

**PROJECT AGREEMENT  
(REDACTED VERSION)**

**TO DESIGN, BUILD AND FINANCE  
THE ST. MICHAEL'S HOSPITAL  
REDEVELOPMENT PROJECT**

**CONFIDENTIAL**

## TABLE OF CONTENTS

	Page
1. DEFINITIONS AND INTERPRETATION .....	2
1.1 Definitions and Interpretation .....	2
1.2 Conflict of Terms .....	4
1.3 Conflict of Documents .....	5
1.4 Legal Requirements .....	5
2. COMMERCIAL CLOSE AND FINANCIAL CLOSE .....	6
2.1 Effective Date .....	6
2.2 Standby Letter of Credit .....	6
2.3 Financial Close .....	7
2.4 Disruption in Financial Markets .....	8
3. GUARANTEED PRICE .....	8
3.1 Guaranteed Price and Adjustments .....	8
3.2 Cash Allowances .....	9
4. PAYMENT .....	13
4.1 General .....	13
4.2 Acknowledgement by Project Co .....	13
4.3 Lump Sum Payments .....	13
4.4 Direction of Payments .....	14
4.5 Payment of Legislative Holdback .....	15
4.6 Completion Holdback and Tower Interim Completion Holdback .....	16
4.7 Withholding of Payment .....	16
4.8 Establishment of Trust Account and Manner of Payment .....	16
4.9 Compensation on Termination .....	17
4.10 Payment Due under Insurance Policies .....	17
4.11 HST .....	17
4.12 Set-Off .....	17
4.13 Effect of Payment .....	18
4.14 No Other Entitlement .....	18
4.15 Taxes .....	18
4.16 Changes in Scope of Taxation .....	18

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
4.17 Information and Assistance Provided by Project Co .....	19
4.18 Residency – Income Tax Act (Canada).....	19
4.19 Taxes – General.....	19
4.20 Taxes – Indemnity .....	19
5. SCOPE OF AGREEMENT .....	20
5.1 Scope of Agreement .....	20
6. REPRESENTATIONS AND WARRANTIES.....	20
6.1 Project Co Representations and Warranties .....	20
6.2 SMH Representations and Warranties .....	23
7. BACKGROUND INFORMATION .....	25
7.1 No Liability .....	25
7.2 No Warranty .....	25
7.3 No Claims.....	25
7.4 Technical Reports.....	26
8. PROJECT DOCUMENTS.....	26
8.1 Project Documents .....	26
8.2 Ancillary Documents.....	26
8.3 Changes to Lending Agreements and Refinancing .....	27
8.4 Compliance with Lending Agreements .....	28
9. SMH RESPONSIBILITIES.....	28
9.1 General .....	28
10. PROJECT CO RESPONSIBILITIES – GENERAL .....	29
10.1 Other Business.....	29
10.2 Complete and Operational Facility .....	29
10.3 General Responsibilities and Standards .....	29
11. PROJECT CO RESPONSIBILITIES – DESIGN AND CONSTRUCTION.....	30
11.1 Development of Design.....	30
11.2 Start-Up Meeting.....	32
11.3 Design Workshops .....	33
11.4 Clinical Functionality .....	35

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
11.5 Performance of Design Obligations .....	36
11.6 Works Submittals .....	36
11.7 Documents at the Site.....	36
11.8 General Construction Obligations .....	37
11.9 Permits, Licences, Approvals and Agreements.....	38
11.10 Protection of Works and Property .....	38
11.11 Liability Unaffected .....	39
11.12 Safety.....	39
11.13 Additional Works .....	40
11.14 Defective Works.....	43
11.15 Warranty Obligations .....	44
11.16 Prompt Repair of Warranty Work.....	46
11.16A Warranty Letter of Credit.....	47
11.17 Minimize Disturbance and Works in Existing Facilities.....	48
11.18 Substitutions .....	49
11.19 Change in Standards.....	49
11.20 Subcontractors and Suppliers .....	50
11.21 Apprenticeship Plan and Program.....	51
11.22 Procurement Monitoring and Implementation Plan .....	52
11.23 Demolition Requirements .....	52
12. REPRESENTATIVES .....	54
12.1 The SMH Representative .....	54
12.2 The Project Co Representative.....	55
12.3 Communications to Representatives .....	56
12.4 Key Individuals .....	56
13. WORKS SCHEDULE AND WORKS REPORT.....	57
13.1 Completion of the Works .....	57
13.2 The Works Schedule .....	57
13.3 Changes to Critical Path.....	57
13.4 Failure to Maintain Schedule .....	57

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
13.4A Notification of Early Phase Completion .....	59
13.4B Notification of Early Tower Interim Completion .....	59
13.5 Notification of Early Substantial Completion .....	60
13.6 Works Report .....	60
14. WORKS COMMITTEE .....	62
14.1 Establishment .....	62
14.2 Function and Role .....	62
14.3 Term of Works Committee .....	63
14.4 Replacement of Committee Members .....	64
14.5 Procedures and Practices .....	64
15. QUALITY ASSURANCE .....	65
15.1 Quality Plans and Systems .....	65
15.2 Changes to Plans .....	66
15.3 Quality Manuals and Procedures .....	66
15.4 Quality Monitoring .....	66
16. LICENCE .....	66
16.1 Licence to Site .....	66
16.2 Non-Exclusive Licence/Development of Site .....	67
16.3 Limited Access Areas .....	68
16.4 Naming and Signage .....	68
16.5 No Interest in Land .....	68
16.6 Non-Disturbance Agreement .....	69
17. TITLE ENCUMBRANCES .....	69
17.1 Title Encumbrances .....	69
17.2 No Site Encumbrances .....	70
17.3 Construction Lien Act (Ontario) .....	70
18. SITE CONDITION .....	72
18.1 Acceptance of Site Condition .....	72
18.2 Contamination .....	74
18.3 Items of Geological, Historical or Archaeological Interest or Value .....	75

# TABLE OF CONTENTS

(continued)

	<b>Page</b>
19. CITY OF TORONTO AND THIRD PARTY FINANCIAL OBLIGATIONS.....	75
19.1 Financial Obligations .....	75
20. SMH ACCESS AND MONITORING .....	76
20.1 SMH Access During the Works .....	76
20.2 Increased Monitoring .....	77
20.3 Right to Open Up .....	77
20.4 No Relief from Obligations .....	77
20.5 Right of Access of Additional Contractors to Works .....	78
21. EQUIPMENT .....	78
21.1 Equipment Steering Committee .....	78
21.2 SMH Equipment Responsibilities .....	79
21.3 SMH Early Procured In-Contract Equipment .....	80
21.4 Project Co Equipment Responsibilities .....	81
21.5 Project Co Procurement Responsibilities .....	84
21.6 Minimizing Disruptions .....	85
21.7 Equipment Training.....	85
21.8 Scheduling of Equipment Procurement and Installation .....	86
22. LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN AND OTHER REQUIREMENTS.....	87
22.1 LEED Design and Construction Obligations .....	87
22.2 Mandatory Prerequisites and Credits .....	87
22.3 LEED Progress Reports .....	87
22.4 LEED Silver Rating .....	87
22.5 Greenhouse Gas Credits .....	88
22.6 LEED Obligations in Design and Construction Contract .....	88
22.7 Energy Matters .....	88
23. INDEPENDENT CERTIFIER.....	89
23.1 Appointment.....	89
23.2 Role of Independent Certifier.....	89
23.3 Changes to Terms of Appointment .....	89

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
23.4 Right to Change Appointment.....	89
23.5 Cooperation .....	90
23.6 Payment of Independent Certifier .....	90
23.7 Replacement .....	90
23A. PHASE COMMISSIONING AND COMPLETION.....	91
23A.1 Phase Commissioning Activities.....	91
23A.2 Phase Commissioning Program .....	91
23A.3 Commencement of Phase Project Co Commissioning.....	92
23A.4 Phase Completion Certificate.....	92
23A.5 Operation and Maintenance Manuals.....	94
23A.5A Maintenance Instructions .....	94
23A.6 Phase SMH Commissioning.....	94
23A.7 Phase Countdown Notice .....	95
23A.8 Phase Minor Deficiencies.....	95
23A.9 Rectification of Phase Minor Deficiencies.....	96
23A.10 Failure to Rectify Phase Minor Deficiencies .....	96
23A.11 Effect of Certificates/Use .....	96
23B. TOWER INTERIM COMPLETION COMMISSIONING AND COMPLETION.....	97
23B.1 Tower Interim Completion Commissioning Activities.....	97
23B.2 Tower Interim Completion Commissioning Program.....	97
23B.3 Commencement of Tower Interim Completion Project Co Commissioning.....	98
23B.4 Tower Interim Completion Certificate .....	98
23B.5 Tower Operation and Maintenance Manuals .....	100
23B.5A Maintenance Instructions .....	100
23B.6 Tower Interim Completion SMH Commissioning.....	100
23B.7 Tower Interim Completion Countdown Notice .....	101
23B.8 Tower Interim Completion Minor Deficiencies.....	101
23B.9 Rectification of Tower Interim Completion Minor Deficiencies .....	102
23B.10 Failure to Rectify Tower Interim Completion Minor Deficiencies.....	102

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
23B.11 Effect of Certificate/Use.....	103
24. COMMISSIONING AND COMPLETION .....	103
24.1 Commissioning Activities .....	103
24.2 Final Commissioning Program.....	104
24.3 Commencement of Project Co Commissioning .....	105
24.4 Substantial Completion Certificate .....	105
24.5 Operation and Maintenance Manuals.....	107
24.5A Maintenance Instructions .....	107
24.6 SMH Commissioning.....	107
24.7 Countdown Notice.....	108
24.8 Minor Deficiencies .....	108
24.9 Rectification of Minor Deficiencies .....	109
24.10 Failure to Rectify Minor Deficiencies .....	109
24.11 Final Completion Countdown Notice .....	110
24.12 Final Completion Certificate .....	110
24.13 Effect of Certificates/Use .....	111
24.14 Transitions .....	112
24.15 Transition Subcommittee .....	113
25. HUMAN RESOURCES .....	113
25.1 Admittance of Personnel, Security and Safety .....	113
25.2 Notification of Convictions .....	114
25.3 Human Resources Policies .....	114
25.4 Management Organizations.....	114
25A SMH’S REMEDIAL RIGHTS.....	115
25A.1 Exercise of Remedial Rights .....	115
25A.2 Emergency .....	116
25A.3 Rectification .....	116
25A.4 Costs and Expenses .....	116
25A.5 Reimbursement Events.....	117
25A.6 Reimbursement if Improper Exercise of Rights.....	117



## TABLE OF CONTENTS

(continued)

	<b>Page</b>
26. RECORDS, INFORMATION AND AUDIT .....	118
26.1 Records Provisions .....	118
26.2 Information and General Audit Rights .....	118
26.3 Lenders' Consultant Reports .....	119
27. COMMUNICATIONS .....	119
27.1 Communications Protocol .....	119
28. CHANGES IN LAW .....	120
28.1 Performance after Change in Law .....	120
28.2 Works Change in Law .....	120
28.3 Relevant Change in Law .....	121
29. VARIATIONS .....	122
29.1 Variation Procedure .....	122
29.2 Innovation and Value Engineering .....	123
30. DELAY EVENTS .....	125
30.1 Definition .....	125
30.2 Consequences of a Delay Event .....	126
30.3 Mitigation .....	129
31. COMPENSATION EVENTS .....	129
31.1 Definition .....	129
31.2 Consequences of a Compensation Event .....	129
31.3 Mitigation .....	130
31.4 Insured Exposure .....	130
32. RELIEF EVENTS .....	130
32.1 Definition .....	130
32.2 Consequences of a Relief Event .....	131
32.3 Mitigation and Process .....	132
32.4 Insured Exposure .....	132
33. FORCE MAJEURE .....	133
33.1 Definition .....	133
33.2 Consequences of Force Majeure .....	133

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
33.3 Mitigation and Process .....	134
33.4 Insured Exposure.....	135
33.5 Modifications .....	135
34. PROJECT CO DEFAULT .....	135
34.1 Project Co Events of Default.....	135
34.2 Notification of Occurrence.....	138
34.3 Right to Termination .....	139
34.4 Remedy Provisions.....	139
34.5 SMH's Costs .....	140
34.6 No Other Rights to Terminate .....	140
35. SMH DEFAULT.....	141
35.1 SMH Events of Default .....	141
35.2 Project Co's Options .....	141
35.3 Project Co's Costs .....	142
35.4 No Other Rights to Terminate .....	142
36. RELIEF EVENT AND NON DEFAULT TERMINATION.....	142
36.1 Termination for Relief Event .....	142
36.2 Termination for Force Majeure .....	142
36.3 Termination for Convenience.....	142
36.4 Automatic Expiry on Expiry Date.....	143
37. EFFECT OF TERMINATION .....	143
37.1 Termination .....	143
37.2 Continued Effect – No Waiver.....	143
37.3 Continuing Performance .....	143
37.4 Effect of Notice of Termination .....	143
37.5 Ownership of Information .....	145
37.6 Provision in Subcontracts.....	145
37.7 Transitional Arrangements .....	146
37.8 Termination upon Aforesaid Transfer .....	146
37.9 Survival .....	146

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
38. COMPENSATION ON TERMINATION.....	147
38.1 Compensation on Termination .....	147
38.2 Full and Final Settlement .....	147
39. INTELLECTUAL PROPERTY .....	148
39.1 Representation and Warranty .....	148
39.2 Delivery of Project Data and Intellectual Property Rights.....	148
39.3 Licence of Project Data and Intellectual Property Rights .....	148
39.4 Jointly Developed Materials.....	149
39.5 Maintenance of Data .....	149
39.6 Claims.....	150
39.7 SMH Trade-Marks .....	150
39.8 Confidential Information.....	150
39.9 Government Use of Documents .....	150
40. CONFIDENTIALITY.....	151
40.1 Disclosure.....	151
40.2 Redaction.....	151
40.3 Disclosure to Government.....	152
40.4 Freedom of Information .....	152
40.5 Use and Disclosure of Confidential Information .....	152
40.6 Exceptions .....	153
40.7 Survival of Confidentiality.....	154
41. PERSONAL INFORMATION.....	154
41.1 General .....	154
41.2 Protection of Patient Information.....	154
41.3 Survival .....	155
42. INSURANCE AND PERFORMANCE SECURITY.....	155
42.1 General Requirements .....	155
42.2 No Relief from Liabilities and Obligations.....	155
42.3 Performance Guarantee of Construction Guarantor.....	155
43. TITLE .....	155

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
43.1 Title .....	155
44. INDEMNITIES .....	156
44.1 Project Co Indemnities to SMH .....	156
44.2 SMH Indemnities to Project Co .....	158
44.3 Conduct of Claims .....	159
44.4 Mitigation – Indemnity Claims .....	161
45. LIMITS ON LIABILITY .....	161
45.1 Indirect Losses .....	161
45.2 No Liability in Tort .....	162
45.3 Sole Remedy .....	162
45.4 Maximum Liability .....	162
46. DISPUTE RESOLUTION PROCEDURE .....	162
47. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL .....	163
47.1 Project Co Assignment .....	163
47.2 SMH Assignment .....	163
47.3 Subcontracting .....	164
47.4 Changes in Ownership and Control .....	164
47.5 SMH Due Diligence .....	165
48. PROHIBITED ACTS .....	165
48.1 Definition .....	165
48.2 Remedies .....	167
48.3 Permitted Payments .....	168
48.4 Notification .....	168
48.5 Replacement of Project Co Party .....	168
49. NOTICES .....	168
49.1 Notices to Parties .....	168
49.2 Notices to Representatives .....	169
49.3 Facsimile .....	169
49.4 Change of Address .....	169
49.5 Deemed Receipt of Notices .....	170

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
49.6 Service on SMH .....	170
50. GENERAL .....	170
50.1 Amendments.....	170
50.2 Waiver .....	170
50.3 Relationship Between the Parties .....	171
50.4 General Duty to Mitigate.....	172
50.5 Actual Knowledge .....	172
50.6 Entire Agreement .....	172
50.7 No Reliance .....	172
50.8 Severability.....	172
50.9 Enurement .....	173
50.10 Governing Law and Jurisdiction .....	173
50.11 Cumulative Remedies .....	173
50.12 Further Assurance .....	173
50.13 Costs .....	173
50.14 Language of Agreement .....	174
50.15 Proof of Authority .....	174
50.16 Counterparts .....	174
50.17 Government Entities as Third Party Beneficiaries .....	174
50.18 Time is of the Essence.....	175
50.19 Copyright Notice .....	175

**SCHEDULES**

<b>Schedule No.</b>		<b>Description</b>
Schedule 1	-	Definitions and Interpretation
Schedule 2	-	Completion Documents
Schedule 3	-	Works Scheduling Requirements
Schedule 4	-	Lenders' Direct Agreement
Schedule 5	-	Construction Contractor's Direct Agreement
Schedule 6	-	Independent Certifier Agreement
Schedule 7	-	Subcontractor's Direct Agreement
Schedule 8	-	Project Co Parties
Schedule 9	-	Key Individuals
Schedule 10	-	Review Procedure
Schedule 11	-	Design Quality Plan and Construction Quality Plan
Schedule 12	-	Performance Guarantee of Construction Guarantor
Schedule 13	-	Project Co Proposal Extracts
Schedule 14	-	Outline Commissioning Program
Schedule 15	-	Output Specifications
Schedule 16	-	Title Encumbrances
Schedule 17	-	Works Report Requirements
Schedule 18	-	Communications Protocol
Schedule 19	-	INTENTIONALLY DELETED
Schedule 20	-	Procurement Monitoring and Implementation Plan
Schedule 21	-	INTENTIONALLY DELETED
Schedule 22	-	Variation Procedure
Schedule 23	-	Compensation on Termination
Schedule 24	-	Financial Model
Schedule 25	-	Insurance and Performance Security Requirements
Schedule 26	-	Record Provisions
Schedule 27	-	Dispute Resolution Procedure
Schedule 28	-	Standby Letter of Credit
Schedule 29	-	Refinancing
Schedule 30	-	Insurance Trust Agreement
Schedule 31	-	Project Co Information
Schedule 32	-	Trust Account Agreement
Schedule 33	-	Energy Matters

**THIS PROJECT AGREEMENT** is made as of the • day of •, 2014.

**BETWEEN:**

**ST. MICHAEL'S HOSPITAL**, a non-share capital corporation incorporated under the laws of Ontario

("SMH")

**AND:**

**2442931 ONTARIO INC., [REDACTED]**

("Project Co")

**WHEREAS:**

- A. SMH, with the assistance of Ontario Infrastructure and Lands Corporation ("IO"), wishes to procure the design, construction and financing of the Facility (the "**Project**").
- B. SMH and Project Co wish to enter into this project agreement (the "**Project Agreement**") which sets out the terms and conditions upon which Project Co shall perform the Works.
- C. The overriding priorities of SMH in entering into and implementing this Project Agreement are the health and safety of the patients of the Facility and the Existing Facilities 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 and the Existing Facilities are, at all times, paramount.
- D. The Project will proceed as an alternative financing and procurement project and complies with the principles set out in MEDEI's Building a Better Tomorrow: An Infrastructure Planning, Financing and Procurement Framework for Ontario's Public Sector (the "**IPFP Framework**").
- E. 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.

- F. 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.
- G. 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.
- H. 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.
- I. 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.
- J. Project Co recognizes and understands that SMH is a public hospital under the *Public Hospitals Act* (Ontario) and is, therefore, subject to a highly regulated legal and operational environment.
- K. 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 SMH 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:

<b>Schedule No.</b>		<b>Description</b>
Schedule 1	-	Definitions and Interpretation
Schedule 2	-	Completion Documents
Schedule 3	-	Works Scheduling Requirements
Schedule 4	-	Lenders' Direct Agreement
Schedule 5	-	Construction Contractor's Direct Agreement
Schedule 6	-	Independent Certifier Agreement
Schedule 7	-	Subcontractor's Direct Agreement
Schedule 8	-	Project Co Parties
Schedule 9	-	Key Individuals
Schedule 10	-	Review Procedure
Schedule 11	-	Design Quality Plan and Construction Quality Plan
Schedule 12	-	Performance Guarantee of Construction Guarantor
Schedule 13	-	Project Co Proposal Extracts
Schedule 14	-	Outline Commissioning Program
Schedule 15	-	Output Specifications
Schedule 16	-	Title Encumbrances
Schedule 17	-	Works Report Requirements
Schedule 18	-	Communications Protocol
Schedule 19	-	INTENTIONALLY DELETED
Schedule 20	-	Procurement Monitoring and Implementation Plan
Schedule 21	-	INTENTIONALLY DELETED
Schedule 22	-	Variation Procedure
Schedule 23	-	Compensation on Termination
Schedule 24	-	Financial Model
Schedule 25	-	Insurance and Performance Security Requirements
Schedule 26	-	Record Provisions
Schedule 27	-	Dispute Resolution Procedure
Schedule 28	-	Standby Letter of Credit
Schedule 29	-	Refinancing
Schedule 30	-	Insurance Trust Agreement
Schedule 31	-	Project Co Information
Schedule 32	-	Trust Account Agreement
Schedule 33	-	Energy Matters

- (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, SMH 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 Works, 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 SMH, no consent, approval or satisfaction of SMH or the SMH 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.
- (g) The organization of the Output Specifications into divisions, sections and parts shall not control Project Co in dividing the Works among the Project Co Parties or in establishing the extent of the Works to be performed by a trade.

## **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) Part 4 of Schedule 15 – Output Specifications;
  - (vii) Schedule 15 – Output Specifications (excluding Part 4);
  - (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 29 – Refinancing;
  - (xiv) Schedule 23 – Compensation on Termination;
  - (xv) Schedule 26 – Record Provisions;
  - (xvi) the other Schedules in the order in which they are listed in Section 1.1(b); and
  - (xvii) 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 Works, the provision that applies to the specific part of the Works shall govern for that specific part of the Works.
- (c) If any ambiguity, conflict or inconsistency is not readily resolved by the foregoing provisions of this Section 1.2, then Project Co or SMH, upon discovery of same, shall immediately give notice to the SMH Representative. The SMH 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) SMH and Project Co shall comply with the determination of the SMH Representative pursuant to this Section 1.2 unless SMH or Project Co disputes the decision of the SMH 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 ambiguities, conflicts or inconsistencies between this Project Agreement and the Lenders' Direct Agreement, the Lenders' Direct Agreement shall prevail. Notwithstanding the foregoing, if there is any right or remedy in favour of SMH set out in the Lenders' Direct Agreement or any part thereof which is not set out or provided for in the Project Agreement, such additional right or remedy shall not constitute an ambiguity, conflict or inconsistency.

### **1.4 Legal Requirements**

- (a) Whenever standards of Applicable Law differ, the most stringent standards shall govern.

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

### **2.1 Effective Date**

- (a) The provisions of Sections 1.1, 1.2, 1.4, 2.1, 2.2, 2.3, 2.4, 3.1, 4.15 to 4.20, 5 to 15, 16.5, 17 to 23, 25 to 29, and 39 to 50 and Schedules 1, 2, 8 to 13, 16, 18, 19, 22, and 24 to 28 of this Project Agreement will come into effect on the date of this Project Agreement (“**Commercial Close**”). All other provisions and schedules will come into effect only on Financial Close.

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

- (a) On the date of this Project Agreement, Project Co shall deliver, or cause to be delivered, to SMH an irrevocable standby letter of credit (the “**Standby Letter of Credit**”) in the amount of \$[REDACTED] substantially in the form of Schedule 28 – Standby Letter of Credit. Project Co may, with the consent of SMH, which consent may be withheld in the sole discretion of SMH, provide multiple irrevocable standby letters of credit delivered from National Bank of Canada as approved and confirmed by SMH (each a “**Letter of Credit Provider**”) in an amount totalling \$[REDACTED] and each substantially in the form of Schedule 28 – Standby Letter of Credit. For the purposes of this Section 2.2, each of the multiple irrevocable standby letters of credit is referred to as a Standby Letter of Credit.
- (b) Unless a Standby Letter of Credit is drawn by SMH in accordance with the provisions of this Project Agreement, SMH shall release and deliver the Standby Letters of Credit to Project Co on Financial Close.
- (c) Project Co shall ensure that the Standby Letters 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.
- (d) If Project Co delivers multiple Standby Letters of Credit from multiple Letter of Credit Providers in accordance with Section 2.2(a) with the delivery of multiple Standby Letters of Credit by Letter of Credit Providers, Project Co acknowledges and agrees that:
  - (i) SMH may draw upon any Standby Letter of Credit provided by any Letter of Credit Provider in any specified rateable amount;
  - (ii) SMH may draw on any Standby Letter of Credit provided by any Letter of Credit Provider in a disproportionate amount to such Letter of Credit Providers’ contribution to security;
  - (iii) SMH may draw upon any Standby Letter of Credit provided by any Letter of Credit Provider even in the event that such Letter of Credit Provider is no longer a Project Co Party; and

- (iv) The provision of multiple Standby Letters of Credit shall not in any way prejudice or adversely affect the rights of SMH to draw on the Standby Letter(s) of Credit in accordance with this Project Agreement, including in a circumstance where the default giving rise to SMH's right to draw on the Standby Letter(s) of Credit is not the result of any act or omission of the Letter of Credit Provider(s) whose Standby Letter of Credit is drawn upon.

## **2.3 Financial Close**

- (a) No later than 30 days prior to the Financial Close Target Date, Project Co will deliver to SMH 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 SMH the documents referred to in Section 1 of Schedule 2 - Completion Documents; and
  - (ii) SMH 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 SMH 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 SMH of its obligations under Section 2.3(b)(ii)) and SMH does not waive such requirement, SMH will be entitled to draw on the Standby Letter of Credit immediately and to retain the lesser of (A) the full amount of the Standby Letter of Credit, and (B) the difference between the Guaranteed Price and the price that SMH is able to obtain from another contractor for the Works, together with all costs reasonably incurred by SMH to enter into binding agreements with such other contractor, and 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 SMH will suffer as a result of the happening of the specified event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by SMH as a result of Project Co not achieving Financial Close. The Parties agree that such liquidated damages shall be payable whether or not SMH incurs or mitigates its damages, and that SMH 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 the receipt of written instructions from SMH given on or after 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 SMH. 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 SMH 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, SMH 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 SMH and SMH 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 SMH elects to be assigned.
- (c) If SMH exercises its rights pursuant to Section 2.4(b), and, provided Project Co has, if directed, delivered the assignments provided for in Section 2.4(b)(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. SMH'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 SMH, that such fee represents full and final satisfaction of any obligation or liability of SMH, 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 process.

## **3. GUARANTEED PRICE**

### **3.1 Guaranteed Price and Adjustments**

- (a) Project Co represents and warrants that the Guaranteed Price, exclusive of HST, is **\$301,189,863**, and is equal to the sum of the Cost of the Works and the Cost of the

Financing. The Cost of the Works and the Cost of the Financing are as set out in the Financial Model.

- (b) Project Co represents and warrants that the Project Debt Interest Cost is based upon the Interest Reference Rate. The Project Debt Interest Cost will be adjusted once on, or within the 2 Business Days immediately prior to, Financial Close on the basis of the actual increase or decrease in the Project Debt Interest Cost resulting directly from any change upward or downward in the Interest Reference Rate as compared to the Interest Reference Rate as at the RFP Submission Deadline.
- (c) The Parties:
  - (i) acknowledge that the Project Debt Interest Cost is a component of the Cost of the Financing and that the Project Debt Interest Cost is subject to adjustment under Section 3.1(b) as at the date set out in Section 3.1(b); and
  - (ii) acknowledge and agree that subject to adjustments made in accordance with the provisions of this Project Agreement, the final Guaranteed Price shall be determined on the basis of such final adjusted Cost of the Financing and the final adjusted Cost of the Works as of the date of Financial Close.
- (d) Subject to the provisions of Section 3.1(c), the Parties agree that the Guaranteed Price will not be subject to adjustment despite changes in the Works, unless such changes in the Works arise pursuant to a Variation Confirmation. The Parties further agree that the Guaranteed Price will only be adjusted where the Project Agreement specifically and expressly refers to an adjustment to the Guaranteed Price, and no claim for an adjustment to the Guaranteed Price on any legal or equitable basis outside of the specific and express rights to an adjustment of the Guaranteed Price set out in the Project Agreement will be allowed. In order to be effective, any permitted adjustment to the Guaranteed Price must be provided for in a Variation Confirmation under Schedule 22 – Variation Procedure.

### **3.2 Cash Allowances**

- (a) On or before the date of this Project Agreement, Project Co shall open the Cash Allowance Account. Project Co shall deposit the portion of the applicable Cash Allowance Amount in respect of each applicable Cash Allowance Item into the Cash Allowance Account prior to the scheduled commencement of the portion of the Works relating to such portion of the Cash Allowance Item as set out in the Works Schedule (the “**Cash Allowance Monthly Deposit Amount**”). The Cash Allowance Monthly Deposit Amount shall be equal to the estimated value of the portion of the Works relating to the applicable Cash Allowance Item to be completed in each applicable month. In the event that, at any time and from time to time, it is determined that the actual value of such Works is greater or less than the Cash Allowance Monthly Deposit Amount deposited for such month, Project Co shall adjust the Cash Allowance Monthly Deposit Amount for the following month downwards or upwards, as the case may be, in order to reconcile the Cash Allowance Monthly Deposit Amount for the previous month (each is a “**Cash**

**Allowance Monthly Deposit Amount Reconciliation**”). For clarity, the intent is that Project Co shall ensure that it has sufficient funds in the Cash Allowance Account to pay the relevant vendors and Project Co Parties from the Cash Allowance Account in respect of the applicable month pursuant to and in accordance with Section 3.2(g) and that the amount of such funds need not exceed the estimated value of the portion of the Works relating to the applicable Cash Allowance Item to be completed in each applicable month.

- (b) Subject to Section 3.2(c)(iv), in the event that at any time and from time to time the actual cost of the Works for a particular Cash Allowance Item (or any portion thereof) exceeds the total Cash Allowance Amount for such Cash Allowance Item, Project Co shall fund the difference between such actual cost of the Works and such Cash Allowance Amount (a “**Cash Allowance Amount Shortfall**”) from the then remaining Cash Allowance Amount of any other Cash Allowance Item, such remaining Cash Allowance Amount, for clarity, being an amount equal to the amount of funds in respect of such Cash Allowance Amount that, at that time, has not yet been deposited by Project Co into the Cash Allowance Account (a “**Remaining Cash Allowance Amount**”). Upon Project Co funding the Cash Allowance Amount Shortfall there shall be a corresponding reduction in the Remaining Cash Allowance Amount for such other Cash Allowance Item.
- (c) The Parties agree that Project Co shall manage the Cash Allowance Account and the cash flow process applicable thereto in accordance with the following:
  - (i) Project Co will hold and manage all monies in the Cash Allowance Account in trust for, for the benefit of and as directed by SMH;
  - (ii) interest earned on the Cash Allowance Account will accrue in the Cash Allowance Account and will be for the benefit of SMH;
  - (iii) Project Co shall provide a reconciliation of the Cash Allowance Account to SMH on a monthly basis;
  - (iv) in the event that
    - (A) Project Co must deposit a Cash Allowance Monthly Deposit Amount into the Cash Allowance Account pursuant to Section 3.2(a);
    - (B) a Cash Allowance Amount Shortfall exists; and
    - (C) the Cash Allowance Amount Shortfall exceeds the aggregate of all of the Remaining Cash Allowance Amounts, then

SMH shall, at its sole cost and expense, deposit into the Cash Allowance Account (I) the initial Cash Allowance Amount Shortfall up to the aggregate amount of all vendor and Project Co Party invoices that have been approved by SMH pursuant to Section 3.2(f) in respect of the particular Cash Allowance Item to which the Cash Allowance Amount Shortfall relates and that are due for payment that month



and (II) all future Cash Allowance Monthly Deposit Amounts required to complete the Works for all of the remaining Cash Allowance Items. SMH shall deposit such funds into the Cash Allowance Account on a date that is no later than 2 Business Days before the date that Project Co is required to make each of the applicable payments under each of the invoices approved by SMH pursuant to Section 3.2(f) related to such Works;

- (v) notwithstanding Section 3.2(a), on the Substantial Completion Date, Project Co shall deposit the aggregate of all Remaining Cash Allowance Amounts (if any) into the Cash Allowance Account (including, for clarity, each and every Cash Allowance Amount in respect of any Works for any Cash Allowance Items that are to be completed following the Substantial Completion Date). Following the Substantial Completion Date and on the later of (A) the Substantial Completion Payment Date and (B) the date that the Independent Certifier certifies that all of the Works related to the Cash Allowance Items have been completed, if a positive balance in the Cash Allowance Account exists on such date, such balance will be the property of SMH and will be paid by Project Co to SMH or as SMH directs. If the Termination Date occurs prior to the date described above in terms of items (A) and (B) and if a positive balance in the Cash Allowance Account exists on the Termination Date, such balance will be the property of SMH and will be paid by Project Co to SMH or as SMH directs; and
  - (vi) 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.
- (d) Project Co shall provide monthly reports to the SMH Representative that include the following information:
- (i) itemized and aggregate amounts committed to date for each Cash Allowance Item separately and all Cash Allowance Items in the aggregate;
  - (ii) itemized and aggregate amounts spent to date for each Cash Allowance Item separately and all Cash Allowance Items in the aggregate;
  - (iii) the projected cost of each remaining Cash Allowance Item, the projected effect of such costs on each Cash Allowance Amount separately and on the aggregate of all of the Cash Allowance Amounts (including any and all anticipated Cash Allowance Amount Shortfalls); and
  - (iv) details and supporting information in respect of any Cash Allowance Monthly Deposit Amount Reconciliations.
- (e) In addition to the monthly reports described in Section 3.2(d), Project Co shall, on a monthly basis, provide to the SMH 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 in connection with any Cash Allowance Items or portions thereof;
  - (ii) evidence that the commitment by Project Co to purchase any applicable Cash Allowance Items or portions thereof have been approved by SMH; and
  - (iii) any discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co in connection with any Cash Allowance Item or portion thereof.
- (f) SMH 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. SMH shall only be permitted to withhold its approval if (i) SMH determines that the Request for Payment Approval does not contain the information that SMH requires, acting reasonably, to discharge its obligations under this Section 3.2 and (ii) upon the request of SMH, the Independent Certifier confirms to SMH that any of the Works claimed by Project Co to be in relation to a Cash Allowance Item are not, in fact, in relation to a Cash Allowance Item. If SMH withholds its approval pursuant to this Section 3.2(f) and subsequently receives the information that SMH requires, acting reasonably, to discharge its obligations under this Section 3.2, it shall, within 10 Business Days of its receipt of such information, provide to Project Co, in writing, SMH's approval of the invoices set out in the aforementioned Request for Payment Approval.
- (g) If SMH 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.
- (h) 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) subject to SMH's responsibilities under Section 3.2(c)(iv), all of the Cash Allowance Amounts (including all portions thereof) shall be deposited and the Cash Allowance Account will be managed in accordance with the Works

Schedule and any costs, expenses or delays related to funding or managing the Cash Allowance Account are the responsibility of Project Co.

- (i) Notwithstanding anything to the contrary in this Project Agreement, the approval by SMH of the commitment by Project Co to purchase any Discretionary SMH Cash Allowance Item with any portion of the Discretionary SMH Cash Allowance Amount shall be in SMH's sole discretion and shall only be in respect of any obligation of SMH under this Project Agreement, including but not limited to, any matter which is the responsibility of SMH pursuant to Section 18 of the Project Agreement, and, for greater certainty, excluding any matter which is in respect of any obligation of Project Co under this Project Agreement.

#### **4. PAYMENT**

##### **4.1 General**

- (a) Subject to the provisions of the Project Agreement (including, for clarity Section 3.1(d)) and in accordance with and subject to Applicable Law respecting holdbacks, SMH shall make the payments set out in this Article 4.
- (b) For the purpose of this Project Agreement, payments made by electronic transfer shall be deemed to have been made on the day and at the time the electronic transfer is initiated, as confirmed by the initiating bank by a confirmation setting out the transfer number and the other details of the transfer.

##### **4.2 Acknowledgement by Project Co**

- (a) Project Co acknowledges and agrees with SMH that SMH is not responsible for the payment of any base progress payments pursuant to the Design and Construction Contract nor any legislative holdbacks in respect thereof.

##### **4.3 Lump Sum Payments**

- (a) Subject to Sections 4.4(a) and 4.9, SMH covenants and agrees to pay to Project Co the Tower Interim Completion Payment and the applicable HST on the Tower Interim Completion Payment Date.
- (b) Subject to Sections 4.4(b) and 4.9, SMH covenants and agrees to pay to Project Co the Substantial Completion Payment and the applicable HST on the Substantial Completion Payment Date. Notwithstanding the foregoing, if the Warranty Letter of Credit has not been delivered to SMH by the Substantial Completion Payment Date, SMH may withhold from the Substantial Completion Payment a holdback amount of \$[REDACTED] (the "**Warranty Cash Amount**"). In such an event, such Warranty Cash Amount may be withheld by SMH until the date that is two Business Days following the date that the Warranty Letter of Credit has been delivered to SMH and, upon such second Business Day, the Warranty Cash Amount shall be paid by SMH to Project Co. Until receipt of the Warranty Letter of Credit, SMH may use the Warranty

Cash Amount in the place of, in the same manner as and for the same purpose as the Warranty Letter of Credit. The withholding of the Warranty Cash Amount in accordance with this Section 4.3(b) shall be SMH's sole remedy for failure on the part of Project Co to deliver the Warranty Letter of Credit by the Substantial Completion Payment Date and, for greater certainty, SMH shall not be entitled to withhold payment of the balance of the Substantial Completion Payment as a result of any such failure on the part of Project Co.

