags indicating the plan breaks for 1:100 scale drawings.
- (o) Architectural reflected ceiling plans (prepared at 1:100 scale) of every level, including the Facility, showing:
  - (i) All walls and partitions in actual thicknesses;
  - (ii) All program and non-program rooms/areas, New room numbering codes;
  - (iii) Ceiling finishes indication of type only; and
  - (iv) All equipment for the clinical areas for which preliminary architectural ceiling plan details have been prepared, coordinated with the updated Equipment, ICAT and Food Services List.
- (p) Structural composite floor plans (prepared at 1:300 scale) of every level, including penthouse(s) and Roof(s), for the Facility, showing:
  - (i) Shear walls, Slab depressions, openings, Slab loading and slab reinforcing for heavy loading areas.
- (q) Structural floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:
  - (i) Foundation plan showing preliminary locations and elevations of footings;
  - (ii) Structural system and framing;
  - (iii) Provisions for adaptability, flexibility and expandability, removal and replacement of building and medical systems and equipment;

- (iv) Provisions for any equipment requirements in the clinical areas for which architectural plan details have been prepared; and
- (v) Summary of preliminary structural loads.
- (r) Mechanical floor plans (prepared at 1:200 scale) of every level, including penthouse(s) and Roof(s), for the Facility, showing:
  - (i) Indicating AHU zoning.
- (s) Mechanical floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:
  - (i) Location and basic layout of major equipment including C.U.P.;
  - (ii) Preliminary routing of main feeds (including pneumatic tube) and associated shafts and risers;
  - (iii) Single-line schematic of services riser drawings for all services;
  - (iv) Preliminary sizing of equipment;
  - (v) Provisions for adaptability, flexibility and expandability, removal and replacement of building and medical systems and equipment;
  - (vi) Provisions for any equipment requirements in the clinical areas for which architectural plan details have been prepared;
  - (vii) Preliminary load estimates for storm and sanitary sewers, potable water supply, heating and cooling plants;
  - (viii) Preliminary flow estimates for heating and cooling systems, air supply, return and exhaust systems;
  - (ix) Typical room servicing;
  - (x) Preliminary plumbing fixture schedules;
  - (xi) Preliminary estimate of annual energy use; and
  - (xii) Climate/wind study results.
- (t) Electrical composite floor plans (prepared at 1:300 scale) of every level, including penthouse(s) and Roof(s), for the Facility, showing:
  - (i) Main and satellite electrical rooms.

- (u) Electrical floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:
  - (i) Location and basic layout of major power distribution equipment;
  - (ii) Routing of main feeds and associated shafts and risers;
  - (iii) Single-line drawings for all electrical services;
  - (iv) Preliminary sizing of major equipment;
  - (v) Preliminary provisions for adaptability, flexibility and expandability, removal and replacement of building and medical systems and equipment;
  - (vi) Provisions for any equipment requirements in the clinical areas for which architectural plan details have been prepared;
  - (vii) Preliminary lighting loads for typical rooms and the clinical areas for which architectural plan details have been prepared; and
  - (viii) Preliminary luminaire schedule of all building luminaires to be used.
- (v) Preliminary ICAT composite floor plans (prepared at 1:200 scale) of every level, including penthouse(s) and Roof(s), for the Facility, showing:
  - (i) Indicating zoning.
  - (ii) Data centre, telecommunications rooms, and servicing area.
- (w) Preliminary ICAT cabling infrastructure floor plans (prepared at 1:100 scale) of every level showing:
  - (i) Cabling riser locations and riser diagrams
  - (ii) Data centre layout, telecommunications room layout, and demarcation rooms arrangement.
- (x) Preliminary Wired and wireless provisions
- (y) Preliminary Provide riser diagram for cellular signal boosting system, including headend equipment, distribution, and field antennas.
- (z) Preliminary Provide network topology diagrams for hospital ICAT systems and intended equipment list.

- (aa) Preliminary Provide ICAT integration diagrams including hospital clinical applications and building systems. Provide a description for intended system design.
- (bb) Preliminary Security floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:
  - (i) Location and basic layout of equipment including, but not limited to, video surveillance, access control, duress/panic alert, intercommunications, patient wandering, infant abduction, asset tracking and personal wireless duress systems;
  - (ii) Riser block diagrams for the access control, duress, panic, intercom, RFID/IR (patient wandering, infant abduction, asset tracking and personal wireless duress) and video surveillance systems depicting point-to-point connections. Multiple systems can be shown on a single drawing; however at a minimum access control, video surveillance and auxiliary systems drawings shall be provided; and
  - (iii) Detail drawing of the Security Command Centre layout and typical security workstation locations.
- (cc) Composite building sections (prepared at 1:200 scale), including penthouse(s) and Roof(s), for the Facility, showing:
  - (i) All grids floor elevations, and envelope, with detail bubbles and tags indicating the breaks for 1:100 scale drawings; and
  - (ii) Fire separation.
- (dd) Typical building sections (prepared at 1:100 scale) showing:
  - (i) Relative thickness of floors/walls, including differentiation between opaque and transparent walls, with fire separations;
  - (ii) Major floor elevations, including those below grade, with fire separations;
  - (iii) Finish grades, dotted lines through building section;
  - (iv) Relationship to Site contours and other important Site elements as shown in building elevation drawings;
  - (v) Elevations beyond; and
  - (vi) Major room names.

- (ee) Stair and elevator plans, sections and details, with fire separations (prepared at 1:50 scale).
- (ff) Preliminary Schematic sections of ceiling space (prepared at 1:50 scale)
  - (i) Take ceiling sections indicating service stacking at various ceiling height planned in the Facility.
- (gg) Composite building Elevations (prepared at 1:200 scale), including penthouse(s) and Roof(s), for the Facility, showing:
  - (i) All grids, floor elevations, and envelope, with detail bubbles and tags indicating the breaks for 1:100 scale drawings.
- (hh) Exterior elevations (prepared at 1:100) showing:
  - (i) Indication of surface materials for all areas, with legend and notations identifying extent and type of all proposed glazing and cladding materials;
  - (ii) Different vertical planes differentiated with line weights or shadows;
  - (iii) Finish grades;
  - (iv) Major floor elevations, including those below grade;
  - (v) Sections when elevation is shown by taking vertical cut-through another space;
  - (vi) Significant plantings/Site elements when important in defining space and volume, such as bodies of water, hills, earth berms; and
  - (vii) Identification of locations for exterior building signage.
- (ii) Exterior design drawings – (prepared at 1:50 scale)

Provide plans, sections and elevations of selected site and exterior elements, indicating development of exterior design intent and showing architectural features and construction assemblies of exterior spaces such as entries, waiting areas, canopies and landscape elements.
- (jj) Exterior wall sections (prepared at 1:50 scale)

Describe typical wall assemblies and indicate relationship of materials. Include annotation describing proposed wall assembly types.
- (kk) Typical envelope / cladding details (prepared at 1:10 scale), provided with a building science report reviewing envelope design and details.

Provide representative section and plan details of exterior wall, roof and floor slab assemblies. Show features such as atrium skylight, sun shading, etc. Details will indicate proposed components of assemblies and will be referenced to other drawings.

- (ll) Preliminary Interior elevations (prepared at 1:50) for public entrances and all other major public spaces.
  - (mm) Interior finishes colour and materials selection boards which include a minimum of three (3) complete options for interior finishes.
  - (nn) Preliminary door, window/glazing and hardware schedules and hardware cut sheets.
  - (oo) Preliminary plumbing fixtures schedules and plumbing fixtures cut sheets.
  - (pp) Preliminary lighting design submittals, including fixture cut sheets and illumination level analysis.
  - (qq) Preliminary security systems floor plan layouts, locations of all security systems equipment, connection points and control points.
  - (rr) Preliminary drawings of all millwork/systems furniture elements identified in the Room Data Sheets, Furniture list and shown in the Room Templates in the Output Specifications, including all dimensions, key elevations, and all fixed and moving elements (1:50 scale).
  - (ss) Preliminary Single line audio/visual distribution diagrams showing cable management and equipment rooms, coordinated with the updated Equipment Lists.
  - (tt) Preliminary Single line information technology distribution diagrams showing cable management and equipment rooms, coordinated with the updated Equipment Lists.
- 1.2 Construction specifications identifying all systems, materials, and construction execution methods proposed to be used in the project. Specifications to be submitted in NMS format.
- 1.3 Design packages for proposed full scale mock-ups with all specified finishes and equipment, in accordance with the Osler design requirements, including fully resolved construction details and methods, for:
- (a) Typical Ambulatory Clinic Exam Room BE 01;
  - (b) Typical Urgent Care Exam Room;

- (c) Typical Phase I Recovery Bay in Ambulatory Procedures;
  - (d) Typical Nursing Station in Urgent Care Exterior; and
  - (e) Wall mock-up as per Section 3.5 - 014339.
- 1.4 Clinical Functionality Report, providing detail level appropriate to the documentation provided in this submission stage, and addressing all issues of Clinical Functionality found in Part 3 of the Output Specifications, in particular, the Clinical Functionality requirements of the key clinical areas listed in Section 1.1(h) of this Appendix A.
- 1.5 Updated Equipment procurement and coordination plan and Equipment List.
- 1.6 Updated Construction Quality Plan.
- 1.7 Updated Phasing Plan (phasing and construction implementation analysis), including demolition, construction, decanting and occupancy.
- 1.8 Updated Approvals Strategy coordinated with the Phasing Plan.
- 1.9 Comprehensive acoustical and vibration control report reviewing all proposed assemblies, acoustical conditions, and noise and vibration control measures.
- 1.10 Environmental services design report.
- 1.11 Vertical transportation analysis, reviewing vertical transportation strategy with reference to service volumes, flow, and security considerations.
- 1.12 Ontario Building Code and Ontarians with Disabilities Act analysis and compliance strategy and accessibility measures report.
- 1.13 Updated Space Program which:
- (a) Identifies net area of each room and department, listed by floor levels;
  - (b) Lists line by line area variance, departmental area variance and grossing factor, and building area and grossing factor in comparison with Output Specification Space Program;
  - (c) Lists mechanical and electrical spaces outside of departmental areas;
  - (d) Utilizes both final room numbering and the alphanumeric Room Codes used in the Space Allocation Tables and Room Data Sheets in Part 3 of the Output Specifications; and
  - (e) Lists additional rooms not previously identified with additional sequential Room Codes as required.

- 1.14 Micro-climate report to confirm that the findings and anticipated conditions are consistent with the micro-climate studies based on the Illustrative Design scheme included in the Output Specifications. The report will address exhaust re-entrainment, pedestrian level wind and snow studies using water flume and wind tunnel testing to provide a visual indication of snow accumulation, wind patterns, wind flows and emission paths on and around the building(s) to demonstrate that the development will not create unacceptable wind forces, noise levels, air quality concerns, or snow fall and accumulation conditions at building entrances, exits, landscaped open spaces and street sidewalks.
- 1.15 Follow-up to LEED registration with CaGBC, and LEED credits tracking documentation. Also provide documentation that supports achievement of all Targeted LEED Credits and Additional Sustainable Requirements described in Section 4.10 Sustainable Design Requirements of Schedule 15 Output Specifications (e.g. all LEED credits that are requirements of the Output Specifications that are not contributing to the LEED Silver Rating).
- 1.16 Preliminary Energy Model Report with Narrative and Inputs including a digital of the entire energy model.
- 1.17 Daylight Study of each floor indicating the lux level at the floor for all daylit spaces in a clear sky condition on March 21st or September 21st at 9:00 a.m. and 3:00 p.m.
- 1.18 Wireless communications design report to detail the proposed wireless network, tracking system and distributed antenna system, as well as confirm that the proposed design meets the performance requirements defined in the PSOS.
- 1.19 Communications infrastructure design report that details the designs and strategies used to achieve performance metrics and up-time guarantees for availability.
- 1.20 Technology Equipment Centre and Technology Distribution Room design report that details the designs and strategies used to achieve performance metrics, up-time guarantees for power and cooling, and security.
- 1.21 Preliminary Interoperability report that details the design strategies and capabilities proposed to maximize interoperability of building operation.
- 1.22 Preliminary Interoperability report that details the design strategies and capabilities proposed to enhance wayfinding effectiveness.
- 1.23 Preliminary Interoperability report that details the design strategies and capabilities proposed to further the vision of a digital hospital.
- 1.24 EMI Report. Also provide a written statement supplemented by drawings and spectral analysis to demonstrate how the Facility's design responds to the EMI requirements of the Output Specifications and the current EMI conditions on the proposed site.



1.25 Any other Submissions Osler reasonably requires to understand the Works.

2. MINIMUM SUBMITTAL REQUIREMENTS FOR THE 100% DESIGN DEVELOPMENT STAGE

Project Co shall provide the following updated Design Development Submittals to Osler for review and comment in accordance with this Schedule 10:

2.1 Updated design development documents in accordance with the requirements set forth in Section 18.3 of this Project Agreement including:

- (a) Updated Site plans (prepared at 1:500 scale) showing all previously listed requirements.
- (b) Updated Site servicing plan (prepared at 1:500 or as appropriate) showing all previously listed requirements.
- (c) Updated Site Grading Plan (prepared at 1:500 or as appropriate).
- (d) Updated Erosion and Sediment Control Plans for each Phase matching the Updated Phasing Plan in Item 2.8 below (prepared at 1:500).
- (e) Updated Stormwater Management Report
- (f) [Intentionally Deleted]
- (g) Updated and augmented Site and landscape details (prepared at 1:10 scale).
- (h) Updated architectural graphic floor plans (11x17- NTS) of every level, including penthouse(s) and roof(s), showing all previously listed requirements.
- (i) Updated composite floor plans (prepared at 1:200) showing all previously listed requirements.
- (j) Updated architectural floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
  - (i) Overall dimensions;
  - (ii) Indication of fire areas, fire walls, and smoke zones;
  - (iii) All millwork/systems furniture and workstation layouts;
  - (iv) All equipment;

- (v) Floor elevations; and
- (vi) Capacity information (number of beds, seating, etc.).
- (k) Updated enlarged architectural plan, details (prepared at 1:50 scale) for key clinical and other areas including all previously listed areas at 1.1 (m) in this Section.
- (l) Interior Design – (prepared at 1: 50 scale)

Provide plans sections and elevations, indicating development of interior design intent and showing architectural features and construction assemblies, including:

- (i) Spaces as Listed under 1.1(m)(ii) C in this Section;
  - (ii) Spaces as Listed under 1.1.(ii) m)(ii)A.1 in this Section
  - (iii) Minor Procedure, Exam Room, Procedure / Treatment, Ortho Fracture Clinic -, Open Treatment – Dialysis , Open Cubicles, Procedure Endo-Cysto, High Acuity/Stabilization, Procedure/Suture Gynecology Room , General Radiography, Ultrasound, Mammography, Immunochemistry Line, Echocardiography
  - (iv) Any other spaces required and directed by Osler.
- (m) Interior Plan and Section Details – (prepared at 1:10 scale)

Provide detail plans, sections and elevations of feature elements, including:

- (i) Details as required to illustrate the design of spaces as listed in 1.1.(m)(ii)C and 1.1.(m) A.1;
  - (ii) Representative wall sections at spaces adjacent to the atrium; guardrails; atrium skylights if applicable.
- (n) Updated Stair and elevator plans, sections and details (prepared at 1:50).
  - (o) Update Architectural reflected ceiling composite plans (prepared at 1:200 scale) of every level, for the Facility, showing previous requirements and:
    - (i) Show and Coordinate all services, ceiling tracks, arms, lights, diffusers, exit signs, nurse call, Wireless, security, etc.
  - (p) Reflected ceiling plans (prepared at 1:100 scale) for all levels except parking, loading and mechanical penthouse, showing all typical rooms and special interest areas with location of major components shown.

- (q) Update Structural composite floor plans (prepared at 1:200 scale) of every level, including penthouse(s) and Roof(s), for the Facility, showing previous requirements.
- (r) Updated structural floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
  - (i) Foundation plan showing finalized locations and elevations of footings;
  - (ii) Column schedules;
  - (iii) Foundation details;
  - (iv) Typical framing details;
  - (v) Provisions for any equipment requirements; and
  - (vi) Updated structural loads.
- (s) Update Mechanical floor plans (prepared at 1:200 scale) of every level, including penthouse(s) and Roof(s), for the Facility, showing previous requirements.
- (t) Updated mechanical floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
  - (i) Detailed floor layouts showing locations of all major mechanical equipment items, pipe mains, risers and branch mains, duct mains including supply return and exhaust;
  - (ii) Interior building section details coordinating and confirming preliminary fit of structural/electrical/mechanical (including pneumatic tube);
  - (iii) Provisions for any equipment requirements;
  - (iv) Finalized load estimates for storm and sanitary sewers, potable water supply, heating and cooling plants;
  - (v) Finalized flow estimates for heating and cooling systems, air supply, return and exhaust systems;
  - (vi) Updated plumbing fixture schedules; and
  - (vii) Updated estimate of annual energy use.
  - (viii) Ground heat exchanger model for 30 years, inputs and outputs.

- (u) Updated Electrical composite floor plans (prepared at 1:200 scale) of every level, including penthouse(s) and Roof(s), for the Facility, showing previous requirements.
- (v) Updated electrical floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
  - (i) Detailed floor layouts showing locations of electrical equipment items, normal and emergency, major feeders and branch feeders, and locations of major pathways for all systems;
  - (ii) Interior building section details coordinating and confirming preliminary fit of structural/electrical/mechanical;
  - (iii) Preliminary Equipment connection data sheet;
  - (iv) Preliminary Summary of lighting loads for all rooms; and
  - (v) Preliminary Finalized load estimates for normal power distribution centres, vital power distribution centres, delayed vital power distribution centres, and heating and cooling plants.
- (w) Update ICAT composite floor plans (prepared at 1:200 scale) of every level, including penthouse(s) and Roof(s), for the Facility, showing previous requirements.
  - (i) Data centre, telecommunications rooms, and servicing area.
- (x) ICAT cabling infrastructure floor plans (prepared at 1:100 scale) of every level showing:
  - (i) Cabling riser locations and riser diagrams.
  - (ii) Data centre layout, telecommunications room layout, and demarcation rooms arrangement.
  - (iii) Typical telecommunications room cabinet elevations layout
- (y) Wired and wireless provisions including all field devices. Update riser diagram for cellular signal boosting system, including head end equipment, distribution, and field antennas.
- (z) Updated network topology diagrams for hospital ICAT systems and intended equipment list.

- (aa) Updated ICAT integration diagrams including hospital clinical applications and building systems. Provide a description for intended system design.
- (bb) ICAT floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:
  - (i) Indicating riser ceiling and wall mounted receptor and signal for all IT and automated equipment.
- (cc) Wired and wireless network architecture diagrams.
- (dd) Update Security composite floor plans (prepared at 1:200 scale) of every level, including penthouse(s) and Roof(s), for the Facility, showing previous requirements.
- (ee) Security floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:
  - (i) Location and basic layout of equipment including, but not limited to, video surveillance, access control, duress/panic alert, intercommunications, patient wandering, infant abduction, asset tracking and personal wireless duress systems;
  - (ii) Riser block diagrams for the access control, duress, panic, intercom, RFID/IR (patient wandering, infant abduction, asset tracking and personal wireless duress) and video surveillance systems depicting point-to-point connections. Multiple systems can be shown on a single drawing; however at a minimum access control, video surveillance and auxiliary systems drawings shall be provided; and
  - (iii) Detail drawing of the Security Command Centre layout and typical security workstation locations.
- (ff) Update composite building sections (prepared at 1:200 scale), including penthouse(s) and Roof(s), for the Facility, showing previous requirements.
- (gg) Updated building sections (prepared at 1:100 scale) showing all previously listed requirements and preliminary ceiling space coordination diagram(s).
- (hh) Updated and augmented exterior design drawings and wall sections (prepared at 1:50 scale) and envelope cladding details (prepared at 1:10 scale), with updated building science report reviewing envelope design and details.
- (ii) Updated stair, elevator and escalator plans, sections and details (scales as appropriate).

- (jj) Update composite building Elevations (prepared at 1:200 scale), including penthouse(s) and Roof(s), for the Facility, showing previous requirements.
  - (kk) Updated exterior elevations (prepared at 1:100) showing all previously listed requirements and significant mechanical and electrical equipment such as roof-top units, chimneys, louvers, transformers, pole lines, etc.
  - (ll) Updated interior elevations (prepared at 1:100) for all previously listed areas at 1.1 (m) in this Section and specifically as follows:
    - (i) Spaces as Listed under 1.1(m)(ii)C in this Section;
    - (ii) Spaces as Listed under 1.1(m)(ii)A.1 in this Section;
    - (iii) Minor Procedure, Exam Room, Procedure / Treatment, Ortho Fracture Clinic -, Open Treatment – Dialysis, Open Cubicles, Procedure Endo-Cysto, High Acuity/Stabilization, Procedure/Suture Gynecology Room , General Radiography, Ultrasound, Mammography, Immunochemistry Line, Echocardiography;
  - (mm) Interior Design – 1:10 scale  
Updated details of feature elements, including all items previously listed.
  - (nn) Finalized interior finishes colour and materials selection boards and preliminary room finishes schedule.
  - (oo) Updated door, window/glazing and hardware schedules and hardware cut sheets.
  - (pp) Updated lighting design submittals, including fixture cut sheets and illumination level analysis.
  - (qq) Updated security systems floor plans and equipment details, locations of all security systems equipment, connection points and control points.
  - (rr) Updated drawings of all millwork/systems furniture elements identified in the Room Data Sheets and shown in the Room Templates in the Output Specifications, including all dimensions, key elevations, and all fixed and moving elements (1:50 scale) and details (1:10 or 1:20 scale, as appropriate).
  - (ss) Updated and augmented audio/visual drawings and details.
  - (tt) Updated and augmented information technology drawings and details.
- 2.2 Updated construction specifications, including all previously listed requirements.

- 2.3 Report on review and adjustments of proposed mock-ups.
- 2.4 Updated Clinical Functionality Report, providing detail level appropriate to the documentation provided in this submission stage, and addressing all issues of Clinical Functionality found in Part 2 of the Output Specifications, in particular, the Clinical Functionality requirements of the key clinical areas listed in Section 1.1(h) of this Appendix A.
- 2.5 Updated building vibration analysis as it relates to relevant equipment, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by Osler.
- 2.6 Updated Equipment procurement and coordination plan and Equipment List.
- 2.7 Updated Construction Quality Plan, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by Osler.
- 2.8 Updated construction implementation analysis, including demolition, construction, and occupancy.
- 2.9 Updated Approvals Strategy coordinated with the Phasing Plan.
- 2.10 Updated acoustical report, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by Osler.
- 2.11 Wayfinding and signage standards proposal, describing wayfinding strategy and its integration with the overall architecture. Illustrating proposed signage standards, including approach to graphics and text, hierarchy of signage, proposed specifications for materials and installation, and maintenance and updating of information. Describe and illustrate proposed use of digital technology and interoperability, with building automation systems, wireless tracking systems, CCTV and other ICAT related systems, to enhance wayfinding effectiveness.
- 2.12 Updated environmental services design report, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by Osler.
- 2.13 Updated vertical transportation analysis, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by Osler.
- 2.14 Updated Ontario Building Code and Ontarians with Disabilities Act analysis, and report from an independent Building Code Consultant providing detailed review of the drawings

- and documentation and confirming compliance with the above regulatory documents including Fire Code.
- 2.15 Updated Space Program, including all previously listed requirements.
  - 2.16 Report on review and adjustments of micro-climate report.
  - 2.17 Progress report on LEED credits tracking documentation. Also provide documentation that supports achievement of all Targeted LEED Credits and Additional Sustainable Requirements described in Section 3.1.5 Sustainability and Environmental Quality of Schedule 15 Output Specifications (e.g. all LEED credits that are requirements of the Output Specifications that are not contributing to the LEED Silver Rating).
  - 2.18 Energy Model Report with Narrative and Inputs including a digital of the entire energy model per Section 3.1.5.
  - 2.19 Daylight Study of each floor indicating the lux level at the floor for all daylit spaces in a clear sky condition on March 21st or September 21st at 9:00 a.m. and 3:00 p.m.
  - 2.20 Report for audio visual systems, digital signage.
  - 2.21 Report for security systems.
  - 2.22 Report for ICAT cabling infrastructure, network equipment, integration and interoperability.
  - 2.23 Report on review and adjustments of proposed Kiosk design.
  - 2.24 Report on review and adjustments of interoperability reports.
  - 2.25 Outline Commissioning Program.
  - 2.26 Any other Submittals Osler reasonably requires to understand the Works.
  - 2.27 Updated Technical Specifications.
  - 2.28 Proposed Kiosk design.
3. MINIMUM SUBMITTAL REQUIREMENTS FOR THE 50% & 80% CONSTRUCTION DOCUMENTS STAGE

Project Co shall provide the following Construction Document Submittals to Osler for review and comment in accordance with this Schedule 10:

- 3.1 Updated construction documents in accordance with the requirements set forth in Section 18.3 of this Project Agreement including:



- (a) Updated Site plan (prepared at 1:500 scale) showing all previously listed requirements and planting schedule.
- (b) Updated Site expansion plan (prepared at 1:500) showing all previously listed requirements.
- (c) Updated Site servicing plan (prepared at 1:500) showing all previously listed requirements.
- (d) Updated Site grading plan (prepared at 1:500)
- (e) Updated Erosion and Sediment Control Plans (e) for each Phase matching the Updated Phasing plan per Item 3.8 below.
- (f) Updated and augmented Site and landscape details (prepared at 1:10 scale).
- (g) Updated composite floor plans (prepared at 1:200) showing all previously listed requirements.
- (h) Architectural floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
  - (i) Full dimensions;
  - (ii) Layout of all spaces;
  - (iii) Fire and Life safety plans;
  - (iv) Material symbols;
  - (v) Door symbols;
  - (vi) Glazed light symbols;
  - (vii) Window types and numbers;
  - (viii) Floor material changes;
  - (ix) Pits, trenches, etc.;
  - (x) Furring notes;
  - (xi) Hatch walls and partitions;
  - (xii) Depressed floor for terrazzo, tile, etc.;
  - (xiii) Lead and other shielding indications;

- (xiv) Curbs for mechanical room penetrations;
  - (xv) Sump pits, gratings;
  - (xvi) Recessed mats;
  - (xvii) Expansion joints;
  - (xviii) Pipe trench;
  - (xix) Convectors;
  - (xx) Low partitions; and
  - (xxi) Folding partitions.
- (i) Updated and augmented enlarged architectural detailed plans (prepared at 1:50 scale) for the areas listed under 1.1 (m) in this Section and in addition for all other areas required to explain the design intent.
- (j) Update Structural composite floor plans (prepared at 1:200 scale) of every level, including penthouse(s) and Roof(s), for the Facility, showing previous requirements.
- (k) Updated structural floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
- (i) Sections/elevations showing all structural elements;
  - (ii) All legends and schedules; and
  - (iii) Finalized structural loads.
- (l) Update Mechanical floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and Roof(s), for the Facility, showing previous requirements.
- (m) Updated mechanical floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
- (i) Interior building section details coordinating and confirming finalized fit of structural/electrical/mechanical;
  - (ii) All legends and schedules;
  - (iii) HVAC, plumbing and medical gas details;
  - (iv) Enlarged equipment room and toilet plans;

- (v) Mechanical room plans;
- (vi) Control schematics; and
- (vii) Finalized estimate of annual energy use.
- (n) Updated Electrical composite floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and Roof(s), for the Facility, showing previous requirements.
- (o) Updated electrical floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements and:
  - (i) Interior building section details coordinating and confirming finalized fit of structural/electrical/mechanical;
  - (ii) All legends, and schedules;
  - (iii) Grounding details;
  - (iv) Fire alarm riser diagram;
  - (v) Nurse call riser diagram;
  - (vi) Telephone riser diagram;
  - (vii) Paging riser diagram;
  - (viii) Television riser diagram (as applicable);
  - (ix) Network cabling riser diagram;
  - (x) Control schematics; and
  - (xi) Electrical details including electrical room equipment requirements.
- (p) Updated ICAT cabling infrastructure composite floor plans (prepared at 1:100 scale) of every level, for the Facility, showing:
  - (i) Data centre, telecommunications rooms, and servicing area.
- (q) Updated ICAT cabling infrastructure floor plans (prepared at 1:100 scale) of every level showing:
  - (i) Cabling riser locations and riser diagrams.

- (ii) Data centre layout, telecommunications room layout, and demarcation rooms arrangement.
- (iii) Telecommunications rooms cabinet elevations layout.
- (iv) Provide required details for telecommunications equipment installation in data centre and telecommunications rooms.
- (v) Provide proof of coordination with (v) mechanical and electrical requirements in telecommunications spaces, including UPS, HVAC, grounding, fire alarm, and other systems.
- (r) Wired and wireless provisions including all field devices including voice, data, and TV outlets.
- (s) Update riser diagram for cellular signal boosting system, including headend equipment, distribution, and field antennas.
- (t) Updated network topology diagrams for hospital ICAT systems and intended equipment list.
- (u) Updated ICAT integration diagrams including hospital clinical applications and building systems.
- (v) ICAT floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:
  - (i) Indicating mounting schedules, final locations of equipment.
- (w) Update Security composite floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and Roof(s), for the Facility, showing previous requirements.
- (x) Security floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing:
  - (i) Location and basic layout of equipment including, but not limited to, video surveillance, access control, duress/panic alert, intercommunications, patient wandering, infant abduction, asset tracking and personal wireless duress systems;
  - (ii) Riser block diagrams for the access control, duress, panic, intercom, RFID/IR (patient wandering, infant abduction, asset tracking and personal wireless duress) and video surveillance systems depicting point-to-point connections. Multiple systems can be shown on a single drawing; however

- at a minimum access control, video surveillance and auxiliary systems drawings shall be provided; and
- (iii) Detail drawing of the Security Command Centre layout and typical security workstation locations.
- (y) Update Architectural reflected ceiling composite plans (prepared at 1:200 scale) of every level, for the Facility, showing previous requirements
- (z) Updated reflected ceiling plans (prepared at 1:100 scale) for all areas, showing:
- (i) Light fixtures;
  - (ii) Grilles;
  - (iii) Diffusers;
  - (iv) Heat detectors;
  - (v) Smoke detectors;
  - (vi) Soffits (dotted);
  - (vii) Folding partitions;
  - (viii) Cubicle tracks;
  - (ix) IV tracks;
  - (x) Curtain tracks;
  - (xi) Skylights;
  - (xii) Access panels;
  - (xiii) Hatches;
  - (xiv) Major structural members (if sight exposed);
  - (xv) Surgical lights (dotted);
  - (xvi) Patient lifts;
  - (xvii) Other ceiling-mounted equipment;
  - (xviii) Hoods;

- (xix) Gas columns;
- (xx) Exit signs;
- (xxi) Room numbers;
- (xxii) ICAT sensors and infrastructure; and
- (xxiii) Any other fixture or device to be installed in or mounted on ceiling.
- (aa) Composite building sections (prepared at 1:200 scale), including penthouse(s) and Roof(s), for the Facility, showing previous requirements.
- (bb) Updated building sections (prepared at 1:100 scale) showing all previously listed requirements and:
  - (i) Completed ceiling space coordination diagram(s);
  - (ii) Vertical dimensions;
  - (iii) Floor elevations;
  - (iv) Column lines;
  - (v) Room numbers/names;
  - (vi) Rooftop equipment; and
  - (vii) Wall section designations.
- (cc) Updated and augmented exterior wall sections (prepared at 1:50 scale) and envelope/ cladding details (prepared at 1:10 scale), with updated building science report reviewing envelope design and details.
- (dd) Updated and augmented stair and elevator plans, sections and details (scales as required).
- (ee) Update composite building Elevations (prepared at 1:200 scale), including penthouse(s) and Roof(s), for the Facility, showing previous requirements.
- (ff) Updated exterior elevations (prepared at 1:100) showing all previously listed requirements and:
  - (i) Window types and numbers;
  - (ii) Entrance types and numbers;

- (iii) Door types and numbers;
  - (iv) Wall material indication;
  - (v) Coping materials;
  - (vi) Overhead fascia materials;
  - (vii) Top of foundation wall line;
  - (viii) Footing and foundation line;
  - (ix) Floor lines;
  - (x) Vertical dimensions;
  - (xi) Signage;
  - (xii) Section lines;
  - (xiii) Column centerlines;
  - (xiv) Louvers;
  - (xv) Stairs and ramps;
  - (xvi) Chimneys;
  - (xvii) Stacks;
  - (xviii) Light fixtures; and
  - (xix) Other mechanical or electrical equipment.
- (gg) Updated interior elevations (prepared at 1:50) for all previously listed areas and showing:
- (i) Hospital casework indications;
  - (ii) Millwork and detail designations;
  - (iii) Shelving;
  - (iv) Tack board;
  - (v) Whiteboard;

- (vi) Interior glazed panels (dimensions and details);
  - (vii) Base indication;
  - (viii) Mechanical grilles, thermostats, gas outlets, etc.;
  - (ix) Wall handrails;
  - (x) Graphics;
  - (xi) Equipment;
  - (xii) Interior finishes;
  - (xiii) Electrical receptacles, speakers, clocks, light fixtures, etc.;
  - (xiv) Wall-mounted accessories;
  - (xv) Plumbing fixture foot controls, etc.; and
  - (xvi) Locker designation.
- (hh) Interior details (scaled as appropriate) showing:
- (i) Base types;
  - (ii) Soffits;
  - (iii) Curbs for mechanical penetrations;
  - (iv) Door details;
  - (v) Hollow metal glazed panels;
  - (vi) Expansion joints;
  - (vii) Fireproofing at beams and columns;
  - (viii) Low walls;
  - (ix) Folding partitions
  - (x) Rolling doors;
  - (xi) Dressing compartments;
  - (xii) Pass-windows;



- (xiii) Supports – patient lifts;
  - (xiv) Automatic sliding/swing door details;
  - (xv) Hanger details for x-ray equipment;
  - (xvi) Expansion joint details;
  - (xvii) Typical partition construction;
  - (xviii) Exhaust hood details; and
  - (xix) Corner guard details.
  - (xx) Updated room finish schedule.
- (ii) Updated door, window/glazing and hardware schedules and hardware cut sheets.
  - (jj) Updated lighting design submittals, including fixture cut sheets and illumination level analysis.
  - (kk) Updated and augmented security systems floor plans and equipment details, locations of all security systems equipment, connection points and control points.
  - (ll) Drawings of all millwork/systems furniture elements identified in the Room Data Sheets and shown in the Room Templates in the Output Specifications, including all dimensions, key elevations, and all fixed and moving elements (1:50 scale) and details (1:10 or 1:20 scale, as appropriate).
  - (mm) Updated and augmented audio/visual drawings and details.
  - (nn) Updated and augmented information technology drawings and details.
- 3.2 Updated construction specifications, including all previously listed requirements.
- 3.3 Report on review and adjustments of mock-ups.
- 3.4 Updated Clinical Functionality Report, providing detail level appropriate to the documentation provided in this submission stage, and addressing all issues of Clinical Functionality found in Part 3 of the Output Specifications, in particular, the Clinical Functionality requirements of the key clinical areas listed in Section 1.1(h) of this Appendix A.
- 3.5 Updated building vibration and acoustical analysis as it relates to relevant equipment, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by Osler.

- 3.6 Updated Equipment procurement and coordination plan and Equipment List.
- 3.7 Updated Construction Quality Plan, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by Osler.
- 3.8 Updated construction implementation analysis, including demolition, construction, and occupancy.
- 3.9 Updated Approvals Strategy coordinated with the Phasing Plan.
- 3.10 Updated acoustical report, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by Osler.
- 3.11 Updated environmental services design report, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by Osler.
- 3.12 Updated vertical transportation analysis, if there are any changes to previous version, including a statement of how the proposed matter has changed from the previous matter reviewed by Osler.
- 3.13 Updated Ontario Building Code and Ontarians with Disabilities Act analysis and compliance strategy.
- 3.14 Updated wayfinding and signage standards, design, layout and specifications for materials and installation, including detail drawings of typical conditions (including kiosk designs).
- 3.15 Updated Space Program, including all previously listed requirements.
- 3.16 Report on review and adjustments of micro-climate report.
- 3.17 Progress report on LEED credits tracking documentation. Also provide documentation that supports achievement of all Targeted LEED Credits and Additional Sustainable Requirements described in Section Section 3.1.5 Sustainability and Environmental Quality of Schedule 15 Output Specifications (e.g. all LEED credits that are requirements of Schedule 15 Output Specifications that are not contributing to the LEED Silver Rating).
- 3.18 Energy Model Report with Narrative and Inputs including a digital of the entire energy model per Section 3.1.5.
- 3.19 Daylight Study of each floor indicating the lux level at the floor for all daylit spaces in a clear sky condition on March 21st or September 21st at 9:00 a.m. and 3:00 p.m.

- 3.20 Updated Technical Specifications
- 3.21 Updated Outline Commissioning Program.
- 3.22 Updated Mock up Specifications
- 3.23 Any other Submittals Osler reasonably requires to understand the Works.

4. MINIMUM SUBMITTAL REQUIREMENTS FOR THE CONSTRUCTION STAGE

Project Co shall provide the following Construction Document Submittals to Osler for review and comment in accordance with this Schedule 10:

- 4.1 Provide all updated and consolidated drawings and specifications as they are issued for construction.
- 4.2 Works Schedule, updated monthly, showing complete sequence of construction by activity, identifying Works of separate stages and other logically grouped activities and indicating:
  - (a) dates for submission, review time, resubmission time and last date for meeting fabrication schedule of all required Shop Drawings and samples;
  - (b) the early and late start, early and late finish, float dates and duration of all activities;
  - (c) estimated percentage of completion for each item of the Works at each submission of schedule;
  - (d) changes occurring since previous submission of schedule; and
  - (e) a narrative report defining:
    - (i) problem areas, anticipated delays, and impact on schedule;
    - (ii) corrective action recommended and its effect; and
    - (iii) effect of changes on schedules of the Project Co Parties.
- 4.3 Shop Drawings and samples which will be processed by Osler include:
  - (a) Coordination drawings of all millwork, casework and modular systems furniture will be reviewed for harmonization of ergonomics, equipment layout and mechanical/electrical outlet locations;
  - (b) Major finishes and envelope systems and materials;

- (c) All In-Contract Equipment;
  - (d) Security systems including hardware and access control;
  - (e) Signage and wayfinding systems (including demonstration of a Kiosk);
  - (f) Architectural feature elements and assemblies such as handrails, guardrails, feature stairs, canopies, etc.
  - (g) Pharmacy medication systems;
  - (h) All major mechanical equipment and systems; and
  - (i) All major electrical equipment and systems, electrical coordination study and arc flash study.
- 4.4 All review comments from submissions to building authorities, insurance authorities and inspection authorities.
- 4.5 Progress photographs, updated monthly, from four vantage points, locations to be determined by Osler and/or the Osler Representative.
- 4.6 Material and finish samples (all exterior and interior finishes) and mock-ups, as noted in the construction specifications, including (but not limited to) mock-ups of the following:
- (a) Typical exterior glazing (curtain wall, structural glazing);
  - (b) Typical cladding module, including curtain wall/glazing integrated with stone or other cladding components;
  - (c) Sunshading devices (fins, louvers etc.);
  - (d) Handrails or guardrails in public spaces;
  - (e) Significant feature elements, such as convenience stairs.
- 4.7 Full scale room Mock-ups, including:
- (a) Typical Ambulatory Clinic Exam Room BE 01;
  - (b) Typical Urgent Care Exam Room;
  - (c) Typical Phase I Recovery Bay in Ambulatory Procedures;
  - (d) Typical Nursing Station in Urgent Care Exterior; and
  - (e) Wall mock-up as per Section 3.5 - 014339.

**William Osler Health System**

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- 4.8 Mock ups must be full scale using materials that conform to materials specified, including work of all trades required to finish work and placement of all Equipment, unless otherwise specified, supplied by owner. Testing and inspection reports.
- 4.9 Construction Contractor proposed substitutions.
- 4.10 Deficiency reports, updated monthly.
- 4.11 Draft of Final Commissioning Program.
- 4.12 Draft Scheduled Maintenance Plan.
- 4.13 Draft Five Year Maintenance Plan.
- 4.14 Final Commissioning Plan.
- 4.15 Substantial Completion Certificate.
- 4.16 Any other Submittals Osler reasonably requires to understand the Works.
- 4.17 Updated Energy Model.

**SCHEDULE 11**

**DESIGN QUALITY PLAN AND CONSTRUCTION QUALITY PLAN**

**[REDACTED]**

**SCHEDULE 12  
SERVICE QUALITY PLAN OUTLINE**

**[REDACTED]**

**SCHEDULE 13**

**PROJECT CO PROPOSAL EXTRACTS**

[REDACTED]



**SCHEDULE 14**

**OUTLINE COMMISSIONING PROGRAM**

**1. APPLICABLE STANDARDS**

- 1.1 Project Co shall ensure that all regulation and code references in this Schedule 14 and Schedule 15 - Output Specifications are current and applicable at time of commissioning.
- 1.2 Project Co shall plan, schedule, coordinate and execute the commissioning of each item of Equipment and building system provided as part of the Works in accordance with the following standards:
  - (a) CAN/CSA Z318.0-05 Commissioning of Health Care Facilities;
  - (b) 2007 ASHRAE Handbook – HVAC Applications Chapter 42 HVAC Commissioning;
  - (c) ASHRAE Guideline 1.1, HVAC&R Technical Requirements for the Commissioning Process;
  - (d) ASHRAE Guideline 0-2005, The Commissioning Process;
  - (e) CaGBC LEED EA Pre-requisite 1 Fundamental Commissioning;
  - (f) CaGBC LEED EA Credit 3 Enhanced Commissioning Credit Requirements;
  - (g) CSA Z320-11 Building Commissioning Standard;
  - (h) Building Envelope;
    - (i) CSA Z320-11 - Building Commissioning, as applicable
  - (i) Elevators & Lifts;
    - (i) CSA Z320-11 - Building Commissioning, as applicable
  - (j) Fire Protection Systems;
    - (i) CSA Z320-11 - Building Commissioning, as applicable
    - (ii) NFPA 291 - Fire Flow Testing

- (iii) AWWA C600-82 - Standard for Installation of Ductile-Iron Water Mains and their appurtenances
- (k) Plumbing Systems
  - (i) CSA Z320-11 – Building Commissioning, as applicable
  - (ii) OPSS 407 – Requirements for adjusting or rebuilding maintenance holes, catch basins, ditch inlets, and valve chambers; and the installation of safety platforms
  - (iii) OPSS 410 – Construction specification for pipe sewer installation in open cut
- (l) HVAC Systems
  - (i) CSA Z320-11 – Building Commissioning, as applicable
  - (ii) ASHRAE Guideline 1.1 – 2007 – The HVAC&R Technical Requirements for the Commissioning Process
- (m) Building Automation System
  - (i) CSA Z320-11 - Building Commissioning, as applicable
- (n) Electrical Systems
  - (i) CSA Z320-11 – Building Commissioning, as applicable
- (o) Communication Systems
  - (i) ANSI/TIA/EIA – 568 Commercial Building Telecommunications Standard
  - (ii) ANSI/TIA/EIA – 569 Commercial Building Standard for Telecommunications Pathways and Spaces
  - (iii) ANSI/TIA/EIA – 607 Commercial Building Grounding (Earthing) and Bonding Requirements for Telecommunications
  - (iv) BICSI Telecommunications Distribution Design Manual
  - (v) BICSI Wireless Design Manual

- (vi) Per the systems manufacturer’s instructions, specifications, installation and warranty requirements
- (p) Security & Safety Systems
  - (i) CSA Z320-11 – Building Commissioning, as applicable
- (q) Earth Energy System
  - (i) CSA C448.1-02 – Design and Installation of Earth Energy Systems

**2. PROJECT CO COMMISSIONING AUTHORITY**

- 2.1 Project Co shall retain a commissioning authority (hereinafter referred to as the “**Project Co Commissioning Authority**”) to undertake the role described in CSA Z320-11.
- 2.2 The Project Co Commissioning Authority shall be:
  - (a) an individual, company or agency having a minimum of five (5) years experience in commissioning of mechanical, electrical, automation, and information technology systems in similar health care facilities, shall be licensed or authorized by the Association of Professional Engineers of the Province of Ontario and shall be familiar with and knowledgeable about each of the standards listed in Section 1.1 of this Schedule 14; and
  - (b) Meet the CaGBC LEED-NC 2009 Independent Commissioning Authority (CxA) requirements as outlined in EA Credit 3 Enhanced Commissioning.

**3. COMMISSIONING PARAMETERS**

- 3.1 Prior to 75% Design Development Submittals and at the onset of the Construction Phase when Subcontractors have been retained, the Project Co Commissioning Authority shall convene a meeting of the Commissioning Team to set commissioning parameters, designate the responsibilities of the various parties and establish the documentation requirements for each stage of the Works and the Project Co Commissioning .
- 3.2 Project Co shall create a detailed schedule of commissioning activities (the “**Commissioning Schedule**”) and shall incorporate the Commissioning Schedule into the Works Schedule.

- 3.3 The Project Co Commissioning Authority shall submit reports to the Works Committee regarding the progress of the Project Co Commissioning on a monthly basis, or a bi-weekly basis if requested by Osler.
- 3.4 Project Co is responsible for the supply, installation, start-up, testing, adjusting and cleaning of each item of equipment and the building system provided as part of the Works. Where applicable, commissioning shall be completed in accordance with the equipment vendor's guidance or other instructions.

**4. COMMISSIONING TEAM**

- 4.1 The commissioning team shall be comprised of:
  - (a) a representative of Project Co;
  - (b) a representative of Osler;
  - (c) the Project Co Commissioning Authority;
  - (d) representatives of the Design Team, the Construction Contractor and the Service Provider;
  - (e) representatives of the Design Compliance Consultant;
  - (f) representatives of the relevant Equipment manufacturers; and
- 4.2 Project Co and each relevant Project Co Party shall assign an individual from each relevant trade to the commissioning team and shall ensure that representatives of the relevant Equipment manufacturers are present during the relevant Project Co Commissioning.
- 4.3 Project Co shall provide all necessary labour, materials, equipment, testing apparatus and incidentals necessary to completely start-up, verify, performance test and commission each item of Equipment and building system provided as part of the Works.
- 4.4 The Commissioning Team shall be assembled during the design stage. After Financial Close, unless otherwise agreed by the Commissioning Team, they shall meet monthly to review the progress of the Project Co Commissioning.

**5. COMMISSIONING PROCEDURES**

- 5.1 Project Co shall meet all of the testing, balancing, commissioning and verification requirements outlined in Schedule 15 – Output Specifications.

- 5.2 Project Co and the Project Co Commissioning Authority shall plan and prepare documentation and execute all commissioning processes and procedures.
- 5.3 Project Co shall start and bring to normal operating condition or to the level described in the respective testing section for each item of equipment and building system provided as part of the Works.
- 5.4 The commissioning team shall ensure that all regulation and code references in the construction documents are current and applicable.
- 5.5 Project Co shall operate and maintain each item of Equipment and building system provided as part of the Works as required for the duration of the Project Co Commissioning.
- 5.6 Project Co shall modify or replace, re-adjust, re-test, re-balance and re-start any item of Equipment or building system provided as part of the Works that fails to perform as required.
- 5.7 The Project Co Commissioning Authority shall lead the Commissioning Team through the start-up, verification and performance testing check sheets appropriate to each item of equipment and building system provided as part of the Works.
- 5.8 The Project Co Commissioning Authority shall lead the commissioning team through any seasonal verification necessary to complete the check sheets for the Equipment and building system provided as part of the Works.
- 5.9 The Project Co Commissioning Authority shall lead the Commissioning Team through the one year performance review of the Equipment and building system provided as part of the Works following substantial completion.
- 5.10 The Project Co Commissioning Authority shall prepare and issue installation, verification and performance testing check sheets for each item of Equipment and building system provided as part of the Works. Check sheets shall be prepared in accordance with the standards listed in Section 1.21 of this Schedule 14 and shall be modified to reflect the particular needs of the Project.
- 5.11 Various members of the Commissioning Team shall complete the various check sheets as it pertains to their field of expertise. Members of the Commissioning Team that have direct knowledge and expertise of specific check sheets shall review the check sheets on completion and shall initial each check sheet to indicate their acceptance.
- 5.12 Project Co Commissioning Authority shall notify the Osler Commissioning Agent in advance of all equipment and building system start-up, testing, balancing, and

training activities taking place. Such notice shall be given a minimum of five Business Days prior to such activity taking place.

- 5.13 Independent testing and inspection contractors are to be used for all required testing and inspections for each item of equipment and building systems provided as part of the Works.
- 5.14 The Project Co Commissioning Authority shall ensure that all the required commissioning procedures for the LEED Fundamental and Best Practice Commissioning Credit (as referred to in the Output Specifications) have been met.
- 5.15 The Project Co Commissioning Authority shall chair commissioning meetings in intervals which reflect the progress of the work onsite.

**6. COMMISSIONING SUBMITTALS**

- 6.1 Project Co shall cause the Project Co Commissioning Authority to prepare and submit to the Osler Representative detailed commissioning plans for each item of Equipment and building system provided as part of the Works. A commissioning plan is to be provided at the end of the design development and it is to be updated at the onset of each project phase.
- 6.2 Project Co shall develop and incorporate commissioning specifications into the construction contract documents.
- 6.3 Project Co shall prepare and submit to the Osler Representative a detailed commissioning schedule for each item of Equipment and building system provided as part of the Works.
- 6.4 Project Co shall cause the Project Co Commissioning Authority shall prepare and submit to the Osler Representative the commissioning report within a reasonable time after occupancy.
- 6.5 Project Co Commissioning Authority with the help from Project Co shall prepare and submit to the Osler Representative a hard and soft copy of a systems manual. The systems manual is to at minimum meet the LEED Best Practice Commissioning requirements.
- 6.6 Project Co Commissioning Authority shall ensure that all documentation required for LEED Fundamental and Best Practice Commissioning has been developed and if necessary, obtained from the commissioning team.

**7. TRAINING REQUIREMENTS**

- 7.1 Project Co shall provide a training schedule and agenda for each training session. Operational and maintenance training shall be provided for all equipment and systems. Project Co shall provide two dates for each training session to accommodate the availability of hospital staff.
- 7.2 The Project Co Commissioning Authority shall co-ordinate with Osler Representative, or its designate, to schedule the training and to review the training agendas.
- 7.3 The Project Co Commissioning Authority shall attend every training session to ensure the agenda is maintained and that quality training is provided. One training session for each category shall be video recorded in digital format. The disks shall be submitted to Osler and labelled accordingly.
- 7.4 Project Co's design consultants shall provide Osler with an overview of the building systems, including an explanation for why types of systems and equipment were selected, identification of the design intent and discussion of the operating procedures required to maintain the design intent. These sessions shall be video recorded in digital format.
- 7.5 The training sessions for equipment shall be conducted at the location of the equipment.
- 7.6 The training sessions for systems shall be conducted at the systems operating stations (workstations).

**8. BUILDING SYSTEMS TO BE COMMISSIONED**

- 8.1 The Project Co Commissioning will include the commissioning of all items of Equipment and building systems provided as part of the Works including, but not limited to, the following:
  - (a) Site Development
    - (i) Storm Sewers & Structures
    - (ii) Sanitary Sewers & Structures
    - (iii) Storm & Sanitary Pumps
    - (iv) Storm Water Collection System
    - (v) Water Servicing and Appurtenances

- (vi) Natural Gas Service
- (vii) Electrical Power Service
- (viii) Underground Communications Services
- (ix) Irrigation Sprinkler Systems
- (b) Building Envelope
  - (i) Window Testing
  - (ii) Air/Vapour Barrier
  - (iii) Roofing
  - (iv) Thermal Scan
- (c) Elevators and Lifts
  - (i) Elevators
  - (ii) Lifts
  - (iii) Escalators
- (d) Building Acoustical Systems
- (e) Fire Protection Systems
  - (i) Fire Suppression System
  - (ii) Wet Sprinkler
  - (iii) Dry Sprinkler
  - (iv) Pre-action Sprinkler
  - (v) Total Flooding – Inert Gas
  - (vi) Total Flooding – Wet Chemical
  - (vii) Standpipe & Hose – 2-1/2”/1-1/2”
  - (viii) Fire/Sprinkler Pumps



- (ix) Portable Fire Extinguishers
- (f) Plumbing Systems
  - (i) Domestic water pressure boost
  - (ii) Domestic water distribution
  - (iii) Domestic water heating
  - (iv) Hot water recirculating
  - (v) Compressed air supply
  - (vi) Sanitary fixtures
  - (vii) Safety (emergency) fixtures
  - (viii) Chlorination of Potable Water Systems
  - (ix) Backflow preventors
  - (x) Mixing valves
  - (xi) Heat sanitization systems
  - (xii) Copper-silver ion units
  - (xiii) Sump pumps
  - (xiv) Heat recovery units
  - (xv) Electronic faucets
  - (xvi) Interceptor/neutralizing systems
  - (xvii) Bulk acid systems
  - (xviii) Pure water systems
- (g) Lab Gas Systems
  - (i) Lab Air
  - (ii) Lab Vacuum

- (h) Medical Gas Systems
  - (i) Medical Air
  - (ii) Medical Vacuum
  - (iii) Oxygen
  - (iv) Carbon Dioxide
  - (v) Nitrogen
  - (vi) Nitrous Oxide
  - (vii) Anaesthetic Gas Scavenging
  - (viii) Smoke evacuation
- (i) Pneumatic Tube System
  - (i) Stations
  - (ii) Transfer units
  - (iii) Blowers
- (j) HVAC Systems
  - (i) Fire dampers
  - (ii) Smoke dampers
  - (iii) Fan coil units
  - (iv) CRAC units
  - (v) Fuel supply
  - (vi) Standby fuel storage and supply
  - (vii) Heating Plant
  - (viii) Steam distribution – 100 psig
  - (ix) Steam distribution – 12 psig

- (x) Condensate collection & return
- (xi) Feedwater supply & treatment
- (xii) Flue gas heat recovery
- (xiii) Heat exchangers
- (xiv) Hot water heating – radiation
- (xv) Hot water heating – reheat
- (xvi) Hot water/glycol heating – AHU
- (xvii) Underfloor heating
- (xviii) Snow melting
- (xix) Soffit heating
- (xx) Chillers
- (xxi) Cooling towers
- (xxii) Chilled water distribution
- (xxiii) Condenser water distribution
- (xxiv) Direct expansion refrigeration
- (xxv) Supply air distribution
- (xxvi) Return air collection
- (xxvii) Outdoor air intake
- (xxviii) Air filtration
- (xxix) Air humidification
- (xxx) Air de-humidification
- (xxxii) Air heating
- (xxxii) Air cooling

- (xxxiii) Exhaust air collection
- (xxxiv) Exhaust air discharge
- (xxxv) Energy recovery
- (xxxvi) Pressurization fans
- (xxxvii) Isolation Rooms
- (xxxviii) Dust Collectors
- (xxxix) Laboratory Fume Hood Exhaust Systems
- (xl) VFD Harmonic Distortion Measurement
- (xli) Room air change rates
- (xlii) Room temperature controls
- (xlili) Room noise
- (xliv) Carbon Monoxide Detection System
- (xlv) Chemical Treatment Systems (Open & Closed Loops)
- (xlvi) Pressure Reducing Valve stations
- (xlvii) Automated failover for Technology Equipment Center (TEC)
- (xlviii) Automated failover for Technology Distribution Room (TDR)
- (k) Mechanical Equipment Noise Level Verification
- (l) Mechanical Systems Testing, Adjusting and Balancing
- (m) All Mechanical/Electrical Systems Items Related to Obtaining LEED credits
- (n) Earth Energy System
- (o) Building Automation Systems
  - (i) Operator Workstations

- (ii) Field panels
- (iii) Network cabling
- (iv) Valves, dampers and actuators
- (v) Pumps
- (vi) Fans
- (vii) Meters
- (viii) Heating systems
- (ix) Ventilating systems
- (x) Air conditioning systems
- (xi) Pressurization systems
- (xii) Smoke venting
- (xiii) Humidification systems
- (xiv) De-humidification systems
- (xv) Smoke control systems
- (xvi) Electrical Systems
- (xvii) Isolation Room Controls
- (xviii) Reheat Coils
- (p) Electrical Systems
  - (i) Thermographic Study of Panels and Coordination Study and Arch Flash Study
  - (ii) HV feeders
  - (iii) HV switchgear
  - (iv) HV transformers

- (v) High-voltage bus
- (vi) 600-V bus
- (vii) 600-V switchgear
- (viii) 600-V feeders
- (ix) 600-V panel boards
- (x) 600-V Motor control centers (to be listed under mechanical and to be commissioned in conjunction with associated motors)
- (xi) 600-V Transformers
- (xii) Low-voltage feeders
- (xiii) Low-voltage panel boards
- (xiv) Low-voltage Motor control centers
- (xv) Wiring & Equipment connections
- (xvi) Electrical devices
- (xvii) Diesel-engine generator sets
- (xviii) Diesel-engine generator controls
- (xix) Associated systems
- (xx) Automatic Transfer switches or systems
- (xxi) Power conditioners
- (xxii) UPS systems including batteries
- (xxiii) Power factor correction capacitors
- (xxiv) Lighting fixtures (including exterior lighting fixtures and controls)
- (xxv) Electric vehicle outlets
- (xxvi) Emergency lighting battery units

- (xxvii) Lighting controls
- (xxviii) Variable frequency drives (to be listed under mechanical and to be commissioned in conjunction with associated motors)
- (xxix) Transient Voltage Surge Suppression
- (xxx) Nurse Call
- (xxxi) Fire Detection and Alarm
- (q) Communications Systems
  - (i) Unified communications
    - (1) Voice over IP
    - (2) Video
    - (3) Messaging
  - (ii) Analog phone system
  - (iii) Wired network certification
  - (iv) Wireless network certification
    - (1) Osler Private wireless network
    - (2) Osler Public wireless network
  - (v) Wireless Tracking System
  - (vi) Distributed Antenna System
  - (vii) Paging
  - (viii) Intercom
  - (ix) Pagers
  - (x) Cable Television
  - (xi) Video on demand

- (xii) Satellite TV (as necessary)
- (xiii) Microwave antenna system
- (r) Point of Service Devices
  - (i) Fixed devices
  - (ii) Integrated bedside terminals
  - (iii) Signage monitors
  - (iv) Wall mounted monitors
  - (v) Patient room monitors
  - (vi) Room sign monitors
  - (vii) Dashboard monitors
  - (viii) Kiosks
  - (ix) Audio visual equipment
  - (x) Server infrastructure
  - (xi) Storage infrastructure
  - (xii) Security & Safety Systems
  - (xiii) Duress and Panic Alert
  - (xiv) Access Control and Monitoring
  - (xv) Video Surveillance and Digital Storage
  - (xvi) Electromagnetic Door Locks, electronic hardware devices, auto door operators
  - (xvii) Security Access Control Devices and User Credentials
  - (xviii) Security and Digital Video Workstations
  - (xix) Patient Wandering, Infant Abduction, Asset Tracking and Personal Wireless Duress systems



- (xx) Primary and Satellite Security Command Centres
- (xxi) Systems Integrations
- (xxii) Door Hardware

**9. EQUIPMENT COMMISSIONING**

- 9.1 Project Co shall coordinate with and provide reasonable assistance to Osler in implementing and coordinating all equipment commissioning activities.
- 9.2 Project Co shall be solely responsible for implementing and carrying out all the commissioning activities in relation to the Equipment as described in Section 21 of the Project Agreement, and including for certainty all activities relating to training set out in Section 21 of the Project Agreement.
- 9.3 Project Co shall coordinate with the Hospital on Hospital Commissioning activities. Accordingly, Project Co shall:
  - (a) ensure that the Works to enable Hospital Commission are completed in time for the scheduled Hospital Commission dates;
  - (b) work with Osler to appropriately schedule the Hospital Commissioning activities; and
  - (c) provide support to Osler during Hospital Commissioning activities, especially as it relates to the interface between the Works and equipment.

**SCHEDULE 15**

**OUTPUT SPECIFICATIONS**

**[REDACTED]**

**SCHEDULE 16**

**TITLE ENCUMBRANCES**

“**Title Encumbrances**” means:

1. Instrument No. BR30997 registered December 7, 1955 being a Transfer of Easement to Peel Memorial Hospital Association over lands described as Parts 3, 4, 6 and 7, Plan 43R-16347 as confirmed by Notice of Claim registered as Instrument No. RO1095026 on July 26, 1995.
2. Instrument No. VS58197 registered November 20, 1967 being a Transfer of Easement to The Water Commissioners of the Town of Brampton over Parts 5, 6 and 7, Plan 43R-16347 for the purposes of installation and maintenance of watermains, as confirmed by Notice of Claim registered as Instrument No. PR2162073 on March 9, 2012.
3. Instrument No. VS81760 registered August 21, 1968 being a Transfer of Easement to The Hydro-Electric Commission of the Town of Brampton over Parts 4 and 7, Plan 43R-16347 for the purposes of installing lines, wires, cables, etc.
4. Instrument No. RO614883 registered July 27, 1982 being a Re-zoning and Site Plan Agreement with The Corporation of the City of Brampton .
5. Instrument No. R0940020 registered June 1, 1990 being a Transfer from Mary Louise Majetic to Peel Memorial Hospital Association. There are no rights being retained by the Transferor in this instrument.
6. Instrument No. RO973140 registered June 13, 1991 being a Re-zoning and Site Plan Agreement with The City of Brampton.
7. Instrument No. RO973141 registered June 13, 1991 being an amendment to a Re-zoning and Site Plan Agreement with the City of Brampton.
8. Instrument No. RO976411 registered July 11, 1991 being an amendment to a Re-zoning and Site Plan Agreement with The City of Brampton.
9. Instrument No. RO1002226 registered April 3, 1992 being an agreement with the City of Brampton.
10. Instrument No. PR2487030 registered January 14, 2014 being a Master Site Plan Agreement with the City of Brampton.
11. Liens, charges or prior claims for taxes (which term includes charges, rates, levies and assessments) or utilities (including levies or imposts for sewers and other municipal utility services) not yet due or if due, the validity of which is being contested in good faith, and liens or charges for the excess of the amount of any past due taxes or utilities

- charges for which a final assessment or account has not been received over the amount of such taxes or utilities charges as estimated and paid by Osler.
12. Inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Site or of which notice in writing shall not at the time have been given to Osler pursuant to the *Construction Lien Act* (Ontario) or otherwise or any lien or charge, a claim for which, although registered, or notice of which, although given, relates to obligations not overdue or delinquent and in respect of any of the foregoing cases, Osler has, where applicable, complied with the holdback or other similar provisions or requirements of the relevant construction contracts so as to protect the Site therefrom.
  13. The rights reserved to or vested in any municipality or governmental or other public authority by any statutory provision.
  14. Any subsisting reservations, limitations, provisions and conditions contained in any original grants from the Crown of any land or interests therein, reservations of undersurface rights to mines and minerals of any kind.
  15. Zoning (including, without limitation, airport zoning regulations), use and building by-laws and ordinances, federal, provincial or municipal by-laws and regulations as to the use of the Site, which do not materially impair the value of the Site or materially interfere with the use of the Site for the purposes of the Project.
  16. Servitudes, easements, rights-of-way, or other similar rights in land for sewers, electric lines, telegraphs and telephone lines and other utilities and services which do not materially impair the value of the Site or materially interfere with the use of the Site for the purposes of the Project.
  17. Minor encroachments onto or from neighboring lands which are permitted under agreements with the owners of such lands and which do not materially impair the value of the Site or materially interfere with the use of the Site for the purposes of the Project.
  18. Any encroachments, easements, rights of way or similar interests which would be revealed by an up-to-date survey of the Site.
  19. Registered subdivision, site-plan, development or other municipal agreements, if any, provided such are complied with and which do not materially impair the value of the Site or materially interfere with the use of the Site for the purposes of the Project.
  20. The exceptions and qualifications contained in subsection 44(1) of the *Land Titles Act* (Ontario) except for paragraphs 11 and 14, Provincial Succession Duties and Escheats or Forfeiture to the Crown and the rights of any person who would, but for the *Land Titles Act*, be entitled to the land or any part of it through length of adverse possession, prescription, misdescription, or boundaries settled by convention.

**SCHEDULE 17**

**[INTENTIONALLY DELETED]**

**SCHEDULE 18**

**COMMUNICATIONS PROTOCOL**

**1. GENERAL**

**1.1 Communications Principles**

The Project represents an important infrastructure commitment by the Province. Accordingly, a comprehensive communications and stakeholder relations plan is required to ensure the public is informed and engaged where necessary and to meet both Osler and IO communications requirements. This plan will support effective communications between Project Co and Osler, and with Osler stakeholders and the Osler community.

**2. OSLER RESPONSIBILITIES**

**2.1 Lead Communications Role**

Osler will assume the lead communications role for its local community. Osler will take primary responsibility for all communications matters and will be responsible for:

- (a) providing identified, dedicated lead communications contacts with applicable skills and experience with 24/7 availability on applicable aspects of communications and issues management;
- (b) providing an identified, dedicated media-trained lead media spokesperson, with back-up media-trained personnel, as required with 24/7 availability on applicable aspects of communications;
- (c) acting as primary media contact for the Project;
- (d) providing final review and approval of all public communications materials;
- (e) communicating promptly with all relevant parties on crisis issues and communicating within 24 hours on general issues;
- (f) maintaining and updating the Project website, as required; and
- (g) providing coordinated updates to internal/ external stakeholders, as required.

**2.2 Osler Communications Responsibilities During the Works Phase**

In the period up to the Substantial Completion Date, Osler will be responsible for the following matters:

- (a) Communications: To develop a comprehensive communications strategy and program that includes community relations, media relations, marketing, special events, employee communications and government relations regarding issues related to the Project.
- (b) Crisis Communications: To undertake, in cooperation with Project Co, required planning for potential crisis issues related to the Project. A plan will be developed within 30 days following Financial Close outlining the roles and responsibilities of both Osler and Project Co during a crisis situation.
- (c) Patient-Related Communication: To provide all communications related to the provision of the Hospital Services.
- (d) Performance Review: To review, on a periodic basis, Project Co's performance in providing communications support as outlined in Section 3 of this Schedule 18.

### **2.3 Osler Communications Responsibilities During the Operational Term**

No later than 30 days prior to the Scheduled Substantial Completion Date, the Parties will agree on a communications protocol to apply during the Operational Term.

## **3. PROJECT CO RESPONSIBILITIES**

### **3.1 Support Communications Role**

Project Co will assume a supporting role with respect to communications related to the Project. Project Co will be responsible for:

- (a) providing identified, dedicated media-trained lead media spokesperson (with back-up media-trained personnel, as required) with 24/7 availability on applicable aspects of communications;
- (b) responding to communications issues in accordance with agreed timeframes;
- (c) reviewing and/ or providing communications and/ or technical materials reasonably requested by Osler for website content;
- (d) updating, in collaboration with Osler, internal/ external stakeholders, as required, including involvement and participation in community events;
- (e) providing the public/ media reasonable access to the Site for milestone events;
- (f) directing all media enquiries and interview requests to Osler's lead communications contact;

- (g) maintaining a written record of all material public enquiries, complaints and communications and providing copies to Osler’s lead communications contact on a weekly basis (or immediately if urgent);
- (h) reporting to Osler on communications matters on an agreed upon basis;
- (i) participating in Osler communications meetings, as required; and
- (j) during a crisis situation, ensuring and making available sufficient resources to work effectively with Osler and proactively manage and perform its communications responsibilities.

### **3.2 Project Co Communications Responsibilities During the Works Phase**

In the period up to the Substantial Completion Date, Project Co will:

- (a) within 30 days following Financial Close and in collaboration with Osler, develop, maintain and implement a construction liaison and communications plan that includes:
  - (i) a description of Project Co’s approach to all communications aspects of the Project;
  - (ii) a description of Project Co’s communications team, including the roles and responsibilities for each team member and any Project Co Parties who will provide any aspect of the communications program; and
  - (iii) the identification of proposed communication tools to be used to keep the community and other stakeholders informed with respect to the progress of the Project;
- (b) update the construction liaison and communications plan on an annual basis or as reasonably requested by Osler;
- (c) coordinate with Osler in the implementation of the construction liaison and communications plan;
- (d) attend regular meetings with Osler to discuss communication issues and developments;
- (e) produce monthly progress reports, which will include information on activities, public and media enquiries, any emerging issues, and actions taken in response to issues;



- (f) through Osler, provide regular updates to the immediately affected property owners and neighbourhoods on Works related issues with particular attention to communicating the scope, schedule and status of the Works. This will include processes to proactively address any Works related enquiries and issues (e.g., public enquiries and complaints re noise, hours of work, dust, etc.);
- (g) provide regular updates to Osler related to the management of local traffic during the Works;
- (h) develop, in collaboration with Osler, a crisis communication plan outlining roles and responsibilities for a list of potential crisis issues that could develop during the Works; and
- (i) follow any guidelines provided by Osler related to signage or advertising at the Site.

### **3.3 Project Co Communications Responsibilities During the Operational Term**

No later than 30 days prior to the Scheduled Substantial Completion Date, the Parties will agree on a communications protocol to apply during the Operational Term.

## **4. PUBLIC DISCLOSURE AND MEDIA RELEASES**

### **4.1 Public Disclosure and Media Releases**

- (a) Project Co shall not, and shall ensure that no Project Co Party shall, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, this Project Agreement, the Hospital Services, or any matters related thereto, without the prior written consent of Osler, in its sole discretion, or, in the case of any media release, public announcement or public disclosure required by Applicable Law, without the prior written consent of Osler.
- (b) Unless otherwise required by Applicable Law (but only to that extent), neither Party shall use the other Party's name or refer to the other Party, directly or indirectly, in any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, this Project Agreement, the Hospital Services, or any matter related thereto, without the prior written consent of the other Party.
- (c) Project Co shall, and shall ensure that all Project Co Parties and its and their subcontractors, agents, employees, officers and directors, in each case, comply, at all times, with Osler's media release and publicity protocols or guidelines, as such protocols and/or guidelines are updated by Osler from time to time.

**5. CONSTRUCTION SIGNAGE**

**5.1 Construction Signage Guidelines**

With respect to any signage that may be erected and maintained at or on the Site or Project, Project Co, Project Co Parties and/or the Lenders, as applicable, shall:

- (a) include the hospital logo and the IO logo on the sign;
- (b) ensure that the signage is no larger than the larger of: (i) an existing government project sign on the site; or (ii) 16 feet by 8 feet;
- (c) adhere to local by-laws including by-laws regarding placement and size;
- (d) consider signage material suitable for long-term outdoor exposure;
- (e) provide a mock-up of the signage to Osler with a copy to IO for approval prior to printing; and
- (f) be responsible for installation, maintenance and removal of the signage.

**SCHEDULE 19**

**[INTENTIONALLY DELETED]**

## SCHEDULE 20

## PAYMENT MECHANISM

PART A:  
DEFINITIONS

## 1. DEFINITIONS

1.1 “**Accessibility Condition**” means a state or condition of the relevant Functional Part or the means of access to it which allows all persons who are entitled to enter, occupy or use the relevant Functional Part to enter and leave the Functional Part safely and conveniently and using normal access routes. For the avoidance of doubt, in the event of an Elevator Availability Failure, it shall be assumed that Osler’s access to Level P1 to Level 3 of the Facility has been impaired and there shall be an Elevator Availability Failure Deduction.

1.2 “**Ad-Hoc Services**” means services which, in accordance with Schedule 15 – Output Specifications, Osler is entitled to require Project Co to provide but where Project Co’s obligation to provide those services does not arise unless and until it is requested to do so by Osler.

1.3 “**Ad-Hoc Services Request**” means a request for the provision of Ad-Hoc Services made by Osler to Project Co in accordance with Schedule 15 – Output Specifications.

1.4 “**Adjusted Service Payment**” means the amount that would be calculated for the relevant Contract Month in accordance with the formula set out in Section 1.1 of Part B of this Schedule 20 without deducting the sums represented by the symbol  $\Sigma D$ .

1.5 “**Annual Service Payment**” means the sum in Canadian dollars calculated in accordance with the provisions set out in Part B of this Schedule 20.

1.6 “**APAP**” has the meaning given in Section 6.4 of Part C of this Schedule 20.

1.7 “**Area Weighting Percentage**” means the percentage weighting ascribed to the relevant Functional Area for the purpose of calculating Deductions for Availability Failures as set out in Appendix D to this Schedule 20.

1.8 “**Availability Condition**” means any of (i) the Accessibility Condition, (ii) the Safety Condition or (iii) the Use Condition.

1.9 “**Availability Failure**” means an Event which has not been Rectified within the relevant Rectification Time and which causes a Functional Part to be Unavailable.

1.10 “**Availability Failure Deduction**” means a Deduction which may be made in respect of an Availability Failure.

1.11 “**Base Date**” means April 1, 2014.

1.12 “**Bedding-In Period**” means the three-month period following the Payment Commencement Date.

1.13 “**Contract Day**” means a 24 hour period commencing at midnight at the start of the relevant day.

1.14 “**Contract Month**” means a calendar month, except with respect to the first Contract Month, which runs from the Payment Commencement Date until the end of the calendar month in which the Payment Commencement Date falls, and the last Contract Month, which runs from the first day of the calendar month in which the Expiry Date falls until the Expiry Date.

1.15 “**Deduction**” means a deduction made from an Adjusted Service Payment in accordance with this Schedule 20.

1.16 “**Elevator Availability Failure**” means an Event which has not been Rectified in the Rectification Time and which impacts on Osler’s ability to use the elevator(s) in question. For the avoidance of doubt, in these circumstances it shall be assumed that the Accessibility Condition has been breached and that Osler’s access to Level P1 to Level 3 of the Facility is impaired.

1.17 “**Elevator Availability Failure Deduction**” means a Deduction which may be made in respect of an Elevator Availability Failure as calculated in accordance with the provisions set out in Section 13 of Part C of this Schedule 20.

1.18 “**Escalation Factor**” means the escalation factor calculated in accordance with Section 3.1 of Part B of this Schedule 20.

1.19 “**Event**” means an incident or state of affairs which does not meet or comply with the Performance Indicators set out in Schedule 15 – Output Specifications and/or results in an Availability Condition not being met in a Functional Part. An Event is capable of becoming:

- (a) an Availability Failure, if it results in an Availability Condition not being met in a Functional Part and the Event is not Rectified within the Rectification Time;
- (b) a Service Failure if the Event is not Responded to within the Response Time or Rectified within the Rectification Time; or
- (c) if, in accordance with Schedule 15 – Output Specifications, no Rectification Time or Response Time applies, the Event shall be either a Service Failure or Quality Failure as determined by the designation of the applicable Performance Indicator in Schedule 15 – Output Specifications as Failure Type “SF” or “QF” respectively.

1.20 “**Failure Points**” means points allocated to Project Co in respect of the occurrence of Availability Failures, Quality Failures and Service Failures which are determined by the provisions set out in Part G of and Appendix C to this Schedule 20.

1.21 “**Failure Type**” means the designation of Performance Indicators in Schedule 15 – Output Specifications as either “AF” (Availability Failure), “QF” (Quality Failure) or “SF” (Service Failure).

1.22 “**Functional Area**” means an area of the Facility specified as such in Appendix D to this Schedule 20 comprising one or more Functional Units.

1.23 “**Functional Part**” means a Functional Unit or a Functional Area according to the context in which it is used.

1.24 “**Functional Unit**” means a room or space within a Functional Area which is specified as such in Appendix D to this Schedule 20.

1.25 “**Gainshare Adjustment**” means the adjustment calculated in accordance with Schedule 36 - Energy Matters.

1.26 “**Help Desk**” means the contact point to be established by Project Co pursuant to Schedule 15 – Output Specifications in respect of the Help Desk for the notification of Events and other day to day matters arising in relation to the provision of Services.

1.27 “**Initial APAP Due Date**” has the meaning given in Section 6.4 of Part C of this Schedule 20.

1.28 “**Lifecycle Payment**” means the annual amounts as represented in Appendix F to this Schedule 20 and does not include additional costs other than anticipated costs (and directly related contingencies and reserves) in respect of the replacement, refreshment and/or refurbishment of building systems, equipment and fixtures.

1.29 “**Major Quality Failure**” means a Quality Failure which has been designated in the Output Specifications or in this Schedule 20 as a Major Quality Failure.

1.30 “**Major Quality Failure Deduction**” means a Deduction which may be made in respect of a Major Quality Failure.

1.31 “**Major Service Failure**” means a Service Failure which has been designated in the Output Specifications or in this Schedule 20 as a Major Service Failure.

1.32 “**Major Service Failure Deduction**” means a Deduction which may be made in respect of a Major Service Failure.

1.33 “**Medium Quality Failure**” means a Quality Failure which has been designated in the Output Specifications or in this Schedule 20 as a Medium Quality Failure.

1.34 “**Medium Quality Failure Deduction**” means a Deduction which may be made in respect of a Medium Quality Failure.

1.35 “**Medium Service Failure**” means a Service Failure which has been designated in the Output Specifications or in this Schedule 20 as a Medium Service Failure.

1.36 “**Medium Service Failure Deduction**” means a Deduction which may be made in respect of a Medium Service Failure.

1.37 “**Minimum Agreed Availability Conditions**” means all of the Accessibility Condition, the Safety Condition and the Use Condition, as temporarily modified as permitted in accordance with Section 9 of Part C of this Schedule 20 for the purposes of a Temporary Repair.

1.38 “**Minimum Unavailability Deduction**” means the sum of \$[REDACTED] which shall be index linked from the Base Date, using the Escalation Factor as referred to in Section 3.1 of Part B of this Schedule 20.

1.39 “**Minor Quality Failure**” means a Quality Failure which has been designated in the Output Specifications or in this Schedule 20 as a Minor Quality Failure.

1.40 “**Minor Quality Failure Deduction**” means a Deduction which may be made in respect of a Minor Quality Failure.

1.41 “**Minor Service Failure**” means a Service Failure which has been designated in the Output Specifications or in this Schedule 20 as a Minor Service Failure.

1.42 “**Minor Service Failure Deduction**” means a Deduction which may be made in respect of a Minor Service Failure.

1.43 “**Monthly Service Payment**” means the sum in Canadian Dollars payable by Osler to Project Co for the provision of the Project Co Services in accordance with the Project Agreement, as calculated in Section 1.1 of Part B of this Schedule 20.

1.44 “**Painshare Adjustment**” means the adjustment calculated in accordance with Schedule 36 – Energy Matters.

1.45 “**Performance Indicator**” means a description in Schedule 15 – Output Specifications of the level of performance that Project Co must achieve to attain compliance with the allotted output specification.

1.46 “**Performance Monitoring Period**” means the periods of time specified in Schedule 15 – Output Specifications in respect of a Project Co Service or a part of a Project Co Service being the periods by reference to which Project Co has an obligation to monitor its performance of a Project Co Service as set out under the column headed “Recording Frequency” of the Performance Indicators Legend.

1.47 “**Performance Monitoring Report**” means the report specified in Schedule 15 – Output Specifications in respect of a Service or a part of a Service which Project Co has an obligation to prepare for Osler in respect of its performance of that Service or the relevant part of it during a specified period.

1.48 “**Permanent Repair**” means Rectification where a Temporary Repair has been permitted and carried out pursuant to Section 9 of Part C of this Schedule 20.

1.49 “**Permanent Repair Deadline**” has the meaning given in Section 9.1(b) of Part C of this Schedule 20.

1.50 “**Quality Failure**” means any failure by Project Co to provide the Project Co Services in accordance with Performance Indicators designated Failure Type “QF” in Schedule 15 – Output Specifications.

1.51 “**Quality Failure Deduction**” means a Deduction which may be made in respect of a Quality Failure.

1.52 “**Rectification**” means, following the occurrence of an Event and where rectification is applicable in accordance with Schedule 15 – Output Specifications, making good the Event so that the subject matter of the Event complies with the levels of service required pursuant to the Project Agreement. Without prejudice to the generality of the foregoing this shall include (a) restoring all functional capability; (b) ensuring that any Functional Part which has been affected by the relevant Event complies with the Availability Conditions; and (c) formally notifying the Help Desk that Rectification has been completed; and “Rectify” or “Rectified” shall be construed accordingly.

1.53 “**Rectification Time**” means in the case of an Event which, if not rectified, will result in Unavailability, a period of 4 hours or, in the case of any other Event, the period specified in Schedule 15 – Output Specifications within which Rectification of the relevant Event in the relevant Functional Part must be completed, calculated in either case from the time that such Event is reported to the Help Desk. For the avoidance of doubt, if no period for rectification is specified in Schedule 15 – Output Specifications in respect of the relevant Event, no Rectification Time applies.

1.54 “**Remedial Period**” means the period allowed for remedying a Quality Failure in accordance with Section 3.3 of Part C of this Schedule 20.



1.55 “**Response**” means, following the notification of the occurrence of an Event and where response is applicable in accordance with Schedule 15 – Output Specifications, the following actions by Project Co:

- (a) establishing the nature, location and cause of the Event and attending the Site if necessary;
- (b) appointing a suitably qualified, experienced and accountable person to assess the situation who, within reasonable limits, is empowered to take or to authorize any required action;
- (c) taking all necessary actions to make the Functional Part safe and secure, thereby as a minimum fulfilling all health and safety requirements;
- (d) when necessary, giving the Osler Representative an assessment of the problem, the action taken, details of any work required with timescales and any limitations that this may impose on the related Functional Parts or Project Co Services; and
- (e) formally advising the Help Desk that the Response has been completed.

1.56 “**Response Time**” means the time required for Project Co to complete its Response measured from when an Event is reported to the Help Desk.

1.57 “**Return Date**” has the meaning given in Section 12.3(d) of Part C of this Schedule 20.

1.58 “**Safety Condition**” means a state or condition of the relevant Functional Part which allows those persons who it can reasonably be expected may from time to time require to enter, leave, occupy and use such Functional Part to do so safely, including compliance with Applicable Law, relevant Osler policies and MOHLTC requirements related to fire safety or health or workplace safety.

1.59 “**Seasonal Bedding-In Period**” means a calendar month during the first 12 calendar months following the Payment Commencement Date which is not contemporaneous with the Bedding-In Period.

1.60 “**Service Failure**” means any failure by Project Co to provide the Project Co Services in accordance with Performance Indicators designated Failure Type “SF” in Schedule 15 – Output Specifications and which, where a Response Time or Rectification Time applies, has not been responded to or rectified (as the case may be) within the relevant time. For the avoidance of doubt, where no Response Time and/or Rectification Time applies (for example, in respect of scheduled activities) there shall be a Service Failure at the point at which the non-compliance occurred (for example, non-performance of the scheduled activity by the scheduled time).

1.61 “**Service Failure Deduction**” means a Deduction which may be made in respect of a Service Failure.

1.62 “**Service Failure Performance Indicator**” means a Performance Indicator designated as “SF” (Service Failure) in Schedule 15 – Output Specifications.

1.63 “**Subsequent APAP Due Date**” has the meaning given in Section 6.4 of Part C of this Schedule 20.

1.64 “**Temporary Alternative Accommodation**” means accommodation offered to Osler by Project Co as a substitute for any Unavailable Functional Part pursuant to Section 12 of Part C of this Schedule 20.

1.65 “**Temporary Repair**” means, in respect of the occurrence of an Event which results in an Availability Condition not being met in a Functional Part, works of a temporary nature that do not constitute Rectification but satisfy the Minimum Agreed Availability Conditions and substantially make good the relevant Event for the period until a Permanent Repair can be undertaken.

1.66 “**Unavailable**” means, in relation to a Functional Part, that such Functional Part (or any part thereof) is in a state or condition which does not comply with any one or more of the Availability Conditions and “**Unavailability**” shall be construed accordingly.

1.67 “**Unit Weighting Percentage**” means the percentage weighting ascribed to each Functional Unit for the purpose of calculating Deductions for Availability Failures as set out in Appendix D to this Schedule 20.

1.68 “**Use Condition**” means a state or condition of the relevant Functional Part which satisfies the Use Parameters for that Functional Part.

1.69 “**Use Parameters**” means the range of functional requirements for the proper use and enjoyment of a Functional Part for its particular purpose as set out in Schedule 15 – Output Specifications.

**PART B:  
CALCULATION OF SERVICE PAYMENTS**

**1. MONTHLY SERVICE PAYMENT**

1.1 The Monthly Service Payment payable in respect of any Contract Month shall be calculated in accordance with the following formula:

$$\text{MSP} = (\text{ASPn}/12) - \Sigma\text{D} + \text{GS} - \text{PS}$$

where

MSP is the Monthly Service Payment for the Contract Month for which the formula is to be applied;

ASPn is the Annual Service Payment for the relevant Contract Year;

ΣD is the sum of Deductions in respect of the relevant Contract Month in relation to Quality Failures, Service Failures and Availability Failures calculated in accordance with the provisions set out in Part C of this Schedule 20;

GS means any Gainshare Adjustment arising pursuant to Schedule 36 – Energy Matters; and

PS means any Painshare Adjustment arising pursuant to Schedule 36 – Energy Matters.

1.2 In the Contract Month in which the Payment Commencement Date falls and in the last Contract Month of the Project Term, a pro rata adjustment shall be made to reflect the actual number of days in the relevant Contract Month from and including the Payment Commencement Date (for the first month) and up to and including the last day of the Project Term (for the last month). Additionally, in the Contract Month in which the Payment Commencement Date falls, the number of days in the Contract Month shall be adjusted to include such number of calendar days after the Substantial Completion Date and before the Payment Commencement Date that Project Co has provided the Project Co Services.

1.3 Osler shall pay to Project Co the Monthly Service Payment in accordance with the provisions of this Schedule 20 and Section 31 of the Project Agreement.

**2. ANNUAL SERVICE PAYMENT**

2.1 The Annual Service Payment for any Contract Year shall be calculated in accordance with the following formula:

$$\text{ASPn} = (\text{ASPXo} \times (1 - \text{PESC})) + (\text{ASPXo} \times \text{PESC} \times \text{ESCn}) + (\text{LCPn} \times \text{ESCn}) + \text{IA}$$

Where:

ASP<sub>n</sub> is the Annual Service Payment for the relevant Contract Year;

ASP<sub>Xo</sub> is the Annual Service Payment, excluding the Lifecycle Payment for the relevant Contract Year as set out in Appendix F to this Schedule 20;

PESC is [REDACTED]%;

LCP<sub>n</sub> is the Lifecycle Payment for the relevant Contract Year as set out in Appendix F to this Schedule 20;

IA is the Insurance Adjustment calculated in accordance with Section 2.7 and 2.8 of this Part B; and

ESC<sub>n</sub> is the Escalation Factor for the relevant Contract Year as calculated in accordance with Section 3.1 of this Part B.

2.2 No later than 60 days prior to each Insurance Review Date, Project Co will require its insurance broker to prepare and submit to Osler the Joint Insurance Cost Report. Osler and Project Co, both acting reasonably, will agree on the Insurance Adjustment to be applied to the Annual Service Payment for the next Contract Year.

2.3 The Insurance Adjustment will constitute an adjustment to the Annual Service Payment on the Payment Commencement Date. On each Insurance Review Date thereafter, the Insurance Adjustment will be applied in accordance with Section 2.1 of this Part B.

### **3. ESCALATION FACTOR**

3.1 The Escalation Factor shall be calculated in accordance with the following formula:

$$\text{ESC}_n = \text{CPI}_n / \text{CPI}_o$$

Where:

ESC<sub>n</sub> is the escalation factor applicable to the relevant Contract Year;

CPI<sub>n</sub> is the value of CPI on April 1 of the relevant Contract Year “n”, to be determined by reference to the relevant index in the month of February most recently preceding the indexation date; and

CPI<sub>o</sub> is the value of CPI on the Base Date, to be determined by reference to the relevant index in the month of February most recently preceding the Base Date.

**PART C:  
DEDUCTIONS FROM SERVICE PAYMENTS**

**1. ENTITLEMENT TO MAKE DEDUCTIONS**

1.1 If at any time during the Operational Term a Quality Failure, a Service Failure or an Availability Failure shall occur, Osler shall, subject to Sections 1, 2, and 5 of this Part C, be entitled to make a Deduction from the relevant Monthly Service Payment in respect of that Quality Failure, Service Failure or Availability Failure.

1.2 The maximum aggregate of all Deductions that Osler can make from a Monthly Service Payment in respect of any Contract Month shall be the Adjusted Service Payment relating to that Contract Month.

1.3 The classification of an Event as a potential Quality Failure, Service Failure or Availability Failure shall be made at the time at which the occurrence of the Event is reported to the Help Desk. An Event which is incorrectly classified may be re-classified with the approval of the Osler Representative and the Project Co Representative, acting reasonably, in which case the applicable Performance Monitoring Report will be revised accordingly.

**2. BEDDING-IN PERIOD AND SEASONAL BEDDING-IN PERIOD**

2.1 During the Bedding-In Period, the following provisions shall apply:

- (a) during the first month of the Bedding-In Period, no Failure Points may be awarded and no Deductions may be made in respect of Quality Failures and Service Failures occurring in the provision of any Project Co Service; and
- (b) during the second and third months of the Bedding-In Period, the number of Failure Points and the amount of any Deductions in respect of Quality Failures and Service Failures occurring in the provision of any Project Co Service shall be reduced by [**REDACTED**]%.

2.2 For the avoidance of doubt, there shall be no relief from Failure Points or Deductions relating to Availability Failures during the Bedding-In Period.

2.3 Project Co shall be entitled to two Seasonal Bedding-In Periods. Project Co shall, by written notice to the Osler Representative, identify each Seasonal Bedding-In Period at least 30 days prior to the first day of such Seasonal Bedding-In Period.

2.4 During the Seasonal Bedding-In Periods, the revised environmental parameters identified in Table 3, Part 4 of Schedule 15 – Output Specifications will be in effect.

2.5 For the avoidance of doubt, there shall be no relief from Failure Points or Deductions relating to Availability Failures, Quality Failures or Service Failures during the Seasonal Bedding-In Periods.

**3. AMOUNT OF DEDUCTIONS FOR QUALITY FAILURES**

3.1 Subject to Sections 1, 2 and 5 of this Part C, the amount of the Deduction in respect of a Quality Failure shall be as follows:

- (a) in the case of a Minor Quality Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 3.1 of Part B in this Schedule 20;
- (b) in the case of a Medium Quality Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 3.1 of Part B in this Schedule 20; and
- (c) in the case of a Major Quality Failure, the sum of \$[REDACTED], index-linked using the Escalation Factor as referred to in Section 3.1 of Part B in this Schedule 20.

3.2 There are no Response Times or Rectification Times in respect of Quality Failures. The occurrence of a Quality Failure will result in a Quality Failure Deduction in respect of the Contract Month in which the Quality Failure occurred.

3.3 Following the occurrence of a Quality Failure, Project Co shall be allowed a Remedial Period of one Contract Month. If, before the expiry of the Remedial Period, Project Co demonstrates, to the reasonable satisfaction of the Osler Representative, that it has remedied the Quality Failure, no further Deduction shall be made in respect of the Quality Failure. Otherwise, a further Deduction shall be made of the appropriate amount (as described in Section 3.1 of Part C of this Schedule 20) and a further Remedial Period or Remedial Periods of equal duration shall apply (and, if appropriate, Deductions shall continue to be made) until such time as Project Co shall demonstrate, to the reasonable satisfaction of the Osler Representative, that it has remedied the Quality Failure.

**4. AMOUNT OF DEDUCTIONS FOR SERVICE FAILURES**

4.1 Subject to Sections 1, 2 and 5 of this Part C, the amount of the Deduction in respect of a Service Failure shall be as follows:

- (a) in the case of a Minor Service Failure, the sum of \$[REDACTED], index-linked per Functional Unit affected using the Escalation Factor as referred to in Section 3.1 of Part B in this Schedule 20;

- (b) in the case of a Medium Service Failure, the sum of \$[REDACTED], index-linked per Functional Unit affected using the Escalation Factor as referred to in Section 3.1 of Part B in this Schedule 20; and
- (c) in the case of a Major Service Failure, the sum of \$[REDACTED], index-linked per Functional Unit affected using the Escalation Factor as referred to in Section 3.1 of Part B in this Schedule 20.

4.2 Where a Service Failure Performance Indicator has a Response Time or a Rectification Time, a Service Failure shall only occur if the Event in question has not been responded to within the applicable Response Time or rectified within the applicable Rectification Time.

4.3 Following the occurrence of a Service Failure, Project Co shall be allowed an additional Response Time or Rectification Time (as the case may be) equivalent to the original Response Time or Rectification Time. If, before the expiry of this additional period, Project Co demonstrates, to the reasonable satisfaction of the Osler Representative, that it has remedied the Service Failure, no further Deduction shall be made in respect of the Service Failure. Otherwise, a further Deduction shall be made of the appropriate amount (as described in Section 4.1 of Part C of this Schedule 20) and a further Response Time or Rectification Time of equal duration shall apply (and, if appropriate, Deductions shall continue to be made) until such time as Project Co shall demonstrate, to the reasonable satisfaction of the Osler Representative, that it has remedied the Service Failure.

4.4 The provisions of Section 4.3 of this Part C shall not apply to Service Failures in cases where, if the response or rectification is not carried out within the Response Time or the Rectification Time, as applicable, the Osler Representative notifies the Project Co Representative that Osler no longer requires the relevant Project Co Service.

4.5 Where a Service Failure Performance Indicator has no Response Time or Rectification Time, a Service Failure, shall occur upon the occurrence of the Event in question and a Service Failure Deduction shall apply in accordance with Section 4.1 of this Part C.

## **5. TOLERANCES FOR QUALITY FAILURES AND SERVICE FAILURES**

5.1 No Deduction may be made to the Monthly Service Payment for the relevant Contract Month in respect of any Minor Quality Failure, Medium Quality Failure, Minor Service Failure or Medium Service Failure if, in respect of the Project Co Service in question, the combined total of the Minor Quality Failure Deductions, Medium Quality Failure Deductions, Minor Service Failure Deductions and Medium Service Failure Deductions which have occurred in the Contract Month in respect of that Project Co Service does not exceed in aggregate a sum calculated in accordance with the following formula:

$$SD = (ASP_n/12) \times [REDACTED]\%$$

Where:

SD is the total of all such Deductions that could have been made in respect of the Project Co Services; and

ASP<sub>n</sub> is the Annual Service Payment for the relevant Contract Year.

5.2 If SD is exceeded, a Deduction shall be made in respect of each and every Minor Quality Failure, Medium Quality Failure, Minor Service Failure or Medium Service Failure which shall have occurred in respect of the relevant Project Co Service during that Contract Month.

**6. DEDUCTIONS FOR AVAILABILITY FAILURES**

6.1 Subject to Sections 1 and 2 of this Part C, the amount to be deducted from the Monthly Service Payment in respect of any Availability Failure shall be the higher of:

- (a) the Minimum Unavailability Deduction; and
- (b) the aggregate of amounts calculated in accordance with the following formula in respect of all Functional Parts made Unavailable as a result of the Availability Failure:

$$D = (ASP_n / (N_y \times 6)) \times AW \times UW \times DP$$

where:

D means the amount (in Canadian dollars) of the Deduction in respect of the Availability Failure;

ASP<sub>n</sub> means the Annual Service Payment at the time the relevant Availability Failure occurs;

N<sub>y</sub> means the number of days in the Contract Year (being the year in which the relevant Availability Failure occurs);

AW means the Area Weighting Percentage attributable to the Functional Area in which the Availability Failure occurs;

UW means the Unit Weighting Percentage attributable to the Functional Unit(s) in which the Availability Failure occurs; and

DP is [REDACTED]% and shall apply only where the relevant Functional Part is Unavailable but Osler continues to use it (or any part thereof).



The Deductions for Availability Failures will be index-linked by the Escalation Factor in Section 3.1 of Part B in this Schedule 20, per Functional Unit affected.

6.2 For the avoidance of doubt, if more than one Functional Unit or Functional Area is rendered Unavailable by an Availability Failure, the amount of the Minimum Unavailability Deduction in respect of that Availability Failure remains the same. However, if the Availability Failure is not rectified within a further 4 hour period, another Deduction (including the Minimum Unavailability Deduction) may be applied, since this is treated as a further Availability Failure.

6.3 In the event of an Elevator Availability Failure, Section 13 of this Part C explains the calculation of the corresponding Elevator Availability Failure Deduction.

6.4 Implementation of Core Areas

Although all of the Functional Units are important, Osler has categorized the Functional Units into Category 1 Functional Units and Category 2 Functional Units in Appendix D to this Schedule 20 for the purposes of calculating and applying Deductions:

- (a) In the event of a breach in the Availability Conditions of Category 1 Functional Units or Emergency events in respect of Category 2 Functional Units which are not resolved within the Response Time or the Rectification Time, Availability Failure Deductions will apply.
- (b) In the event of a breach or breaches in the Availability Conditions of Category 2 Functional Units for Urgent or Routine events, Project Co shall prepare an Availability Performance Action Plan ("APAP"), upon request by Osler, and the following Deductions shall apply:
  - where a complete APAP is not submitted within five (5) Business Days of the request by Osler ("Initial APAP Due Date"), a APAP Deduction of \$[REDACTED] applies as of the Initial APAP Due Date;
  - for each subsequent week following the Initial APAP Due Date ("Subsequent APAP Due Date"), where the APAP is not submitted, an APAP Deduction of \$[REDACTED] applies as of each Subsequent APAP Due Date; and
  - where the key activities listed in the APAP (4-5 activities per APAP) are not implemented according to the milestone dates included in the APAP, an APAP Deduction of \$[REDACTED] per milestone date that is not achieved is applicable. For every month the milestone date is not achieved, a further \$[REDACTED] deduction will apply.

## **7. RECTIFICATION**

7.1 This Section applies where, in Schedule 15 – Output Specifications, a Rectification Time is specified in respect of an Event.

7.2 Subject to Sections 9 and 9.5 (in respect of Rectification only) of this Part C, no Service Failure or Availability Failure shall occur if Project Co successfully carries out the Rectification within the specified Rectification Time and in such circumstances no Deduction shall be made.

7.3 When carrying out a Rectification, or a Temporary Repair pursuant to Section 9 of this Part C, Project Co shall act in accordance with Applicable Law, Good Industry Practice, relevant Osler policies and MOHLTC requirements related to fire safety or health or workplace safety. Failure to do so shall be deemed to be a new Minor Service Failure, unless the failure constitutes a breach of Applicable Law, in which case it shall be deemed to be a new Major Service Failure.

## **8. RE-COMMISSIONING**

8.1 Where a Functional Unit needs to be re-commissioned by Osler following Rectification, the Osler Representative shall determine, prior to commencement of any re-commissioning activities, that the Rectification has been properly carried out. The Osler Representative may delegate this task to other Osler staff in the relevant Functional Unit and, if re-commissioning activities commence, it shall be assumed that the necessary determination has been made. If it does not then prove possible to successfully complete the re-commissioning of the relevant Functional Unit, Project Co shall, notwithstanding, still be deemed to have carried out Rectification successfully.

8.2 Section 8.1 of this Part C shall not affect the right of Osler to issue, in accordance with the Output Specifications, an Ad-Hoc Service Request for the provision of Ad-Hoc Services in connection with any re-commissioning activities carried out by Osler.

## **9. TEMPORARY REPAIRS**

9.1 If Project Co informs Osler that it is unable to Rectify an Event within the specified Rectification Time due to the need for specialized materials or personnel that are not, and cannot reasonably be expected to be, immediately available at the Facility but that a Temporary Repair can be effected:

- (a) Osler shall permit Project Co to carry out the Temporary Repair proposed by Project Co unless Osler, acting reasonably, considers that, if the Temporary Repair proposed by Project Co is carried out, the use of the relevant Functional Part will not be in accordance with generally accepted clinical practices or not be in accordance with Good Industry Practice; and

- (b) where a Temporary Repair is permitted, a deadline by which a Permanent Repair must be made shall be agreed to by the Parties, each acting reasonably, giving Project Co a reasonable period within which to carry out the Permanent Repair (the “**Permanent Repair Deadline**”).

9.2 During any period beginning at the time when a Temporary Repair is permitted and ending at the earlier of:

- (a) the time at which a Permanent Repair is successfully completed; and
- (b) the Permanent Repair Deadline,

the Availability Conditions shall be replaced by the Minimum Agreed Availability Conditions for the purposes of assessing if the relevant Functional Part is Unavailable.

9.3 Subject to Section 7.3 of this Part C, if the Temporary Repair is effected within the specified Rectification Time and the Permanent Repair is effected by no later than the Permanent Repair Deadline, no Service Failure or Availability Failure will occur, and no Deduction may be made, in respect of the Event.

9.4 If the Temporary Repair is not effected within the specified Rectification Time, a Service Failure or, as the case may be, an Availability Failure shall be deemed to occur and the following provisions shall apply:

- (a) there shall be a further period beginning at the expiry of the Rectification Time and of a duration equal to that of the Rectification Time;
- (b) Project Co shall ensure that the Temporary Repair is successfully carried out prior to the expiry of the additional period referred to in Section 9.4(a);
- (c) if the Temporary Repair is not successfully carried out prior to the expiry of the additional period referred to in Section 9.4(a), a further Service Failure or, as the case may be, Availability Failure shall occur and a further additional period shall commence;
- (d) unless the Temporary Repair has been successfully carried out prior to the expiry of the additional period then, subject to Section 9.4(e) of this Part C, a further Service Failure or, as the case may be, Availability Failure shall occur until such time as the Temporary Repair shall have been successfully completed; and
- (e) if the Temporary Repair is not successfully carried out prior to the Permanent Repair Deadline, and no Permanent Repair has been successfully carried out, the right for Project Co to carry out a Temporary Repair pursuant to this Section 9 shall cease and Section 9.5 of this Part C shall apply.

9.5 If the Permanent Repair is not effected by the Permanent Repair Deadline, a Service Failure or, as the case may be, Availability Failure shall be deemed to occur and the provisions of Sections 4, 5 and 6 of this Part C shall apply.

## **10. REPEATED RECTIFICATION**

10.1 Notwithstanding that Project Co completes a Rectification in respect of an Event within the relevant Rectification Time, there shall be deemed to be a Minor Service Failure on the occurrence of:

- (a) the third such Event that arises during the Contract Day; and/or
- (b) the fourth such Event which occurs in any consecutive seven day period,

provided that:

- (c) each such Event is in connection with the same Service Standards set out in Schedule 15 – Output Specifications and occurs in the same Functional Area; and
- (d) whether the Events occur in the same Functional Unit or in different Functional Units within the same Functional Area there is reason to believe that the root cause of each Event is the same.

10.2 If the same such Event occurs more than three times in a Contract Day or more than four times in any consecutive seven day period, a Minor Service Failure shall be deemed to have occurred in respect of each and every Event which has occurred during the Contract Day or during the consecutive seven day period (as the case may be).

## **11. EFFECT OF UNAVAILABILITY ON OTHER DEDUCTIONS**

11.1 Until an Availability Failure has been Rectified, the Deduction in respect of the Availability Failure shall be the only Deduction available to be made in respect of any Functional Unit in which the Availability Failure has occurred. No further Deduction shall be made for any subsequent Service Failure which may occur in the relevant Functional Unit or Functional Area (as the case may be) during the period until Rectification has been completed, provided that where Osler continues to use a Functional Unit which is affected by an Availability Failure, Project Co shall be obliged to continue to provide in respect of that Functional Unit such of the Project Co Services as are normally provided as part of the day to day functioning of that Functional Unit and, if those Project Co Services are not provided in a manner which satisfies the requirements of Schedule 15 – Output Specifications, Osler shall be entitled to award Failure Points in accordance with Part G of this Schedule 20 where appropriate.

11.2 For the avoidance of doubt, in the case of an Elevator Availability Failure, further Deductions in respect of unrelated Availability Failures that affect Functional Parts on Level P1 to Level 3 of the Facility shall continue to apply.

## **12. TEMPORARY ALTERNATIVE ACCOMMODATION**

12.1 If an Availability Failure occurs Project Co may offer Osler Temporary Alternative Accommodation by written notice to Osler within 10 Business Days from the commencement of the relevant Event.

12.2 The Temporary Alternative Accommodation shall:

- (a) comply with:
  - (i) the Accessibility Condition;
  - (ii) the Safety Condition; and
  - (iii) the Use Condition;
- (b) be a temporary alternative having regard to the facts and the circumstances in existence;
- (c) be upon terms which are not materially different from the terms upon which Osler occupied the affected Functional Part;
- (d) unless Osler otherwise agrees, be accommodation for which Osler is not already paying within the Monthly Service Payment or other terms of the Project Agreement;
- (e) be supplied with the Project Co Services to the standards set out in Part 4 of Schedule 15 – Output Specifications which Project Co would under normal circumstances be providing within the Unavailable Functional Part;
- (f) not involve Osler incurring any additional cost or charges in respect of the Temporary Alternative Accommodation including, without limitation, the reasonable costs of any relocation to and from the Temporary Alternative Accommodation; and
- (g) be in reasonable proximity to the Facility for which it is a temporary replacement, shall be reasonably accessible by public and private transport and shall have adequate parking facilities.

12.3 The written notice sent by Project Co to Osler pursuant to Section 12.1 of this Part C shall:

- (a) describe the Temporary Alternative Accommodation;
- (b) invite Osler to inspect the Temporary Alternative Accommodation and shall give Osler reasonable notice of a time and a date when it may do so;
- (c) set out its proposals regarding the timing and co-ordination of relocation to the Temporary Alternative Accommodation;
- (d) specify the date (agreed by Osler before the submission of the written notice) by which Project Co reasonably expects Osler to be able to relocate back to the relevant Functional Part (the “**Return Date**”); and
- (e) describe the terms upon which Osler shall be entitled to occupy such Temporary Alternative Accommodation including the proposed division of such accommodation into Functional Units and Functional Areas and the weighting to be attributed to them for the purposes of the operation of the Payment Mechanism.