- (c) On the date that is 2 Business Days following the date upon which the Independent Certifier provides SMH with written confirmation that Project Co has completed the installation and commissioning of all Not-In-Contract Equipment in accordance with Section 21, SMH shall pay to Project Co the Not-In-Contract Equipment Fee.
- (d) On the date that is 2 Business Days following the date upon which the Independent Certifier provides SMH with written confirmation that Project Co has completed the final Transition (including, for greater certainty, the transfer, installation and commissioning of all Existing Equipment) in accordance with Section 24.14, SMH shall pay to Project Co the Transition Services Fee.

#### **4.4 Direction of Payments**

- (a) Project Co hereby irrevocably directs SMH to make any Tower Interim Completion Payment, together with applicable HST, to the Lenders' Agent or as the Lenders' Agent may direct, as security for the Financing. SMH shall pay the Tower Interim Completion Payment as directed by Project Co and shall not accept any redirection without the consent of the Lenders' Agent. SMH will pay the amounts that Project Co is entitled to hereunder once the conditions for payment set out in this Project Agreement, if any, have been satisfied. Project Co acknowledges and agrees that payment by SMH of the Tower Interim Completion Payment to the Lenders' Agent in accordance with this Section 4.4(a) constitutes payment by SMH to Project Co in satisfaction of SMH's obligation to pay the Tower Interim Completion Payment to Project Co under this Project Agreement and in satisfaction of any trust obligation of SMH with respect to such payments under Section 7 of the CLA pursuant to Section 10 of the CLA.
- (b) Project Co hereby irrevocably directs SMH to make any Substantial Completion Payment, together with applicable HST, to the Lenders' Agent or as the Lenders' Agent may direct, as security for the Financing. SMH shall pay the Substantial Completion Payment as directed by Project Co and shall not accept any redirection without the consent of the Lenders' Agent. SMH will pay the amounts that Project Co is entitled to hereunder once the conditions for payment set out in this Project Agreement, if any, have been satisfied. Project Co acknowledges and agrees that payment by SMH of the Substantial Completion Payment to the Lenders' Agent in accordance with this Section 4.4(b) constitutes payment by SMH to Project Co in satisfaction of SMH's obligation to pay the Substantial Completion Payment to Project Co under this Project Agreement and in satisfaction of any trust obligation of SMH with respect to such payments under Section 7 of the CLA pursuant to Section 10 of the CLA.

**4.5 Payment of Legislative Holdback**

- (a) Subject to Section 4.9, SMH covenants and agrees with Project Co to pay to Project Co the Legislative Holdback on the Legislative Holdback Payment Date or pay to such party as otherwise directed by Project Co and shall not accept any redirection without the consent of the person to whom payment is directed. SMH agrees to pay the Legislative Holdback as Project Co may direct in accordance with any such direction. Project Co acknowledges and agrees that payment by SMH of the Legislative Holdback in accordance with this Section 4.5 as Project Co may direct, constitutes payment by SMH to Project Co in satisfaction of SMH's obligation to pay the Legislative Holdback to Project Co under this Project Agreement and in satisfaction of any trust obligation of SMH with respect to such payments under Section 7 of the CLA pursuant to Section 10 of the CLA.
- (b) After the issuance of the Substantial Completion Certificate under Section 24.4, Project Co shall:
  - (i) submit an application for payment of the Legislative Holdback amount;
  - (ii) submit a written request for release of the Legislative Holdback, including a declaration that no written notice of lien arising in relation to the performance of the Works has been received by it that has not been withdrawn by the lien claimant;
  - (iii) submit a Statutory Declaration CCDC Form 9A (2001); and
  - (iv) submit an original WSIB Certificate of Clearance
- (c) After the later of (i) the receipt of the documents set out in Section 4.5(b), and (ii) the expiration of a period of 45 days from the date of publication of the certificate of substantial performance pursuant to the CLA, the Independent Certifier shall issue a certificate for payment of the Legislative Holdback.
- (d) Prior to the date of the release of the holdback, Project Co shall have removed from the Site, the Facility and the Existing Facilities all supplies, waste materials, rubbish and temporary facilities and all personnel except as required to achieve Final Completion or to correct any remaining Minor Deficiencies.
- (e) Subject to the provisions of Section 17.3 and the removal of claims for lien preserved or perfected pursuant to the CLA arising in relation to the performance of the Works, the Legislative Holdback amount authorized by the certificate for payment of the Legislative Holdback amount is due and payable on the second Business Day following the receipt of the certificate for payment of the Legislative Holdback amount pursuant to Section 4.5(c).

**4.6 Completion Holdback and Tower Interim Completion Holdback**

- (a) The Tower Interim Completion Holdback may be reduced from time to time as a result of such actions by Project Co, as confirmed by the Independent Certifier, in accordance with the terms and conditions of this Project Agreement. To the extent the Tower Interim Completion Holdback is reduced from time to time, Project Co hereby irrevocably directs SMH to pay the amount of any Tower Interim Completion Holdback reduction, together with applicable HST, to the Lenders' Agent or as the Lenders' Agent may direct, as security for the Financing. SMH agrees to pay the Tower Interim Completion Holdback reductions as directed by Project Co and shall not accept any redirection without the consent of the Lenders' Agent. Project Co acknowledges and agrees that payment by SMH of the Tower Interim Completion Holdback reductions in accordance with this Section 4.6(a) as Project Co may direct constitutes payment by SMH to Project Co in satisfaction of SMH's obligation to pay the Tower Interim Completion Holdback reductions to Project Co under this Project Agreement and in satisfaction of any trust obligation of SMH with respect to such payments under Section 7 of the CLA pursuant to Section 10 of the CLA.
- (b) The Completion Holdback may be reduced from time to time as a result of such actions by Project Co, as confirmed by the Independent Certifier, in accordance with the terms and conditions of this Project Agreement. To the extent the Completion Holdback is reduced from time to time, Project Co hereby irrevocably directs SMH to pay the amount of any Completion Holdback reduction, together with applicable HST, to the Lenders' Agent or as the Lenders' Agent may direct, as security for the Financing. SMH agrees to pay the Completion Holdback reductions as directed by Project Co and shall not accept any redirection without the consent of the Lenders' Agent. Project Co acknowledges and agrees that payment by SMH of the Completion Holdback reductions in accordance with this Section 4.6(b) as Project Co may direct constitutes payment by SMH to Project Co in satisfaction of SMH's obligation to pay the Completion Holdback reductions to Project Co under this Project Agreement and in satisfaction of any trust obligation of SMH with respect to such payments under Section 7 of the CLA pursuant to Section 10 of the CLA.

**4.7 Withholding of Payment**

- (a) If because of climatic or other conditions reasonably beyond the control of Project Co, there are items of work that cannot be performed, payment in full for that portion of the Works which has been performed, as certified by the Independent Certifier, shall not be withheld or delayed by SMH on account thereof, but SMH may withhold, until the remaining portion of the Works is finished, only such amount that the Independent Certifier determines is sufficient and reasonable to cover the cost of performing such remaining Works.

**4.8 Establishment of Trust Account and Manner of Payment**

- (a) SMH agrees that it will make commercially reasonable efforts to establish the Trust Account in conjunction with Project Co on or before Financial Close, but if not so

established, then within 90 days of Financial Close. All costs and expenses associated with the establishment, maintenance and administration of the Trust Account shall be borne solely by Project Co.

#### **4.9 Compensation on Termination**

- (a) If this Project Agreement is terminated pursuant to Sections 34.3(a), 35.2(a)(ii), 36.1, 36.2 or 36.3, then:
  - (i) Schedule 23 - Compensation on Termination shall apply and SMH shall pay Project Co any applicable compensation on termination; and
  - (ii) the provisions of Sections 4.3 through 4.6, inclusive, shall no longer apply.
- (b) Project Co hereby irrevocably directs SMH to make any Compensation Payment to the Lenders' Agent, or as the Lenders' Agent may direct, as security for the Financing. SMH shall pay the Compensation Payment as directed by the Lenders' Agent and shall not accept any redirection without the consent of Lenders' Agent. SMH will pay the Compensation Payment in accordance with the provisions of Schedule 23 – Compensation on Termination. Project Co acknowledges and agrees that payment by SMH of the Compensation Payment to the Lenders' Agent in accordance with this Section 4.9 constitutes payment by SMH to Project Co in satisfaction of SMH's obligation to pay the Compensation Payment to Project Co under this Project Agreement and in satisfaction of any trust obligation of SMH with respect to such payments under Section 7 of the CLA pursuant to Section 10 of the CLA.

#### **4.10 Payment Due under Insurance Policies**

- (a) In the event of loss or damage occurring where payment becomes due under the property and boiler insurance policies, payments shall be made in accordance with the provisions of the Insurance Trust Agreement.

#### **4.11 HST**

- (a) SMH covenants and agrees to pay to Project Co the HST that may be exigible with respect to any payments made by SMH to Project Co hereunder.

#### **4.12 Set-Off**

- (a) The Parties agree that their rights of set-off at law or in equity are limited to the right of:
  - (i) SMH 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 Article 44) which are due to SMH by Project Co pursuant to the terms of this Project Agreement or by the Construction Guarantor pursuant to Schedule 12 – Performance Guarantee of Construction Guarantor; and

- (ii) Project Co to set off against any amounts otherwise due to SMH pursuant to the terms of this Project Agreement, any amounts (including, without limitation, any amounts payable in accordance with Article 44) which are due to Project Co by SMH pursuant to the terms of this Project Agreement.

#### **4.13 Effect of Payment**

- (a) Subject to Section 38.2, 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.

#### **4.14 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.

#### **4.15 Taxes**

- (a) All amounts specified in this Project Agreement, including, for clarity, any compensation payable on termination, are expressed exclusive of any Taxes payable pursuant to Applicable Law by SMH. For clarity, SMH 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. If Project Co is required by Applicable Law to collect any such Taxes from SMH, SMH shall pay such Tax to Project Co simultaneously with the amount to which such applicable Tax relates or applies.
- (b) SMH 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, the Facility or the Existing Facilities.
- (c) SMH shall pay all applicable HST properly payable in accordance with the *Excise Tax Act* (Canada) by SMH upon and in connection with payments by SMH to Project Co under this Project Agreement.

#### **4.16 Changes in Scope of Taxation**

- (a) If, as a result of a Change in Law, the application of Taxes under Part IX of the *Excise Tax Act* (Canada) or any provincial sales tax legislation changes with respect to the provision of any goods or services by Project Co in connection with the performance of the Works, SMH and Project Co agree to co-operate to determine how such change affects their respective obligations under this Agreement.



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

- (a) Project Co shall, at SMH's request and cost, assist SMH in applying for and obtaining all remissions and credits of Taxes to which SMH is entitled.
- (b) SMH 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 SMH's cost, assist SMH in making any applications for such global or general exemption, waiver, remission or refund and shall provide SMH with such documentation as SMH may reasonably require to support such application and, in any event, shall provide such consent as SMH may require. Any exemption, waiver, remission, refund or other recovery of Taxes obtained by SMH through such application shall accrue to the sole benefit of SMH.
- (c) Project Co will provide SMH with any information reasonably requested by SMH from time to time in relation to any Taxes chargeable by Project Co in accordance with this Project Agreement and payable by SMH to Project Co from time to time.

**4.18 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 SMH's prior written consent, which consent may be withheld in SMH's sole discretion.

**4.19 Taxes – General**

- (a) Project Co shall not, without the prior written consent of SMH (which consent may be withheld in its sole discretion), undertake any action or transaction that, if undertaken, would cause SMH to have (or result in SMH 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 Ancillary Document.

**4.20 Taxes – Indemnity**

- (a) If (i) Project Co becomes a Non-Resident, or (ii) SMH 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 SMH under the Project Agreement or under any of the Project Documents, then SMH 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 a 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) SMH 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 SMH under this Project Agreement or under any

other Ancillary 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) SMH 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 SMH under the Project Agreement or under any of the Project Documents, Project Co shall, in each case, indemnify and hold harmless SMH for (A) the full amount of all Taxes (“**Indemnifiable Taxes**”) that arise, are imposed on or are required to be paid by SMH in respect of any amounts paid or credited by SMH to Project Co or any Project Co Party under this Project Agreement or under any other Ancillary Document as a result of either of the foregoing items less any amount withheld or deducted by SMH 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 Tax 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 SMH 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 SMH shall be conclusive evidence, absent manifest error, of the amount due from Project Co to SMH. SMH shall be entitled to exercise its rights of set-off under Section 4.12 against any amounts owing under this indemnification.

## **5. SCOPE OF AGREEMENT**

### **5.1 Scope of Agreement**

- (a) Project Co shall undertake the Project and perform the Works 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 SMH, 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.

## **6. REPRESENTATIONS AND WARRANTIES**

### **6.1 Project Co Representations and Warranties**

- (a) Project Co represents and warrants to SMH that as of the date of this Project Agreement:
- (i) Project Co [**REDACTED**] 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) Project Co and the Project Co Parties, collectively, have extensive experience and are knowledgeable in the design and construction of hospital facilities and have the required ability, experience, skill and capacity to perform the Works in a timely and professional manner as set out in this Project Agreement;
- (iii) 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;
- (iv) 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;
- (v) 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;
- (vi) 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) any Applicable Law; or
  - (C) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vii) no Project Co Event of Default has occurred and is continuing;
- (viii) all of the information regarding Project Co set out in Schedule 31 – Project Co Information is true and correct in all material respects;
- (ix) 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;

- (x) 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 SMH, and, to Project Co's knowledge, nothing contained herein or therein inhibits or prevents Project Co from completing the Works or performing the Works in accordance with this Project Agreement in a good and safe manner so as to achieve and satisfy the requirements of this Project Agreement;
- (xi) Project Co is able to meet its obligations as they generally become due;
- (xii) Project Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada) and its HST registration number is [REDACTED];
- (xiii) the Scheduled Tower Interim Completion Date is a realistic date and is achievable by Project Co performing the Works in accordance with this Project Agreement;
- (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) Project Co has obtained all necessary Project Co Permits, Licences, Approvals and Agreements required to commence the Works;
- (xvii) the manager or supervisory personnel Project Co has assigned to the Project are highly experienced;
- (xviii) Project Co has a sufficient staff of qualified and competent personnel to replace its designated supervisors, subject to the SMH's approval, in the event of death, incapacity or resignation;
- (xix) Project Co and certain of the Project Co Parties have conducted inspections of the Site prior to Commercial Close and an investigation and examination of the Project Agreement, the Background Information and any other documents made available to Project Co by SMH so as to ascertain the nature or location of the Works and the Site, the physical conditions of the Site, the interface with the Existing Facilities and protocols, rules and regulations if any, conditions relating to the transportation, handling and storage of materials and availability of labour

and the character and availability of equipment, materials and facilities needed to perform the Works;

- (xx) Project Co has secured the Financing and is in a position to complete the Financing on or before the Financial Close Target Date, subject to the satisfaction of reasonable conditions that are customary in closing financing for projects similar to the Project;
- (xxi) 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 in relation to the operation, management and ownership of the Project; and
- (xxii) To the knowledge of Project Co, no Restricted Person has directly or indirectly, an Economic Interest in Project Co or the Project.

## **6.2 SMH Representations and Warranties**

- (a) SMH represents and warrants to Project Co that as of the date of this Project Agreement:
  - (i) SMH 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 Services (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) SMH has the requisite power, authority and capacity to execute, deliver and perform its obligations under 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 SMH's constituting 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 SMH and constitutes a legal, valid, and binding obligation of SMH, enforceable against SMH 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 SMH 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 SMH Event of Default has occurred and is continuing;
- (vii) to the knowledge of SMH, there are no actions, suits, proceedings, or investigations pending or threatened (in writing) against SMH or, to SMH's knowledge, any SMH Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) of which SMH 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 SMH or in any impairment of its ability to perform its obligations under this Project Agreement, and SMH 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) SMH is able to meet its obligations as they generally become due;
- (ix) SMH 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 SMH to grant or to cause to be granted to Project Co the licence rights contemplated in Section 16.1;
- (x) SMH is the registered owner of the Site and has good title thereto in fee simple, subject only to the Title Encumbrances; and
- (xi) subject to the limitations on this representation and warranty contained in Appendix "A" to Schedule 1 – Definitions and Interpretation, the contemplated uses of the Facility are permitted by the existing official plan, zoning and other land use restrictions.

**7. BACKGROUND INFORMATION****7.1 No Liability**

- (a) Except as expressly provided in Sections 7.4, 18.2 and 18.3, none of SMH, any SMH Party or any Government Entity shall 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 SMH, any SMH 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.

**7.2 No Warranty**

- (a) Except as expressly provided in Sections 7.4, 18.2 and 18.3:
- (i) neither SMH nor any Government Entity gives any warranty or undertaking of whatever nature in respect of the Background Information and, specifically (but without limitation), neither SMH 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 SMH 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.

**7.3 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 7.4, 18.2 and 18.3, it shall not be entitled to and shall not, and shall ensure that no Project Co Party shall, make any claim

against SMH, any SMH 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.

#### **7.4 Technical Reports**

- (a) SMH agrees that, if at the date of this Project Agreement, except as disclosed in any Background Information or as otherwise disclosed by SMH or any SMH 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 SMH, incorrect or there is relevant information in the possession or control of SMH 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 Works or materially adversely affects Project Co's cost of performing the Works, such incorrect information shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (b) For the purposes of Section 7.4(a), "to the actual knowledge of SMH" means to the actual knowledge of the Executive Vice President and Chief Administrative Officer or the Vice President and Chief Planning Officer.

### **8. PROJECT DOCUMENTS**

#### **8.1 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 SMH.

#### **8.2 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 47.3 and 48.2 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 or waive or exercise any of its rights under 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 SMH, 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, if any such breach (or waiver or lapse) would 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 SMH, 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 8.2(a)(i),

without the prior written consent of SMH, not to be unreasonably withheld or delayed, provided that, where consent is requested pursuant to Section 8.2(a)(i) or 8.2(a)(iv), such consent shall not be withheld, and shall be provided within a reasonable time, where the relevant matter referred to in Section 8.2(a)(i) or 8.2(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 SMH, 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 8.2(a)(i), or the entering into of any agreement replacing all or part of any Ancillary Document as described in Section 8.2(a)(iv), Project Co shall, to the extent applicable, comply with all provisions herein relating to changes in Subcontractors, including Section 47.3.

- (b) Upon the written request of SMH or the SMH Representative, Project Co will deliver or cause to be delivered to SMH or the SMH Representative a copy of any notices delivered or received by Project Co under any of the Ancillary Documents.

### **8.3 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 the liability of SMH whether actual or potential, unless such action is a Permitted Borrowing or a Refinancing effected in accordance with the provisions of Schedule 29 - Refinancing.

**8.4 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.

**9. SMH RESPONSIBILITIES****9.1 General**

- (a) SMH 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 SMH Permits, Licences, Approvals and Agreements which may be required for the performance of the Works;
  - (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 SMH shall not be under any obligation to perform any of Project Co's obligations under this Project Agreement; and
  - (v) perform all of its obligations under, and observe all provisions of, the SMH Development Accountability Agreement.
- (b) SMH shall, and shall cause all SMH Parties to, take reasonable steps to minimize undue interference with the provision of the Works by Project Co or any Project Co Party.
- (c) Nothing in this Project Agreement shall in any way fetter the right, authority and discretion of SMH 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 SMH'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 SMH's board of directors from time to time, subject to Section 29.1(b).

## **10. PROJECT CO RESPONSIBILITIES – GENERAL**

### **10.1 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 SMH, in its sole discretion.

### **10.2 Complete and Operational Facility**

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

### **10.3 General Responsibilities and Standards**

- (a) Project Co shall, at its own cost and risk, perform and complete the Works:
  - (i) in accordance with the Works Schedule and, in this regard, shall commence the Works no later than the day following Financial Close and, subject to adjustment as provided for in the Project Agreement, (A) achieve each Phase Completion by the applicable Scheduled Phase Completion Date; (B) achieve Tower Interim Completion by the Scheduled Tower Interim Completion Date; (C) achieve Substantial Completion by the Scheduled Substantial Completion Date; and (D) achieve Final Completion by the Scheduled Final Completion Date;
  - (ii) in compliance with Applicable Law;
  - (iii) so as to satisfy the Output Specifications;
  - (iv) 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;
  - (v) in accordance with Good Industry Practice and to meet the standards followed by professionals, manufacturers, contractors and trades who are experienced in work on hospital facilities that are comparable to the Facility;
  - (vi) in a timely and professional manner;
  - (vii) with due regard to the health and safety of persons and property;
  - (viii) subject to the other provisions of this Project Agreement, in a manner which will not impair the ability of SMH, any of the SMH Parties or any Government Entity to comply with Applicable Law; and

- (ix) in accordance with all other terms of this Project Agreement.
- (b) Project Co shall cooperate with SMH 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 SMH's obligations under this Project Agreement.

## **11. PROJECT CO RESPONSIBILITIES – DESIGN AND CONSTRUCTION**

### **11.1 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 11.1.
- (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 SMH Design Team) for each of the following:
  - (i) 50%, 75% 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% and 100% 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 (the “**Construction Document Submittals**”);
  - (iii) Permit, Licence, Approval and Agreement drawings (phased, if applicable); and
  - (iv) all other documentation required pursuant to Schedule 10 – Review Procedure.
- (d) Project Co shall submit to the SMH Representative for review in accordance with Schedule 10 – Review Procedure all Design Data and other items listed in Section 11.1(c).
- (e) The Design Data and other items listed in Section 11.1(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 SMH 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 SMH wishes to attend shall be held in Toronto, Ontario unless SMH 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 and/or the Existing Facilities, replace and restore, as applicable, any parts of the design or construction that do not comply with this Project Agreement.
- (h) Subject to Section 11.4, neither SMH nor any SMH Party will have any liability:
- (i) if a document submitted by Project Co and reviewed by SMH, the SMH Representative or the SMH Design Team 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 SMH will cooperate with each other in the design review process. Notwithstanding such cooperation by SMH, such review shall not, except as provided in Section 11.4, 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 SMH Design Team, at any time, a reasonable opportunity to view any items of Design Data, which shall be made available to the SMH Representative as soon as practicable following receipt of a written request from the SMH Representative.
- (i) Specifically, Project Co will cooperate with SMH and the SMH Design Team and will cause the Construction Contractor to cooperate with SMH and in particular the Construction Contractor 's design and engineering consultants to:
    - (A) create as requested by SMH or SMH Representative; and/or

(B) provide to and allow the SMH Design Team to make use of;

any items of Design Data and any other documents that may be required in the submission of any such items to any Governmental Authority for the purposes of obtaining any Permits, Licences, Approvals and Agreements in particular for the achievement of notice of approval conditions and site plan approvals required to be obtained by SMH in respect of the New Shuter Wing.

- (k) Project Co shall cause the Construction Contractor to establish and maintain a computerized design database which Project Co and SMH may access remotely by computer to view drawings comprised within the Design Data and to electronically store and print copies of such Design Data.

## **11.2 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 SMH 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 partnership with SMH for the purpose of supporting SMH 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, Existing 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 SMH Representative to allow sufficient time for review of each Works Submittal by the SMH Design Team, taking into account both the resources available to the SMH Design Team 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.

### **11.3 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 SMH Representative;
  - (ii) the Parties shall cooperate to develop a reasonable schedule for the Design Workshops and shall incorporate such schedule into the Works Schedule;
  - (iii) Project Co shall circulate to the SMH Representative an agenda for each of the Design Workshops no later than 10 Business Days prior to the relevant Design Workshop;
  - (iv) the Design Workshops shall be held in person, except where otherwise agreed by the Parties, acting reasonably;
  - (v) Project Co shall maintain minutes of the Design Workshops, including possible design solutions and changes in design, and, within two Business Days after each Design Workshop, Project Co shall provide to the SMH 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;
  - (vi) SMH 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 SMH shall not be bound by the input provided in connection with the Design Workshops;
  - (vii) Project Co shall submit to SMH the Design Development Submittals or the Construction Document Submittals, as applicable, for review pursuant to Schedule 10 - Review Procedure; and
  - (viii) 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 Schedule 10 - Review Procedure.
- (b) Prior to the 50% and 75% 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; and
    - (C) materials management strategy;
  - (iii) exterior elevations, including materials, finishes and colours;
  - (iv) room layouts;
  - (v) millwork/modular systems furniture;
  - (vi) Equipment, including coordination and other details;
  - (vii) information/communications strategy;
  - (viii) interior colour/material presentation;
  - (ix) mechanical and electrical systems, including plant layouts and functionality, and including integration of mechanical and electrical systems into Existing Facilities; and
  - (x) facilities management, lifecycle and energy efficiency considerations.
- (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) all items listed in Section 11.3(b) and all items listed in Sections 1.0, 2.0 and 3.0 Appendix A of Schedule 10 – Review Procedure, as required;
  - (ii) physical mock-ups for the SMH Design Team and user review - rooms to be mocked-up as per Appendix A of Schedule 10 – Review Procedure;
  - (iii) room and millwork/modular casework interior elevations;
  - (iv) door/hardware/security functionality;
  - (v) In-Contract Equipment coordination;
  - (vi) audio/visual systems and integration; and
  - (vii) sustainability considerations and LEED requirements.



- (d) Prior to the 50% and 100% 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;
  - (iii) Equipment coordination details;
  - (iv) signage and wayfinding;
  - (v) detailed engineering system solutions; and
  - (vi) facilities management, lifecycle and energy efficiency considerations.
- (e) The purpose of the Design Workshops is to facilitate the incorporation of the SMH Design Team and user input, involvement and feedback into the Design Data prior to submission of such Design Data in accordance with Schedule 10 - Review Procedure.

#### **11.4 Clinical Functionality**

- (a) SMH confirms that, as at the date of this Project Agreement, it has reviewed the Site master plan and blocking and stacking diagrams and that, subject to any qualifications or comments noted thereon, such Works Submittals satisfy the Output Specifications in respect of Clinical Functionality, so far as can reasonably be determined given the level of detail in the Works Submittals.
- (b) With each of the Design Development Submittals, Project Co shall submit to SMH, 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 SMH 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 SMH, for its review pursuant to Schedule 10 – Review Procedure, a final Clinical Functionality Report, and SMH 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) the Plant.

### **11.5 Performance of Design Obligations**

- (a) In the design and engineering of the Project, 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, Output Specifications and codes, and as otherwise required by Applicable Law.

### **11.6 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 SMH prior to Substantial Completion, including any and all subsequent revisions, amendments and changes thereto, shall be subject to review by SMH pursuant to Schedule 10 – Review Procedure.

### **11.7 Documents at the Site**

- (a) Project Co shall keep one copy of the current digital files of the Project Agreement, Project Documents, Works Schedule, submittals, reports, Variation Confirmations, Project Co Variation Notices, Variation Directives, partnering documents, records of meetings and all other documents necessary for the administration of the Project at the Site, all in good order and available to SMH, Lenders' Consultant and SMH Representative. Project Co shall keep a daily log available to SMH, Lenders' Consultant and SMH Representative at all times.

- (b) Project Co shall, where practical, keep one copy of current standards and manufacturers' literature specified in the Project Documents at the Site in good order and available to SMH Representative and Lenders' Consultant and their representatives for the duration of the Works.

### **11.8 General Construction Obligations**

- (a) Without limiting Section 10.3:
- (i) Project Co is solely 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 all other performance of the Works.
  - (ii) Project Co shall in a timely and professional manner and in accordance with the requirements of this Project Agreement:
    - (A) construct the Works diligently, expeditiously and in a thorough and workman-like manner;
    - (B) ensure that no works other than the Works under this Project Agreement are constructed on the Site, the Facility or the Existing Facilities by Project Co, any Project Co Party or any person for whom Project Co is responsible at law;
    - (C) protect the Works from all of the elements, casualty and damage;
    - (D) in respect of plant, equipment, Products and materials incorporated in the Works, use plant, equipment, Products and materials that:
      - (I) are of a kind that are consistent with the Output Specifications;
      - (II) are new, of good quality and are used, handled, stored and installed in accordance with Applicable Law and Good Industry Practice, including, with respect to health and safety, so as not to be hazardous or dangerous; and
      - (III) where they differ from the Output Specifications, have been substituted with SMH's prior written consent in accordance with Section 11.18.
  - (iii) Without limiting Project Co's obligations pursuant to Section 11.12, the Phasing Requirements or Project Co's indemnity pursuant to Section 44.1, Project Co shall, at all times throughout the progress of the Works, be responsible for maintaining and securing those portions of the Site occupied by Project Co from time to time for construction of the Works in accordance with the Phasing Requirements to prevent access onto the Site and the Facility of any persons not

entitled to be there, and the licence granted to Project Co pursuant to Section 16.1 shall include rights for Project Co to do so.

### **11.9 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 Works;
  - (ii) except for those obligations which are identified as SMH obligations in Appendix 1 of Schedule 1 – Definitions and Interpretation, assume all of the obligations of SMH under the SMH Permits, Licences, Approvals and Agreements (and for greater certainty, the Development Approvals); 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 SMH or any SMH Party, Project Co shall not obtain or renew such Permits, Licences, Approvals and Agreements without the prior written consent of SMH not to be unreasonably withheld or delayed, provided that neither SMH nor any SMH Party shall be responsible for obtaining or for the failure of Project Co to obtain any Permit, Licence, Approval and Agreement or for the failure of Project Co to renew any SMH Permit, Licence, Approval and Agreement. SMH shall comply, or shall require compliance, with any conditions, liabilities or obligations as are imposed on SMH or any SMH Party by the requirements of any Permit, Licence, Approval and Agreement obtained with SMH consent under this Section 11.9(b).
- (c) SMH 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 11.9(a)(ii), SMH shall: (i) provide Project Co with relevant information and copies of notices received under the applicable SMH Permits, Licences, Approvals and Agreements and (ii) execute any documents under the applicable the SMH Permits, Licences, Approvals and Agreements which Applicable Law dictates that only SMH can execute.

### **11.10 Protection of Works and Property**

- (a) Project Co shall protect the Works and the property of SMH at the Site, including the property adjacent to the Site and the Existing Facilities, from damage which may arise as a result of Project Co's operations under this Project Agreement, and shall be responsible for such damage, except damage which occurs as a result of acts or omissions by SMH or any SMH Party.

- (b) Should Project Co, in the performance of this Project Agreement, damage the Works or the property of SMH at the Site, including the property adjacent to the Site and the Existing Facilities, Project Co shall be responsible to Make Good such damage at Project Co's expense.
- (c) Should damage occur to the Works or the property of SMH at the Site, including the property adjacent to the Site and the Existing Facilities, for which Project Co is not responsible, as provided in Section 11.10(a), Project Co shall Make Good such damage to the Works and, if SMH so directs, to the property of SMH and the Guaranteed Price, each applicable Scheduled Phase Completion Date, the Scheduled Tower Interim Completion Date and the Scheduled Substantial Completion Date shall, if applicable, be adjusted in accordance with Schedule 22 – Variation Procedure.
- (d) Project Co shall not undertake to repair and/or replace any damage whatsoever to adjoining property without first consulting SMH and receiving written instructions as to the course of action to be followed.
- (e) Notwithstanding Section 11.10(d), where there is danger to life or property which arises out of or in connection with the performance of the Works, either Party may, but Project Co shall, take such emergency action as is necessary to remove the danger.
- (f) If any Project Co Party has caused damage to the work of another contractor related to the Project, Project Co agrees upon due notice to settle with the other contractor by negotiation or arbitration in accordance with Section 11.13(e) and Schedule 27 – Dispute Resolution Procedure. If the other contractor makes a claim against SMH on account of damage alleged to have been so sustained, the dispute shall be dealt with in substantially the same manner as contemplated in Section 11.13(e) and Schedule 27 – Dispute Resolution Procedure.

### **11.11 Liability Unaffected**

- (a) Project Co shall not be relieved of any liability or obligation under this Project Agreement by the retainer or 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 Works, to comply with the obligations of Project Co to SMH in the same manner and to the same extent as Project Co.
- (b) No inspection, review, comment, approval, verification, confirmation, certification, acknowledgement or audit pursuant to the provisions of this Project Agreement by SMH, the SMH Representative, or Lenders' Consultant, or anyone on their behalf, nor any failure of any of them to do so, shall relieve Project Co from performing or fulfilling any of its obligations under this Project Agreement or be construed as an acceptance of the Works or any part thereof.

### **11.12 Safety**

- (a) From Financial Close until Final Completion, Project Co shall:

**Confidential**

Page 39

- (i) comply with the Construction 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 SMH, each SMH 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 SMH with a certificate of good standing from WSIB or any successor thereto once every 90 days.
- (b) At any time that the Works are being carried out in or around the Existing Facilities Project Co shall at all times:
- (i) ensure that it complies with all safety requirements set out in the Project Agreement, including those set out in Section 11.12(a) above; and
  - (ii) keep the Existing Facilities in a safe and orderly state, as appropriate and in accordance with Good Industry Practice, to avoid any danger to the patients, employees, visitors and other persons attending the Existing Facilities.

### **11.13 Additional Works**

- (a) SMH reserves the right to carry out Additional Works. SMH 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, SMH 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 11.13(a), the methods and means of construction and coordination and scheduling of the Additional Works with the Works during the performance of the Works;

- (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, and to the extent such matters have been assigned to Project Co pursuant to Section 11.13(a), the methods and means of construction and coordination and scheduling of the Additional Works;
  - (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 to provide seamless insurance coverage to Project Co and SMH (including, if appropriate, naming SMH and Project Co as additional insureds 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 during the performance of the Works:
- (i) 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;
  - (ii) to the extent SMH has assigned to Project Co any or all of the matters referred to in Section 11.13(a) and subject to the performance by SMH of its obligations under Sections 11.13(b)(i) and 11.13(b)(ii), 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 to be performed under this Project Agreement;
  - (iii) where all or part of the performance of the Works in accordance with the Project Agreement is affected by or depends upon, the completion and/or proper execution of the Additional Works, promptly report to SMH in writing any readily apparent deficiencies in the Additional Works, prior to proceeding with the affected Works. Failure by Project Co to so report shall invalidate any claims against SMH by reason of such readily apparent deficiencies;
  - (iv) afford Additional Contractors reasonable opportunity to introduce and store their products and use their construction machinery and equipment to execute the Additional Works; and

- (v) participate with SMH and Additional Contractors in reviewing their construction schedules when directed to do so by SMH.
- (d) If, in respect of Additional Works carried out prior to Substantial Completion at the Site:
  - (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 are not as a result of Project Co's failure to perform any of its obligations under Section 11.13(c) 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 Article 30, be treated as a Delay Event and, subject to and in accordance with Article 31, 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 SMH pursuant to this Agreement) shall be dealt with in substantially the same manner as contemplated in Section 8 of Schedule 27 – Dispute Resolution Procedure, provided the Additional Contractors are subject to binding reciprocal obligations in the contracts between SMH and the Additional Contractors. Project Co shall be deemed to have consented to binding arbitration of any dispute with any other contractor whose contract with SMH contains a binding reciprocal agreement to arbitrate.
- (f)
  - (i) Project Co shall have a period of 10 Business Days following notice from SMH of SMH'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 adverse effect on Project Co's ability to perform any of the Works, 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 11.13(f)(i), SMH 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) subject to 11.13(d), either Party may refer the question of whether a Variation is required pursuant to Section 11.13(e) for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and where SMH has given notice to Project Co that it does not agree that a Variation is required, SMH 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) SMH shall not be entitled to withdraw any such Variation Enquiry unless SMH 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 11.13(f)(i)) and will not result in any material adverse effect (including material additional costs) on Project Co's ability to perform any of the Works 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 increase in costs arising from any void warranty.
- (g) 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.

#### **11.14 Defective Works**

Prior to Substantial Completion:

- (a) Project Co shall promptly Make Good any Construction Defect whether or not such Construction Defect has been incorporated into the Facility and whether or not the Construction Defect is the result of poor workmanship, use of defective Products or In-Contract Equipment or damage through carelessness or other act or omission of Project Co. The correction of Construction Defects shall be at Project Co's sole cost and expense. Project Co shall Make Good, in a manner acceptable to the Independent Certifier, all Construction Defects, whether or not they are specifically identified by the Independent Certifier, and Project Co shall prioritize the correction of any Construction Defects so as not to interfere with or derogate from the Works Schedule, provided that Project Co shall prioritize the correction of any Construction Defects that in the sole discretion of SMH are determined to adversely affect the day to day operation of SMH.
- (b) Project Co shall Make Good promptly other contractors' work destroyed or damaged by such rectifications at Project Co's expense.

- (c) If in the opinion of the Independent Certifier it is not expedient for Project Co to correct any Construction Defect, SMH may deduct from the amount of the Guaranteed Price the difference in value between the Works as performed and that called for by the Project Agreement. If SMH and Project Co do not agree on the difference in value, they shall refer the matter to the Independent Certifier for a determination and the determination will be issued as a Variation.