12.4 If it requires an inspection of the Temporary Alternative Accommodation, Osler shall do so within 5 Business Days of receipt of the notice referred to in Section 12.1 above. Osler shall notify Project Co in writing of its acceptance or refusal of the proposed Temporary Alternative Accommodation within 24 hours of its inspection of the same or, if Osler has elected not to carry out an inspection, within 5 Business Days of receipt of the notice referred to in Section 12.1 of this Part C. Osler shall act reasonably when deciding to accept or refuse any proposed Temporary Alternative Accommodation.

12.5 Osler accepts the offer of Temporary Alternative Accommodation then, without affecting Osler’s remedial rights under Section 30 of the Project Agreement, Osler shall not be entitled to vacate the Temporary Alternative Accommodation until the earlier of the Return Date and the date on which Osler is entitled and able to return to and use the Functional Part in accordance with the agreed program for relocation and re-commissioning referred to in Section 12.9 of this Part C.

12.6 For the avoidance of doubt, Osler’s rights under Section 30 of the Project Agreement shall not be affected by the acceptance by Osler of the Temporary Alternative Accommodation.

12.7 If Osler accepts Project Co’s offer of Temporary Alternative Accommodation, no further Deductions shall be made or Failure Points awarded in respect of a Functional Part vacated by Osler while the Temporary Alternative Accommodation replacing that Functional Part is being used by Osler.

12.8 Osler shall be entitled to award Failure Points and make Deductions in respect of any Service Failure or Availability Failure which occurs in the Temporary Alternative Accommodation as if the Temporary Alternative Accommodation was the Functional Part which it replaced and any Deduction in respect of an Availability Failure shall be calculated using the weightings Applicable to the Functional Part which the Temporary Alternative Accommodation has replaced.

12.9 When Project Co has completed the required works to enable Osler to return to the Functional Part, the Osler Representative shall confirm that the Availability Conditions for the Functional Part are met and the Osler Representative and Project Co shall agree a relocation program to return to the Functional Part and any necessary period for re-commissioning.

12.10 Where Osler has accepted the proposed Temporary Alternative Accommodation pursuant to Section 12.4 of this Part C, in the event that Project Co fails to complete the works to enable Osler to return to the relevant Functional Part on the Return Date Osler may, in its absolute discretion, vacate the Temporary Alternative Accommodation at any time after the Return Date or remain in occupation. In such circumstances:

- (a) where Osler, in its discretion, remains in occupation of the Temporary Alternative Accommodation following the Return Date the Temporary Alternative Accommodation shall be deemed to be Unavailable with Effect from the Return Date and Osler shall levy [REDACTED]% of the Deduction which would have been levied in respect of that Availability Failure for each Contract Day on which Osler occupies the Temporary Alternative Accommodation thereafter until the date on which the Availability Failure referred to in Section 12.1 of this Part C has been rectified and Osler is able to resume its use of the Functional Part; and
- (b) where Osler, in its discretion, vacates the Temporary Alternative Accommodation following the Return Date, the Temporary Alternative Accommodation shall be deemed to be Unavailable on each Contract Day on which Osler is not in occupation of the Temporary Alternative Accommodation until the date on which the Availability Failure referred to in Section 12.1 of this Part C has been rectified and Osler is able to resume its use of the Functional Part.

12.11 Osler shall specify a date, being a date no earlier than the Return Date, by which the Rectification shall be completed and if Project Co fails to complete the Rectification of the Functional Part for which the Temporary Alternative Accommodation is a replacement by such date the following shall apply:

- (a) Osler may (without prejudice to its rights under Section 42 of the Project Agreement or any other express rights of Osler under the Project Agreement) take such steps as it considers to be appropriate (either itself or by engaging others to take such steps) to restore any Functional Part for which the Temporary

Alternative Accommodation is a replacement to a condition which satisfies in all respects the requirements of the Output Specifications; and

- (b) Project Co shall reimburse Osler for all reasonable costs, losses, expenses or damages incurred by Osler in relation to taking the steps, or engaging others to take the steps, referred to in Section 12.11(a) of this Part C and Osler shall be entitled to deduct any such amount from any amounts payable to Project Co under the provisions of the Project Agreement.

**13. DEDUCTIONS FOR ELEVATOR AVAILABILITY FAILURES**

13.1 In the event of an Elevator Availability Failure, the level of Availability Failure Deduction shall be based on the following formula:

$$D = (ASP_n / (N_y \times 6)) \times AW(\sum F_x:F_y) \times [\text{REDACTED}] \% \times DP(EAF)$$

where:

D means the amount (in Canadian dollars) of the Deduction in respect of the Availability Failure;

ASP<sub>n</sub> means the Annual Service Payment at the time the relevant Availability Failure occurs;

N<sub>y</sub> means the number of days in the Contract Year (being the year in which the relevant Availability Failure occurs);

AW(∑F<sub>x</sub>:F<sub>y</sub>) means the sum of the Area Weighting Percentages attributable to the Functional Areas on Level P1 to Level 3 of the Facility; and

DP(EAF) is the percentage set out in Appendix E to this Schedule 20 as determined by the number of Elevators that are Unavailable at any one time.



**PART D:  
REVIEW OF DEDUCTIONS**

**1. ANNUAL REVIEW**

1.1 The identification of Functional Areas, Functional Units, Rectification Times, Area Weighting Percentages, Unit Weighting Percentages and the amount of Deductions for each category of Quality Failure, Service Failure, and Availability Failure shall be reviewed by Osler and Project Co at any time if requested by either Party but in any event shall be reviewed at least once in every Contract Year.

1.2 Osler and Project Co shall act reasonably and diligently in carrying out the review.

1.3 For the avoidance of doubt, the Parties intend that any changes made as a result of such a review shall not alter the overall risk profile of the relevant Project Co Service or the likely magnitude of Deductions. Where proposed changes would result in any such alteration, the matter shall be deemed to be a Variation and Schedule 22 – Variation Procedure shall apply.

1.4 Osler and Project Co may in respect of each matter the subject of the review either:

- (a) agree that the status of the relevant matter shall continue to apply unchanged in the Contract Year immediately following the review; or
- (b) agree adjustments to the relevant matter to take effect in the Contract Year immediately following the review.

1.5 Any agreed adjustment pursuant to a review shall be effective from the commencement of the Contract Year immediately following the relevant review carried out in accordance with Section 1.1 of this Part D.

**PART E:  
FAILURE BY PROJECT CO TO MONITOR OR REPORT**

**1. FAILURE BY PROJECT CO TO MONITOR OR REPORT**

1.1 Subject to Sections 1.2 to 1.6 inclusive of this Part E, the Performance Monitoring Report produced by Project Co for any Contract Month shall be the source of the factual information regarding the performance of the Project Co Services for the relevant Contract Month for the purposes of calculating the relevant Monthly Service Payment, the number of Failure Points awarded and the number of Warning Notices awarded.

1.2 If there shall be any error or omission in the Performance Monitoring Report for any Contract Month, Project Co and Osler shall agree the amendment to the Performance Monitoring Report or, failing agreement within 10 days of notification of the error or omission which shall not be made more than 2 calendar months following the relevant Performance Monitoring Report, except in the circumstances referred to in Section 1.5 of this Part E either party may refer the matter to the Dispute Resolution Procedure.

1.3 If Project Co fails to monitor or accurately report an Event, Quality Failure, Service Failure, Availability Failure or Ad-Hoc Service Request then, without prejudice to the Deduction to be made in respect of the relevant Quality Failure, Service Failure, or Availability Failure (if any), the failure to monitor or report the Event, Quality Failure, Service Failure, Availability Failure or Ad-Hoc Service Request shall be deemed to be a new Minor Quality Failure, unless the circumstances set out in Section 1.5 of this Part E apply, in which case it shall be deemed to be a new Major Quality Failure.

1.4 In the event that any inspection or investigation by Osler of records made available pursuant to the Project Agreement reveals any further matters of the type referred to in Sections 1.2 and 1.3 above, those matters shall be dealt with in accordance with Section 1.2 or 1.3 of this Part E, as appropriate, and Osler shall, in addition, be entitled to make Deductions in respect of any Quality Failures, Service Failures, or Availability Failures in the manner prescribed in Part C of this Schedule 20. Any such Deductions shall be made from the Monthly Service Payment payable in respect of the Contract Month in which the relevant matters were revealed by Osler's investigations or, to the extent that Osler is unable to make any further deductions from the Monthly Service Payment in respect of that Contract Month by virtue of Section 1.2 of Part C of this Schedule 20, may be carried forward and deducted from Monthly Service Payments due in respect of subsequent Contract Months.

1.5 For the purposes of Sections 1.2, 1.3, and 1.4 of this Part E the relevant circumstances are:

- (a) fraudulent action or inaction;
- (b) deliberate misrepresentation; or

- (c) gross misconduct or incompetence in each case on the part of Project Co or a Project Co Party.

1.6 The provisions of this Part E shall be without prejudice to any rights of Osler pursuant to Sections 29, 42 and 57 of the Project Agreement.

**PART F:  
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**PART G:  
FAILURE POINTS**

**1. FAILURE POINTS**

1.1 Failure Points shall be awarded for every Quality Failure, Service Failure and Availability Failure which occurs during the Operational Term, unless such matters are disregarded pursuant to Section 2 or 5 of Part C of this Schedule 20 or such Failure Points are cancelled pursuant to any other provision of the Project Agreement.

1.2 For the avoidance of doubt when awarding Failure Points, where a further Availability Failure, Quality Failure or Service Failure is deemed to have occurred in accordance with Sections 3, 4, and 6 of Part C of this Schedule 20, the appropriate number of Failure Points shall be awarded in respect of each such Availability Failure, Quality Failure or Service Failure even though they arise from the same circumstances.

1.3 If the same Availability Failure or Service Failure affects more than one Functional Unit, the number of Failure Points to be awarded in respect of that Availability Failure shall be determined by the number of Functional Units affected. For example, an Availability Failure affecting one Functional Unit will attract [REDACTED] Failure Points whereas an Availability Failure affecting five Functional Units will attract [REDACTED] Failure Points.

1.4 The number of Failure Points attributable to Quality Failures, Service Failures and Availability Failures is set out in Appendix C to this Schedule 20.

1.5 The maximum number of Failure Points that can be allocated to a single Availability Failure is [REDACTED].

1.6 For the avoidance of doubt, if the maximum number of Failure Points has been allocated due to an Availability Failure then no further Failure Points shall be allocated due to the continuation of that Availability Failure (as a “further Availability Failure” pursuant to Section 6.2 of Part C of this Schedule 20).

**PART H:  
INTENTIONALLY DELETED**

**APPENDIX A  
INTENTIONALLY DELETED**

**APPENDIX B  
INTENTIONALLY DELETED**



**APPENDIX C  
FAILURE POINTS**

Category	FPs	Application
Minor Quality Failure	[REDACTED]	Per Quality Failure
Medium Quality Failure	[REDACTED]	
Major Quality Failure	[REDACTED]	
Minor Service Failure	[REDACTED]	Per Service Failure and if applicable, per Functional Unit affected by the Service Failure
Medium Service Failure	[REDACTED]	
Major Service Failure	[REDACTED]	
Availability Failure (for the avoidance of doubt, this applies whether or not Osler continues to make use of the relevant Functional Part)	[REDACTED]	Per Functional Unit affected by the Availability Failure

**APPENDIX D  
AREA WEIGHTS AND FUNCTIONAL UNIT WEIGHTS**

**[REDACTED]**

**APPENDIX E  
DEDUCTION PERCENTAGES USED IN THE CALCULATION  
OF ELEVATOR AVAILABILITY FAILURES**

[REDACTED]

**Appendix F**

**Annual Service Payment Schedule**

**[REDACTED]**

**SCHEDULE 21**

**INTENTIONALLY DELETED**

## SCHEDULE 22

### VARIATION PROCEDURE

#### 1. VARIATIONS

##### 1.1 Definitions

- (a) The following terms shall have the following meanings:
- (i) “**Direct Cost**” has the meaning given in Appendix A of this Schedule 22.
  - (ii) “**Estimate**” has the meaning given in Section 1.4(a) of this Schedule 22.
  - (iii) “**Osler Work**” has the meaning given in Section 1.7(a) of this Schedule 22.
  - (iv) “**Project Co Variation Notice**” has the meaning given in Section 2.1(a) of this Schedule 22.
  - (v) “**Variation**” means a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Project Operations, including in relation to the whole or any part of the Works or the Project Co Services.
  - (vi) “**Variation Confirmation**” has the meaning given in Section 1.8(a)(ii) of this Schedule 22.
  - (vii) “**Variation Directive**” means a written instruction which is issued on a form designated as a “Variation Directive Form” and signed by the Osler Representative directing Project Co to immediately proceed with a Variation pending the finalization and issuance of a Variation Confirmation for that Variation.
  - (viii) “**Variation Enquiry**” has the meaning given in Section 1.3(a) of this Schedule 22.

##### 1.2 General

- (a) Osler has the right from time to time to propose and require Project Co to carry out and implement a Variation, and any such Variation shall be subject to the provisions of this Schedule 22 provided that Osler shall not be permitted to withdraw a Variation Enquiry (nor will a Variation Enquiry be deemed to have been withdrawn) with respect to those circumstances specified in the Project Agreement for which Osler is obligated to proceed with a Variation.

- (b) Osler shall be obligated to proceed with a Variation in certain circumstances specified in this Project Agreement, and any such Variation shall be subject to the provisions of this Schedule 22.
- (c) Project Co will not be entitled to any payment, compensation or extension of time for a Variation except to the extent provided in a Variation Confirmation or Variation Directive in accordance with this Schedule 22.

### **1.3 Variation Enquiry**

- (a) If Osler proposes or is obligated pursuant to the terms of this Project Agreement or Applicable Law to initiate a Variation it shall deliver to Project Co a written notice of the proposed Variation (a “**Variation Enquiry**”).
- (b) A Variation Enquiry shall:
  - (i) describe the proposed Variation with sufficient detail to enable Project Co to prepare a detailed Estimate;
  - (ii) in the event that the proposed Variation will require a Capital Expenditure, state whether Osler intends to pay for the Variation by way of lump sum payment or payments, adjustment to the Monthly Service Payments (and, if applicable, with a request for Project Co to obtain financing for all or part of the Variation), or a combination thereof; and
  - (iii) provide a preliminary indication of any provisions of this Project Agreement (including the Output Specifications or the Project Co Proposal Extracts) that will be affected by the proposed Variation, as well as the amendments to this Project Agreement (including the Output Specifications or the Project Co Proposal Extracts) that may be necessary to accommodate the Variation.

### **1.4 Delivery of Estimate**

- (a) As soon as practicable and in any event within 15 Business Days after receipt of a Variation Enquiry, or such longer period as the Parties agree acting reasonably, Project Co shall deliver its detailed breakdown, estimate and other information (an “**Estimate**”) prepared in accordance with and meeting the requirements of Section 1.6.

### **1.5 Project Co Grounds for Objection**

- (a) Project Co may only refuse to deliver an Estimate if Project Co can demonstrate to Osler’s satisfaction, acting reasonably, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), that:

- (i) the implementation of the Variation would materially and adversely affect the health and safety of any person;
- (ii) the implementation of the Variation would:
  - (A) infringe Applicable Law;
  - (B) cause to be revoked any of the existing Permits, Licences, Approvals or Agreements required by Project Co to perform the Project Operations, and any such Permit, Licence, Approval or Agreement is not, using commercially reasonable efforts, capable of amendment or renewal; or
  - (C) require any new Permits, Licences, Approvals or Agreements for Project Co to perform the Project Operations, any of which will not, using commercially reasonable efforts by Project Co or Osler, as applicable, be obtainable;
- (iii) the proposed Variation would have a material and adverse effect on performance of the Project Operations (except those Project Operations which have been specified as requiring amendment in the Variation Enquiry) in a manner not compensated pursuant to this Schedule 22;
- (iv) the implementation of the Variation would be a departure from Good Industry Practice;
- (v) Osler does not have the legal power or capacity to require the Variation to be implemented or to do anything envisaged by this Schedule 22 in respect of or in connection with the Variation;
- (vi) the Variation would, if implemented, result in a change in the essential nature of the Facility;
- (vii) the Variation Enquiry does not comply with the requirements of Section 1.3 (including a failure to include adequate information therein to enable Project Co to prepare an Estimate in respect thereof);
- (viii) in the case of a Variation relating to the Works, the time specified for commencement and/or completion of such Variation cannot be achieved by Project Co despite commercially reasonable efforts; or
- (ix) in the case of a Variation relating to the Project Co Services, the time specified for implementation of such Variation cannot be achieved by Project Co despite commercially reasonable efforts.



- (b) If Project Co refuses to provide an Estimate on the grounds set out in Section 1.5(a), Project Co shall, within the period for delivery of an Estimate specified or agreed pursuant to Section 1.4(a), deliver to Osler a written notice specifying the grounds upon which Project Co rejects the Variation and the details thereof.

### **1.6 Estimate Requirements**

- (a) Unless Osler in a Variation Enquiry requires only specified limited information, each Estimate shall include the following information, sufficient to demonstrate to Osler's reasonable satisfaction:
- (i) the steps Project Co will take to implement the Variation, in such detail as is reasonable and appropriate in the circumstances;
  - (ii) any impact on the Scheduled Substantial Completion Date, and any other schedule impact on the provision of the Facility and completion of the Works (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
  - (iii) any impact on the performance of the Project Operations and any other impact on this Project Agreement (including for certainty, any impact of the proposed Variation after taking into consideration other Variations);
  - (iv) any impact on expected usage of utilities, including those identified in Schedule 20 – Payment Mechanism, for the current Contract Year and subsequent Contract Years;
  - (v) any amendments to this Project Agreement (including Schedule 20 – Payment Mechanism) or any Project Document required as a consequence of the Variation, the objective of such amendments being to ensure that (save for the obligation of Osler to make payments or altered payments in respect of the Variation) the Parties are in no better and no worse position in relation to the Project than they would have been in if the Variation had not been implemented and, in particular, that there will be no material adverse change to the risk profile of the Project as a result of the Variation;
  - (vi) any impact on the Direct Costs of Project Co and the Subcontractors, including:
    - (A) any Capital Expenditure that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs (whether financed by Project Co or Osler); and
    - (B) any other costs that will be incurred, reduced or avoided and the impact on Project Co's cash flows from incurring, reducing or avoiding such costs;

- (vii) either:
  - (A) a confirmation that the proposed Variation will not affect Project Co's existing financing or that Project Co's existing financing is adequate to implement the Variation; or
  - (B) if new or additional financing is required to implement the Variation, an indication as to the availability of such new or additional financing and the cost and terms of such new or additional financing;
- (viii) Project Co's confirmation that the projected internal rate of return on any additional equity capital required to finance the Variation will be the Base Case Equity IRR;
- (ix) Project Co's preliminary indication of the potential increase or decrease, if any, of the Monthly Service Payments, with such amount calculated by reference to the relevant parts of the Financial Model to demonstrate the impact of the proposed Variation;
- (x) any Permits, Licences, Approvals and Agreements that must be obtained or amended for the Variation to be implemented, and the latest date by which Project Co must receive a Variation Confirmation and obtain or amend such Permits, Licences, Approvals and Agreements for the Estimate to remain valid; and
- (xi) the proposed methods of certification of any construction or operational aspect of the Project Operations required by the Variation if not covered by the provisions of this Project Agreement,

in each case, together with such supporting information and justification as is reasonably required.

- (b) In preparing its Estimate, Project Co shall include sufficient information to demonstrate to Osler's satisfaction, acting reasonably, that:
  - (i) Project Co has used or has obliged the Subcontractors (or will oblige any Subcontractors not yet selected) to use commercially reasonable efforts, including the use of competitive quotes or tenders (if appropriate or required by Sections 1.6(c) and 1.6(e)), to minimize any increase in costs and to maximize any reduction in costs;
  - (ii) all costs of Project Co and the Subcontractors are limited to Direct Costs;
  - (iii) Project Co, the Construction Contractor and the Service Provider shall charge only the margins for overhead and profit as set out in Appendix B hereto (such margins each calculated on the basis of the applicable Direct Costs so that no

- margin of Project Co, the Construction Contractor or the Service Provider is calculated on any other margin of Project Co, the Construction Contractor or the Service Provider), and no other margins or mark – ups;
- (iv) the margins for overheads and profit as set out in Appendix B hereto as applicable to Project Co’s Direct Costs shall only be chargeable on Direct Costs of Project Co, such that Project Co shall not charge any margins on any amounts charged by the Construction Contractor or the Service Provider;
  - (v) all costs of providing Project Operations, including Capital Expenditures, reflect:
    - (A) labour rates applying in the open market to providers of services similar to those required by the Variation;
    - (B) any and all changes in the Output Specifications arising out of the proposed Variation; and
    - (C) any and all changes in risk allocation;
  - (vi) the full amount of any and all expenditures that have been reduced or avoided (including for any Capital Expenditure) and that all such expenditures, including all applicable margins for overhead and profit anticipated to be incurred but for the Variation, have been taken into account and applied in total to reduce the amount of all costs; and
  - (vii) Project Co has mitigated or will mitigate the impact of the Variation, including on the Works Schedule, the performance of the Project Operations, the expected usage of utilities, and the Direct Costs to be incurred.
- (c) Project Co will use commercially reasonable efforts to obtain the best value for money when procuring any work, services, supplies, materials or equipment required by the Variation and will comply with all Good Industry Practice in relation to any such procurement, to a standard no less than Project Co would apply if all costs incurred were to its own account without recourse to Osler, including using commercially reasonable efforts to mitigate such costs.
  - (d) As soon as practicable, and in any event not more than 15 Business Days after Osler receives an Estimate, Project Co and Osler shall discuss and seek to agree on the Estimate, including any amendments to the Estimate agreed to by the Parties.
  - (e) If Osler would be required by Applicable Law or any policy applicable to Osler to competitively tender any contract in relation to the proposed Variation, Osler may require Project Co to seek and evaluate competitive tenders for the proposed Variation in accordance with such Applicable Law or policy.

- (f) Osler may modify a Variation Enquiry in writing at any time for any matter relating to the Estimate or the discussions in relation thereto, in which case Project Co shall, as soon as practicable and in any event not more than 10 Business Days after receipt of such modification, notify Osler in writing of any consequential changes to the Estimate.
- (g) If the Parties cannot agree on an Estimate pursuant to Section 1.6(d), then any Dispute will be determined in accordance with Schedule 27 – Dispute Resolution Procedure.

### **1.7 Osler’s Right to Perform**

- (a) After Substantial Completion, Osler shall have the right to perform the subject matter of a proposed Variation (“**Osler Work**”) itself, or through others contracting directly with Osler, without compensation to Project Co, except as specifically stated herein.
- (b) Osler shall indemnify and save Project Co harmless from and against any and all loss or expense which may be suffered, sustained or incurred by Project Co as a direct result of, in respect of, or arising out of the performance by Osler, or any third party, of Osler Work, including, without limitation, any loss or expense related to any adverse impacts on the Project Operations.

### **1.8 Variation Confirmation**

- (a) As soon as practicable, and in any event within 15 Business Days after the later of the date the Estimate was delivered and the date the Estimate was either agreed to or any Dispute in respect thereof was determined in accordance with Schedule 27 – Dispute Resolution Procedure, Osler shall either:
  - (i) subject to Sections 1.2(b) and 1.8(e), withdraw the Variation Enquiry by written notice to Project Co; or
  - (ii) issue a written confirmation (the “**Variation Confirmation**”) of the Estimate, including any agreed modifications thereto or any modifications resulting for the determination of a Dispute in respect thereof, which Variation Confirmation may be subject to Project Co obtaining financing pursuant to Section 1.9.
- (b) If Osler does not issue a Variation Confirmation within such 15 Business Days, then, subject to Sections 1.2(b) and 1.8(e), the Variation Enquiry shall be deemed to have been withdrawn.
- (c) Upon the Variation Confirmation being issued, and if applicable upon Project Co obtaining financing pursuant to Section 1.9:
  - (i) the Parties shall as soon as practicable thereafter do all acts and execute all documents to amend this Project Agreement necessary to implement the

Variation, including in respect of any required extension of time and including provision for payment to Project Co as provided in Section 1.10;

- (ii) Project Co shall implement the Variation as provided for in the Variation Confirmation, and subject to amendments pursuant to Section 1.8(c)(i), all provisions of this Project Agreement applicable to the Project Operations shall apply to the Project Operations as thereby changed and no additional claim with respect to the Variation or Variation Confirmation will be considered; and
  - (iii) payment in relation to the Variation shall be as provided for in Section 1.10 and pursuant to any amendments pursuant to Section 1.8(c)(i).
- (d) If a Variation Confirmation is subject to Project Co obtaining financing pursuant to Section 1.9, then the Variation Confirmation shall not be effective until:
- (i) Project Co obtains such financing acceptable to Osler in its sole discretion; or
  - (ii) Osler in its sole discretion waives such requirement.
- (e) Except as hereinafter provided, until a Variation Confirmation has been issued:
- (i) the determination of whether or not to proceed with a Variation shall at all times be at Osler's sole discretion, despite any Dispute or any other matter in relation to a Variation being referred to or determined by Schedule 27 – Dispute Resolution Procedure; and
  - (ii) Osler may at any time withdraw a Variation Enquiry and, subject to Section 1.8(f), Osler shall not be obligated to Project Co in respect of a Variation until such time as Osler in its sole discretion issues a Variation Confirmation and, if applicable, Project Co has obtained the financing requested by Osler or Osler has waived such requirement,

provided that Osler may not withdraw (or be deemed to have withdrawn) a Variation Enquiry in circumstances where Osler is obligated pursuant to the terms of this Project Agreement to proceed with a Variation. In such circumstances Schedule 27 – Dispute Resolution Procedure shall be employed to finalize any aspects of the Variation which cannot otherwise be agreed to in accordance with the terms of this Schedule 22.

- (f) If a Variation Confirmation is not issued for any Variation Enquiry in respect of which Project Co has used commercially reasonable efforts to produce a fair and accurate Estimate, Osler shall reimburse Project Co for all Direct Costs reasonably and properly incurred by Project Co in connection with preparing the Estimate.

**1.9 Financing**

- (a) If Project Co in its Estimate confirms that existing financing is not available to pay for the proposed Variation and if Osler requests Project Co to obtain financing for a Variation, then a Variation Confirmation may be issued subject to Project Co obtaining financing. In such event, Project Co shall use commercially reasonable efforts to obtain the requested financing on terms satisfactory to Project Co, the Lenders and Osler, provided that, prior to the Substantial Completion Date, Project Co shall not be required to seek financing from any source other than the Lenders.
- (b) If Project Co has used commercially reasonable efforts to obtain the requested financing but has been unable to obtain an offer of financing on terms reasonably satisfactory to Project Co and Osler within 60 days of the date that Osler issues the Variation Confirmation, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless Osler, in its sole discretion, waives the requirement for financing or unless Osler is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (c) If Project Co obtains an offer of financing on terms reasonably satisfactory to Project Co, Project Co shall provide Osler with details of such financing, and Osler shall, in its sole discretion, determine whether Project Co should proceed with such financing. If Osler determines that Project Co should not proceed with such financing, then Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless Osler, in its sole discretion, waives the requirement for financing or unless Osler is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (d) Osler may at any time withdraw the requirement for Project Co to use commercially reasonable efforts to obtain financing, after which Project Co shall have no further obligation to obtain financing for the Variation and any Variation Confirmation subject to financing shall no longer have any effect unless Osler in its sole discretion waives the requirement for financing or unless Osler is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (e) If Osler waives the requirement for financing or if Project Co has no further obligation to obtain financing for the Variation pursuant to Sections 1.9(b), 1.9(c) or 1.9(d), then Project Co shall proceed with the Variation as set out in the Variation Confirmation and Osler shall pay for the Variation as provided for in Section 1.10(a)(ii).

**1.10 Payment**

- (a) If a Variation Confirmation has been issued and is not subject to financing, or if the requirement for financing has been satisfied by Project Co or has been waived by Osler, a

price adjustment for the Variation, as set out in the Estimate and as adjusted and confirmed by the Variation Confirmation, shall be made as follows:

- (i) the Monthly Service Payments shall be adjusted as set out in the Variation Confirmation; and
- (ii) payment for Capital Expenditures as set out in the Variation Confirmation and not financed by Project Co shall be paid as follows:
  - (A) Osler shall pay such Capital Expenditures in lump sum payments based on a payment schedule agreed by Osler and Project Co, acting reasonably, to reflect the amount and timing of the Capital Expenditures to be incurred by Project Co in carrying out the Variation to the extent borne by Osler; and
  - (B) where payment for part of the Variation reflects the carrying out of, or specific progress towards, an element within the Variation, Project Co shall provide satisfactory evidence confirming that the part of the Variation corresponding to each occasion when payment is due under the payment schedule has been duly carried out.

In the event Osler and Project Co fail to agree as to the terms of the payment schedule, the payment schedule shall be determined in accordance with Schedule 27 – Dispute Resolution Procedure, provided that, where all or any part of the Variation is being carried out by a third party under a contract with Project Co, subject to the terms of any contract between Project Co and that third party in relation to the implementation of the Variation having been approved by Osler (such approval not to be unreasonably withheld or delayed), the process under Schedule 27 – Dispute Resolution Procedure shall determine a payment schedule which would enable Project Co to be funded by Osler in time to make payments to that third party in accordance with its contract with Project Co.

- (b) Osler shall make payment to Project Co within 20 Business Days of receipt by Osler of invoices presented to Osler in accordance with the agreed payment schedule accompanied (where applicable) by the relevant evidence that the relevant part of the Variation has been carried out.
- (c) Payments by Osler in respect of a Variation shall be subject to applicable holdback provisions of the *Construction Lien Act* (Ontario), as applicable.
- (d) Project Co shall not be entitled to any amount in excess of the amount of the Estimate confirmed in the Variation Confirmation.
- (e) Upon request by Project Co, Osler shall provide to Project Co copies of any consent or approval issued by MOHLTC or Osler's board of directors in connection with a proposed Variation.

**1.11 Reduction in Project Operations**

- (a) If a Variation involves any reduction in Project Operations which results in savings in Direct Costs to Project Co, such savings shall result in a reduction in the compensation payable to Project Co under this Project Agreement in an amount equal to such reduction in Direct Costs, and Project Co shall compensate Osler by way of a reduction in the Monthly Service Payments.

**1.12 Variation Directive**

- (a) If an Estimate is not promptly agreed upon by Osler and Project Co or if there is a Dispute in relation thereto or if Osler, in its sole discretion, requires a Variation to be implemented prior to issuing a Variation Confirmation, then Osler may issue a Variation Directive and, following receipt of the Variation Directive:
  - (i) Project Co shall promptly proceed with the Variation;
  - (ii) the determination of the valuation and time extensions, if any, required in connection with such Variation, shall be made as soon as reasonably possible after commencement of the implementation of the Variation; and
  - (iii) pending final determination of the valuation and time extensions, if any, required in connection with such Variation, the Independent Certifier (if such Variation is in respect of matters prior to Final Completion) or the Osler Representative, as applicable and, in each case, acting reasonably, shall determine the valuation in accordance with Appendices A and B hereto, with any Dispute to be determined in accordance with Schedule 27 – Dispute Resolution Procedure,

provided that, Osler shall fund all Variations implemented by way of a Variation Directive as provided for in Section 1.10(a)(ii).

**2. PROJECT CO VARIATIONS**

**2.1 General**

- (a) Project Co shall deliver to Osler a written notice (a “**Project Co Variation Notice**”) for each Variation proposed by Project Co.

**2.2 Project Co Variation Notice**

- (a) A Project Co Variation Notice shall:
  - (i) set out details of the proposed Variation in sufficient detail to enable Osler to evaluate it in full;
  - (ii) specify Project Co’s reasons for proposing the Variation;



- (iii) indicate all reasonably foreseeable implications of the Variation, including whether there are any costs or cost savings to Osler, and whether an adjustment to the Monthly Service Payments is required; and
  - (iv) indicate the latest date by which a Variation Enquiry must be issued.
- (b) If Osler, in its sole discretion, elects to consider the Variation proposed by Project Co, Osler may issue to Project Co a Variation Enquiry and the procedure set out in Section 1 will apply.
- (c) Project Co shall, promptly upon demand, reimburse Osler for all out-of pocket costs and expenses reasonably incurred by Osler in connection with Osler's consideration of any Variation proposed by Project Co pursuant to Article 2 of this Schedule 22, including without limitation, legal and consulting fees and disbursements, regardless of whether (i) a Variation Enquiry or Estimate is issued in connection therewith or (ii) such Variation is implemented.

### **3. SMALL WORKS**

#### **3.1 General**

- (a) After the Substantial Completion Date, Project Co shall carry out all Small Works requested by Osler.
- (b) If Small Works are requested by Osler, Project Co shall, within 10 Business Days of each such request and prior to carrying out the Small Works, provide Osler with a price for carrying out the Small Works.
- (c) If Project Co's price is accepted by Osler, in its sole discretion, Project Co shall carry out the Small Works for such price.
- (d) Osler may at any time, in its sole discretion, including if Osler does not accept the price proposed by Project Co pursuant to Section 3.1(b), issue a Variation Enquiry or Variation Directive in respect of such Small Works, in which event the provisions of this Schedule 22, other than this Section 3, shall apply.
- (e) Project Co's price shall include only its Direct Costs, as calculated in accordance with Appendix A, together with applicable margins as set out in Appendix B.

#### **3.2 Project Co to Minimize Inconvenience**

- (a) Project Co shall notify Osler of the estimated duration of any Small Works so that Osler and Project Co can agree upon a convenient time for carrying out the same, so as to minimize and mitigate inconvenience and disruption to Osler. Project Co shall use commercially reasonable efforts to minimize the duration of any Small Works.

## APPENDIX A

## CALCULATION OF DIRECT COSTS

## 1. DIRECT COSTS

**1.1 Subject to Section 1.2 of this Appendix A, the term “Direct Cost” means the cumulative total, without duplication, of only the following amounts, as paid or incurred by Project Co or the Subcontractors, as applicable, to the extent that they specifically relate to, and are attributable to, the Variation under which Project Co is expressly entitled to its Direct Cost and would not otherwise have been incurred:**

- (i) wages and benefits paid for labour in the direct employ of Project Co or the Subcontractors while performing that part of the Project Operations on Site;
- (ii) salaries, wages and benefits of Project Co’s or the Subcontractors’ personnel when stationed at the Site office in whatever capacity employed, or personnel engaged at shops or on the road, in expediting the production or transportation of materials or equipment;
- (iii) salaries, wages and benefits of Project Co’s or the Subcontractors’ office personnel engaged in a technical capacity;
- (iv) without limiting Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, contributions, assessments or taxes incurred for such items as employment insurance, provincial health insurance, workers’ compensation, and Canada Pension Plan, insofar as such costs are based on the wages, salaries, or other remuneration paid to Project Co for employees pursuant to Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A, but excluding for certainty all income taxes on such wages, salaries and other remuneration;
- (v) travel and subsistence expenses of Project Co’s or the Subcontractors’ officers or employees referred to in Sections 1.1(i), 1.1(ii) and 1.1(iii) of this Appendix A;
- (vi) the cost of materials (including hand tools which have a retail value of \$[REDACTED] or less), products, supplies, equipment, temporary services and facilities, including transportation and maintenance thereof, which are consumed in the performance of the Variation;
- (vii) the rental costs of all tools (excluding hand tools which have a retail value of \$[REDACTED] or less), machinery, and equipment used in the performance of the Variation, whether rented from or provided by Project Co or others, including installation, minor repair and replacement, dismantling, removal, transportation and delivery costs thereof;

- (viii) deposits lost;
- (ix) the amount of all Subcontracts with Subcontractors;
- (x) the amount paid for any design services;
- (xi) the cost of third party quality assurance required by Osler, such as independent inspection and testing services;
- (xii) charges levied by Governmental Authorities, but excluding fines or penalties not related to the implementation of the Variation;
- (xiii) subject to Section 1.1(iv) of this Appendix A and without limiting the obligation of Osler to pay HST under this Project Agreement, Taxes, but excluding:
  - (A) HST;
  - (B) taxes imposed on Project Co or a Subcontractor based on or measured by income or profit or otherwise imposed under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;
  - (C) capital taxes based on or measured by the capital of Project Co or a Subcontractor;
  - (D) taxes relating to withholdings on any payments by Project Co or a Subcontractor; and
  - (E) taxes relating to any business or activity other than the business or activities related to, and conducted for, the purposes of the Project Operations;
- (xiv) the cost of removal and disposal of contaminants, hazardous substances, waste products and debris for which Project Co is not responsible under this Project Agreement;
- (xv) termination payments which are required under Applicable Law to be made to employees of Project Co reasonably and properly incurred by Project Co arising as a direct result of any Variation reducing the scope of the Project Operations, except to the extent that such termination payments are provided for in contracts of employment, agreements or arrangements that were not entered into in the ordinary course of business and on commercial arm's-length terms;
- (xvi) the cost of financing, including additional financing costs related to any delay caused by the implementation of the Variation;

- (xvii) the cost of competitively tendering any contract in relation to the proposed Variation which is required by Applicable Law or any policy applicable to Osler;
- (xviii) the cost of any additional insurance or performance security required or approved by Osler;
- (xix) the cost of obtaining all Permits, Licences, Approvals and Agreements; and
- (xx) reasonable fees and disbursements of Project Co's legal advisors.

**1.2 The Direct Cost otherwise payable shall be subject to and limited by the following:**

- (i) the Direct Cost shall be net of all discounts, rebates and other price reductions and benefits, which relate to the Direct Cost incurred;
- (ii) the amount paid for materials, products, supplies and equipment incorporated into the Project Operations as a result of the Variation shall not exceed commercially competitive rates available in the Province for such materials, products, supplies and equipment from arm's-length third party suppliers;
- (iii) the amount paid for any design services included in the Direct Cost, whether provided by Project Co's personnel, consultants, manufacturers or manufacturers' consultants, for hourly paid personnel shall not exceed two times the actual salary received by those personnel (actual salary to be inclusive of all benefits, statutory remittances and holidays), and for salaried personnel, the actual salary per hour shall be calculated by dividing the annual salary (inclusive of all benefits, statutory remittances and holidays) by 2080 hours;
- (iv) the amount paid for machinery and equipment rental costs shall not exceed the prevailing competitive commercial rate for which such equipment or machinery can be obtained in Toronto, Ontario; and
- (v) the Direct Cost shall not include any cost incurred due to the failure on the part of Project Co to exercise reasonable care and diligence in its attention to the prosecution of that part of the Project Operations.

APPENDIX B

APPLICABLE MARGINS

Party	Total Overhead and Profit Margin (as % of Direct Cost)		
	<i>For projects under \$[REDACTED]</i>	<i>For projects between \$[REDACTED] and \$[REDACTED]</i>	<i>For projects over \$[REDACTED]</i>
Project Co (Own Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
Construction Contractor (Own Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
Construction Contractor (Subcontracted Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
Service Provider (Own Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%
Service Provider (Subcontracted Work)	[REDACTED]%	[REDACTED]%	[REDACTED]%

**SCHEDULE 23**

**COMPENSATION ON TERMINATION**

**1. DEFINITIONS**

**1.1 Definitions**

The following terms shall have the following meanings:

- (a) “**Adjusted Estimated Fair Value**” means the Estimated Fair Value adjusted as follows:
- (i) where, in respect of any Payment Period or part of a Payment Period from the Termination Date to the Compensation Date, the Post Termination Service Amount is a negative number, the aggregate amount by which all such negative Post Termination Service Amounts are negative shall be set off against and shall reduce the Estimated Fair Value (whether or not such amounts have been set off by Osler pursuant to Section 3.3(f) of this Schedule 23);
  - (ii) the aggregate of the following amounts shall be deducted, without duplication, from the Estimated Fair Value:
    - (A) the Post Termination Service Amounts actually paid by Osler to Project Co prior to the Compensation Date;
    - (B) the Tender Costs; and
    - (C) amounts that Osler is entitled to set off or deduct; and
  - (iii) the aggregate of the following amounts shall be added, without duplication, to the Estimated Fair Value:
    - (A) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the Estimated Fair Value is calculated; and
    - (B) any insurance proceeds and other amounts owing to Project Co (and which Project Co is entitled to retain), to the extent not included in Section 1.1(a)(iii)(A),  
to the extent that:
      - (C) Sections 1.1(a)(iii)(A) and 1.1(a)(iii)(B) have not been directly taken into account in calculating the Estimated Fair Value; and

- (D) Osler has received such amounts in accordance with this Project Agreement.
- (b) **“Adjusted Highest Qualifying Tender Price”** means the price offered by the Qualifying Tenderer (if any) with the highest tender price, adjusted as follows:
  - (i) where, in respect of any Payment Period or part of a Payment Period from the Termination Date to the Compensation Date, the Post Termination Service Amount is a negative number, the aggregate amount by which all such negative Post Termination Service Amounts are negative shall be set off against and shall reduce such highest tender price (whether or not such amounts have been set off by Osler pursuant to Section 3.3(f) of this Schedule 23);
  - (ii) the aggregate of the following amounts shall be deducted, without duplication, from such highest tender price:
    - (A) the Post Termination Service Amounts actually paid by Osler to Project Co prior to the Compensation Date;
    - (B) the Tender Costs; and
    - (C) amounts that Osler is entitled to set off or deduct; and
  - (iii) the aggregate of the following amounts shall be added, without duplication, to such highest tender price:
    - (A) all credit balances on any bank accounts held by or on behalf of Project Co on the date that the highest priced Qualifying Tender is received; and
    - (B) any insurance proceeds and other amounts owing to Project Co (and which Project Co is entitled to retain), to the extent not included in Section 1.1(b)(iii)(A),  
  
to the extent that:
    - (C) Sections 1.1(b)(iii)(A) and 1.1(b)(iii)(B) have not been directly taken into account in that Qualifying Tender; and
    - (D) Osler has received such amounts in accordance with this Project Agreement.
- (c) **“Compensation Date”** means either:
  - (i) if Section 3.3 of this Schedule 23 applies, the earlier of:

- (A) the date that the New Agreement is entered into; and
  - (B) the date on which Osler pays the Adjusted Highest Qualifying Tender Price to Project Co; or
  - (ii) if Section 3.4 of this Schedule 23 applies, the date that the Adjusted Estimated Fair Value has been agreed or determined.
- (d) **“Discount Rate”** means a rate equal to  $((A + B) / C) + D$ , where:
- A = the product of the outstanding principal amount of debt funded under the Lending Agreements on the date of calculation and the rate of interest applicable to such amount as shown in the Financial Model at Financial Close.
- B = the product of the Equity Capital as at Financial Close and the Base Case Equity IRR.
- C = the sum of the outstanding principal amount of debt funded under the Lending Agreements on the date of calculation and the Equity Capital as at Financial Close.
- D = the yield to maturity on a benchmark Government of Canada bond of the same maturity as the average life of the outstanding principal amount of debt funded under the Lending Agreements on the date of calculation, minus the yield to maturity on a benchmark Government of Canada bond of the same maturity as the average life of the outstanding principal amount of debt funded under the Lending Agreements as shown in the Financial Model at Financial Close.
- (e) **“Employee Termination Payments”** means termination payments which are required under Applicable Law to be made to employees of Project Co as a direct result of terminating this Project Agreement (provided that Project Co or the relevant Project Co Party shall take commercially reasonable steps to mitigate its loss) and provided that, in calculating such amount, no account should be taken of any liabilities and obligations of Project Co or the relevant Project Co Party arising out of:
- (i) contracts of employment or other agreements or arrangements entered into by Project Co or the relevant Project Co Party to the extent that such contracts of employment, agreements or arrangements were not entered into in connection with the Project; or
  - (ii) contracts of employment or other agreements or arrangements entered into by Project Co or the relevant Project Co Party other than in the ordinary course of business and on commercial arm’s length terms, save to the extent that amounts would have arisen if such contracts or other agreements or arrangements had been



entered into in the ordinary course of business and on commercial arm's length terms.

- (f) **“Estimated Fair Value”** means the amount determined in accordance with Section 3.4 of this Schedule 23.
- (g) **“Invoice Date”** means the date that is the later of:
  - (i) the date on which Osler receives an invoice from Project Co for the relevant termination sum; and
  - (ii) the date on which Osler receives the supporting evidence required pursuant to Section 8.1(a) of this Schedule 23.
- (h) **“Junior Debt Amount”** means, at any time, the then outstanding principal amount of debt funded under the terms of the Lending Agreements by the Junior Lenders to Project Co, together with all interest accrued thereon at that time. For greater certainty, the Junior Debt Amount includes any amount funded under the terms of the Lending Agreements which has a fixed return without equity participation, step-up rights or rights to share in Project Co's excess cash flow and a coupon equal to or less than [REDACTED]% of the coupon payable to the Senior Lenders and excludes the Junior Debt Makewhole.
- (i) **“Junior Debt Makewhole”** means, at any time, any amount (other than the Junior Debt Amount) then due and payable to the Junior Lenders under the Lending Agreements, including any “make whole” payments, breakage fees (less any breakage benefits) and all other fees, costs and expenses reasonably and properly incurred which Project Co is obligated to pay to the Junior Lenders pursuant to the Lending Agreements.
- (j) **“Lending Agreements”** means any or all of the agreements or instruments to be entered into by Project Co or any of its Affiliates relating to the financing of the Project Operations, including, for greater certainty, the Security Documents and any agreements or instruments to be entered into by Project Co or any of its Affiliates relating to the rescheduling of their indebtedness in respect of the financing of the Project Operations or the refinancing of the Project Operations.
- (k) **“Liquid Market”** means that there are 2 or more willing parties (each of whom is capable of being a Suitable Substitute and of meeting the Qualification Criteria) in the market for agreements in Canada for the provision of services to healthcare facilities under an alternative financing and procurement or similar model (where such agreements are the same as or similar to this Project Agreement) such that the retendering process in Section 3.3 of this Schedule 23 can reasonably be expected to result in a highest Qualifying Tender price broadly in the range of values that would reasonably be expected

to be achieved calculating the Estimated Fair Value under Section 3.4 of this Schedule 23.

- (l) **“Market Value Availability Deduction Amount”** means for any Payment Period or part of a Payment Period, an amount equal to the Deductions for Availability Failures that were made from the Monthly Service Payment under the Payment Mechanism in the Payment Period immediately preceding the Termination Date, less an amount equal to Deductions for Availability Failures that were made for Functional Parts which were unavailable at the Termination Date but which have subsequently become available, whether as a result of Osler incurring Rectification Costs or otherwise.
- (m) **“Maximum Service Payment”** means the Monthly Service Payments payable at any time before any Deductions under the Payment Mechanism but allowing for indexation under the Payment Mechanism.
- (n) **“New Agreement”** means an agreement on substantially the same terms and conditions as this Project Agreement as at the Termination Date, but with the following amendments:
  - (i) if this Project Agreement is terminated prior to the Substantial Completion Date, then the Longstop Date shall be extended by a period to allow a New Project Co to achieve Substantial Completion prior to such extended Longstop Date;
  - (ii) any accrued Failure Points shall be cancelled;
  - (iii) the term of such agreement shall be equal to the term from the Termination Date until the Expiry Date; and
  - (iv) any other amendments which do not adversely affect Project Co.
- (o) **“New Project Co”** means the person who has entered or who will enter into the New Agreement with Osler.
- (p) **“Non-Default Termination Sum”** has the meaning given in Section 4.1(b) of this Schedule 23.
- (q) **“Osler Default Termination Sum”** has the meaning given in Section 2.1(b) of this Schedule 23.
- (r) **“Post Termination Service Amount”** means, for the purposes of Section 3.3 of this Schedule 23, for the whole or any part of a Payment Period for the period from the Termination Date to the Compensation Date, an amount equal to the Maximum Service Payment which would have been payable under this Project Agreement had this Project

- Agreement not been terminated, less an amount equal to the aggregate (without double counting) of:
- (i) the Market Value Availability Deduction Amount for that Payment Period; and
  - (ii) the Rectification Costs incurred by Osler in that Payment Period.
- (s) “**Prohibited Acts Termination Sum**” has the meaning given to it in Section 5.1(b) of this Schedule 23.
- (t) “**Qualification Criteria**” means the criteria that Osler requires tenderers to meet as part of the Tender Process, which (subject to compliance with Applicable Law) shall include the following:
- (i) that the tenders confirm acceptance of the New Agreement terms;
  - (ii) that the tenderers have, and are able to demonstrate on an indicative basis on request, the financial ability to pay the lump sum tendered;
  - (iii) that tenderers may only bid on the basis of a single lump sum payment to be paid by the tenderer;
  - (iv) that the tenderer is experienced in providing the Project Co Services or similar services;
  - (v) that the technical solution proposed by the tenderers is capable of delivery and the tenderer is technically capable of delivery of the Project Operations; and
  - (vi) any other tender criteria established by Osler, acting reasonably.
- (u) “**Qualifying Tender**” means a tender that meets all of the Qualification Criteria.
- (v) “**Qualifying Tenderer**” means a tenderer who submits a Qualifying Tender.
- (w) “**Rectification Costs**” means, for the purposes of any Termination Date that occurs after the Substantial Completion Date, an amount equal to the reasonable and proper costs incurred by Osler in a particular Payment Period or part of a Payment Period in ensuring that the Project Co Services are carried out.
- (x) “**Senior Debt Amount**” means, at any time, the then outstanding principal amount of debt funded under the terms of the Lending Agreements by the Senior Lenders to Project Co, together with all interest accrued thereon at that time. For greater certainty, the Senior Debt Amount excludes the Senior Debt Makewhole.

- (y) **“Senior Debt Makewhole”** means, (i) at any time, any amount (other than the Senior Debt Amount) then due and payable to the Senior Lenders under the Lending Agreements with respect to the Senior Debt Amount, including any “make whole” payments, breakage costs (less any breakage benefits) and all other fees, costs and expenses reasonably and properly incurred which Project Co is obligated to pay to the Senior Lenders pursuant to the Lending Agreements with respect to the Senior Debt Amount.
- (z) **“Subcontractor Losses”** means, subject to Project Co’s obligations under this Project Agreement to limit any compensation to Subcontractors:
- (i) the amount reasonably and properly payable by Project Co to the Construction Contractor under the terms of the Construction Contract as a direct result of the termination of this Project Agreement (including any reasonable commercial breakage fee), provided that such amount shall be reduced to the extent that Project Co or any Subcontractors fail to take commercially reasonable steps to mitigate such amount; and
  - (ii) the amount reasonably and properly payable by Project Co to the Service Provider under the terms of the Service Contract as a direct result of the termination of this Project Agreement (including any reasonable commercial breakage fee), provided that such amount shall be reduced to the extent that Project Co or the Subcontractors fail to take commercially reasonable steps to mitigate such amount,

provided that, in both cases, no account should be taken of any liabilities and obligations of Project Co to the Subcontractors arising out of:

- (iii) any loss of overhead or profit of such Subcontractor relating to any period or costs after the Termination Date (save to the extent the same are properly included in any reasonable commercial breakage fee set out in any of the Ancillary Documents);
- (iv) agreements or arrangements entered into by Project Co or the Subcontractors to the extent that such agreements or arrangements were not entered into in connection with those parties’ obligations in relation to the Project; or
- (v) agreements or arrangements entered into by Project Co or the Subcontractors other than in the ordinary course of business and on commercial arm’s length terms, save to the extent that amounts would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm’s length terms.

- (aa) **“Tender Costs”** means the reasonable and proper costs of Osler incurred in carrying out the Tender Process or in connection with any calculation of the Estimated Fair Value.
- (bb) **“Tender Process”** means the process by which Osler requests tenders from any parties interested in entering into a New Agreement, evaluates the responses from those interested parties and enters into a New Agreement with a new Project Co, in accordance with Section 3.3 of this Schedule 23.
- (cc) **“Tender Process Monitor”** has the meaning given in Section 3.3(g) of this Schedule 23.