### **11.15 Warranty Obligations**

- (a) Project Co represents, warrants and covenants that:
  - (i) the Works shall conform to the requirements of this Project Agreement, Good Industry Practice, Applicable Law and all professional engineering principles generally accepted as standards of the industry in the Province of Ontario;
  - (ii) the Works shall be free of defects, including design defects, errors and omissions; and
  - (iii) materials and equipment shall be of good quality and in compliance with this Project Agreement.
- (b) During each Warranty Period and subject to Section 11.15(c), Project Co shall promptly, at its sole cost and expense, correct and Make Good all Construction Defects arising in respect of the Works. For greater certainty, Project Co is required to correct and Make Good Construction Defects related to any Product and any In-Contract Equipment during the applicable Warranty Period despite Project Co having obtained on SMH's behalf industry-standard or other required warranties in accordance with Section 11.15(f). For all work to correct Construction Defects, the applicable Warranty Period shall be extended for a further one year from the date of the last work completed in respect of such corrective Works. For clarity, any extension of a Warranty Period for the purposes of a correction shall only apply to the relevant Construction Defect and not the Works as a whole.
- (c) In addition to the obligation to correct and Make Good Construction Defects during a Warranty Period, Project Co shall at its expense correct and Make Good any Construction Defects that could not reasonably have been ascertained by a competent person in accordance with Good Industry Practice during a visual inspection of the Works ("**Construction Latent Defect**"), provided SMH gives Project Co written notice of the Construction Latent Defect within the time frame applicable to such Construction Latent Defect pursuant to the *Limitations Act*, 2002 (Ontario).
- (d) The warranties described in this Section 11.15 shall cover labour and material, including, the costs of removal and replacement of covering materials. The warranties shall not limit extended warranties on any Product or item of In-Contract Equipment called for elsewhere in the Output Specifications or otherwise provided by any manufacturer of such Product or item of In-Contract Equipment.

- (e) If Project Co fails to correct and Make Good any Construction Defects or Construction Latent Defects in accordance with Sections 11.15(b) and 11.15(c) and in the time period specified in Section 11.16(a) or Section 11.16(b), as applicable, without prejudice to any other right or remedy SMH may have, SMH may correct such Construction Defects or Construction Latent Defects at Project Co's sole cost and expense.
- (f) Project Co shall obtain warranties from the manufacturers of each of the Products and items of In-Contract Equipment for the duration(s) and in accordance with the applicable requirements specified in the Output Specifications in the name of and to the benefit of both Project Co and SMH. Where, in respect of a Product warranty or In-Contract Equipment warranty, the Output Specifications do not specify a specific duration and/or other requirements, Project Co shall obtain industry-standard warranties from the applicable manufacturers in the name of and to the benefit of Project Co and SMH and shall use commercially reasonable efforts to ensure that such Product warranties and In-Contract Equipment warranties extend for as long a period from each Phase Completion Date, the Tower Interim Completion Date and the Substantial Completion Date as can be obtained from the applicable manufacturer, but in any event all such Product warranties and In-Contract Equipment warranties shall extend no less than two years from the Substantial Completion Date. Each Product warranty and In-Contract Equipment warranty shall be issued by the applicable manufacturer and delivered to Project Co no later than 30 days prior to each Phase Completion Date, with respect to each applicable Phase of the Works, the Tower Interim Completion Date, with respect to the Tower Interim Completion Works, and the Substantial Completion Date, with respect to the Remainder Works. Project Co shall ensure that each Product warranty and In-Contract Equipment warranty, including any Product warranty or In-Contract Equipment warranty extended under this Section 11.15(f), is fully assigned to SMH, at no cost or expense to SMH, at the end of each Warranty Period, as such Warranty Period may be extended in accordance with Section 11.15(b).
- (g) Project Co shall monitor the maintenance program of SMH throughout each and every Warranty Period to satisfy itself that the Works are being maintained in accordance with the operating and maintenance manuals described in Sections 23A.5, 23B.5 and 24.5 and the Maintenance Instructions provided by Project Co. Project Co shall report on the status of such SMH maintenance program and shall report promptly to SMH any deviations from such prescribed Maintenance Instructions. If SMH agrees with such reported deviations, SMH shall, on a reasonable and prompt basis, perform the work required to correct such deviations and, provided such work is carried out in accordance with Good Industry Practice and the Maintenance Instructions, such work shall not impact the applicable warranty provided by Project Co hereunder. If SMH does not agree with such reported deviations, SMH and Project Co agree to cooperate in good faith to resolve such disagreement and for SMH to then perform the agreed upon work (if any), which work, for clarity, shall not impact the applicable warranty provided by Project Co hereunder. If SMH and Project Co cannot resolve such disagreement, either Party may refer the matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

- (h) Subject to Section 11.13 and Section 11.15(g), Project Co acknowledges that SMH may, in its sole discretion, maintain, repair and/or alter any part or parts of the Works during the applicable Warranty Period and agrees that such work shall not impact any of the warranties provided by Project Co hereunder, provided that such work is carried out in accordance with Good Industry Practice and, if applicable, the Maintenance Instructions and that such work does not materially alter the affected part or parts of the Works.

#### **11.16 Prompt Repair of Warranty Work**

- (a) Project Co acknowledges that the timely performance of warranty work is critical to the ability of SMH to maintain effective operations of the Facility and the Existing Facilities. Project Co shall use commercially reasonable efforts to respond to any requirement by SMH to correct Construction Defects and Construction Latent Defects within the time periods required by SMH (which, for certainty, may, in respect of an Emergency, require immediate correction). Project Co further acknowledges that if SMH is unable to contact Project Co and/or the corrective work is not commenced within such time period as may be required by SMH (including, for clarity, immediately in the event of an Emergency), SMH's own forces may take such emergency steps as are reasonable and appropriate to correct such Construction Defects and Construction Latent Defects at Project Co's sole cost and expense and, except in the case of damage caused by SMH's own forces, such emergency steps taken by SMH's own forces shall not invalidate any warranties in respect of such portion of the Works affected by such corrective actions of SMH's own forces.
- (b) Subject to Section 11.16(a), Project Co shall promptly, and in any event not more than 15 days after receipt of written notice thereof from SMH, Make Good any Construction Defects which may develop within the applicable Warranty Period and any Construction Latent Defects, and also Make Good any damage to other Works caused by the correction of such Construction Defects and Construction Latent Defects. All such corrective work shall be at Project Co's sole cost and expense and shall not be treated as, or entitle Project Co to request or form the basis of a claim for, a Variation, additional compensation or damages. The above-noted time period of 15 days shall be subject to the following:
  - (i) If the corrective work cannot be completed in the 15 days specified, Project Co shall be in compliance if Project Co:
    - (A) commences and is diligently proceeding with the corrective work within the specified time;
    - (B) provides SMH with a schedule acceptable to SMH for such correction;
    - (C) reports to SMH on the status and the progress of the corrective work on an ongoing basis (including on a daily basis if requested by SMH); and
    - (D) Makes Good the Construction Defects, Construction Latent Defects and/or damage, as the case may be, in accordance with such schedule.

- (c) If Project Co fails to correct and Make Good the Construction Defects, Construction Latent Defects and/or damage, as the case may be, in the time specified in Section 11.16(a) or Section 11.16(b), as applicable, or subsequently agreed upon, without prejudice to any other right or remedy SMH may have, SMH may correct such Works at the sole risk, cost and expense of Project Co and may draw down on the Warranty Letter of Credit to fund or as reimbursement for such costs and expenses.
- (d) The performance of corrective work and Making Good of Construction Defects, Construction Latent Defects and/or damage for which Project Co is responsible shall be commenced and completed as expeditiously as possible in accordance with Section 11.16(a) or Section 11.16(b), as applicable, and shall be executed at times convenient to SMH and this may require work outside normal working hours at Project Co's expense. Any extraordinary measures required to complete such work, as directed by SMH to accommodate the operation of the Facility or other aspects of the Project as constructed, shall be at Project Co's sole cost and expense.
- (e) The foregoing express warranties shall not deprive SMH of any action, right or remedy otherwise available to SMH at law or in equity for breach of any of the provisions of the Project Agreement or any Ancillary Document by Project Co, and the periods referred to in this Section 11.16, shall not be construed as a limitation on the time in which SMH may pursue such other action, right or remedy.

#### **11.16A Warranty Letter of Credit**

- (a) On or before the Substantial Completion Date, Project Co shall deliver, or cause to be delivered, to SMH an unconditional and irrevocable letter of credit (the "**Warranty Letter of Credit**") from any one or more of the Schedule I Canadian chartered banks or any other financial institutions approved by SMH in SMH's sole and absolute discretion, in each case, whose current long-term issuer rating is at least "A" by Standard & Poor's and "A2" by Moody's Investor Services or an equivalent rating by another party acceptable to SMH, in its sole and absolute discretion, in favour and for the direct and exclusive benefit of SMH, in a form provided by Project Co to SMH no fewer than 60 days prior to the Anticipated Substantial Completion Date but acceptable to and approved by SMH, acting reasonably, and in the amount equal to **[REDACTED]**.
- (b) Unless the Warranty Letter of Credit is drawn by SMH in accordance with the provisions of this Project Agreement, SMH shall release and deliver the Warranty Letter of Credit to Project Co on the day following the expiry of the final Warranty Period, as may be extended pursuant to Section 11.15(b).
- (c) SMH shall be entitled to draw on the Warranty Letter of Credit:
  - (i) in accordance with Section 11.16(c); and/or
  - (ii) to satisfy any amounts that are due and have remained outstanding for 30 days by Project Co pursuant to the terms of this Project Agreement or by the Construction

Guarantor pursuant to Schedule 12 – Performance Guarantee of Construction Guarantor.

- (d) SMH may make multiple calls on the Warranty Letter of Credit.
- (e) Project Co shall continuously maintain, replace or renew the Warranty Letter of Credit (or shall cause the continuous maintenance, replacement or renewal of the Warranty Letter of Credit) until the Warranty Letter of Credit is released and delivered to Project Co pursuant to Section 11.16A(b).
- (f) In the event that Project Co does not renew (or does not cause the renewal of) the Warranty Letter of Credit and does not provide (or cause the provision of) proof of such renewal to SMH before the date that is 20 calendar days before the Warranty Letter of Credit's expiry date, then at any time during such 20 calendar day period and upon providing prior written notice to Project Co, SMH may draw upon the full amount of the Warranty Letter of Credit and deposit the cash proceeds thereof in a segregated bank account selected by Project Co (provided that such bank account must be at a bank that meets the thresholds described in Section 11.16A(a) and if Project Co does not promptly select such bank account then such bank account may be selected by SMH in its sole and absolute discretion) and such cash proceeds shall thereupon stand in place of the Warranty Letter of Credit until Project Co delivers (or causes the delivery of) a replacement Warranty Letter of Credit to SMH. All interest earned on such cash proceeds shall be for the benefit of Project Co. SMH shall be entitled to withdraw such cash proceeds in the same manner that they are permitted to draw upon the Warranty Letter of Credit under Section 11.16A(c). Upon the delivery of a replacement Warranty Letter of Credit by Project Co to SMH, all remaining cash proceeds and all accrued interest thereon from such segregated bank account shall be returned to Project Co or as Project Co may direct within five Business Days.
- (g) Until a date that is one year before the Scheduled Substantial Completion Date, Project Co may propose to SMH a form of warranty bond in favour of SMH as a substitute for the Warranty Letter of Credit. Project Co agrees that the aggregate bond amount of such warranty bond shall be no less than \$[REDACTED] and a portion of such aggregate bond amount shall contain a liquid amount of no less than \$[REDACTED] to be made available to SMH upon demand. In the event that, in SMH's discretion acting reasonably, SMH approves of and accepts such form of warranty bond as a substitute for the Warranty Letter of Credit, a Variation shall be implemented in respect thereof. For clarity, SMH shall be under no obligation whatsoever to approve of or accept any such warranty bond or to implement any such Variation.

### **11.17 Minimize Disturbance and Works in Existing Facilities**

- (a) Project Co recognizes and understands that SMH is a public hospital under the *Public Hospitals Act* (Ontario) and is therefore subject to a highly regulated legal and operating environment. Project Co acknowledges that in addition to the use of Good Industry Practice, this Project Agreement includes instructions as to the manner in which the

Works are to be performed in order to minimize disturbance to the Existing Facilities, including with respect to noise, dust control, access to the Site and the particular requirements in respect of those portions of the Works which are to be carried out within the Existing Facilities and in respect of those portions of the Works where connections are being made to the Existing Facilities. In addition, Project Co acknowledges that it has familiarized itself with the facility and/or building operations of the Existing Facilities and will perform the Works taking into account the requirements of SMH to maintain normal facility and/or building operations of the Existing Facilities. Project Co further acknowledges that the Cost of the Works includes all premium time and overtime that may be required to perform the Works in accordance with this Project Agreement and Good Industry Practice. Project Co shall develop and implement protocols in furtherance of the foregoing in accordance with the Output Specifications.

- (b) Project Co recognizes that part of the Works consists of the renovation of existing buildings and structures or the addition of a structure to an existing building and that the carrying on of SMH Activities during construction is a priority for SMH and acknowledges that it has reviewed the Project Documents. Project Co shall use all methods required to comply with the instructions set out in this Project Agreement during the performance of the Works. Project Co shall fully cooperate with SMH in complying with said instructions during the performance of the Works. Any costs incurred by Project Co in complying with said instructions shall be part of the Guaranteed Price.
- (c) Project Co acknowledges that the Project Agreement includes the Phasing Requirements and other specifications which include instructions respecting SMH's use of the Existing Facilities and infection control procedures. Project Co acknowledges having read and understood the said instructions and agrees to comply with the procedures set out therein. Project Co shall be responsible for any costs and expenses resulting in its failure to comply with these procedures.

#### **11.18 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 SMH, in its sole discretion.

#### **11.19 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 SMH of such change. If, after such notice, SMH

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 SMH 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 11.19 shall not apply where a change in a technical standard is also a Change in Law.

## **11.20 Subcontractors and Suppliers**

- (a) Project Co shall preserve and protect the rights of the Parties under this Project Agreement with respect to the works to be performed under Subcontract, and shall:
  - (i) enter into Subcontracts or written agreements with Project Co Parties to require them to perform their work as provided in the Project Agreement;
  - (ii) incorporate the relevant terms and conditions of the Project Agreement into all contracts or written agreements with Project Co Parties; and
  - (iii) be as fully responsible to SMH for acts and omissions of the Project Co Parties as for acts and omissions of persons directly employed by Project Co.
- (b) Attached in Part 1 of Schedule 8 – Project Co Parties is a list of all Project Co Parties that Project Co has engaged or caused to be engaged for the performance of the Work as of the date of execution of this Project Agreement. Project Co agrees to update such list from time to time as additional Project Co Parties are engaged. Any of these named Project Co Parties listed by Project Co may be changed by Project Co upon prior notice to (but without the approval of) the SMH Representative, provided however, that if the SMH Representative reasonably objects to any change to a mechanical or electrical Subcontractor that is a Project Co Party, then Project Co shall select an alternative replacement mechanical or electrical Subcontractor to which the SMH Representative does not reasonably object.
- (c) Project Co hereby agrees to contractually obligate the Construction Contractor to enter into the Construction Contractor's Direct Agreement and, subject to Section 11.20(d), to cause the Construction Contractor to cause each of the other Project Co Parties, including Suppliers leasing any construction machinery and equipment, to enter into the Subcontractor's Direct Agreement, to evidence, among other things, that SMH shall have the right to cure any default by the Construction Contractor under the Subcontract.
- (d) With the exception of the Subcontracts specifically listed in items (a) through (k) in Part 2 of Schedule 8 – Project Co Parties, none of Project Co, the Construction Contractor or the applicable Project Co Party are obliged to enter into a Subcontractor's Direct Agreement in respect of Subcontracts having a total estimated cost of \$[REDACTED] or less.



- (e) Subject to Section 11.20(d), Project Co agrees to deliver to SMH the Subcontractor's Direct Agreements by the applicable due dates set out in Part 2 of Schedule 8 – Project Co Parties. If, following the date that 100% Construction Document Submittals are submitted to SMH in accordance with Schedule 10 – Review Procedure, Project Co is required to enter into any additional Subcontractor's Direct Agreement pursuant to this Section 11.20, Project Co shall deliver such Subcontractor's Direct Agreements to SMH within 30 days of execution.

### **11.21 Apprenticeship Plan and Program**

- (a) No later than six months after Financial Close, Project Co shall provide a plan setting out Project Co's Project-specific approach to maximizing apprenticeship opportunities on the Project (the "**Apprenticeship Plan**") for review and approval by SMH. The Apprenticeship Plan shall include,
  - (i) specific objectives for apprenticeship opportunities for the Project on a trade-by-trade basis;
  - (ii) apprenticeship opportunities for each trade required on the Project;
  - (iii) a confirmation that apprenticeships will be registered with the Ministry of Training, Colleges and Universities and the Ontario College of Trades, as applicable;
  - (iv) a program to ensure the required supply of apprentices to meet Project Co's Apprenticeship Plan targets and requirements;
  - (v) a program to support apprentices on the Project, to complete their apprenticeships during the Project Term and, for those whose apprenticeships are not complete by the end of the Project Term a program to support apprentices to complete their apprenticeships after the end of the Project Term; and
  - (vi) a focused program for youth-at-risk, local communities, and military veterans.
- (b) Project Co shall implement the approved Apprenticeship Plan.
- (c) Project Co shall provide an annual report to SMH on the implementation of the Apprenticeship Plan which report shall include,
  - (i) statistics on the number of apprentices involved in the Project relative to the number of journeypersons, for each month of the Project; and
  - (ii) detailed information setting out Project Co's progress toward achieving the objectives set out in the Apprenticeship Plan, including an identification of an barriers that prevented Project Co from achieving its objectives.

- (d) SMH may require Project Co to amend its Apprenticeship Plan if, in its opinion, acting reasonably, Project Co is failing to maximize apprenticeship opportunities on the Project pursuant to the then current Apprenticeship Plan.
- (e) SMH may, in its sole discretion, release Project Co's Apprenticeship Plan to the public. Project Co's Apprenticeship Plan shall not be Confidential Information.

#### **11.22 Procurement Monitoring and Implementation Plan**

- (a) Project Co shall implement the procurement monitoring and implementation plan (the "**Procurement Monitoring and Implementation Plan**") attached as Schedule 20 – Procurement Monitoring and Implementation Plan to this Project Agreement.
- (b) A director of Project Co shall submit, annually, on each anniversary of Commercial Close, a completed and executed declaration in the form attached as Appendix 1 to Schedule 20 – Procurement Monitoring and Implementation Plan that Project Co has made the proper inquiries and has determined that the requirements of the Procurement Monitoring and Implementation Plan have been complied with by Project Co and its Subcontractors in the immediately previous year.

#### **11.23 Demolition Requirements**

- (a) Project Co shall, and shall cause each Project Co Party that is performing any part of the Works, at such person's own cost and risk, at all times during any period in which the Works that are being performed pursuant to this Project Agreement involving any Demolition, to:
  - (i) conduct all work in connection with any Demolition at all times in compliance with Section 3 of the Performance Standards Regulation;
  - (ii) ensure that all Project Co Parties having responsibility for the supervision of any such Demolition are qualified as either a professional engineer, limited license holder or provisional license holder (as such terms are used in the Performance Standards Regulation) (such person is hereinafter referred to as a "**Demolition Supervisor**");
  - (iii) observe and perform the Demolition in a manner that is consistent with the recommendations set forth in the Demolition Guidelines in all material respects; and
  - (iv) in connection with any Complex Structure Demolition to be conducted by Project Co or any Project Co Party, shall:
    - (A) prepare detailed specifications relating to such Complex Structure Demolition which specifications will include, without limitation, colour-coded Load-Path Diagrams (which will include a description of the Demolition Requirements set forth herein) to supplement the Site work

plans and blueprints relating to the Demolition and all other technical requirements relating to the Complex Structure Demolition (the “**Demolition Specifications**”);

- (B) at all times when a Complex Structure Demolition is being performed that the Demolition Specifications, Demolition workplan and Load-Path Diagram, be present and available at the Site at which such Complex Structure Demolition is being performed; and
- (C) ensure at all times when a Complex Structure Demolition is being performed that a Demolition Supervisor will be on the Site at which such Complex Structure Demolition is being performed and actively supervising all activities in respect of the Complex Structure Demolition;

(the obligations to be performed by Project Co or any Project Co Party that is performing any part of the Works in connection with any Demolition as set forth in this Section 11.23(a) are collectively referred to as the “**Demolition Requirements**”).

- (b) Without limiting any other provision of this Project Agreement, if at any time while any Demolition is being performed pursuant to this Project Agreement, Project Co or any Project Co Party that is performing any part of any Demolition receives notice from SMH, any SMH Party or any Governmental Authority that the Demolition is:
  - (i) not being conducted in a manner that is in compliance with the Demolition Requirements; or
  - (ii) not being conducted in a manner that is in accordance with this Project Agreement;

(such event referred to as a “**Demolition Default Event**”),

Project Co, and the applicable Project Co Party, shall:

- (A) be required immediately upon the occurrence of a Demolition Default Event, to notify SMH of that a Demolition Default Event has occurred, unless SMH was the person that provided notice of the Demolition Default Event,
- (B) cease all work in respect of such Demolition, and
- (C) within 5 Business Days of receipt of a notice of a Demolition Default Event produce and deliver to the SMH Representative:
  - (I) a report identifying the reasons for the occurrence of the Demolition Default Event; and

- (II) a Demolition Plan showing the steps that are to be taken to rectify the Demolition Default Event within a period of not more than 30 days from the occurrence of the Demolition Default Event, which Demolition Plan shall be subject to review and approval by SMH and, to the extent SMH requires any amendments or revisions to be made to such Demolition Plan, Project Co and the applicable Project Co Party shall take all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to SMH an amended and revised Demolition Plan not more than 5 Business Days from the date on which such request is made by SMH.
- (c) No Demolition shall be recommenced at the Site that was the subject of the Demolition Default Event until (i) SMH is satisfied that Project Co or the applicable Project Co Party has taken all necessary steps to remediate such Demolition Default Event in accordance with Demolition Plan and (ii) SMH has received a report, in form and substance satisfactory to SMH, prepared by a professional engineer that the Demolition Default Event has been remediated and the Site has been properly prepared for the Demolition to proceed in accordance with the Demolition Plan. SMH shall have the right to require Project Co and the applicable Project Co Party, each at its sole cost and expense, to take all corrective and remedial action as SMH, acting reasonably, believes is necessary to ensure that the Site that was the subject of the Demolition Default Event is remediated and prepared so that the Demolition can proceed in accordance with the Demolition Plan. If Project Co and the applicable Project Co Party do not take such actions within the time period required by SMH, SMH shall have the right to, or to cause a third party to, at the sole cost and expense of Project Co, take all such corrective and remedial action as may be required to put the Site in a condition that will allow the Demolition to proceed in accordance with the Demolition Plan.
- (d) Provided that Project Co has complied with Section 11.23(b), for greater certainty, the occurrence of a Demolition Default Event shall not be a Project Co Event of Default for the purposes of Section 34.1(a)(vi).

## **12. REPRESENTATIVES**

### **12.1 The SMH Representative**

- (a) Subject to the limitations set out in Section 12.1(d), the SMH Representative shall exercise the functions and powers identified in this Project Agreement as functions or powers to be performed by the SMH Representative and such other functions and powers of SMH under this Project Agreement as SMH may notify Project Co from time to time.
- (b) SMH may, from time to time by written notice to Project Co, change the SMH 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 SMH Representative has been appointed, or when the SMH Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the SMH Representative's functions under this Project Agreement, SMH shall perform or may, by written notice to Project Co, promptly appoint an alternative SMH Representative to perform the functions which would otherwise be performed by the SMH Representative. Upon receipt of such written notice, Project Co and the Project Co Representative shall be entitled to treat any act of such alternative SMH Representative which is permitted by this Project Agreement as being authorized by SMH, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.
- (d) The SMH 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 12.1(a) and 12.1(d), unless otherwise notified in writing, Project Co and the Project Co Representative shall be entitled to treat any act of the SMH Representative which is authorized by this Project Agreement as being authorized by SMH, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.

## **12.2 The Project Co Representative**

- (a) Subject to the limitations set out in Section 12.2(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 SMH, 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 SMH, 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 SMH's consent in accordance with Section 12.2(b) if such alternative Project Co Representative is in place for more than 180 days. Upon receipt of such written notice, SMH and the SMH 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 SMH and the SMH 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 12.2(d), unless otherwise notified in writing, SMH and the SMH 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 SMH and the SMH Representative shall not be required to determine whether authority has in fact been given.

### **12.3 Communications to Representatives**

- (a) At the time that a Party appoints or changes the appointment of the SMH 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.

### **12.4 Key Individuals**

- (a) The individuals who are critical to the performance of the Works are identified in Schedule 9 – Key Individuals. Project Co shall use commercially reasonable efforts to ensure that such persons remain involved in the Works in the capacity set out in 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 SMH, acting reasonably, such involvement would have a material adverse effect on the Works.
- (b) If Project Co considers it necessary to replace any individual identified in Schedule 9 – Key Individuals, Project Co shall provide SMH with relevant information on the proposed replacement and shall consult with SMH 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 SMH, which consent shall not be withheld or delayed where the proposed replacement is suitably qualified and experienced and of equal or better quality and experience than the individual being replaced.
- (c) If SMH determines, acting reasonably, that it is in the best interests of SMH that any individual identified in Schedule 9 – Key Individuals be replaced, SMH 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 SMH with relevant information on the proposed replacement and shall consult with SMH 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 SMH, which consent shall not be withheld or delayed where the proposed replacement is suitably qualified and experienced and of equal or better quality and experience than the individual being replaced.

### **13. WORKS SCHEDULE AND WORKS REPORT**

#### **13.1 Completion of the Works**

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

#### **13.2 The Works Schedule**

- (a) Project Co shall, in accordance with Schedule 3 – Works Scheduling Requirements, prepare and submit to SMH and the Independent Certifier as soon as practical and in any event within 45 days of Financial Close, a detailed computerized draft Works Schedule. SMH shall provide Project Co with comments on the draft Works Schedule in accordance with Schedule 10 – Review Procedure, provided that the period for review of such draft Works Schedule shall be 20 Business Days rather than the 15 Business Days prescribed in Section 2.4 of Schedule 10 – Review Procedure. Project Co shall revise the draft Works Schedule to the extent required by Schedule 10 – Review Procedure within 30 days of receipt of any comments from SMH. When agreed by the Parties, the draft Works Schedule shall become the Works Schedule.
- (b) Project Co and SMH shall comply with the provisions of Schedule 3 – Works Scheduling Requirements.

#### **13.3 Changes to Critical Path**

- (a) Any change to the critical path of the Works Schedule initiated by Project Co which affects a Scheduled Phase Completion Date, the Scheduled Tower Interim Completion Date, the Scheduled Substantial Completion Date or the Scheduled Final Completion Date must be approved in writing by SMH. Subject to the terms of Schedule 22 – Variation Procedure, any SMH approval of such changes to the critical path does not entitle Project Co to a Variation, an extension of time or an addition to the Guaranteed Price.

#### **13.4 Failure to Maintain Schedule**

- (a) Without limiting any other provision of this Project Agreement but subject to Article 30, if, at any time:

- (i) the actual progress of the Works has fallen significantly behind the Works Schedule, including, for clarity, any failure of Project Co to achieve a Works Milestone; or
- (ii) SMH is of the opinion that:
  - (A) the actual progress of the Works has fallen significantly behind the Works Schedule;
  - (B) Project Co will not achieve one or more Phase Completions by the applicable Phase Completion Dates;
  - (C) Project Co will not achieve Tower Interim Completion by the Scheduled Tower Interim Completion Date; or
  - (D) Project Co will not achieve Substantial Completion by the Longstop Date,

Project Co shall:

- (iii) within 5 Business Days of receipt of notice from SMH, produce and deliver to each of the SMH 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 the applicable Phase Completion(s) by the relevant Phase Completion Date(s);
    - (II) achieve Tower Interim Completion by the Scheduled Tower Interim Completion Date;
    - (III) achieve Substantial Completion by the Scheduled Substantial Completion Date; or
    - (IV) if Substantial Completion will not be achieved by the Scheduled Substantial Completion Date, achieve Substantial Completion by the Longstop Date,
  - (C) a revised Works Schedule incorporating the measures required to bring the progress of the Works back on schedule in accordance with the plan delivered under Section 13.4(a)(iii)(B) and approved by the SMH Representative; and



- (iv) bring the progress of the Works back on schedule in accordance with the plan delivered under Section 13.4(a)(iii)(iii)(B) and approved by the SMH Representative.
- (b) Project Co shall notify the SMH Representative if, at any time, the actual progress of the Works is significantly ahead of the Works Schedule.
- (c) For greater certainty, provided that Project Co has complied with this Section 13.4 and is not in default under Section 34.1(a)(iii), the failure to achieve a Phase Completion by the applicable Scheduled Phase Completion Date or Tower Interim Completion by the Scheduled Tower Interim Completion Date on its own shall not be a Project Co Event of Default.

**13.4A Notification of Early Phase Completion**

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

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

**13.4B Notification of Early Tower Interim Completion**

- (f) Unless Project Co obtains the prior written consent of SMH, in its sole discretion, Project Co shall not be entitled to the Tower Interim Completion Certificate prior to, and the Tower Interim Completion Date shall not be earlier than, the Scheduled Tower Interim Completion Date.
- (g) If Project Co advises SMH that it expects to be able to achieve Tower Interim Completion prior to the Scheduled Tower Interim Completion Date, the SMH Representative shall be entitled to require Project Co to produce and submit to the SMH Representative a revised Works Schedule showing the manner and the periods in which

the Works shall be performed and what the revised date for Tower Interim Completion would be so as to enable SMH to consider at its sole discretion:

- (i) whether to agree to an earlier Scheduled Tower Interim Completion Date; and
- (ii) what modifications, if any, shall be required to this Project Agreement in order to accommodate such earlier Scheduled Tower Interim Completion Date.

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

### **13.5 Notification of Early Substantial Completion**

- (a) Unless Project Co obtains the prior written consent of SMH, in its sole discretion, Project Co shall not be entitled to the Substantial Completion Certificate prior to, and the Substantial Completion Date shall not be earlier than, the Scheduled Substantial Completion Date.
- (b) If Project Co advises SMH that Project Co expects to be able to achieve Substantial Completion prior to the Scheduled Substantial Completion Date, the SMH Representative shall be entitled to require Project Co to produce and submit to the SMH 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 SMH 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.

### **13.6 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 SMH 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) a table setting out and responding to items of Project Agreement non-compliance and deficiencies in ongoing Works as identified by SMH and/or Project Co;

- (iii) an updated Works Schedule in summary and detailed formats in accordance with Section 7.1 of Appendix A – Minimum Design and Construction Submittal Requirements of Schedule 10 – Review Procedure;
  - (iv) a narrative with detailed descriptions of the progress of the Works, including:
    - (A) the progress towards achieving the Works Milestones;
    - (B) key deliveries to the Site;
    - (C) construction, erection, testing and commissioning;
    - (D) a discussion of the basis for any required changes to the sequencing of the Works, interdependencies or original activity durations set out in the Works Schedule, which changes, for clarity, shall be incorporated into the updated Works Schedule;
    - (E) comparisons of the actual versus the planned progress of the Works, with a brief commentary on any actual or forecasted delays or problems that might have an impact on the scheduled completion dates of the Works in the Works Schedule and a discussion of the measures being (or to be) adopted by Project Co to overcome them, and
    - (F) any other information specifically requested by SMH on the progress of the Works;
  - (v) 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; and
  - (vi) an update on those matters set out in Schedule 17 – Works Report Requirements, all in form and substance satisfactory to SMH, 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 or revised Works Schedule.
- (b) Project Co shall use and interact with, and ensure that the Construction Contractor uses and interacts with, the On-line Project Management (“**OCPM**”) software system specified by SMH. 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 22 – Variation Procedure and Schedule 17 – Works Report Requirements and other processes as determined by SMH in its sole discretion.

## **14. WORKS COMMITTEE**

### **14.1 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 SMH:
    - (A) the SMH Representative; and
    - (B) 2 other representatives appointed by SMH from time to time; and
  - (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, 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 to provide briefings to the Works Committee members.
- (c) The SMH Representative shall be the chairperson of the Works Committee.

### **14.2 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 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 SMH or Project Co;
  - (viii) any community and media relations issues in accordance with Schedule 18 – Communications Protocol;
  - (ix) monitoring each Phase Commissioning Program, the Tower Interim Completion Commissioning Program and the Final Commissioning Program; and
  - (x) any other issues pertaining to the Works.
- (c) Subject to Section 14.2(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, any Scheduled Phase Completion Date, the Scheduled Tower Interim Completion Date, 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 a Phase Completion by the applicable Scheduled Phase Completion Date, Tower Interim Completion by the Scheduled Tower Interim Completion Date, 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 SMH has a right of consent or in respect of which SMH may exercise discretion pursuant to this Project Agreement.

### **14.3 Term of Works Committee**

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

**14.4 Replacement of Committee Members**

- (a) IO and SMH shall be entitled to replace any of their respective representatives on the Works Committee by written notice to Project Co. SMH 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 SMH, not to be unreasonably withheld or delayed.

**14.5 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 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) Any one of the Project Co Representatives or the SMH Representatives on the Works Committee 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, in the City of Toronto, 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) 2 representatives appointed by SMH (one of whom shall be the SMH Representative), 2 representatives appointed by Project Co (one of whom shall be the Project Co Representative) and a 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 Project Co. Project Co 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 SMH notifies Project Co within 5 Business Days of receipt of the minutes that it disagrees with the contents of the minutes, Project Co and SMH shall be deemed to have approved such minutes. Project Co shall maintain a complete set of all minutes of the meetings of the Works Committee and shall make such minutes available for inspection by SMH during regular business hours.

## **15. QUALITY ASSURANCE**

### **15.1 Quality Plans and Systems**

- (a) Project Co shall cause all of the Works to be the subject of quality management systems, which shall include a Design Quality Plan and a Construction Quality Plan (collectively, the “**Quality Plans**”), which may be incorporated into one document.
- (b) All Quality Plans shall be consistent with the requirements of the Output Specifications, each Phase Commissioning Program, the Tower Interim Completion Commissioning Program and the Final Commissioning Program.
- (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 SMH within 60 days following Financial Close.
- (e) All Quality Plans shall be subject to review by SMH 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.
- (f) Project Co shall implement the Quality Plans, shall perform and cause to be performed the Works in compliance with the Quality Plans, including by causing the Construction Contractor to implement the Design Quality Plan and the Construction Quality Plan.
- (g) Where any aspect of the Works is performed by more than one Project Co Party, then this Article 15, 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 Article 15 to such Project Co Party, including the Construction Contractor, shall be construed accordingly.

**15.2 Changes to Plans**

- (a) Project Co shall submit to SMH, in accordance with Schedule 10 – Review Procedure, any changes to any of the Quality Plans required to comply with Section 15.1, and shall amend such Quality Plans as required pursuant to Schedule 10 – Review Procedure.

**15.3 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 SMH 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.

**15.4 Quality Monitoring**

- (a) Without limiting SMH's other rights pursuant to this Project Agreement, including Section 26, SMH 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 SMH also has the right to perform periodic monitoring, spot checks and auditing of the Construction Contractor's quality management systems.
- (b) Project Co shall cooperate, and shall cause the Construction Contractor to cooperate, with SMH in monitoring quality management systems and shall provide SMH with all information and documentation reasonably required in connection with SMH's rights under this Section 15.4.

**16. LICENCE****16.1 Licence to Site**

- (a) Effective from the date of Financial Close until the Termination Date and subject to this Article 16, SMH hereby grants or shall cause to be granted, and shall continuously until the earlier of the termination of the Project Agreement or Final Completion 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 the Facility in accordance with the Phasing Requirements, except such rights set out as a Project Co responsibility to obtain under the Permits, Licences, Approvals and Agreements tables attached as Appendix "A" to Schedule 1 – Definitions and Interpretation, as are required by Project Co and such Project Co Parties and sufficient (subject to Project Co performing its obligations described in the Permits, Licences, Approvals and Agreements tables attached as Appendix "A" to Schedule 1 – Definitions and Interpretation) to allow Project Co and such Project Co Parties to perform the Works. Following Final Completion, SMH shall grant, or cause to be granted, to Project Co and all Project Co Parties such rights of use



and access to, on and over the Site and the Facility 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 "A" to Schedule 1 – Definitions and Interpretation) to allow Project Co and such Project Co Parties to carry out its remaining obligations under the Project Agreement.

- (b) In consideration for the licence granted pursuant to Section 16.1(a), Project Co shall provide the Works subject to and in accordance with this Project Agreement.
- (c) Without derogating from any of SMH's rights hereunder, in particular and subject to this Section 16.1(c), the rights of access to the Site and the Facility prior to a Phase Completion Date, the Tower Interim Completion Date and the Substantial Completion Date for purposes of the applicable Phase SMH Commissioning, the Tower Interim Completion SMH Commissioning and the SMH Commissioning, SMH acknowledges that, in respect of the Works, Project Co and the Project Co Parties require, and SMH shall provide, access to the Site and the Facility in accordance with the Phasing Requirements without material interference by SMH or any SMH Party from the date of Financial Close until the Termination Date. Project Co further acknowledges that following Final Completion, its access to the Site and the Facility shall be subject to the SMH Activities.
- (d) None of the rights granted pursuant to this Section 16.1 shall extend beyond the boundaries of the Site, or to any lands other than the Site, other than easements and similar interests of SMH which benefit the Site, obtained after the date of this Project Agreement, to the extent the same are necessary for the Works. Notwithstanding the foregoing, SMH shall provide Project Co with limited access to the Existing Facilities in accordance with the Phasing Requirements, to the extent necessary to perform the Works and subject to such reasonable conditions as are imposed by SMH.
- (e) Project Co agrees to: (i) provide hoarding around the licensed area outside of the Existing Facilities in accordance with the Project Documents; (ii) cordon off areas within the Existing Facilities where Project Co is performing the Works required under the Project Documents and as approved by the SMH Representative; and (iii) use such access to the Existing Facilities, including loading docks, freight elevators and access routes as provided in the Output Specifications and as otherwise directed by the SMH Representative.
- (f) The licence and access rights provided in this Section 16.1 shall terminate as of the Termination Date.

## **16.2 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 SMH and any person authorized by SMH may occupy and possess the Site, the Facility and the Existing Facilities.

- (b) Without limiting Section 16.2(a), Project Co acknowledges that SMH 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 Works, such use or development shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.

### **16.3 Limited Access Areas**

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

### **16.4 Naming and Signage**

- (a) Project Co acknowledges that SMH 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, the Facility and the Existing Facilities; and (iii) all rights, Trade-Marks, naming or branding regarding the Facility and any part of the Facility and the Existing Facilities. It is agreed, however, that, with the prior written consent of SMH, 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 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.

### **16.5 No Interest in Land**

- (a) Project Co acknowledges and agrees that, subject to the provisions of the CLA, in accordance with the principles of the IPFP Framework, neither Project Co nor the Lenders shall acquire any estate, right, title or ownership interest in the Site, the Facility or the Existing Facilities or any other interest in land pursuant to this Project Agreement, the Project Documents or otherwise. Notwithstanding any provision herein or in any of the Project Documents to the contrary, all fee simple interest in and freehold title to the Site, or any part thereof, and the Project, shall at all times remain unencumbered by any interest of Project Co or the Lenders. Project Co and the Lenders shall have access to the Site, the Facility and Existing Facilities under and subject to the licences and access rights granted under this Article 16 and the Lenders' Direct Agreement, respectively.

**16.6 Non-Disturbance Agreement**

- (a) If SMH mortgages, charges or otherwise encumbers the Site, SMH 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 16 and the Lenders' Direct Agreement, respectively, free from interference from the mortgagee or any person claiming by or through the mortgagee. This Section 16.6 shall not apply in respect of any portion of the Site used or developed pursuant to Section 16.2(b) if neither the licence granted pursuant to this Section 16 nor the Works pertain to such portion of the Site.

**17. TITLE ENCUMBRANCES****17.1 Title Encumbrances**

- (a) Project Co shall perform all obligations under the Title Encumbrances for or on behalf of SMH, other than:
- (i) obligations under any Title Encumbrance which Project Co is not legally capable of performing for or on behalf of SMH (including, for clarity, any and all obligations under the SMH Mortgages);
  - (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 Toronto may formally relieve or waive, with the consent of SMH, with respect to any Development Approval; and
  - (iv) obligations under the Title Encumbrances that Appendix "A" – Permits, Licences, Approvals and Agreements of Schedule 1 – Definitions and Interpretation provide for SMH performing.
- (b) All Works performed by or on behalf of Project Co 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 17.2 and Section 17.3, the performance of the Works shall not give rise to a right for any person to obtain title to or any interest in the Site, the Facility or the Existing Facilities or any part of it or them, except in accordance with the terms of this Project Agreement.

**17.2 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, the Facility or the Existing Facilities or any part thereof or any interest therein due to an act or omission of Project Co or any Project Co Party.
- (b) Subject to Encumbrances that Project Co shall remove pursuant to Section 17.2(c), the performance of the Work shall not give rise to a right for any person to obtain title to or any interest in the Site, the Facility or the Existing Facilities or any part of it or them except in accordance with the terms of this Project Agreement.
- (c) In the event that the Site, the Facilities or the Existing Facilities or any part thereof or any interest therein becomes subject to any Encumbrance arising in relation to the performance of the Works which has not been consented to in writing by SMH, 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, SMH 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.
- (d) Notwithstanding the provisions of this Section 17.2, the Parties acknowledge that the provisions of Section 17.3 shall apply to claims for lien made against the Site, the Facility or the Existing Facilities pursuant to the *CLA* and shall also apply to claims made against the Legislative Holdback.

**17.3 Construction Lien Act (Ontario)**

- (a) Project Co shall withhold from each Subcontractor the holdbacks required under the *CLA* and shall deal with such holdbacks in accordance with the *CLA* and, for the purposes of the *CLA*, any contract for the performance of the Works entered into by and between Project Co and any Subcontractor in relation to the performance of the Works shall be considered a "contract" as defined in the *CLA*.
- (b) In furtherance of Section 17.3(a), 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.

- (c) Project Co shall follow the requirements of the CLA and Good Industry Practice for posting and advertising certificates of completion when issued.
- (d) Project Co and SMH agree to comply with the requirements of the CLA with respect to the Site, the Facility, the Existing Facilities and the Project whether or not any part of the Site, the Facility, the Existing Facilities or the Project is subject to the provisions of the CLA. For greater certainty, Project Co and SMH hereby covenant and agree to assume and undertake the same obligations that would exist if the Project was subject to the CLA with respect to any part or parts of the Site, the Facility, the Existing Facilities or Project to which the CLA does not apply.
- (e) Notwithstanding anything to the contrary in this Project Agreement, in the event that:
  - (i) a claim for a construction lien arising in relation to the performance of the Works is registered against the Site, the Facility or the Existing Facilities, and unless Project Co makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to SMH, acting reasonably, or
  - (ii) SMH receives any written notice of lien arising in relation to the performance of the Works,

SMH shall be entitled to withhold such portion of any payment otherwise due to Project Co in an amount SMH reasonably determines would be required to satisfy the applicable lien claimant and any costs and expenses incurred by SMH in connection therewith, including such amount on account of costs of the lien claimant such that SMH may, upon payment of the amount of the lien claim together with such costs into court, obtain an order vacating such lien pursuant to the CLA, until such time as such claim has been dealt with as provided below.

- (f) In the event that a written notice of a construction lien arising in relation to the performance of the Works is received by SMH, and unless Project Co makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to SMH, acting reasonably, Project Co shall, within 10 Business Days, at its sole expense, arrange for the withdrawal or other disposal of the written notice of a lien pursuant to the CLA.
- (g) If a construction lien arising in relation to the performance of the Works is registered against the Site, the Facility or the Existing Facilities, and unless Project Co makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to SMH, acting reasonably, Project Co shall, within 10 Business Days, at its sole expense, vacate or discharge the lien from title to the Site, the Facility and the Existing Facilities. If the lien is merely vacated, Project Co shall, if requested, undertake SMH's defence of any action commenced in respect of the lien at Project Co's expense and (i) if an action against SMH has been commenced in respect of the lien, Project Co shall, at its sole cost and expense, promptly use best efforts

to obtain a discontinuance of such action as it relates to SMH, or (ii) if no action has been commenced in respect of the lien, Project Co shall, at its sole cost and expense, promptly use best efforts to obtain a release from the lien claimant releasing SMH from all claims of such claimant that arise from the subject matter of the lien.

- (h) If Project Co fails or refuses to (i) vacate or discharge a construction lien or obtain the withdrawal or other disposal of a written notice of lien arising in relation to the performance of the Works within the time prescribed above, or (ii) promptly obtain the discontinuance of action or release described in Section 17.3(g) above, if applicable, and (iii) unless Project Co makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to SMH, acting reasonably, then SMH shall, at its option, be entitled to take all steps necessary to vacate and/or discharge the lien, and all costs incurred by SMH in doing so (including legal fees on a full indemnity basis and any payment which may ultimately be made out of or pursuant to security posted to vacate the lien) shall be for the account of Project Co, and Owner may deduct such amounts from the amounts otherwise due or owing to Project Co.
- (i) Without limiting any of the provisions of this Section 17.3, Project Co shall satisfy all judgments and pay all costs resulting from any construction liens arising in relation to the performance of the Works or any actions brought in connection with any such liens, or in connection with any other claim or lawsuit brought against SMH by any person that provided services or materials to the Site, the Facility or the Existing Facilities in relation to the Works.
- (j) The provisions of Sections 17.3(e) through 17.3(i) (inclusive) do not apply to construction liens (i) filed by Project Co which are claimed as a result of any default of SMH to make payments to Project Co in accordance with the terms of the Project Agreement or (ii) filed by any SMH Party, including for greater certainty SMH's own forces or SMH's other contractors, which are claimed as a result of work in relation to the Project.
- (k) For clarity, with each application for payment, Project Co shall submit a Statutory Declaration on CCDC Form 9A (2001).

## **18. SITE CONDITION**

### **18.1 Acceptance of Site Condition**

- (a) Subject to Sections 7.4, 18.2 and 18.3, Project Co acknowledges and agrees that it has investigated the Site and its surroundings in accordance with Good Industry Practice taking into account all matters relating to the Site (including the buildings, structures and works, on, over and under the Site existing on the date hereof and 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 7.4, 18.2 and 18.3, Project Co shall not be entitled to

make any claim of any nature whatsoever against SMH or any SMH 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 SMH or a SMH 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 7.4, 18.2 and 18.3, Project Co acknowledges and agrees that it has and shall be deemed to have:
  - (i) performed all necessary Site due diligence and investigations and investigated and examined the Site and its surroundings and any existing works on, over or under the Site in accordance with Good Industry Practice, taking into account all matters relating to the Site, including the buildings, structures and works, on, over and under the Site existing on the date hereof;
  - (ii) in accordance with Good Industry Practice, taking into account all matters relating to the Site, including the buildings, structures and works, on, over and under the Site existing on the date hereof, 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 in accordance with Good Industry Practice, taking into account all matters relating to the Site, including the buildings, structures and works, on over and under the Site existing on the date hereof;
  - (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.
- (b.1) in respect to the New Shuter Wing Lands the environmental conditions reported in the Environmental Report (Phase Two Environmental Site Assessment) in relation to lands to the south and to the west of the New Shuter Wing Lands shall be deemed to also apply to the New Shuter Wing Lands to the same extent as if the Environmental Report (Phase Two Environmental Site Assessment) had directly covered and applied to the New Shuter

Wing Lands. Also in respect to the New Shuter Wing Lands the geotechnical and hydrogeological conditions reported in the Geotechnical Reports in relation to lands to the south and to the west of the New Shuter Wing Lands shall be deemed to also apply to the New Shuter Wing Lands to the same extent as if the Geotechnical Reports had directly covered and applied to the New Shuter Wing Lands. For clarity, for the purposes of Section 18.2(a), references to the Environmental Reports and to the Geotechnical Reports shall take into account the provisions of this Section 18.1(b.1).

- (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 Works in a lawful manner.

## **18.2 Contamination**

- (a) SMH 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, the Geotechnical Reports or the Hazardous Materials Survey Reports;
  - (ii) that could have been properly inferable, readily apparent or readily discoverable on the basis of investigations, inspections or other due diligence in accordance with Good Industry Practice, including as referred to in Section 18.1, taking into account all matters relating to the Site, including the buildings, structures and works, on, over and under the Site existing on the date hereof; or
  - (iii) that is caused by Project Co or any Project Co Party.
- (b) Upon the discovery of any Contamination for which SMH is responsible pursuant to Section 18.2(a), Project Co shall immediately inform the SMH Representative and shall comply with all Applicable Law in respect thereof at SMH's cost pursuant to Section 18.2(d).
- (c) In the event that SMH wishes Project Co to perform actions which are in addition to any required pursuant to Section 18.2(b), then SMH shall issue an instruction to Project Co specifying what action SMH requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at SMH's cost pursuant to Section 18.2(d).
- (d) If Sections 18.2(b) and 18.2(c) require Project Co to perform any alteration, addition, Demolition, extension or variation in the Works as a result of Contamination for which SMH is responsible pursuant to Section 18.2(a) 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 30,



be treated as a Delay Event and, subject to and in accordance with Section 31, be treated as a Compensation Event.

### **18.3 Items of Geological, Historical or Archaeological Interest or Value**

- (a) As between the Parties, all fossils, artifacts 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 SMH.
- (b) Upon the discovery of any item referred to in Section 18.3(a) during the course of the Works, Project Co shall:
  - (i) immediately inform the SMH 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 Cremations Act* and the Heritage Guidelines and Protocols.
- (c) In the event that SMH wishes Project Co to perform actions which are in addition to any required pursuant to Section 18.3(b), then SMH shall issue an instruction to Project Co specifying what action SMH requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions.
- (d) If Sections 18.3(b) and 18.3(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 Article 30, be treated as a Delay Event and, subject to and in accordance with Article 31, be treated as a Compensation Event.

## **19. CITY OF TORONTO AND THIRD PARTY FINANCIAL OBLIGATIONS**

### **19.1 Financial Obligations**

- (a) Subject to Section 19.1(c), 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 Toronto, 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 Toronto, any applicable Utility Company or any applicable Governmental Authority or any other third party relating to the Financial Obligations referred to in Section 19.1(a) shall be for the benefit of SMH to the extent such Financial Obligations were paid by SMH and shall be for the benefit of Project Co to the extent such Financial Obligations were paid by Project Co.
- (c) SMH shall be responsible for all Financial Obligations required under the SMH Permits, Licences, Approvals and Agreements that are expressly described in Appendix "A" – Permits, Licences, Approvals and Agreements to Schedule 1 – Definitions and Interpretation as being the responsibility of SMH.

## **20. SMH ACCESS AND MONITORING**

### **20.1 SMH Access During the Works**

- (a) Subject to Section 20.1(b) but without limiting any of SMH's rights in respect of the Site and the Existing Facilities, Project Co acknowledges and agrees that SMH, the SMH Parties and the Government Entities and their respective representatives shall, prior to Final 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. For clarity, nothing in this Section 20.1 shall restrict or impede SMH's right to use and access the Existing Facilities or any part of the Site not required at that time for Project Co's performance of the Works in accordance with the terms hereof.
- (b) In exercising their access rights under Section 20.1(a), SMH, the SMH Parties and the Government Entities and their respective representatives shall:
- (i) provide reasonable prior notice appropriate to the circumstances (other than for any offices or other facilities provided at the Site for SMH'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.

## **20.2 Increased Monitoring**

- (a) If, at any stage, SMH 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, SMH 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 SMH considers reasonable taking into account the nature of the relevant defect or failure until such time as Project Co shall have demonstrated, to SMH'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 SMH for any reasonable costs incurred as a result of such increased monitoring.

## **20.3 Right to Open Up**

- (a) SMH shall have the right, at any time prior to the Final Completion Date to request Project Co to open up and inspect (or allow SMH to inspect) any part or parts of the Works, or to require testing of any part or parts of the Works, where SMH 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 Design Data) relevant to such part or parts of the Works, and Project Co shall comply with such request. When SMH makes such a request, SMH 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 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 SMH 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 Design Data) relevant to such part or parts of the Works, the exercise by SMH of its rights pursuant to this Section 20.3 shall, subject to and in accordance with Section 30, be treated as a Delay Event and, subject to and in accordance with Section 31, be treated as a Compensation Event.

## **20.4 No Relief from Obligations**

- (a) The Parties acknowledge that the exercise by SMH or the SMH Representative of the rights under this Article 20 shall in no way affect the obligations of Project Co under this Project Agreement except as set out in this Article 20.

## **20.5 Right of Access of Additional Contractors to Works**

- (a) Subject to Section 11.13, Project Co shall grant, and shall cause all Project Co Parties to grant, Additional Contractors access to those parts of the Works as may be necessary for the Additional Contractors to carry out any Additional Works.

## **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 SMH, one of whom shall be the SMH Representative, appointed by SMH from time to time; 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 to 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 Equipment, including, but not limited to, 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 planning, procurement, installation and commissioning of all Not-In-Contract Equipment in a timely and efficient manner and in accordance with the Works Schedule and the Equipment Sub-Plan. Project Co and the Equipment Steering Committee will work co-operatively with any equipment consultant retained by SMH.
- (e) 3 representatives of SMH (one of whom shall be either the SMH Representative or a senior project manager), 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 of 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. Unless the Works Committee otherwise directs:
  - (i) a representative of Project Co shall be the chairperson of the Equipment Steering Committee;

- (ii) Project Co shall be responsible for preparing and providing to the members of the Equipment Steering Committee an agenda for each meeting of the Equipment Steering Committee no fewer than 10 Business Days prior to each meeting;
  - (iii) minutes of all meetings, recommendations and decisions of the Equipment Steering Committee, including those made by telephone or other form of communication, shall be recorded and maintained by Project Co and Project Co 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 SMH notifies Project Co within 5 Business Days of receipt of the minutes that it disagrees with the contents of the minutes, Project Co and SMH shall be deemed to have approved such minutes; and
  - (iv) Project Co shall maintain a complete set of all minutes of the meetings of the Equipment Steering Committee and shall make such minutes available for inspection by SMH during regular business hours.
- (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 SMH Equipment Responsibilities**

- (a) SMH shall be responsible for the procurement of each and every item of Not-In-Contract Equipment and the execution of any and all purchase orders, contracts, manufacturer's installation invoices and other documentation related thereto. For clarity, SMH shall, in its sole discretion:
- (i) determine the method of planning, procurement, quantity, make, model, vendor and any terms and conditions of financing for all Not-In-Contract Equipment based upon tenders, quotations or proposals for Not-In-Contract Equipment obtained by or on behalf of SMH;
  - (ii) prepare and issue Not-In-Contract Equipment procurement documentation (which documents shall, for clarity, include the terms and conditions of each procurement, the Not-In-Contract Equipment specifications and, where applicable, any Not-In-Contract service and preventative maintenance arrangements);
  - (iii) conduct procurement and product evaluations; and
  - (iv) make vendor and Not-In-Contract Equipment selections and awards.
- (b) SMH shall approve the selection of and the entering into of each and every purchase order, contract and manufacturer's installation invoice by Project Co with respect to each item of In-Contract Equipment. Prior to SMH providing any such approval, if applicable,

Project Co shall present to SMH different options for In-Contract Equipment service agreements or other similar arrangements which SMH may, in its sole discretion, select.

- (c) For greater certainty:
  - (i) SMH, not Project Co, shall be liable as “purchaser” to the vendor under every purchase order, contract and manufacturer’s installation invoice related to Not-In-Contract Equipment, and shall make all payments related thereto in accordance with the relevant invoice terms; and
  - (ii) Project Co, and not SMH, shall be liable as “purchaser” to the vendor under every purchase order, contract and manufacturer’s installation invoice related to In-Contract Equipment, and shall make all payments related thereto in accordance with the relevant invoice terms and, if applicable, the provisions of Section 3.2 in respect of cash allowances.
- (d) SMH will assume the obligation to make any payments in respect of In-Contract Equipment that are payable to a vendor after the Substantial Completion Date under any and all leases, managed equipment programs, usage based pricing and other such arrangements or for service agreements, provided that SMH has given its prior written approval to such arrangements.
- (e) SMH shall be responsible for any and all decontamination of Existing Equipment (as required under Applicable Law or by SMH in its sole discretion) prior to the decommissioning of such Existing Equipment by Project Co.

### **21.3 SMH Early Procured In-Contract Equipment**

- (a) Upon Financial Close, SMH shall assign to Project Co and/or Project Co shall assume:
  - (i) any incomplete procurement of SMH Early Procured In-Contract Equipment and any and all related documents; and
  - (ii) if any procurement of SMH Early Procured In-Contract Equipment has been completed by SMH prior to Financial Close, all purchase orders, contracts, manufacturer’s installation invoices and other documentation related to such SMH Early Procured In-Contract Equipment,

(collectively, the “**SMH Early Procured In-Contract Equipment Assumption**”). Project Co shall complete any assigned procurement and shall enter into any and all future purchase orders, contracts, manufacturer’s installation invoices and other documentation respecting any and all SMH Early Procured In-Contract Equipment for which procurement of SMH Early Procured In-Contract Equipment was initiated by SMH but was not completed by Financial Close.
- (b) For greater clarity:

- (i) SMH shall approve and select all SMH Early Procured In-Contract Equipment and assist Project Co with the completion of the related design development in respect of such SMH Early Procured In-Contract Equipment; and
  - (ii) from and after the date of the SMH Early Procured In-Contract Equipment Assumption, Project Co has the same obligations in respect of SMH Early Procured In-Contract Equipment as it does for In-Contract Equipment under this Project Agreement and, for clarity, Project Co shall be liable as “purchaser” to the vendor under every purchase order and other related contract, including manufacturer’s installation invoice, related to SMH Early Procured In-Contract Equipment.
- (c) For the purpose of this Section 21.3(c), all capitalized terms not defined in this Project Agreement have the meanings given to them in the SMH Early Procured In-Contract Equipment Assumption. SMH may, in its sole discretion, require Project Co to procure and perform other Works in relation to items of additional In-Contract Equipment identified by SMH from time to time following the date of this Project Agreement and prior to Substantial Completion pursuant to the SMH Early Procured In-Contract Equipment Agreements (“**Additional In-Contract Equipment and Works**”), including, but not limited to, requiring Project Co to purchase additional optional equipment (including consumables) at the fixed price set out in (i) Sections A-3 – Optional Equipment and Pricing and A-4 – Consumables Pricing of Schedule “A” – Equipment, Products of the Steris Early Procured In-Contract Equipment Agreement, and (ii) Section A-4 – Consumables Pricing of Schedule “A” – Equipment, Products of the Getinge Early Procured In-Contract Equipment Agreement. In such an event a Variation will arise in respect of such Additional In-Contract Equipment and Works and SMH may, in its sole discretion, elect to either (A) pay for such Additional In-Contract Equipment and Works out of its own funds or (B) notify Project Co in writing that such Additional In-Contract Equipment and Works are Discretionary SMH Additional In-Contract Equipment and Works Items and direct Project Co to pay the cost of such Additional In-Contract Equipment and Works with all or a portion of the Discretionary SMH Additional In-Contract Equipment and Works Amount.
- (d) Immediately following Financial Close, Project Co shall pay to SMH the SMH Early Procured In-Contract Equipment Reimbursement Amount to reimburse SMH for all payments made by SMH prior to Financial Close for SMH Early Procured In-Contract Equipment.

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

- (a) Project Co shall be responsible for:
  - (i) completing the design of the Facility to accommodate all Equipment and Existing Equipment, (including, for clarity, in response to any alternatives to any Not-In-Contract Equipment identified and/or selected by the SMH Representative from time to time);

- (ii) revising, coordinating and finalizing the plan to procure, transfer, install and commission, as applicable, all Equipment and Existing Equipment (including, but not limiting to, finalizing and updating the lists of Not-In-Contract Equipment set out in Part 4 of Schedule 15 – Output Specifications) based on the development of Project Co's Design Data and the latest information available from the SMH Representative (including, but not limited to, the to-be-SMH-approved Not-In-Contract Equipment budget, as a result of which substantial revisions to the lists of Not-In-Contract Equipment and Existing Equipment in Part 4 of Schedule 15-Output Specifications may be required) and in consultation with the Equipment Steering Committee;
  - (iii) if applicable, completing the procurement of any SMH Early Procured In-Contract Equipment;
  - (iv) all costs and expenses associated with the commissioning of Equipment and Existing Equipment;
  - (v) procuring and purchasing all In-Contract Equipment as set out in Part 4 of Schedule 15 – Output Specifications;
  - (vi) subject to Section 21.2(e), decommissioning, de-installing, disconnecting and transferring all Existing Equipment as set out in Section C of Part 4 of Schedule 15 – Output Specifications;
  - (vii) 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;
  - (viii) expediting, assembly, unpacking, offloading, handling and storing all Equipment;
  - (ix) 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
  - (x) coordinating, scheduling and completing the commissioning of all Equipment and Existing Equipment, in accordance with each Phase Commissioning Program, the Tower Interim Completion Commissioning Program and the Final Commissioning Program.
- (b) For the purpose of achieving a Phase Completion, all Equipment Project Co is required to commission to achieve such Phase Completion must be successfully commissioned by Project Co in accordance with each Phase Commissioning Program. Not less than 10 Business Days prior to Project Co's submission of a draft Phase Commissioning Program under Section 23A.1(a), SMH shall identify for Project Co the Existing Equipment, if any, that must be successfully commissioned by Project Co in accordance with the applicable Phase Commissioning Program for each Phase Completion to be achieved. Provided that, in respect of any item of (i) In-Contract Equipment, such requirements



shall be waived by SMH if (A), 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 due to a delay in the performance of any of its obligations by an equipment vendor or manufacturer, and (B) the inability of Project Co to complete the procurement, installation or commissioning of such item of equipment does not prevent or materially impede the ability of SMH to deliver patient care in respect of the applicable portion of the Facility; and (ii) Not-In-Contract Equipment, such requirements shall be waived by SMH if, despite having used commercially reasonable efforts to do so, Project Co is unable to complete the installation or commissioning of such item of equipment due to a delay in the performance of any of its obligations by SMH, an equipment vendor or manufacturer.

- (c) For the purpose of achieving Tower Interim Completion, all Equipment Project Co is required to commission to achieve Tower Interim Completion must be successfully commissioned by Project Co in accordance with the Tower Interim Completion Commissioning Program. Not less than 10 Business Days prior to Project Co's submission of the draft Tower Interim Completion Commissioning Program under Section 23B.2(a), SMH shall identify for Project Co the Existing Equipment, if any, that must be successfully commissioned by Project Co in accordance with the Tower Interim Completion Commissioning Program for Tower Interim Completion to be achieved. Provided that, in respect of any item of (i) In-Contract Equipment, such requirements shall be waived by SMH if, (A) 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 due to a delay in the performance of any of its obligations by an equipment vendor or manufacturer, and (B) the inability of Project Co to complete the procurement, installation or commissioning of such item of equipment does not prevent or materially impede the ability of SMH to deliver patient care in respect of the applicable portion of the Facility; and (ii) Not-In-Contract Equipment, such requirements shall be waived by SMH if, despite having used commercially reasonable efforts to do so, Project Co is unable to complete the installation or commissioning of such item of equipment due to a delay in the performance of any of its obligations by SMH, an equipment vendor or manufacturer.
- (d) For the purpose of achieving Substantial Completion, all Equipment must be successfully commissioned by Project Co in accordance with the Final Commissioning Program. Not less than 10 Business Days prior to Project Co's submission of the draft Final Commissioning Program under Section 24.2(a), SMH shall identify for Project Co the Existing Equipment, if any, that must be successfully commissioned by Project Co in accordance with the Final Commissioning Program for Substantial Completion to be achieved. Provided that, in respect of any item of (i) In-Contract Equipment, such requirements shall be waived by SMH if, (A) 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 due to a delay in the performance of any of its obligations by an equipment vendor or manufacturer, and (B) the inability of Project Co to complete the procurement, installation or commissioning of such item of equipment does not prevent or materially impede the ability of SMH to deliver patient

care in respect of the applicable portion of the Facility; and (ii) Not-In-Contract Equipment, such requirements shall be waived by SMH if, despite having used commercially reasonable efforts to do so, Project Co is unable to complete the installation or commissioning of such item of equipment due to a delay in the performance of any of its obligations by SMH, an equipment vendor or manufacturer.

- (e) Whether or not Substantial Completion has been achieved, until such time as Project Co has completed the installation and commissioning of all Not-In-Contract Equipment in accordance with this Section 21, SMH may withhold from any payment or payments due to Project Co a holdback amount equal to the greater of the Not-In-Contract Equipment Fee and \$[REDACTED].

## **21.5 Project Co Procurement Responsibilities**

- (a) Project Co shall act as purchasing and procurement manager for SMH and shall:
- (i) in consultation with the Equipment Steering Committee, update and finalize the lists of Not-In-Contract Equipment and Existing Equipment set out in Part 4 of Schedule 15 – Output Specifications based on the development of Project Co's Design Data and the latest information available from the SMH 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 the layout in respect of 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) upon the request of SMH, provide advice to the Equipment Steering Committee in respect of the evaluation of tenders, quotations or proposals from Not-In-Contract Equipment vendors;
  - (iv) upon the request of SMH, assist 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;
  - (v) upon the request of SMH, assist the Equipment Steering Committee with the selection of tenders, quotations or proposals received from Not-In-Contract Equipment vendors; and
  - (vi) manage and perform the procurement of all In-Contract Equipment (except, for clarity, in respect of any SMH Early Procured In-Contract Equipment for which

the procurement was completed by Financial Close), which includes, but is not limited to, the responsibility for executing any purchase orders, contracts, manufacturer's installation invoices and other documentation related to In-Contract Equipment, as approved by SMH;

- (vii) in respect of Not-In-Contract Equipment, providing such documentation as SMH requires, acting reasonably;
  - (viii) test and calibrate any Equipment not tested and calibrated by vendors and coordinate the acceptance testing of all Equipment as designated in Part 4 of Schedule 15 – Output Specifications; and
  - (ix) during each Warranty Period, coordinate and manage any warranty issues with In-Contract Equipment vendors.
- (b) Based on the awards, tenders, quotations and proposals received by SMH from Not-In-Contract Equipment vendors, Project Co shall be responsible for:
- (i) providing analyses and recommendations to SMH of the effect of the type, quality and quantity of Not-In-Contract Equipment items on the overall design of the Facility and on the relevant areas within the Facility;
  - (ii) the coordination of vendor installation, service agreements, training, supplies, spare parts and start-up consumables included with the items of Not-In-Contract Equipment by the relevant manufacturer or vendor;
  - (iii) the coordination of training for all applicable SMH staff;
  - (iv) the coordination of 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; and
  - (v) the coordination of the dates and times when the items of Not-In-Contract Equipment shall be delivered to the Site.

## **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 SMH Activities. 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 Equipment operated by SMH, 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 SMH staff.

- (b) SMH shall make its staff available for training purposes in accordance with the Works Schedule, each Phase Commissioning Program, the Tower Interim Completion Commissioning Program and the Final Commissioning Program, as applicable.
- (c) Project Co's obligation to complete all applicable Equipment training prior to and as a condition of its achievement of each Phase Completion, Tower Interim Completion and Substantial Completion may be waived in writing by SMH in its sole discretion. If SMH elects to exercise such right from time to time, no later than 30 days prior to the applicable Scheduled Phase Completion Date, the Scheduled Tower Interim Completion Date or the Scheduled Substantial Completion Date, as the case may be, SMH shall provide to Project Co a written list of the Equipment training that Project Co shall be required to complete following the achievement of such Phase Completion, Tower Interim Completion or Substantial Completion, as the case may be, and for which such waiver is being provided by SMH. Promptly following the receipt of such written list, SMH and Project Co shall agree to the time(s) and date(s) upon which such training shall be completed by Project Co following the applicable Phase Completion Date, Tower Interim Completion Date or Substantial Completion Date, as the case may be, and Project Co shall incorporate the time(s) and date(s) of such training into the Works Schedule and the Phase Commissioning Program, the Tower Interim Commissioning Program or the Final Commissioning Program, as applicable.

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

- (a) Project Co shall, in consultation with SMH and in accordance with Schedule 3 - Works Scheduling Requirements, 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, each Phase Commissioning Program, the Tower Interim Completion Commissioning Program and the Final Commissioning Program, as applicable. Such schedule shall include the date by which SMH must procure and make a final determination of the quantity, make, model and vendor of each piece of Not-In-Contract Equipment.
- (b) SMH shall procure and 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 SMH Representative shall have received such documentation as SMH 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. Notwithstanding the foregoing, SMH may, in its sole discretion and at any time and from time to time, delay or cancel the procurement of any item of

Not-In-Contract Equipment and/or the execution of any purchase order, contract, manufacturer's installation invoice and/or other documentation related thereto.

## **22. LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN AND OTHER REQUIREMENTS**

### **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 a LEED Silver Rating and, except as set out in Section 1.1.6.2 of Part 1 of Schedule 15 – Output Specifications and Section 3.10 of Part 3 of Schedule 15 – Output Specifications, Project Co may, in its sole discretion, determine which additional credits to pursue.

### **22.2 Mandatory Prerequisites and Credits**

- (a) Project Co shall, at a minimum, achieve the credits and prerequisites under the LEED Rating System provided for in Section 1.1.6.2 of Part 1 of Schedule 15 – Output Specifications and Section 3.10 of Part 3 of Schedule 15 – Output Specifications.

### **22.3 LEED Progress Reports**

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

### **22.4 LEED Silver Rating**

- (a) Project Co shall cause the Project to be registered with CaGBC on behalf of SMH. Project Co shall verify that the Project is registered with CaGBC within 60 days following Financial Close and confirm to SMH that Project Co is satisfied that the registration is valid, and is effective as of the date it was made.
- (b) If there is a change in the requirements for the achievement of a LEED Silver Rating under the LEED Rating System, and Project Co is required by the CaGBC to comply with such change, then Project Co shall notify SMH 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 a LEED Silver Rating for the Tower and the New Shuter Wing as soon as possible.
- (d) In the event that:
  - (i) Project Co fails to obtain the credits and prerequisites under the LEED Rating System within 24 months after the Tower Interim Completion Date provided for

in Section 1.1.6.2 of Part 1 of Schedule 15 – Output Specifications and Section 3.10 of Part 3 of Schedule 15 – Output Specifications; or

- (ii) a LEED Silver Rating is not obtained for the Tower by 24 months after the Tower Interim Completion Date and for the New Shuter Wing by 24 months after the Substantial Completion Date,

other than as a direct result of any act or omission of SMH, any SMH Party or any Government Entity, SMH shall be entitled to be paid liquidated damages by Project Co in the amount of: (i) \$[REDACTED] in relation to the Tower LEED requirements; and (ii) \$[REDACTED] in relation to the New Shuter Wing LEED requirements. The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that SMH will suffer as a result of the occurrence of either of the specified events and would be difficult or impossible to quantify upon the occurrence of either of such events. Such payment shall constitute full and final settlement of any and all damages that may be claimed by SMH as a result of the occurrence of either of such events. For greater certainty, Project Co's failure to obtain the credits and prerequisites under the LEED Rating System provided for in Section 1.1.6.2 of Part 1 of Schedule 15 – Output Specifications and Section 3.10 of Part 3 of Schedule 15 – Output Specifications or to obtain a LEED Silver Rating for the Tower by 24 months after the Tower Interim Completion Date and for the New Shuter Wing by 24 months after the Substantial Completion Date shall not result in a Project Co Event of Default. The Parties agree that such liquidated damages shall be payable whether or not SMH incurs or mitigates its damages, and that SMH shall not have any obligation to mitigate any such damages.

## **22.5 Greenhouse Gas Credits**

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

## **22.6 LEED Obligations in Design and Construction Contract**

- (a) All obligations of Project Co with respect to LEED arising under this Project Agreement, including for certainty all obligations under this Article 22, are required to be made the obligations of the Construction Contractor under the Design and Construction Contract.

## **22.7 Energy Matters**

- (a) The Parties shall comply with the provisions of Schedule 33 – 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 SMH 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 SMH 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 five 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 five Business Days thereafter, select three 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.



## **23A. PHASE COMMISSIONING AND COMPLETION**

### **23A.1 Phase Commissioning Activities**

- (c) Project Co shall perform all Phase Project Co Commissioning, and shall facilitate the performance of the Phase SMH Commissioning, set out in each Phase Commissioning Program.

### **23A.2 Phase Commissioning Program**

- (d) Project Co shall prepare a draft of the applicable Phase Commissioning Program in respect of each Phase Project Co Commissioning and Phase SMH Commissioning and shall provide a copy thereof to the Independent Certifier, the SMH Commissioning Consultant and the SMH Representative not less than 90 days prior to each applicable Scheduled Phase Completion Date.
- (e) Each Phase Commissioning Program shall, at a minimum:
  - (i) describe the requirements, and the timing and sequence of such requirements, necessary in order that the applicable Phase Project Co Commissioning shall be completed to achieve Phase Completion on or before each Scheduled Phase Completion Date;
  - (ii) describe the requirements, and the timing and sequence of such requirements, of the applicable Phase SMH 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 SMH than those set out in the Outline Commissioning Program, unless otherwise agreed to by SMH;
  - (v) include the names of the individuals or companies proposed to perform all applicable Phase Project Co Commissioning;
  - (vi) include a schedule of each of the Phase Project Co Commissioning Tests and the Phase SMH 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 applicable Phase Project Co Commissioning and Phase SMH Commissioning;
  - (viii) provide for the re-verification of systems following the applicable Phase SMH Commissioning;

- (ix) list the approvals required from any Governmental Authority, manufacturer or other person that are necessary to meet the requirements of each Phase Commissioning Program or Applicable Law; and
- (x) comply with the requirements and the timing and sequence of such requirements of each applicable Transition (as set out in the Transition Parameters).
- (f) SMH shall provide Project Co with comments on each draft Phase Commissioning Program in accordance with the procedures contemplated by Section 4.1 of Schedule 10 – Review Procedure, and Project Co shall revise each draft Phase Commissioning Program to the extent contemplated by Schedule 10 – Review Procedure within 30 days of receipt of any comments from SMH.
- (g) When agreed by the Parties, the applicable Phase Commissioning Program shall replace the Outline Commissioning Program with respect to the applicable Phase Completion.

### **23A.3 Commencement of Phase Project Co Commissioning**

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

### **23A.4 Phase Completion Certificate**

- (j) Project Co shall give the Independent Certifier and the SMH Representative at least ten Business Days' notice prior to the date upon which Project Co anticipates delivering a Phase Completion Notice.
- (k) Project Co shall give the Independent Certifier and the SMH Representative notice (the "**Phase Completion Notice**") upon the satisfaction of all requirements for a Phase Completion, which Phase Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for the Phase Completion, together with Project Co's

opinion as to whether the conditions for issuance of the applicable Phase Completion Certificate have been satisfied.