## **2. COMPENSATION ON TERMINATION FOR Osler DEFAULT OR CONVENIENCE**

### **2.1 Compensation**

- (a) If Project Co terminates this Project Agreement pursuant to Section 43 of this Project Agreement or Osler terminates this Project Agreement pursuant to Section 44.3 of this Project Agreement, Osler shall pay to Project Co the Osler Default Termination Sum.
- (b) The **“Osler Default Termination Sum”** shall be an amount equal to the aggregate of:
  - (i) the Senior Debt Amount and the Senior Debt Makewhole;
  - (ii) the Junior Debt Amount and the Junior Debt Makewhole;
  - (iii) any amount payable by Osler to Project Co in accordance with Sections 40.2(b) and 41.2(b) of this Project Agreement;
  - (iv) the Employee Termination Payments and Subcontractor Losses;
  - (v) any reasonable costs properly incurred by Project Co to wind up its operations; and
  - (vi) an amount which, if paid on the Termination Date and taken together with all dividends and other Distributions paid on or made in respect of the Equity Capital on or before the Termination Date and taking account of the actual timing of all such payments, but, in any event, excluding all amounts (whether for costs, overhead, profit or otherwise) after the Termination Date, gives a nominal internal rate of return to the Termination Date equal to the Equity IRR on the amount paid for the Equity Capital (to the extent that such Equity Capital has been applied by Project Co for the purposes of the Project);

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (vii) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where Osler is required to procure insurances and to make proceeds available to Project Co under this Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and this Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project and this Project Agreement) to Osler and, at no additional cost to Project Co, give Osler reasonable assistance in prosecuting such claims;
  
- (viii) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to Osler pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
  - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
  - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
  
- (ix) amounts which Osler is entitled to set off pursuant to Section 31.13(a)(i) of this Project Agreement,

provided that the Osler Default Termination Sum shall never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole.

- (c) To the extent that such assets and rights referred to in Section 2.1(b)(iii) are not realized and applied pursuant thereto, Project Co shall, on payment of the Osler Default Termination Sum, assign such assets and rights to Osler.
- (d) Osler shall pay the Osler Default Termination Sum in accordance with Section 8 of this Schedule 23.

### **3. COMPENSATION FOR PROJECT CO DEFAULT**

#### **3.1 Compensation**

- (a) Save and except where Sections 5 or 6 apply, if Osler terminates this Project Agreement pursuant to Section 42 of this Project Agreement, Osler shall pay to Project Co either the Adjusted Highest Qualifying Tender Price according to the retendering procedure set out in Section 3.3 of this Schedule 23 or the Adjusted Estimated Fair Value according to the no retendering procedure set out in Section 3.4 of this Schedule 23, as applicable.

#### **3.2 Retendering Election**

- (a) Osler shall be entitled to retender the provision of the Project Operations in accordance with Section 3.3 of this Schedule 23 and the provisions thereof shall apply if:
  - (i) Osler notifies Project Co on or before the date falling 30 days after the Termination Date; and
  - (ii) there is a Liquid Market,

but, otherwise, Osler shall require a determination in accordance with the no retendering procedure set out in Section 3.4 of this Schedule 23 and the provisions thereof shall apply.

- (b) Until it is determined that the basis for determining the compensation to Project Co will be the no retendering procedure set out in Section 3.4 of this Schedule 23, Project Co shall continue to provide the Project Co Services and Osler shall pay Project Co in accordance with Section 3.3(e).

#### **3.3 Retendering Procedure**

- (a) The objective of the Tender Process shall be to enter into a New Agreement with a Qualifying Tenderer.
- (b) Osler shall commence the Tender Process promptly after delivering the notice pursuant to Section 3.2(a) and use commercially reasonable efforts to complete the Tender Process as soon as practicable.

- (c) Osler shall, as soon as reasonably practicable, notify Project Co of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process and shall act reasonably in setting such requirements and terms.
- (d) Project Co authorizes the release of any information by Osler under the Tender Process which would otherwise be prevented under Section 49 of this Project Agreement that is reasonably required as part of the Tender Process.
- (e) Project Co shall continue to provide the Project Co Services, and, for all or any part of a Payment Period falling within the period from the Termination Date to the Compensation Date, Osler shall pay to Project Co:
  - (i) the Post Termination Service Amount for each completed Payment Period, on or before the date falling 20 Business Days after the end of that Payment Period; and
  - (ii) the Post Termination Service Amount for the period from the end of the last completed Payment Period until the Compensation Date, on or before the date falling 30 days after the Compensation Date.
- (f) If any Post Termination Service Amount is negative, then the amount by which the Post Termination Service Amount is negative shall be carried forward and may be set off against any future positive Post Termination Service Amounts.
- (g) Project Co may, at its own cost, appoint a person (the “Tender Process Monitor”) to monitor the Tender Process for the purpose of monitoring and reporting to Project Co and the Lenders on Osler’s compliance with the Tender Process. The Tender Process Monitor shall enter into a confidentiality agreement with Osler in a form acceptable to Osler and shall be entitled to attend all meetings relating to the Tender Process, inspect copies of all the tender documentation and bids and make representations to Osler as to compliance with the Tender Process. Osler shall not be bound to consider or act upon such representations. The Tender Process Monitor will not disclose confidential information to Project Co or the Lenders but shall be entitled to advise Project Co and the Lenders on whether it considers that Osler has acted in accordance with the Tender Process and correctly determined the Adjusted Highest Qualifying Tender Price.
- (h) As soon as practicable after tenders have been received, Osler shall, acting reasonably, review and assess the Qualifying Tenders and shall notify Project Co of the Adjusted Highest Qualifying Tender Price.
- (i) If Project Co refers a Dispute relating to the Adjusted Highest Qualifying Tender Price to dispute resolution in accordance with Schedule 27 – Dispute Resolution Procedure, Osler shall, irrespective of such Dispute, be entitled to enter into a New Agreement.



- (j) Osler shall pay the Adjusted Highest Qualifying Tender Price in accordance with Section 8 of this Schedule 23.
- (k) Osler may elect, by notice to Project Co at any time prior to Osler ascertaining the Adjusted Highest Qualifying Tender Price, to follow the no retendering procedure set out in Section 3.4 of this Schedule 23. In addition, Osler shall follow such no retendering procedure if:
  - (i) only one Qualifying Tender is received; or
  - (ii) a New Agreement has not been entered into and compensation paid under Section 8.2 on or before the date falling 18 months after the Termination Date.
- (l) Project Co may give written notice to Osler at any time after the Termination Date and prior to the date for receipt of Qualifying Tenders that a Liquid Market does not exist (or shall not exist on the date for receipt of Qualifying Tenders). If Osler is in agreement with such notice, the provisions of Section 3.4 of this Schedule 23 shall apply. If Osler provides a written response within 10 Business Days of receipt of such notice stating that it is in disagreement with that notice or if no written response is provided by Osler within such 10 Business Day period, the matter shall be referred for determination in accordance with Schedule 27 – Dispute Resolution Procedure.

### **3.4 No Retendering Procedure**

- (a) Subject to Section 3.4(b), if the provisions of this Section 3.4 apply, Project Co shall not be entitled to receive any Post Termination Service Amount.
- (b) If Osler elects to require a determination in accordance with this Section 3.4 after it has elected to follow the procedure set out in Section 3.3, then Osler shall continue to pay to Project Co each Post Termination Service Amount until the Compensation Date in accordance with Section 3.3.
- (c) In determining the Estimated Fair Value, the Parties shall be obliged to follow the principles set out below:
  - (i) All forecast amounts should be calculated in nominal terms as at the Termination Date. Where relevant, adjustments for forecast inflation between the date of calculation and the forecast payment date(s), as set out in this Project Agreement, will be made and, if made, will use an assumed inflation rate of [REDACTED]% per annum.
  - (ii) The Estimated Fair Value shall be calculated using the following formula (without double counting):

$(A - B - C) - D$

Where:

A = the present value of (i) the Substantial Completion Payment, Equipment Procurement Fee and Transition Services Fee, if any remains, to be paid at the Termination Date, and (ii) the Monthly Service Payments forecast to be made from the Termination Date to the Expiry Date, assuming that no Deductions will be made over that period, discounted in each case at the Discount Rate

B = a contingency amount based on a reasonable risk assessment of any cost overruns that may reasonably arise (including in respect of any matter referred to in this Section 3.4(c)(ii)) whether or not forecast in the relevant base case and represented in the Financial Model as of the date of Financial Close, discounted at the Discount Rate

C = the present value of the costs of obtaining or providing the Project Co Services reasonably forecast to be incurred by Osler from the Termination Date to the Expiry Date to the standard required, discounted at the Discount Rate

D = any rectification costs (including Rectification Costs) reasonably required to deliver the Project Operations to the standard required, including, if applicable, to complete the Works, any costs reasonably forecast to be incurred by Osler for up-front finance fees and related costs (excluding principal and interest payments) that would not arise at the time or in the future had the termination not occurred, and any other additional operating costs required to restore operating services standards less (to the extent that such sums are included in any calculation of rectification costs (including Rectification Costs) for the purposes of this item D), the aggregate of:

(A) any insurance proceeds received or which will be received pursuant to policies maintained in accordance with Schedule 25 – Insurance and Performance Security Requirements; and

(B) amounts payable by Osler in respect of Capital Expenditures under this Project Agreement which have not been paid,

discounted at the Discount Rate.

(iii) The amount of  $(A - B - C)$  as defined in Section 3.4(c)(ii) shall be no greater than the Non-Default Termination Sum.

(iv) All costs referred to in Section 3.4(c)(ii) are to be forecast at a level that will deliver the Project Co Services and other Project Operations to the standards

required by this Project Agreement and to achieve the full Monthly Service Payments (without Deductions).

- (v) The calculation will take into consideration the obligations of the Parties with respect to allowances and payments under this Project Agreement.
- (d) If the Parties cannot agree on the Estimated Fair Value, then the Estimated Fair Value shall be determined in accordance with Schedule 27 – Dispute Resolution Procedure.
- (e) Osler shall pay the Adjusted Estimated Fair Value in accordance with Section 8 of this Schedule 23.

#### **4. CONSEQUENCES OF NON-DEFAULT TERMINATION AND TERMINATION BY Osler FOR RELIEF EVENT**

##### **4.1 Consequences**

- (a) If Osler terminates this Project Agreement pursuant to Section 44.1 of this Project Agreement or if either Party terminates this Project Agreement pursuant to Section 44.2 of this Project Agreement, Osler shall pay to Project Co the Non-Default Termination Sum.
- (b) The “**Non-Default Termination Sum**” shall be an amount equal to the aggregate of:
  - (i) the Senior Debt Amount and the Senior Debt Makewhole;
  - (ii) the Junior Debt Amount;
  - (iii) any amount payable by Osler to Project Co in accordance with Sections 40.2(b) and 41.2(b) of this Project Agreement;
  - (iv) the Employee Termination Payments and Subcontractor Losses (but excluding therefrom any claims for loss of profit); and
  - (v) an amount equal to the Equity Capital as at Financial Close, less all dividends and other Distributions paid on or made in respect of the Equity Capital on or before the Termination Date, provided that where such amount is negative, it shall be deemed instead to be zero;

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (vi) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in

accordance with the requirements of this Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where Osler is required to procure insurances and to make proceeds available to Project Co under this Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and this Project Agreement (but only when received from third parties) but excluding any claims under any Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project and this Project Agreement) to Osler and, at no additional cost to Project Co, give Osler reasonable assistance in prosecuting such claims; and

- (vii) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to Osler pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
  - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
  - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (viii) amounts which Osler is entitled to set off pursuant to Section 31.13(a)(i) of this Project Agreement,

provided that the Non-Default Termination Sum shall never be less than the aggregate of the Senior Debt Amount, the Senior Debt Makewhole and the Junior Debt Amount.

- (c) To the extent that such assets and rights referred to in Section 4.1(b)(vii) are not realized and applied pursuant thereto, Project Co shall, on payment of the Non-Default Termination Sum, assign such assets and rights to Osler.

- (d) Osler shall pay the Non-Default Termination Sum in accordance with Section 8 of this Schedule 23.

## **5. CONSEQUENCES OF TERMINATION FOR PROHIBITED ACTS**

### **5.1 Consequences**

- (a) If Osler terminates this Project Agreement as a result of a Project Co Event of Default for failing to comply with Section 57 of this Project Agreement, Osler shall pay to Project Co the Prohibited Acts Termination Sum.
- (b) The “**Prohibited Acts Termination Sum**” shall be an amount equal to the aggregate of:
  - (i) the Senior Debt Amount and the Senior Debt Makewhole;
  - (ii) any amount payable by Osler to Project Co in accordance with Sections 40.2(b) and 41.2(b) of this Project Agreement; and
  - (iii) the following amounts calculated in respect of the Construction Contractor, if the Construction Contractor is not responsible for a Prohibited Act, and the Service Provider, if the Service Provider is not responsible for a Prohibited Act, and which Project Co can demonstrate will be paid directly to such persons:
    - (A) the Employee Termination Payments; and
    - (B) as applicable, the Construction Contractor’s and Service Provider’s out-of-pocket costs incurred as a direct result of termination of this Project Agreement (excluding any breakage fees and overhead and profit of the Construction Contractor and Service Provider, as applicable);

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (iv) all credit balances on any bank accounts held by or on behalf of Project Co on the Termination Date and the value of any insurance proceeds due to Project Co or to which Project Co would have been entitled had insurance been maintained in accordance with the requirements of this Project Agreement (save where such insurance proceeds are to be applied in reinstatement, restoration or replacement, or, in the case of third party legal liability, in satisfaction of the claim, demand, proceeding or liability or where Osler is required to procure insurances and to make proceeds available to Project Co under this Project Agreement and it has failed to do so) or sums due and payable from third parties other than sums wholly unrelated to the Project Operations, the Project and this Project Agreement (but only when received from third parties) but excluding any claims under any

Subcontracts or claims against other third parties which have not been determined or have been determined but not yet paid, provided that, in such case, Project Co shall assign any such rights and claims under the Subcontracts or claims against other third parties (other than claims against other third parties wholly unrelated to the Project Operations, the Project and this Project Agreement) to Osler and, at no additional cost to Project Co, give Osler reasonable assistance in prosecuting such claims;

- (v) to the extent realized before the Invoice Date, the market value of any other assets and rights of Project Co (other than those transferred to Osler pursuant to this Project Agreement) less liabilities of Project Co properly incurred in carrying out its obligations under this Project Agreement as at the Termination Date, provided that no account should be taken of any liabilities and obligations of Project Co arising out of:
  - (A) agreements or arrangements entered into by Project Co to the extent that such agreements or arrangements were not entered into in connection with Project Co's obligations in relation to the Project; or
  - (B) agreements or arrangements entered into by Project Co other than in the ordinary course of business and on commercial arm's length terms, save to the extent that liabilities and obligations would have arisen if such agreements or arrangements had been entered into in the ordinary course of business and on commercial arm's length terms; and
- (vi) amounts which Osler is entitled to set off pursuant to Section 31.13(a)(i) of this Project Agreement, provided that Osler shall only set off amounts which are due to Osler by Project Co pursuant to the terms of this Project Agreement if and to the extent the Prohibited Acts Termination Sum exceeds the Senior Debt Amount.
- (c) To the extent that such assets and rights referred to in Section 5.1(b)(v) are not realized and applied pursuant thereto, Project Co shall, on payment of the Prohibited Acts Termination Sum, assign such assets and rights to Osler.
- (d) Osler shall pay the Prohibited Acts Termination Sum in accordance with Section 8 of this Schedule 23.

## **6. CONSEQUENCES OF TERMINATION FOR BREACH OF REFINANCING**

### **6.1 Consequences**

- (a) If Osler terminates this Project Agreement as a result of a Project Co Event of Default for failing to comply with Section 7.3 of this Project Agreement or Schedule 28 – Refinancing or the Lender assigns, transfers or otherwise disposes of any right, title or

interest it may have in, or obligations it may have pursuant to, the Security Documents in breach of the Lenders' Direct Agreement, Osler shall pay to Project Co a termination sum equivalent to, and calculated in accordance with Sections 5.1(b)(i), (ii), (iii), (iv) and (v) of this Schedule 23, less amounts which Osler is entitled to set off pursuant to Section 31.13(a)(i) of this Project Agreement.

- (b) Osler shall pay such termination sum in accordance with Section 8 of this Schedule 23.

## **7. CONSEQUENCES OF TERMINATION BY PROJECT CO FOR RELIEF EVENT**

### **7.1 Consequences**

- (a) If Project Co terminates this Project Agreement pursuant to Section 44.1 of this Project Agreement, Osler shall pay to Project Co a termination sum equivalent to the greater of (i) an amount calculated and payable in accordance with, the Prohibited Acts Termination Sum; and (ii) the Adjusted Estimated Fair Value calculated in accordance with this Schedule 23.
- (b) Osler shall pay such termination sum in accordance with Section 8.1 or 8.3 of this Schedule 23, as applicable.

## **8. GENERAL**

### **8.1 Payment and Interest Following Non-Project Co Default Termination**

- (a) In respect of the termination payments to be made pursuant to any of Sections 2, 4, 5, 6 or 7 of this Schedule 23, as soon as practicable after, and, in any event, within 30 days after, the Termination Date, Project Co shall give to Osler an invoice for the relevant termination sum and sufficient supporting evidence, reasonably satisfactory to Osler, justifying the amount of the relevant termination sum including a detailed breakdown of each of the individual items comprising such sum.
- (b) Osler shall pay to Project Co:
  - (i) the relevant termination sum within 60 days after the Invoice Date; and
  - (ii) Osler shall indemnify Project Co as provided in Section 53.2(c) of this Project Agreement in respect of any damages suffered or incurred as a result of the relevant termination sum (or any part of such sum that remains outstanding) not being received on the Termination Date:
    - (A) in an amount equivalent to the No Default Payment Compensation Amount for the period from (but excluding) the Termination Date to (and including) the date which is 60 days after the Invoice Date; and

- (B) thereafter, in an amount equivalent to the Payment Compensation Amount until the date of payment.
- (c) In respect of the termination payments to be made pursuant to any of Sections 4, 5, 6 or 7 of this Schedule 23, if the applicable termination sum is negative, Osler shall have no obligation to make any payment to Project Co and Project Co shall, within 60 days after the Invoice Date, pay to Osler the amount by which such termination sum is negative, failing which Project Co shall also thereafter indemnify Osler as provided in Section 53.1(e) of this Project Agreement in respect of any damages suffered or incurred on such amount on the basis that the due date for the payment of the negative termination sum amount was the date 60 days after the Invoice Date until the date of payment in an amount equivalent to the Payment Compensation Amount.

**8.2 Payment and Interest Following Project Co Default – Retendering Procedure**

- (a) Following the retendering procedure set out in Section 3.3 of this Schedule 23, Osler shall pay to Project Co the Adjusted Highest Qualifying Tender Price no later than the date falling 30 days after the later of:
  - (i) the date on which Osler enters into the New Agreement with the New Project Co; and
  - (ii) if Project Co has, pursuant to Section 3.3(i) of this Schedule 23, referred a Dispute relating to the Adjusted Highest Qualifying Tender Price to be resolved in accordance with Schedule 27 – Dispute Resolution Procedure, the date on which the Dispute is finally determined, provided that Osler shall pay the undisputed amount on the date referred to in Section 8.2(a)(i),

and Osler shall indemnify Project Co as provided in Section 53.2(c) of this Project Agreement on the Adjusted Highest Qualifying Tender Price on the basis that the due date for the payment of the Adjusted Highest Qualifying Tender Price was the date on which Osler enters into the New Agreement with the New Project Co:

- (iii) in an amount equivalent to the No Default Payment Compensation Amount from the due date up to (and including) the date following 30 days from after the later of the dates determined under Section 8.2(a)(i) and (ii) above (and for clarity, on such portions of the Adjusted Highest Qualifying Tender Price in the circumstance described in paragraph (ii) above); and
- (iv) thereafter, in an amount equivalent to the Payment Compensation Amount until the date of payment.
- (b) If the Adjusted Highest Qualifying Tender Price is negative, Osler shall have no obligation to make any payment to Project Co and Project Co shall, on the date of the



New Agreement, pay Osler the amount by which such termination sum is negative, failing which Project Co shall also thereafter indemnify Osler as provided in Section 53.1(e) of this Project Agreement in respect of any damages suffered or incurred on such amount on the basis that the due date for the payment of the negative termination sum amount was the date of the New Agreement in an amount equivalent to the Payment Compensation Amount until the date of payment.

### **8.3 Payment and Interest Following Project Co Default – No Retendering Procedure**

- (a) If Osler follows the no retendering procedure set out in Section 3.4 of this Schedule 23, Osler shall pay to Project Co the Adjusted Estimated Fair Value no later than the date falling 60 days after the date on which the Adjusted Estimated Fair Value has been agreed or determined in accordance with Section 3.4 of this Schedule 23, together with interest on such amount calculated in accordance with Section 8.1(b)(ii) above.
- (b) If the Adjusted Estimated Fair Value is negative, Osler shall have no obligation to make any payment to Project Co and Project Co shall, on the Compensation Date, pay Osler the amount by which the Adjusted Estimated Fair Value is negative, failing which Project Co shall also thereafter indemnify Osler as provided in Section 53.1(e) in respect of any damages suffered or incurred on such amount on the basis that the due date for payment of the negative Adjusted Estimated Fair Value was the date of the New Agreement in an amount equivalent to the Payment Compensation Amount until the date of payment.

### **8.4 Costs**

- (a) The costs and expenses to be taken into account in the calculation of all termination sums due pursuant to this Schedule 23 shall only be such costs and expenses to the extent that they are reasonable and proper in quantum and shall have been or will be reasonably and properly incurred.

### **8.5 Undisputed Amounts**

- (a) If the calculation of any termination amount is disputed then any undisputed amount shall be paid in accordance with this Section 8 and the disputed amount shall be dealt with in accordance with Schedule 27 – Dispute Resolution Procedure.

### **8.6 Outstanding Debt Amounts**

- (a) Osler shall be entitled to rely on a certificate of the Lenders' Agent as conclusive as to the Senior Debt Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole, as applicable, outstanding or payable at any relevant time.
- (b) If a receipt or other acknowledgement is given by the Lenders' Agent acknowledging or otherwise confirming receipt of payment or payments in respect of the Senior Debt

Amount, the Senior Debt Makewhole, the Junior Debt Amount and the Junior Debt Makewhole, as applicable, such receipt or other acknowledgement shall discharge Osler's obligation to pay such portion of compensation due to Project Co that is equal to the amount acknowledged or confirmed.

**SCHEDULE 24**

**EXPIRY TRANSITION PROCEDURE**

**1. Independent Inspector**

1.1 Not less than 90 months prior to the Expiry Date, the Parties shall agree upon and, in accordance with Osler procurement policies, engage an independent and suitably qualified and experienced person (the “**Independent Inspector**”) to carry out inspections of the Facility pursuant to this Schedule 24.

Project Co and Osler shall share equally the responsibility for the payment of all fees and costs of the Independent Inspector.

1.2 In the event of the Independent Inspector’s engagement being terminated otherwise than for full performance, the Parties shall liaise and cooperate with each other in order to appoint a replacement as soon as reasonably practicable, and in any event within 10 Business Days of the termination of the last Independent Inspector’s engagement.

1.3 In the event the Parties fail to agree upon the identity of the Independent Inspector either pursuant to Section 1.1 or Section 1.2 of this Schedule 24 by the specified deadline, then the Independent Inspector shall be selected as follows:

- (a) each Party shall within 10 Business Days thereafter select three independent and suitably qualified and experienced persons that would be acceptable to that Party as the Independent Inspector, and shall provide notice thereof to the other Party; and
- (b) if the Parties have both selected a common person, then such common person shall be the Independent Inspector; or
- (c) if the Parties have not selected a common person, then the Independent Inspector shall be selected in accordance with Schedule 27 – Dispute Resolution Procedure.

**2. Condition of Facilities on Expiry**

2.1 Subject to the exceptions specified in Section 2.2, on the Expiry Date:

- (a) each element of the Facility and the Site (including the ground soil located on the Site) shall be in a condition which is consistent with due performance by Project Co of its obligations under this Project Agreement and, in particular, is consistent with the Facility having been maintained in accordance with the Scheduled Maintenance Plan and the Lifecycle Replacement Schedule, and, with respect to the Site and the ground soil located on the Site, does not deviate from the Pre-

Existing Environmental Site Conditions by reason of any Contamination for which Project Co is responsible pursuant to this Project Agreement;

- (b) each element of the Facility shall be in good operating order (Normal Wear and Tear excepted) and capable of performing in accordance with the performance specifications and standards set out in Schedule 15 – Output Specifications; and
- (c) each element of the Facility shall be in a condition which ensures that such element of the Facility will have a reasonable likelihood of completing its Replacement Lifecycle and/or remaining lifecycle in good condition and operating order (Normal Wear and Tear excepted), and, if applicable, shall not have any structural faults, deterioration and/or defect,

(collectively, the “**Expiry Transition Requirements**”).

2.2 For greater certainty, this Schedule 24 shall not apply to any Equipment to be maintained by Osler in accordance with this Project Agreement.

### **3. Facility Inspections**

3.1 The Parties shall cause the Independent Inspector to perform an inspection of the Facility and to produce and deliver to each of the Parties a written report (a “**Facility Condition Report**”) not less than 7 years prior to the Expiry Date that:

- (a) identifies the condition of the Facility and each element of the Facility (subject to the exceptions specified in Section 2.2) in relation to the Expiry Transition Requirements;
- (b) assesses Project Co’s business case related to capital replacement (which, for greater certainty, will include consideration of energy consumption), and provides the Independent Inspector’s opinion on both the adequacy of Project Co’s proposed strategy and the consistency of Project Co’s proposed strategy with the business case methodology and lifecycle strategy set out in Appendix A hereto;
- (c) identifies any works required to ensure the Facility and each element of the Facility (subject to the exceptions specified in Section 2.2) will meet the Expiry Transition Requirements on the Expiry Date (the “**Expiry Transition Works**”), and specifying the Contract Year in which each of those Expiry Transition Works would be required;
- (d) specifies the Independent Inspector’s estimate of the costs that would be required to perform the Expiry Transition Works (the “**Expiry Transition Works Costs**”);
- (e) details how the Expiry Transition Works Costs were calculated; and

- (f) identifies any works required and the timing for such works to ensure that the Anticipated Replacement Year for each relevant element of the Facility identified in Appendix A of this Schedule 24 will be reasonably met under ongoing normal operations of the Facility. Such works shall form part of Expiry Transition Works and the estimated costs of such works shall form part of the Expiry Transition Works Costs.
- 3.2 The Parties shall cause the Independent Inspector to perform another inspection of the Facility and produce and deliver to each of the Parties an updated Facility Condition Report (each a “**Revised Facility Condition Report**”) on each anniversary of the date of the original Facility Condition Report.
- 3.3 The Scheduled Maintenance Plan, the Five Year Maintenance Plan and the Lifecycle Replacement Schedule shall be amended and updated, as applicable, to include all Expiry Transition Works identified in either the Facility Condition Report or any Revised Facility Condition Report not already included in the then current Scheduled Maintenance Plan, Five Year Maintenance Plan or Lifecycle Replacement Schedule.
- 3.4 Project Co shall carry out the Expiry Transition Works at its own cost notwithstanding that the actual cost of the Expiry Transition Works may be higher than the Expiry Transition Works Costs.
- 3.5 Either Party may dispute the Facility Condition Report or any Revised Facility Condition Report, including the Expiry Transition Works and the Expiry Transition Works Costs, in accordance with Schedule 27 – Dispute Resolution Procedure. In the event that a final determination in accordance with Schedule 27 – Dispute Resolution Procedure specifies Expiry Transition Works or Expiry Transition Works Costs which are different than those set out in either the Facility Condition Report or any Revised Facility Condition Report, then either the Facility Condition Report or any Revised Facility Condition Report, as the case may be, shall be deemed to be amended accordingly, and the Scheduled Maintenance Plan, Five Year Maintenance Plan and Lifecycle Replacement Schedule, as amended pursuant to Section 3.3, and all deductions and payments permitted or required by Section 4, shall be adjusted accordingly.

#### **4. Payments To and From Escrow Account**

- 4.1 Following the date for delivery of the Facility Condition Report, for the purposes of Section 4.2, the Parties shall review the amount of the Expiry Transition Works Costs and the level of capital expenditure Project Co has allocated to spend in the same period pursuant to the Financial Model (the “**Expiry Lifecycle Costs**”). Where the Expiry Transition Works Costs are greater than the Expiry Lifecycle Costs, the difference between the Expiry Transition Works Costs and the Expiry Lifecycle Costs shall be apportioned equally over the Payment Periods from the date the Facility Condition Report is to be delivered hereunder to the Expiry Date (each installment being the

- “**Expiry Transition Amount**”). If the Facility Condition Report is delivered after the date for delivery hereunder, then the first installment to be paid shall also include the amounts to be paid under the installments that would have been payable prior to the date the Facility Condition Report is delivered. Where the Expiry Transition Works Costs are amended pursuant to Section 3.2 or 3.5, the Parties agree that the Expiry Transition Amount shall be adjusted accordingly.
- 4.2 Subject to Sections 4.3 and 4.5, Osler may deduct the Expiry Transition Amount from each Monthly Service Payment, and pay into a separate interest bearing bank account, upon escrow terms acceptable to the Parties or in trust (the “**Escrow Account**”), the Expiry Transition Amount. If in any Payment Period, the Expiry Transition Amount is greater than the relevant Monthly Service Payment, Osler may deduct the difference between the Expiry Transition Amount and the Monthly Service Payment from the next Monthly Service Payment or from such other Payment Period as otherwise agreed between the Parties.
- 4.3 Osler shall not deduct any amount from a Monthly Service Payment as contemplated in Section 4.2 if, at such time, the funds in the Escrow Account exceed the value (based on the Expiry Transition Works Costs) of all or any part of the Expiry Transition Works (as amended) yet to be performed.
- 4.4 Project Co may from time to time, but not more often than once in any month, make written request for release of funds from the Escrow Account. Osler shall consider such request within 10 Business Days and if the funds in the Escrow Account exceed the value (based on the Expiry Transition Works Costs) of all or any part of the Expiry Transition Works (as amended) yet to be performed, then Osler shall pay the excess to Project Co from the Escrow Account within 10 Business Days thereafter, together with any interest that has accrued on such amount. Project Co shall include with its request all information reasonably required by Osler to evaluate such request.
- 4.5 Following the date of any Revised Facility Condition Report, the Expiry Transition Amount under Section 4.1 shall be recalculated and if the amount in the Escrow Account (being the deductions of the Expiry Transition Amount made since the Facility Condition Report) together with the deductions currently scheduled to be made from the remaining Monthly Service Payments under Section 4.2 (and under any previous application of this Section 4.5) is less than the revised Expiry Transition Amount, then Osler may additionally deduct such shortfall, in equal installments, from each remaining Monthly Service Payment until the Expiry Date, and pay each installment into the Escrow Account and Section 4.4 shall continue to apply until the Expiry Date.
- 4.6 As an alternative to the deductions permitted by Sections 4.2 and 4.5 or the retention of any amount in the Escrow Account pursuant to the foregoing provisions of this Section 4, Project Co may (and if, at any time, the amounts which Osler is permitted to deduct pursuant to Sections 4.2 and 4.5 is greater than the remaining Monthly Service Payments,

Project Co shall), within 5 Business Days of a written request from Osler, provide a bond or letter of credit (the “**Expiry Transition Security**”) in favour of Osler in an amount equal to the amounts which Osler is permitted to deduct pursuant to Sections 4.2 and 4.5, in a form and from a surety or bank, as applicable, acceptable to Osler.

**5. Project Co Not Relieved of Obligations**

5.1 Notwithstanding:

- (a) any agreement of Osler to any Expiry Transition Works, Expiry Transition Works Costs or Expiry Transition Security;
- (b) any participation of Osler in any inspection under this Schedule 24; and
- (c) the complete or partial carrying out of the Expiry Transition Works,

Project Co shall not be relieved or absolved from any obligation to conduct any other inspection or to perform any other works to the extent otherwise required by this Project Agreement, including without limitation the Output Specifications.

**6. Final Facility Condition Report**

6.1 The Parties shall cause the Independent Inspector to perform an inspection of the Facility and to produce and deliver to each of the Parties a Facility Condition Report within 30 Business Days after the Expiry Date (the “**Final Facility Condition Report**”) that documents whether the Facility met the Expiry Transition Requirements on the Expiry Date, as well as identifying any Expiry Transition Works and Expiry Transition Works Costs.

6.2 If the Final Facility Condition Report identifies any Expiry Transition Works, Osler may withdraw from the Escrow Account or call upon the Expiry Transition Security an amount equivalent to such Expiry Transition Works Costs, and Osler shall pay any remaining funds in the Escrow Account (including any interest accrued) to Project Co and return any remaining Expiry Transition Security to Project Co.

6.3 Provided that the funds in the Escrow Account and/or the Expiry Transition Security is adequate to meet Project Co’s obligations in respect of the Expiry Transition Works identified in the Final Facility Condition Report, following any withdrawal from the Escrow Account or call upon the Expiry Transition Security in accordance with Section 6.2, Project Co shall have no further liability with respect to such Expiry Transition Works.

6.4 If no Expiry Transition Works are identified in the Final Facility Condition Report, Osler shall, within 20 Business Days of receipt by Osler of the Final Facility Condition Report,

pay the funds in the Escrow Account (including any interest accrued) to Project Co and return the Expiry Transition Security to Project Co, unless Osler disputes the Final Facility Condition Report, in which case the Escrow Account and Expiry Transition Security shall be dealt with as determined in accordance with Schedule 27 – Dispute Resolution Procedure.



**APPENDIX A**

**LIFECYCLE REPLACEMENT SCHEDULE**

[REDACTED]

**SCHEDULE 25**

**INSURANCE AND PERFORMANCE  
SECURITY REQUIREMENTS**

**ARTICLE 1  
WORKS PHASE INSURANCE COVERAGE**

- 1.1 Subject to Section 8, from and after execution of this Project Agreement and until the Substantial Completion Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, exclusively through the Infrastructure Ontario Construction Insurance Program (IOCIP) the following insurances as further described in Appendix A to this Schedule 25:
- (a) “All Risks” Course of Construction Property, including Boiler and Machinery;
  - (b) “Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability;
  - (c) Project Specific Professional Liability; and
  - (d) Project Specific Pollution Liability (combined Contractors’ Pollution Liability and Pollution Legal Liability).
- 1.2 Subject to Section 8, from and after execution of this Project Agreement and until the Substantial Completion Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances as further described in Appendix A to this Schedule 25:
- (a) Automobile Liability;
  - (b) Commercial General Liability and Non-Owned Automobile Liability (to be maintained by the Construction Contractor and each of the Subcontractors involved in the Works) with respect to off-site operations and activities;
  - (c) Aircraft and Watercraft Liability (if any exposure);
  - (d) “All Risks” Marine Cargo (if any exposure);
  - (e) “All Risks” Contractors’ Equipment;
  - (f) Comprehensive Crime; and
  - (g) WSIB.

**ARTICLE 2  
SERVICES PHASE INSURANCE COVERAGE**

- 2.1 Subject to Section 8, from and after the Substantial Completion Date and until the Termination Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances as further described in Appendix A to this Schedule 25:
- (a) “All Risks” Property;
  - (b) Boiler and Machinery;
  - (c) Commercial General Liability and Non-Owned Automobile Liability;
  - (d) Environmental Impairment (Pollution) Liability;
  - (e) Automobile Liability;
  - (f) Comprehensive Crime; and
  - (g) WSIB.

**ARTICLE 3  
NO LIMIT ON RECOVERY**

- 3.1 Notwithstanding any other provision of this Project Agreement, it is hereby agreed that the limits of liability specified in this Schedule 25 for insurance policies, whether such policies are required to be obtained (or caused to be obtained) by Osler or by Project Co, shall in no way limit Project Co’s liability or obligations to Osler or Osler’s liability or obligations to Project Co, as applicable.

**ARTICLE 4  
ADDITIONAL COVER**

- 4.1 Without prejudice to the other provisions of this Schedule 25, Osler and Project Co shall, at all relevant times and at their own expense, obtain and maintain, or cause to be obtained and maintained, those insurances which they are required to obtain and maintain, or cause to be obtained and maintained, by Applicable Law, or that they consider necessary.
- 4.2 Osler reserves the right to require Project Co to purchase such additional insurance coverage as Osler may reasonably require. Osler also reserves the right to request such higher or lower limits of insurance or otherwise alter the types of coverage requirements, their minimum amounts and deductibles (taking into consideration such matters as the nature of the Project Co Services and the Works, contract value, industry standards, and availability of insurance) as Osler may reasonably require from time to time. Any additional costs of such additional and/or

amended insurance shall be borne by Osler and any cost savings resulting from the implementation of such additional and/or amended insurance shall be for the account of Osler.

#### **ARTICLE 5 RESPONSIBILITY FOR DEDUCTIBLES**

- 5.1 The Party responsible for the matter giving rise to a claim, to the extent responsible therefor, shall be responsible and liable for the payment of deductibles under any policy of insurance under which it is an insured party or under any policy of insurance Project Co is required to maintain (or cause to be maintained) under this Schedule 25. In the event that responsibility for the matter giving rise to the claim is indeterminable, the First Named Insured under the policy of insurance is responsible and liable for the payment of deductibles.

#### **ARTICLE 6 COOPERATION WITH INSURER'S CONSULTANT**

- 6.1 If an insurer or an insurer's appointed consultant, for underwriting purposes or as a term of an insurance policy, needs to review any part of the performance of this Project Agreement, then Osler and Project Co shall, and shall require the Osler Parties and the Project Co Parties, respectively, to:
- (a) cooperate with the insurer and its consultant, including providing them with such information and documentation as they may reasonably require; and
  - (b) allow the insurer and its consultant to attend meetings between Project Co and Osler (or, as applicable, and if reasonably required by the insurer, between Project Co and those engaged by or through Project Co).

#### **ARTICLE 7 BENCHMARKING OF INSURANCE COSTS**

- 7.1 For purposes of this Section 7, the following terms shall have the following meanings:
- (a) “**Actual Relevant Insurance Cost**” means the aggregate of (i) the annual insurance premiums reasonably incurred by Project Co to maintain (or cause to be maintained) the Relevant Insurance during the Insurance Review Period, but excluding Taxes and all broker's fees and commissions.
  - (b) “**Base Relevant Insurance Cost**” means \$[REDACTED] for the first Insurance Review Period and, thereafter, means the aggregate of the annual insurance premiums which were projected (as set out in the Financial Model pursuant to Section 2.20 of Part F of Part 2 of Schedule 3 to the RFP) to be incurred by Project Co to maintain (or cause to

be maintained) the Relevant Insurance during the Insurance Review Period, which amounts exclude Taxes and all broker's fees and commissions.

- (c) **“Insurance Cost Differential”** means an amount, based on the Joint Insurance Cost Report, equal to  $(ARIC - BRIC) \pm PIC$  where:

ARIC is the Actual Relevant Insurance Cost;

BRIC is the Base Relevant Insurance Cost; and

PIC is any Project Insurance Change.

For the purpose of determining the Insurance Cost Differential, in the event that there is a net increase in the ARIC relative to the BRIC, the Project Insurance Change shall have a negative value and, in the event that there is a net decrease in the ARIC relative to the BRIC, the Project Insurance Change shall have a positive value.

- (d) **“Insurance Review Date”** means the Relevant Insurance Inception Date and thereafter each anniversary of the Relevant Insurance Inception Date, except where such date lies beyond the end of the Project Term, in which case the Insurance Review Date shall be the last renewal date of the Relevant Insurance and prior to the Expiry Date.
- (e) **“Insurance Review Period”** means a one year period from the Relevant Insurance Inception Date and each subsequent one year period commencing on the Relevant Insurance Inception Date, except where the end of such period lies beyond the end of the Project Term, in which case the Insurance Review Period shall be the period from the end of the penultimate Insurance Review Period to the last day of the Project Term.
- (f) **“Project Insurance Change”** means any net increase or net decrease in the Actual Relevant Insurance Cost relative to the Base Relevant Insurance Cost, arising from:
- (i) other than in respect of claims or re-ratings arising out of acts or omissions of Osler, an Osler Party or an Osler Service User, the claims history or re-rating of Project Co or any Project Co Party;
  - (ii) the effect of any change in deductible unless:
    - (1) such change is attributable to circumstances generally prevailing in the worldwide insurance market; and
    - (2) the deductible, further to such change, is either greater than or equal to the maximum deductibles set out in this Schedule 25; and

- (3) in respect of the Relevant Insurance, such change is not attributable to claims made as the result of acts or omissions of Project Co or any Project Co Party; and
- (iii) any other issue or factor other than circumstances generally prevailing in the worldwide insurance market.
- (g) “**Relevant Insurance**” means all policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with Section 2 of this Schedule 25.
- (h) “**Relevant Insurance Inception Date**” means the date on which the Relevant Insurance is first providing active insurance cover to Project Co and Osler, respectively, being a date no earlier than the Substantial Completion Date.
- 7.2 No later than 60 days prior to each Insurance Review Date, Project Co’s insurance broker shall, at Project Co’s sole cost and expense, prepare a report on behalf of both Project Co and Osler (the “**Joint Insurance Cost Report**”), which contains the following information for the relevant Insurance Review Period:
- (a) a full breakdown of the Actual Relevant Insurance Cost;
- (b) a full breakdown of the Base Relevant Insurance Cost;
- (c) an assessment and quantification of each Project Insurance Change, together with the reasons therefor;
- (d) the opinion of Project Co’s insurance broker as to the reasons why the Actual Relevant Insurance Cost has varied from the Base Relevant Insurance Cost, specifying the impact of each of the factors and quantifying the amount attributable to each factor;
- (e) the calculation of the Insurance Cost Differential; and
- (f) evidence satisfactory to Osler, acting reasonably, of any changes to circumstances generally prevailing in the worldwide insurance market that are claimed to account for the Insurance Cost Differential.
- 7.3 The Annual Service Payment will be subject to an adjustment in the amount of the Insurance Cost Differential (the “**Insurance Adjustment**”) in accordance with Schedule 20 – Payment Mechanism

**ARTICLE 8  
UNINSURABLE RISKS**

- 8.1 The term “**Uninsurable Risk**” means a risk, or any component of a risk, against which Project Co is required to insure pursuant to this Schedule 25 and for which, at any time after the date of this Project Agreement, either:
- (a) the insurance required pursuant to this Schedule 25 (including the terms and conditions specified for such insurance herein) is not available in relation to that risk:
    - (i) where Applicable Laws require that the insurer be licensed in the Province of Ontario to insure such a risk, by insurers licensed in the Province of Ontario; or
    - (ii) where Applicable Laws do not require that the insurer be licensed in the Province of Ontario to insure such a risk, by any insurer otherwise permitted under the terms of the Project Agreement; or
  - (b) the insurance premium payable or the terms and conditions for insuring that risk are such that the risk is not generally being insured against in the worldwide insurance market.
  - (c) Project Co has the onus of demonstrating, to Osler’s reasonable satisfaction that the foregoing definition applies to a particular risk.
- 8.2 Project Co shall notify Osler as soon as possible and, in any event, within 15 Business Days of becoming aware of same, that a risk, or any component of a risk, has become an Uninsurable Risk, and shall provide Osler with all relevant details in relation to such risk, including a copy of the relevant insurance policy.
- 8.3 Project Co and Osler shall, as soon as possible following the provision of the notice referred to in Section 8.2, meet to discuss, in good faith, the appropriate means by which the Uninsurable Risk should be managed and, if Project Co and Osler are able to agree to alternative arrangements, the Uninsurable Risk shall be managed in accordance with such alternative arrangements.
- 8.4 In the event that Project Co and Osler, each acting in good faith, are unable to agree to alternative arrangements with respect to the management of an Uninsurable Risk within 15 Business Days of the expiry of the period referred to in Section 8.2 of this Schedule 25, Osler may, in its absolute discretion, either:
- (a) elect to assume responsibility for the Uninsurable Risk and, in respect of the year in which the relevant risk becomes an Uninsurable Risk and every year thereafter, withhold, in equal instalments over the course of such year, from the payment or

payments otherwise due to Project Co an amount equal to the annual premium (index linked) relating to the Uninsurable Risk as was current on the date immediately prior to the date on which the relevant risk became an Uninsurable Risk, in which case this Project Agreement shall continue in full force and effect; or

- (b) terminate this Project Agreement in accordance with Section 44.2 of this Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 44.2 of this Project Agreement following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 23 – Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.

8.5 On the occurrence of an Uninsurable Risk, Osler may, in its absolute discretion, either:

- (a) pay to Project Co an amount equal to the insurance proceeds that would have been payable to Project Co in connection with such Uninsurable Risk had the relevant insurance continued to be available, in which case this Project Agreement shall continue in full force and effect; or
- (b) terminate this Project Agreement in accordance with Section 44.2 of this Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 44.2 of this Project Agreement following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 23 – Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.

8.6 With respect to any Uninsurable Risk:

- (a) Project Co shall continue to approach the insurance market on a regular basis and, in any event, at intervals of not less than 180 days and use reasonable efforts to obtain (or cause to be obtained) insurance to cover as much or all of the Uninsurable Risk as can be insured in the available insurance market from time to time; and
- (b) Subject to Section 8.6(a) of this Schedule 25, Project Co shall be relieved of its obligation to maintain (or cause to be maintained) insurance in respect of the Uninsurable Risk.

8.7 Where a risk which was previously an Uninsurable Risk ceases to be so, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, insurance in accordance with the requirements of this Schedule 25 in respect of the risk and the provisions of this Section 8 shall no longer apply to such risk.



8.8 From and after the Substantial Completion Date, the Parties shall meet on an annual basis to review the scope of insurance coverage and deductibles provided in this Schedule 25, and may make mutually agreed changes thereto.

**ARTICLE 9  
TOTAL OR SUBSTANTIAL DESTRUCTION**

9.1 In the event of damage to, or destruction of, all or substantially all of the Facility for which there is coverage under an insurance policy, any insurance proceeds received by Project Co shall first be applied so as to ensure the performance by Project Co of its obligations under this Project Agreement, including, where appropriate, the reinstatement, restoration or replacement of the Facility or any other assets, materials or goods necessary or desirable for the carrying out of the Project Operations, all in accordance with the terms of the Insurance Trust Agreement.

**ARTICLE 10  
SUBCONTRACTORS**

10.1 Project Co shall require that all Subcontractors are covered by, or obtain, the insurance described in this Schedule 25, provided that Project Co shall determine the applicable limits to be obtained for such insurance. Project Co shall be solely responsible and liable for any damages which Osler may suffer as a direct result of Project Co’s failure to comply with the foregoing.

10.2 If Project Co receives notice that any Subcontractor employed by or through Project Co is not covered by any insurance required by this Schedule 25 to be obtained (or caused to be obtained) by Project Co, Project Co shall:

- (a) ensure that such insurance coverage is put in place;
- (b) remove the Subcontractor from the Site and ensure that such Subcontractor does not perform any further part of the Project Operations until after such insurance coverage is put in place; or
- (c) if the Subcontractor cannot be covered by a particular policy as required by this Schedule 25, replace the Subcontractor with a new Subcontractor who can obtain the required insurance coverage; it being acknowledged by Project Co that the requirements and restrictions set forth in this Project Agreement regarding new and replaced Subcontractors shall be complied with.

**ARTICLE 11  
RENEWAL**

- 11.1 Project Co shall provide to Osler, at least 5 Business Days prior to the expiry date of any policy of insurance required to be obtained (or caused to be obtained) by Project Co pursuant to this Schedule 25, evidence of the renewal of each such policy satisfactory to Osler, acting reasonably.

**ARTICLE 12  
NAMED AND ADDITIONAL INSUREDS AND WAIVER OF SUBROGATION**

- 12.1 All insurance provided by Project Co, shall:
- (a) include Project Co, Osler and IO as Named Insureds to the extent specified in Appendix A of this Schedule 25;
  - (b) include Osler, IO, MOHLTC, the Lenders and the Lenders' Agent as Additional Insureds, or loss payees to the extent of their respective insurable interests specified in Appendix A of this Schedule 25;
  - (c) except with respect to the Project Specific Professional Liability specified in Part 1 of Appendix A to this Section 25 and Automobile Liability, Comprehensive Crime and WSIB specified in Parts 1 and 2 of Appendix A to this Schedule 25, contain a waiver of subrogation as against Osler, Osler Parties and their respective shareholders, officials, directors, officers, employees, servants, consultants (other than Design Consultants) and agents;
  - (d) contain a breach of warranty provision whereby a breach of a condition by Project Co will not eliminate or reduce coverage for any other insured; and
  - (e) be primary insurance with respect to any similar coverage provided by any insurance obtained by or available to Osler, without any right of contribution of any insurance carried by Osler.

**ARTICLE 13  
CERTIFICATES OF INSURANCE AND CERTIFIED COPIES OF POLICIES**

- 13.1 Prior to the commencement of any part of the Works, Project Co will provide Osler with certified copies of policies, confirming that the insurances specified in Section 1.1 have been obtained and are in full force and effect.
- 13.2 Prior to the commencement of any part of the Works, Project Co will provide Osler with certificates of insurance or certified copies of policies, confirming that the insurances specified in Section 1.2 have been obtained and are in full force and effect. If certificates of insurance

are provided, certified copies of the entire contents of all relevant insurance policies will be subsequently provided to Osler no later than 90 days after execution of this Project Agreement.

- 13.3 Prior to the commencement of any part of the Project Co Services, Project Co will provide Osler with certificates of insurance or certified copies of policies, confirming that the insurances specified in Section 2.1 have been obtained and are in full force and effect. If certificates of insurance are provided, certified copies of the entire contents of all relevant insurance policies will subsequently be provided to Osler no later than 90 days after the Substantial Completion Date; however specimen wordings of all such insurance policies, along with the corresponding summary of coverage, limits and deductibles, must be provided to Osler no later than 90 days prior to the Substantial Completion Date.

#### **ARTICLE 14**

##### **FAILURE TO MEET INSURANCE REQUIREMENTS**

- 14.1 If Project Co fails to obtain or maintain, or cause to be obtained and maintained, the insurance required by this Schedule 25, fails to furnish to Osler a certified copy of each policy required to be obtained by this Schedule 25 or if, after furnishing such certified copy, the policy lapses, is cancelled, or is materially altered, then Osler shall have the right, without obligation to do so, to obtain and maintain such insurance itself in the name of Project Co, and the cost thereof shall either, at Osler's option, be payable by Project Co to Osler on demand or be deducted by Osler from the next payment or payments otherwise due to Project Co.
- 14.2 If coverage under any insurance policy required to be obtained (or caused to be obtained) by Project Co should lapse, be terminated or be cancelled, then, if directed by Osler, all work by Project Co shall immediately cease until satisfactory evidence of renewal is produced.

#### **ARTICLE 15**

##### **MODIFICATION OR CANCELLATION OF POLICIES**

- 15.1 Except as noted in Appendix A to this Schedule 25, all insurance provided by Project Co shall contain endorsements confirming that the policy will not be cancelled, adversely reduced, adversely materially altered or adversely materially amended without the insurer(s) giving at least ninety (90) days prior written notice by registered mail, at the address specified, to Osler, the Lenders' Agent, and IO. For greater certainty, the terms "adversely reduced", "adversely materially altered" and "adversely materially amended" as used in this provision shall mean any decrease or reduction in policy limits, aggregate limits or sub-limits (other than as a result of claims under the policy), any increase in any policy deductible or self-insured retention, any reduction in the policy coverage period, cancellation or suspension of coverage with respect to any insured parties from the time the policy was issued for that policy period, addition of any exclusions or restrictions from the time the policy was issued for that policy period and any reduction or restriction in the scope of coverage provided under the policy, in all cases when

such adverse reduction, adverse material alteration or adverse material amendment is initiated by the insurer.

- 15.2 All insurance provided by Project Co shall contain endorsements confirming that, in the event of cancellation for non-payment of premium, the insurer(s) will give at least fifteen (15) days prior written notice by registered mail, at the address specified, to Osler, the Lenders' Agent and IO.
- 15.3 With respect to Services Phase insurances, only notice of cancellation will be required for the Automobile Liability and Comprehensive Crime described in Part 2 of Appendix A to this Schedule 25.
- 15.4 With respect to insurances described in Section 1.1 (a), (b) and (d), Section 1.2 (d) and Section 2.1(a), (b), (c) and (d), breach of any of the terms or conditions of the policies required to be provided by Project Co, or any negligence or wilful act or omission or false representation by an Insured under these policies, shall not invalidate the insurance with respect to Osler, IO, the Lenders or any other Insured, but only to the extent that such breach is not known to these parties.

## ARTICLE 16 INSURERS

- 16.1 All policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with this Schedule 25 shall be issued by financially sound insurers acceptable to Osler and Lenders, acting reasonably, and, where required by statute, be licensed to insure such risk in the Province of Ontario.
- 16.2 To be eligible to provide insurance, an insurer must have the capacity to provide the particular insurance and shall have current ratings from time to time of either:
- (a) a Financial Strength Rating of not lower than “A-” for three out of the previous five years but not lower than “B” at any time during those five years, and a Financial Size Category not lower than VII, such ratings being those established by A.M. Best Company (**Best**); or
  - (b) a Long-Term Financial Strength Rating of not lower than “A-” for three out of the past five years but not less than “BBB” at any time during those five years, a Short-Term Financial Strength Rating of not lower than “A-3” for three out of the previous five years and a Financial Enhancement Rating of not lower than “A-” for three out of the previous five years but not less than “BB+” at any time during those five years, such ratings being those established by Standard and Poor’s (**S&P**); or

- (c) if the insurer is not rated by Best or S&P, an insurer that is acceptable to Osler and Lenders, acting reasonably, with respect to the insurances required by this Schedule 25.