- (l) SMH shall, within five Business Days after receipt of the applicable Phase Completion Notice, provide the Independent Certifier and Project Co with SMH's opinion as to whether the conditions for issuance of the applicable Phase Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that such Phase Completion Certificate should not be issued.
- (m) Within five Business Days after Project Co's receipt of SMH's opinion pursuant to Section 23A.4(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the applicable Phase Completion Certificate have been satisfied, having regard for the opinions of both Project Co and SMH, to determine whether any Phase Minor Deficiencies exist, and to issue to SMH and to Project Co either:
  - (i) the applicable Phase Completion Certificate, confirming the date of issue as the applicable Phase Completion Date and setting out the Phase Minor Deficiencies List (if applicable) in accordance with Section 23A.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 applicable Phase Completion Certificate.
- (n) Where the Independent Certifier has issued a report in accordance with Section 23A.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 five Business Days after receipt of such report, provide the Independent Certifier and the SMH 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 Phase 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 applicable Phase Project Co Commissioning in a timely manner. Upon completion thereof, Project Co may give a further Phase Completion Notice and Sections 23A.4(c) to (e), inclusive, shall be repeated until the applicable Phase Completion Certificate has been issued.
- (o) Project Co shall provide As-Built Drawings and specifications, Design Data, spare parts and Shop Drawings as soon as possible and in any event no later than 30 days after each Phase Completion Date.

**23A.5 Operation and Maintenance Manuals**

- (p) Project Co shall prepare and deliver to SMH draft copies of all necessary operation and maintenance manuals for the applicable Phase of the Works in the format set out in the Output Specifications no later than 30 days prior to each Scheduled Phase Completion Date.

**23A.5A Maintenance Instructions**

- (q) No later than 30 days prior to each Scheduled Phase Completion Date, Project Co shall prepare and deliver to SMH maintenance data in the format set out in the Output Specifications which is compatible with SMH's CMMS. The maintenance data shall detail all required planned activities (including, but not limited to, preventive maintenance) for the applicable portion of the Works prescribed by the applicable operation and maintenance manuals and Good Industry Practice and shall be subject to the review and approval of SMH, acting reasonably. Following SMH's approval of such maintenance data, SMH shall upload it into the CMMS.

**23A.6 Phase SMH Commissioning**

- (r) The Parties acknowledge that each Phase SMH Commissioning shall be performed both before and after each Phase Completion Date. Prior to each Phase Completion, Project Co shall give SMH full access to the Site, the Facility, any portion of the Existing Facilities in which any Works are to be performed and all relevant parts thereof at such times as may be set out in the applicable Phase Commissioning Program to enable SMH to undertake the applicable Phase SMH Commissioning in accordance with such Phase Commissioning Program. SMH shall comply, and shall ensure that all SMH 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 Works in performing all Phase SMH Commissioning.
- (s) SMH acknowledges that, during each Phase SMH Commissioning Period, Project Co and each Subcontractor will be active in the Facility and, if applicable, in the Existing Facilities, in both the rectification of any Phase Minor Deficiencies and the completion of the applicable Phase Project Co Commissioning, and SMH shall take commercially reasonable steps to allow such activities to proceed in accordance with each Phase Commissioning Program.
- (t) Project Co acknowledges that, prior to and during each Phase SMH Commissioning Period, Project Co and each Subcontractor shall cooperate with SMH and all SMH Parties and use commercially reasonable efforts to ensure that all requirements, and the timing and sequence of such requirements, of the applicable Phase SMH Commissioning activities are able to be completed in the timeframe for completion set out in the applicable Phase Commissioning Program.

**23A.7 Phase Countdown Notice**

- (u) With respect to each Phase Completion, Project Co shall deliver a notice (the “**Phase Countdown Notice**”) to SMH and the Independent Certifier specifying the date (which, for greater certainty, will be on or before the applicable Scheduled Phase Completion Date) on which Project Co anticipates that such Phase Completion will be achieved (the “**Anticipated Phase Completion Date**”).
- (v) Each Phase Countdown Notice shall be delivered not less than 90 days prior to each Anticipated Phase Completion Date. If Project Co fails to deliver a Phase Countdown Notice not less than 90 days prior to the applicable Scheduled Phase Completion Date, such Anticipated Phase Completion Date shall be deemed to be the same date as such Scheduled Phase Completion Date.
- (w) Project Co acknowledges and agrees that SMH requires a minimum of 90 days’ notice prior to each Anticipated Phase Completion Date to prepare for the applicable Phase SMH Commissioning.
- (x) In accordance with Section 13.4A, no Anticipated Phase Completion Date shall be earlier than the applicable Scheduled Phase Completion Date without the prior written consent of SMH, in its sole discretion.

**23A.8 Phase Minor Deficiencies**

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

**23A.9 Rectification of Phase Minor Deficiencies**

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

**23A.10 Failure to Rectify Phase Minor Deficiencies**

- (ee) If Project Co has failed to complete and rectify any Phase Minor Deficiency specified in a Phase Minor Deficiencies List:
  - (i) within 75 days of the issuance of the Phase Minor Deficiencies List for all Phase 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 Phase Minor Deficiency where such a time has been specified in the Phase Minor Deficiencies List by the Independent Certifier,

SMH may engage others to perform the work necessary to complete and rectify any such Phase Minor Deficiencies, at the risk and cost of Project Co, and, if and as applicable, SMH may deduct such cost from the Tower Interim Completion Holdback and interest earned thereon or from the Completion Holdback and interest earned thereon.

**23A.11 Effect of Certificates/Use**

- (ff) The issuance of a Phase Completion Certificate and any taking over or use by SMH of any part of a Phase of the Works under the terms of this Project Agreement, 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 applicable Phase Minor Deficiencies List; or
  - (ii) be construed as an approval by SMH of the Works or the way in which they have been carried out.

**23B. TOWER INTERIM COMPLETION COMMISSIONING AND COMPLETION**

**23B.1 Tower Interim Completion Commissioning Activities**

- (gg) Project Co shall perform all Tower Interim Completion Project Co Commissioning, and shall facilitate the performance of all Tower Interim Completion SMH Commissioning, pursuant to the Tower Interim Completion Commissioning Program.

**23B.2 Tower Interim Completion Commissioning Program**

- (hh) Project Co shall prepare a draft of the Tower Interim Completion Commissioning Program in respect of the Tower Interim Completion Project Co Commissioning and the Tower Interim Completion SMH Commissioning and shall provide a copy thereof to the Independent Certifier, the SMH Commissioning Consultant and the SMH Representative not less than 365 days prior to the Scheduled Tower Interim Completion Date.
- (ii) The Tower Interim Completion Commissioning Program shall, at a minimum:
- (i) describe the requirements, and the timing and sequence of such requirements, necessary in order that the Tower Interim Completion Project Co Commissioning shall be completed to achieve Tower Interim Completion on or before the Scheduled Tower Interim Completion Date;
  - (ii) describe the requirements, and the timing and sequence of such requirements, of the Tower Interim Completion SMH 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 SMH than those set out in the Outline Commissioning Program, unless otherwise agreed to by SMH;
  - (v) include the names of the individuals or companies proposed to perform all Tower Interim Completion Project Co Commissioning;
  - (vi) include a schedule of each of the Tower Interim Completion Project Co Commissioning Tests and the Tower Interim Completion SMH 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 Tower Interim Completion Project Co Commissioning and the Tower Interim Completion SMH Commissioning;

- (viii) provide for the re-verification of systems following the Tower Interim Completion SMH Commissioning;
- (ix) list the approvals required from any Governmental Authority, manufacturer or other person that are necessary to meet the requirements of the Tower Interim Completion Commissioning Program or Applicable Law ; and
- (x) comply with the requirements and the timing and sequence of such requirements of the applicable Transition (as set out in the Transition Parameters).
- (jj) SMH shall provide Project Co with comments on the draft Tower Interim Completion Commissioning Program in accordance with the procedures contemplated by Section 4.1 of Schedule 10 – Review Procedure, and Project Co shall revise the draft Tower Interim Completion Commissioning Program to the extent contemplated by Schedule 10 – Review Procedure within 30 days of receipt of any comments from SMH.
- (kk) When agreed by the Parties, the Tower Interim Completion Commissioning Program shall replace the Outline Commissioning Program with respect to Tower Interim Completion.

### **23B.3 Commencement of Tower Interim Completion Project Co Commissioning**

- (ll) Project Co shall give 30 days' written notice to the Independent Certifier, the SMH Commissioning Consultant and the SMH Representative of the proposed commencement of the Tower Interim Completion Project Co Commissioning.
- (mm) Project Co shall give at least five Business Days' notice to, and shall invite, the Independent Certifier, the SMH Commissioning Consultant and the SMH Representative to witness, and to comment on, each aspect of the Tower Interim Completion Project Co Commissioning. Project Co shall, together with such notice, provide all information that the Independent Certifier, the SMH Commissioning Consultant and the SMH Representative may reasonably require in relation thereto, including:
  - (i) tests proposed;
  - (ii) test methodology; and
  - (iii) expected test results.

### **23B.4 Tower Interim Completion Certificate**

- (nn) Project Co shall give the Independent Certifier and the SMH Representative at least ten Business Days' notice prior to the date upon which Project Co anticipates delivering the Tower Interim Completion Notice.
- (oo) Project Co shall give the Independent Certifier and the SMH Representative notice (the **"Tower Interim Completion Notice"**) upon the satisfaction of all requirements for



Tower Interim Completion, which Tower Interim Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for Tower Interim Completion, together with Project Co's opinion as to whether the conditions for issuance of the Tower Interim Completion Certificate have been satisfied.

- (pp) SMH shall, within five Business Days after receipt of the Tower Interim Completion Notice, provide the Independent Certifier and Project Co with SMH's opinion as to whether the conditions for issuance of the Tower Interim Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Tower Interim Completion Certificate should not be issued.
- (qq) Within five Business Days after Project Co's receipt of SMH's opinion pursuant to Section 23B.4(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Tower Interim Completion Certificate have been satisfied, having regard for the opinions of both Project Co and SMH, to determine whether any Tower Interim Completion Minor Deficiencies exist, and to issue to SMH and to Project Co either:
  - (i) the Tower Interim Completion Certificate, confirming the date of issue as the Tower Interim Completion Date and setting out the Tower Interim Completion Minor Deficiencies List (if applicable) in accordance with Section 23B.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 Tower Interim Completion Certificate.
- (rr) Where the Independent Certifier has issued a report in accordance with Section 23B.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 SMH 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 Tower Interim Completion 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 Tower Interim Completion Project Co Commissioning in a timely manner. Upon completion thereof, Project Co may give a further Tower Interim Completion Notice and Sections 23B.4(c) to (e), inclusive, shall be repeated until the Tower Interim Completion Certificate has been issued.

- (ss) The Independent Certifier's decision to issue or not to issue the Tower Interim Completion Certificate shall be final and binding on the Parties solely in respect of determining the Tower Interim Completion Payment Date, and a Dispute in relation to the Tower Interim Completion Payment 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 Tower Interim Completion Certificate may be referred for resolution pursuant to the Schedule 27 – Dispute Resolution Procedure.
- (tt) Project Co shall provide As-Built Drawings and specifications, Design Data, spare parts and Shop Drawings as soon as possible and in any event no later than 30 days after the Tower Interim Completion Date.

### **23B.5 Tower Operation and Maintenance Manuals**

- (uu) Project Co shall prepare and deliver to SMH draft copies of all necessary operation and maintenance manuals for the Tower in the format set out in the Output Specifications no later than 30 days prior to the Tower Interim Completion Date.

### **23B.5A Maintenance Instructions**

- (vv) No later than 30 days prior to the Tower Interim Completion Date, Project Co shall prepare and deliver to SMH maintenance data in the format set out in the Output Specifications which is compatible with SMH's CMMS. The maintenance data shall detail all required planned activities (including, but not limited to, preventive maintenance) for the applicable portion of the Works prescribed by the applicable operation and maintenance manuals and Good Industry Practice and shall be subject to the review and approval of SMH, acting reasonably. Following SMH's approval of such maintenance data, SMH shall upload it into the CMMS.

### **23B.6 Tower Interim Completion SMH Commissioning**

- (ww) The Parties acknowledge that the Tower Interim Completion SMH Commissioning shall be performed both before and after the Tower Interim Completion Date. Prior to Tower Interim Completion, Project Co shall give SMH full access to the Site, the Facility, any portion of the Existing Facilities in which any Works are to be performed and all relevant parts thereof at such times as may be set out in the Tower Interim Completion Commissioning Program to enable SMH to undertake the Tower Interim Completion SMH Commissioning in accordance with the Tower Interim Completion Commissioning Program. SMH shall comply, and shall ensure that all SMH 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 Works in performing the Tower Interim Completion SMH Commissioning.
- (xx) SMH acknowledges that, during the Tower Interim Completion SMH Commissioning Period, Project Co and each Subcontractor will be active in the Facility and, if applicable,

in the Existing Facilities, in both the rectification of Tower Interim Completion Minor Deficiencies and the completion of Tower Interim Completion Project Co Commissioning, and SMH shall take commercially reasonable steps to allow such activities to proceed in accordance with the Tower Interim Completion Commissioning Program.

- (yy) Project Co acknowledges that, prior to and during the Tower Interim Completion SMH Commissioning Period, Project Co and each Subcontractor shall cooperate with SMH and all SMH Parties and use commercially reasonable efforts to ensure that all requirements, and the timing and sequence of such requirements, of the Tower Interim Completion SMH Commissioning activities are able to be completed in the timeframe for completion set out in the Tower Interim Completion Commissioning Program.

### **23B.7 Tower Interim Completion Countdown Notice**

- (zz) Project Co shall deliver a notice (the “**Tower Interim Completion Countdown Notice**”) to SMH and the Independent Certifier specifying the date (which, for greater certainty, will be on or before the Scheduled Tower Interim Completion Date) on which Project Co anticipates that Tower Interim Completion will be achieved (the “**Anticipated Tower Interim Completion Date**”).
- (aaa) The Tower Interim Completion Countdown Notice shall be delivered not less than 90 days prior to the Anticipated Tower Interim Completion Date. If Project Co fails to deliver the Tower Interim Completion Countdown Notice not less than 90 days prior to the Scheduled Tower Interim Completion Date, the Anticipated Tower Interim Completion Date shall be deemed to be the same date as the Scheduled Tower Interim Completion Date.
- (bbb) Project Co acknowledges and agrees that SMH requires a minimum of 90 days’ notice prior to the Anticipated Tower Interim Completion Date to prepare for the Tower Interim Completion SMH Commissioning.
- (ccc) In accordance with Section 13.4B(a), the Anticipated Tower Interim Completion Date shall not be earlier than the Scheduled Tower Interim Completion Date without the prior written consent of SMH, in its sole discretion.

### **23B.8 Tower Interim Completion Minor Deficiencies**

- (ddd) In the event that any Tower Interim Completion Minor Deficiencies exist when Project Co gives the Tower Interim Completion Notice, the Independent Certifier, in consultation with Project Co and SMH, shall prepare a list of all Tower Interim Completion Minor Deficiencies (the “**Tower Interim Completion Minor Deficiencies List**”) identified at that time and an estimate of the cost and the time for rectifying such Tower Interim Completion Minor Deficiencies. SMH may withhold from the Tower Interim Completion Payment a holdback amount that is [REDACTED]% of the amount estimated by the Independent Certifier for SMH to complete and rectify (i) all Phase

Minor Deficiencies identified, incomplete and unrectified in respect of Phases of the Works which have achieved Phase Completion at that time and (ii) all such Tower Interim Completion Minor Deficiencies (the “**Tower Interim Completion Holdback**”), which holdback shall be held in an interest bearing account.

- (eee) The Tower Interim Completion Minor Deficiencies List will contain the schedule for the completion and rectification of the Tower Interim Completion Minor Deficiencies. In determining the relevant time for rectifying Tower Interim Completion Minor Deficiencies, Project Co shall schedule the completion and rectification of Tower Interim Completion Minor Deficiencies so as to minimize, to the greatest extent reasonably possible, any impairment of SMH's use and enjoyment of the Tower or disruption of the Works.
- (fff) The Independent Certifier must prepare the Tower Interim Completion Minor Deficiencies List in relation to the Tower Interim Completion Notice before the Tower Interim Completion Certificate is issued, but shall not withhold the Tower Interim Completion Certificate by reason solely that there are Tower Interim Completion Minor Deficiencies.
- (ggg) SMH may, in its sole discretion, waive any requirement for Tower Interim Completion, including with respect to Equipment and Existing Equipment, and the failure to meet any such requirement shall constitute a Tower Interim Completion Minor Deficiency.

### **23B.9 Rectification of Tower Interim Completion Minor Deficiencies**

- (hhh) Project Co shall, in consultation with the SMH Representative and so as to minimize, to the greatest extent reasonably possible, any disruption of the Works, complete and rectify all Tower Interim Completion Minor Deficiencies within 45 days of the issuance of the Tower Interim Completion Minor Deficiencies List or such other period as the Independent Certifier may specify in the Tower Interim Completion Minor Deficiencies List.
- (iii) Project Co acknowledges and agrees that the completion and rectification of Tower Interim Completion Minor Deficiencies may require work outside of normal working hours in order to accommodate the efficient operation of the Tower.

### **23B.10 Failure to Rectify Tower Interim Completion Minor Deficiencies**

- (jjj) If Project Co has failed to complete and rectify any Tower Interim Completion Minor Deficiency specified in the Tower Interim Completion Minor Deficiencies List:
  - (i) within 75 days of the issuance of the Tower Interim Completion Minor Deficiencies List for all Tower Interim Completion 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 Tower Interim Completion Minor Deficiency where such a time has been specified in the Tower Interim Completion Minor Deficiencies List by the Independent Certifier,

SMH may engage others to perform the work necessary to complete and rectify any such Tower Interim Completion Minor Deficiencies, at the risk and cost of Project Co, and SMH may deduct such cost from the Tower Interim Completion Holdback and interest earned thereon.

- (kkk) Upon completion and rectification of each Phase Minor Deficiency for which a holdback has been retained by SMH pursuant to Section 23B.8(a), SMH shall release to Project Co the amount of the Tower Interim Completion Holdback related to such Phase Minor Deficiency. Upon completion and rectification of each Tower Interim Completion Minor Deficiency, SMH shall release to Project Co the amount of the Tower Interim Completion Holdback related to such Tower Interim Completion Minor Deficiency. Upon completion and rectification of all applicable Phase Minor Deficiencies and all Tower Interim Completion Minor Deficiencies, SMH shall release to Project Co the then remaining amount of Tower Interim Completion Holdback, together with all interest accrued thereon. Where SMH exercises its rights pursuant to Section 23A.10(a) or Section 23B.10(a), if the cost of such completion and rectification exceeds the amount of the Tower Interim Completion Holdback and interest, then Project Co shall reimburse SMH for all such excess cost.

#### **23B.11 Effect of Certificate/Use**

- (lll) The issue of the Tower Interim Completion Certificate and any taking over or use by SMH of any part of the Tower under the terms of this Project Agreement, 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 Tower Interim Completion Minor Deficiencies List; or
  - (ii) be construed as an approval by SMH of the Works or the way in which they have been carried out.

### **24. COMMISSIONING AND COMPLETION**

#### **24.1 Commissioning Activities**

- (a) Project Co shall perform all Project Co Commissioning, and shall facilitate the performance of all SMH 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 of the Project Co Commissioning and the SMH Commissioning and shall provide a copy thereof to the Independent Certifier, the SMH Commissioning Consultant and the SMH Representative not less than 365 days prior to the Scheduled Substantial Completion Date.
- (b) The Final Commissioning Program shall, at a minimum:
  - (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 SMH 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 SMH than those set out in the Outline Commissioning Program, unless otherwise agreed to by SMH;
  - (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 SMH 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 SMH Commissioning;
  - (viii) provide for the re-verification of systems following the SMH Commissioning;
  - (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; and

- (x) comply with the requirements and the timing and sequence of such requirements of the applicable Transition (as set out in the Transition Parameters).
- (c) SMH shall provide Project Co with comments on the draft Final Commissioning Program in accordance with the procedures contemplated by Section 4.1 of Schedule 10 – Review Procedure, and Project Co shall revise the draft Final Commissioning Program to the extent contemplated by Schedule 10 – Review Procedure within 30 days of receipt of any comments from SMH.
- (d) When agreed by the Parties, the Final Commissioning Program shall replace the Outline Commissioning Program with respect to Substantial Completion and Final Completion.

#### **24.3 Commencement of Project Co Commissioning**

- (a) Project Co shall give 30 days' written notice to the Independent Certifier, the SMH Commissioning Consultant and the SMH Representative of the proposed commencement of the Project Co Commissioning.
- (b) Project Co shall give at least five Business Days' notice to, and shall invite, the Independent Certifier, the SMH Commissioning Consultant and the SMH 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 SMH Commissioning Consultant and the SMH 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 SMH Representative at least ten Business Days' notice prior to the date upon which Project Co anticipates delivering the Substantial Completion Notice.
- (b) Project Co shall give the Independent Certifier and the SMH 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) SMH shall, within five Business Days after receipt of the Substantial Completion Notice, provide the Independent Certifier and Project Co with SMH'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 five Business Days after Project Co's receipt of SMH'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 SMH, to determine whether any Minor Deficiencies exist, and to issue to SMH 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 SMH 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 Substantial Completion Payment Date, and a Dispute in relation to the Substantial Completion Payment 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 Schedule 27 – Dispute Resolution Procedure.



- (g) Project Co shall provide As-Built Drawings and specifications, Design Data, spare parts and Shop Drawings as soon as possible and in any event no later than 30 days after the Substantial Completion Date.

## **24.5 Operation and Maintenance Manuals**

- (a) Project Co shall prepare and deliver to SMH draft copies of all necessary operation and maintenance manuals for the Facility in the format set out in the Output Specifications no later than 30 days prior to the Substantial Completion Date.

### **24.5A Maintenance Instructions**

- (b) No later than 30 days prior to the Substantial Completion Date, Project Co shall prepare and deliver to SMH maintenance data in the format set out in the Output Specifications which is compatible with SMH's CMMS. The maintenance data shall detail all required planned activities (including, but not limited to, preventive maintenance) for the applicable portion of the Works prescribed by the applicable operation and maintenance manuals and Good Industry Practice and shall be subject to the review and approval of SMH, acting reasonably. Following SMH's approval of such maintenance data, SMH shall upload it into the CMMS.

## **24.6 SMH Commissioning**

- (a) The Parties acknowledge that the SMH Commissioning shall be performed both before and after the Substantial Completion Date. Prior to Substantial Completion, Project Co shall give SMH full access to the Site, the Facility, any portion of the Existing Facilities in which any Works are to be performed and all relevant parts thereof at such times as may be set out in the Final Commissioning Program to enable SMH to undertake the SMH Commissioning in accordance with the Final Commissioning Program. SMH shall comply, and shall ensure that all SMH 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 Works in performing the SMH Commissioning.
- (b) SMH acknowledges that, during the SMH Commissioning Period, Project Co and each Subcontractor will be active in the Facility and, if applicable, in the Existing Facilities, in both the rectification of Minor Deficiencies and the completion of Project Co Commissioning, and SMH 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 SMH Commissioning Period, Project Co and each Subcontractor shall cooperate with SMH and all SMH Parties and use commercially reasonable efforts to ensure that all requirements, and the timing and sequence of such requirements, of the SMH 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 SMH 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 90 days prior to the Anticipated Substantial Completion Date. If Project Co fails to deliver the Countdown Notice not less than 90 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 SMH requires a minimum of 90 days’ notice prior to the Anticipated Substantial Completion Date to prepare for the SMH Commissioning.
- (d) In accordance with Section 13.5(a), the Anticipated Substantial Completion Date shall not be earlier than the Scheduled Substantial Completion Date without the prior written consent of SMH, in its sole discretion.

## **24.8 Minor Deficiencies**

- (a) In the event that any Minor Deficiencies exist when Project Co gives the Substantial Completion Notice, the Independent Certifier, in consultation with Project Co and SMH, 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. SMH may withhold from the Substantial Completion Payment a holdback amount that is [REDACTED]% of the amount estimated by the Independent Certifier for SMH to complete and rectify (i) all Phase Minor Deficiencies identified, incomplete and unrectified at that time for which a holdback has not already been retained pursuant to Section 23B.8(a) and (ii) all such Minor Deficiencies (the “**Completion Holdback**”), which holdback shall be held in an interest bearing account. For greater certainty, the amounts provided for in items (i) and (ii) of this Section 24.8 shall not be duplicative.
- (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 SMH’s use and enjoyment of the Facility or disruption of the Works.
- (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) SMH 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 SMH Representative and so as to minimize, to the greatest extent reasonably possible, any disruption of the Works, 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,

SMH may engage others to perform the work necessary to complete and rectify any such Minor Deficiencies, at the risk and cost of Project Co, and SMH may deduct such cost from Completion Holdback and interest earned thereon.

- (b) Upon completion and rectification of each Phase Minor Deficiency for which a holdback has been retained by SMH pursuant to Section 24.8(a), SMH shall release to Project Co the amount of the Completion Holdback related to such Phase Minor Deficiency. Upon completion and rectification of each Minor Deficiency, SMH shall release to Project Co the amount of the Completion Holdback related to such Minor Deficiency. Upon completion and rectification of all applicable Phase Minor Deficiencies and Minor Deficiencies, SMH shall release to Project Co the then remaining amount of Completion Holdback, together with all interest accrued thereon. Where SMH exercises its rights pursuant to Section 23A.10(a) or Section 24.10(a), if the cost of such completion and rectification exceeds the amount of Completion Holdback and interest, then Project Co shall reimburse SMH for all such excess cost.

#### **24.11 Final Completion Countdown Notice**

- (a) Project Co shall deliver a notice (the “**Final Completion Countdown Notice**”) to SMH and the Independent Certifier specifying the date (which, for greater certainty, will be on or before the Scheduled Final Completion Date) on which Project Co anticipates that Final Completion will be achieved (the “**Anticipated Final Completion Date**”).
- (b) The Final Completion Countdown Notice shall be delivered not less than 60 days prior to the Anticipated Final Completion Date. If Project Co fails to deliver the Final Completion Countdown Notice not less than 60 days prior to the Scheduled Final Completion Date, the Anticipated Final Completion Date shall be deemed to be the same date as the Scheduled Final Completion Date.

#### **24.12 Final Completion Certificate**

- (a) Project Co shall give the Independent Certifier and the SMH Representative at least ten Business Days’ notice prior to the date upon which Project Co anticipates delivering the Final Completion Notice.
- (b) Project Co shall give the Independent Certifier and the SMH Representative notice (the “**Final Completion Notice**”) upon the satisfaction of all requirements for Final Completion, which Final Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for Final Completion, including the completion and rectification of all Phase Minor Deficiencies and all Minor Deficiencies, together with Project Co’s opinion as to whether the conditions for issuance of the Final Completion Certificate have been satisfied. The Final Completion Notice shall also include the following documentation:
  - (i) Project Co’s written request for release of the Completion Holdback, including a declaration that no written notice of lien arising in relation to the performance of the Works has been received by it that has not been withdrawn by the lien claimant;
  - (ii) Project Co’s Statutory Declaration CCDC 9A (2001);
  - (iii) Project Co’s WSIB Certificate of Clearance; and
  - (iv) a written statement that the Works have been performed to the requirements of the Ancillary Documents, itemizing approved changes in the Works, the Independent Certifier’s written instructions, and modifications required by Governmental Authorities.
- (c) SMH shall, within five Business Days after receipt of the Final Completion Notice, provide the Independent Certifier and Project Co with SMH’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 five Business Days after Project Co's receipt of SMH's opinion pursuant to Section 24.12(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 SMH, and to issue to SMH 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 24.12(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 five Business Days after receipt of such report, provide the Independent Certifier and the SMH 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 24.12(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.

#### **24.13 Effect of Certificates/Use**

- (a) The issue of the Substantial Completion Certificate and the Final Completion Certificate and any taking over or use by SMH of any part of the Facility under the terms of this Project Agreement, 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 SMH of the Works or the way in which they have been carried out.

#### **24.14 Transitions**

- (a) Subject to Section 24.14(b), Project Co shall, in cooperation with the Transition Subcommittee:
  - (i) plan, coordinate, manage and execute the physical transitions to and within the Facility, including, without limitation:
    - (A) the transfer, storage and installation of all Existing Equipment, except such Existing Equipment that is connected to patients, in accordance with each applicable Phase Commissioning Program, the Tower Interim Completion Commissioning Program and the Final Commissioning Program; and
    - (B) the physical transitions of certain resources relating to the operations and activities of the Existing Facilities (including, for clarity, the associated contents of the Existing Facilities) as identified by SMH; and
  - (ii) plan, schedule and coordinate, but not perform, the transportation of patients, Existing Equipment connected to patients and items currently in use for the direct provision of care to such patients,

in each case incorporating the requirements set out in the document entitled “**Transition Parameters**” in Section 3.9 of Part 3 of the Output Specifications (each such transition is a “**Transition**” and, collectively, all of them are the “**Transitions**”). For clarity, each Transition shall be carried out by Project Co at all times in accordance with the applicable requirements of Schedule 11 – Design Quality Plan and Construction Quality Plan.

- (b) SMH shall be responsible for and at all times maintain absolute control over the transportation to and within the Facility of patients, Existing Equipment connected to patients and applicable items currently in use for the direct provision of care within the Existing Facilities. SMH 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 within the Existing Facilities.
- (c) Project Co shall, within 30 days following Financial Close, prepare and submit to SMH a list of prospective candidates (each a “**Transition Advisor Candidate**”) for appointment as the Transitions advisor (the “**Transition Advisor**”), each of which must have experience planning and executing hospital relocation assignments of similar size, scope and complexity and who will, in accordance with this Section 24.14 (i) ensure that a complete and all-encompassing service is provided that will fulfill all aspects of each Transition and all related planning, occupancy planning and operational preparedness

planning required by SMH and (ii) perform the physical relocation of all items involved in such Transitions, subject at all times to Section 24.14(b).

- (d) Subject to Section 24.14(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 SMH in the design and implementation of such competitive bid process, including the development of the evaluation criteria, and shall accommodate any reasonable request of SMH with respect thereto. SMH shall be entitled to participate in the evaluation and selection of the successful Transition Advisor Candidate for appointment as Transition Advisor.

#### **24.15 Transition Subcommittee**

- (a) The Parties shall, within 30 days following Financial Close, establish a transition subcommittee of the Works Committee (the “**Transition Subcommittee**”) consisting of 3 representatives of each Party. A representative of the Transition Advisor shall be 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 to 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 each Transition, including issues related to decanting to and within 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 each Transition in a timely and efficient manner and in accordance with the Works Schedule and with each applicable Phase Commissioning Program, the Tower Interim Completion Commissioning Program and the Final Commissioning Program.
- (d) The Transition Subcommittee shall be responsible for receiving and reviewing all matters related to each Transition and shall make recommendations to the Works Committee, which, after consulting with the Works Committee, SMH 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) The Transition Subcommittee shall operate until the Final Completion Date.

#### **25. HUMAN RESOURCES Admittance of Personnel, Security and Safety**

- (a) Without limitation, Project Co acknowledges that the security of the occupants of the Site, the Facility and the Existing Facilities and the safety and health of the patients, employees, visitors and other persons on the Site and/or in the Facility and the Existing

Facilities is paramount. If any employee of Project Co, or any Project Co Party is considered by SMH to constitute a concern for the security of the Site, the Facility and/or the Existing Facilities or for the safety or health of the patients, employees, visitors and/or other persons on the Site and/or in the Facility or the Existing Facilities, SMH may require that Project Co replace such employee or restrict access to the Site, the Facility and/or the Existing Facilities to that employee and Project Co shall engage or cause the Project Co Parties to engage substitute employees to proceed with the Works so as not to jeopardize security or safety or cause delay to the progress of the Works contrary to the Works Schedule.

- (b) SMH shall have the right to refuse admittance to, or order the removal from the Site, the Facility and/or the Existing Facilities of any person employed by (or acting on behalf of) Project Co, or any Project Co Party who fails to comply with the Human Rights Policies or who has been convicted of a Relevant Conviction.
- (c) Any decision of SMH made pursuant to this Section 25.1 shall be final and conclusive.
- (d) Any action taken under this Section 25.1 shall promptly be confirmed by SMH to Project Co and, for greater certainty, shall not relieve Project Co of any of its obligations under this Project Agreement.

## **25.2 Notification of Convictions**

- (a) To the extent permitted by Applicable Law, Project Co shall ensure that SMH is immediately notified in the event that Project Co or any Project Co Party becomes aware that any person employed or engaged by Project Co or any Project Co Party in the provision of any of the Works has been convicted of a Relevant Conviction. 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 SMH as contemplated in this Section 25.2.

## **25.3 Human Resources Policies**

- (a) Project Co shall ensure that there are set up and maintained by it and by all Project Co Parties, human resources policies and procedures covering all relevant matters relating to the Works (including, for example, health and safety). Project Co shall ensure that the terms and the implementation of such policies and procedures comply with Applicable Law, Authority Requirements, Good Industry Practice and the Human Rights Policies and that they are published in written form and that copies of them (and any revisions and amendments to them) are directly issued to SMH and all Project Co Parties.

## **25.4 Management Organizations**

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



## **25A SMH'S REMEDIAL RIGHTS**

### **25A.1 Exercise of Remedial Rights**

- (b) SMH may exercise all rights set out in this Article 25A at any time and from time to time if:
- (i) SMH, 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 and/or Existing Facilities, including employees of and visitors to the Facility and/or Existing Facilities and members of the public; or
    - (B) may potentially compromise SMH'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:

- (C) 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 Section 25A.1(a)(i)(A), SMH shall not exercise its rights under this Article 25A unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of notice from SMH 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 Section 25A.1(a)(i)(A) actually occur;
- (D) in respect of Section 25A.1(a)(i)(B), SMH shall not exercise its rights under this Article 25A unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of notice from SMH 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; and
- (E) subject to Section 9.1(c), Project Co has failed to comply with any written direction issued by or on behalf of SMH's board of directors.

**25A.2 Emergency**

- (c) Notwithstanding that Project Co is not in breach of its obligations under this Project Agreement, SMH may exercise all of the rights set out in this Article 25A at any time and from time to time if SMH, acting reasonably, considers the circumstances to constitute an Emergency.

**25A.3 Rectification**

- (d) Without prejudice to SMH's rights under Article 34 and any other rights under this Project Agreement, in any of the circumstances set out in Sections 25A.1 or 25A.2, SMH may, by written notice, require Project Co to take such steps as SMH, acting reasonably, considers necessary or expedient to mitigate, rectify or protect against such circumstance, including, if applicable, the termination and replacement of any Project Co Party, and Project Co shall use commercially reasonable efforts to comply with SMH's requirements as soon as reasonably practicable.

- (e) If SMH gives notice to Project Co pursuant to Section 25A.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 that it is willing to take the steps required in such notice or present an alternative plan to SMH to mitigate, rectify and protect against such circumstances that SMH 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 SMH, acting reasonably, shall think fit,

then SMH may take such steps as it considers to be appropriate, acting reasonably, requiring the termination and replacement of Project Co Parties, either itself or by engaging others (including a third party) to take any such steps.

- (f) Notwithstanding the foregoing provisions of this Section 25A.3, in the event of an Emergency, the notice under Section 25A.3(a) shall be given as promptly as possible having regard to the nature of the Emergency and SMH may, prior to Project Co's confirmation under Section 25A.3(b)(i), take such steps as are appropriate having regard to the nature of the Emergency.

**25A.4 Costs and Expenses**

- (g) Subject to SMH's obligations pursuant to Sections 25A.5 and 25A.6:

- (i) Project Co shall bear all costs and expenses incurred by Project Co in relation to the exercise of SMH's rights pursuant to this Article 25A; and

- (ii) Project Co shall reimburse SMH for all reasonable costs and expenses incurred by SMH in relation to the exercise of SMH's rights pursuant to this Article 25A, including in relation to SMH taking such steps, either itself or by engaging others (including a third party) to take any such steps as SMH considers appropriate and as are in accordance with this Article 25A.

#### **25A.5 Reimbursement Events**

- (h) In this Section 25A.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 SMH or an SMH Party; or
  - (ii) 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.
- (i) If SMH either takes steps itself or requires Project Co to take steps in accordance with this Article 25A as a result of a Reimbursement Event:
  - (i) SMH shall reimburse Project Co for the reasonable costs and expenses incurred by Project Co in relation to the exercise of SMH's rights pursuant to this Article 25A that would not otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement; and
  - (ii) SMH shall bear all costs and expenses incurred by SMH in relation to the exercise of SMH's rights pursuant to this Article 25A.

#### **25A.6 Reimbursement if Improper Exercise of Rights**

- (j) If SMH exercises its rights pursuant to this Article 25A, but SMH was not entitled to do so, SMH 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 SMH issued as a result of SMH having exercised such rights.
- (k) Project Co acknowledges and agrees that Project Co has no right to require a determination of whether or not SMH is entitled to exercise its rights pursuant to this Article 25A before taking any such action that SMH may require and Project Co shall comply with all of SMH's requirements. Only concurrently with or after complying with SMH's requirements shall Project Co be entitled to refer any dispute for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

**26. RECORDS, INFORMATION AND AUDIT****26.1 Records Provisions**

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

**26.2 Information and General Audit Rights**

- (a) Project Co shall provide, and shall cause each Subcontractor to provide, to SMH 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 SMH 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 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 SMH, and shall require each Subcontractor, including the Construction Contractor, to provide to SMH (at SMH's reasonable cost), all information, reports, documents, records and the like required to be provided pursuant to Section 26.2(a) which subsequently come into the possession of, or become available to, Project Co or each Subcontractor, as SMH may reasonably require from time to time to enable SMH to provide reports, notices, returns and the like pursuant to Applicable Law, including information and documentation pertaining to the physical condition of the Site, security, 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 SMH 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 Works, or the Site, and Project Co shall include relevant terms in all Subcontracts to this effect.
- (d) Project Co shall promptly notify SMH 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 SMH hereunder, shall be subject and open to inspection and audit by SMH 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 SMH and Project Co otherwise agree. SMH shall also have the right to monitor and audit the performance of any and all parts of the Works wherever located, and Project Co shall cooperate with, and shall require each Subcontractor to cooperate with, and provide access to the representatives of SMH monitoring and auditing such parts of the Works, including providing them with access and copies (at SMH's reasonable cost) of all relevant information, reports, documents and records pertaining to the performance of such parts of the Works. Except as otherwise provided herein, all of SMH's costs for the inspections, audits and monitoring shall be borne by SMH.

- (f) In conducting an audit of Project Co under Section 26.2(e) or as otherwise provided under this Project Agreement, SMH shall have all rights necessary or incidental to conducting an audit, including the right to have access to and inspect and take copies (at SMH's reasonable cost) of all books and records of Project Co required to be provided to or available to SMH hereunder, upon reasonable notice and at reasonable times. Project Co shall fully cooperate with SMH 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 SMH all matters arising from such audits, including the refunding of monies to SMH where applicable. At the reasonable request of SMH's auditors, Project Co shall provide such information, reports, documents and records as SMH's auditors may reasonably require, other than Sensitive Information.
- (g) SMH's rights pursuant to this Section 26.2 shall be in addition to, and shall not limit, any other audit, information, inspection or similar rights under this Project Agreement.
- (h) SMH's rights pursuant to this Section 26.2 shall not limit or restrict any Governmental Authority's right of review, audit, information or inspection under Applicable Law.

### **26.3 Lenders' Consultant Reports**

- (a) Project Co shall cause the Lenders' Agent to cause, in accordance with Section 6.1(i) of Schedule 4 – Lenders' Direct Agreement, the Lenders' Consultant to provide SMH a copy of any written assessment or report of the Works under the Design and Construction Contract, including but not limited to, any certificate of payment, concurrently with its delivery to the Lenders' Agent.

## **27. COMMUNICATIONS**

### **27.1 Communications Protocol**

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

**28. CHANGES IN LAW****28.1 Performance after Change in Law**

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

**28.2 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 ten 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 ten 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) SMH shall, within ten 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) SMH 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.

**28.3 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 Works 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 28.3.
- (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 ten 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 ten 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) SMH shall, within ten 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) SMH 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 in 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 28.3, and any calculation of compensation shall take into consideration, inter alia:
  - (I) any failure by a Party to comply with Section 28.3(b)(iii);
  - (II) any increase or decrease in its costs resulting from such Relevant Change in Law; and
  - (III) 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 Article 30 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 28.3, and Article 31 shall be construed accordingly.

## **29. VARIATIONS**

### **29.1 Variation Procedure**

- (a) Except as otherwise expressly provided in this Project Agreement, Schedule 22 – Variation Procedure shall apply in respect of Variations.
- (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 SMH'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 Works.
- (c) Without limiting Project Co's obligations pursuant to Section 11.11(a) 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.



## **29.2 Innovation and Value Engineering**

- (a) Project Co acknowledges that SMH at all times desires to reduce the overall cost to SMH of the Project, and Project Co agrees to cooperate, explore and work with SMH 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 SMH.
- (c) The Parties agree that the subject of an Innovation Proposal shall not include:
  - (i) any Variation Enquiry initiated by SMH; or
  - (ii) any Variation resulting from a Change in Law.
- (d) The Innovation Proposal must:
  - (i) set out sufficient detail to enable SMH to evaluate the Innovation Proposal in full;
  - (ii) specify Project Co's reasons and justification for proposing the Innovation Proposal;
  - (iii) request SMH to consult with Project Co with a view to deciding whether to agree to the Innovation Proposal and, if so, what consequential changes SMH 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 SMH;
  - (v) indicate if there are any dates by which a decision by SMH must be made;
  - (vi) indicate the capital cost of the Innovation Proposal, including the cost of financing; and
  - (vii) include such other information and documentation as may be reasonably requested by SMH to fully evaluate and consider the Innovation Proposal.
- (e) SMH shall, acting in good faith, evaluate the Innovation Proposal, taking into account all relevant issues, including whether:
  - (i) the Innovation Proposal affects the quality of the Works, the Facility, or the likelihood of successful completion of the Works;

- (ii) the Innovation Proposal will benefit or interfere with the efficient operation of the Facility or the performance of the SMH Activities;
  - (iii) the Innovation Proposal will interfere with the relationship between SMH and third parties;
  - (iv) the financial strength of Project Co is sufficient to deliver the changed Works, as applicable;
  - (v) the residual value of the Site or Facility is affected;
  - (vi) the Innovation Proposal materially affects the risks or costs to which SMH is exposed; or
  - (vii) any other matter SMH considers relevant.
- (f) SMH may request clarification or additional information regarding the Innovation Proposal, and may request modifications to the Innovation Proposal.
- (g) SMH may, in its sole discretion, accept or reject any Innovation Proposal.
- (h) If SMH 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) 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 a Subcontractor to decrease, the net savings in the costs of Project Co and/or the Subcontractor will be shared equally by Project Co and SMH, and SMH's share of the net savings shall, if the Parties agree, be reflected in a lump sum payment.
- (j) If an Innovation Proposal causes or will cause the costs of SMH to decrease, the net savings in the costs of SMH will be shared:
- (i) equally by Project Co and SMH following the implementation of the Innovation Proposal until the Termination Date; and
  - (ii) thereafter, SMH 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 be reflected in a lump sum payment.

**30. DELAY EVENTS****30.1 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 a Phase Completion by the applicable Scheduled Phase Completion Date, Tower Interim Completion by the Scheduled Tower Interim Completion Date or Substantial Completion by the Scheduled Substantial 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 SMH of any of SMH’s obligations under this Project Agreement (including, subject to Section 30.2(h), any delay by SMH in giving access to the Site or to the Existing Facilities pursuant to Section 16.1), any obstruction of the rights afforded to Project Co under Section 16.1, any delay by SMH in carrying out its obligations set forth in Section 21.8(b) or any delay by SMH 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 20.3 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 SMH in respect of the same or a similar component of the Works or subset of the Works;
  - (iv) a requirement pursuant to Sections 18.2(b) or 18.2(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 18.3(b) or 18.3(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, artifacts 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 the provisions of Section 11.13, the execution of Additional Works on the Site by Additional Contractors;
- (vii) a requirement pursuant to Section 11.1 of Schedule 27 – Dispute Resolution Procedure for Project Co to proceed in accordance with the direction of SMH during the pendency of a Dispute, which Dispute is subsequently determined in Project Co's favour;
- (viii) a Relief Event;
- (ix) an event of Force Majeure; or
- (x) a Relevant Change in Law.

### **30.2 Consequences of a Delay Event**

- (a) Project Co shall provide written notice to the SMH Representative and the Independent Certifier within five Business Days of becoming aware of the occurrence of a Delay Event. Project Co shall, within ten Business Days after such notification, provide further written details to the SMH 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 any Phase Completion Date, the Scheduled Tower Interim Completion Date and/or the Scheduled Substantial Completion Date, as applicable; 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 three 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 SMH Representative and the Independent Certifier.
- (c) The SMH Representative shall, after receipt of written details under Section 30.2(a), or of further particulars under Section 30.2(b), be entitled by written notice to require Project Co to provide such further supporting particulars as the SMH Representative may reasonably consider necessary. Project Co shall afford the SMH 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 30, the SMH Representative shall allow Project Co an extension of time equal to the delay caused by the Delay Event and shall fix (A) one or more revised Scheduled Phase Completion Dates; (B) a revised Scheduled Tower Interim Completion Date; (C) a revised Scheduled Substantial Completion Date; or (D) 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 SMH Representative of Project Co's notice given in accordance with Section 30.2(a) and the date of receipt of any further particulars (if such are required under Section 30.2(c)), whichever is later; and
  - (ii) the date of receipt by the SMH Representative of any supplemental information supplied by Project Co in accordance with Section 30.2(b) and the date of receipt of any further particulars (if such are required under Section 30.2(c)), whichever is later.
- (e) If:
- (i) the SMH Representative declines to fix (A) any applicable revised Scheduled Phase Completion Date(s); (B) a revised Scheduled Tower Interim Completion Date; (C) a revised Scheduled Substantial Completion Date; or (D) a revised Scheduled Final Completion Date, as applicable;
  - (ii) Project Co considers that a different (A) Scheduled Phase Completion Date(s); (B) Scheduled Tower Interim Completion Date; (C) Scheduled Substantial Completion Date; or (D) Scheduled 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.
- (f) If the Works should be behind schedule for a reason other than a Delay Event, or if a Project Co Party delays the progress of any portion of the Works necessary to complete the Works on schedule, Project Co shall use all reasonable measures to bring the Works back on schedule. Project Co shall exercise all means within its discretion, such as directing any Project Co Party that is creating delays to increase their labour forces and equipment, to improve the organization and expediting of the Works, or to work overtime as may be necessary. Project Co shall provide any additional supervision, coordination and expediting, including overtime by its own personnel as may be required to achieve this end. The costs and expenses incurred by the use of such measures and overtime shall be borne by Project Co and/or the Project Co Parties and there shall be no adjustment to the Guaranteed Price as a result of such costs and expenses and for clarity, no extension

to any Phase Completion Date(s), the Scheduled Tower Interim Completion Date or the Scheduled Substantial Completion Date.

- (g) Where there are concurrent delays, some of which are caused by SMH or others for whom SMH is responsible, and some of which are caused by Project Co or others for whom Project Co is responsible, Project Co shall not be entitled to either an extension in the Scheduled Phase Completion Date(s), the Scheduled Tower Interim Completion Date or the Scheduled Substantial Completion Date or additional compensation to the extent of the concurrent delays. Concurrent delays are those that are caused by two or more independent events which affect the Scheduled Phase Completion Date(s), the Scheduled Tower Interim Completion Date or the Scheduled Substantial Completion Date, as applicable, where the time period over which such delays occur overlap in time, but only for the duration of the overlap.
- (h) Subject to Sections 11.17(b) and 11.17(c), SMH shall provide Project Co with access to and use of the Site and the Existing Facilities as required pursuant to Article 16 of this Project Agreement in a manner consistent with the Works Schedule and in accordance with the notification requirements and restrictions set out in the Project Agreement, provided that Project Co agrees that the inability of SMH to provide Project Co with access to an area for construction activities not on the critical path for reasons set out in Sections 11.17(b) and 11.17(c) will not result in the occurrence of a Delay Event (and, for greater certainty, there shall not be a resulting change to any Scheduled Phase Completion Date, the Scheduled Tower Interim Completion Date or the Scheduled Substantial Completion Date) or a Compensation Event (and, for certainty, there shall not be any resulting change to the Guaranteed Price).
- (i) In no event shall the extension of time for a Delay Event be more than the necessary extension of the critical path as a result of the Delay Event.
- (j) Project Co acknowledges and agrees that the Works Schedule includes a Schedule Cushion at no additional cost or expense to SMH. Project Co shall separately identify the extent of the Schedule Cushion in the Works Schedule.
- (k) Project Co acknowledges and agrees that in the event that an extension of the time for achieving a Phase Completion, Tower Interim Completion or Substantial Completion is allowed under any provision of this Project Agreement (including an extension to a Phase Completion Date, the Scheduled Tower Interim Completion Date and/or the Scheduled Substantial Completion Date granted pursuant to this Section 30 or in accordance with Schedule 22 – Variation Procedure), SMH may, in its sole discretion, elect to apply all or any portion of the Schedule Cushion with the result that such extension shall be reduced or eliminated, as the case may be, by the number of days of the Schedule Cushion SMH has elected to apply.

### **30.3 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 30.3, such failure shall be taken into account in determining Project Co's entitlement to an extension of time pursuant to this Section 30.

## **31. COMPENSATION EVENTS**

### **31.1 Definition**

- (a) For the purposes of this Project Agreement, "**Compensation Event**" means any event referred to in Sections 30.1(a)(ii) (subject to Section 30.2(h)), 30.1(a)(iii), 30.1(a)(iv), 30.1(a)(v), 30.1(a)(vi) and 30.1(a)(vii) 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.

### **31.2 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 31. 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 30.1(a)(i);
  - (ii) Section 33, in the case of a Delay Event referred to in Section 30.1(a)(ix);
  - (iii) Section 32, in the case of a Delay Event referred to in Section 30.1(a)(viii); and
  - (iv) Section 28, in the case of a Delay Event referred to in Section 30.1(a)(x).
- (b) Subject to Sections 31.3 and 31.4, 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 or 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 SMH to Project Co. Project Co shall promptly provide the SMH Representative with any information the SMH Representative may require in order to determine the amount of such compensation.

- (c) If SMH is required to compensate Project Co pursuant to this Section 31.2, then SMH 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.
- (d) Notwithstanding any other provision in this Project Agreement, including Section 31.2(b), where SMH elects to apply all or any portion of the number of days of the Schedule Cushion, Project Co shall not be entitled to any Direct Losses or any other additional compensation related to the time that is reduced or eliminated by the Schedule Cushion, except as otherwise provided for in Schedule 22 – Variation Procedure.

### **31.3 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 31 in relation to any Compensation Event.
- (b) To the extent that Project Co does not comply with its obligations under this Section 31.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 31.

### **31.4 Insured Exposure**

- (a) The compensation payable to Project Co pursuant to this Section 31 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.

## **32. RELIEF EVENTS**

### **32.1 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 or construction 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 Works 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 SMH claiming relief, as a result of any act or omission of any SMH Party.

### **32.2 Consequences of a Relief Event**

- (a) Subject to Section 32.3, no right of termination, other than either Party's right to terminate this Project Agreement pursuant to Section 36.1, shall arise under this Project Agreement by reason of any failure by a Party to perform any of its obligations under this Project Agreement, 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).
- (b) In respect of a Relief Event that is also a Delay Event pursuant to Section 30.1(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 30; and
  - (ii) in respect of a Relief Event referred to in Section 32.1(a)(v), 32.1(a)(vi) or 32.1(a)(vii), on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the SMH Default Termination Sum or Non-Default Termination Sum (and as a part thereof) in accordance with Schedule 23 – Compensation on Termination, SMH 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 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 Project Co to the Senior Lenders.

- (c) If a Relief Event occurs, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 32.2(b)(ii) and 38.
- (d) Subject to Section 38, 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 32.

### **32.3 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 32.3, such failure shall preclude such Party's entitlement to relief pursuant to this Section 32.
- (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 32.3(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 32.3(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.

### **32.4 Insured Exposure**

- (a) The compensation payable to Project Co pursuant to this Section 32 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.

### **33. FORCE MAJEURE**

#### **33.1 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 33.1(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.

#### **33.2 Consequences of Force Majeure**

- (a) Subject to Section 33.3, 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 30.1(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 30; and
  - (ii) on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the SMH Default Termination Sum or Non-Default Termination Sum (and as a part thereof) in accordance with Schedule 23 – Compensation on Termination, SMH 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 accrued 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 payable on the principal amount of debt funded under the Lending Agreements, which, but for the Delay Event, would have been paid by Project Co to the Lenders.

- (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 33.2(b)(ii) and 38.
- (d) Subject to Section 38, 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 33.

### **33.3 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, including efforts to minimize any negative impact of the event of Force Majeure on the Works Schedule.
- (b) To the extent that the Party claiming relief does not comply with its obligations under Section 33.3(a), such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Section 33.
- (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 33.3(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 33.3(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.

### **33.4 Insured Exposure**

- (a) The compensation payable to Project Co pursuant to this Section 33 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.

### **33.5 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 SMH and Project Co to reach agreement pursuant to this Section 33.5.

## **34. PROJECT CO DEFAULT**

### **34.1 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 SMH 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, SMH, a SMH 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 Works or of the SMH Activities (where such proceedings have not been withdrawn, stayed, discharged, or are otherwise of no further effect, within 90 days of being instituted),

under any 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 34.1(a)(i);

- (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 this Section 34.1(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 34.1(a)(i)(A), (B) or (C), constitute a Project Co Event of Default;
- (ii) Project Co failing to achieve Substantial Completion within 180 days after the Scheduled Substantial Completion Date (the "**Longstop Date**");
  - (iii) Project Co either:
    - (A) failing to deliver a rectification plan under Section 13.4(a)(iii)(B);
    - (B) delivering a rectification plan under Section 13.4(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 13.4(a)(iii)(B) that is not acceptable to the Independent Certifier, acting reasonably, as to the matters set out in Section 13.4(a)(iii)(B)(IV);
  - (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 Works, the SMH Activities, or that may compromise

SMH'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 SMH;

- (v) Project Co committing a breach of Sections 40 or 41 ;
- (vi) Project Co committing a breach of its obligations under this Project Agreement which has or will have a material adverse effect on the performance of SMH operations or SMH Activities (other than a breach that is otherwise referred to in Section 34.1(a)(i) to (v) (inclusive) or 34.1(a)(vii) to (xvi) (inclusive)) other than where such breach is a consequence of a breach by SMH 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 SMH and the performance of SMH operations and the SMH Activities;
    - (II) put forward, within 5 Business Days of receipt of notice of such breach from SMH, 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;
- (vii) Project Co wholly abandoning the Works for a period which exceeds three 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 SMH of its obligations under this Project Agreement;
- (viii) Project Co failing to comply with Sections 47.1 or 47.3;
- (ix) the occurrence of any Change in Ownership or Change in Control which is prohibited by Section 47.4;

- (x) 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 SMH) 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;
- (xi) Project Co failing to pay any sum or sums due to SMH 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 SMH;
- (xii) Project Co failing to comply with Section 48;
- (xiii) Project Co failing to comply with Section 8.3 or Schedule 29 - Refinancing;
- (xiv) 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 SMH 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;
- (xv) Project Co failing to comply with any determination, order or award made against Project Co in accordance with Schedule 27 – Dispute Resolution Procedure;
- (xvi) A default by Project Co or any Project Co Party under any of the Ancillary Documents following the expiry of any applicable notice and cure periods thereunder.

### **34.2 Notification of Occurrence**

- (a) Project Co shall, promptly upon Project Co becoming aware of the occurrence, notify SMH 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.



**34.3 Right to Termination**

- (a) On the occurrence of a Project Co Event of Default, or at any time after SMH 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, SMH may, subject to Section 34.4, 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.

**34.4 Remedy Provisions**

- (a) In the case of a Project Co Event of Default referred to in Sections 34.1(a)(i)(B), 34.1(a)(i)(C), 34.1(a)(i)(D) (where the Project Co Event of Default referred to in Section 34.1(a)(i)(D) is analogous to a Project Co Event of Default referred to in Section 34.1(a)(i)(B) or 34.1(a)(i)(C)), 34.1(a)(iii), 34.1(a)(iv), 34.1(a)(v), 34.1(a)(vii), 34.1(a)(viii), 34.1(a)(ix), (where the Project Co Event of Default referred to in Section 34.1(a)(ix) is capable of being remedied), 34.1(a)(xi), 34.1(a)(xiii), 34.1(a)(xiv) (where the Project Co Event of Default referred to in Section 34.1(a)(xiv) is not in respect of insurance), 34.1(a)(xv), or 34.1(a)(xvi), SMH 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 five 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 SMH, 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 34.4(a)(i) that has a date for the Project Co Event of Default to be remedied that is beyond 30 days from the notice of default, SMH shall have 5 Business Days from receipt of the same within which to notify Project Co that SMH does not accept such longer period in the plan and schedule and that the 30 day limit will apply, failing which SMH 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 34.4(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 SMH; or
- (ii) Project Co fails to put forward a plan and schedule pursuant to Section 34.4(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 34.4(a) and (b); or
- (iv) where Project Co puts forward a plan and schedule pursuant to Section 34.4(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 SMH 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 SMH may give the notice referred to in Section 34.4(a), and without prejudice to the other rights of SMH in this Section 34.4, at any time during which a Project Co Event of Default is continuing, SMH may, at Project Co's risk and expense, take such steps as SMH 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 34.4, such occurrence of a Project Co Event of Default shall thereafter cease to be a Project Co Event of Default and SMH shall not be entitled to terminate this Project Agreement for that occurrence of a Project Co Event of Default.

### **34.5 SMH's Costs**

- (a) Project Co shall reimburse SMH 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 SMH in exercising its rights under this Section 34, including any relevant increased administrative expenses. SMH shall take commercially reasonable steps to mitigate such costs.

### **34.6 No Other Rights to Terminate**

- (a) SMH 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 34 and 36.

## **35. SMH DEFAULT**

### **35.1 SMH Events of Default**

- (a) For the purposes of this Project Agreement, “**SMH Event of Default**” means any one or more of the following events or circumstances:
- (i) SMH failing to pay any sum or sums due to Project Co under this Project Agreement, which sum or sums are not being disputed by SMH 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 Tower Interim Completion Payment or the Substantial Completion Payment, such failure continues for a period of 10 Business Days; or
    - (B) in respect of any other payment due and payable by SMH to Project Co under this Project Agreement, such failure continues for a period of 90 days,in any such case, from receipt by SMH of a notice of non-payment from or on behalf of Project Co;
  - (ii) SMH committing a material breach of its obligations under Section 16 (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, provided that, 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”.

### **35.2 Project Co's Options**

- (a) On the occurrence of a SMH Event of Default and while the same is continuing, Project Co may give notice to SMH of the occurrence of such SMH 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 until such time as SMH has remedied such SMH Event of Default; or

- (ii) if such SMH Event of Default has not been remedied within 30 days of receipt by SMH of notice of the occurrence of such SMH Event of Default, terminate this Project Agreement in its entirety by notice in writing having immediate effect.

### **35.3 Project Co's Costs**

- (a) SMH 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 35, including any relevant increased administrative expenses. Project Co shall take commercially reasonable steps to mitigate such costs.

### **35.4 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.

## **36. RELIEF EVENT AND NON DEFAULT TERMINATION**

### **36.1 Termination for Relief Event**

- (a) 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 32.3(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.

### **36.2 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 33.5 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.

### **36.3 Termination for Convenience**

- (a) SMH 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 SMH has, in respect of such termination, obtained the prior written consent of MOHLTC.

- (b) In the event of notice being given by SMH in accordance with this Section 36.3, SMH 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 where such Works have not yet been commenced.

#### **36.4 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.

### **37. EFFECT OF TERMINATION**

#### **37.1 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 36.4, this Section 37 shall apply in respect of such termination.

#### **37.2 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.

#### **37.3 Continuing Performance**

- (a) Subject to any exercise by SMH 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 37.

#### **37.4 Effect of Notice of Termination**

- (a) On the service of a notice of termination, or termination on the Expiry Date pursuant to Section 36.4:
  - (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 SMH as shall not already have been transferred to SMH pursuant to Section 43.1, Project Co

shall transfer to, and there shall vest in, SMH, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through SMH), such part of the Works and Facility as shall have been constructed and such items of the Plant and equipment, including Equipment as shall have been procured by Project Co, and, if SMH so elects:

- (A) all plant, equipment and materials (other than those referred to in Section 37.4(a)(i)(B)) on or near to the Site shall remain available to SMH for the purposes of completing the Works; and
  - (B) all construction plant and equipment shall remain available to SMH for the purposes of completing the Works, subject to payment by SMH of the Construction Contractor's reasonable charges;
- (ii) if termination is prior to the Substantial Completion Date, Project Co shall deliver to SMH (to the extent such items have not already been delivered to SMH) 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 SMH pursuant to Section 43.1 or Section 37.4(a)(i), Project Co shall hand over to, and there shall vest in, SMH, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through SMH), the Facility together with all other assets and rights capable of being transferred that are necessary for the performance of the Project and the Works 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 SMH, Project Co shall enter into agreements or make other arrangements in order to permit the use of the assets or rights by SMH 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 SMH so elects, Project Co shall ensure that any of the Subcontracts between Project Co and a Subcontractor (including the Design and Construction 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 Works or to protect the interests of Project Co, shall be novated or assigned to SMH 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 the Design and Construction Contract with the Construction Contractor shall be made by SMH pursuant to, and subject to, the terms of the Construction Contractor's Direct Agreement;
  - (v) Project Co shall, or shall ensure that any Project Co Party shall, offer to sell (and if SMH so elects, execute such sale) to SMH 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 SMH), 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 SMH in connection with the operation of the Facility;

- (vi) Project Co shall use commercially reasonable efforts to assign, or otherwise transfer, to SMH, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through SMH), 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; and
- (vii) Project Co shall deliver to SMH all information, reports, documents, records and the like referred to in Section 26, 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 SMH).

### **37.5 Ownership of Information**

- (a) Subject to Section 39, 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 Works accumulated over the course of the Project Term shall be the property of SMH and upon termination of this Project Agreement shall be provided or returned to SMH, as applicable, in electronic format acceptable to SMH, acting reasonably, where it exists in electronic format, and in its original format, when not in electronic format.

### **37.6 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 SMH shall be in a position to exercise its rights, and Project Co shall be in a position to perform its obligations, under this Section 37.

**37.7 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:
  - (i) as soon as practicable remove from the Site all property belonging to Project Co or any Project Co Party that is not acquired by SMH pursuant to Section 37.4 or otherwise, and, if Project Co has not done so within 60 days after any notice from SMH requiring it to do so, SMH 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;
  - (ii) forthwith deliver to the SMH 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 SMH's rights pursuant to Section 39, any copyright licences for any computer programs, or licences to use the same, used in connection with the operation of the Facility; and
  - (iii) as soon as practicable vacate the Site and shall leave the Site and the Facility in a safe, clean and orderly condition.

**37.8 Termination upon Aforesaid Transfer**

- (a) On completion of Project Co's obligations pursuant to this Section 37, this Project Agreement shall terminate and, except as provided in Section 37.9, all rights and obligations of SMH and Project Co under this Project Agreement shall cease and be of no further force and effect.

**37.9 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, 4, 6, 7, 8, 11.15, 11.16, 16A, 17.2, 18.1, 18.2(a), 18.3(a), 23.6, 24.13, 26, 34.5, 35.3, 36.4, 37, 38, 39 (with the exception of 39.4(b)), 40, 41, 42.3, 43, 44, 45, 46, 48.3, 49.1, 50.4, 50.8, 50.9, 50.10, 50.11 and 50.12 of this Project Agreement, Schedule 14 – Outline Commissioning Program, Schedule 23 – Compensation on Termination, Schedule 24 – Financial Model, 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 36.4.

- (b) Termination of this Project Agreement shall be without prejudice to, and shall not affect, the Performance Guarantee of Construction Guarantor, which shall survive the termination of this Project Agreement, including termination on the Expiry Date pursuant to Section 36.4, in respect of any and all of such surviving provisions of the Project Agreement.

### **38. COMPENSATION ON TERMINATION**

#### **38.1 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 SMH shall pay Project Co any applicable compensation on termination.

#### **38.2 Full and Final Settlement**

- (a) Except as otherwise provided in Section 38.2(b), any compensation paid pursuant to this Section 38, 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 SMH, 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 SMH 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 38.2(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 4.12 or taken into account pursuant to Schedule 23 - Compensation on Termination in determining or agreeing upon the SMH Default Termination Sum, Non-Default Termination Sum, Project Co Default Termination Sum or any other termination sum, as the case may be; and
  - (ii) any liabilities arising under or in respect of any breach by either Party of their obligations under Section 37.9 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.

### **39. INTELLECTUAL PROPERTY**

#### **39.1 Representation and Warranty**

- (a) Project Co represents, warrants and covenants to SMH 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 SMH herein;
  - (ii) Project Co has and shall have the right to provide the assignments granted to SMH herein; and
  - (iii) the Project Data and the Intellectual Property Rights and their use by SMH and the SMH 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.

#### **39.2 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, SMH 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 SMH on the aforesaid terms of this Section 39.2(a), for any and all of the Approved Purposes.

#### **39.3 Licence of Project Data and Intellectual Property Rights**

- (a) Project Co:
  - (i) hereby grants to SMH 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, obtain the grant of an equivalent licence to that referred to in Section 39.3(a)(i), provided that such licence may, in respect of the Construction Contractor's Intellectual Property Rights that are proprietary and subject to trademark or copyright, be limited to the term of the Design and Construction Contract; 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), obtain the grant of

an equivalent licence to that referred to in Section 39.3(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 39.3 and 39.5(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.

#### **39.4 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 SMH pursuant to this Project Agreement or in relation to the Facility, the Site or Works (the “**Jointly Developed Materials**”), then the Parties hereby acknowledge and agree that SMH 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 SMH, 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) SMH 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 SMH.

#### **39.5 Maintenance of Data**

- (a) To the extent that any of the data, materials and documents referred to in this Section 39 are generated by, or maintained on, a computer or similar system, Project Co shall procure for the benefit of SMH, either at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable SMH or its nominee to access and otherwise use (as such term is defined in Section 39.3(b), subject to the payment by SMH of any relevant fee) such data, materials and documents for the Approved Purposes.
- (b) Without limiting the obligations of Project Co under Section 39.5(a), Project Co shall ensure the back up and storage in safe custody of the data, materials and documents referred to in this Section 39 in accordance with Good Industry Practice. Project Co shall submit to the SMH Representative Project Co's proposals for the back up and storage in

safe custody of such data, materials and documents and SMH 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 SMH 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 SMH Representative, who shall be entitled to object on the basis set out above. Any Disputes in connection with the provisions of this Section 39.5(b) may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure with reference to Good Industry Practice.

### **39.6 Claims**

- (a) Where a demand, claim, action or proceeding is made or brought against SMH or a SMH 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 SMH or any SMH Party or because the use of any materials, machinery or equipment in connection with the Works 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 SMH otherwise than in accordance with the terms of this Project Agreement, Project Co shall indemnify, defend and hold harmless SMH from and against all such demands, claims, actions and proceedings and Section 44.3 shall apply.

### **39.7 SMH Trade-Marks**

- (a) Project Co shall not use any SMH Trade-Marks or the Trade Marks of a Government Entity without obtaining a trade-mark licence on terms and conditions satisfactory to SMH or the relevant Government Entity, as applicable, in their sole discretion.

### **39.8 Confidential Information**

- (a) It is expressly acknowledged and agreed that nothing in this Section 39 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.

### **39.9 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 MEDEI's, IO's, MOHLTC's or the Province's ability to use this Project Agreement in any manner desired by MEDEI, IO, MOHLTC or the Province.
- (b) Each of the Parties hereby consents to the use by MEDEI, IO, MOHLTC and/or the Province of this Project Agreement, and any portion thereof, subject to compliance with FIPPA and to the removal by SMH (in consultation with Project Co) of any information supplied in confidence to MEDEI, IO, MOHLTC and/or the Province by either Party in circumstances where disclosure may be refused under section 17(1) of FIPPA.

**40. CONFIDENTIALITY****40.1 Disclosure**

- (a) Subject to Sections 40.1(b), 40.1(c) and 40.2, 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, SMH 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 SMH, in its sole discretion, may consider appropriate. In exercising its discretion, SMH will be guided by the principles set out in Sections 40.1(b) and 40.1(c).
- (b) SMH 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 40.1(b), but subject to Section 40.2, 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), SMH may disclose such information.

**40.2 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), SMH 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 40.1(b). The Parties acknowledge and agree that the Guaranteed Price, but not any 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 40.1(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 SMH 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.

#### **40.3 Disclosure to Government**

- (a) Project Co acknowledges and agrees that SMH will be free to disclose any information, including Confidential Information, to MEDEI, IO, MOHLTC and/or the Province, and, subject to compliance with FIPPA, MEDEI, 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 MEDEI, 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 MEDEI, IO, MOHLTC and/or the Province.

#### **40.4 Freedom of Information**

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

#### **40.5 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 40 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 or agent of the Lenders and the Lenders' Agent, 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 Works 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 MEDEI, IO, MOHLTC and/or the Province may use the Confidential Information of Project Co 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. MEDEI, IO, MOHLTC and/or the Province will advise Project Co prior to using any Confidential Information of Project Co 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.

#### **40.6 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 SMH upon a termination of this Project Agreement, pursuant to Section 36 or is otherwise required by SMH for the purposes of performing (or having performed) the Works, including the design or construction of the Facility, or any other operations or services the same as, or similar to, the Works; or
- (ix) the information would not be exempt from disclosure under FIPPA.

#### **40.7 Survival of Confidentiality**

- (a) The obligations in Section 40.1 to Section 40.6 will cease on the date that is three years after the Termination Date and accordingly shall survive the termination of the Project Agreement.

### **41. PERSONAL INFORMATION**

#### **41.1 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 SMH 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 41.
- (e) Project Co shall allow SMH on reasonable notice to inspect the measures of Project Co and each Project Co Party to protect Personal Information.

#### **41.2 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) SMH may from time to time require that Project Co or any Project Co Party execute and deliver within 2 Business Days of such request an agreement satisfactory to SMH, acting reasonably, requiring such person to keep Patient Information confidential.
- (d) This Section 41.2 shall not limit Section 41.1.

### **41.3 Survival**

- (a) The obligations in this Section 41 shall survive the termination of this Project Agreement.

## **42. INSURANCE AND PERFORMANCE SECURITY**

### **42.1 General Requirements**

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

### **42.2 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 SMH of their respective liabilities and obligations under this Project Agreement.

### **42.3 Performance Guarantee of Construction Guarantor**

- (a) At all times during the Project Term and, in respect of the provisions described in Section 37.9, following the Project Term, Project Co shall ensure that a valid and binding Performance Guarantee of Construction Guarantor in favour of SMH from the Construction Guarantor (or a party of comparable financial strength, capacity and stability, as determined by SMH acting in its sole discretion) and in the form of guarantee attached as Schedule 12 – Performance Guarantee of Construction Guarantor, is in place and enforceable by SMH.

## **43. TITLE**

### **43.1 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 SMH (or as SMH 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 SMH (or as SMH may direct) at the time that such items are included in the Facility or affixed or attached to the Facility.

#### **44. INDEMNITIES**

##### **44.1 Project Co Indemnities to SMH**

- (a) Project Co shall indemnify and save harmless SMH 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 a Phase Completion by the applicable Scheduled Phase Completion Date;
  - (ii) a failure by Project Co to achieve Tower Interim Completion by the Scheduled Tower Interim Completion Date;
  - (iii) a failure by Project Co to achieve Substantial Completion by the Scheduled Substantial Completion Date;
  - (iv) any physical loss of or damage to all or any part of the Site, the Facility and the Existing Facilities, or to any equipment, assets or other property related thereto;
  - (v) the death or personal injury of any person;
  - (vi) any physical loss of or damage to property or assets of any third party;
  - (vii) any other loss or damage of any third party;
  - (viii) any fines or penalties levied or imposed under Applicable Law with respect to privacy; or
  - (ix) any costs incurred in connection with any notifications required under Applicable Law with respect to privacy or ordered by a privacy commissioner with applicable jurisdiction,

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:

- (x) the breach of this Project Agreement by SMH; or
  - (xi) in respect of Section 44.1(a)(i), Section 44.1(a)(ii) or Section 44.1(a)(iii), any deliberate or negligent act or omission of SMH or any SMH Party; or
  - (xii) in respect of Sections 44.1(a)(iv), 44.1(a)(v), 44.1(a)(vi), 44.1(a)(vii), 44.1(a)(viii) or 44.1(a)(ix), any act or omission of SMH or any SMH Party.
- (b) Project Co shall indemnify and save harmless SMH 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 SMH 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 SMH, is responsible pursuant to Section 18.2(a);
- except to the extent that such Direct Losses are caused, or contributed to, by the breach of this Project Agreement by SMH or by any act or omission of SMH or any SMH Party.
- (d) Without prejudice to SMH's rights under Section 34 and any other rights under this Project Agreement, if SMH exercises its step-in rights under the Construction Contractor's Direct Agreement, Project Co shall indemnify SMH for all obligations of Project Co assumed by SMH under the Design and Construction Contract, as the case may be, and for all reasonable costs and expenses incurred by SMH in relation to the exercise of SMH's rights.
- (e) Project Co shall indemnify SMH 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 SMH under Schedule 27 – Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from day to day at a rate per annum from the day after the date on which payment was due, the day on which overpayment was made by SMH, or from the date identified (if any) applicable to an amount determined as payable by Project Co to SMH under Schedule 27 – Dispute Resolution Procedure, up to and including the date of payment.

**44.2 SMH Indemnities to Project Co**

- (a) SMH 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 SMH or any act or omission of SMH or any SMH 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 SMH or any deliberate or negligent act or omission of SMH or any SMH 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 SMH or any deliberate or negligent act or omission of SMH or any SMH 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 SMH 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) SMH 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 SMH herein.
- (c) SMH shall indemnify Project Co for damages suffered or incurred on account of (i) any payment not duly made by SMH pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by SMH; or (iii) an amount determined as payable by SMH to Project Co under Schedule 27 – Dispute Resolution

Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from day to day at a rate per annum 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 SMH to Project Co under Schedule 27 – Dispute Resolution Procedure, up to and including the date of payment.

#### **44.3 Conduct of Claims**

- (a) This Section 44.3 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 44, the Beneficiary shall give written notice to the Indemnifier as soon as reasonably practicable and in any event within ten 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 44.3(d), 44.3(e) and 44.3(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 44.3 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 44.3(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 44.3(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 44.3(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 44.3(c) applies. For greater certainty, Project Co acknowledges and agrees that where SMH is the Beneficiary, SMH may retain or take over such conduct in any matter involving Personal Information 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 44.3(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 44.3 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.