**ARTICLE 17  
POLICY TERMS AND CONDITIONS**

- 17.1 All policies of insurance to be obtained (or caused to be obtained) by Project Co in accordance with this Schedule 25 shall be in form and substance satisfactory to Osler and its insurance advisors, acting reasonably.
- 17.2 To achieve the minimum limits for any type of insurance required under Appendix A, it is permissible to arrange the insurance under a single policy, or by a combination of primary, umbrella and/or excess policies.

**ARTICLE 18  
FAILURE TO COMPLY**

- 18.1 Neither failure to comply nor full compliance by Project Co with the insurance provisions of this Schedule 25 shall relieve Project Co of its liabilities and obligations under this Project Agreement.

**ARTICLE 19  
PERFORMANCE SECURITY REQUIREMENTS**

[REDACTED]

**ARTICLE 20  
INSURANCE TRUST AGREEMENT**

- 20.1 All losses under (i) the “All Risks” Course of Construction Property Insurance policy, including Boiler & Machinery Insurance carried by Project Co prior to Substantial Completion; (ii) the Property Insurance carried by Project Co after Substantial Completion; and (iii) the Boiler and Machinery Insurance carried by Project Co after Substantial Completion, which, in each case relate to Equipment purchased by Osler, shall be payable solely to Osler and shall not be payable to the Account Trustee or distributed pursuant to the Insurance Trust Agreement.

**APPENDIX A – INSURANCE REQUIREMENTS**

William Osler Health System

Works Phase Insurance – Part 1 William Osler Health System

From First Access to Site until Substantial Completion Date (Insurance for Works Phase)

Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
"All Risks" Course of Construction Property Including Boiler and Machinery	Value declared to be equal to the estimated completed Project value of the Facility, including Property of Every Description, all Equipment and all other property supplied by Osler or Osler Parties for incorporation into the Facility.  All Existing Equipment from the start of decommissioning or removal from its original location , by or on behalf of Project Co, until such existing equipment has been relocated to the Facility and has become Osler's responsibility.  All other Equipment, until the later of the date such Equipment has been commissioned or the date on which Osler becomes responsible for it.  Delay in Start-up \$[REDACTED], covering a 18 month indemnity period, including Contingent Delayed Start-Up re losses at Suppliers' or Manufacturers' premises, or other temporary storage locations (\$[REDACTED] sub-limit with respect to Contingent Delay in Start-Up)  Soft Costs \$[REDACTED] (representing [REDACTED]% of Recurring / Continuing Soft Costs)  Extra and Expediting Expense	[REDACTED]% of loss value / \$[REDACTED] minimum Earthquake \$[REDACTED] Flood \$[REDACTED] Testing and Commissioning \$[REDACTED] All other losses  30 days waiting period applicable to time element coverages 48 hour waiting period applicable to Off Premises Services Service Interruption	"All Risks" Course of Construction Property Insurance covering the full insurable replacement cost of the Works including cold and hot testing / commissioning, of Boiler & Machinery equipment, including HVAC, Delay in Start-Up, Soft Costs, with no early occupancy restriction.  This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by Osler, IO, ORC or the Lenders.	TBD

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	(minimum \$[REDACTED] sub-limit)			
	Principal Extensions:			
	<ul style="list-style-type: none"> <li>Replacement Cost Valuation (Property)</li> <li>Most Recent Technology Replacement Cost Valuation (Equipment or Machinery)</li> <li>Flood (to policy limit with annual aggregate)</li> <li>Natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with annual aggregate)</li> <li>Electronic Data Processing equipment and media, including data restoration and re-creation costs</li> <li>Transit</li> <li>Unnamed locations</li> <li>By-laws including Demolition, Increased Cost of Repairs and Replacement (subject to a \$[REDACTED] sub-limit only with respect to existing or renovated buildings)</li> <li>Debris Removal (minimum</li> </ul>			



Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> <li>• Off Premises Services (\$[REDACTED] sub-limit)</li> <li>• Professional Fees (minimum \$[REDACTED] sub-limit)</li> <li>• Fire Fighting Expenses (minimum \$[REDACTED] sub-limit)</li> <li>• Radioactive contamination caused by sudden and accidental release of radioactive isotopes (resulting from an accident to measuring, testing or medical equipment and subject to a \$[REDACTED] sub-limit)</li> <li>• Valuable Papers (minimum \$[REDACTED] sub-limit)</li> <li>• Accounts Receivable (minimum \$[REDACTED] sub-limit)</li> <li>• Green Building and LEED Upgrades (subject to a \$[REDACTED] sub-limit)</li> <li>• Defence Costs (subject to a \$[REDACTED] sub-limit)</li> <li>• Contamination Clean-up or Removal (minimum \$[REDACTED])</li> </ul>			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	sub-limit)			
	<ul style="list-style-type: none"> <li>Ammonia Contamination (minimum \$[REDACTED] sub-limit)</li> <li>LEED Recertification, Commissioning and Testing Expenses (subject to a \$[REDACTED] sub-limit)</li> <li>Civil Authority Access Interruption (8 weeks)</li> <li>Prevention of Ingress/Egress (8 weeks)</li> <li>Permission for Partial Occupancy prior to Substantial Completion</li> <li>Off Premises Services Interruption</li> <li>Cost of Carrying Project Financing (18 Months), included in Delayed Start-Up or Soft Costs coverage</li> <li>Margin of Profit Extension for Contractors                             <ul style="list-style-type: none"> <li>Testing and Commissioning (120 days)</li> </ul> </li> </ul>			
	Permitted Exclusions:			
	<ul style="list-style-type: none"> <li>Cyber risk</li> </ul>			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium

<i>Comments</i>	<ul style="list-style-type: none"> <li>• Named Insured includes Project Co, Lenders, Lender’s Agent, the Construction Contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, Osler and IO, as their respective interests may appear. Lenders will be covered as Loss Payee and Mortgagee.</li> <li>• No provision permitted allowing a coinsurance penalty</li> <li>• Insurance shall be primary without right of contribution of any other insurance carried by any Named Insured</li> <li>• Additional key extensions of coverage:             <ul style="list-style-type: none"> <li>– Underground services, temporary works involved in the Project such as scaffolding, hoarding, etc., site preparation, including excavation and associated improvements, landscaping and property of others used in the construction of the Project</li> </ul> </li> </ul>
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- All loss proceeds payable in accordance with the Insurance Trust Agreement
- Upon Substantial Completion, coverage will cease with respect to the Facility and be replaced by Property and Boiler & Machinery insurance – Services Phase for the entire Facility
- Waiver of Subrogation against all Named and Unnamed Insureds, including but not limited to Project Co, IO, Osler, contractors, subcontractors, professional consultants (other than for their professional liability), Lenders, Lenders' Agent, as well as officers, directors and employees, servants, and agents of the foregoing
- Frost or freezing to concrete – but only resultant damage from a peril not otherwise excluded
- Liberalization Clause
- Errors and Omissions
- Breach of Conditions
- Interim Payments Clause

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**Underwriters**      Principal underwriters in compliance with Article 16 of this Schedule.

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**Works Phase Insurance – Part 1 William Osler Health System - Peel Memorial Centre for Integrated Health and Wellness Project**

**From First Access to Site until Substantial Completion Date (Insurance for Works Phase)**

**Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program**

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<b>Wrap-Up Commercial General Liability and Non-Owned Automobile Liability</b>	<p>Sub-limits:</p> <ul style="list-style-type: none"> <li>• <b>[\$REDACTED]</b> Non-Owned Automobile Liability</li> <li>• <b>[\$REDACTED]</b> Sudden and Accidental Pollution and Hostile Fire Pollution Liability</li> <li>• <b>[\$REDACTED]</b> "All Risks" Tenants' Legal Liability</li> <li>• <b>[\$REDACTED]</b> Prairie or Forest Fire Fighting Expenses</li> <li>• <b>[\$REDACTED]</b> Employee Benefits Administrative Errors and Omissions</li> <li>• <b>[\$REDACTED]</b> Contractors Rework</li> <li>• <b>[\$REDACTED]</b> Legal Liability for Damages To Non-owned</li> </ul>	<p><b>[\$REDACTED]</b> per occurrence</p> <p><b>[\$REDACTED]</b> per claim with respect to Contractors Rework</p> <p><b>[\$REDACTED]</b> per claim with respect to each of SEF 94, Tenants' Legal Liability, Prairie or Forest Fire Fighting Expenses and Employee Benefits Administrative Errors and Omissions</p>	<p>Wrap-Up Commercial General Liability and Non-Owned Automobile Liability insurance covering all construction operations on an occurrence basis against claims for Bodily Injury (including Death), Personal Injury, Property Damage (including Loss of Use), and including Products and Completed Operations Liability extension for a period of not less than 24 months, effective from the date of Substantial Completion.</p> <p>Coverage shall be maintained continuously from the date of the first activities at the Site, until the Substantial Completion Date, at which time the Products and Completed Operations extension will take effect.</p> <p>Pollution Liability – Sudden and Accidental Pollution coverage to be not less than IBC 2313 form (240 hours detection/240 hours notice coverage structure). To include Hostile Fire extension.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by Osler, IO, MOHLTC or the Lenders.</p>	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
			Automobiles (SEF 94)	
			<ul style="list-style-type: none"> <li>• \$[REDACTED]/\$[REDACTED] Medical Payments</li> </ul>	
			Principal Extensions:	
			<ul style="list-style-type: none"> <li>• Owner's and Contractor's Protective</li> <li>• Blanket Contractual (written and oral)</li> <li>• Direct and Contingent Employers Liability</li> <li>• Employee Benefits Administrative Errors and Omissions</li> <li>• Personal Injury (nil participation)</li> <li>• Cross Liability and Severability of Interest with respect to each insured party</li> <li>• Blasting/demolition/excavating/underpinning/pile driving/shoring/caisson work/work below ground surface/tunnelling/grading, and similar operations associated with the Works, as applicable</li> <li>• Elevator and Hoist Collision Liability</li> <li>• Liberalized Notice of Claim Requirement, i.e., requirement to report will commence when</li> </ul>	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	knowledge is held by a designated Project person(s) – to be identified by Project Co			
	<ul style="list-style-type: none"> <li>• Non-Owned Automobile Liability</li> <li>• Tenants' Legal Liability (All Risks) – subject to sub-limit</li> <li>• Medical Expenses – subject to sub-limit</li> <li>• Prairie or Forest Fire Fighting Expenses – subject to sub-limit</li> <li>• Sudden and Accidental Pollution – subject to sub-limit</li> <li>• Permission for Unlicensed Vehicles (partial road use)</li> <li>• Unlicensed Equipment</li> <li>• Loss of Use Without Property Damage</li> <li>• Loading and Unloading of Automobiles</li> <li>• Broad Form Property Damage</li> <li>• Broad Form Completed Operations</li> <li>• Intentional Injury, committed to</li> </ul>			



Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
			Protect Persons or Property	
			<ul style="list-style-type: none"> <li>• Accident Benefits</li> <li>• Worldwide Territory, subject to suits being brought in Canada or the US</li> </ul>	
			Permitted Exclusions:	
			<ul style="list-style-type: none"> <li>• Injury to employees, where WSIB provides valid coverage</li> <li>• Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations extension period</li> <li>• Operation of licensed motor vehicles, other than attached machinery while used for its purpose, or at the Project Site</li> <li>• Physical damage to the Project, except during Broad Form Products and Completed Operations extension period</li> <li>• Cyber risk</li> <li>• Mould, fungi and fungal derivatives</li> <li>• Professional liability of engineers, architects, and other professional</li> </ul>	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	consultants			
	<ul style="list-style-type: none"> <li>Nuclear or radioactive contamination, except release radioactive isotopes intended for scientific, medical, industrial or commercial use</li> </ul>			

<i>Comments</i>	<ul style="list-style-type: none"> <li>Named Insured includes Project Co and its Affiliates, Osler, IO, the Lenders, Project Co Parties involved in the Works, including all other contractors, subcontractors, sub-subcontractors, suppliers while working on Site, tradesmen while working on Site, engineers, architects, consultants and sub-consultants (other than for professional liability), others as Additional Insureds, as may be required from time to time, arising from all operations and activities pertaining to the Works and the control and use of the Site</li> <li>MOHLTC as Additional Insured</li> <li>Directors, officers, shareholders, employees of the insured parties involved in the Works covered as Additional Insureds</li> <li>Insurance primary without right of contribution of any other insurance carried by any Named Insured</li> <li>Aggregate limits will be permitted for Products and Completed Operations, Prairie and Forest Fire Fighting Expenses, Sudden and Accidental and Hostile Fire Pollution Liability and Employee Benefits Administrative Errors &amp; Omissions Liability; no policy general aggregate will be permitted</li> <li>Professional service activities integral to the Project, but not covering engineers, architects or other professional consultants, i.e., incidental professional liability risk of a Named Insured and their employed professionals is to be covered, but not the professional liability of independent fee-for-service professional consultants, architects or engineers</li> <li>Waiver of Subrogation of insurers' rights of recovery, against all Named and/or Additional Insureds, including Project Co, Osler, IO, MOHLTC, contractors, subcontractors or sub-subcontractors; professional consultants, engineers and architects (other than for their professional liability), Lenders, Lenders' Agent, as well as officers, directors, employees, servants and agents of the foregoing</li> </ul>
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**Underwriters**      Principal underwriters in compliance with Article 16 of this Schedule.

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**Works Phase Insurance – Part 1 William Osler Health System - Peel Memorial Centre for Integrated Health and Wellness Project**

**From First Access to Site until Substantial Completion Date (Insurance for Works Phase)**

**Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program**

Type	Amount	Maximum Self-Insured Retention	Principal Cover	Estimated Premium
<b>Project Specific Professional Liability</b>	<p>[\$REDACTED] minimum per claim / \$[\$REDACTED] in the aggregate (inclusive of defense and related costs and supplementary payments).</p> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>• Primary Insurance extension</li> <li>• Automatic addition of firms</li> <li>• Present, former partner, executive officer, director or shareholder of Named Insureds while acting within their scope of duties for the Named Insured</li> <li>• Any individuals or personal corporations retained by the Named Insured under a personal services contract</li> <li>• Claim defined as a written or oral demand for money or a written or oral allegation in breach in the rendering or failure to render professional services received by the Insured or Named Insured and resulting</li> </ul>	<p>[\$REDACTED] per claim</p>	<p>Project Specific Professional Liability Insurance in connection with the design and construction of the Project from beginning of first design, through the entire construction period, to Substantial Completion plus coverage for an extended reporting period of not less than 36 months.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by Osler, IO, MOHLTC or the Lenders.</p>	

Type	Amount	Maximum Self-Insured Retention	Principal Cover	Estimated Premium
	from a single error, omission or negligent act			
	<ul style="list-style-type: none"> <li>• Lawyer fees and associated expenses incurred in the investigation, defence, settlement, arbitration or litigation of claims</li> <li>• Duty to defend, even if the allegations are groundless, false or fraudulent</li> <li>• Worldwide Territory, subject to suits brought in Canada</li> </ul>			
	Permitted Exclusions: <ul style="list-style-type: none"> <li>• Express warranties or guarantees</li> <li>• Estimates on profit, return</li> <li>• Faulty workmanship, construction or work which is alleged or in fact not constructed in accordance with the design of the Project or the construction documents</li> <li>• Design or manufacture of any good or products sold or supplied by the Named Insured</li> </ul>			

Type	Amount	Maximum Self-Insured Retention	Principal Cover	Estimated Premium
<ul style="list-style-type: none"> <li>• Terrorism</li> <li>• Nuclear Liability</li> <li>• Judgments and awards deemed uninsurable by law</li> <li>• Liability assumed under design contract, unless such liability would have attached to the Named Insured by law in the absence of such agreement</li> <li>• Punitive or exemplary damages, fines, penalties or interest or liquidated punitive or exemplary damages or fees</li> <li>• Refusal to employ, termination of employment, humiliation or discrimination on any basis or other employment related practices or policies</li> </ul>				

**William Osler Health System**

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<i>Comments</i>	<ul style="list-style-type: none"><li>• Named Insured: Construction Contractor (as appropriate), all engineers, architects, and other professional consultants that provide professional design services in connection with the Project</li><li>• Professional Services covered: Including but not limited to all architectural, engineering, land surveying, environmental, landscape architectural, interior design/space planning, soil and material testing services, geotechnical services and procurement services, including their replacements and/or sub-consultants of any tier</li><li>• Retroactive Date: Full retroactive coverage from date of first design activity</li><li>• Policy to be non-cancellable except for premium non-payment, material misrepresentation or concealment of facts, or a material breach of any condition of the policy</li></ul>
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**Underwriters**      Principal underwriters in compliance with Article 16 of this Schedule.

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**Works Phase Insurance – Part 1 William Osler Health System - Peel Memorial Centre for Integrated Health and Wellness Project**

**From First Access to Site until Substantial Completion Date (Insurance for Works Phase)**

**Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program**

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<b>Project Specific Pollution Liability (combined Contractors' Pollution Liability and Pollution Legal Liability):</b>	<p>[\$REDACTED] per claim and in the aggregate for all claims, inclusive of defense and all costs and expenses</p> <p>[\$REDACTED] per claim and in the aggregate for all claims, inclusive of defense and all costs and expenses</p>	<p>[\$REDACTED] per claim inclusive of defense and all costs and expenses</p>	<p>Pollution Liability insurance covering third party bodily injury, property damage consequential loss or damage, including clean-up and restoration costs, both at the Site and Off-Site, as required.</p> <p>Extended Reporting Period: Minimum of 36 months after Substantial Completion Date.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by Osler, IO or the Lenders.</p>	
<p>Combined Limit subject to Commercial Pollution Legal Liability with a minimum [\$REDACTED] sub-limit</p>	<p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>• Hazardous Substances occurring at or emanating from the Facility or Site during the Policy Period</li> <li>• Microbial Matter (including Fungus/Mould)</li> <li>• Underground / above ground storage tanks</li> <li>• First Party Restoration and Clean-up Costs</li> <li>• Disposal Site Extension, including Transportation (reporting required)</li> </ul>			



Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
			<ul style="list-style-type: none"><li>Duty to Defend</li><li>Canada and US Territory</li><li>Contractual Liability</li><li>Emergency Response Costs</li></ul>	
			Permitted Exclusions: <ul style="list-style-type: none"><li>Terrorism</li><li>War</li><li>Intentional Non-compliance</li><li>Prior Knowledge</li><li>WSIB</li><li>Employers' Liability</li><li>Professional Liability</li><li>Nuclear Liability</li><li>Property Damage to Motor Vehicles during Transportation</li></ul>	

**William Osler Health System**

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<i>Comments</i>	<ul style="list-style-type: none"><li>• Named Insured will include Project Co, its Affiliates, Project Co Parties and all other parties engaged in the Works, including contractors, subcontractors, sub-subcontractors, consultants and sub-consultants</li><li>• Osler, IO, MOHLTC and the Lenders will be identified as Additional Insureds, or insured clients of Project Co and its Affiliates</li><li>• The directors, officers, shareholders, and employees of the foregoing shall be Additional Insureds</li></ul>
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<b>Underwriters</b>	Principal underwriters in compliance with Article 16 of this Schedule.
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**Works Phase Insurance – Part 1 William Osler Health System - Peel Memorial Centre for Integrated Health and Wellness Project**

**From First Access to Site until Substantial Completion Date (Insurance for Works Phase)**

**Insurances to be provided, or caused to be provided, by Project Co**

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<b>Automobile Liability</b>	<p>[\$REDACTED] (Minimum) for Project Co and Project Co's Construction Contractor vehicles</p> <p>[\$REDACTED] (Minimum) for vehicles of any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons working on or at the Site</p>		<p>Standard Ontario Owners Form For all vehicles operated by Project Co, Contractor, all subcontractors, sub-subcontractors, consultants, and sub-consultants, operated in connection with the Project.</p> <p>Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle.</p> <p>Policies shall be endorsed to preclude cancellation, except upon 60 days prior written notice provided to Osler, IO, MOHLTC and the Lenders.</p>	
<b>Commercial General Liability and Non-Owned Automobile Liability</b>	<p>[\$REDACTED] each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations for Project Co and Project Co's Construction Contractor</p>		<p>Commercial General Liability insurance covering all operations on an occurrence basis against claims for Bodily Injury (including Death), Broad Form Property Damage (including Loss of Use), and including Broad Form Products and Completed Operations Liability.</p>	
For Project Co, the Construction Contractor, all subcontractors, sub-subcontractors, sub-consultants and sub-consultants, including Direct and Contingent Employers Liability,	<p>[\$REDACTED] each occurrence, and in the annual aggregate with respect to Broad Form Completed Operations for any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons involved in the Works</p> <p>In both instances, limits of liability may be structured as any combination of Primary</p>		<p>This Commercial General Liability Insurance will cover Off-Site activities connected to the Project and Products and Completed Operations Liability beyond the "Wrap-Up" Commercial General Liability Insurance policy's Products and Completed Operations extension period.</p> <p>This insurance shall be maintained in effect, during the Works phase until twelve (12) months following</p>	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
Products and Completed Operations and Owner's and Contractor's Protective extensions	<p>plus supplementary layers and Umbrella and/or Excess, or Primary plus Umbrella and/or Excess</p> <p>Sub-limits (Project Co and Project Co's Construction Contractor):</p> <ul style="list-style-type: none"> <li>• Full policy limits with respect to Non-Owned Automobile Liability</li> <li>• \$[REDACTED] Prairie or Forest Fire Fighting Expenses</li> </ul> <p>Principal Extensions (required to be provided by the Project Co. and its Construction Contractor; shall be endeavoured to be provided by any other contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen, or other persons involved in the Works):</p> <ul style="list-style-type: none"> <li>• Owner's and Contractor's Protective</li> <li>• Blanket Contractual (written)</li> <li>• Direct and Contingent Employers Liability</li> <li>• Personal Injury (nil participation)</li> <li>• Cross Liability and Severability of Interest with respect to each insured party</li> <li>• Blasting/demolition/excavating/under-</li> </ul>		<p>the earlier of the termination of the insured's person's involvement in the Works and the date of issuance of the Substantial Completion Certificate for the Works.</p> <p>Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to Osler, IO, MOHLTC and the Lenders.</p>	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
			pinning/pile driving/shoring/caisson work/work below ground surface/tunnelling/grading, and similar operations associated with the Works as applicable	
			<ul style="list-style-type: none"> <li>• Elevator and Hoist Collision Liability</li> <li>• Non-Owned Automobile Liability</li> <li>• Prairie or Forest Fire Fighting Expenses – subject to sub-limit</li> <li>• Permission for Unlicensed Vehicles' (partial road use)</li> <li>• Unlicensed Equipment</li> <li>• Loss of Use Without Property Damage</li> <li>• Loading and Unloading of Automobiles</li> <li>• Broad Form Property Damage</li> <li>• Broad Form Completed Operations</li> <li>• Intentional Injury, committed to Protect Persons or Property</li> <li>• Worldwide Territory, subject to suits being brought in Canada or the US</li> </ul>	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
Permitted Exclusions:				
<ul style="list-style-type: none"> <li data-bbox="401 326 785 375">• Injury to employees, where WSIB provides valid coverage</li> <li data-bbox="401 410 848 508">• Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations extension period</li> <li data-bbox="401 544 821 641">• Operation of licensed motor vehicles, other than attached machinery while used for its purpose, or at the Project Site</li> <li data-bbox="401 677 848 758">• Physical damage to the Project, except during Broad Form Products and Completed Operations extension period</li> <li data-bbox="401 794 554 813">• Cyber risk</li> <li data-bbox="401 849 800 868">• Mould, fungi and fungal derivatives</li> <li data-bbox="401 904 785 985">• Professional liability of engineers, architects, and other professional consultants</li> <li data-bbox="401 1021 831 1118">• Nuclear or radioactive contamination, except release of radioactive isotopes intended for scientific, medical, industrial or commercial use</li> </ul>				

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<i>Comments</i>				
	<ul style="list-style-type: none"> <li>Osler, IO, MOHLTC and the Lenders will be identified as Additional Insureds, or insured clients of Project Co and its Affiliates</li> </ul>			
<b>Aircraft and Watercraft Liability (If any exposure)</b>	Minimum \$[REDACTED] inclusive, including To be determined \$[REDACTED] passenger hazard – Owned Aircraft  Minimum \$[REDACTED] inclusive – Non-Owned Aircraft  Minimum \$[REDACTED] inclusive Owned or Non-Owned Watercraft		Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to Osler, IO, MOHLTC and the Lenders.	
<i>Comments</i>				
	<ul style="list-style-type: none"> <li>Osler, IO, MOHLTC and the Lenders will be identified as Additional Insureds, or insured clients of Project Co and its Affiliates</li> </ul>			
<b>“All Risks” Ocean Marine Cargo (If any exposure)</b>	[REDACTED]% Replacement Cost Valuation basis	[\$REDACTED]	Property of Every description destined for incorporation into the Facility, during marine transit, on a full replacement value basis, with no co-insurance provision.  This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by Osler, IO or the Lenders.	
<i>Comments</i>				
	<ul style="list-style-type: none"> <li>Named Insured includes Project Co, Lenders, Lender’s Agent, the Construction Contractor, subcontractors, sub-subcontractors, consultants, and sub-consultants. Osler and IO as their respective interests may appear.</li> </ul>			
<b>“All Risks” Contractors’ Equipment</b>	If Site equipment is three years old or less the sum insured shall be equal to [REDACTED]% of the replacement value of all contractors’ equipment used at the To cover Project Co,		All Risks coverage on all owned, rented, leased or borrowed contractors’ equipment, used at the Project Site.	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
contractors, subcontractors, sub-subcontractors, consultants and sub-consultants	Project. If Site equipment is more than three years old, actual cash value basis of loss settlement is acceptable			
<i>Comments</i>	<ul style="list-style-type: none"> <li>Waiver of Subrogation rights against Project Co, Osler, IO, Construction Contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, Lenders, Lenders' Agent, as well as officers, directors, shareholders and employees of the foregoing</li> </ul>			
<b>Comprehensive Crime</b>	[\$REDACTED] per loss with respect to Employee Dishonesty		<p>Comprehensive Crime insurance, including coverage for Employee Dishonesty insurance against the fraudulent/dishonest acts of employees of Project Co and its Affiliates coverage for Broad Form Money and Securities, Money Orders and Counterfeit Paper, Depositors' Forgery, Computer Fraud and Funds Transfer Fraud, Audit Expenses and Credit Card Forgery.</p> <p>Custodial endorsement extending protection to third parties.</p> <p>Insurance primary without right of contribution of any other insurance carried by Osler, IO or the Lenders.</p>	
<b>Underwriters (All non-IOCIP Works Phase insurances that are to be provided or caused to be provided by Project Co)</b>	Principal underwriters in compliance with Article 16 of this Schedule.			



Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
WSIB	In accordance with Ontario Act's established benefits and schedules	Not Applicable	<p>(i) Project Co and its Affiliates shall obtain and maintain at Project Co's expense, WSIB Insurance, in accordance with the Province of Ontario requirements.</p> <p>(ii) Project Co shall ensure that satisfactory evidence of WSIB Insurance is provided by all Project Co Parties, including all other consultants, sub consultants, contractors, subcontractors, suppliers and tradesmen working at the Site.</p> <p>Prior to commencement of the work, each of the foregoing shall provide satisfactory written confirmation of compliance, from the appropriate authority, including confirmation that all required assessments have been paid to date.</p> <p>Upon Substantial Completion of the Facility, Project Co shall be provided with satisfactory written confirmation that all required assessments have been paid to date.</p> <p>On request, within 30 days of such request, Project Co shall deliver to Osler evidence of the WSIB coverage maintained by any person involved in the Works, or confirmation of that person's exemption from WSIB coverage.</p>	

**Services Phase Insurance – Part 2 William Osler Health System - Peel Memorial Centre for Integrated Health and Wellness Project**

**Insurance to be provided, or caused to be provided, by Project Co from Substantial Completion Date with respect to the entire Facility until Termination Date (Insurance for Services Phase)**

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<p><b>“All Risk” Property</b></p> <p>Full Replacement Cost of all property associated with the Facility, while on the Site or while in transit, including material and supplies destined for incorporation into the Facility or intended to be used in the performance of Project Co services and all In-Contract Equipment</p> <p>For certainty, Project Co is not required to insure Medical Equipment</p> <p>Business Interruption (Gross Revenue or Gross Profits Form), 24 months period of indemnity – including interdependency and contingent coverage re losses at key supplier premises, property in transit or in storage off-Site</p> <p>Extra and Expediting Expenses (minimum \$[REDACTED] sub-limit)</p> <p>If commercially available, such business interruption insurance should be extended to include infectious disease as a peril that triggers the business interruption coverage</p> <p>Principal Extensions:</p>		<p>[REDACTED]% of loss value / \$[REDACTED] minimum</p> <p>Earthquake</p> <p>\$[REDACTED] Flood</p> <p>\$[REDACTED] All other losses</p> <p>30 days waiting period applicable to time element coverages</p>	<p>All Risks Property insurance covering all property to be insured with a sum insured equivalent to the full replacement cost value of the property insured, and including necessary business interruption and expediting expenses.</p> <p>Such insurance will include Inland Transportation, By-Laws and Off Premises coverage.</p> <p>Coverage shall be maintained continuously from the Substantial Completion Date until the Termination Date.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by Osler, IO or the Lenders.</p>	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
			<ul style="list-style-type: none"> <li>• Replacement Cost Valuation (Property)</li> <li>• Most Recent Technology Replacement Cost Valuation (Equipment or Machinery)</li> <li>• Flood (to policy limit with annual aggregate)</li> <li>• Natural or man-made earth movement, including earthquake, landslide or subsidence (to policy limit with annual aggregate)</li> <li>• Electronic Data Processing equipment and media, including data restoration and re-creation costs</li> <li>• Debris Removal (minimum \$[REDACTED] sub-limit)</li> <li>• Transit (minimum \$[REDACTED] sub-limit)</li> <li>• Unnamed locations (minimum \$[REDACTED] sub-limit)</li> <li>• Professional Fees (minimum \$[REDACTED] sub-limit)</li> <li>• Fire Fighting Expenses (minimum \$[REDACTED] sub-</li> </ul>	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	limit)			
	<ul style="list-style-type: none"> <li>Valuable Papers (minimum \$[REDACTED] sub-limit)</li> <li>Accounts Receivable (minimum \$[REDACTED] sub-limit)</li> <li>Contamination Clean-up or Removal (minimum \$[REDACTED] sub-limit)</li> <li>Civil Authority Access Interruption (minimum 8 weeks)</li> <li>Prevention of Ingress/Egress (minimum 8 weeks)</li> <li>Automatic Coverage for Newly Acquired Locations (90 day reporting period acceptable)</li> <li>By-Laws including demolition and increased replacement / repair costs</li> <li>Off premises services interruption</li> <li>By-laws including demolition, increased cost of repairs and replacement</li> <li>Margin of profit extension for</li> </ul>			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
			contractors	
			<ul style="list-style-type: none"> <li>Radioactive contamination caused by sudden and accidental release of radioactive isotopes resulting from an accident to medical equipment)</li> <li>Joint Loss Agreement (if separate "All Risk" Property and Boiler and Machinery policies are arranged)</li> </ul>	
			Permitted Exclusions:	
			<ul style="list-style-type: none"> <li>Cyber risk</li> <li>Mould, fungi and fungal derivatives</li> <li>Faulty workmanship, materials construction, or design but resultant damage to be insured</li> <li>War risk</li> <li>Terrorism</li> <li>Nuclear or radioactive contamination, except re radioactive isotopes intended for scientific, medical, industrial or</li> </ul>	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	commercial use			
<i>Comments</i>	<ul style="list-style-type: none"> <li>• Named Insured will include Project Co, Osler, IO and the Lenders - Lenders will be covered as Loss Payee and Mortgagee</li> <li>• All loss proceeds payable to the Insurance Trustee in accordance with the Insurance Trust Agreement</li> <li>• No provision allowing a coinsurance penalty</li> <li>• Waiver of Subrogation against all Insureds, including but not limited to Project Co, Osler, IO, the Lenders, Lenders' Agent, as well as officers, directors and employees, servants, and agents of the foregoing</li> </ul>			
<b>Underwriters</b>	Principal underwriters in compliance with Article 16 of this Schedule.			

**Services Phase Insurance – Part 2 William Osler Health System - Peel Memorial Centre for Integrated Health and Wellness Project**

**Insurance to be provided, or caused to be provided, by Project Co from Substantial Completion Date with respect to the entire Facility until Termination Date (Insurance for Services Phase)**

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<b>Boiler &amp; Machinery</b>	<p>Limit of \$[REDACTED] each Accident to an Insured Object</p> <p>Business Interruption Insurance valued at the sum of the forward future availability payments based on a 24 month indemnity period</p> <p>If a covered accident to insured objects(s) causes an interruption to Osler services or Osler services, the Business Interruption loss will include the costs of carrying the Project financing, during the affected period</p> <p>Sub-limits (\$[REDACTED] each):</p> <ul style="list-style-type: none"> <li>• Ammonia Contamination</li> <li>• Automatic Coverage</li> <li>• Bylaws</li> <li>• Errors and Omissions</li> <li>• Expediting Expenses</li> <li>• Extra Expense</li> </ul>	<p>\$[REDACTED] per claim, Direct Damage</p> <p>Business Interruption – Maximum 30 day Waiting Period</p>	<p>From the date of Substantial Performance, or activation, whichever shall first occur, Boiler &amp; Machinery insurance on a Comprehensive Policy Form basis including HVAC, but not medical equipment, on a full replacement cost basis, including all appropriate endorsements and extensions as well as necessary business interruption and Expediting and Extra Expense coverage.</p> <p>Boiler and Machinery Insurance may be arranged on a combined Property/Boiler and Machinery basis, subject to the Boiler and Machinery section of such a policy being arranged on a Comprehensive Form basis.</p> <p>Coverage shall be maintained continuously from the Substantial Completion Date until the Termination Date.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by Osler, IO or the Lenders.</p>	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<hr/>				
<i>Comments</i>	<ul style="list-style-type: none"> <li data-bbox="407 594 1635 615">• Named Insured will include Project Co, Osler and the Lenders - Lenders will be covered as Loss Payee and Mortgagee</li> <li data-bbox="407 651 1467 672">• All loss proceeds payable to the Insurance Trustee in accordance with the Insurance Trust Agreement</li> <li data-bbox="407 708 1335 729">• As nearly as possible, coverage will be structured to dovetail with the Property Insurance</li> </ul>			
<b>Underwriters</b>	Principal underwriters in compliance with Article 16 of this Schedule.			



Services Phase Insurance – Part 2 William Osler Health System - Peel Memorial Centre for Integrated Health and Wellness Project

Insurance to be provided, or caused to be provided, by Project Co from Substantial Completion Date with respect to the entire Facility until Termination Date (Insurance for Services Phase)

Type	Amount	Maximum Deductible	Principal Cover	Estimated Annual Premium
<b>Commercial General Liability and Non-Owned Automobile Liability</b>	<p>[\$REDACTED] each accident or occurrence and in the aggregate with respect to Products and Completed Operations</p> <p>Sub-limits:</p> <ul style="list-style-type: none"> <li>• \$[REDACTED] Non-Owned Automobile Liability, unless coverage provided under automobile liability insurance</li> <li>• \$[REDACTED] Sudden and Accidental Pollution, and Hostile Fire Pollution</li> <li>• \$[REDACTED] "All Risks" Tenants' Legal Liability, if any exposure</li> <li>• \$[REDACTED] Prairie or Forest Fire Fighting Expense</li> <li>• \$[REDACTED] Employee Benefits Administrative Errors and Omission Liability</li> <li>• \$[REDACTED] Legal Liability for Damages To Non-owned Automobiles (SEF 94), unless</li> </ul>	<p>[\$REDACTED] per occurrence</p>	<p>Commercial General Liability insurance covering all operations on an occurrence basis against claims for personal injury (including bodily injury and death), Broad Form Property Damage (including Loss of Use), and including Broad Form Products and Completed Operation Liability insurance.</p> <p>Coverage shall be maintained continuously from the Substantial Completion Date until the Termination Date.</p> <p>Pollution Liability – Sudden and Accidental Pollution coverage to be not less than IBC 2313 form (120 hours detection/120 hours notice coverage structure). To include Hostile Fire extension.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by Osler, IO or the Lenders.</p>	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Annual Premium
			coverage provided under automobile liability insurance	
			<ul style="list-style-type: none"> <li>• \$[REDACTED]/\$[REDACTED] Medical Payments</li> </ul>	
			Principal Extensions:	
			<ul style="list-style-type: none"> <li>• Owner's and Contractor's Protective</li> <li>• Blanket Contractual (written and oral)</li> <li>• Direct and Contingent Employers Liability</li> <li>• Employee Benefits Administrative Errors and Omissions</li> <li>• Personal Injury (nil participation)</li> <li>• Cross Liability and Severability of Interest with respect to each insured party</li> <li>• Blasting/demolition/excavating / under pinning/pile driving/shoring/caisson work/work below ground surface/tunnelling/grading, and</li> </ul>	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Annual Premium	
				similar operations as applicable	
				<ul style="list-style-type: none"> <li>• Elevator and Hoist Collision Liability</li> <li>• Liberalized Notice of Claim Requirement, i.e., requirement to report will commence when knowledge is held by a designated Project person(s) – to be identified by Project Co</li> <li>• Non-owned Automobile Tenants' Legal Liability (All Risks) – subject to sub-limit</li> <li>• Medical Expenses – subject to sub limit</li> <li>• Prairie or Forest Fire Fighting Expenses – subject to sub-limit</li> <li>• Sudden and Accidental Pollution and Hostile Fire – subject to sub-limit</li> <li>• Permission for unlicensed vehicles' partial road use</li> <li>• Unlicensed Equipment</li> <li>• Loss of Use Without Property Damage</li> <li>• Loading and Unloading of</li> </ul>	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Annual Premium
Automobiles				
			<ul style="list-style-type: none"> <li>• Broad Form Property Damage</li> <li>• Broad Form Completed Operations</li> <li>• Intentional Injury, committed to Protect Persons or Property</li> <li>• Voluntary Compensation</li> <li>• Worldwide Territory, subject to suits being brought in Canada or the US</li> </ul>	
			<p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>• Injury to employees, where WSIB provides valid coverage</li> <li>• Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations extension period</li> <li>• Operation of licensed motor vehicles, other than attached machinery while used for its purpose, or at the Project Site</li> </ul>	



arising from all operations and activities pertaining to the Project Co Services and the control and use of the Site

- MOHLTC as Additional Insured
- Directors, officers, shareholders, employees of the insured parties involved in the Project Co Services are covered as Additional Insureds
- Insurance primary without right of contribution of any other insurance carried by any Named Insured
- Aggregate limits will be permitted for Products and Completed Operations, Prairie and Forest Fire Fighting Expenses, Sudden and Accidental and Hostile Fire Liability and Employee Benefits Administrative Errors & Omissions Liability; no policy general aggregate will be permitted
- Professional service activities integral to the Project Co Services, but not covering engineers, architects or other professional consultants, i.e., incidental professional liability risk of a Named Insured and their employed professionals is to be covered, but not the professional liability of independent fee-for-service professional consultants, architects or engineers
- Waiver of Subrogation of insurers' rights of recovery, against all Named and/or Additional Insureds, including Project Co, Osler, IO, MOHLTC, contractors, subcontractors and sub-subcontractors; professional consultants, engineers and architects (other than for their professional liability), Lenders, Lenders' Agent, as well as officers, directors, employees, servants and agents of the foregoing

**Underwriters** Principal underwriters in compliance with Article 16 of this Schedule.

**Services Phase Insurance – Part 2 William Osler Health System - Peel Memorial Centre for Integrated Health and Wellness Project**

**Insurance to be provided, or caused to be provided, by Project Co from Substantial Completion Date with respect to the entire Facility until Termination Date (Insurance for Services Phase)**

Type	Amount	Maximum Deductible	Principal Cover	Estimated Annual Premium
<b>Environmental Impairment (Pollution) Liability</b>	Minimum \$[REDACTED] per claim and in the aggregate for all claims, inclusive of defense and all costs and expenses	\$[REDACTED] per claim inclusive of defense and all costs and expenses	<p>Pollution Liability insurance covering third party bodily injury and property damage liability, consequential loss or damage, including necessary on-Site and off-Site clean-up costs, both at the Site and Off-Site, as required. Coverage is extended to include underground and above ground storage tanks.</p> <p>Coverage shall be maintained continuously from the Substantial Completion Date until the Termination Date.</p> <p>This insurance shall include a twelve (12) month extended discovery period and reporting period provision in the event of termination of the Policy or in the event termination of the Project Agreement for any reason, including its expiration.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by Osler, IO or the Lenders.</p>	
	<p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>Hazardous Substances occurring at or emanating from the Facility or Site during the Policy Period</li> <li>Microbial Matter (including Fungus/Mould)</li> <li>Biological Agents</li> <li>Underground / above ground storage tanks</li> <li>First Party Restoration and Clean-up</li> <li>Duty to Defend</li> <li>Contractual Liability</li> </ul>			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Annual Premium
	Permitted Exclusions:			
	<ul style="list-style-type: none"><li>• Terrorism</li><li>• Intentional Non-Compliance</li><li>• WSIB</li><li>• War</li><li>• Employers Liability</li><li>• Nuclear Liability</li><li>• Professional Liability</li></ul>			
<i>Comments</i>	<ul style="list-style-type: none"><li>• It is permissible for Project Co to extend the construction pollution policy to include pollution events occurring during the Services Phase, on an annual basis throughout the term.</li></ul>			
<b>Underwriters</b>	Principal underwriters in compliance with Article 16 of this Schedule.			



**Services Phase Insurance – Part 2 William Osler Health System - Peel Memorial Centre for Integrated Health and Wellness Project**

**Services Phase Insurance to be provided, or caused to be provided, by Project Co from Substantial Completion Date with respect to the entire Facility until Termination Date (Insurance for Services Phase)**

Type	Amount	Maximum Deductible	Principal Cover	Estimated Annual Premium
<b>Automobile Liability</b>	<p>[\$REDACTED] (Minimum) Project Co's vehicles</p> <p>[\$REDACTED] (Minimum) for vehicles of any contractors, subcontractors, sub-subcontractors, consultants, and sub-consultants, workmen, tradesmen or other persons working on or at the Site in connection with the Project Co Services</p>		<p>Standard Ontario Owners Form For all vehicles operated by Project Co, Contractors, subcontractors, sub-subcontractors, consultants, sub-consultants, workmen, tradesmen or other working on or at the Site in connection with the Project Co Services.</p> <p>Coverage shall be maintained continuously from the Substantial Completion Date until the Termination Date.</p> <p>Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle.</p> <p>Policies shall be endorsed to preclude cancellation, except upon 60 days prior written notice provided to Osler, IO and the Lenders.</p>	
<i>Comments</i>				
<b>Underwriters</b>	Principal underwriters in compliance with Article 16 of this Schedule.			

**Services Phase Insurance – Part 2 William Osler Health System - Peel Memorial Centre for Integrated Health and Wellness Project**

**Services Phase Insurance to be provided, or caused to be provided, by Project Co from Substantial Completion Date with respect to the entire Facility until Termination Date (Insurance for Services Phase)**

Type	Amount	Maximum Deductible	Principal Cover	Estimated Annual Premium
<b>Comprehensive Crime</b>	[\$REDACTED] per extension		<p>Comprehensive Crime insurance including coverage for Employee Dishonesty against the fraudulent/dishonest acts of employees of Project Co and its Affiliates, coverage for Broad Form Money and Securities, Money Orders and Counterfeit Paper, Depositors' Forgery, Computer Fraud and Funds Transfer Fraud, Audit Expenses and Credit Card Forgery.</p> <p>Custodial endorsement extending protection to third parties.</p> <p>Coverage shall be maintained continuously from the Substantial Completion Date until the Termination Date.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by Osler, IO or the Lenders.</p>	
<i>Comments</i>				
<b>Underwriters</b>	Principal underwriters in compliance with Article 16 of this Schedule.			
<b>WSIB</b>	In accordance with Ontario Act's established benefits and schedules	Not Applicable	<p>(i) Project Co and its Affiliates shall obtain and maintain at Project Co's expense, WSIB Insurance, in accordance with the Province of Ontario requirements.</p> <p>(ii) Project Co shall ensure that satisfactory evidence of WSIB Insurance is provided by all Project Co Parties, including all other consultants, sub consultants,</p>	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Annual Premium
			<p>contractors, subcontractors, suppliers and tradesmen working at the Site.</p>	
			<p>Prior to commencement of the Project Co Services, each of the foregoing shall provide satisfactory written confirmation of compliance, from the appropriate authority, including confirmation that all required assessments have been paid to date.</p>	
			<p>Upon completion of the Project Co Services, Project Co shall be provided with satisfactory written confirmation from the appropriate authority that all required assessments have been paid to date.</p>	
			<p>On request, within 30 days of such request, Project Co shall deliver to Osler evidence of the WSIB coverage maintained by any person involved in the Project Co Services, or confirmation of that person's exemption from WSIB coverage.</p>	

**SCHEDULE 26**

**RECORD PROVISIONS**

**1. General Requirements**

- 1.1 Project Co shall prepare, retain and maintain, at its own expense, all the records (including superseded records) referred to in Section 2.1 of this Schedule 26, as follows:
- (a) in accordance with this Section 1;
  - (b) in accordance with the Output Specifications;
  - (c) in accordance with the requirements of Good Industry Practice, which shall include all requirements of the Canadian Institute for Health Information;
  - (d) having due regard to the guidelines and policies of the Office of the Information and Privacy Commissioner of Ontario;
  - (e) in accordance with the most stringent of Project Co's, the Construction Contractor's and the Service Provider's normal business practices;
  - (f) in accordance with Canadian GAAP;
  - (g) in chronological order;
  - (h) in sufficient detail, in appropriate categories and generally in such a manner as to enable Project Co to comply with Project Co's obligations under Section 34 of this Project Agreement; and
  - (i) in a form that is capable of audit.
- 1.2 Project Co shall retain and maintain all records at the Facility or otherwise on the Site.
- 1.3 Wherever practical, original records shall be retained and maintained in a hard copy form. Project Co may retain true copies of original records where it is not practical to retain original records.
- 1.4 Any drawings (including, without limitation, the As Built Drawings) required to be made or supplied pursuant to this Project Agreement shall be of a size appropriate to show the detail to be depicted clearly without magnifying aids, shall be consistent in size and format to drawings previously submitted by Project Co to Osler, and shall conform to the Output Specifications and Good Industry Practice. Where by prior agreement Osler and Project Co have agreed to accept microfilm, microfiche, CD-ROM or other storage media, Project Co shall make or supply drawings and other documents in such form as has been agreed by the Parties and shall include secure back up facilities.

- 1.5 Records may, with the consent of Osler, not to be unreasonably withheld or delayed, be stored in electronic form if Osler has access thereto and will continue to have access thereto, such that Osler will be able to read, copy, download, and search same without licence or payment.
- 1.6 Subject to Sections 1.7 and 1.8, Project Co shall retain and maintain in safe storage, at its expense, all records referred to in Section 2.1 of this Schedule 26 for a period of at least 7 years or such longer period as required by Applicable Law.
- 1.7 Project Co shall notify Osler if Project Co wishes to destroy any records referred to in this Schedule 26 which are more than 7 years old, or in respect of which the required period under Applicable Law for their retention has expired. The Parties agree that:
- (a) within 60 days of such notice, Osler may elect to require Project Co to deliver such records to Osler, in which case Project Co shall, at the expense of Osler, deliver such records (with the exception of Sensitive Information) to Osler in the manner and to the location as Osler shall specify; or
  - (b) if Osler fails to notify Project Co of its election pursuant to Section 1.7(a) within such 60 day period, Project Co may, at its expense, destroy such records.
- 1.8 In the event of termination of this Project Agreement prior to the Expiry Date, Project Co shall deliver all records that Project Co retains and maintains pursuant to this Schedule 26 to Osler in the manner and to the location that Osler shall reasonably specify. Osler shall make available to Project Co all the records Project Co delivers pursuant to this Section 1.8 subject to prior reasonable notice. Project Co may deliver true copies of original records required by:
- (a) statute to remain with Project Co;
  - (b) Project Co in connection with its fulfilment of any outstanding obligations under this Project Agreement; or
  - (c) Project Co in connection with its fulfilment of any outstanding obligations under the Lending Agreements.
- 1.9 Where the termination of this Project Agreement arises:
- (a) as a result of a Osler Event of Default or pursuant to Section 44.3 of this Project Agreement, then the costs of delivering the records and the costs for retaining such records in safe storage will be borne by Osler; or
  - (b) for any other cause, then the costs of delivering the records and the costs for retaining such records in safe storage for a period of at least six years following

the Termination Date (unless a longer period is required by Applicable Law), shall be borne by Project Co.

- 1.10 Within 30 days after the end of each Contract Year, Project Co shall deliver to Osler a report, as reasonably requested by Osler in connection with Osler's financial reporting, detailing to the best of Project Co's knowledge at the time of any such report any and all liabilities, claims and demands, including contingent liabilities, claims and demands, that Project Co has or may have against Osler or that may be owing by Osler to Project Co. The Parties acknowledge and agree that the contents of any such report or the failure to mention any matter in any such report shall not limit either Party's rights or remedies against the other Party as contemplated by this Project Agreement.
- 1.11 Project Co shall provide to Osler not later than 60 days after the end of each of the first three fiscal quarters in each fiscal year, part or all of which falls in a Contract Year, a copy of Project Co's unaudited financial statements, and not later than 120 days after the end of each such fiscal year, a copy of Project Co's audited financial statements, in respect of that period. All financial statements delivered hereunder shall be prepared in accordance with Applicable Law and Canadian GAAP, together with copies of all related auditors' reports and, to the extent publicly available, all related directors' reports and other notices and circulars to shareholders or partners, all of which documents, whether or not marked or identified as confidential or proprietary but subject to the exceptions contained in Section 49 of this Project Agreement, shall be treated by Osler as Confidential Information of Project Co.

## **2. Records To Be Kept**

- 2.1 Without limiting any other requirement of this Project Agreement, Project Co shall prepare, retain and maintain at its own expense:
- (a) this Project Agreement, its Schedules and the Project Documents, including all amendments to such agreements;
  - (b) all records relating to the appointment and replacement of the Osler Representative and the Project Co Representative;
  - (c) any documents, drawings (including, without limitation, the As Built Drawings) or submissions in accordance with Schedule 10 - Review Procedure;
  - (d) any documents relating to Development Approvals and other Project Co Permits, Licences, Approvals and Agreements, including any refusals and appeals relating to any applications;
  - (e) all records relating to any statutory inspections of the Facility or the Site, including any roadways;

- (f) any notices, reports, results and certificates relating to Substantial Completion and Final Completion of the Works and completion of the Project Co Commissioning;
- (g) all operation and maintenance manuals;
- (h) any documents relating to events of Force Majeure, Delay Events, Compensation Events, Relief Events and Excusing Causes;
- (i) all formal notices, reports or submissions made to or received from Osler in connection with the provision of the Project Co Services, the monitoring of performance, the availability of the Facility, and payment adjustments;
- (j) all certificates, licences, registrations or warranties related to the provision of the Project Co Services;
- (k) the invoices for Monthly Service Payments;
- (l) all documents submitted in accordance with Schedule 22 – Variation Procedure;
- (m) any documents related to decisions resulting from the Dispute Resolution Procedure;
- (n) any documents related to a Project Co Change in Ownership or Change in Control;
- (o) any documents relating to any Refinancing;
- (p) all accounts for Taxes and transactions relating to Taxes, including in relation to HST applicable to the Project, but excluding any records for:
  - (i) Project Co's liabilities or payments under the *Income Tax Act* (Canada), the *Income Tax Act* (Ontario) or any similar statute in any other jurisdiction;
  - (ii) Project Co's liabilities or payments for capital taxes based on or measured by the capital of Project Co;
  - (iii) the withholdings of any payments by Project Co; or
  - (iv) any business or activity in addition to the business or activities related to, and conducted for, the purpose of the Project;
- (q) the financial accounts of Project Co referred to in Section 1.11 above;
- (r) all records required by Applicable Law (including in relation to health and safety matters) to be maintained by Project Co with respect to the Project Operations;

- (s) any documents relating to insurance and insurance claims;
- (t) the Plant Services Information Management System;
- (u) all Jointly Developed Materials;
- (v) such documents as Osler may reasonably require relating to Business Opportunities proposed by Project Co in accordance with the Project Agreement; and
- (w) all other records, documents, information, notices or certificates expressly required to be produced or maintained by Project Co pursuant to this Project Agreement.

2.2 Either Party may review the documents required to be prepared, retained and maintained by Project Co pursuant to Section 2.1.



## SCHEDULE 27

## DISPUTE RESOLUTION PROCEDURE

**1. General**

- 1.1 All disputes, controversies, or claims arising out of or relating to any provision of this Project Agreement, or the alleged wrongful exercise or failure to exercise by a Party of a discretion or power given to that Party under this Project Agreement, or the interpretation, enforceability, performance, breach, termination, or validity of this Project Agreement, including, without limitation, this Schedule 27, or any matter referred to for resolution pursuant to this Schedule 27 (collectively and individually, a “**Dispute**”) shall be resolved in accordance with the provisions of this Schedule 27.
- 1.2 The Parties agree that at all times, both during and after the Project Term, each of them will make bona fide efforts to:
- (a) resolve by amicable negotiations any and all Disputes arising between them on a without prejudice basis; and
  - (b) have all Disputes resolved at the lowest level of management before engaging the dispute resolution processes described in Sections 2 to 9 of this Schedule 27.
- 1.3 If the Parties are unable to resolve a Dispute at the lowest level of management pursuant to Section 1.2(b) of this Schedule 27, either Party may deliver to the Osler Representative or the Project Co Representative, as applicable, a written notice of dispute (the “**Notice of Dispute**”), which Notice of Dispute shall, subject to the terms of this Schedule 27 requiring resolution of a Dispute pursuant to a specific dispute resolution process set forth in this Schedule 27, initiate the dispute resolution process described in Sections 2 to 9 of this Schedule 27, as applicable, as more particularly described in this Schedule 27. To be effective, the Notice of Dispute must expressly state that it is a notice of dispute, set out the particulars of the matter in dispute, describe the remedy or resolution sought by the Party issuing the Notice of Dispute and be signed by the Osler Representative, if given by Osler, or by the Project Co Representative, if given by Project Co.

**2. Amicable Resolution by Party Representatives**

- 2.1 On receipt of a Notice of Dispute, the Osler Representative and the Project Co Representative (collectively “**Party Representatives**” and individually “**Party Representative**”) shall each promptly and diligently make all reasonable bona fide efforts to resolve the Dispute. Each Party Representative shall provide to the other, on a without prejudice basis, frank, candid and timely disclosure of relevant facts, information and documents (except such documentation that is subject to legal privilege) as may be required or reasonably requested by the other to facilitate the resolution of the Dispute.

**3. Amicable Resolution by Senior Officers of each Party**

- 3.1 If, following the process referred to in Section 2 of this Schedule 27 (or as otherwise agreed to in writing by the Parties pursuant to Section 12.6 of this Schedule 27), a Dispute is not resolved by the Party Representatives within 10 Business Days after receipt by a Party of the applicable Notice of Dispute, or within such longer period of time as the Party Representatives may both expressly agree, then at any time after the expiry of such period of time either Party Representative may, by notice in writing to the other, refer the Dispute to an executive of a Party who:
- (a) is in a position of authority above that of the Osler Representative or the Project Co Representative, as the case may be; and
  - (b) subject only to approval of the board of directors or similar governing body of the Party, has full authority to resolve and settle the Dispute.
- 3.2 Once a Dispute is referred to them, the executive of each Party shall promptly and diligently make all reasonable bona fide efforts to resolve the Dispute. All discussions and negotiations, and all documents exchanged, between them related to the Dispute shall be on a without prejudice basis to facilitate the resolution of the Dispute.

**4. Independent Certifier**

- 4.1 This Section 4 applies to all Disputes that fall within the description of Section 4.2 of this Schedule 27 that cannot be resolved as provided in Sections 2 and 3 of this Schedule 27 or as otherwise agreed to in writing by the Parties pursuant to Section 12.6 of this Schedule 27.
- 4.2 All Disputes related to the Works and that:
- (a) arise prior to, or otherwise in relation to Substantial Completion;
  - (b) relate to completion of Minor Deficiencies;
  - (c) relate to whether any proposed work constitutes a Variation;
  - (d) relate to a review of Estimates or any other matters relating to Variations as the Independent Certifier is entitled to review and determine pursuant to Section 36 of the Project Agreement;
  - (e) are referred to in this Project Agreement for determination by the Independent Certifier; or
  - (f) relate to the Certification Services or any Certification Service Variations (as those terms are defined in the Independent Certifier Agreement);

shall initially be submitted to the Independent Certifier for independent determination by the Independent Certifier within such period as may be specified in this Project Agreement, or if no period is specified, within 10 Business Days after submission to the Independent Certifier.

- 4.3 Without limiting any obligations of the Parties under the Independent Certifier Agreement, the Parties shall cooperate with the Independent Certifier and provide such information, records and documents as may be required by the Independent Certifier to make the determination within the period referred to in Section 4.2 of this Schedule 27.
- 4.4 The Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Payment Commencement Date and a Dispute in relation to the Payment Commencement Date shall not be subject to resolution pursuant to this Schedule 27. Save and except as aforesaid, the Independent Certifier's determinations are not binding on the Parties, and all Disputes in relation to the Independent Certifier's decisions shall be resolved pursuant to this Schedule 27, provided however that Sections 5 and 6 of this Schedule 27 shall not apply unless otherwise agreed by the Parties on terms acceptable to the Parties.

## **5. Expert Determination**

- 5.1 If, following the process referred to in Section 2 and 3 (or as otherwise agreed to in writing by the Parties pursuant to Section 12.6 of this Schedule 27) of this Schedule 27, any Dispute as to:
- (a) whether a Liquid Market exists;
  - (b) whether amendments proposed by potentially Qualifying Tenders to this Project Agreement or other Project Documents are material;
  - (c) the Adjusted Highest Qualifying Tender Price;
  - (d) the determination of the Estimated Fair Value in accordance with Schedule 23 – Compensation on Termination of this Project Agreement; or
  - (e) whether Project Co has achieved all necessary prerequisites, credits and points under the LEED-NC Rating System in accordance with the specific requirements under this Project Agreement to achieve the LEED-NC Silver Rating;

has not been resolved within 10 Business Days after the date the Dispute was referred to the executives of the Parties for resolution by them, or within such longer period of time as the executives may expressly agree in writing in respect of a specific Dispute to allow them to continue their efforts to resolve the Dispute, then either Party may at any time thereafter, by written notice signed by their Party Representative and delivered to the

other Party Representative, require that the Dispute be resolved on an expedited basis by a qualified and experienced expert (the “**Expert**”).

5.2 The Expert shall be appointed as follows:

- (a) if the Parties agree on the Expert, the Parties shall jointly appoint the Expert as soon as possible and, in any event, within 5 Business Days after delivery of the notice requiring that the Dispute be resolved by an Expert;
- (b) if the Parties fail to agree or jointly appoint the Expert within such 5 Business Day period, either Party may apply to the Ontario Superior Court of Justice for appointment of the Expert, in which case the court shall appoint the Expert at the earliest opportunity from the list of potential Experts submitted by the Parties or, if either or both Parties fail to submit their list of potential Experts within 7 Business Days, the court may appoint such person as the Expert who meets the requirements set out in this Schedule 27 for qualifications and experience of the Expert.

5.3 No one shall be nominated or appointed to act as an Expert who is or was in any way interested, financially or otherwise, in the conduct of the Project Operations or in the business affairs of Osler, Project Co, or any consultant, subconsultant or subcontractor of any of them.

5.4 Subject to the matters the Expert is authorized to determine pursuant to Section 5.1 of this Schedule 27, the Expert will be appointed on a Dispute by Dispute basis, with each Expert having the qualifications and experience relevant to the issues in the particular Dispute for which the Expert is appointed. Where the issues in Dispute include whether Project Co has or will adversely impact the Clinical Services then such qualifications and experience should include relevant experience in the provision of Clinical Services in a major acute care hospital.

5.5 The Expert shall determine the appropriate process for timely and cost effective resolution of the Dispute and, without limiting the generality of the foregoing, the Expert has discretion to, among other things:

- (a) solicit submissions and documents from both Parties, and impose deadlines for the receipt of such submissions;
- (b) require some or all of the evidence to be provided by affidavit;
- (c) direct either or both Parties to prepare and provide the Expert with such documents, test results or other things as the Expert may require to assist the Expert in the resolution of the Dispute and rendering of a decision;

- (d) require either Party to supply or prepare for examination by the Expert and the other Party, any document or information the Expert considers necessary;
  - (e) inspect the Project Operations, giving reasonable notice to each Party of the time when, and the place where, the Expert intends to conduct any inspections;
  - (f) convene meetings of the Parties to have the Parties discuss the issues in Dispute in the presence of the Expert; and
  - (g) take, or require either or both Parties to take and provide to the Expert, such measurements, perform such tests, audit such processes and procedures, and take any and all such other measures and steps as the Expert considers necessary to make a final determination in the Dispute.
- 5.6 The Expert shall render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than 10 Business Days after the date of the appointment of the Expert, or such longer period of time as agreed to in writing by the Parties. The Expert shall give reasons or a summary of reasons for the Expert's decision.
- 5.7 The Expert shall keep all information about the Dispute confidential and shall not disclose such information to anyone other than the Parties.
- 5.8 Each Party shall bear its own costs of the process for resolution of the Dispute by the Expert. In addition, the costs of the Expert shall be borne equally by the Parties.
- 5.9 Subject to a right to require the Dispute to be arbitrated or litigated pursuant to Sections 7, 8 and 9 of this Schedule 27 by giving the required notices to arbitrate or litigate within the time periods specified therein, the Parties agree that the Expert's determination shall be final and binding on both Parties and not subject to appeal, adjudication, arbitration, litigation or any other dispute resolution process, and both Parties expressly waive all rights of appeal in connection with the Expert's determination. For greater certainty, the final determination by the Expert shall not be referred to an Adjudicator (as defined below) for determination under Section 6 of this Schedule 27.

## **6. Adjudication**

- 6.1 If the Parties fail to resolve any Dispute through the process referred to in Section 2 and 3 of this Schedule 27 within 15 Business Days following referral of the Dispute to an executive in accordance with Section 3.1 (or such other period as may be agreed or expressly stipulated in respect of the relevant matter) and it is not a Dispute referred to in Sections 4.2 and 5.1 of this Schedule 27 or a Dispute referred to arbitration or litigation pursuant to Sections 4.4 or 5.9 of this Schedule 27 (except as otherwise agreed to in writing by the Parties pursuant to Section 12.6 of this Schedule 27), either Party may refer the Dispute to an adjudicator selected in accordance with Section 6.2 of this Schedule 27 (the "**Adjudicator**").

- 6.2 The Adjudicator nominated by the Party issuing the Notice of Dispute shall be agreed between the Parties or, failing agreement, shall be determined by the Ontario Superior Court of Justice (following an application thereto by the Party issuing the Notice of Dispute) and shall:
- (a) be independent of and at arm's length to Project Co, Osler, any Government Entity, the Lenders and any other person having an interest in the Facility or any of the Project Documents;
  - (b) if the Dispute arises during the Project Term, be familiar with building operations and management and hospital activities; and
  - (c) be a person who has qualifications and experience with respect to the particular issues in Dispute, including, where the issues in Dispute include whether Project Co has or will adversely impact the Clinical Services, then such qualifications and experience should include relevant experience in the provision of Clinical Services in a major acute care hospital.
- 6.3 The Adjudicator shall resolve the Dispute in accordance with the United Kingdom Construction Industry Council's *Model Adjudication Procedure: Fourth Edition* (the "**Model Adjudication Procedure**") the terms of which are incorporated herein by reference, subject to the following modifications:
- (a) notwithstanding paragraph 14 of the Model Adjudication Procedure, within 7 Business Days of appointment in relation to a particular Dispute, the Adjudicator shall require the Parties to submit in writing their respective arguments; provided that, where necessary, the onus of proving that the Facility is operating in accordance with all relevant specifications and requirements set forth in the Project Agreement is on Project Co. The Adjudicator shall, in his absolute discretion, determine the procedure of the adjudication proceedings including without limitation, whether a hearing is necessary in order to resolve the Dispute;
  - (b) notwithstanding paragraphs 16 and 24 of the Model Adjudication Procedure, in any event, and subject to Section 6.4 of this Schedule 27, the Adjudicator shall provide to both Parties his written decision on the Dispute, within 10 Business Days of appointment (or within such other period as the Parties may agree after the reference). The Adjudicator shall give detailed reasons for the Adjudicator's decision. The Adjudicator shall be entitled to award compensation to a Party and shall be entitled to state the relief for such Party, which may include deeming the occurrence of any Relief Event, Delay Event, Compensation Event and/or Excusing Cause. Unless otherwise provided for in this Schedule 27, the Adjudicator's decision shall be binding on the Parties, but not final;
  - (c) notwithstanding paragraphs 29 and 30 of the Model Adjudication Procedure, the Adjudicator's costs, including any legal fees, of any reference shall be borne as

the Adjudicator shall specify or in default, equally by the Parties. In no circumstances shall the Adjudicator be entitled to order a successful or partially successful Party in an adjudication to pay more than one half of the Adjudicator's fees. Each Party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses;

- (d) the Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the *Arbitration Act, 1991* (Ontario) and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination;
- (e) notwithstanding paragraph 26 of the Model Adjudication Procedure, the Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. Unless otherwise expressly provided in this Project Agreement, the Adjudicator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given under this Project Agreement. For greater certainty, the Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Payment Commencement Date and a Dispute in relation to the Payment Commencement Date shall not be subject to resolution pursuant to this Schedule 27;
- (f) the Adjudicator shall execute a non-disclosure agreement (the “**Non-Disclosure Agreement**”) in a form satisfactory to the Parties, providing that, among other things, all information, data and documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment as the Adjudicator shall be treated as confidential and without prejudice to any potential litigation proceedings. The Adjudicator shall not, save except as expressly permitted by the Non-Disclosure Agreement, disclose to any person any such information, data or documentation, and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Adjudicator's mandate with respect to the Dispute; and
- (g) notwithstanding paragraph 34 of the Model Adjudication Procedure, the Adjudicator shall not be liable for anything done or omitted to be done in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.

#### 6.4 Where it is determined by the Adjudicator that:

- (a) corrective measures must be taken by Project Co to resolve a Dispute, those measures must be implemented by Project Co as soon as reasonably practical, without payment by Osler unless (i) the Adjudicator determines otherwise; or

- (ii) that determination is subsequently reversed by a binding and final determination made in a court proceeding;
  - (b) corrective measures are not required to be taken by Project Co to resolve a Dispute, Osler may, at its option, require corrective measures to be taken forthwith by Project Co, in which case those measures must be implemented by Project Co as soon as reasonably practical provided that Osler undertakes to pay Project Co for Direct Costs, plus reasonable overhead and profit incurred by Project Co as such costs are so incurred; provided that no such costs should exceed the amount Project Co is entitled to receive pursuant to Schedule 22 – Variation Procedure thereby incurred upon completion of those corrective measures, but any such undertaking and payment shall be without prejudice to Osler’s right to contest the determination made by the Adjudicator in a subsequent proceeding. Osler shall provide Project Co such reasonable extensions of time in respect of Project Co’s obligations under this Agreement necessary to allow Project Co to effect the corrective measures and such extension of time may be treated as a Delay Event or an Excusing Cause, as applicable, if so determined by the Adjudicator.
- 6.5 Subject to a right to require the Dispute to be arbitrated or litigated pursuant to Sections 7, 8 and 9 of this Schedule 27 by giving the required notices to arbitrate or litigate within the time periods specified therein, the Parties agree that the Adjudicator’s determination is final and binding and not subject to appeal, arbitration, litigation or any other dispute resolution process, and both Parties expressly waive all rights of appeal in connection with the Adjudicator’s determination.

**7. Referral of Disputes to Arbitration or Litigation**

7.1 If:

- (a) the amount awarded by the Expert to a Party pursuant to Section 5 of this Schedule 27 or by the Adjudicator pursuant to Section 6 of this Schedule 27 is more than \$[REDACTED] (index linked) in the aggregate or \$[REDACTED] (index linked) in any one year;
- (b) the Dispute involves issues other than monetary claims by one Party against the other Party and which a Party reasonably believes are material and significant to that Party; or
- (c) a Notice of Dispute has been issued for a Dispute in relation to the Independent Certifier’s decisions for which Section 4.4 of this Schedule 27 provides that Sections 5 and 6 of this Schedule 27 shall not apply to resolve such Dispute,

then, subject to the right of a Party to require litigation of the Dispute pursuant to Section 9.1 of this Schedule 27 or a consolidation of proceedings pursuant to Section 11



of this Schedule 27, either Party may, by written notice signed by their Party Representative, request that the Dispute be resolved by arbitration pursuant to Section 8 of this Schedule 27 upon the written consent of the other Party. Such notice will not be effective unless it indicates it is a notice to arbitrate, is signed by the Party Representative and is delivered to the other Party Representative within 15 Business Days after receipt of the Expert's determination, the Adjudicator's decision or the Notice of Dispute referred to in Section 7.1(c) of this Schedule 27, as applicable, and provided further that such notice expressly identifies the specific Dispute and determination of the Expert, decision of the Adjudicator or the Independent Certifier, as applicable, that is to be the subject of the arbitration.

- 7.2 If a Party is entitled to refer a Dispute to which Sections 5 or 6 of this Schedule 27 apply to arbitration or litigation pursuant to Sections 7.1 or 9.1 of this Schedule 27 then, unless the Parties otherwise expressly agree in writing, all information, documents and submissions prepared by a Party for the Expert or the Adjudicator which are not business records that would otherwise be kept in the normal course of business by the Party for its business purposes, and all decisions and determinations by the Expert or the Adjudicator, shall be confidential and inadmissible in any arbitration or litigation proceeding. For greater certainty, neither the Expert or the Adjudicator shall be called as a witness by either party in any arbitration or litigation proceeding.

## **8. Resolution by Arbitration**

- 8.1 Upon the mutual written consent of the parties,
- (a) where the Parties fail to resolve a Dispute through the process set out in Sections 2, 3, 4, 5 and 6 (to the extent required) of this Schedule 27, and
  - (b) all other requirements set out in this Schedule 27 have been satisfied.

such Dispute may be referred to arbitration in accordance with the *Arbitration Act, 1991* (Ontario) and this Section.

- 8.2 Disputes referred to arbitration shall be resolved by a single arbitrator unless one of the Parties, by notice in writing delivered to the other Party within 5 Business Days after a notice to arbitrate pursuant to Section 7.1 of this Schedule 27 has been delivered, expressly requires that the Dispute that is the subject of that notice to arbitrate be resolved by a three person arbitration tribunal, in which case that particular Dispute shall be resolved by a three person arbitration tribunal.
- 8.3 If the arbitration tribunal is comprised of a single arbitrator, the arbitrator shall be appointed as follows:

- (a) if the Parties agree on the arbitrator, the Parties shall jointly appoint the arbitrator as soon as possible and in any event within 5 Business Days after delivery of the notice to arbitrate pursuant to Section 7 of this Schedule 27; and
- (b) if the Parties fail to agree or jointly appoint the arbitrator within such 5 Business Day period, either Party may apply to the Ontario Superior Court of Justice for appointment of the arbitrator, in which case the court shall appoint the arbitrator at the earliest opportunity in accordance with the following:
  - (i) from the lists of potential arbitrators submitted to the court by the Parties, provided that potential arbitrators meeting the necessary qualifications and experience set out in this Schedule 27 are on the list; or
  - (ii) if one Party fails to submit its list of potential arbitrators to the court within 5 Business Days of a request from the court to submit a list, from the list submitted by the other Party provided that potential arbitrators meeting the necessary qualifications and experience set out in this Schedule 27 are on the list of that other Party; or
  - (iii) if no list is submitted by either Party, or if the list or lists submitted do not include potential arbitrators with the necessary qualifications and experience, the court shall be entitled at its sole discretion to appoint anyone who meets the requirements set out in this Schedule 27 for the qualifications and experience of the arbitrator.

8.4 If the arbitration tribunal is comprised of three arbitrators:

- (a) the arbitrators shall be appointed as follows:
  - (i) each Party shall appoint one arbitrator no later than 5 Business Days after delivery of the notice to arbitrate pursuant to Section 7 of this Schedule 27;
  - (ii) if a Party fails to appoint an arbitrator within 5 Business Days after delivery of the notice to arbitrate, the other Party is entitled to apply to the Ontario Superior Court of Justice to appoint that arbitrator, in which case the court shall appoint that arbitrator at the earliest opportunity using a comparable process to that described in Section 8.3(b) of this Schedule 27;
  - (iii) the arbitrators appointed in accordance with the foregoing shall, within 5 Business Days after their appointment, jointly appoint a third arbitrator who shall also act as the chair of the arbitration tribunal and who, in addition to all other required qualifications, shall have experience in arbitration or judicial processes and procedures; and

- (iv) if the two arbitrators appointed by the Parties fail to appoint a third arbitrator within the required time, either of the other two arbitrators may apply to the Ontario Superior Court of Justice for appointment of the third arbitrator, in which case the court shall appoint the third arbitrator at the earliest opportunity using a comparable process to that described in Section 8.3(b) of this Schedule 27; and
  - (b) the arbitrators appointed by the Parties shall at all times be neutral and act impartially and shall not act as advocates for the interests of the Party who appointed them.
- 8.5 All arbitrators must have qualifications and experience relevant to the issues in the Dispute and also have qualifications and experience as arbitrators. Where the issues in Dispute include whether Project Co has or will adversely impact the Clinical Services then such qualifications and experience should include relevant experience in the provision of Clinical Services in a major acute care hospital.
- 8.6 No one shall be nominated or appointed to act as an arbitrator who is or was in any way interested, financially or otherwise, in the conduct of the Project Operations or in the business affairs of Osler, Project Co, or any consultant, subconsultant or subcontractor of any of them.
- 8.7 The arbitrator(s) shall have the jurisdiction and power to:
  - (a) amend or vary any and all rules under the *Arbitration Act, 1991* (Ontario), including rules relating to time limits, either by express agreement of the Parties or, failing such agreement, as the arbitrator(s) consider appropriate and necessary in the circumstances to resolve the Dispute and render an award;
  - (b) require some or all of the evidence to be provided by affidavit;
  - (c) hold a hearing at which evidence and submissions are presented by the Parties;
  - (d) direct either or both Parties to prepare and provide the arbitrator(s) with such documents, test results or other things as the arbitrator(s) may require to assist them in the resolution of the Dispute and rendering of an award;
  - (e) require either Party to supply or prepare for examination by the arbitrator(s) and the other Party, any document or information the arbitrator(s) considers necessary;
  - (f) inspect the Project Operations, giving reasonable notice to each Party of the time when, and the place where, the arbitrator(s) intend(s) to conduct any inspections;

- (g) award any remedy or relief that a court or judge of the Ontario Superior Court of Justice could order or grant subject to and in accordance with this Project Agreement, including, without limitation, interim orders, interim and permanent injunctions, and specific performance; and
  - (h) require either or both Parties to take and provide to the arbitrator(s) such measurements, perform such tests, perform such audits, or take any and all such other measures or steps as the arbitrator(s) consider necessary or desirable to aid them in making a fair and reasonable award.
- 8.8 The place of arbitration shall be Toronto, Ontario. The language of the arbitration shall be English.
- 8.9 The costs of an arbitration are in the discretion of the arbitrator(s) who, in addition to any jurisdiction and authority under applicable law to award costs, has the jurisdiction and authority to make an order for costs on such basis as the arbitrator(s) considers appropriate in the circumstances, including to award actual legal fees and disbursements and expert witness fees, and to specify or order any or all of the following:
- (a) the Party entitled to costs;
  - (b) the Party who must pay the costs;
  - (c) the amount of the costs or how that amount is to be determined; and
  - (d) how all or part of the costs must be paid.
- 8.10 In exercising discretion to award costs, however, the arbitrator(s) will take into account the desire of the Parties that costs should generally be awarded to each Party in proportion to the relative success that each Party has in the arbitration.
- 8.11 The award of the arbitrator(s) shall be final and binding upon both Parties, and both Parties expressly waive all rights of appeal in connection with the award of the arbitrator(s). Judgment may be entered upon the award in accordance with Applicable Law in any court having jurisdiction.
- 8.12 The Parties agree to and shall co-operate fully with the arbitrator(s) and proceed with the arbitration expeditiously, including in respect of any hearing, in order that an award may be rendered as soon as practicable by the arbitrator(s), given the nature of the Dispute. The arbitrator(s) shall render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than 20 Business Days after the date of the hearing, or such longer period of time as agreed to in writing by the Parties. If the arbitration tribunal is comprised of three arbitrators, the decision of a majority of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal, and

where there is no majority decision, the decision of the chair of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal.

- 8.13 This Project Agreement, including this Schedule 27, constitutes an agreement to arbitrate that shall be specifically enforceable.
- 8.14 Any arbitrator appointed pursuant to this Section 8 of this Schedule 27 shall keep all information about the Dispute confidential and shall not disclose such information to anyone other than the Parties.

## **9. Litigation**

- 9.1 Notwithstanding that a notice to arbitrate has been delivered pursuant to Section 7.1 of this Schedule 27, following receipt of the Expert's award or determination pursuant to Section 5 of this Schedule 27, or of the Adjudicator's award or determination pursuant to Section 6 of this Schedule 27, or if applicable a Notice of Dispute has been issued following receipt of a decision of the Independent Certifier if the Dispute is a Dispute in relation to the Independent Certifier's decisions for which Section 4.4 of this Schedule 27 provides that Sections 5 and 6 of this Schedule 27 shall not apply, if one or more of the following apply then either Party may elect, by written notice signed by their Party Representative, to require that the Dispute be referred to and resolved solely by litigation in the Ontario Superior Court of Justice, and both Parties agree to attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of the Dispute:
- (a) if the actual or potential total value or amount at issue in the Dispute (as determined by adding all claims and counterclaims) is more than \$[REDACTED] (index linked) in the aggregate or \$[REDACTED] (index linked) in any one year; or
  - (b) if the Dispute is considered by Osler to involve material issues of public health or safety.

Such notice will not be effective unless it indicates it is a notice to submit the Dispute to litigation, is signed by the Party Representative and is delivered to the other Party Representative within 15 Business Days after receipt of the Expert's determination, the Adjudicator's determination, or the Notice of Dispute referred to in Section 7.1(c) of this Schedule 27, as applicable, and provided further that such notice expressly identifies the specific Dispute and determination of the Adjudicator, Expert or Independent Certifier, as applicable, that is to be the subject of the litigation.

- 9.2 If neither Party delivers a notice of election to resolve a particular Dispute by litigation in the manner and within the time specified in Section 9.1 of this Schedule 27, then:
- (a) provided that one Party has, in the manner and within the time period specified in Section 7.1 of this Schedule 27, given notice to the other Party of election to

resolve that Dispute by arbitration, and subject to a consolidation of proceedings pursuant to Section 11 of this Schedule 27, that Dispute shall be resolved only by arbitration pursuant to Sections 8.2 to 8.14 of this Schedule 27; and

- (b) subject to Section 9.2(a), where a Dispute was determined by the Expert, the Expert's determination is final and binding on both Parties and not subject to appeal, arbitration, litigation or any other dispute resolution process.

## **10. Consolidation of Project Agreement Adjudication, Arbitration and Litigation**

10.1 For all Disputes that arise prior to Substantial Completion, unless:

- (a) both Parties otherwise agree; or
- (b) the issue in a particular Dispute arises in connection with the Review Procedure; or
- (c) the issue in a particular Dispute is such that waiting until after Substantial Completion to resolve that Dispute will cause irreparable harm to one of the Parties; or
- (d) the issue in a particular Dispute arises in connection with requirements of achieving or deficiencies in not achieving Substantial Completion; or
- (e) in respect to a particular Dispute, the Dispute is consolidated with Third Party Disputes (as hereinafter defined) pursuant to Section 11 of this Schedule 27;

all adjudication, arbitral and litigation proceedings between the Parties prior to Substantial Completion shall be stayed and consolidated into, as applicable, a single adjudication, arbitration and a single litigation proceeding, with the adjudication, arbitration and, if applicable, litigation, proceeding promptly and expeditiously after Substantial Completion.

## **11. Consolidation with Third Party Disputes**

11.1 Subject to Section 11.4 of this Schedule 27, if either Party is involved in an arbitration in the Province of Ontario with a third party ("**Third Party Arbitration**"), and if such Third Party Arbitration involves common factual or legal issues (including common issues of damages) which are also the subject of a Dispute between the Parties for which a Notice of Dispute has been given, then any arbitration of the Dispute between the Parties which includes those common factual, legal or damages issues ("**Project Agreement Arbitration**") shall be stayed, consolidated or joined with the Third Party Arbitration(s) but only if Osler, Project Co and the other Parties all agree or, failing their agreement, if a court in the Province of Ontario on application considers it just and

convenient in all the circumstances that the Project Agreement Arbitration should be stayed or consolidated or joined with the Third Party Arbitration.

11.2 Subject to Section 11.4 of this Schedule 27, if either Party is involved in litigation in the Province of Ontario with a third party (“**Third Party Litigation**”) and if:

- (a) such Third Party Litigation involves common factual or legal issues (including common issues of damages) which are the subject of a Project Agreement Arbitration; and
- (b) one of the Parties is brought directly into the Third Party Litigation as a Party to that litigation,

then on the application of either Party to the court in the Province of Ontario having jurisdiction the court may, if it determines that it is just and convenient in all the circumstances, order a stay of either or both the Project Agreement Arbitration proceeding and Third Party Litigation, or order a joinder of the Project Agreement Arbitration and the Third Party Litigation. If such joinder is ordered, the Project Agreement Arbitration and the Third Party Litigation ordered to be joined by the court shall be determined by that court or by another court in Ontario such that the Project Agreement Arbitration and the Third Party Litigation shall be resolved in one forum. For purposes of the foregoing, joinder of the Project Agreement Arbitration and the Third Party Litigation shall be construed to include stays and conditional stays of issues in the Project Agreement Arbitration pending the commencement and completion of third party proceedings by one or both of the Parties in the Third Party Litigation.

11.3 In considering whether to order a stay, consolidation or joinder of a Project Agreement Arbitration with a Third Party Arbitration or Third Party Litigation, the court will be entitled to give substantial weight to the desire by the Parties that all Disputes which are related to Third Party Arbitration or Third Party Litigation be resolved in a single forum to avoid multiplicity of proceedings and the potential for contradictory findings of fact, liability and quantum, and to ensure the arbitrator or court has the advantage of obtaining full evidence and disclosure from the Parties and from the other Parties, as applicable and as required to resolve the Dispute and to make findings of fact, liability and quantum of damages and awards or judgments binding on the Parties based on all available evidence.

11.4 Sections 11.1 and 11.2 of this Schedule 27 only apply:

- (a) if the Dispute between the Parties includes a claim by one Party against the other for contribution or indemnity for that Party’s liability or potential liability to the third party where such liability results or will result from an award in the Third Party Arbitration or a judgment in the Third Party Litigation; and
- (b) to those specific issues that are common issues in the Project Agreement Arbitration, the Third Party Arbitration and the Third Party Litigation, such that

all other issues in the Dispute shall continue to be resolved by Project Agreement Arbitration and shall not be consolidated with the Third Party Arbitration or Third Party Litigation.

**12. Miscellaneous**

- 12.1 Project Co and Osler shall diligently carry out their respective obligations under this Project Agreement during the pendency of any Disputes, including, without limitation, adjudication proceedings, arbitration proceedings or litigation proceedings. If during the pendency of any Dispute it is considered necessary by either Party to proceed in respect of the matter that is in Dispute, then without prejudice to Project Co's rights in respect of the Dispute (including in respect of Delay Events, Compensation Events and Variations), Project Co shall proceed in accordance with the direction of Osler, and in the event the matter in dispute is determined in favour of Project Co, proceeding in accordance with Osler's position shall: (i) subject to and in accordance with Section 38 of this Project Agreement, be treated as a Delay Event; (ii) subject to and in accordance with Section 39 of this Project Agreement, be treated as a Compensation Event; and (iii) subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation. For greater certainty, in respect of any Dispute relating to the Works referred to in Section 4.2 of this Schedule 27, the Independent Certifier shall be the decision maker of first instance and the Parties shall comply with the initial decision of the Independent Certifier unless and until it is overturned in a subsequent arbitration or litigation proceeding.
- 12.2 Nothing contained in this Schedule 27 will prevent the Parties from seeking interim protection from the courts of the Province of Ontario, including seeking an interlocutory injunction, if necessary to prevent irreparable harm to a Party.
- 12.3 The Parties shall indemnify each other in respect of any damages suffered or incurred on amounts agreed to be paid pursuant to resolution of a Dispute by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27, and on the amount of any award or judgment as follows:
- (a) for amounts payable by Project Co to Osler, Project Co shall indemnify Osler as provided for at Section 53.1(e) of this Project Agreement from and against any damages suffered or incurred resulting from any overpayment to Project Co or, as applicable, any underpayment or non-payment by Project Co from the date of any overpayment to Project Co or, as applicable, from the date on which payment was due under this Project Agreement to Osler until the date of payment; or
  - (b) for amounts payable by Osler to Project Co, Osler shall indemnify Project Co as provided for at Section 53.2(c) of this Project Agreement from and against any damages suffered or incurred resulting from any overpayment to Osler or, as applicable, any underpayment or non-payment by Osler from the date of any overpayment to Osler or, as applicable, from the date on which payment was due under this Project Agreement to Project Co until the date of payment.



- 12.4 Project Co shall ensure that any and all documents and other information in the possession or control of any Project Co Party that are available to Project Co and that may be necessary for the resolution of a Dispute on an informed basis by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27, or by an expert, an adjudicator, an arbitrator or court of competent jurisdiction, are made available in a timely manner to Osler and the Osler Representative.
- 12.5 Osler shall ensure that any and all documents and other information in the possession or control of any Osler Party that are available to Osler and that may be necessary for the resolution of a Dispute on an informed basis by the Party Representatives or by the executives of the Parties pursuant to Sections 2 and 3 of this Schedule 27, or by an adjudicator, an arbitrator or court of competent jurisdiction, are made available in a timely manner to Project Co and the Project Co Representative.
- 12.6 The Parties can, by written agreement, on a Dispute by Dispute basis:
- (a) extend any or all timelines set out in this Schedule 27;
  - (b) agree to waive or by-pass any one or more of the Dispute resolution processes in Sections 2, 3, 4, 5 and 6 of this Schedule 27 and, instead, proceed directly to resolution of the Dispute by arbitration or litigation pursuant to Sections 7, 8 and 9 of this Schedule 27;
  - (c) agree to (i) resolve a Dispute by litigation rather than adjudication or arbitration notwithstanding the requirements of Section 6 and Section 8 of this Schedule 27, or (ii) agree to resolve a Dispute by arbitration rather than adjudication or litigation notwithstanding the requirements of Section 6 and Section 9 of this Schedule 27, or (iii) agree to resolve a Dispute by adjudication rather than arbitration or litigation notwithstanding the requirements of Section 8 and Section 9 of this Schedule 27; and
  - (d) agree to resolve a Dispute relating to the decision of an Expert by adjudication, arbitration or litigation, notwithstanding the provisions of Section 6 of this Schedule 27.

**SCHEDULE 28**

**REFINANCING**

**1. DEFINITIONS**

1.1 The following terms shall have the following meanings:

- (a) **“Distribution”** means, whether in cash or in kind, any:
- (i) dividend or other distribution in respect of the Equity Capital;
  - (ii) reduction of capital, redemption or purchase of shares or any other reorganization or variation to the Equity Capital;
  - (iii) payment, loan, contractual arrangement or transfer of assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms; or
  - (iv) the receipt of any other benefit which is not received in the ordinary course of business nor on reasonable commercial terms,

and where any such Distribution is not in cash, the equivalent cash value of such Distribution shall be calculated.

- (b) **“Equity IRR”** means the projected internal rate of return to the Equity Provider over the full term of this Project Agreement, taking into account the aggregate of all its investments and of all Distributions made and projected to be made.
- (c) **“Exempt Refinancing”** means:
- (i) any Refinancing that has the effect of replacing or extending any Mini-Perm Financing, provided that Project Co shall assume any and all risks and benefits associated with such Refinancing without adjustment to the Monthly Service Payments or any other form of compensation to Project Co under the Project Agreement, including any risk that such Refinancing results in higher financing costs than the financing costs assumed by Project Co in its Financial Model as of the date of this Project Agreement for the Refinancing of any Mini-Perm Financing;
  - (ii) a change in taxation or change in accounting treatment pursuant to a Change in Law or change in Canadian GAAP;
  - (iii) the exercise of any right, the grant of any amendment, waiver or consent or any similar action under the Lending Agreements by the Lenders that

does not provide for a financial benefit to Project Co under those agreements;

- (iv) any sale of Equity Capital or securitization of the existing rights or interests attaching to such Equity Capital, unless such sale or securitization involves increasing the Senior Debt Amount or the Junior Debt Amount, as applicable, or amending the Senior Debt Makewhole or the Junior Debt Makewhole, as applicable, on terms more favourable to Project Co than contained in the Lending Agreements;
  - (v) any Qualifying Bank Transaction;
  - (vi) any Rescue Refinancing;
  - (vii) any Refinancing that was approved by Osler prior to the execution of this Project Agreement and occurs during the first six months following the date of this Project Agreement;
  - (viii) any amendment, variation or supplement of any agreement approved by Osler as part of any Variation under this Project Agreement; or
  - (ix) any Permitted Borrowing.
- (d) **“Mandatory Refinancing”** means an Exempt Refinancing described in Section 1.1(c)(i).
- (e) **“Mini-Perm Financing”** means a financing facility under any Lending Agreement that, pursuant to the applicable Lending Agreement, is scheduled to be repaid in whole or in part from the proceeds of a new financing.
- (f) **“Qualifying Bank”** means a lending institution that is:
- (i) a bank listed in Schedule I, II or III of the *Bank Act* (Canada); or
  - (ii) a bank, life insurance company, pension fund or fund managed by a professional fund manager that controls, either directly or through its affiliates, funds in excess of \$[REDACTED],

provided such institution is not a Restricted Person or a person whose standing or activities are inconsistent with Osler’s role as a hospital, or may compromise Osler’s reputation or integrity or the nature of the Province’s health care system, so as to affect public confidence in that system.

- (g) **“Qualifying Bank Transaction”** means:

- (i) the disposition by a Lender of any of its rights or interests in the Lending Agreements to a Qualifying Bank;
  - (ii) the grant by a Lender to a Qualifying Bank of any rights of participation in respect of the Lending Agreements; or
  - (iii) the disposition or grant by a Lender to a Qualifying Bank of any other form of benefit or interest in either the Lending Agreements or the revenues or assets of Project Co, whether by way of security or otherwise.
- (h) **“Qualifying Refinancing”** means any Refinancing that will give rise to a Refinancing Gain that is not an Exempt Refinancing.
- (i) **“Refinancing”** means:
- (i) any amendment, variation, novation, supplement or replacement of any Lending Agreement;
  - (ii) the exercise of any right, or the grant of any waiver or consent, under any Lending Agreement;
  - (iii) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Lending Agreements or the creation or granting of any other form of benefit or interest in either the Lending Agreements or the contracts, revenues or assets of Project Co whether by way of security or otherwise; or
  - (iv) any other arrangement put in place by Project Co or another person which has an effect which is similar to any of the foregoing provisions of this definition above or which has the effect of limiting Project Co’s ability to carry out any of the foregoing provisions of this definition.
- (j) **“Refinancing Financial Model”** means a comprehensive and detailed financial model satisfactory to Osler, acting reasonably, prepared for the purpose of Section 2 of this Schedule 28, which financial model shall be similar in form and content to the Financial Model, suitable for the purposes for which it will be used in this Schedule 28, and shall take into account:
- (i) cash flows for the entire remaining Project Term;
  - (ii) any changes in structure and funding since the date of this Project Agreement;
  - (iii) the performance of the Project Operations to the date of the Refinancing;

- (iv) macroeconomic assumptions; and
  - (v) all other relevant factors.
- (k) **“Refinancing Gain”** means an amount equal to the greater of zero and  $(A - B)$ , where:
- A = the net present value, discounted at a discount rate equal to the Base Case Equity IRR, of all Distributions as projected immediately prior to the Refinancing (using the Refinancing Financial Model and taking into account the effect of the Refinancing) to be made over the remaining term of this Project Agreement following the Refinancing.
- B = the net present value, discounted at a discount rate equal to the Base Case Equity IRR, of all Distributions as projected immediately prior to the Refinancing (using the Refinancing Financial Model but without taking into account the effect of the Refinancing) to be made over the remaining term of this Project Agreement following the Refinancing.
- (l) **“Refinancing Notice”** has the meaning given in Section 2.9.
  - (m) **“Rescue Refinancing”** means any Refinancing which takes place due to the failure or prospective failure of Project Co to comply with any material financial obligation under the Lending Agreements, or any of them, which does not increase any liability of Osler, whether actual or potential.

## **2. REFINANCING**

### **2.1 Project Co shall not carry out:**

- (a) any Qualifying Refinancing unless Project Co has obtained the prior written consent of Osler, which consent, subject to Section 2.2, shall not be unreasonably withheld or delayed; or
- (b) any Exempt Refinancing or any other Refinancing which does not result in a Refinancing Gain unless Project Co has delivered a notice of such Refinancing to Osler before 5 Business Days of such Refinancing, except that such notice shall not be required for a disposition by a Lender of its rights or participation in the Lending Agreements where such disposition is a trade of bonds issued as provided for under a book-based system of a depository or pursuant to a trust indenture that comprises a portion of the Senior Debt Amount and/or Junior Debt Amount.

- 2.2 Osler may withhold its consent to any Qualifying Refinancing, in its sole discretion:
- (a) where any person with whom Project Co proposes to carry out a Qualifying Refinancing is a Restricted Person;
  - (b) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will materially adversely affect the ability of Project Co to perform its obligations under the Project Documents or this Project Agreement; or
  - (c) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will have the effect of increasing any liability of Osler, whether actual or contingent, present or future, known or unknown.
- 2.3 Osler shall be entitled to receive:
- (a) a [REDACTED]% share of any Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of \$[REDACTED];
  - (b) a [REDACTED]% share of any further Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain in excess of \$[REDACTED] and up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of \$[REDACTED]; and
  - (c) a [REDACTED]% share of any further Refinancing Gain arising from a Qualifying Refinancing.
- 2.4 Project Co shall promptly provide Osler with full details of any proposed Qualifying Refinancing, including a copy of the proposed Refinancing Financial Model and the basis for the assumptions used in the proposed Refinancing Financial Model. Osler shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over the Refinancing Financial Model and any documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with such Refinancing (whether or not such Refinancing is determined to be a Qualifying Refinancing). Project Co shall promptly, and, in any event, within 5 Business Days of receiving a written request from Osler, provide any information in relation to a proposed Refinancing as Osler may reasonably require. Project Co shall keep Osler informed as to any changes to the terms of the Refinancing. Both Osler and Project Co shall at all times act in good faith with respect to any Refinancing.
- 2.5 Subject to Section 2.6, Osler shall have the right to elect to receive its share of any Refinancing Gain as:

- (a) a single payment in an amount less than or equal to any Distribution made on or about the date of the Refinancing; and/or
  - (b) a reduction in the Monthly Service Payments over the remaining Project Term, such that the total net present value, discounted at the Discount Rate, of the foregoing, calculated at the time immediately prior to the Refinancing, shall equal Osler’s share of the Refinancing Gain.
- 2.6 Osler and Project Co will negotiate in good faith to agree upon the basis and method of calculation of the Refinancing Gain and payment of Osler’s share of the Refinancing Gain (taking into account how Osler has elected to receive its share of the Refinancing Gain under Section 2.5 and the profile of the Refinancing Gain). If the parties fail to agree upon the basis and method of calculation of the Refinancing Gain or the payment of Osler’s share, the Dispute shall be determined in accordance with Schedule 27 – Dispute Resolution Procedure.
- 2.7 Both Osler and Project Co shall work collaboratively to establish the rate setting process required to complete the Qualifying Refinancing. The Refinancing Gain shall be calculated after taking into account the reasonable out-of-pocket costs that each Party directly incurs in relation to the Qualifying Refinancing and on the basis that, within 15 Business Days of any Qualifying Refinancing, Project Co will reimburse Osler for all such reasonable out-of-pocket costs incurred by Osler. Project Co and Osler shall not be entitled to claim as out-of-pocket costs, any charge, cost, expense, fee or similar amount that is incurred by either Party in relation to a Refinancing outside of the ordinary course.
- 2.8 If Project Co must, at a future date, undertake a Mandatory Refinancing, then Osler may at any time request that Project Co provide to Osler full and complete details and information with respect to the Mandatory Refinancing and its plan for the Mandatory Refinancing, including in respect to all relevant assumptions regarding the Mandatory Refinancing set out in the Financial Model (the “**Refinancing Information**”). For clarity, if Project Co must, at a future date, undertake a Mandatory Refinancing, Osler must request Project Co to provide the Refinancing Information before it can issue a Refinancing Notice pursuant to Section 2.9. If Osler and Project Co mutually agree, acting reasonably, that based on the Refinancing Information, a Refinancing prior to the Mandatory Refinancing would not have a negative material financial impact on the Mandatory Refinancing, then Osler may provide Project Co with a Refinancing Notice pursuant to Section 2.9.
- 2.9 If Osler considers the funding terms generally available in the market to be more favourable than those reflected in the Lending Agreements, Osler may, by notice in writing to Project Co (a “**Refinancing Notice**”), require Project Co to request potential funders to provide terms for a potential Refinancing.

- 2.10 The Refinancing Notice shall set out in reasonable detail the grounds upon which Osler believes such funding terms to be available. Project Co and Osler shall meet to discuss the Refinancing Notice within 20 Business Days. Such a meeting will consider the evidence available to both parties about the availability of funding terms for a potential Refinancing. Osler shall be entitled to withdraw the Refinancing Notice at or before such a meeting, or within 7 Business Days following the meeting.
- 2.11 If Osler serves a Refinancing Notice which is not withdrawn pursuant to Section 2.10, then Project Co shall:
- (a) act promptly, diligently and in good faith with respect to the potential Refinancing;
  - (b) use all reasonable endeavours to obtain the most favourable available terms from existing and/or new lenders for any potential Refinancing (provided that Project Co shall not be required to propose refinancing in a manner which a prudent board of directors of a company operating the same business in Canada to that operated by Project Co, in similar circumstances, would not approve), for the avoidance of doubt also being terms which are likely to generate a positive Refinancing Gain after the deduction of costs in accordance with the provisions of Section 2.7; and
  - (c) either:
    - (i) as soon as reasonably practicable after receipt of the Refinancing Notice, provide to Osler (I) full details of the proposed Refinancing, including a financial model and the basis for the assumptions used in the financial model and evidence to the reasonable satisfaction of Osler that these assumptions represent the most favourable available terms for the potential Refinancing on the basis set out in Section 2.11(b) and (II) initial drafts of any changes to the Project Agreement including in relation to potential compensation on termination which might be required to give effect to the proposed Refinancing; or
    - (ii) if Project Co (acting reasonably) believes that it is not possible to obtain funding terms which are more favourable than those reflected in the Lending Agreements in accordance with the requirements of Section 2.11(b), provide evidence to the reasonable satisfaction of Osler for such belief and evidence to the reasonable satisfaction of Osler that Project Co has complied with its obligations in Sections 2.11(a) and (b) above.



2.12 Following receipt of the information referred to in Section 2.11(c)(i), Osler shall, acting reasonably, either:

- (a) instruct Project Co to implement the proposed Refinancing; or
- (b) instruct Project Co to discontinue the proposed Refinancing

provided that if Osler reasonably considers that the requirements of Sections 2.11(c)(i) or (ii) have not been satisfied, Osler may require Project Co to satisfy its obligations under Sections 2.11(c)(i) or (ii). If Project Co must, at a future date, undertake a Mandatory Refinancing, Osler shall not instruct Project Co to implement the proposed Refinancing unless both Osler and Project Co, acting reasonably, agree that such Refinancing will be likely to generate a positive Refinancing Gain after the deduction of costs in accordance with the provisions of Section 2.7 and will not have a negative material financial impact on the Mandatory Refinancing.

2.13 If Osler instructs Project Co to implement the proposed Refinancing:

- (a) Project Co shall, as soon as reasonably practicable, use all reasonable endeavours to ensure that such proposed Refinancing is implemented;
- (b) such proposed Refinancing shall be deemed to be a Qualifying Refinancing; and
- (c) the provisions of Sections 2.1 to 2.7 shall apply.

2.14 If:

- (a) Osler instructs Project Co to discontinue the potential Refinancing pursuant to Section 2.12(b); or
- (b) the requirements of Section 2.11(c)(ii) are satisfied

then, Osler shall reimburse Project Co for the reasonable and proper professional costs incurred by Project Co in relation to the potential Refinancing, such costs to be paid to Project Co by Osler within 20 Business Days after receipt of a valid invoice in respect of such amount. Such costs shall not include any internal management costs incurred by Project Co except insofar as (i) it can be demonstrated to the reasonable satisfaction of Osler that such costs have been incurred in place of professional costs which would in the normal course of such business have been paid to third parties and (ii) Osler has, by prior written agreement, approved the use of such internal management resource.

2.15 Osler shall be entitled to issue a Refinancing Notice under Section 2.9 at any time but not more than once in any two-year period. For the avoidance of doubt, a Refinancing Notice that has been withdrawn under Section 2.10 has been issued for the purpose of this Section 2.15.

SCHEDULE 29

STANDBY LETTER OF CREDIT

**[NTD: The Standby Letter of Credit must be issued by a bank acceptable to Osler, acting reasonably, and must be callable at the bank’s counters in Toronto, Ontario.]**

Letter of Credit: #[●]

Date: [●]

William Osler Health System  
2100 Bovaird Dr E  
Brampton, ON L6R 3J7

Attn:●

Dear Sir/Madam:

**RE: William Osler Health System**

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At the request of our client, Plenary Health Peel LP (“**Project Co**”), we, **[insert name and address of issuing bank]**, hereby issue in your favour an irrevocable standby letter of credit (the “**Letter of Credit**”) in the amount of **[REDACTED]** Dollars (\$**[REDACTED]**).

The amount available under this Letter of Credit is payable to William Osler Health System, a non-share capital corporation incorporated under the laws of Ontario, (“**Osler**”), at any time and from time to time, upon (a) receipt by us of a written demand for payment, accompanied by a certificate signed by two officers of Osler certifying that Osler is entitled to draw on this Letter of Credit pursuant to Section 2.3(c) of a project agreement dated May 26, 2014 (as amended from time to time, the “**Project Agreement**”), and (b) presentation of the original of this Letter of Credit.

This Letter of Credit will expire at 5:00 p.m. on November 24, 2014 (the “**Expiry Date**”), and Osler may call for payment of any amount outstanding under this Letter of Credit at any time up to 5:00 p.m. on that date should this Letter of Credit not be renewed.

It is a condition of this Letter of Credit that it shall be automatically extended, without amendment, for one year from the expiration date hereof, or any future expiration date, unless, at least 30 days prior to any expiration date, we notify you, in writing, that we elect not to consider this Letter of Credit renewed for any such additional period. Upon receipt by you of such notice, you may draw the full amount hereunder by means of your demand.

Partial drawings are permitted.

We hereby agree that demands delivered under this Letter of Credit will be duly honoured upon presentation provided that all terms and conditions herein have been complied with.

Written demands drawn under this Letter of Credit shall state on their face that they are drawn under Letter of Credit #[●].

It is understood that [insert name of issuing bank] is obligated under this Letter of Credit for payments of monies only.

The Project Agreement is referred to herein for reference purposes only and does not form part of the terms of this Letter of Credit.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) of the International Chamber of Commerce (ICC Publication No. 600) (the “UCP”) with the exception of Articles 18-30 inclusive (other than Article 29a, which shall apply) and Articles 31b, 31c and 32 except to the extent, if any, inconsistent with the express terms of this Letter of Credit. Notwithstanding Article 36 of the UCP, if this Letter of Credit expires during an interruption of business as contemplated in such Article 36, we shall honour any demand made under this Letter of Credit prior to the Expiry Date, within 30 days after the date on which such interruption of business ends (and we shall notify you promptly when it does so end). For matters not covered by such publication, this Letter of Credit shall be governed by and construed in accordance with the laws of the Province of Ontario.

Yours very truly,

**[Name of Issuing Bank]**

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

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

**SCHEDULE 30**

**INSURANCE TRUST AGREEMENT**

**THIS AGREEMENT** is made as of the 28<sup>th</sup> day of May, 2014.

**BETWEEN:**

**WILLIAM OSLER HEALTH SYSTEM**, a non-share capital corporation incorporated under the laws of Ontario.

(“**Osler**”)

**AND:**

**BNY TRUST COMPANY OF CANADA**, in its capacity as collateral trustee under the Common Terms Agreement

(the “**Lenders’ Agent**”)

**AND:**

**PLENARY HEALTH PEEL LP, [REDACTED]**

(“**Project Co**”)

**AND:**

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

(the “**Account Trustee**”)

**WHEREAS:**

- A. Osler and Project Co have entered into the Project Agreement.
- B. Osler, the Lenders’ Agent and Project Co have entered into the Lenders’ Direct Agreement.
- C. Osler, the Lenders’ Agent and Project Co have agreed that all amounts from time to time contained in the Insurance Trust Account are to be held in trust by the Account Trustee in accordance with the terms of this Insurance Trust Agreement, and that no releases, distributions or transfers of any funds from the Insurance Trust Account shall be made other than in accordance with the terms of this Insurance Trust Agreement.