#### **44.4 Mitigation – Indemnity Claims**

- (a) For greater certainty, Section 50.4 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.

### **45. LIMITS ON LIABILITY**

#### **45.1 Indirect Losses**

- (a) Subject to Section 45.1(b) and without prejudice to 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 Sections 44.1(a)(i), 44.1(a)(ii) and 44.1(a)(iii) only, the exceptions in Sections 45.1(a)(ii) and (iii) shall not apply as a result of, or in relation to, SMH's loss of use of the Facility and/or the Existing Facilities or a portion thereof, which for the purposes of Sections 44.1(a)(i), 44.1(a)(ii) and 44.1(a)(iii), shall be Direct Losses.

**45.2 No Liability in Tort**

- (a) Subject to the indemnities provided herein, SMH and the SMH 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 SMH or any SMH 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.

**45.3 Sole Remedy**

- (a) Nothing in this Project Agreement shall prevent or restrict the right of SMH to seek injunctive relief or a decree of specific performance or other discretionary remedies of a court of competent jurisdiction.
- (b) 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.

**45.4 Maximum Liability**

- (a) Subject to Section 45.4(b), the maximum aggregate liability of each Party in respect of all claims under Section 44 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 Sections 44.1(a)(i), 44.1(a)(ii) and 44.1(a)(iii) 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 45.4 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.

**46. DISPUTE RESOLUTION PROCEDURE**

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



**47. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL**

**47.1 Project Co Assignment**

- (a) Project Co shall not sell, assign, transfer, charge, mortgage, encumber, dispose of or otherwise alienate all or any part of any interest, whether legal or beneficial, in this Project Agreement or any Ancillary Document without the prior written consent of SMH, which consent may be withheld in the sole discretion of SMH, 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 SMH's role as a hospital, or may compromise SMH'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 47.1(a) shall not apply to:
  - (i) 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 SMH so requires; or
  - (ii) any Subcontract or sub-subcontract entered into by Project Co, the Project Co Parties or any sub-subcontractor in connection with the Project.

**47.2 SMH Assignment**

- (a) SMH 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 SMH 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 SMH, 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 SMH hereunder and under any agreement in connection with this Project Agreement to which Project Co and SMH 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 SMH Development Accountability Agreement.
- (b) SMH 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 47.2.

### **47.3 Subcontracting**

- (a) Project Co shall not subcontract any interest in this Project Agreement or the Design and Construction Contract, and shall not permit the Construction Contractor to subcontract any interest in the Design and Construction Contract, to a Restricted Person, or any Affiliate thereof, or a person whose standing or activities are inconsistent with SMH's role as a hospital, or may compromise SMH'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 unless Project Co has complied with Sections 8.2(a), 47.3(c) and 47.3(d) or received the prior written consent of SMH, not to be unreasonably withheld or delayed.
- (c) Subject to Section 47.3(d), if the Design and Construction 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 shall cease to act in relation to the Project, Project Co shall forthwith appoint a replacement, subject to SMH's prior written consent, acting reasonably, as to the suitability of the replacement.
- (d) It is a condition of replacement of the Construction Contractor, and Project Co shall require, that any replacement enter into a contract upon the same or substantially similar terms as the Design and Construction Contract so replaced, including the provision of replacement Security and an agreement on the same or substantially similar terms as the Construction Contractor's Direct Agreement unless any material variations are approved by SMH, acting reasonably.

### **47.4 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 SMH's role as a hospital,

or may compromise SMH'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 Works.
- (b) Subject to Section 47.4(a), 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, shall be permitted without the prior written consent of SMH, not to be unreasonably withheld or delayed.
- (c) This Section 47.4 shall not apply to a Change in Ownership or Change in Control of persons whose equity securities or ownership units or any other ownership interests are listed on a recognized stock exchange.
- (d) Whether or not Project Co is required to obtain SMH's consent to a Change in Ownership or Change in Control pursuant to this Section 47.4, Project Co shall provide timely notice to SMH of any proposed Change in Ownership or 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, as the case may be, within 5 Business Days of such Change in Ownership or Change in Control, and such notification shall include a statement identifying all such owners and their respective holdings of such ownership interests of Project Co, prior to and following any such Change in Ownership or Change in Control any person with an ownership interest, as the case may be.
- (e) No Restricted Person or a person whose standing or activities are inconsistent with SMH's role as a hospital, or may compromise SMH's reputation or integrity or the nature of the Province's health care system shall be permitted to have at any time or acquire, 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.

#### **47.5 SMH Due Diligence**

- (a) Project Co shall promptly reimburse SMH for SMH's reasonable due diligence costs (including fees of professional advisors) in connection with any consent required of SMH pursuant to, or SMH's determination of Project Co's compliance with Section 47.1, 47.3 or 47.4 whether or not such consent is granted.

### **48. PROHIBITED ACTS**

#### **48.1 Definition**

- (a) The term "**Prohibited Act**" means:

- (i) offering, giving or agreeing to give to SMH 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 SMH 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 SMH or any public body in connection with the Project,

provided that this Section 48.1(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 SMH 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 SMH or any public body in connection with the Project;

- (ii) entering into this Project Agreement or any other agreement with SMH 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, SMH 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 SMH, provided that this Section 48.1(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 SMH 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 SMH or any public body in connection with the Project without contravening the intent of this Section 48;
- (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 SMH or any public body in connection with the Project; or
- (iv) defrauding or attempting to defraud or conspiring to defraud SMH or any other public body.

**48.2 Remedies**

- (a) If Project Co or any Project Co Party (or anyone employed by or acting on their behalf) commits any Prohibited Act, then SMH 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 SMH may give written notice to Project Co and Section 34 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 SMH may give written notice to Project Co and Section 34 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 Works 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 SMH may give written notice to Project Co and Section 34 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 Works shall be performed by another person, where relevant, in accordance with Section 47.3;
  - (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 SMH may give notice to Project Co and Section 34 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 Works 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 48.2(a)(i) to 48.2(a)(iv), then SMH may give notice to Project Co and Section 34 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 Works shall be performed by another person.
- (b) Any notice of termination under this Section 48.2 shall specify:
- (i) the nature of the Prohibited Act;
  - (ii) the identity of the person whom SMH 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 48.2, SMH shall be entitled to recover from Project Co any Direct Loss sustained in consequence of any breach of this Section 48.

#### **48.3 Permitted Payments**

- (a) Nothing contained in this Section 48 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.

#### **48.4 Notification**

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

#### **48.5 Replacement of Project Co Party**

- (a) Where Project Co is required to replace any Project Co Party pursuant to this Section 48, 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.

### **49. NOTICES**

#### **49.1 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 SMH:

**[REDACTED]**

Fax No.: **[REDACTED]**

Attn.: [REDACTED]

With a copy to the following [REDACTED]  
addressees (which shall not constitute  
notice): [REDACTED]

Attn.: [REDACTED]

#### **49.2 Notices to Representatives**

- (a) In addition to the notice requirements set out in Section 49.1, where any Notice is to be provided or submitted to the SMH 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 the SMH Representative: [REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

#### **49.3 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 49.3.

#### **49.4 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 49.1 or 49.2 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.

#### **49.5 Deemed Receipt of Notices**

- (a) Subject to Sections 49.5(b), 49.5(c) and 49.5(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 49.
- (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.

#### **49.6 Service on SMH**

- (a) Where any Notice is required to be served on SMH, the obligation to serve such Notice shall be fulfilled by serving it on SMH in accordance with the provisions of this Section 49.

### **50. GENERAL**

#### **50.1 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.

#### **50.2 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.

### **50.3 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 SMH 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 SMH 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 that it is an agent of the other Party, or to accept any order, or enter into any contract or agreement, or make any representations or warranties of any kind to any person, or to assume or create any obligation, express or deemed, on behalf of or binding, or purportedly binding upon, the other Party;
  - (ii) neither Party shall be required to make or pay employment benefits, contributions for Employment Insurance, Canada Pension Plan, Workers' Compensation Board or other similar levies with respect to any persons employed or engaged by the other Party;
  - (iii) except as otherwise expressly provided in this 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.

**50.4 General Duty to Mitigate**

- (a) SMH 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.

**50.5 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 SMH 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 the Project Co Representative and the SMH Representative, respectively. For clarity, except as expressly set out to the contrary, a reference in this Project Agreement to the "knowledge of" Project Co or SMH, shall be construed in a manner consistent with the foregoing sentence.

**50.6 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.

**50.7 No Reliance**

- (a) Each of the Parties acknowledges 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 50.7 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.

**50.8 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.

**50.9 Enurement**

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

**50.10 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.

**50.11 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.

**50.12 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.

**50.13 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.

#### **50.14 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, operation 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

#### **50.15 Proof of Authority**

- (a) SMH 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 SMH or Project Co, as applicable, that they have the requisite authority to execute this Project Agreement on behalf of and to bind SMH or Project Co, as applicable.

#### **50.16 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 or faxed form provided that any Party providing its signature in faxed form shall promptly forward to the other Party an original signed copy of this Project Agreement which was so faxed.

#### **50.17 Government Entities as Third Party Beneficiaries**

- (a) The provisions of Sections 2.4, 5.1(b), 7.1, 7.2(a), 7.3(a), 9.1(c), 11.12(a), 39.6, 39.7, 39.9, 40, 44.1 and 45.2 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) SMH shall hold the rights and benefits of Sections 2.4, 5.1(b), 7.1, 7.2(a), 7.3(a), 9.1(c), 11.12(a), 39.6, 39.7, 39.9, 40, 44.1 and 45.2 and each other provision of the Project Agreement which is to the benefit of each Government Entity in trust for and on behalf of

the Third Party Beneficiaries and SMH hereby accepts such trust and agrees to hold the benefit of and enforce performance of such covenants on behalf of the Third Party Beneficiaries.

**50.18 Time is of the Essence**

- (a) Time is of the essence in this Project Agreement.

**50.19 Copyright Notice**

- (a) The Parties acknowledge that the Queen's Printer for Ontario is the exclusive owner of the copyright in the Project Agreement.

**[EXECUTION PAGE IMMEDIATELY FOLLOWS]**

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

**ST. MICHAEL'S HOSPITAL  
[REDACTED]**

**2442931 ONTARIO INC.  
[REDACTED]**

**SCHEDULE 1**

**DEFINITIONS AND INTERPRETATION**

1. **Definitions.** In the Project Agreement, unless the context otherwise requires:
  - 1.1 **“Account Trustee”** has the meaning given in Schedule 30 - Insurance Trust Agreement.
  - 1.2 **“Additional Contractors”** means any independent contractor (not being, for the avoidance of doubt, the Construction Contractor or Project Co) or SMH's own forces, engaged by SMH to carry out the Additional Works.
  - 1.3 **“Additional In-Contract Equipment and Works”** has the meaning given in Section 21.3(c) of the Project Agreement.
  - 1.4 **“Additional Works”** means those works: (i) in relation to the Facility; or (ii) are being carried out in the Site or Existing Facilities, which are not Works and which are to be carried out by an Additional Contractor.
  - 1.5 **“Adjudicator”** has the meaning given in Section 6.1 of Schedule 27 – Dispute Resolution Procedure.
  - 1.6 **“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 the unitholders, shareholders, partners or owners of Project Co, as applicable, and any person or entity controlling, controlled by or under common control with Project Co where “control” of any person or entity shall mean the ownership, directly or indirectly, of securities of such person or entity having the power to elect a majority of directors or similar authority or to otherwise control the decisions made on behalf of such person or entity.
  - 1.7 **“Ancillary Documents”** means [REDACTED].
  - 1.8 **“Anticipated Final Completion Date”** has the meaning given in Section 24.11(a) of the Project Agreement.
  - 1.9 **“Anticipated Phase Completion Date”** has the meaning given in Section 23A.7(a) of the Project Agreement.
  - 1.10 **“Anticipated Substantial Completion Date”** has the meaning given in Section 24.7(a) of the Project Agreement.
  - 1.11 **“Anticipated Tower Interim Completion Date”** has the meaning given in Section 23B.7(a) of the Project Agreement.
  - 1.12 **“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, SMH or any SMH Party and, in particular, shall include the *Public Hospitals Act* (Ontario).
- 1.13 **“Appointed Representative”** has the meaning given in Schedule 4 – Lenders' Direct Agreement.
- 1.14 **“Appointed Representative Notice”** has the meaning given in Schedule 4 – Lenders' Direct Agreement.
- 1.15 **“Apprenticeship Plan”** has the meaning given in Section 11.21(a) of the Project Agreement.
- 1.16 **“Approved Purposes”** means:
- (a) SMH and the SMH Parties performing the SMH Activities (and their operations relating to the performance of the SMH Activities), 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 Works; and
  - (c) the development by MOHLTC and/or the Province of best practices for healthcare facilities in Ontario.
- 1.17 **“As Built Drawings”** means drawings prepared by Project Co in a format and with content and details that SMH, acting reasonably, considers appropriate.
- 1.18 **“Associated Liabilities”** has the meaning given in Section 4.20(b) of the Project Agreement.
- 1.19 **“ATI”** means the *Access to Information Act* (Canada).
- 1.20 **“Authority Requirements”** means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority.

- 1.21 **“Background Information”** means any and all drawings, reports (including the Environmental Reports, the Geotechnical Reports, the Hazardous Materials Survey Reports and any other report given or otherwise referred to in the Output Specifications), studies, data, documents, or other information, given or made available to Project Co or any Project Co Party by SMH or any SMH Party, or which was obtained from or through any other sources prior to the date of the Project Agreement.
- 1.22 **“Bank”** has the meaning given in Schedule 30 – Insurance Trust Agreement.
- 1.23 **“Beneficiary”** has the meaning given in Section 44.3(a) of the Project Agreement.
- 1.24 **“Bonds”** means any one or more of the Performance Bond (which, for greater clarity, includes the Multiple Obligee Rider to the Performance Bond) and Labour and Material Payment Bond (which, for greater clarity, includes the Multiple Obligee Rider to the Labour and Material Payment Bond) and, collectively, means all of them, which Bonds are in the forms attached as Appendices B and C, respectively, to Schedule 25 – Insurance and Performance Security Requirements.
- 1.25 **“Building”** means a building as defined in the *Building Code Act, 1992* (Ontario).
- 1.26 **“Building Code”** means Ontario Regulation 332/12 made under the *Building Code Act, 1992* (Ontario).
- 1.27 **“Business Day”** means any day other than a Saturday, a Sunday, a statutory holiday in the Province of Ontario or any day on which banks are not open for business in the City of Toronto, Ontario.
- 1.28 **“CaGBC”** means the Canadian Green Building Council.
- 1.29 **“Canadian and Industry Standards”** means, at the applicable time, those standards, practices, methods and procedures applicable to Good Industry Practice.
- 1.30 **“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.
- 1.31 **“Capital Expenditure”** means capital expenditure as interpreted in accordance with Canadian GAAP.
- 1.32 **“Cash Allowance Account”** means [REDACTED].
- 1.33 **“Cash Allowance Amounts”** means [REDACTED].
- 1.34 **“Cash Allowance Amount Shortfall”** has the meaning given in Section 3.2(b) of the Project Agreement.

**1.35 “Cash Allowance Items” [REDACTED]**

1.36 **“Cash Allowance Monthly Deposit Amount”** has the meaning given in Section 3.2(a) of the Project Agreement.

1.37 **“Cash Allowance Monthly Deposit Amount Reconciliation”** has the meaning given in Section 3.2(a) of the Project Agreement.

1.38 **“Certification Services”** has the meaning given in Schedule 6 – Independent Certifier Agreement.

1.39 **“Certification Services Variation”** has the meaning given in Schedule 6 – Independent Certifier Agreement.

1.40 **“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.

1.41 **“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.

1.42 **“Change in Ownership”** means, with respect to a person, any change in ownership, whether beneficial or otherwise, of any of the shares or units of ownership of such person, or in the direct or indirect power to vote or transfer any of the shares or units of ownership of such person.

1.43 **“CLA”** means the *Construction Lien Act*, R.S.O. 1990, c.C.30.

1.44 **“Clinical Functionality”** means the ability of the Facility to enable SMH to carry out the Clinical Services in a manner that meets SMH’s operating requirements as set out in the functional program represented in the Output Specifications approved by MOHLTC.

1.45 **“Clinical Functionality Report”** has the meaning given in Section 11.4(b) of the Project Agreement.

- 1.46 “**Clinical Services**” means the direct and/or indirect provision of medical and healthcare services at the Facility and the Existing Facilities to or for the benefit of persons requesting or requiring such services, including but, not limited to, all management and administrative operations in support thereof.
- 1.47 “**CMMS**” means SMH’s computerized maintenance management system.
- 1.48 “**Commercial Close**” means the date of the Project Agreement.
- 1.49 “**Commissioning Team**” has the meaning given in Section 4.1 of Schedule 14 – Outline Commissioning Program.
- 1.50 “**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 or equipment;
  - (d) required to be included in each Phase Commissioning Program by the Independent Certifier, the SMH Commissioning Consultant or the SMH Representative during its development pursuant to Section 23A.2 of the Project Agreement;
  - (e) required to be included in the Tower Interim Completion Commissioning Program by the Independent Certifier, the SMH Commissioning Consultant or the SMH Representative during its development pursuant to Section 23B.2 of the Project Agreement; and
  - (f) required to be included in the Final Commissioning Program by the Independent Certifier, the SMH Commissioning Consultant or the SMH Representative during its development pursuant to Section 24.2 of the Project Agreement.
- 1.51 “**Compensation Event**” has the meaning given in Section 31.1(a) of the Project Agreement.
- 1.52 “**Compensation Payment**” means the SMH Default Termination Sum, the Project Co Default Termination Sum or the Non-Default Termination Sum.
- 1.53 “**Completion Holdback**” has the meaning given in Section 24.8 of the Project Agreement.
- 1.54 “**Complex Structure**” means any post-tensioned or pre-tensioned Structure that has undergone significant structural alteration making it difficult for personnel at the Site to predict the direction of forces or likely collapse mechanism to be experienced by such Structure in connection with any Demolition of all or any part of such Structure.

- 1.55 **“Complex Structure Demolition”** means any Demolition where:
- (a) significant structural elements, such as girders, columns, shearwalls or slabs, or Complex Structures are being removed, de-stressed, altered or removed;
  - (b) large penetrations are being created through slabs;
  - (c) any Demolition may cause the collapse of any Building or Structure (or any portion thereof) and such collapse may directly impact adjacent occupied areas of a Building or Structure and potentially jeopardize the safety of workers, staff or the general public using such Building or Structure; and
  - (d) the Demolition of any Building or Structure (or any portion thereof) has the potential to result in any materials collapsing onto or interfering with any pedestrian right-of-way or into an occupied part of any Building or Structure.
- 1.56 **“Confidant”** has the meaning given in Section 40.6(a)(i) of the Project Agreement.
- 1.57 **“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.
- 1.58 **“Construction Contractor”** means Bondfield Construction Company Limited, 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.
- 1.59 **“Construction Contractor Support Agreement”** means the construction contractor support agreement between Project Co and the Construction Contractor dated the date of the Project Agreement.
- 1.60 **“Construction Contractor’s Direct Agreement”** means the agreement to be entered into between SMH, Project Co and the Construction Contractor in the form set out in Schedule 5 – Construction Contractor’s Direct Agreement.
- 1.61 **“Construction Defect”** means any deficiency, defect or error in the Works or failure of the Works to conform to the Project Agreement, including, for clarity, any deficiency, defect or error in relation to any Product or item of In-Contract Equipment.
- 1.62 **“Construction Document Submittals”** has the meaning given in Section 11.1(d)(ii) of the Project Agreement.
- 1.63 **“Construction Guarantor”** means Bondfield Construction Company Limited.
- 1.64 **“Construction Latent Defect”** has the meaning given in Section 11.15(c).
- 1.65 **“Construction Quality Plan”** means the construction quality plan included in Schedule 11 - Design Quality Plan and Construction Quality Plan.

- 1.66 “**Construction Safety Plan**” has the meaning given to it in Schedule 13 – Project Co Proposal Extracts.
- 1.67 “**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.
- 1.68 “**Corporations Act**” means the *Corporations Act*, R.S.O. 1990, c. C.38, as amended.
- 1.69 “**Cost of the Financing**” means all costs and expenses incurred in connection with the Financing pursuant to the Lending Agreements, including all interest, fees, expense reimbursements, pre-payment and breakage costs and all other costs and expenses, as set out in Schedule 24 – Financial Model.
- 1.70 “**Cost of the Works**” means the cost to Project Co of performing the Works as set out in Schedule 24 – Financial Model and shall include all amounts to be included in the Cost of the Works set out in the Project Agreement.
- 1.71 “**Countdown Notice**” has the meaning given in Section 24.7(a) of the Project Agreement.
- 1.72 “**CPI**” means, as at the date of the Project Agreement, CPI XFET and, thereafter, the latest available Consumer Price Index Canada (all items) as published by Statistics Canada from time to time (whether preliminary or final), or failing such publication, such other index as the Parties may agree, or as may be determined in accordance with Schedule 27 - Dispute Resolution Procedure, most closely resembles such index.
- 1.73 “**CPI XFET**” means the Consumer Price Index excluding food, energy and the effect of changes in indirect taxes.
- 1.74 “**CPI<sub>n</sub>**” is the value of CPI on April 1 of the relevant year, to be determined by reference to the relevant index in the month of February most recently preceding the indexation date.
- 1.75 “**CPI<sub>o</sub>**” is the value of CPI at Financial Close, to be determined by reference to the relevant index in the month immediately preceding Financial Close.
- 1.76 “**CPM**” has the meaning given in Section 4.1 of Schedule 3 – Works Scheduling Requirements.
- 1.77 “**CSA Standards**” means, at the applicable time, the Canadian Standards Association standards.

- 1.78 **“Debt Service Amount”** means, for any period, the principal and interest payable by Project Co or any Project Co Party to the Lenders in the normal course under the Lending Agreements.
- 1.79 **“Delay Event”** has the meaning given in Section 30.1(a) of the Project Agreement.
- 1.80 **“Demolition”** means the removal of a building or structure, as the case may be, or of any material part of a Building or Structure.
- 1.81 **“Demolition Default Event”** has the meaning given in Section 11.23(b).
- 1.82 **“Demolition Guidelines”** means those guidelines set forth in the document entitled “Professional Engineers Providing Services for Demolition of Buildings and other Structures” published by the Professional Standards Committee established by the Professional Engineers of Ontario and having a publication date of April, 2011.
- 1.83 **“Demolition Plan”** means a plan or other document prepared by a professional engineer, limited licence holder or provisional licence holder in accordance with subsection (3) of the Performance Standards Regulation with respect to the Demolition of a building or structure, and includes any changes to the plan or other document that are made by a professional engineer, limited licence holder or provisional licence holder.
- 1.84 **“Demolition Requirements”** has the meaning given in Section 11.23(a).
- 1.85 **“Demolition Specifications”** means those specifications relating to any Demolition prepared by Project Co in accordance with Section 11.23(a)(iv)(A) of this Project Agreement.
- 1.86 **“Demolition Supervisor”** has the meaning given in Section 11.23(a)(ii).
- 1.87 **“Design and Bid Fee”** has the meaning given in the Request for Proposals.
- 1.88 **“Design and Construction Contract”** means the design and construction contract between Project Co and the Construction Contractor dated on or about the date of Financial Close.
- 1.89 **“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.
- 1.90 **“Design Development Submittals”** has the meaning given in Section 11.1(d)(i) of the Project Agreement.
- 1.91 **“Design Quality Plan”** means the design quality plan included in Schedule 11 - Design Quality Plan and Construction Quality Plan.

- 1.92 **“Design Review Workshops”** has the meaning given in Section 11.3(a) of the Project Agreement.
- 1.93 **“Design Team”** means [REDACTED], engaged by Project Co or a Project Co Party to design the Facility and any substitute design team engaged by Project Co or a Project Co Party as may be permitted by the Project Agreement.
- 1.94 **“Development Approvals”** 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.
- 1.95 **“Direct Cost”** has the meaning given in Schedule 22 -Variation Procedure.
- 1.96 **“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.
- 1.97 **“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 five (5%) 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 five (5%) 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.
- 1.98 **“Discretionary SMH Cash Allowance Amount”** \$[REDACTED]
- 1.99 **“Discretionary SMH Cash Allowance Items”** [REDACTED]
- 1.100 **“Discretionary SMH Additional In-Contract Equipment and Works Amount”** means an aggregate amount of \$[REDACTED] for Discretionary SMH Additional In-Contract Equipment and Works Items.
- 1.101 **“Discretionary SMH Additional In-Contract Equipment and Works Items”** means, collectively, all Additional In-Contract Equipment and Works identified by SMH



pursuant to Section 21.3(c) of the Project Agreement; and any one of the foregoing is a **“Discretionary SMH Additional In-Contract Equipment and Works Item”**.

1.102 **“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 and financing are procured by a contract similar to the Project Agreement in relation to other similar hospitals;
- (b) the Facility in relation to other hospitals in Ontario;
- (c) Project Co in relation to other persons; or
- (d) persons undertaking projects for design, construction and financing 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.

1.103 **“Dispute”** has the meaning given in Schedule 27 - Dispute Resolution Procedure.

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

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 **“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 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 Works and/or the conduct of SMH Activities;

and which, in the opinion of SMH, 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.

1.107 **“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.

1.108 **“Environmental Reports”** means, collectively, the following reports:

- (a) [REDACTED].

1.109 **“Environmental Report (Phase Two Environmental Site Assessment)”** – means [REDACTED].

1.110 **“Equipment”** means the Not-In-Contract Equipment (including, but not limited to, furniture) and the In-Contract Equipment (including, but not limited to, casework) and, for clarity, does not include the Existing Equipment.

1.111 **“Equipment List”** means the equipment list set out in Part 4 of Schedule 15 – Output Specifications.

1.112 **“Equipment Steering Committee”** has the meaning given in Section 21.1(a) of the Project Agreement.

1.113 **“Equipment Sub-Plan”** has the meaning given to it in Schedule 13 – Project Co Proposal Extracts.

1.114 **“Estimate”** has the meaning given in Schedule 22 - Variation Procedure.

1.115 **“Existing Equipment”** means the equipment designated as “Existing Equipment”/ transferrable equipment in Part 4 of Schedule 15 – Output Specifications.

1.116 **“Existing Facilities”** means the existing buildings of SMH within parts of which and adjoining which the Works will occur.

1.117 **“Expert”** has the meaning given in Schedule 27 - Dispute Resolution Procedure.

1.118 **“Expiry Date”** means the first anniversary of the Final Completion Date.

1.119 **“Facility”** means:

- (a) all buildings, facilities and other structures;
- (b) the Plant;
- (c) all site services, utilities, roadways and parking area required to support such buildings, facilities and structures;
- (d) all supporting systems, infrastructure and improvements;
- (e) all In-Contract Equipment;
- (f) all Products; and
- (g) all other works, improvements and Demolition 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 design, construction, installation or completion.

- 1.120 **“Final Commissioning Program”** means the program to be jointly developed and agreed by SMH and Project Co in accordance with Section 24.2 of the Project Agreement.
- 1.121 **“Final Completion”** means the completion of the Works in accordance with the Project Agreement, including completion of all Minor Deficiencies.
- 1.122 **“Final Completion Certificate”** means the certificate to be issued by the Independent Certifier in accordance with Section 24.12 of the Project Agreement.
- 1.123 **“Final Completion Countdown Notice”** has the meaning given in Section 24.11(a) of the Project Agreement.
- 1.124 **“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.
- 1.125 **“Final Completion Notice”** has the meaning given in Section 24.12(b) of the Project Agreement.
- 1.126 **“Financial Close”** means the first date that funding is available under the Lending Agreements.
- 1.127 **“Financial Close Target Date”** means January 22, 2015, as such date may be extended in accordance with the provisions of the Project Agreement.
- 1.128 **“Financial Model”** means the computer spreadsheet model included in Schedule 24 – Financial Model for the Project incorporating statements of Project Co's cashflows including all expenditure, revenues, financing and taxation of the Works together with, if applicable, 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.

- 1.129 **“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.
- 1.130 **“Financing”** means the financing with the Lenders, that is consistent in all material respects with Schedule 24 - Financial Model and the Project Agreement, to finance the Project.
- 1.131 **“FIPPA”** means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 (Ontario).
- 1.132 **“Force Majeure”** has the meaning given in Section 33.1(a) of the Project Agreement.
- 1.133 **“Geotechnical Reports”** [REDACTED]
- 1.134 **“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.
- 1.135 **“Government Entity”** means any one or more of the Province, IO, MEDEI and the MOHLTC.
- 1.136 **“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 SMH, any aspect of the performance of the Project Agreement or the operation of the Facility, or the SMH Activities, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.
- 1.137 **“Guaranteed Price”** is the amount referred to in Section 3.1(a) of the Project Agreement.
- 1.138 **“Hazardous Materials Survey Reports”** [REDACTED]
- 1.139 **“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 in or identified pursuant to any Applicable Law.

- 1.140 **“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.
- 1.141 **“Hedge Provider”** means a person that has entered into a Hedging Agreement with Project Co pursuant to the Lending Agreements, together with their successors and permitted assigns.
- 1.142 **“Hedging Agreement”** means an agreement relating to the hedging of interest rate risk entered into by Project Co and the Hedge Provider(s) pursuant to the Lending Agreements.
- 1.143 **“Heritage Guidelines and Protocols”** means those heritage guidelines and protocols mandated by Applicable Laws.
- 1.144 **“HST”** means the value-added tax imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.
- 1.145 **“Human Rights Policies”** means the following policies of SMH provided to Project Co as Background Information, as amended, supplemented or replaced from time to time:
- (a) St. Michael's Hospital Code of Conduct effective May 1, 2010;
  - (b) Criminal Activity effective January 1, 2013;
  - (c) Code of Business Conduct effective April 1, 2011;
  - (d) Management of Violence in the Workplace effective February 12, 2013; and
  - (e) Workplace Harassment and Discrimination effective May 1, 2011.
- 1.146 **“ICT”** means information and communications technology.
- 1.147 **“Improvements”** means structures, buildings, installations, fixtures, services and other such improvements.
- 1.148 **“In-Contract Equipment”** means all Equipment in respect to which Project Co is to be the purchaser as specified in Part 4 of Schedule 15 – Output Specifications and, for clarity, includes the SMH Early Procured In-Contract Equipment as of Financial Close pursuant to the terms and conditions of the SMH Early Procured In-Contract Equipment Assumption but does not include any Not-In-Contract Equipment or Existing Equipment.
- 1.149 **“Indemnifiable Taxes”** has the meaning given in Section 4.20(b) of the Project Agreement.
- 1.150 **“Indemnifier”** has the meaning given in Section 44.3(a) of the Project Agreement.
- 1.151 **“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.

- 1.152 **“Independent Certifier Agreement”** means the contract entered into between Project Co, SMH and the Independent Certifier in substantially the form attached hereto as Schedule 6 – Independent Certifier Agreement.
- 1.153 **“Indirect Losses”** has the meaning given in Section 45.1 of the Project Agreement.
- 1.154 **“Innovation Proposal”** has the meaning given in Section 29.2(b) of the Project Agreement.
- 1.155 **“Insurance”** means the insurance contemplated in Schedule 25 – Insurance and Performance Security Requirements.
- 1.156 **“Insurance Trust Agreement”** means the insurance trust agreement to be entered into between SMH, the Lenders’ Agent, Project Co and the Account Trustee in the form set out in Schedule 30 - Insurance Trust Agreement.
- 1.157 **“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.
- 1.158 **“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); or
  - (b) the Project Agreement.
- 1.159 **“Interest Reference Rate”** means the reference benchmark rate of interest identified in the Financial Model and used in the calculation of the Project Debt Interest Cost, and for greater clarity, is the base rate of interest exclusive of any stated or imbedded spread, (including credit, swap or other types of spread) or fees.
- 1.160 **“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 Economic Development, Employment and Infrastructure.

- 1.161 **"IPFP Framework"** has the meaning given in the recitals to the Project Agreement.
- 1.162 **"Jointly Developed Materials"** has the meaning given in Section 39.4(a) of the Project Agreement.
- 1.163 **"Junior Debt Amount"** has the meaning given in Schedule 23 – Compensation on Termination.
- 1.164 **"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.
- 1.165 **"Junior Lenders"** for the purpose of the Project Agreement, there are no Junior Lenders and any reference to "Junior Lenders" in the Project Agreement shall have no force and effect whatsoever.
- 1.166 **"Key Individuals"** has the meaning given in Schedule 9 – Key Individuals.
- 1.167 **"Labour and Material Payment Bond"** means, collectively, the Labour and Material Payment Bond and the Multiple Obligee Rider to Labour and Material Payment Bond in the form attached as Appendix C to Schedule 25 – Insurance and Performance Security Requirements.
- 1.168 **"LEED"** means Leadership in Energy & Environmental Design.
- 1.169 **"LEED Rating System"** means CaGBC's Leadership in Energy & Environmental Design (LEED) Green Building Rating System for New Construction and Major Renovations, LEED – NC Version 1.0, including any addenda or update thereto issued prior to the date of the Project Agreement.
- 1.170 **"LEED Silver Rating"** means the achievement of a 'Silver' rating from the CaGBC, with respect to the LEED Rating System.
- 1.171 **"Legislative Holdback"** means the holdback(s) to be maintained under Part IV of the CLA.
- 1.172 **"Legislative Holdback Payment Date"** means the date for payment of the Legislative Holdback pursuant to Section 4.5(e) of the Project Agreement.
- 1.173 **"Lenders"** means any or all of the persons acting arm's length to Project Co and each Project Co Party who provide the Financing, and for greater clarity, excludes the Hedge Provider(s) or any other hedge providers and their respective permitted successors and assigns and any Affiliate of Project Co or a Project Co Party;

- 1.174 **“Lenders’ Agent”** has the meaning given in Schedule 4 - Lenders’ Direct Agreement.
- 1.175 **“Lenders’ Consultant”** means any consultant appointed from time to time by the Lenders. Nothing contained in the Project Documents and no action taken by the Lenders’ Consultant in connection with the Works or the Project Documents shall constitute direction and/or control by SMH, Project Co or the Lenders.
- 1.176 **“Lenders’ Direct Agreement”** means the direct agreement to be entered into between SMH, the Lenders’ Agent and Project Co in the form set out in Schedule 4 - Lenders’ Direct Agreement.
- 1.177 **“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, including, for greater certainty, the Security Documents and the Hedging Agreements.
- 1.178 **“Letter of Credit Provider”** has the meaning given in Section 2.2(a) of the Project Agreement.
- 1.179 **“Load-Path Diagram”** means a graphically illustrated diagram that indicates in all relevant detail (including by use of colour-coded arrows indicating the directions of forces caused by dead loads, live loads, vertical loads and lateral loads) how the structural loads are transferred throughout a Building or Structure that is to be the subject of a Demolition.
- 1.180 **“Local Health Integration Network”** means the Central Local Health Integration Network.
- 1.181 **“Longstop Date”** has the meaning given in Section 34.1(a)(ii) of the Project Agreement.
- 1.182 **“Maintenance Instructions”** means the maintenance data prepared and delivered by Project Co to SMH pursuant to Sections 23A.5A, 23B.5A and 24.5A of the Project Agreement.
- 1.183 **“Make Good”, “Made Good”, “Making Good”** and derivatives thereof, means, as applicable, repairing, restoring, refurbishing, rehabilitating, removing and replacing, or performing filling operation on (a) the Works as required under the Project Agreement or (b) any existing components disturbed due to the Works to at least the condition existing at the commencement of the Works, in terms of construction integrity, finishes, alignment with existing adjoining surfaces, compatibility of materials, sound attenuation criteria, exfiltration/infiltration requirements, air/vapour barrier and thermal continuity.
- 1.184 **“MEDEI”** means Her Majesty The Queen in Right of Ontario as represented by the Minister of Economic Development, Employment and Infrastructure, and includes any successors thereto or persons exercising delegated power under the Minister’s authority.
- 1.185 **“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 SMH’s use and



- enjoyment of the Facility (including the SMH Commissioning) or the performance of the SMH Activities.
- 1.186 **“Minor Deficiencies List”** has the meaning given in Section 24.8(a) of the Project Agreement.
- 1.187 **“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.
- 1.188 **“Multiple Obligee Rider to Labour and Material Payment Bond”** means the Multiple Obligee Rider amending the Labour and Material Payment Bond to add SMH and Lenders as additional named Obligees, in the form attached as Exhibit 1 to Appendix C of Schedule 25 – Insurance and Performance Security Requirements.
- 1.189 **“Multiple Obligee Rider to Performance Bond”** means the Multiple Obligee Rider amending the Performance Bond to add SMH and Lender as additional named Obligees, in the form attached as Exhibit 1 to Appendix B of Schedule 25 – Insurance and Performance Security Requirements.
- 1.190 **“New Shuter Wing”** has the meaning given in Section 1.0.3 of Part 1 of Schedule 15 – Output Specifications.
- 1.191 **“New Shuter Wing Lands”** means the lands depicted as the Study Area (Phase One Property) on the site plan for the report entitled the report entitled “Phase One Environmental Site Assessment” dated April 30, 2014 prepared for SMH by exp Services Inc. (Project Number BRM-00603268-CO).
- 1.192 **“NOAC”** has the meaning given in Appendix A to Schedule 1 – Permits, Licences, Approvals and Agreements.
- 1.193 **“No Default Payment Compensation Amount”** means [REDACTED].
- 1.194 **“Non-Default Termination Sum”** has the meaning given in Schedule 23 - Compensation on Termination.
- 1.195 **“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).
- 1.196 **“Non-Shuter Works”** has the meaning given in Appendix A to Schedule 1 – Permits, Licences, Approvals and Agreements.
- 1.197 **“Not-In-Contract Equipment”** means all Equipment in respect to which SMH is to procure and be the purchaser as specified in Part 4 of Schedule 15 – Output Specifications.
- 1.198 **“Not-In-Contract Equipment Fee”** means \$[REDACTED].