**NOW THEREFORE** in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

**1. DEFINITIONS**

In this Insurance Trust Agreement, unless the context otherwise requires:

- (a) “**Account Trustee**” has the meaning given in the preamble.
- (b) “**Bank**” means The Bank of Nova Scotia, main branch.
- (c) “**Business Day**” has the meaning given in the Project Agreement.
- (d) “**Change of Authorization Event**” has the meaning given in Section 7(a) of this Insurance Trust Agreement.
- (e) “**Change of Authorization Notice**” has the meaning given in Section 7(b)(ii) of this Insurance Trust Agreement.
- (f) “**Common Terms Agreement**” has the meaning given in the Project Agreement.
- (g) “**Default Notice**” means a written notice given by the Lenders’ Agent to the Account Trustee that an event of default under the Lending Agreements has occurred and is continuing.
- (h) “**Default Period**” means the period commencing on the date upon which the Account Trustee receives a Default Notice and ending on the date upon which the Account Trustee receives written notice from the Lenders’ Agent that the event of default which was the subject matter of the applicable Default Notice has been cured.
- (i) “**Facility**” has the meaning given in the Project Agreement.
- (j) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (k) “**Insurance Policies**” has the meaning given in Section 4(a) of this Insurance Trust Agreement.
- (l) “**Insurance Proceeds**” has the meaning given in Section 4(b) of this Insurance Trust Agreement.
- (m) “**Insurance Trust Account**” means [REDACTED].
- (n) “**Insurance Trust Agreement**” means this insurance trust agreement.
- (o) “**Lenders**” has the meaning given in the Project Agreement.

- (p) “**Lenders’ Agent**” has the meaning given in the preamble.
- (q) “**Lenders’ Direct Agreement**” means the lenders’ direct agreement made on or about the date hereof between Osler, Project Co and the Lenders’ Agent.
- (r) “**Lending Agreements**” has the meaning given in the Project Agreement.
- (s) “**Order**” has the meaning given in Section 6(k) of this Insurance Trust Agreement.
- (t) “**Osler**” has the meaning given in the preamble.
- (u) “**Party**” means any of Osler, Project Co, the Lenders’ Agent or the Account Trustee, and “**Parties**” means all of Osler, Project Co, the Lenders’ Agent and the Account Trustee.
- (v) “**person**” has the meaning given in the Project Agreement.
- (w) “**Project**” has the meaning given in the Project Agreement.
- (x) “**Project Agreement**” means the project agreement made on or about the 26<sup>th</sup> day of May, 2014 between Osler and Project Co.
- (y) “**Project Co**” has the meaning given in the preamble.
- (z) “**Project Co Event of Default**” has the meaning given in the Project Agreement.
- (aa) “**Project Operations**” has the meaning given in the Project Agreement.
- (bb) “**Trust Property**” means all of the property held in trust by the Account Trustee pursuant to this Insurance Trust Agreement, including, without limitation, the Insurance Trust Account, and all amounts from time to time contained therein, the Insurance Policies and the Insurance Proceeds.

## **2. INTERPRETATION**

This Insurance Trust Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Insurance Trust Agreement are for convenience of reference only, shall not constitute a part of this Insurance Trust Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Insurance Trust Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Insurance Trust Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.

- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, limited liability company, joint stock company, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Insurance Trust Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Insurance Trust Agreement shall bear their natural meaning.
- (g) References containing terms such as:
  - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Insurance Trust Agreement taken as a whole; and
  - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (h) In construing this Insurance Trust Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this Insurance Trust Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Insurance Trust Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.

- (j) Where this Insurance Trust Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Brampton, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Insurance Trust Agreement they shall be construed and interpreted as synonymous and to read “shall”.

**3. INSURANCE TRUST ACCOUNT**

- (a) Prior to the commencement of a Default Period, the Insurance Trust Account, and all amounts from time to time contained therein, including interest thereon, shall be held in trust by the Account Trustee for the benefit of Project Co. During a Default Period, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of the Lenders’ Agent and the Lenders, provided that, upon receipt by the Account Trustee of a Change of Authorization Notice, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of Osler.
- (b) The Account Trustee shall not release, distribute or transfer any funds from the Insurance Trust Account other than in accordance with the terms of this Insurance Trust Agreement.
- (c) Notwithstanding any other provision of this Insurance Trust Agreement and subject to Section 3(d), the Lenders’ Agent, Osler, and Project Co agree that, if any of them either receives any Insurance Proceeds from the Insurance Trust Account or has the right to direct the Account Trustee to advance funds in respect of any Insurance Proceeds from the Insurance Trust Account to third parties, such funds shall be directed, used or advanced only for one of the following purposes:
  - (i) the repair, reinstatement, restoration or replacement of the Facility or any other assets, materials or goods necessary or desirable for the carrying out of the Project Operations in respect of which such Insurance Proceeds have been paid;
  - (ii) the completion of the Project; or
  - (iii) indemnification for any Osler loss for which the subject Insurance Proceeds were paid under the Insurance Policies (as defined below).

For greater certainty, use of any Insurance Proceeds received in respect of a claim by Project Co for delay in start-up, soft costs or business interruption may be applied in accordance with the terms of the Lending Agreements so as to enable Project Co to carry out the Project Operations.



- (d) Notwithstanding anything in this Insurance Trust Agreement, if Osler is entitled to indemnification under the Insurance Policies in respect of any loss incurred by Osler, such related insurance proceeds are to be paid directly to Osler by the insurer or the Account Trustee and shall not be Insurance Proceeds subject to Section 3(c)(i) or (ii) of this Insurance Trust Agreement. For greater certainty, it is understood and agreed that Osler shall be required to use such proceeds for carrying out the purposes referred to in Sections 3(c)(i) and (ii) in respect of which such proceeds have been paid.

**4. INSURANCE**

- (a) Project Co shall deliver, or cause to be delivered, to the Account Trustee originals of all property and asset related insurance policies that Project Co is required to maintain under the Project Agreement (collectively, the “**Insurance Policies**”), and the Account Trustee shall hold the Insurance Policies in trust for the benefit of each of the beneficiaries and loss payees, as the case may be, thereunder.
- (b) The Account Trustee shall distribute any proceeds of any Insurance Policy that are paid over to it by any insurer, Project Co, the Lenders’ Agent or Osler (the “**Insurance Proceeds**”) as follows:
- (i) subject to Section 4(c), in the case of the all risks course of construction (builders’ risk), boiler and machinery insurance or property insurance policies that Project Co is required to maintain under the Project Agreement:
- (A) if the Account Trustee has not received a Default Notice and:
- (1) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same loss or claim, is less than \$[REDACTED], to Project Co to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; or
- (2) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds paid in respect of the same loss or claim, is equal to or greater than \$[REDACTED], to the Lenders’ Agent to reimburse Project Co for the costs of repairing, restoring or replacing the assets in respect of which such Insurance Proceeds have been paid; or
- (B) if the Account Trustee has received a Default Notice, to the Insurance Trust Account to be distributed by the Account Trustee in such amounts and to such persons as the Lenders’ Agent may at any time or from time to time direct in writing, provided that, if the Account Trustee has received a Change of Authorization Notice, the Account Trustee shall release such Insurance Proceeds from the Insurance Trust Account in such amounts and

to such parties as Osler may at any time or from time to time direct in writing, in each case, to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; and

- (ii) in the case of any other Insurance Policies, to the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, to Osler, to be distributed to the parties entitled thereto.
- (c) All losses under (i) all risks course of construction (builder's risk) including boiler and machinery insurance carried by Project Co prior to Substantial Completion; (ii) property insurance carried by Project Co after Substantial Completion; and (iii) the boiler and machinery insurance carried by Project Co after Substantial Completion, which in each case is related to Equipment purchased by Osler, shall be payable solely to Osler, as applicable, and shall not be payable to the Account Trustee or distributed pursuant to this Insurance Trust Agreement.
- (d) The Account Trustee shall distribute any excess Insurance Proceeds remaining after the distributions contemplated in Section 4(b)(ii) have been made, including, without limitation, any Insurance Proceeds held in the Insurance Trust Account:
  - (i) if the Account Trustee has not received a Default Notice, to Project Co; and
  - (ii) if the Account Trustee has received a Default Notice, to such persons as the Lenders' Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, Osler, may at any time or from time to time direct in writing.

## **5. ACCOUNT AGREEMENT**

- (a) The Account Trustee hereby agrees to promptly provide to the Lenders' Agent all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as the Lenders' Agent may from time to time request in writing.
- (b) The Account Trustee hereby agrees to promptly provide to Osler all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as Osler may from time to time request in writing.

**6. THE ACCOUNT TRUSTEE**

- (a) The Account Trustee shall not have any duty or obligation to manage, control, use, make any payment in respect of, register, record, insure, inspect, sell, dispose of or otherwise deal with any part of the Trust Property except as expressly provided by the terms of this Insurance Trust Agreement. The Account Trustee shall carry out all written directions given by the Lenders' Agent, Osler or Project Co, as applicable, in accordance with this Insurance Trust Agreement and shall not be required to exercise any discretion in exercising any of its duties under this Insurance Trust Agreement in pursuance of such written directions. The Account Trustee shall not be bound to do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall have been required to do so under the terms hereof and has received instruction, advice or direction from the Lenders' Agent, Osler or Project Co, as applicable, as to the action to be taken (except with respect to actions specifically set out herein to be performed by the Account Trustee).
- (b) The Account Trustee will exercise its powers and carry out its obligations hereunder as account trustee honestly, in good faith and in the best interests of the beneficiaries hereunder and in connection therewith will exercise that degree of care, diligence, and skill that a reasonably prudent professional trustee would exercise in comparable circumstances. Unless otherwise required by law, the Account Trustee will not be required to give bond surety or security in any jurisdiction for the performance of any duties or obligations hereunder. No provision of this Insurance Trust Agreement shall be construed to relieve the Account Trustee from liability for its own dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (c) The Account Trustee will not be subject to any liability whatsoever, in tort, contract or otherwise in connection with the Trust Property or the carrying out of its duties under this Insurance Trust Agreement to the Lenders' Agent, the Lenders, Project Co or any other person for any action taken or permitted by it to be taken, or for its failure to take any action, or for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Account Trustee (including, but not limited to, any act or provision of any present or future law or of any Governmental Authority, any act of God or war, or the unavailability of any wire or communication facility), provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of duty by the Account Trustee. The Account Trustee in doing anything or permitting anything to be done in respect of the Trust Property or the carrying out of its duties under this Insurance Trust Agreement is, and will be conclusively deemed to be, acting as trustee for the beneficiaries hereunder and not in any other capacity. Except to the extent provided in this Section 6(c), the Account Trustee will not be subject to any liability for debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust

Property, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of its duties hereunder and resort will be had solely to the Trust Property for the payment or performance thereof, and no other property or assets of the Account Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Insurance Trust Agreement.

- (d) The Account Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers hereunder, or in acting at the request or direction of the Lenders' Agent on behalf of the Lenders, unless it shall have received adequate indemnity or security against such risk or liability satisfactory to it.
- (e) Notwithstanding the foregoing, the Account Trustee shall be liable for any action or failure to act arising from or in connection with the dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder by the Account Trustee or any of its directors, officers or employees, or the failure to comply with the standard of care referred to in Section 6(b).
- (f) Except as otherwise provided in Sections 6(c), 6(d) and 6(e):
  - (i) the Account Trustee may rely and shall be protected in acting or refraining from acting upon any signature, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document reasonably believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties; and
  - (ii) the Account Trustee may exercise its powers and perform its duties by or through such attorneys, representatives, agents and employees as it shall appoint; and may consult with counsel, accountants and other skilled persons selected and employed or retained by it, and the Account Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the written advice of such counsel, accountants or other skilled persons (provided that such advice pertains to such matters as the Account Trustee may reasonably presume to be within the scope of such person's area of competency) and not contrary to any express provision in this Insurance Trust Agreement.
- (g) Project Co hereby agrees to pay, indemnify and hold harmless the Account Trustee from and against any and all loss, liability, cost, claim and expense incurred by the Account Trustee with respect to the performance of this Insurance Trust Agreement by the Account Trustee or any of the Account Trustee's directors, officers or employees, unless arising from its or their own dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.

- (h) Subject to the terms and conditions set forth in the Account Trustee fee letter, the Account Trustee shall receive from the Trust Property reasonable compensation for its services hereunder and shall be reimbursed by Project Co for its reasonable fees and expenses (including the disbursements and reasonable fees of counsel).
- (i) The Account Trustee agrees to look solely to Project Co, and not, except as expressly set forth herein, to the Lenders' Agent, the Lenders or Osler for any claim for indemnification which may arise under this Insurance Trust Agreement.
- (j) The Account Trustee shall be responsible for keeping all appropriate books and records relating to the receipt and disbursement of all money which it receives hereunder.
- (k) If at any time the Account Trustee is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Trust Property held by it hereunder (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Trust Property) (each, an "**Order**"), the Account Trustee is authorized to comply therewith in any manner as it or legal counsel of its own choosing deems appropriate. The Account Trustee shall in no way be bound to call for further evidence (whether as to due execution validly or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so. If the Account Trustee complies with any Order, the Account Trustee shall not be liable to any of the Parties hereto or to any other person or entity even though such Order may be subsequently modified or vacated or otherwise determined to have been without legal force or effect. If the Account Trustee is served with any Order, it shall forthwith and, in any event, within three (3) Business Days, deliver a copy of such Order to each of the Lenders' Agent, Osler and Project Co.
- (l) Unless otherwise specifically set forth herein, the Account Trustee shall proceed as soon as practicable to collect any cheques or other collection items at any time deposited hereunder. All such collections shall be subject to the Account Trustee's usual collection practices or terms regarding items received by the Account Trustee for deposit or collection. Except and to the extent provided herein, the Account Trustee shall not be required, or have any duty, to notify any person of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any cheque, note or security deposited hereunder, or to exercise any right or privilege which may be afforded to the holder of any such security.
- (m) In the event that the Account Trustee determines that any direction, instruction, notice or other communication given under this Insurance Trust Agreement by the Lenders' Agent or, where the Account Trustee has received a Change of Authorization Notice, Osler, is ambiguous or uncertain, the Account Trustee may, in its sole discretion, refrain from taking any action other than retaining possession of the Trust Property, unless the Account Trustee has received written instructions, signed by the Lenders' Agent or, if the

Account Trustee has received a Change of Authorization Notice, Osler, which resolve such ambiguity or uncertainty, provided that the Account Trustee shall, forthwith upon determining that such direction, instruction, notice or other communication is ambiguous or uncertain, seek clarification from the Lenders' Agent, or where the Account Trustee has received a Change of Authorization Notice, Osler, to resolve such ambiguity or uncertainty.

- (n) Prior to receipt of a Change of Authorization Notice by the Account Trustee, any instruction, notice or other communication delivered to the Account Trustee by the Lenders' Agent shall be paramount to and supersede any direction, instruction, notice or other communication from any other Party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from the Lenders' Agent. After the Account Trustee has received a Change of Authorization Notice, any instruction, notice or other communication delivered to the Account Trustee by Osler shall be paramount to and supersede any direction, instruction, notice or other communication from any other Party to this Insurance Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from Osler.
- (o) Each of the Lenders' Agent and Osler shall provide to the Account Trustee an incumbency certificate setting out the names and sample signatures of individuals authorized to give instructions to the Account Trustee hereunder. The Account Trustee shall be entitled to rely on each such incumbency certificate until a revised or replacement incumbency certificate is provided to the Account Trustee by the Lenders' Agent or Osler, as applicable. The Account Trustee shall refuse to act upon any instruction given by the Lenders' Agent or Osler which is signed by any person other than an individual named in the incumbency certificate provided to the Account Trustee by the Lenders' Agent or Osler, as applicable, pursuant to this Section 6(o), as any such incumbency certificate may be amended, supplemented or replaced from time to time.
- (p) The Account Trustee shall be entitled to rely on, and act upon, any direction, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile transmission, provided that any such direction, instruction, notice or other communication is signed by an individual named in the incumbency certificate delivered to the Account Trustee by the Lenders' Agent or Osler, as applicable, pursuant to Section 6(o).
- (q) The Account Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Account Trustee, in its sole judgment, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Account Trustee, in its sole judgment, determine at any time that its acting under this Insurance Trust Agreement has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist

legislation, regulation or guideline, then it shall have the right to resign on 10 days' written notice to Project Co and Osler, or any shorter period of time as agreed to by Project Co and Osler, notwithstanding the provisions of Section 6(a) of this Insurance Trust Agreement, provided that (i) the Account Trustee's written notice shall describe the circumstances of such non-compliance; and (ii) if such circumstances are rectified to the Account Trustee's satisfaction within such 10 day period, then such resignation shall not be effective.

- (r) The Parties acknowledge that federal and/or provincial legislation that addresses the protection of individuals' personal information (collectively, "**Privacy Laws**") may apply to obligations and activities under this Insurance Trust Agreement. Despite any other provision of this Insurance Trust Agreement, no Party shall take or direct any action that would contravene, or cause the other to contravene, applicable Privacy Laws. Project Co, the Lenders' Agent and Osler shall, prior to transferring or causing to be transferred personal information to the Account Trustee, obtain and retain required consents of the relevant individuals to the collection, use and disclosure of their personal information, or shall have determined that such consents either have previously been given upon which the Parties can rely or are not required under the Privacy Laws. The Account Trustee shall use commercially reasonable efforts to ensure that its services hereunder comply with Privacy Laws. Specifically, the Account Trustee agrees: (a) to have a designated chief privacy officer; (b) to maintain policies and procedures to protect personal information and to receive and respond to any privacy complaint or inquiry; (c) to use personal information solely for the purposes of providing its services under or ancillary to this Insurance Trust Agreement and not to use it for any other purpose except with the consent of or direction from Project Co or Osler or the individual involved; (d) not to sell or otherwise improperly disclose personal information to any third party; and (e) to employ administrative, physical and technological safeguards to reasonably secure and protect personal information against loss, theft, or unauthorized access, use or modification.

**7. LENDERS' AGENT AND OSLER RIGHTS TO DIRECT**

- (a) Until the termination of the Project Agreement in accordance with the Lenders' Direct Agreement and receipt by Project Co of any amounts to which it is entitled pursuant to Schedule 23 - Compensation on Termination to the Project Agreement and all Insurance Proceeds to the extent that the value of such Insurance Proceeds was deducted from the amounts payable to Project Co by Osler (a "**Change of Authorization Event**"), the Lenders' Agent shall, subject to Sections 3 and 4 of this Insurance Trust Agreement, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.
- (b) Upon the occurrence of a Change of Authorization Event:

- (i) the Lenders' Agent shall cease to be entitled, and Osler shall thenceforth be entitled, to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds; and
  - (ii) the Lenders' Agent and Osler shall jointly provide notice to the Account Trustee (a "**Change of Authorization Notice**") that Osler shall, as of the date of such Change of Authorization Event, have the exclusive right to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.
- (c) Notwithstanding the foregoing, no Change of Authorization Event shall occur and no Change of Authorization Notice shall be delivered to the Account Trustee where an Osler Event of Default has occurred. Where an Osler Event of Default has occurred, upon receipt by the Lenders' Agent and Lenders of all amounts owing by Osler to the Lenders' Agent and Lenders under the Lenders' Direct Agreement, the Account Trustee shall release all amounts in the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds to Project Co or as Project Co may otherwise direct from time to time.

## **8. TERMINATION**

- (a) Subject to the provisions of Section 8(b), this Insurance Trust Agreement shall remain in full force and effect and be binding in accordance with and to the extent of its terms until:
- (i) the obligations of Project Co to the Lenders' Agent and the Lenders under the Lending Agreements have been paid and performed in full and the Lenders have no further obligation to make any further advances or other credit accommodations under the Lending Agreements; and
  - (ii) the obligations of Project Co to Osler have been paid and performed in full.
- (b) The Account Trustee may terminate this Insurance Trust Agreement at any time upon sixty (60) days prior written notice to the other Parties hereto, provided that no termination of this Insurance Trust Agreement by the Account Trustee shall be effective until such time as the Lender's Agent, Osler, and Project Co have entered into a replacement insurance trust agreement on the same terms and conditions as this Insurance Trust Agreement with a replacement account trustee satisfactory to the Lenders' Agent, the Lenders and Osler.

## **9. ASSIGNMENT**

- (a) The Account Trustee shall not assign, transfer or otherwise dispose of any of its rights or obligations under this Insurance Trust Agreement without the prior written consent of the Lenders' Agent, Osler and Project Co.



**10. NOTICES**

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

If to Osler: [REDACTED]

Tel: [REDACTED]

Fax: [REDACTED]

Attn: [REDACTED]

If to Project Co: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

If to the Account Trustee: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

If to the Lenders’ Agent: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party’s failure to comply with this Section 10(b).
- (c) Any Party to this Insurance Trust Agreement may, from time to time, change any of its contact information set forth in Section 10(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party’s receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 10(e), 10(f) and 10(g):
- (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and

- (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 10.
- (f) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

## **11. AMENDMENTS**

This Insurance Trust Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Insurance Trust Agreement.

## **12. WAIVER**

- (a) No waiver made or given by a Party under or in connection with this Insurance Trust Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

## **13. RELATIONSHIP BETWEEN THE PARTIES**

The Parties are independent contractors. This Insurance Trust Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Insurance Trust Agreement, of principal and agent.

**14. ENTIRE AGREEMENT**

Except where provided otherwise in this Insurance Trust Agreement, this Insurance Trust Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Insurance Trust Agreement.

**15. SEVERABILITY**

Each provision of this Insurance Trust Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Insurance Trust Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Insurance Trust Agreement. If any such provision of this Insurance Trust Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Insurance Trust Agreement as near as possible to its original intent and effect.

**16. ENUREMENT**

This Insurance Trust Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

**17. GOVERNING LAW AND JURISDICTION**

- (a) This Insurance Trust Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Insurance Trust Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

**18. FURTHER ASSURANCE**

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Insurance Trust Agreement.

**19. LANGUAGE OF AGREEMENT**

Each Party acknowledges having requested and being satisfied that this Insurance Trust Agreement and related documents be drawn in English. Chacune des parties reconnaît

avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en declare satisfaite.

**20. COUNTERPARTS**

This Insurance Trust Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to such Party an original signed copy of this Insurance Trust Agreement which was so faxed.

*Remainder of this Page Intentionally Left Blank*

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

**WILLIAM OSLER HEALTH SYSTEM**

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

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

I/We have authority to bind the corporation.

**PLENARY HEALTH PEEL LP, [REDACTED]**

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

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

I/We have authority to bind the corporation.

**BNY TRUST COMPANY OF CANADA**

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

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

I/We have authority to bind the corporation.

**COMPUTERSHARE TRUST COMPANY OF  
CANADA**

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

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

I/We have authority to bind the corporation.

**SCHEDULE 31**

**PROJECT CO INFORMATION**

Project Co represents and warrants that the following information is true and correct as of the date of this Project Agreement:

1. Name: Plenary Health Peel LP
2. General Partners: [REDACTED]
3. Date of Formation: April 22, 2014
4. Incorporation Number of GP: [REDACTED]
5. Directors of GP:

<b>Name</b>	<b>Address</b>
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[REDACTED]

6. Officers of GP:

<b>Name</b>	<b>Address</b>	<b>Office</b>
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[REDACTED]

7. Subsidiaries: [REDACTED]

8. Partnership Interests:

<b>Name and address of Partner</b>	<b>Number and type of partnership interest held</b>
------------------------------------	---

[REDACTED]

9. Other outstanding equity securities (including description of type of securities, name and address of holder and amount):

[REDACTED]

10. Summary of any constitutional, contractual or other special voting rights, restrictions or similar matters relevant to the control of Project Co:

[REDACTED]



**SCHEDULE 32**

**FINANCIAL MODEL EXTRACTS**

**[REDACTED]**

**SCHEDULE 33  
TRUST ACCOUNT AGREEMENT**

**THIS TRUST ACCOUNT AGREEMENT** is made as of the 28<sup>th</sup> day of May, 2014.

**BETWEEN:**

**WILLIAM OSLER HEALTH SYSTEM**, a non-share capital corporation incorporated under the laws of Ontario.

(“**Osler**”)

**AND:**

**PLENARY HEALTH PEEL LP, [REDACTED]**

(“**Project Co**”)

**AND:**

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

(the “**Trustee**”)

**WHEREAS:**

- A. Osler and Project Co have entered into the Project Agreement.
- B. The Parties wish to establish a trust account for certain monies in connection with the Project.
- C. Osler is, under the Project Agreement, obligated to pay certain amounts to Project Co, including the Monthly Service Payment and any Compensation Payments.
- D. Under the Lenders’ Direct Agreement, Osler has been authorized and instructed to pay the Substantial Completion Payment to the Funding Account and all other sums payable to Project Co under the Project Agreement to the Proceeds Account.
- E. Project Co has granted to the Lenders’ Agent for the benefit of the Lenders a security interest in all of its properties, including an assignment of its rights under this Trust Account Agreement and its interest in the Trust Funds.
- F. Osler has irrevocably designated the Trust Account as the “Bank Account” under the Osler Funding and Approval Letter into which payments from MOHLTC of MOHLTC’s

share of the Monthly Service Payments, any Compensation Payments and any other amounts that may from time to time be payable by Osler to Project Co under the Project Agreement pursuant to the Osler Funding and Approval Letter will be made.

- G. The foregoing recitals are made as statements and representations of fact by Osler and Project Co, and not by the Trustee.

**NOW THEREFORE** in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

## 1. DEFINITIONS

In this Trust Account Agreement, unless the context otherwise requires:

- (a) “**Beneficiaries**” has the meaning given in Section 3(a) of this Trust Account Agreement.
- (b) “**Business Day**” has the meaning given in the Project Agreement.
- (c) “**Compensation Payment**” means any of the Osler Default Termination Sum, Adjusted Highest Qualifying Tender Price, Adjusted Estimated Fair Value, Non-Default Termination Sum, Prohibited Acts Termination Sum (as each of those terms are defined in the Project Agreement) or any other termination sum payable by Osler to Project Co pursuant to the Project Agreement.
- (d) “**Dispute Resolution Procedure**” has the meaning given in the Project Agreement.
- (e) “**Funding Account**” means [REDACTED].
- (f) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (g) “**Infrastructure Ontario**” has the meaning given in the Project Agreement.
- (h) “**Lenders**” has the meaning given in the Project Agreement.
- (i) “**Lenders’ Agent**” has the meaning given in the preamble.
- (j) “**Lenders’ Direct Agreement**” means the lenders’ direct agreement made on or about the date hereof between Osler, Project Co and the Lenders’ Agent.
- (k) “**Major Bond Rating Agency**” means any one of Dominion Bond Rating Service Limited, Standard & Poor’s Rating Group, Moody’s Canada Inc. or any of their successors.
- (l) “**MOHLTC**” has the meaning given in the Project Agreement.

- (m) “**Monthly Service Payment**” has the meaning given in the Project Agreement.
- (n) “**Non-Payment Notice**” has the meaning given in Section 4(d)(ii) of this Trust Account Agreement.
- (o) “**Osler**” has the meaning given in the preamble.
- (p) “**Osler Funding and Approval Letter**” has the meaning given in the Project Agreement.
- (q) “**Party**” means any of Osler, Project Co or the Trustee, and “**Parties**” means all of Osler, Project Co and the Trustee.
- (r) “**Payment Instruction**” means a written instruction to the Trustee from:
  - (i) Osler in accordance with Section 4(b)(i) or 4(b)(iv) and in the form attached as Appendix A hereto; or
  - (ii) Osler and Project Co in accordance with Section 4(b)(ii) or 4(b)(iii) and in the form attached as Appendix B hereto,

in each case directing the disposition of Trust Funds.

- (s) “**Permitted Investments**” means:
  - (i) demand deposits, term deposits, bankers’ acceptances or certificates of deposit of or guaranteed by any bank or other financial institution which are rated by a Major Bond Rating Agency at least AA (low) or AA-; and
  - (ii) any bonds, debentures, notes, bills of exchange, securities or other evidences of indebtedness (including specific interest and principal payments thereof) issued or guaranteed by:
    - (A) the Government of Canada; or
    - (B) any Province of Canada,

provided that such instruments are rated by a Major Bond Rating Agency at least AA (low) or AA- (as such ratings are determined as of the date hereof by Dominion Bond Rating Service Limited and Standard & Poor’s Rating Group, respectively).

- (t) “**Privacy Laws**” has the meaning given in Section 7(g) of this Trust Account Agreement.
- (u) “**Proceeds Account**” means [REDACTED].

- (v) “**Project**” has the meaning given in the Project Agreement.
- (w) “**Project Agreement**” means the project agreement made on or about the 26<sup>th</sup> day of May, 2014 between Osler and Project Co.
- (x) “**Project Co**” has the meaning given in the preamble.
- (y) “**Termination Date**” has the meaning given in the Project Agreement.
- (z) “**Trust Account**” means [REDACTED].
- (aa) “**Trust Account Agreement**” means this trust account agreement.
- (bb) “**Trust Funds**” means, as of any particular time, all monies which have been transferred, conveyed or paid to, or acquired by the Trustee pursuant to this Trust Account Agreement, including all income, earnings, profits and gains therefrom, and which at such time are held by the Trustee.
- (cc) “**Trustee**” means has the meaning given in the preamble.

## 2. INTERPRETATION

This Trust Account Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Trust Account Agreement are for convenience of reference only, shall not constitute a part of this Trust Account Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Trust Account Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Trust Account Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.

- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Trust Account Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Trust Account Agreement shall bear their natural meaning.
- (g) References containing terms such as:
  - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Trust Account Agreement taken as a whole; and
  - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (h) In construing this Trust Account Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach to the construction of this Trust Account Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Trust Account Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Trust Account Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (k) Any reference to time of day or date means the local time or date in Brampton, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed.
- (m) Whenever the terms “will” or “shall” are used in this Trust Account Agreement they shall be construed and interpreted as synonymous and to read “shall”.

### 3. DECLARATION OF TRUST

- (a) The Trustee hereby declares that it holds in trust as trustee all Trust Funds deposited in the Trust Account for the benefit of Project Co and Osler (collectively, the “**Beneficiaries**” and, individually, a “**Beneficiary**”), in accordance with and subject to the provisions of this Trust Account Agreement.
- (b) The purpose of this Trust Account Agreement is to establish the Trust Account for the benefit of the Beneficiaries and to provide for the delivery and distribution of the Trust Funds in accordance with this Trust Account Agreement.
- (c) The Trustee hereby accepts the trusts and other obligations in this Trust Account Agreement declared and provided and agrees to perform the same upon the terms and conditions herein set forth.

### 4. PURPOSE

- (a) Osler and Project Co acknowledge and agree that the Trust Account is established for the purpose of:
  - (i) receiving the monies contributed by MOHLTC which are designated, pursuant to the Osler Funding and Approval Letter, for payment of MOHLTC’s share of Monthly Service Payments, any Compensation Payment and any other amounts that may from time to time be payable by Osler to Project Co under the Project Agreement; and
  - (ii) in accordance with the related Payment Instructions, paying to the applicable payee (or as it may direct), any payment that is outstanding under the Project Agreement.
- (b) The Trustee shall not accept any Payment Instruction to distribute Trust Funds other than as follows:
  - (i) for a Monthly Service Payment to Project Co, in accordance with a Payment Instruction signed only by Osler;
  - (ii) for a Compensation Payment to Project Co, in accordance with a Payment Instruction signed by both Osler and Project Co;
  - (iii) for any other amounts that may from time to time be payable by Osler to Project Co under the Project Agreement, in accordance with a Payment Instruction signed by both Osler and Project Co; or
  - (iv) in accordance with a Payment Instruction signed only by Osler if:
    - (A) the monies are to reimburse MOHLTC for any amount over-contributed by MOHLTC in respect of MOHLTC’s share of

Monthly Service Payments, any Compensation Payment or any other amounts that may from time to time be payable by Osler to Project Co under the Project Agreement;

- (B) the monies are to reimburse Osler for any monies expended by Osler in respect of which Osler at that time has a right of set-off or is entitled to reimbursement under the Project Agreement; or
- (C) the monies are to pay to Osler interest earned in accordance with Section 8(b),

and Osler certifies as to (A) and/or (B), as applicable. A Payment Instruction given by Osler pursuant to this 4(b)(iv) shall be addressed to Project Co and the Lenders' Agent as well as the Trustee.

- (c) The Trustee shall deliver a copy of any Payment Instruction signed only by Osler under Section 4(b)(iv) to Project Co and the Lenders' Agent forthwith upon receipt and, in any event, not less than five (5) Business Days before the Trustee distributes any Trust Funds pursuant to such Payment Instruction. At any time prior to the distribution of Trust Funds by the Trustee pursuant to the aforementioned Payment Instruction, Project Co may deliver to the Trustee an objection to the distribution of such Trust Funds.
- (d) Project Co agrees that the basis of an objection is limited to:
  - (i) that the Payment Instruction is not for any of the purposes set out in Sections 4(b)(iv)(A), 4(b)(iv)(B) or 4(b)(iv)(C) in whole or in part; or
  - (ii) that Osler is, at the time, in default of any of its payment obligations under the Project Agreement and Project Co has issued a notice of non-payment to Osler under Section 43.1(a) of the Project Agreement (the “**Non-Payment Notice**”).
- (e) Project Co shall state in its objection the amount under the Payment Instruction that is disputed which, in the case of 4(d)(ii) above shall not exceed the amount set out in the Non-Payment Notice. The Trustee shall not distribute any disputed Trust Funds until any disputed Payment Instruction has been resolved in accordance with Section 4(g).
- (f) Where the objection is only in respect to a portion of the amount under a Payment Instruction or where the amount under the Non-Payment Notice is less than the amount under the Payment Instruction, the objection of Project Co shall state the amount under the Payment Instruction that is not disputed and the undisputed portion of the amount under the Payment Instruction may be distributed by the Trustee.



- (g) Where Project Co objects to a Payment Instruction signed only by Osler, such dispute shall be resolved in accordance with the Dispute Resolution Procedure and, to the extent that such resolution confirms the entitlement of Osler to a withdrawal of disputed Trust Funds, the Trustee shall distribute such Trust Funds pursuant to a supplementary Payment Instruction signed only by Osler.

**5. PAYMENT OF TRUST PROPERTY**

- (a) Subject to Sections 4(c) to 4(g), the Trustee will comply with Payment Instructions from Osler under Sections 4(b)(i) and 4(b)(iv) and from Osler and Project Co under Sections 4(b)(ii) and 4(b)(iii) from time to time given to the Trustee. Osler and Project Co agree that all Payment Instructions shall be consistent with the Project Agreement.
- (b) The Trustee will have the power to incur and make payment of any charges or expenses which in the reasonable opinion of the Trustee are necessary or incidental to or proper for carrying out any of the purposes of this Trust Account Agreement and the administration of the Trust Account.
- (c) The Trustee will be entitled to be paid by Project Co, in default of which the Trustee is entitled to be paid from the Trust Funds, without any requirement of a passing of accounts in respect thereof or approval of any Beneficiary, such fees as the Trustee, Osler and Project Co may agree to from time to time for its services hereunder and all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration and execution of this Trust Account Agreement until all the duties of the Trustee shall be finally and fully performed, except any such expense, disbursement or advance as may arise from or in connection with the dishonesty, bad faith, wilful misconduct, fraud, negligence or reckless disregard of any duty or the failure to comply with the standard of care referred to in Section 7(a) by the Trustee, its officers, employees or agents. All such amounts will be payable at such times as the Trustee, Osler and Project Co may agree from time to time. Any amount not paid when due shall bear interest at a rate per annum equal to the rate designated by the Trustee as the then current rate charged by the Trustee or its successors from time to time to its corporate customers, payable on demand. After default, all amounts so payable and the interest thereon shall be payable out of any funds coming into the possession of the Trustee or its successors in the trusts hereunder in priority to any payments to Beneficiaries. Project Co agrees with Osler that any amount not paid by Project Co to the Trustee in accordance with the foregoing and which the Trustee has satisfied by payment out of the Trust Funds may be set-off by Osler against any amounts that may from time to time be payable by Osler to Project Co under the Project Agreement. This Section 5(c) shall survive the termination of this Trust Account Agreement or the resignation or removal of the Trustee.
- (d) Payment Instructions purporting to be given to the Trustee under this Trust Account Agreement will, subject to Sections 4(c) to 4(g), be conclusive authority

for the Trustee to act in accordance with that Payment Instruction. The Trustee is not obliged or required to monitor any requirements or obligations of Osler or any other person pursuant to this Trust Account Agreement or any other agreement and has no duty to question any Payment Instruction provided to the Trustee. Subject to Sections 4(c) to 4(g), each of Project Co and Osler authorizes the Trustee to act on any such Payment Instruction and waives any claim or action against the Trustee in connection therewith.

## 6. REPLACEMENT OF TRUSTEE

- (a) If the Trustee desires to resign and be discharged from the trusts and powers reposed in or conferred on it by this Trust Account Agreement, it shall provide not less than 60 days prior notice in writing thereof, or such lesser notice as Osler and Project Co may accept. Osler and Project Co may, by instrument in writing, jointly appoint a successor trustee that is acceptable to replace the Trustee. If Osler and Project Co fail to appoint a successor trustee within a reasonable period of time, then application will be made by the Trustee to a Justice of the Ontario Superior Court of Justice at Brampton for appointment of a successor trustee hereunder. The resignation of the Trustee shall not be effective until the appointment of its successor in accordance with the provisions of this Section 6(a). The expense of any act, document, deed or other instrument or thing required under this Section 6(a) will be satisfied from the Trust Funds.
- (b) The term of office of the Trustee will automatically terminate and a vacancy will occur in the event of the bankruptcy or insolvency of the Trustee or inability of the Trustee to exercise its duties under this Trust Account Agreement. No vacancy shall operate to annul this Trust Account Agreement. If a vacancy occurs in the office of the Trustee for any reason, Osler and Project Co may, by instrument in writing, jointly appoint a trustee to replace the Trustee. If Osler and Project Co fail to make such appointment, then an application will be made to a Justice of the Ontario Superior Court of Justice at Brampton for appointment of a successor trustee hereunder. Such application will be made by the Trustee or, if the Trustee elects not to do so, by Osler and Project Co. The expense of any act, document, deed or other instrument or thing required under this Section 6(b) will be satisfied from the Trust Funds.

## 7. STANDARD OF CARE, LIMITATION OF LIABILITY OF TRUSTEE AND OTHER MATTERS

- (a) The Trustee will exercise its powers and carry out its obligations hereunder as trustee honestly, in good faith and in the best interests of the Beneficiaries and in connection therewith will exercise that degree of care, diligence, and skill that a reasonable and prudent professional trustee would exercise in comparable circumstances. Unless otherwise required by law, the Trustee will not be required to give a bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The duties, responsibilities and obligations of the

Trustee shall be limited to those expressly set forth herein and no duties, responsibilities or obligations shall be inferred or implied. The Trustee shall not be subject to, nor required to comply with, any other agreement between or among any or all of the Parties hereto, even though reference thereto may be made herein, or to comply with any direction or instruction other than those contained herein or delivered in accordance herewith. The Trustee shall not be required to, and shall not, expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

- (b) The Trustee will not be subject to any liability whatsoever, in tort, contract or otherwise, in connection with the Trust Funds, to the Beneficiaries, or to any other person, for any action taken or permitted by it to be taken or for its failure to take any action including, without limitation, the failure to compel in any way any former or acting trustee to redress any breach of trust in respect of the execution of the duties of its office or in respect of the Trust Funds, provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with dishonesty, bad faith, wilful misconduct, fraud, negligence or reckless disregard of a duty by the Trustee. The Trustee, in doing anything or permitting anything to be done in respect of the execution of the duties of its office or in respect of the Trust Funds, is and will be conclusively deemed to be acting as trustee of the Trust and not in any other capacity. Except to the extent provided in this Section 7(b), the Trustee will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust Account, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Trust Funds or the Trust activities and resort will be had solely to the Trust Funds for the payment or performance thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution, or other enforcement procedure with regard to any obligation under this Trust Account Agreement.
- (c) Subject as hereinafter specifically provided, the Trustee, its officers, directors, employees and agents, will at all times be indemnified and saved harmless by Project Co, in default of which the Trustee is entitled to be paid out of the Trust Funds, without any requirement of a passing of accounts in respect thereof or the approval of any Beneficiary, from and against all claims, demands, losses, actions, causes of action, costs, charges, expenses, damages and liabilities whatsoever, including without limitation, arising out of or related to actions taken or omitted to be taken by any agent appointed hereunder, reasonable legal fees and disbursements on a substantial indemnity basis and costs and expenses incurred in connection with the enforcement of this indemnity, which the Trustee may suffer or incur, whether at law or in equity, in any way caused by or arising, directly or indirectly, in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of its duties as the Trustee or which it sustains or incurs in or about or in relation to

the Trust Funds. Further, the Trustee will not be liable to any Beneficiary or to any other person for any loss or damage relating to any matter regarding the Trust Account, including any loss or diminution in the value of the Trust Funds. The foregoing provisions of this Section 7(c) do not apply to the extent that in any circumstances there has been dishonesty, bad faith, wilful misconduct, fraud, negligence or reckless disregard of a duty by the Trustee or its employees or agents engaged by the Trustee in the performance of its duties or obligations hereunder. Notwithstanding any other provision hereof, this indemnity shall survive the removal or resignation of the Trustee and termination of any trust created hereby. Project Co agrees with Osler that any amount not paid by Project Co to the Trustee in accordance with the foregoing and which the Trustee has satisfied by payment out of the Trust Funds may be set-off by Osler against any amounts that may from time to time be payable by Osler to Project Co under the Project Agreement.

- (d) The Trustee may exercise its powers and perform its duties by or through such attorneys, representatives, agents and employees as it shall appoint; and may consult with counsel, accountants and other skilled persons selected and employed or retained by it, and the Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the written advice of such counsel, accountants or other skilled persons (provided that such advice pertains to such matters as the Trustee may reasonably presume to be within the scope of such person's area of competency) and not contrary to any express provision in this Trust Account Agreement.
- (e) The Trustee may rely and act upon any statement, report or opinion prepared by or any advice received from Osler and Project Co, and shall not be responsible or held liable for any loss resulting from so relying or acting if the Trustee acted reasonably in relying thereon.
- (f) The Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Trustee, in its sole judgment, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Trustee, in its sole judgment, determine at any time that its acting under this Trust Account Agreement has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign on 10 days' written notice to Project Co and Osler, or any shorter period of time as agreed to by Project Co and Osler, notwithstanding the provisions of Section 6(a) of this Trust Account Agreement, provided that (i) the Trustee's written notice shall describe the circumstances of such non-compliance; and (ii) if such circumstances are rectified to the Trustee's satisfaction within such 10 day period, then such resignation shall not be effective.

- (g) The Parties acknowledge that federal and/or provincial legislation that addresses the protection of individuals' personal information (collectively, "**Privacy Laws**") may apply to obligations and activities under this Trust Account Agreement. Despite any other provision of this Trust Account Agreement, no Party shall take or direct any action that would contravene, or cause the other to contravene, applicable Privacy Laws. Project Co and Osler shall, prior to transferring or causing to be transferred personal information to the Trustee, obtain and retain required consents of the relevant individuals to the collection, use and disclosure of their personal information, or shall have determined that such consents either have previously been given upon which the Parties can rely or are not required under the Privacy Laws. The Trustee shall use commercially reasonable efforts to ensure that its services hereunder comply with Privacy Laws. Specifically, the Trustee agrees: (a) to have a designated chief privacy officer; (b) to maintain policies and procedures to protect personal information and to receive and respond to any privacy complaint or inquiry; (c) to use personal information solely for the purposes of providing its services under or ancillary to this Trust Account Agreement and not to use it for any other purpose except with the consent of or direction from Project Co or Osler or the individual involved; (d) not to sell or otherwise improperly disclose personal information to any third party; and (e) to employ administrative, physical and technological safeguards to reasonably secure and protect personal information against loss, theft, or unauthorized access, use or modification.
- (h) Subject to Section 7(c), the Beneficiaries will not be held to have any personal liability as such, and no resort will be had to their private property for satisfaction of any obligation or claim arising out of or in connection with any contract or obligation in respect of which the Beneficiaries would otherwise have to indemnify the Trustee for any liability incurred by the Trustee as such, but rather the Trust Funds only will be subject to levy or execution for such satisfaction.
- (i) Any written instrument creating an obligation of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as the Trustee. Any written instrument creating an obligation of the Trustee will contain a provision to the effect that the obligations thereunder are not binding upon the Trustee except in its capacity as the Trustee, nor will resort be had to the property of the Trustee except in its capacity as the Trustee, but that the Trust Funds or a specific portion thereof only will be bound, and may contain any further provisions which the Trustee may deem appropriate, but the omission of any such provision will not operate to impose liability on the Trustee except as aforesaid.
- (j) If at any time the Trustee is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Trust Funds (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Trust Funds), the Trustee is authorized to comply therewith in any manner as it or its legal counsel of its own choosing deems appropriate. The

Trustee shall in no way be bound to call for further evidence (whether as to due execution, validity or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so. If the Trustee complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, the Trustee shall not be liable to any of the Parties hereto or to any other person or entity even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

- (k) The Trustee shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Trustee (including but not limited to any act or provision of any present or future law or regulation or governmental authority, any act of God or war, or the unavailability of any wire or communication facility).
- (l) Each of Osler and Project Co shall provide to the Trustee an incumbency certificate setting out the names and sample signatures of persons authorized to give instructions to the Trustee hereunder. The Trustee shall be entitled to rely on such certificate until a revised certificate is provided to it hereunder. The Trustee shall be entitled to refuse to act upon any instructions given by a party which are signed by any person other than a person described in the incumbency certificate provided to it pursuant to this section.
- (m) The Trustee agrees to provide prompt written notice of all payments to or withdrawals from the Trust Funds and any amendments to this Trust Account Agreement to each of the Parties hereto and Infrastructure Ontario and MOHLTC.

## 8. RECORDS AND OTHER MATTERS

- (a) The Trustee will keep or cause to be kept at Toronto, Ontario or at such other place in Canada designated by it proper records and books of account as are by law or good business practice necessary. Such books and records will be available for inspection by either Beneficiary upon reasonable notice during the normal business hours of the Trustee.
- (b) Any monies held by the Trustee may be invested and reinvested in the name or under the control of the Trustee in Permitted Investments, on the written direction of Osler. Pending such investment, such monies may be placed by the Trustee on deposit in any chartered bank in Canada against demand deposit certificates or with its own deposit department. No Party shall be responsible for ensuring the rate of return, if any, on the Permitted Investments. The Trustee shall have no responsibility or liability for any diminution of the funds invested which may result from any investment made in accordance with this Section 8(b). All interest (and interest on interest) earned shall be the property of Osler.

**9. TERMINATION OF THIS AGREEMENT**

This Trust Account Agreement will continue in full force and effect from the date hereof until the Termination Date and thereafter for so long as any Trust Funds remain with the Trustee unless earlier terminated by joint written direction of the Beneficiaries.

**10. ASSIGNMENT**

The Trustee shall not assign, transfer or otherwise dispose of any of its rights or obligations under this Trust Account Agreement without the prior written consent of Osler and Project Co.

**11. NOTICES**

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

If to Osler: [REDACTED]

Fax: [REDACTED]

Attn: [REDACTED]

If to Project Co: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

If to the Trustee: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

(b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party’s failure to comply with this Section 11(b).

(c) Any Party to this Trust Account Agreement may, from time to time, change any of its contact information set forth in Section 11(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party’s receipt of such notice unless a later effective date is given in such notice.

- (d) Subject to Sections 11(e), 11(f) and 11(g):
  - (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 11.
- (f) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (g) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

## 12. AMENDMENTS

This Trust Account Agreement may not be varied, amended or supplemented except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement or other modification, as the case may be, to this Trust Account Agreement.

## 13. WAIVER

- (a) No waiver made or given by a Party under or in connection with this Trust Account Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies.



The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

**14. RELATIONSHIP BETWEEN THE PARTIES**

The Parties are independent contractors. This Trust Account Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Trust Account Agreement, of principal and agent.

**15. ENTIRE AGREEMENT**

Except where provided otherwise in this Trust Account Agreement, this Trust Account Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Trust Account Agreement.

**16. SEVERABILITY**

Each provision of this Trust Account Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Trust Account Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Trust Account Agreement. If any such provision of this Trust Account Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Trust Account Agreement as near as possible to its original intent and effect.

**17. ENUREMENT**

This Trust Account Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

**18. GOVERNING LAW AND JURISDICTION**

- (a) This Trust Account Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and

settle any action, suit, proceeding or dispute in connection with this Trust Account Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

**19. FURTHER ASSURANCE**

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Trust Account Agreement.

**20. LANGUAGE OF AGREEMENT**

Each Party acknowledges having requested and being satisfied that this Trust Account Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en declare satisfaite.

**21. COUNTERPARTS**

This Trust Account Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original or faxed form provided that any Party providing its signature in faxed form shall promptly forward to such Party an original signed copy of this Trust Account Agreement which was so faxed.

**22. COSTS**

Each of Project Co and Osler shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Trust Account Agreement. Project Co shall be responsible for paying the Trustee's costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Trust Account Agreement.

*Remainder of this Page Intentionally Left Blank*

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

**WILLIAM OSLER HEALTH SYSTEM**

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

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

I/We have authority to bind the corporation.

**PLENARY HEALTH PEEL LP [REDACTED]**

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

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

I/We have authority to bind the corporation.

**COMPUTERSHARE TRUST COMPANY OF  
CANADA**

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

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

I/We have authority to bind the corporation.

**APPENDIX A**

**FORM OF PAYMENT INSTRUCTION BY OSLER ONLY**

Computershare Trust Company of Canada  
100 University Avenue, 11<sup>th</sup> Floor  
Toronto, Ontario M5J 2Y1

Dear Sir or Madam,

**Re: Instruction for Payment**

We refer to the Trust Account Agreement made as of May 28, 2014 (the “**Trust Account Agreement**”), between William Osler Health System, Plenary Health Peel LP and Computershare Trust Company of Canada.

In accordance with Section 4(b)(i) or 4(b)(iv) of the Trust Account Agreement, this letter constitutes a Payment Instruction with respect to the payment of Trust Funds by the Trustee. **OR** In accordance with Section 4(g) of the Trust Account Agreement, this letter constitutes a supplementary Payment Instruction with respect to the payment of Trust Funds by the Trustee.

Please transfer the sum of \$[•] to [•] for credit to Account No. [•] maintained in the name [•].

**[Where the Payment Instruction is signed by Osler pursuant to Section 4(b)(i) or 4(b)(iv), Osler must also certify that the monies are being drawn as permitted by Section 4(b)(i) or 4(b)(iv), as applicable, and the Payment Instruction must also be addressed to each of Project Co and Lenders’ Agent.]**

**WILLIAM OSLER HEALTH SYSTEM**

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

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

I/We have authority to bind the corporation.

**APPENDIX B**

**FORM OF PAYMENT INSTRUCTION BY OSLER AND PROJECT CO**

Computershare Trust Company of Canada  
100 University Avenue, 11<sup>th</sup> Floor  
Toronto, Ontario M5J 2Y1

Dear Sir or Madam,

**Re: Instruction for Payment**

We refer to the Trust Account Agreement made as of May 28, 2014 (the “**Trust Account Agreement**”), between William Osler Health System, Plenary Health Peel LP and Computershare Trust Company of Canada.

In accordance with Section 4(b)(ii) or 4(b)(iii) of the Trust Account Agreement, this letter constitutes a Payment Instruction with respect to the payment of Trust Funds by the Trustee.

Please transfer the sum of \$[•] to [•] for credit to Account No. [•] maintained in the name [•].

**WILLIAM OSLER HEALTH SYSTEM**

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

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

I/We have authority to bind the corporation.

**PLENARY HEALTH PEEL LP, [REDACTED]**

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

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

I/We have authority to bind the corporation.

**SCHEDULE 34**

**WORKS REPORT REQUIREMENTS**

1. The Works Report shall include the following:
  - (a) an executive summary;
  - (b) design status;
  - (c) Works Schedule summary, including:
    - (i) permits;
    - (ii) construction progress;
    - (iii) progress photos;
    - (iv) construction milestones; and
    - (v) submissions schedule;
  - (d) contractual outstanding decisions;
  - (e) LEED status;
  - (f) quality assurance and quality control;
  - (g) organization / staffing changes and additions for Project Co and Construction Contractor;
  - (h) health and safety, including:
    - (i) lost time injuries; and
    - (ii) accidents with no lost time;
  - (i) Subcontract status, including:
    - (i) consultants;
    - (ii) Subcontracts awarded;
    - (iii) tenders;
    - (iv) shop drawing submittals status; and



- (v) labour report (average workforce);
- (j) financial status, including:
  - (i) progress and Variations;
  - (ii) insurance summary;
  - (iii) Construction Contractor default status; and
  - (iv) cash flow projection (capital cost components);
- (k) risk management, including:
  - (i) claims;
  - (ii) liens;
  - (iii) environmental issues;
  - (iv) labour;
  - (v) market conditions;
  - (vi) outstanding disputes;
  - (vii) operational risks;
  - (viii) other risks;
- (l) Cash Allowances, including:
  - (i) cash allowance financials (in the Project Agreement);
  - (ii) total contract cash allowance;
  - (iii) cash allowance approved to date;
  - (iv) cash allowance remaining; and
  - (v) potential cash allowance quotes under review;
- (m) Equipment delivery dates; and
- (n) commissioning, occupancy and completion.

**SCHEDULE 35**

**INTENTIONALLY DELETED**

## SCHEDULE 36

## ENERGY MATTERS

## 1. DEFINITIONS

- 1.1 “**Actual Consumption**” means the actual consumption of all Energy at the Facility as invoiced by the relevant utility companies for each Energy Year.
- 1.2 “**Adjusted Annual Energy Target**” means the Annual Energy Target derived from the Aggregate Energy Model after adjusting pursuant to Sections 2.3 and 2.4 and adjusting for metered End User Load consumption for the respective Energy Year in accordance with this Schedule 36.
- 1.3 “**Adjusted Discrete Annual Energy Target**” means the Discrete Energy Target derived from the Aggregate Energy Model after adjusting pursuant to Sections 2.3 and 2.4 and adjusting for metered End User Load consumption for the respective Energy Year in accordance with this Schedule 36.
- 1.4 “**Aggregate Energy Model**” or “**AEM**” means the energy model submitted by Project Co pursuant to the Request for Proposals as referred to in Section 1.2(c) of Attachment A of Part 1 of Schedule 3 to the Request for Proposals as adjusted pursuant to the Final Energy Target Letter and as may be adjusted pursuant to this Schedule 36 from time to time.
- 1.5 “**Annual Energy Target**” or “**AET**” means the consumption of Energy in any Energy Year in respect of the Facility Load, the Secondary Facility Load and the End User Load.
- 1.6 “**Annual Review Date**” means each anniversary of the end of the Initial Period.
- 1.7 “**Annual Review Meeting**” has the meaning set out in Section 8.4.
- 1.8 “**Average Unit Cost**” means the average cost to Osler of each Unit of Energy purchased by Osler during the relevant Energy Year, calculated in accordance with Section 5 of this Schedule 36.
- 1.9 “**Contract Month**” has the meaning given in Schedule 20 – Payment Mechanism.
- 1.10 “**Contract Year**” has the meaning given in the Project Agreement.
- 1.11 “**Discrete Energy Service Actual Consumption**” means the actual consumption of an individual Energy Service at the Facility as invoiced by the relevant utility company for each Energy Year.
- 1.12 “**Discrete Energy Target(s)**” or “**DET**” means the consumption of an individual Energy Service in any Energy Year in respect of the Facility Load, the Secondary Facility Load and the End User Load.

- 1.13 “**End User Equipment Ratio**” means the ratio of the increases or decreases in gains or reductions of the Facility Load to the corresponding End User Load consumption which caused the increase or decrease in the Facility Load as determined pursuant to Section 2.4(c).
- 1.14 “**End User Load**” means the metered provision of Energy other than Facility Load and Secondary Facility Load as defined in this Schedule 36 including, but not limited to, any receptacle loads, central computer servers, autoclave steam, specialized medical equipment, communications and IT equipment and any built-in audio visual systems provided by Osler and not by Project Co.
- 1.15 “**Energy**” means energy/power including electricity, natural gas, oil and any other energy source used at the Facility measured at the utility connection.
- 1.16 “**Energy Analysis Report**” is described in Section 8.8 of this Schedule 36.
- 1.17 “**Energy Models**” means the Forecast Energy Model, the Reference Building Energy Model and the Aggregate Energy Model.
- 1.18 “**Energy Service**” means any metered provision of Energy in respect of the Facility Load, the Secondary Facility Load and the End User Load at the utility connection.
- 1.19 “**Energy Year**” means the period of 12 months beginning on the day after the expiry of the Initial Period and ending on the first Annual Review Date and each subsequent period of 12 months beginning on the day after an Annual Review Date.
- 1.20 “**Final Energy Target Letter**” means the letter submitted by Project Co to Osler pursuant to Schedule 2 to the Project Agreement.
- 1.21 “**Facility Load**” means provision of Energy at the utility for the base building systems and equipment designed, provided, maintained and lifecycled by Project Co for the basic function of the Facility, and for which consumption is directly or indirectly their responsibility. Such uses include, but are not limited to, humidification, space cooling, dehumidification, space heating, ventilation loads, fans, lighting, HVAC pumping, HVAC equipment, domestic water pumping, domestic water heating, general (non-task) lighting, security systems, IT server room cooling and controls, vertical transportation systems, security systems, and built-in AV systems provided, and in the case of the AV systems solely used, by Project Co and not by Osler.
- 1.22 “**Forecast Energy Model**” or “**FEM**” means the energy model submitted by Project Co pursuant to the Request for Proposals as referred to in Section 1.2(a) of Attachment A of Part 1 of Schedule 3 to the Request for Proposals.
- 1.23 “**Gainshare Adjustment**” means the adjustment calculated in accordance this Schedule 36.

- 1.24 “**High Cost Measures**” means, in respect of an Energy Year, energy saving measures that incur capital expenditure with a Simple Payback of greater than 36 months.
- 1.25 “**Initial Period**” means the period beginning on the first day of the first full calendar month immediately after the Substantial Completion Date and ending two (2) years thereafter.
- 1.26 “**Low Cost Measures**” means in respect of an Energy Year, energy saving measures that incur capital expenditure with a simple payback less than 36 months and are considered to be revenue items as opposed to capital investment items.
- 1.27 “**Monthly Energy Report**” shall have the meaning given to it in Section 4.1 of Appendix B of this Schedule 36.
- 1.28 “**No Cost Measures**” means Energy savings measures, including those related to good house-keeping, involving no material additional expenditure and/or no capital expenditure to carry out.
- 1.29 “**Painshare Adjustment**” means the adjustment calculated in accordance with this Schedule 36.
- 1.30 “**Reference Building Energy Model**” means the energy model submitted by Project Co pursuant to the Request for Proposals as referred to in Section 1.2(b) of Attachment A of Part 1 of Schedule 3 to the Request for Proposals.
- 1.31 “**Secondary Facility Load**” means the provision of Energy at the utility for base building loads that is in response to and entirely dependent on the End User Loads. The Secondary Facility Load is included in the Adjusted Energy Targets and is a product of the End User Equipment Ratios and End User Loads.
- 1.32 “**Simple Payback**” means the number of years after which an investment will have paid for itself. Simple Payback is calculated by dividing the initial cost of the retrofit by the energy cost savings. Those projects with the shortest paybacks are assumed to be the most cost effective. Simple Payback = initial cost of energy retrofit / energy savings.
- 1.33 “**Unit of Energy**” means one GigaJoule (GJ).
- 1.34 “**Utilities Management Subcommittee**” has the meaning set out in Section 2.3 of Appendix B of this Schedule 36.
- 1.35 “**Weather Data**” means meteorological data as reported by Environment Canada and provide in format CTMY2 for the location Pearson Airport, Toronto, Ontario.

**2. CALCULATION OF ANNUAL ENERGY TARGET**

2.1 Purpose

- (a) The Annual Energy Target and the Discrete Energy Target(s) shall be established from time to time in respect of the entire Facility pursuant to Section 2.3. The Adjusted Annual Energy Target and the Adjusted Discrete Annual Energy Target upon which any painshare or gainshare calculations are made shall be based upon subtracting metered End User Load consumption and making any adjustments pursuant to Sections 2.3 and 2.4 for the respective Energy Year.

2.2 Annual Energy Target

- (a) The initial Annual Energy Target and the initial Discrete Energy Target(s) are as set out in the Final Energy Target Letter.
- (b) At the end of the first year of the Initial Period, Project Co shall appoint a third party auditor to assess the Facility's Energy performance relative to the Energy Models. Project Co shall take corrective action to improve the energy performance of the Facility, if so required, to ensure that the Annual Energy Target and the Discrete Energy Target(s) as outlined in the Aggregate Energy Model are met.
- (c) The Annual Energy Target and the Discrete Energy Target(s) shall be adjusted in accordance with this Schedule 36.

2.3 Program or Variation Adjustments to the Annual Energy Target

- (a) At any time commencing after the first anniversary of the Substantial Completion Date, either Project Co or Osler may request an energy audit as contemplated in Section 2.3(c), and Project Co and Osler shall, acting reasonably, agree to make any adjustments to the Annual Energy Target and the Discrete Energy Target(s) only in the event of:
  - (i) changes implemented in accordance with the Project Agreement that would cause Facility Load and/or Secondary Facility Load changes or other changes in Energy usage; or
  - (ii) changes in the utilization of the Facility from that described in the Project Agreement, but not including changes in End User Load consumption.
- (b) Pursuant to Section 2.3(a), Project Co may elect to propose a correction to the Annual Energy Target and the Discrete Energy Target(s).
- (c) The Party requesting an amendment to the Annual Energy Target and the Discrete Energy Target(s) as a result of either Section 2.3(a) or (b) shall appoint, subject to

the other Party's approval (acting reasonably) and pay for a complete energy audit to be conducted by a third party auditor. The energy audit shall include a detailed computer simulation of Energy use by function and a comprehensive evaluation of Energy use patterns. The energy auditor shall prepare a report making a recommendation regarding amendments to the Annual Energy Target and Discrete Energy Target(s). Both Osler and Project Co shall have twenty (20) days following receipt of such report to agree to the amended Annual Energy Target and Discrete Energy Target(s). If there is no agreement within a further ten (10) day period, then either Party may refer the matter to the Dispute Resolution Procedure.

#### 2.4 Annual Adjustments to the Annual Energy Target

- (a) By no later than thirty (30) days after the Energy Year, Project Co shall provide to Osler a certificate showing the Actual Consumption and the Discrete Energy Service Actual Consumption in each calendar month during the Energy Year expressed as a number of Units of Energy and measured in accordance with Section 8.
- (b) Project Co and Osler shall obtain the Weather Data from Environment Canada. Project Co and Osler shall then adjust the Aggregate Energy Model by revising the following input data:
  - (i) the only inputs to be adjusted in Weather Data shall be dry bulb temperature and dew point temperature. Hourly values for each Energy Year shall be obtained for weather station Pearson Airport, Ontario from Environment Canada. To adjust the weather file, start with the Energy Plus weather file for the same location as specified for Weather Data (.epw extension). Convert this file to a .csv file and import into Excel. Adjust the Dry Bulb Temperature and Dew Point Temperature as per the Environment Canada weather data and save. Convert this file back to .epw. Use the program eQ\_WthProc (available from [www.doe2.com](http://www.doe2.com)) to convert the new .epw file into a .bin file for use with the model.
- (c) The End User Equipment Ratios shall be calculated and agreed upon between Project Co and Osler at the end of the first year of the Initial Period. The End User Equipment Ratio will be equal to the average ratio of the sum of increases or decreases in gains or reduction of the Facility Loads that are solely attributable to the increases or decreases in the End User Load Consumption to the corresponding sum of the metered End User Loads or based on the manufacturer's data, as the case may be. The End User Equipment Ratios are used to ensure that any internal gains or reduction resulting from the change in End User Load consumption are adequately represented. If manufacturer's data is not available for specific pieces of such equipment, a ratio will be chosen and agreed upon between Project Co and Osler for such equipment. The product of the End User Equipment Ratios with their corresponding metered End User Load, will be

entered into the Aggregate Energy Model, as Secondary Facility Load, so that the internal gains or losses associated with the equipment installed in the Facility that is used exclusively by Osler are appropriately captured in the Annual Energy Target. When equipment is added to or removed from the Facility, the End User Equipment Ratios may be adjusted, on an annual basis following the Initial Period upon the written consent of both Osler and Project Co, to account for the changes in equipment. The Parties acknowledge that internal gains may increase or decrease through these changes, depending on the specific changes to the End User Load. Project Co shall provide metering such that End User Loads are on separate meters from other Facility Loads. Project Co and Osler shall then adjust the Annual Energy Target accordingly.

- (d) Project Co shall provide Osler with the End User Load Energy consumption from the metered data. If the End User Load consumption as per the metered data provided by Project Co increases or decreases from the assumed values for such consumption in the Aggregate Energy Model for a given Energy Year, then the new End User Load consumption shall be entered into and shall adjust the Annual Energy Target. This adjustment shall also include the adjustment to the Secondary Facility Load.
- (e) Any other modifications to the Aggregate Energy Model are subject to the procedure outlined in Section 2.3(c) of this Schedule 36.
- (f) Osler may, in its Sole Discretion, appoint an auditor to audit Project Co's adjustments (including all input data) in accordance with Section 2.3(c), above. If the audit concludes that Project Co has overestimated the adjustments the Aggregate Energy Model, then Project Co shall reimburse Osler for its costs incurred in respect of the audit.

2.5 Any amendment to the Annual Energy Target and the Discrete Energy Target(s) shall only affect the Monthly Service Payment (as a result of any Painshare Adjustments or Gainshare Adjustments) from the date on which the amendment is effective and shall not, for greater certainty, have a retrospective effect on any other previous Monthly Service Payments.

### **3. COMPARING ACTUAL CONSUMPTION OF ENERGY WITH TARGET**

#### **3.1 Comparing Annual Energy Target**

- (a) After the acceptance of the Energy Analysis Report as described in Section 8.7 for each Energy Year, the Discrete Energy Service Actual Consumption for each Energy Service shall be compared to the Adjusted Discrete Annual Energy Target for each Energy Service, and:



- (i) if the Discrete Energy Service Actual Consumption in respect of any discrete Energy Service is greater than [REDACTED]% of the Adjusted Discrete Annual Energy Target in respect of such Energy Service then Project Co shall calculate the Painshare Adjustment set out in Section 4.1(b) and credit Osler’s Monthly Service Payments accordingly in accordance with Schedule 20 - Payment Mechanism; or

Illustration

[REDACTED]

- (ii) if the Discrete Energy Service Actual Consumption in respect of any Energy Service is less than [REDACTED]% of the Adjusted Discrete Annual Energy Target in respect of such Energy Service, then Project Co shall calculate the Gainshare Adjustment set out in Section 4.1(b).

Illustration

[REDACTED]

- (b) If Project Co is subject to a Painshare Adjustment with respect to an Energy Year, then Project Co shall submit a detailed remediation plan to Osler within fourteen (14) days of the calculation of the Painshare Adjustment to explain how it will reduce the relevant Discrete Energy Service Actual Consumption such that it will not exceed the [REDACTED]% threshold established in Section 3.1(a)(i), above, for the subsequent Energy Year. If Project Co is not successful in its remediation plan such that the Painshare Adjustment in Section 3.1(a)(i) is applied with respect to such Discrete Energy Service Actual Consumption for such Energy Year, then the Painshare Adjustment set out in Section 4.1(b) will apply.

**4. CALCULATION OF GAINSHARE ADJUSTMENT OR PAINSHARE ADJUSTMENT**

- 4.1 The formulae to calculate the Gainshare Adjustment and the Painshare Adjustment for each Energy Service are:

[REDACTED]

**5. CALCULATION OF AVERAGE UNIT COST**

- 5.1 The Average Unit Cost shall be calculated in accordance with the following formula:

[REDACTED]

## 6. APPLICATION OF GAINSHARE OR PAINSHARE ADJUSTMENT

- 6.1 Where it is established in accordance with Sections 2, 3 and 4 that a Gainshare Adjustment or a Painshare Adjustment arises pursuant to Sections 3 and 4, the relevant net adjustment shall be given effect by way of (in the case of a Gainshare Adjustment) an increase to a Monthly Service Payment equal to the amount of the Gainshare Adjustment or (in the case of a Painshare Adjustment) by way of a decrease to a Monthly Service Payment equal to the amount of the Painshare Adjustment. In each case the relevant Monthly Service Payment to be adjusted shall be that which is due in respect of the Contract Month in which it is established that the relevant adjustment is required. In the event that a relevant adjustment arises in respect of the final Contract Year, the adjustment shall be made to the final Monthly Service Payment.
- 6.2 The making of any Gainshare Adjustment or Painshare Adjustment shall not affect the Annual Service Payment for the purposes of the application of Escalation Factor to the Project Agreement.
- 6.3 The Parties confirm that the Financial Model contains no provision for the cost of purchasing Energy.

## 7. SUPPLY OF ENERGY

- 7.1 Osler shall from time to time as required enter into contracts with Energy suppliers for the supply of Energy to the Facility and shall be responsible for all payments due pursuant to such supply contracts.
- 7.2 The Parties agree that it is important to maintain an appropriate balance between (i) on the one hand, ensuring the efficient use of Energy and minimizing the level of emissions of greenhouse gases and harmful substances caused by the use of Energy (regardless of where the Energy is generated) and (ii) on the other hand, minimizing the monetary cost of Energy usage.
- 7.3 Subject to Section 7.4 below, if the proportions of Energy or Energy Service actually consumed at the Facility differ by more than [REDACTED]% from the agreed proportions in respect of the Discrete Energy Targets and such increase is the result of any change made by Project Co without the agreement of the Osler Representative, any resultant increase in the cost to Osler of purchasing Energy or Energy Service and/or to Project Co shall be for Project Co's account and shall take effect by way of a reduction to Monthly Service Payments.
- 7.4 Section 7.3 shall not apply to the extent that a change in the proportions of Energy actually consumed results from a Variation or from an increase or decrease from time to time in Osler's requirements for usage of a particular type of Energy, for example, because of an increase in the amount of End User Load which could result in an increase in the use of utility which may, in turn, change the overall percentage mix of Energy usage.

## 8. MEASUREMENT

- 8.1 Without prejudice to Schedule 15 – Output Specifications or anything else in this Schedule 36, Project Co shall measure the amount of Actual Consumption and Discrete Energy Service Actual Consumption for the Facility in respect of each calendar month beginning at the start of the Initial Period and ending on the expiry or earlier termination of the Project Agreement.
- 8.2 Without prejudice to Schedule 15 – Output Specifications or anything else in this Schedule 36, Project Co shall provide to Osler a summary of Actual Consumption and Discrete Energy Service Actual Consumption in respect of each type of Energy at the Facility, at the end of each month, in the form of a certificate. The first such month shall begin on the first day of the Energy Year. For greater certainty, End User Loads, Facility Loads and Secondary Facility Loads should be set out separately in the certificate.
- 8.3 Project Co shall provide Osler with a draft Energy Analysis Report within sixty (60) days following the end of each Energy Year, which report shall include copies of all working papers to fully support the draft Energy Analysis Report. The draft Energy Analysis Report shall be consistent with the format and content requirements set out in Section 8.8 of this Schedule 36.
- 8.4 As soon as practicable and in any event within eighty (80) days following the end of each Energy Year (or on such other date as may be agreed between Osler and Project Co), Project Co and Osler shall convene an annual review meeting to be attended by the Project Co Representative and the Osler Representative, and such other individuals as may be agreed to by the Parties (the “**Annual Review Meeting**”). At the Annual Review Meeting, Project Co shall present the draft Energy Analysis Report to Osler, and Osler and Project Co shall discuss the Actual Consumption and the Discrete Energy Service Actual Consumption for each discrete Energy Service for the preceding Energy Year and discuss Energy Services.
- 8.5 Project Co shall assist the Osler Representative and afford the Osler Representative such information and access to the Facility, building management system records, utility meters, and Help Desk (as such services are described in Schedule 15 – Output Specifications) and by other means as may reasonably be required for the Osler Representative to confirm the draft Energy Analysis Report provided by Project Co to determine the Actual Consumption and the Discrete Energy Service Actual Consumption for each separate Energy Service at the Facility for the Energy Year.
- 8.6 Osler shall promptly notify Project Co of the details of any disagreement of all or any aspect of the draft Energy Analysis Report, and the parties shall then seek to agree to any matters in dispute, but where matters cannot be resolved within a twenty (20) day period (or such other period as may be otherwise agreed between the Osler Representative and the Project Co Representative, acting reasonably) it shall be dealt with in accordance with the Dispute Resolution Procedure.

- 8.7 Subject to Section 8.6, within twenty (20) days following each Annual Review Meeting, or within such period as may be otherwise agreed between the Osler Representative and the Project Co Representatives, acting reasonably:
- (i) Osler shall confirm its acceptance of all or any aspect of the Energy Analysis Report; and
  - (ii) Subject to Sections 2 and 3, Project Co and Osler shall agree to any adjustments to the Annual Energy Target and the Discrete Energy Target(s) after taking into account load or usage changes as a result of any changes in occupancy.
- 8.8 Content and Format of the Energy Analysis Report
- (a) The Energy Analysis Report shall present findings of Actual Consumption and the Discrete Energy Service Actual Consumption for each separate Energy Service for the relevant Energy Year and shall include the following:
    - (i) a summary of actual usage and breakdown by utility in megajoules and cubic meters, or other utility rate units. Also include the actual usage and breakdown by Energy utility in the Unit of Energy. The summary should also highlight any exceptional changes in consumption or pattern of use since any previous survey;
    - (ii) accurate and precise consumption data; and
    - (iii) identification of potential cost savings in respect of Energy usage at the Facility and provide an estimate of potential Energy Service consumption savings broken down by fuel type, implementation costs, Simple Payback periods and projected savings along with identifying potential risks associated with each proposed cost savings measure. Project Co shall categorize these cost savings measures in the following categories: No Cost Measures, Low Cost Measures and High Cost Measures. Project Co shall also advise Osler of projected Energy usage at the Facility for the next five (5) years and cost projections in respect of such projected Energy usage along with pricing trends and potential risks associated with each.
- 8.9 The objectives of the Energy Analysis Report are to confirm Actual Consumption and Discrete Energy Service Actual Consumption for each individual Energy Service at the Facility in the relevant Energy Year and to provide data to calculate Adjusted Annual Energy Target and Adjusted Discrete Annual Energy Target for each individual Energy Service.
- 8.10 Consistent with the objectives set out in Section 8.9 of this Schedule 36, Project Co shall ensure that each Energy Analysis Report has the following components:

- (a) presentation of Actual Consumption, Discrete Energy Service Actual Consumption for each individual Energy Service and the Adjusted Annual Energy Target;
- (b) correlated energy Weather Data graph;
- (c) establishment of a basis for continued monitoring of energy and utility consumption and adjustments to the Annual Energy Target and/or the Discrete Energy Targets; and
- (d) utility data collected by Project Co shall be presented in the table set out in Appendix A1 to this Schedule 36.
- (e) Detailed analysis of metered end-uses:
  - Lighting systems and controls;
  - Steam plant;
  - Heating water boiler plant;
  - HVAC distribution pump energy;
  - Chiller plant;
  - Air handling systems – fan energy;
  - Air handling systems - cooling energy;
  - Air handling systems - heating energy;
  - Natural gas – tenants;
  - Domestic water use – patient care, public, administration;
  - Domestic water use - tenant;
  - Domestic water use – irrigation (if applicable);
  - Domestic water use – process;
  - Domestic water use – cooling tower makeup;
  - Domestic water distribution pump energy;
  - Service Water Heating;

- Building related process energy and equipment;
  - IT server room and associated cooling;
  - Vertical transportation systems;
  - Security Systems;
  - End User Loads;
  - Any additional system(s) required to obtain LEED Credit EAc5: Measurement and Verification; and
  - Any other metered systems.
- (f) Detailed description of building systems:
- Variable frequency drive operation;
  - Air and water economizer and heat recovery cycles;
  - Air distribution static pressures and ventilation air volumes; and
  - Any other pertinent information regarding system performance as it affects Energy consumption.
- (g) Outline any outstanding issues from any previous Energy Analysis Report.
- (h) Adjustments to the Annual Energy Target and Discrete Energy Target(s), complete with detailed explanations of any changes made to the Energy Models.
- (i) Table showing the percentage variation in Actual Consumption against the Adjusted Annual Energy Target, the Adjusted Discrete Energy Target(s) and the Discrete Energy Service Actual Consumption for each discrete Energy Service.
- (j) Tables and graphs showing the consumption, unit costs, and total costs for all purchased Energy for the previous twelve (12) months. Breakdown of Energy types and costs for each energy use described in this Schedule 36 and any other major energy use for the previous twelve (12) months.
- (k) Appendices - The appendices shall include graphs, calculations and miscellaneous data that are relevant to the Energy Analysis Report.
- (l) Summary tables from all previous Energy Analysis Reports delivered by Project Co to Osler.

**9. ENERGY MODEL INTELLECTUAL PROPERTY OWNERSHIP AND  
LIABILITIES**

9.1 Intellectual Property

- (a) For greater certainty, the provisions of Article 48 – Intellectual Property of the Project Agreement shall apply in respect of all Energy Models and Energy Analysis Reports or Monthly Energy Reports delivered to Osler or the Energy Model Services Provider pursuant to this Schedule 36.
- (b) For greater certainty, Project Co acknowledges and agrees that Osler shall not be liable to Project Co for, and Project Co shall not seek to recover from Osler, any Government Entity or any Osler Party, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) as a result of any errors in the Energy Models, the Energy Analysis Reports or the Monthly Energy Reports.

APPENDIX A1

Total Energy Summary	Adjusted Discrete Annual Energy Targets		Actual Consumption		Discrete Energy Service Actual Consumption		Percent Variance between vi and ii	Painshare Adjustment or Gainshare Adjustment
	Usage (Units of Energy)	Adjusted Cost Target for Energy Year (calculated based on Adjusted Discrete Energy Annual Targets multiplied by Average Unit Cost)	Usage (Units of Energy)	Cost for Energy Year	Usage (Units of Energy)	Cost for Energy Year ( for each of the discrete Energy multiplied by average unit cost of each such discrete Energy)		
	i	ii	iii	iv	v	vi	vii	viii
Electricity								
Natural Gas								
Oil / Other								
Aggregate sums  Units of Energy	[To include Annual Energy Target]		[Actual Consumption: •]		[Discrete Energy Service Actual Consumption: •]			



**APPENDIX B****ENERGY PROTOCOL****1. PROTOCOL OBJECTIVES**

- 1.1 Osler and Project Co seek to minimize energy usage and costs within the parameters described within the Project Agreement through the design, construction, operation and efficient occupancy of the Facility.

**2. UTILITIES MANAGEMENT SUBCOMMITTEE AND CONTINUAL ADVICE**

- 2.1 Project Co shall provide an energy monitoring, energy targeting and energy management service to Osler in accordance with this Appendix B.
- 2.2 A joint working group responsible for the management of the energy provisions within this Schedule 36 shall meet each quarter throughout the Operational Term to analyze, review and discuss the monitoring of and record taking from plant and equipment (carried out by Project Co in accordance with Attachment 1 hereto (Outline of Energy Monitoring Procedures)) to ensure continued optimum performance.
- 2.3 The joint working group shall be composed of three (3) representatives nominated by Project Co and three (3) representatives nominated by Osler (the “**Utilities Management Subcommittee**”). Project Co will propose a detailed format and agenda for such Quarterly Monitoring Meetings at least two (2) weeks prior to each meeting (see Attachment 2 hereto for an example agenda). At the start of each Quarterly Monitoring Meeting, the representatives shall appoint one of their number to act as chairperson, ensuring that the position is held by a Project Co representative and then a Osler representative on an alternating basis.
- 2.4 In connection with the ongoing monitoring, Project Co will also be expected to provide quarterly projections for the consumption of energy for the forthcoming twelve (12) months. Such projections will then be used by Osler for financial planning requirements.
- 2.5 Without prejudice to Project Co’s obligations as articulated in the Project Agreement, prime energy usage monitoring must be undertaken on a utility by utility basis by the provision of metering which must be data logged, the results of which will be one of the inputs at the Quarterly Monitoring Meetings. Further information as to the methods of monitoring is contained in Attachment 1 hereto (Outline of Energy Monitoring Procedures).
- 2.6 Project Co shall ensure that representatives of the Service Provider attend the Quarterly Monitoring Meetings.
- 2.7 At the Quarterly Monitoring Meetings, Project Co will report on scheduled maintenance being undertaken together with unscheduled maintenance and emergency maintenance being undertaken relevant to Energy consumption to ensure best operating efficiencies

- for the Facility and the Utilities Management Subcommittee will review and provide feedback on such report.
- 2.8 Project Co shall commit to altering the Schedule of Programmed Maintenance following receipt of feedback from the Utilities Management Subcommittee in the form of Monthly Energy Reports.
- 2.9 Project Co will be proactive at the Quarterly Monitoring Meetings and shall undertake regular value management reviews for the Facility to ascertain whether minor design alterations, technology changes or other technological enhancements will benefit lifecycle costings and further improved energy performance of the installations to the joint and equal benefit of the Parties. Osler may, but shall not be obliged to invoke the Variation Procedure, as outlined in Schedule 22 - Variation Procedure to the Project Agreement, in respect of any such suggestion.
- 2.10 In the event that the Parties and/or the Utilities Management Subcommittee are unable to reach agreement on any of the matters covered in this Appendix B, such matter shall be determined using the Dispute Resolution Procedure as set out in Schedule 27 - Dispute Resolution Procedure.
- 2.11 Project Co (acting through the Utilities Management Subcommittee) will advise Osler in relation to the following measures which it will expect Osler and Osler Parties to implement and Project Co shall implement and shall procure that Project Co Parties implement the same:
- (a) control and efficient use of space heating and cooling;
  - (b) control and efficient use of lighting;
  - (c) control and efficient use of hot water;
  - (d) control and efficient use of plugged-in equipment;
  - (e) any energy awareness campaigns; and
  - (f) all other relevant Energy consumption advice.

### **3. INITIAL MONITORING**

- 3.1 Throughout the Initial Period, Project Co shall ensure that all necessary energy management procedures and energy optimization initiatives are undertaken in accordance with Attachment 1 hereto.
- 3.2 Project Co shall demonstrate, to Osler's satisfaction, that during the Initial Period systems are optimized to operate at peak efficiencies and that all energy reduction techniques designed and included within the job are functioning correctly.

3.3 Energy measurements and meter readings shall be undertaken by Project Co on a calendar month basis during the Initial Period and Project Co shall provide a report on the measurements and readings to Osler.

#### **4. REPORTING SERVICES**

4.1 From the commencement of the Operational Period, Project Co shall provide to Osler a monthly report of the energy efficiency performance (each a “**Monthly Energy Report**”).

4.2 Each Monthly Energy Report following the completion of the Monitoring Period shall compare actual performance to date with the performance targets as required by this Schedule 36 and monthly monitoring of the Facility shall include data on the thermal efficiency of the entire plant and equipment and operational efficiency of distribution systems to ensure continued optimum performance. It will also include trend analysis that will indicate malfunctions.

#### **5. ENERGY MONITORING**

5.1 All energy supplied to and used within the Facility shall be monitored using the building management system, capable of verification by Osler.

#### **6. COMPLIANCE**

6.1 Osler is entitled from time to time to appoint an energy consultant of its choice and at its cost to monitor and check Project Co’s compliance with the provisions of this Appendix B. Project Co must co-operate with any such consultant and must allow such access to the Facility, all energy records and all facilities management maintenance data as such consultant may reasonably require.

#### **7. OSLER AND PROJECT CO’S UNDERTAKINGS**

7.1 Osler shall assist, and shall encourage the Osler Parties to assist, Project Co to achieve the Energy consumption targets through the adoption of good housekeeping techniques, to be determined by the Utilities Management Subcommittee in respect of lighting, water, office equipment and space heating and air conditioning, to be achieved through management and involvement of Osler staff. Osler will ensure that Osler Parties involve management, clinical and non-clinical staff in energy efficiency focus in order to incorporate good practice as part of Osler and Osler Parties’ overall activities.

7.2 Osler and Project Co recognize that the Energy consumption targets can only be achieved with the co-operation of their staff and therefore respectively undertake that their commitment to and the commitment of Osler staff and Project Co staff, service providers and other relevant parties (as the case may be) to energy efficiency will be adopted throughout their respective organizations, to ensure that staff are aware of and have been encouraged to practise the energy saving policy so that Osler, Osler staff, Project Co and

Project Co staff, service providers and other relevant parties will prevent excessive energy usage. This will include without limitation:

- (a) providing their respective staff with information about why energy conservation is important, describing practical and environmental benefits;
- (b) stressing that most energy is used by building occupants;
- (c) informing staff of the minimum legal/design operation temperature requirements;
- (d) including energy efficiency briefing within staff familiarization, training and new staff inductions;
- (e) switching off equipment not in use or not required, including discouraging the leaving of equipment in standby mode where technically appropriate;
- (f) sharing departmental energy use information with departmental managers;
- (g) obtaining feedback from staff on measures to improve energy efficiency;
- (h) appointing departmental/unit managers, and energy monitors to implement good housekeeping measures as set out in Section 7.1 hereof; and
- (i) distributing appropriate promotional and publicity material to raise awareness of energy efficiency measures and achievements

7.3 The Parties shall, for consideration by the Utilities Management Subcommittee, produce annual reports summarizing the above measures and including recommendations and suggestions received from staff to enhance energy efficiency at the Facility.

7.4 Project Co shall encourage representatives of the Service Provider to attend meetings of the Utilities Management Subcommittee.

7.5 Specific Service Specification documents shall be amended to reflect any changes to the organization and management of energy services agreed through the Utilities Management Subcommittee.

7.6 Osler shall advise each quarterly meeting of the Utilities Management Subcommittee of any departmental operational changes, which may affect utilities usage. This would include changes to the assumptions on which Project Co's original Energy consumption figures were calculated, including, material increases in occupancy levels, department opening times and equipment levels.

7.7 Project Co shall undertake regular value management reviews for the services installations to ascertain whether minor design alterations, involving use of in-house resources, technology changes or other technological enhancements will benefit lifecycle costings and further improve energy performance of the installations. Any outputs of

such value management exercises, which have the support of the Utilities Management Subcommittee, will be considered by Project Co and Osler at the Facilities Management Committee, which will then ascertain whether minor capital works are needed to continue to ensure best possible performance targets are achieved. Should work be required to increase energy efficiency then this will be dealt with through the Variation Procedure.

- 7.8 Project Co undertakes that it shall not intentionally alter the proportions of different types of energy consumed from the agreed proportions referred to within this Appendix B without the prior agreement of the Utilities Management Subcommittee.

**ATTACHMENT 1 – OUTLINE OF ENERGY MONITORING PROCEDURES**

**1. INTRODUCTION**

The purpose of this Attachment 1 is to outline how Energy consumption will be monitored and measured at the Facility.

**2. ENERGY MONITORING**

Project Co has provided, as a minimum, the metering required pursuant to Schedule 15 –Output Specifications and this Schedule 36 (including Section 8.10) and the following metering within the Facility:

- (a) electrical consumption;
- (b) gas consumption;
- (c) cold water consumption; and
- (d) other Energy consumption as described in contract documents.

The metering will be an integral part of the building management system, which will have the ability to record and log data regarding the Energy consumption.

The data will be collected and presented in spreadsheet format or trend graphing allowing trends to be identified in the Monthly Energy Reports.

Once a database of monthly consumptions has been established any significant change which is apparent will be investigated.

**3. VARIATION DUE TO WEATHER AND CLIMATE DATA**

Project Co will obtain external temperature profiles from the Environment Canada local weather office and the building management system in furtherance of Section 2.3(c) of this Schedule 36. The temperature profiles will be used to assist in the evaluation of quarterly energy trends particularly in the event that excessive summertime temperatures have been experienced. However, the Environment Canada local weather office data will be the prime source of Weather Data. Any trends in climate change will be noted and included in the Monthly Energy Reports.

**4. VARIATIONS DUE TO END USERS' CONSUMPTION**

Project Co will use available information to determine usage and where appropriate investigate the cause of any excess consumption.

This will require a period of operation under steady state conditions to allow collection of a representative database.

A summary of the database will be included in the Monthly Energy Report.

Project Co will evaluate all deviations as part of its duties to the Utilities Management Subcommittee as defined in Appendix B to this Schedule 36. The results will be logged as either:

- (a) deficient maintenance requiring rectification;
- (b) external influences outside Project Co's control (e.g. abnormal weather conditions);
- (c) deviations subject to Schedule 22 - Variation Procedure to the Project Agreement;
- (d) incidence of misuse of energy by Osler; and
- (e) incidence of misuse of energy by Project Co or any Project Co Party.

All deviations will be reviewed at the next Quarterly Monitoring Meeting where appropriate actions will be agreed.

In the event that the Utilities Management Subcommittee is unable to agree on the cause or magnitude of the deviation, the matter shall be determined using the Dispute Resolution Procedure.

## **5. ENERGY MANAGEMENT**

Project Co will evaluate Energy consumption patterns. This will maximize the benefit of the database and trend logging and enable the focus of energy awareness matters particularly where less than efficient use is suspected.

## **6. TOTAL ENERGY CONSUMPTION**

Total Energy consumption for the Facility will be recorded on a monthly basis and will be included in the Monthly Energy Report. This will be identified separately as fossil (gas), electricity, and water consumption using industry standard units of measurement.

## **7. ONGOING VALUE ENGINEERING**

Project Co will continue to evaluate new and existing technologies in respect of rising energy costs and advise where further investment could provide cost effective energy reductions.

**ATTACHMENT 2 – QUARTERLY MONITORING MEETING AGENDA**

**Meeting Title:** Quarterly Monitoring Meeting of the Utilities Management Subcommittee  
For The Period \_\_\_\_\_

**Date of Meeting:** \_\_\_\_\_

**Venue:** \_\_\_\_\_

**Those Present:** Project Co Representatives  
Osler Representatives  
Representative of the Service Provider

**Item 1** Apologies for absence

**Item 2** Recorded energy consumption for the quarter

Gas: \_\_\_\_\_

Electric: \_\_\_\_\_

Oil: \_\_\_\_\_

Water: \_\_\_\_\_

**Item 3** Report on Weather Data for corresponding period

**Item 4** Osler Variations under Schedule 22 - Variation Procedure

**Item 5** Actual energy consumption compared against target

**Item 6** Review Painshare and Gainshare mechanisms

**Item 7** Report on Procedures

**Item 8** Report on plant and systems performance and review of future planned maintenance program

**Item 9** Review of energy trends and recommendations for improved energy efficiency and training

**Item 10** Asset management and lifecycle issues

**Item 11** New technologies and issues for consideration under ongoing value engineering

**Item 12** Rolling 12 month annual energy totals

**Item 13** Disputes subject to Schedule 27 - Dispute Resolution Procedure

**Item 14** AOB and date of next meeting



**SCHEDULE 37  
ACCESS COORDINATION AGREEMENT**

**THIS AGREEMENT** is dated as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ (the “**Effective Date**”).

**AMONG:**

**WILLIAM OSLER HEALTH SYSTEM**, a non-share capital corporation incorporated under the laws of Ontario.

(“**Osler**”)

**AND:**

**PLENARY HEALTH PEEL LP, [REDACTED]**

(“**Project Co**”)

**AND:**

[•], a [•]

[NTD: Phase 2 Contractor may be a corporation, a limited partnership or a general partnership, in each case formed under the laws of any Canadian jurisdiction and otherwise acceptable to Osler.]

(“**Phase 2 Contractor**”)

**WHEREAS:**

- A. Osler and Project Co have entered into a project agreement (the “**Phase 1 Project Agreement**”) dated as of May 26, 2014 pursuant to which Project Co will design, construct, finance and maintain the facility situated on the Site (as defined in the Phase 1 Project Agreement, and referred to herein as the “**Phase 1 Site**”).
- B. Osler and Phase 2 Contractor have entered into an agreement (the “**Phase 2 Construction Contract**”) dated as of [•], 201[•] pursuant to which Phase 2 Contractor will perform certain construction and maintenance activities on those parts marked as “Phase 2” on the conceptual drawing attached hereto as Appendix A (and referred to herein as the “**Phase 2 Site**”).
- C. As shown on the conceptual drawing attached hereto as Appendix A, certain parts of the Phase 1 Site overlap with the Phase 2 Site (collectively, the “**Shared Areas**”). Pursuant to the terms of their respective agreements with Osler, Project Co and Phase 2 Contractor are required to provide and coordinate access to the other in respect of the Shared Areas and their respective activities on the Phase 1 Site and Phase 2 Site in general.

**NOW THEREFORE** in consideration of the mutual covenants and agreements of the parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows

**1. TERM**

**1.1 Term**

The term of this Access Coordination Agreement shall commence on the date hereof and expire on the date that is the earlier of:

- (i) the termination of the Phase 1 Project Agreement in accordance with its terms; and
- (ii) the termination of the Phase 2 Construction Contract in accordance with its terms.

On or before the day that either the Phase 1 Project Agreement or the Phase 2 Construction Contract is terminated, Project Co or Phase 2 Contractor, respectively, shall provide the other parties with notice of the occurrence of the termination of the Phase 1 Project Agreement or Phase 2 Construction Contract, as applicable.

**2. PROJECT CO AND PHASE 2 CONTRACTOR TO COOPERATE AND COMMUNICATE**

**2.1 Cooperation between Project Co and Phase 2 Contractor**

Project Co and Phase 2 Contractor shall work cooperatively and act in good faith with each other to prevent material adverse interference with their respective access rights on the Phase 1 Site and the Phase 2 Site and to grant the other party the access on the applicable portions of the Shared Areas to the extent such access is required to enable the other party to perform its obligations under its respective agreement with Osler. Project Co and Phase 2 Contractor shall manage such access and coordination of their respective activities through the committee to be established under Section 3.

The rights of access granted pursuant to Section 2.2, shall be exercised by each of Project Co and Phase 2 Contractor in a manner that is consistent with the safety rules applicable to (i) the Phase 1 Site (to the extent access is over the portions of the Shared Areas which form part of the Phase 1 Site) or (ii) the Phase 2 Site (to the extent access is over the portions of the Shared Areas that form part of the Phase 2 Site), respectively. Furthermore, Phase 2 Contractor shall at all times avoid or minimize any disruption, hindrance or other impact on Project Co with respect to the progress of the Project Operations (as defined in the Phase 1 Project Agreement) and Project Co shall at all times avoid or minimize any disruption, hindrance or other impact on Phase 2 Contractor with respect to the delivery of the construction and other obligations of Phase 2 Contractor under the Phase 2 Construction Contract.

## 2.2 Sub-Licence to Shared Areas

- (a) As of the Effective Date, each of Project Co and Phase 2 Contractor hereby grants, or has caused to be granted, and shall continuously until the termination of this Access Coordination Agreement grant or cause to be granted, to the other party such non-exclusive sub-licence rights of use and access to the Shared Areas that form part of either the Phase 1 Site or the Phase 2 Site, respectively, from time to time, as are required to allow Project Co and Phase 2 Contractor to perform their obligations under the Phase 1 Project Agreement and Phase 2 Construction Contract, respectively.
- (b) None of the rights granted pursuant to this Section 2.2 by Project Co and Phase 2 Contractor shall extend beyond the boundaries of the Phase 1 Site and Phase 2 Site, respectively, or to any lands other than the Phase 1 Site and Phase 2 Site, other than easements and similar interests of Osler which benefit the Phase 1 Site or Phase 2 Site, as applicable, obtained after the date of this Access Coordination Agreement, to the extent the same are necessary to allow Project Co or Phase 2 Contractor to perform their obligations under the Phase 1 Project Agreement and Phase 2 Construction Contract, respectively.
- (c) The sub-licence rights provided in this Section 2.2 shall automatically terminate as of the date of termination of this Access Coordination Agreement.

## 3. ACCESS COORDINATION COMMITTEE

### 3.1 Establishment

- (a) Within [7] days of the Effective Date, Project Co and Phase 2 Contractor shall establish a committee (the “**Access Coordination Committee**”) consisting of:
  - (i) 3 representatives of Project Co; and
  - (ii) 3 representatives of Phase 2 Contractor.
- (b) The membership of the Access Coordination Committee shall be subject to periodic review and may be constricted or expanded as deemed necessary by the committee members.
- (c) 1 representative of Osler shall attend each meeting of the Access Coordination Committee on an *ex officio* basis.
- (d) Only 2 members of each of Project Co and Phase 2 Contractor shall be required for a quorum of the Access Coordination Committee.

**3.2 Function and Role**

- (a) The Access Coordination Committee shall assist the parties by promoting cooperative and effective communication and coordination with respect to the Phase 2 Contractor’s activities on the Phase 2 Site and their impact on Project Co’s activities on the Phase 1 Site and vice versa.
- (b) The Access Coordination Committee shall be responsible for reviewing and discussing all matters related to the relationship between Phase 2 Contractor’s performance of the construction and other obligations under the Phase 2 Construction Contract and Project Co’s performance of the Project Operations under the Phase 1 Project Agreement, including but not limited to:
  - (i) coordinating site access;
  - (ii) coordinating delivery of materials;
  - (iii) construction or maintenance activities on the Phase 2 Site that will affect construction activities or ongoing operations on the Phase 1 Site; and
  - (iv) any other matter related to the operations on either site that the parties wish to raise.
- (c) Subject to Section 3.2(d), any unanimous decision of the Access Coordination Committee shall be final and binding on Project Co and Phase 2 Contractor. If the Access Coordination Committee is unable to reach a unanimous decision, either party may refer the matter for resolution in accordance with Appendix B – Dispute Resolution Procedure.
- (d) The Access Coordination Committee shall not have authority to make decisions with respect to or to approve any matter that amends or varies the rights or obligations of any party under the Phase 1 Project Agreement or the Phase 2 Construction Contract.

**3.3 Meeting Frequency**

The Access Coordination Committee shall meet monthly, or more frequently as required.

**4. ACKNOWLEDGEMENTS**

**4.1 Acknowledgement of Project Co and Phase 2 Contractor**

Project Co acknowledges having received and reviewed a redacted copy of the execution version of the Phase 2 Construction Contract and Phase 2 Contractor acknowledges having received and reviewed a redacted copy of the execution version of the Phase 1 Project Agreement.

#### **4.2 No Cross Default**

Project Co, Phase 2 Contractor and Osler acknowledge and agree that any breach of obligations under this Access Coordination Agreement shall not constitute a breach of either the Phase 1 Project Agreement or the Phase 2 Construction Contract except to the extent that such circumstances otherwise constitute a breach under either of those agreements.

#### **4.3 Not Additional Cause for Delay or Compensation**

Nothing in this Access Coordination Agreement shall be cause for justifiable delay by Project Co or Phase 2 Contractor under the Phase 1 Project Agreement and the Phase 2 Construction Contract, respectively, nor support any claim for additional compensation nor any further cause of action by either Project Co or Phase 2 Contractor against Osler.

### **5. LIABILITY AND INDEMNIFICATION OF OSLER**

#### **5.1 Osler Not Liable**

Osler shall be held harmless and have no liability whatsoever in respect of the failure of Project Co or Phase 2 Contractor to perform their respective obligations under this Access Coordination Agreement or in respect of any and all Direct Losses which may be suffered, incurred or brought against either Project Co or Phase 2 Contractor due to an act or omission of the other party. Project Co and Phase 2 Contractor acknowledge and agree that their sole remedy in respect of a breach of this Access Coordination Agreement or any Direct Losses suffered as a result of an act or omission of the other party shall be against each other.

#### **5.2 Project Co to Indemnify Osler and Phase 2 Contractor**

Project Co shall indemnify and save harmless Osler, Phase 2 Contractor and their respective directors, officers, employees, agents and representatives (the “**Project Co Indemnitees**”) from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any physical loss of or damage to all or any part of the Phase 2 Site, including but not limited to the Shared Areas, or in respect of increased costs, liabilities and expenses that the Project Co Indemnitees may suffer, receive or incur, in each case, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, a failure of Project Co to comply with the provisions of this Access Coordination Agreement or any act or omission of Project Co or any Project Co Party (as defined in the Phase 1 Project Agreement) except to the extent caused by any deliberate or negligent act or omission of Osler or Phase 2 Contractor that is not otherwise authorized pursuant to the Phase 1 Project Agreement, the Phase 2 Construction Contract or this Access Coordination Agreement.

### 5.3 Phase 2 Contractor to Indemnify Osler and Project Co

Phase 2 Contractor shall indemnify and save harmless Osler, Project Co and their respective directors, officers, employees, agents and representatives (the “**Phase 2 Contractor Indemnitees**”) from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any physical loss of or damage to all or any part of the Phase 1 Site, including but not limited to the Shared Areas, or in respect of increased costs, liabilities and expenses that the Phase 2 Contractor Indemnitees may suffer, receive or incur, in each case, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, a failure of Phase 2 Contractor to comply with the provisions of this Access Coordination Agreement or any act or omission of Phase 2 Contractor or any of Phase 2 Contractor’s subcontractors of any tier, agents, employees, officers and directors, except to the extent caused by any deliberate or negligent act or omission of Osler or Project Co that is not otherwise authorized pursuant to the Phase 1 Project Agreement, the Phase 2 Construction Contract or this Access Coordination Agreement.

### 5.4 General Duty to Mitigate

Osler, Project Co and Phase 2 Contractor shall at all times take commercially reasonable steps to minimize and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Access Coordination Agreement.

### 5.5 Direct Losses

For the purpose of this Access Coordination Agreement, “**Direct Losses**” shall include all damage, losses, liabilities, penalties, fines, assessments, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on a substantial indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law, except to the extent any loss claimed by any party is:

- (i) for punitive, exemplary or aggravated damages;
- (ii) for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity; or
- (iii) is a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by any party.

### 5.6 Dispute Resolution Procedure

All disputes under this Access Coordination Agreement shall be resolved in accordance with, and the Parties shall comply with, Appendix B – Dispute Resolution Procedure which shall be applied *mutatis mutandis* and references to the Parties therein shall be deemed to include Phase 2 Contractor as the context requires.

6. ASSIGNMENT

6.1 Assignment

Neither Project Co, Phase 2 Contractor nor Osler may assign, transfer, charge, dispose of or otherwise alienate all or any part of any interest, whether legal or beneficial, in this Access Coordination Agreement except to the extent that the relevant party is otherwise entitled to assign, transfer, charge or dispose of its interest under the Phase 1 Project Agreement or the Phase 2 Construction Contract, as applicable.

7. NOTICE

7.1 Notices to Parties

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

If to Project Co: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

If to Phase 2 Contractor: [Address]

Fax: [•]

Attn.: [•]

If to Osler: [REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

With a copy to: [REDACTED]

Fax: [REDACTED]

Attn.: [REDACTED]

## **7.2 Facsimile**

Where any Notice is provided or submitted to a Party via facsimile, an original of the Notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a Notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 7.2.

## **7.3 Change of Address**

Any Party to this Coordination Agreement may, from time to time, change any of its contact information set forth in Section 7.1 by prior Notice to the other Parties, and such change shall be effective on the Business Day (as defined in the Phase 1 Project Agreement) that next follows the recipient Parties' receipt of such Notice unless a later effective date is given in such Notice.

## **7.4 Deemed Receipt of Notices**

- (a) Subject to Sections 7.4(b), 7.4(c) and 7.4(d):
  - (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
  - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (b) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 7.
- (c) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (d) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.



## **8. GENERAL**

### **8.1 Governing Law**

This Access Coordination Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.

### **8.2 Waiver**

- (a) No waiver made or given by a Party under or in connection with this Access Coordination Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of such right, power, or remedy or with respect to any other right, power, or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

### **8.3 Severability**

Each provision of this Access Coordination Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Access Coordination Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Access Coordination Agreement. If any such provision of this Access Coordination Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Access Coordination Agreement as near as possible to its original intent and effect.

### **8.4 Further Assurance**

Each Party shall do all things, from time to time, and execute all further documents necessary to give full effect to this Access Coordination Agreement.

### **8.5 Costs**

Project Co and the Phase 2 Contractor shall each be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation, execution, delivery, and administration of this Access Coordination Agreement. In the event that Osler incurred any out-of-pocket third party costs in connection with the negotiation, preparation, execution, delivery and administration of this Access Coordination Agreement, then Project Co and Phase 2 Contractor shall be jointly and severally liable to reimburse Osler for such costs.

## **8.6 Counterparts**

This Access Coordination Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original, faxed form, or pdf, provided that any Party providing its signature in faxed form or by pdf shall promptly forward to the other Party an original signed copy of this Access Coordination Agreement which was so faxed or electronically delivered.

**[EXECUTION PAGE IMMEDIATELY FOLLOWS]**

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

**WILLIAM OSLER HEALTH SYSTEM**

Per:

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

Per:

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

I/We have authority to bind the Corporation

**PLENARY HEALTH PEEL LP, [REDACTED]**

Per:

\_\_\_\_\_  
Name:  
Title: Authorized Signing Officer

Per:

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

I/We have authority to bind the Corporation

**[PHASE 2 CONTRACTOR]**

Per:

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

I/We have authority to bind the Corporation

**APPENDIX A**

**CONCEPTUAL SITE DRAWING**

Attach Site Drawing

**APPENDIX B**

**DISPUTE RESOLUTION PROCEDURE**

To attach Dispute Resolution Procedure from Phase 1 Project Agreement