- 1.199 “**Notice**” has the meaning given in Section 49.1(a) of the Project Agreement.
- 1.200 “**Notice of Project**” means a notice of project filed with the Ministry of Labour in compliance with O. Reg 213/91 under the *Occupational Health and Safety Act* (Ontario).
- 1.201 “**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.
- 1.202 “**OCPM**” has the meaning given in Section 13.6(b) of the Project Agreement.
- 1.203 “**Order**” has the meaning given in Schedule 30 - Insurance Trust Agreement.
- 1.204 “**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.
- 1.205 “**Output Specifications**” means Schedule 15 – Output Specifications.
- 1.206 “**Party**” means either SMH or Project Co, and “**Parties**” means both SMH and Project Co, but, for greater certainty, such definitions do not include IO, MOHLTC or MEDEI.
- 1.207 “**Patient Information**” means Personal Information of patients, clients, and other users and recipients of the Hospital Activities and, for clarity, includes all “personal health information” of such persons (as such term is defined in the *Personal Health Information Protection Act, 2004*).
- 1.208 “**Payment Compensation Amount**” means [REDACTED].
- 1.209 “**PDC Team**” means the team of consultants led by Diamond Schmitt Architects.
- 1.210 “**Performance Bond**” means collectively, the Performance Bond and the Multiple Obligor Rider to the Performance Bond in the form attached as Appendix B to Schedule 25 – Insurance and Performance Security Requirements.
- 1.211 “**Performance Guarantee of Construction Guarantor**” means a performance guarantee given by the Construction Guarantor in the form set out in Schedule 12 – Performance Guarantee of Construction Guarantor.
- 1.212 “**Performance Standards Regulation**” means Ontario Regulation 260/08 made under the *Professional Engineers Act* (Ontario).
- 1.213 “**Permits, Licences, Approvals and Agreements**” means the SMH Permits, Licences, Approvals and Agreements and the Project Co Permits, Licences, Approvals and Agreements.
- 1.214 **Permitted Borrowing**” means:

- (a) any advance to Project Co under the Lending Agreements;
  - (b) any additional financing approved by SMH 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 SMH's liabilities under the Project Agreement whether actual or contingent, present or future, known or unknown.
- 1.215 **"Personal Information"** means all personal information (as the term **"personal information"** is defined in section 2(1) of FIPPA) in the custody or control of Project Co or a Project Co Party other than personal information of the employees of Project Co or a Project Co Party and other than personal information that is wholly unrelated to the Works and not derived directly or indirectly from SMH in respect of the Project.
- 1.216 **"Phase Commissioning Program"** means each program to be jointly developed and agreed by SMH and Project Co in accordance with Section 23A.2 of the Project Agreement.
- 1.217 **"Phase Completion"** means the point at which (i) a Phase of the Works has been completed in accordance with the Project Agreement; (ii) a Phase Occupancy Permit has been issued; and (iii) all requirements for a Phase Completion described in the applicable Phase Commissioning Program, other than in respect of Phase Minor Deficiencies, have been satisfied.
- 1.218 **"Phase Completion Certificate"** means the certificate to be issued by the Independent Certifier in accordance with Section 24.4A(d) of the Project Agreement.
- 1.219 **"Phase Completion Date"** means the date on which each Phase Completion is achieved as evidenced by the applicable Phase Completion Certificate, as such date shall be stated therein.
- 1.220 **"Phase Completion Notice"** has the meaning given in Section 23A.4(b) of the Project Agreement.
- 1.221 **"Phase Countdown Notice"** has the meaning given in Section 24.7A(a) of the Project Agreement.
- 1.222 **"Phase of the Works"** means each phase of the Works identified in Section 3.9.2 of Part 3 of the Output Specifications; and **"Phases of the Works"** means greater than one Phase of the Works.
- 1.223 **"Phase 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 an applicable Phase Completion and which would not materially impair SMH's use and enjoyment of the applicable Phase of the Works (including the applicable Phase SMH Commissioning) or the performance of the applicable SMH Activities.

- 1.224 **“Phase Minor Deficiencies List”** has the meaning given in Section 23A.8(a) of the Project Agreement.
- 1.225 **“Phase Occupancy Permit”** means all Permits, Licences, Approvals and Agreements required for the occupancy of a Phase of the Works as a health care facility in compliance with Applicable Law.
- 1.226 **“Phase Project Co Commissioning”** means the commissioning activities to be carried out by Project Co prior to the issuance of a Phase Completion Certificate in accordance with each Phase Commissioning Program.
- 1.227 **“Phase Project Co Commissioning Tests”** means all Commissioning Tests required to be performed by Project Co pursuant to each Phase Commissioning Program.
- 1.228 **“Phase SMH Commissioning”** means the commissioning activities to be carried out by SMH in accordance with each Phase Commissioning Program.
- 1.229 **“Phase SMH Commissioning Period”** means each period during which SMH is performing Phase SMH Commissioning.
- 1.230 **“Phase SMH Commissioning Tests”** means all Commissioning Tests required to be performed by SMH pursuant to each Phase Commissioning Program.
- 1.231 **“Phasing Requirements”** means the requirements for the phasing and sequencing of the Works set out in Section 3.9 of Part 3 of the Output Specifications.
- 1.232 **“Plant”** means all buildings, building services, infrastructure, building fabric, and mechanical and electrical services, which are required to meet the operational needs of SMH as defined in Schedule 15 – Output Specifications.
- 1.233 **“Procurement Monitoring and Implementation Plan”** has the meaning given in Section 11.22(a) of the Project Agreement.
- 1.234 **“Product”** means or **“Products”** mean material, machinery, equipment and fixtures forming the Works but does not include Equipment or machinery and equipment used to prepare, fabricate, convey or erect the Works, which is referred to as construction machinery and equipment.
- 1.235 **“Prohibited Act”** has the meaning given in Section 48.1(a) of the Project Agreement.
- 1.236 **“Project”** has the meaning given in the recitals to the Project Agreement.
- 1.237 **“Project Agreement”** has the meaning given in the recitals to the Project Agreement.
- 1.238 **“Project Co”** has the meaning given in the introductory paragraph of the Project Agreement.

- 1.239 **“Project Co Amount”** has the meaning given in Schedule 23 – Compensation on Termination.
- 1.240 **“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.
- 1.241 **“Project Co Commissioning Authority”** has the meaning given in Section 2 of Schedule 14 – Outline Commissioning Program.
- 1.242 **“Project Co Commissioning Tests”** means all Commissioning Tests required to be performed by Project Co pursuant to the Final Commissioning Program.
- 1.243 **“Project Co Construction Event of Default”** means a Project Co Event of Default relating to a failure or breach by Project Co to perform, observe or comply with any covenants, agreements, obligations or liabilities with respect to the Works, excluding a default by the Construction Guarantor under the Performance Guarantee of Construction Guarantor.
- 1.244 **“Project Co Default Termination Sum”** has the meaning given in Schedule 23 – Compensation on Termination.
- 1.245 **“Project Co Event of Default”** has the meaning given in Section 34.1(a) of the Project Agreement.
- 1.246 **“Project Co Group”** means [REDACTED].
- 1.247 **“Project Co Party”** means:
- (a) the Construction Contractor;
  - (b) any person engaged by Project Co and/or the Construction Contractor from time to time as may be permitted by the Project Agreement to procure or manage the provision of the Works (or any of them); and
  - (c) 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.
- 1.248 **“Project Co Permits, Licences, Approvals and Agreements”** means all permissions, consents, approvals, certificates, permits, licences, agreements and authorizations to be obtained by Project Co in accordance with the Project Agreement and as required by Applicable Law, and all necessary consents and agreements from any third parties (including all Development Approvals and the approval of the Fire Marshal of Ontario), needed to perform the Works in accordance with the Project Agreement, and including those permits, licenses, approvals and agreements which are the responsibility of Project Co to obtain as set out in Appendix “A” to this Schedule 1 – Definitions and

Interpretation and those permits, licenses, approvals and agreements which are the responsibility of Project Co to obtain as set out in the Output Specifications, but other than any SMH Permits, Licences, Approvals and Agreements.

- 1.249 **“Project Co Proposal Extracts”** has the meaning given to it in Schedule 13 – Project Co Proposal Extracts.
- 1.250 **“Project Co Representative”** means the person designated as such by Project Co on or prior to Commercial Close and any permitted replacement.
- 1.251 **“Project Co Variation Notice”** has the meaning given in Schedule 22 - Variation Procedure.
- 1.252 **“Project Data”** means:
- (a) all Design Data; and
  - (b) any other materials, documents and or data acquired, brought into existence or used in relation to the Works 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.
- 1.253 **“Project Debt Interest Cost”** means the budgeted amount of aggregate interest charges in respect of the Senior Debt Amount used to calculate the Cost of the Financing portion of the Guaranteed Price.
- 1.254 **“Project Documents”** means the Ancillary Documents and the Lending Agreements.
- 1.255 **“Project Term”** means the period commencing on the date of the Project Agreement and expiring at midnight on the Termination Date.
- 1.256 **“Proprietor”** has the meaning given in Section 40.6(a) of the Project Agreement.
- 1.257 **“Province”** means Her Majesty the Queen in Right of Ontario.
- 1.258 **“Quality Plans”** has the meaning given in Section 15.1(a) of the Project Agreement.
- 1.259 **“Recovery Amount”** has the meaning given in Section 44.3(g) of the Project Agreement.
- 1.260 **“Refinancing”** has the meaning given in Schedule 29 – Refinancing.
- 1.261 **“Reimbursement Event”** has the meaning given in Section 25A.5(a) of the Project Agreement.
- 1.262 **“Relevant Change in Law”** means a Discriminatory Change in Law or a Health Specific Change in Law.

- 1.263 “**Relevant Conviction**” means a conviction under the *Criminal Code* (Canada) for which no pardon has been granted.
- 1.264 “**Relief Event**” has the meaning given in Section 32.1(a) of the Project Agreement.
- 1.265 “**Remainder Works**” means all Works other than Phases of the Works and Tower Interim Completion Works, which are identified in Section 3.9 of Part 3 of the Output Specifications.
- 1.266 “**Remaining Cash Allowance Amount**” has the meaning given in Section 3.2(b) of the Project Agreement.
- 1.267 “**Request for Payment Approval**” has the meaning given in Section 3.2(d) of the Project Agreement.
- 1.268 “**Request for Proposals**” or “**RFP**” means the request for proposals issued in respect of the Project on August 2, 2013.
- 1.269 “**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* 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 SMH 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 SMH’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.
- 1.270 **“Review Procedure”** means the procedure set out in Schedule 10 - Review Procedure.
- 1.271 **“RFP Submission Deadline”** means May 21, 2014.
- 1.272 **“Schedule Cushion”** means a schedule contingency added to the last activity on the critical path of the Works Schedule and consisting of a 30 day duration. The Schedule Cushion shall be included in the Works Schedule and, for greater certainty, the Schedule Cushion shall not extend the time for achieving any Phase Completion, Tower Interim Completion and/or Substantial Completion of the Works in any manner whatsoever. SMH has ownership of the Schedule Cushion and can elect to use it at any time in respect of a Variation, or upon the occurrence of a Delay Event which would otherwise grant to Project Co an extension of any Scheduled Phase Completion Date, the Scheduled Tower Interim Completion Date and/or the Scheduled Substantial Completion Date, provided any portion of the Schedule Cushion which has not been used by SMH prior to the Substantial Completion Date will be given to Project Co. Use of the Schedule Cushion by SMH shall not result in any right of Project Co to a claim for an increase in the Cost of the Financing.
- 1.273 **“Scheduled Final Completion Date”** means [REDACTED].
- 1.274 **“Scheduled Phase Completion Date”** means each Scheduled Phase Completion Date set out in the Works Schedule, as such date may be extended pursuant to Section 30 of the Project Agreement. For clarity, any change to a Scheduled Phase Completion Date initiated by Project Co other than an extension to such date pursuant to Section 30 of the Project Agreement must be approved in writing by SMH and, subject to the terms of Schedule 22 – Variation Procedure, any SMH approval of any such change does not entitle Project Co to a Variation, an extension of time or an addition to the Guaranteed Price.
- 1.275 **“Scheduled Substantial Completion Date”** means [REDACTED], as such date may be extended pursuant to Section 30 of the Project Agreement.
- 1.276 **“Scheduled Tower Interim Completion Date”** means [REDACTED], as such date may be extended pursuant to Section 30 of the Project Agreement.
- 1.277 **“Security”** means the Bonds, the Insurance and any other security interests granted by Project Co to the Lenders’ Agent pursuant to the Security Documents.
- 1.278 **“Security Documents”** means [REDACTED].
- 1.279 **“Senior Debt Amount”** has the meaning given in Schedule 23 – Compensation on Termination.
- 1.280 **“Senior Debt Service Amount”** means [REDACTED].
- 1.281 **“Senior Lenders”** means [REDACTED].



- 1.282 **“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.
- 1.283 **“Severe Market Disruption”** means any occurrence of exceptional circumstances in financial markets in Europe, the United States of America and/or Canada which:
- (a) results in the suspension or cessation of all or substantially all lending activity in national or relevant international capital or interbank markets; and
  - (b) adversely affects access by Project Co to such markets.
- 1.284 **“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.
- 1.285 **“Site”** means the lands, including all Improvements thereon and therein, legally described as PIN 21098-0100 (LT), being lots 48 to 56 (both inclusive) on the east side of Victoria Street on Plan 22A; unnumbered lots also known as lots 2 to 8 (both inclusive) on the north side of Queen Street formerly lot street on Plan 22A; lots 2 to 10 (both inclusive) on the west side of Bond Street; and part of an unnamed lane on Plan 22A between Victoria Street and Bond Street, south of Shuter Street closed by EP120456 and EP3407 as in EP122030 and EP10533; City of Toronto.
- 1.286 **“Site Conditions”** means the condition of the Site, including the physical, geophysical, climatic, ecological, environmental, geotechnical and archaeological conditions.
- 1.287 **“SMH”** means St. Michael's Hospital.
- 1.288 **“SMH Activities”** includes (i) the Clinical Services and (ii) all facilities management services at the Facility and the Existing Facilities, including, but not limited to, select general management services, select help desk 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.
- 1.289 **“SMH Commissioning”** means the commissioning activities to be carried out by SMH in accordance with the Final Commissioning Program.
- 1.290 **“SMH Commissioning Consultant”** means the person appointed by SMH as its commissioning consultant.

- 1.291 **“SMH Commissioning Period”** means the period during which SMH is performing the SMH Commissioning.
- 1.292 **“SMH Commissioning Tests”** means all commissioning tests required to be performed by SMH pursuant to the Final Commissioning Program.
- 1.293 **“SMH Default Termination Sum”** has the meaning given in Schedule 23 – Compensation on Termination.
- 1.294 **“SMH Design Team”** means any of SMH, its agents, contractors and subcontractors of any tier and its or their governors, directors, officers and employees, and other persons engaged in respect of design reviews, design evaluation, or design consultation processes with respect to the Facility on behalf of SMH, but excluding Project Co and any Project Co Party.
- 1.295 **“SMH Development Accountability Agreement”** means the development accountability agreement between MOHLTC and SMH dated January 8, 2015 with respect to, among other things, the terms and conditions of funding for SMH's obligations related to the Project.
- 1.296 **“SMH Early Procured In-Contract Equipment”** means the In-Contract Equipment designated as “SMH Early Procured In-Contract Equipment” in Part 4 of Schedule 15 – Output Specifications.
- 1.297 **“SMH Early Procured In-Contract Equipment Assignment”** has the meaning given in Section 21.3(a).
- 1.298 **“SMH Early Procured In-Contract Equipment Assumption”** has the meaning given in Section 21.3(a).
- 1.299 **“SMH Early Procured In-Contract Equipment Reimbursement Amount”** means \$[REDACTED].
- 1.300 **“SMH Event of Default”** has the meaning given in Section 35.1(a) of the Project Agreement.
- 1.301 **“SMH Funding and Approval Letter”** means the funding and approval letter from MOHLTC to SMH dated January 8, 2014 with respect to, among other things, the terms and conditions of funding by MOHLTC of certain of SMH's obligations related to the Project and MOHLTC's approval of the Project.
- 1.302 **“SMH Mortgages”** means, collectively, the Sisters First Mortgage and the Sisters Second Mortgage, which are both defined and described in Schedule 16 – Title Encumbrances;
- 1.303 **“SMH Party”** means any of SMH and its respective agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged by any of the foregoing in respect of the SMH Activities, but excluding

Project Co and any Project Co Party, and the “**SMH Parties**” shall be construed accordingly.

- 1.304 “**SMH Permits, Licences, Approvals and Agreements**” means only those SMH permits, licences, approvals and agreements which are the responsibility of SMH to obtain as set out in Appendix “A” to this Schedule 1 - Definitions and Interpretation.
- 1.305 “**SMH Representative**” means the person designated as such by SMH on or prior to the date of the Project Agreement and any permitted replacement.
- 1.306 “**SMH Taxes**” means taxes, or payments in lieu of taxes, imposed on SMH and HST and property taxes for which SMH is responsible pursuant to Section 4.15 of the Project Agreement.
- 1.307 “**SMH Trade-Marks**” means any and all Trade-Marks used by SMH in any manner whatsoever.
- 1.308 “**Standby Letter of Credit**” has the meaning given in Section 2.2(a) of the Project Agreement.
- 1.309 “**Start-Up Meeting**” has the meaning given in Section 11.2(a) of the Project Agreement.
- 1.310 “**Step-in Period**” has the meaning given in Schedule 4 – Lenders' Direct Agreement.
- 1.311 “**Structure**” means any permanent structure other than a building, including a bridge, dam or lock.
- 1.312 “**Subcontractor**” means any subcontractor of Project Co engaged by or through Project Co to perform any of the Works, including the Construction Contractor, any Supplier or consultant, and any subcontractor of any other subcontractor at any tier.
- 1.313 “**Subcontractor's Direct Agreement**” means the agreement to be entered into among SMH, Project Co, the Construction Contractor and certain Subcontractors determined in accordance with the terms of the Project Agreement in the form set out in Schedule 7 – Subcontractor's Direct Agreement.
- 1.314 “**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 any other Subcontractor at any tier in relation to any aspect of the Works.
- 1.315 “**Substantial Completion**” means the point at which (i) the Facility has been completed in accordance with the Project Agreement; (ii) the Occupancy Permit has been issued; (iii) a professional architect of the Design Team has certified the substantial performance of the Design and Construction Contract and the related certificate of substantial performance has been published, each in accordance with the CLA; and (iv) all requirements for Substantial Completion described in the Final Commissioning Program, other than in respect of Minor Deficiencies, have been satisfied.

- 1.316 **“Substantial Completion Certificate”** means the certificate to be issued by the Independent Certifier in accordance with Section 24.4(d) of the Project Agreement.
- 1.317 **“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.
- 1.318 **“Substantial Completion Notice”** has the meaning given in Section 24.4(b) of the Project Agreement.
- 1.319 **“Substantial Completion Payment”** means [REDACTED].
- 1.320 **“Substantial Completion Payment Date”** means the date that is 2 Business Days after the Substantial Completion Date.
- 1.321 **“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 Works.
- 1.322 **“Surety”** means the person issuing the Bonds.
- 1.323 **“Tax”** or **“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, provided however that **“Taxes”** shall not include the SMH Taxes.
- 1.324 **“Technical Reports”** means the Environmental Reports, the Geotechnical Reports and the Hazardous Materials Survey Reports.
- 1.325 **“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.
- 1.326 **“Third Party Beneficiaries”** has the meaning given at Section 51.17(a)(i) of the Project Agreement.
- 1.327 **“Title Encumbrances”** means the Encumbrances listed in Schedule 16 - Title Encumbrances and any other Encumbrance consented to by SMH and reasonably required in connection with the development of the Facility and the Works.
- 1.328 **“Tower”** means the “Patient Care Tower” described in Section 1.03 of Part 1 of Schedule 15 – Output Specifications.
- 1.329 **“Tower Interim Completion”** means the point at which (i) the Tower has been completed in accordance with the Project Agreement; (ii) the Tower Occupancy Permit has been issued; and (iii) all requirements for Tower Interim Completion described in the Tower Interim Completion Commissioning Program, other than in respect of Tower Interim Completion Minor Deficiencies, have been satisfied.

- 1.330 **“Tower Interim Completion Certificate”** means the certificate to be issued by the Independent Certifier in accordance with Section 23B.4(d) of the Project Agreement.
- 1.331 **“Tower Interim Completion Commissioning Program”** means the program to be jointly developed and agreed to by SMH and Project Co in accordance with Section 23B.2 of the Project Agreement.
- 1.332 **“Tower Interim Completion Countdown Notice”** has the meaning given in Section 23B.7(a) of the Project Agreement.
- 1.333 **“Tower Interim Completion Date”** means the date on which Tower Interim Completion is achieved as evidenced by the Tower Interim Completion Certificate, as such date shall be stated therein.
- 1.334 **“Tower Interim Completion Holdback”** has the meaning given in Section 23B.8 of the Project Agreement.
- 1.335 **“Tower Interim Completion 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 Tower Interim Completion.
- 1.336 **“Tower Interim Completion Minor Deficiencies List”** has the meaning given in Section 23B.8(a) of the Project Agreement.
- 1.337 **“Tower Interim Completion Notice”** has the meaning given in Section 23B.4(b) of the Project Agreement.
- 1.338 **“Tower Interim Completion Payment”** means \$[REDACTED].
- 1.339 **“Tower Interim Completion Payment Date”** means the date that is 2 Business Days after the Tower Interim Completion Date.
- 1.340 **“Tower Interim Completion Project Co Commissioning”** means the commissioning activities to be carried out by Project Co prior to the issuance of the Tower Interim Completion Certificate in accordance with the Tower Interim Completion Commissioning Program.
- 1.341 **“Tower Interim Completion Project Co Commissioning Tests”** means all commissioning tests required to be performed by Project Co pursuant to the Tower Interim Completion Commissioning Program.
- 1.342 **“Tower Interim Completion SMH Commissioning”** means the commissioning activities to be carried out by SMH in accordance with the Final Commissioning Program.
- 1.343 **“Tower Interim Completion SMH Commissioning Period”** means the period during which SMH is performing the Tower Interim Completion SMH Commissioning.

- 1.344 **“Tower Interim Completion SMH Commissioning Tests”** means all commissioning tests required to be performed by SMH pursuant to the Tower Interim Completion Commissioning Program.
- 1.345 **“Tower Interim Completion Works”** means the portion of the Works in respect of the design, construction, installation, testing, commissioning and completion of the Tower and rectification of any Tower Interim Completion Minor Deficiencies described in Section 3.9 of Part 3 of the Output Specifications.
- 1.346 **“Tower Occupancy Permit”** means all Permits, Licences, Approvals and Agreements required for the occupancy of the Tower in compliance with Applicable Law.
- 1.347 **“Trade-Marks”** means any registered or unregistered mark, trade-mark, service mark, distinguishing guise, logo, insignia, seal, design or symbol.
- 1.348 **“Transition”** and **“Transitions”** have the meanings respectively given in Section 24.14(a) of the Project Agreement.
- 1.349 **“Transition Advisor”** has the meaning given in Section 21.14(c).
- 1.350 **“Transition Advisor Candidate”** has the meaning given in Section 24.14(c) of the Project Agreement.
- 1.351 **“Transition Parameters”** has the meaning given in Section 24.14(a) of the Project Agreement.
- 1.352 **“Transition Services Fee”** means \$[REDACTED].
- 1.353 **“Transition Subcommittee”** has the meaning given in Section 24.14(a) of the Project Agreement.
- 1.354 **“Trust Account”** has the meaning given in the Trust Account Agreement.
- 1.355 **“Trust Account Agreement”** means the trust account agreement to be entered into between SMH, Project Co and the Trustee in the form set out in Schedule 32 - Trust Account Agreement.
- 1.356 **“Trustee”** has the meaning given in Schedule 32 - Trust Account Agreement.
- 1.357 **“Utilities”** means energy/power supplies and waste recovery, including electricity, natural gas/fuel oil, water, sanitary waste and storm water.
- 1.358 **“Utility Company”** means any company or companies designated by Project Co to provide Utilities.
- 1.359 **“Variation”** has the meaning given in Schedule 22 - Variation Procedure.
- 1.360 **“Variation Confirmation”** has the meaning given in Schedule 22 - Variation Procedure.

- 1.361 **“Variation Directive”** has the meaning given in Schedule 22 - Variation Procedure.
- 1.362 **“Variation Enquiry”** has the meaning given in Schedule 22 - Variation Procedure.
- 1.363 **“Variation Procedure”** means the procedure set out in Schedule 22 - Variation Procedure.
- 1.364 **“VOR”** has the meaning given in Section 21.6(a)(iv) of the Project Agreement.
- 1.365 **“Warranty Cash Amount”** has the meaning given in Section 4.3(b) of the Project Agreement.
- 1.366 **“Warranty Letter of Credit”** has the meaning given in Section 11.16A of the Project Agreement.
- 1.367 **“Warranty Period”** means (i) with respect to each Phase of the Works which has achieved Phase Completion, a period beginning on the applicable Phase Completion Date and expiring on the date that is two years following the Substantial Completion Date, (ii) with respect to all Tower Interim Completion Works which have achieved Tower Interim Completion, a period beginning on the Tower Interim Completion Date and expiring on the date that is two years following the Substantial Completion Date, and (iii) with respect to the Remainder Works which has achieved Substantial Completion, a period beginning on the Substantial Completion Date and expiring on the date that is two years following the Substantial Completion Date.
- 1.368 **“Works”** means the design, construction, installation, testing, commissioning and completion of the Facility, including the Phases of the Works, the Tower Interim Completion Works, the Remainder Works and the rectification of any Phase Minor Deficiencies, Tower Interim Completion Minor Deficiencies and Minor Deficiencies and the performance of all other obligations of Project Co under the Project Agreement.
- 1.369 **“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 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.
- 1.370 **“Works Committee”** has the meaning given in Section 14.1(a) of the Project Agreement.

- 1.371 “**Works Milestones**” has the meaning given in Schedule 3 – Works Scheduling Requirements.
- 1.372 “**Works Report**” has the meaning given in Section 13.6 of the Project Agreement.
- 1.373 “**Works Schedule**” means the works schedule developed pursuant to and in accordance with Section 13.2(a) of the Project Agreement and Schedule 3 – Works Scheduling Requirements.
- 1.374 “**Works Submittals**” has the meaning given in Section 1.1 of Schedule 10 - Review Procedure.
- 1.375 “**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, Articles, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement are references to such Sections, Articles, Clauses, Paragraphs, or Subparagraphs of, Schedules to, or divisions of the Project Agreement and the terms “Section”, “Article” and “Clause” are used interchangeably and are synonymous.
- 2.3 Except where the context requires otherwise, references to specific Sections, Articles, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement followed by a number are references to the whole of the Section, Article, 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, Articles, 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 SMH or any SMH Party shall be construed having regard to the interactive nature of the activities of SMH, SMH Parties and Project Co and further having regard to:
- (a) acts contemplated by the Output Specifications; or
  - (b) 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 SMH'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 Toronto, 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 SMH they shall be construed and interpreted as synonymous and to read “Project Co shall” or “SMH 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 SMH 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, including the Existing Facilities, 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”)**

**SMH AND PROJECT CO PLAA RESPONSIBILITY TABLE**

**[REDACTED]**

**APPENDIX “A” TO SCHEDULE 1 - PERMITS, LICENCES, APPROVALS AND AGREEMENTS**

**SMH AND PROJECT CO PERMITS, LICENCES, APPROVALS AND AGREEMENTS (“PLAA”)**

**[REDACTED]**

**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 SMH and in form and substance satisfactory to SMH, acting reasonably) is to be delivered by Project Co to SMH on or prior to the Financial Close Target Date:

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

- 1.14 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;
- 1.15 a certificate of an officer of Project Co certifying:
  - (a) a true copy of the Financial Model audit report dated [REDACTED] prepared by [REDACTED]; and
  - (b) that the Financial Model algorithms have not changed from the audit report referred to in (a) above;
- 1.16 an original of the Bonds required in accordance with this Project Agreement or as SMH may direct in accordance with the Insurance Trust Agreement;
- 1.17 an original of the acknowledgement and undertaking in the form attached as Appendix B to this Schedule 2;
- 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 and Construction Guarantor substantially in the form attached as Appendix C to this Schedule 2;
- 1.20 an original of the opinion from counsel to Project Co, the Construction Contractor, the Construction Guarantor, and such other Project Co Parties as SMH may reasonably require substantially in the form attached as Appendix D to this Schedule 2 and otherwise acceptable to SMH and its counsel;
- 1.21 an original of the SMH Early Procured In-Contract Equipment Assumption;
- 1.22 the Construction Contractor Support Agreement;
- 1.23 an original of the Final Energy Target Letter (as defined in Schedule 33 – Energy Matters); and
- 1.24 such other documents as the parties may agree, each acting reasonably.

## **2. DOCUMENTS TO BE DELIVERED BY SMH**

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

- 2.1 an original of this Project Agreement;
- 2.2 an original of the Lenders' Direct Agreement;

- 2.3 an original of the Construction Contractor's Direct Agreement;
- 2.4 an original of the Independent Certifier Agreement;
- 2.5 an original of the Insurance Trust Agreement;
- 2.6 an original of the Trust Account Agreement;
- 2.7 an original notice of appointment of the SMH Representative;
- 2.8 a copy of the SMH Development Accountability Agreement;
- 2.9 a copy of the SMH Funding and Approval Letter;
- 2.10 a certificate of an officer of SMH substantially in the form attached as Appendix E respectively to this Schedule 2;
- 2.11 an original of the opinion from counsel to SMH substantially in the form attached as Appendix F to this Schedule 2;
- 2.12 an original of the SMH Early Procured In-Contract Equipment Assumption; and
- 2.13 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 Economic Development, Employment and Infrastructure ("**MEDEI**")

**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 [●] day of January, 2015 between St. Michael's Hospital ("**SMH**") and 2442931 Ontario Inc. ("**Project Co**")

---

In consideration of SMH entering into the Project Agreement, the undersigned hereby acknowledges and agrees that Infrastructure Ontario, MEDEI, 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 SMH contained in the Project Agreement, and hereby releases Infrastructure Ontario, MEDEI, 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 SMH, its employees, officers, directors or agents.

**DATED** this \_\_\_\_ day of January, 2015.

2442931 ONTARIO INC.  
[REDACTED]

APPENDIX B

FORM OF UNDERTAKING AND ACKNOWLEDGEMENT

**TO:** St. Michael's Hospital ("SMH")

**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 [●] day of January, 2015 between SMH and 2442931 Ontario Inc. ("**Project Co**")

---

1. The undersigned acknowledges that:
  - (a) The Project will proceed as an alternative financing and procurement project under the MEDEI's *ReNew Ontario* infrastructure investment plan, and complies with the principles set out in the IPFP Framework.
  - (b) The IPFP Framework establishes 5 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 SMH to the extent that the direction or order affects the Works.
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 \_\_\_\_\_ day of January, 2015.

2442931 ONTARIO INC.

**[REDACTED]**

APPENDIX C

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

Certificate of an Officer of

[•]

(the "Corporation")

TO: ST. MICHAEL'S HOSPITAL ("SMH")

AND TO: ONTARIO INFRASTRUCTURE AND LANDS CORPORATION

AND TO: [REDACTED]

AND TO: [REDACTED]

AND TO: [REDACTED]

AND TO: [REDACTED]

---

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. Constatting 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 SMH made as of [●], 20[●] (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 and finance the Facility;
- (2) a lenders’ direct agreement between the Corporation, SMH and the Lenders’ Agent;
- (3) a design and construction contract between the Corporation and [●] (the “**Construction Contractor**”);
- (4) an insurance trust agreement between the Corporation, SMH, the Lenders’ Agent and [REDACTED];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 \_\_\_\_\_ day of January, 2015.

\_\_\_\_\_  
Name:

Title:



APPENDIX D

FORM OF PROJECT CO/PROJECT CO PARTY/CONSTRUCTION GUARANTOR  
OPINION

[INSERT DATE]

**St. Michael's Hospital**  
30 Bond Street  
Toronto, Ontario  
M5B 1W8

**Ontario Infrastructure and Lands  
Corporation**  
777 Bay Street, 9<sup>th</sup> Floor  
Toronto, Ontario  
M5G 2C8

[REDACTED]

Dear Sirs/Mesdames:

**Re: St. Michael's Hospital Redevelopment Project**

---

We have acted as counsel to 2442931 Ontario Inc. ("**Project Co**") and Bondfield Construction Company Limited (the "**Construction Contractor**") in connection with the alternative financing and procurement transaction whereby Project Co has agreed to enter into a design, build and finance agreement for the redevelopment of St. Michael's Hospital's ("**SMH**") hospital facilities in Toronto, Ontario. [NTD: Additional parties to be added depending on consortium structure and/or the financing package.]

This opinion is being delivered to SMH, Ontario Infrastructure and Lands Corporation and their counsel pursuant to Section [1.16] of Schedule 2 to the project agreement made as of [date] between SMH 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 and the Construction Contractor, 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 [date]):

1. the Project Agreement; and
2. the following project documents (collectively, the "**Implementation Documents**"):

- (a) the Design and Construction Contract;
- (b) the Insurance Trust Agreement;
- (c) the Lenders' Direct Agreement;
- (d) the Trust Account Agreement;
- (e) the Construction Contractor's Direct Agreement;
- (f) the Lending Agreements;
- (g) the Performance Bond;
- (h) the Multiple Obligee Rider to the Performance Bond;
- (i) the Labour and Material Payment Bond;
- (j) the Multiple Obligee Rider to the Labour and Material Payment Bond; and
- (k) the Performance Guarantee of Construction Guarantor. **[NTD: List other documents delivered at Financial Close.]**

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 or the Construction Contractor]**, 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 and the Construction Contractor 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 and the Construction Contractor (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 [●], 20[●] (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.

**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 and the Construction Contractor) 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 and the Construction Contractor) 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 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 and the Construction Contractor) to Project Co and the Construction Contractor.

### **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.

#### *Corporate Power and Capacity*

1. 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.
2. 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.

#### *Corporate Authorization*

1. 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.

2. 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.

*Execution and Delivery*

1. Project Co has duly executed and delivered each of the Documents to which it is a party.
2. The Construction Contractor has duly executed and delivered each of the Documents to which it is a party.

*Enforceability*

1. 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.
2. 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.

*No Breach or Default*

1. 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.
2. 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.

*Regulatory Approvals*

1. 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.
2. 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.

### **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 SMH for which it would be contrary to public policy to require Project Co to indemnify SMH 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,

**[INSERT NAME OF LAW FIRM]**

APPENDIX E

FORM OF SMH OFFICER'S CERTIFICATE

Certificate of an Officer of  
St. Michael's Hospital  
(the "Corporation")

TO: [REDACTED]

AND TO: [REDACTED]

AND TO: [REDACTED]

AND TO: [REDACTED]

AND TO: [REDACTED]

---

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. Constatting Documents

- (a) The Corporation is a non-share capital corporation formed under the *Corporations Act* (Ontario) (Corporation No. ●).
- (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 [REDACTED] 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 [●], 20[●] (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 and finance new hospital facilities;
      - (2) a lenders’ direct agreement between the Corporation, Project Co and the Lenders’ Agent;
      - (3) a direct agreement between Bondfield Construction Company Limited (the “**Construction Contractor**”), Project Co, the Construction Guarantor and the Corporation;
      - (4) a development accountability agreement between the Corporation and MOHLTC; and
      - (5) [NTD: List other documents delivered at Financial Close.],
- (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 agency, court or tribunal, foreign or domestic, or before any private arbitration tribunal (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 agency, court or tribunal, foreign or domestic, or any private arbitration tribunal that could result in any such material adverse effect or 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: **[list MOHLTC and any other required regulatory approvals]**.

**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:

NAME	POSITION	SIGNATURE

DATED this \_\_\_\_\_ day of January, 2015.

\_\_\_\_\_  
Name:

Title:

APPENDIX F  
FORM OF SMH OPINION

[INSERT DATE]

2442931 ONTARIO INC.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Dear Sirs/Mesdames:

**Re: St. Michael's Hospital Redevelopment Project**

---

We have acted as project counsel to St. Michael's Hospital ("**SMH**") in connection with the alternative financing and procurement transaction whereby SMH and 2442931 Ontario Inc. ("**Project Co**") have agreed to enter into a design, build and finance project agreement for new hospital facilities in Toronto, Ontario.

This opinion is being delivered to Project Co, [REDACTED] (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 2.18] of Schedule 2 to the project agreement made as of [•] January, 2015 between SMH 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 SMH, 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 [•], 2015):

1. the Project Agreement; and
2. the following project documents (collectively, the "**Implementation Documents**"):
  - (a) the Lenders' Direct Agreement;

---

Confidential

Page 24

- (b) the Construction Contractor's Direct Agreement; and
- (c) the SMH Development Accountability Agreement. **[NTD: List other documents delivered at Financial Close.]**

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 SMH, 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 SMH 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 SMH (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 SMH) 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 SMH) 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 SMH) to SMH.
7. SMH has obtained or will obtain all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorizations to be obtained by SMH in connection with the entering into and performance by SMH 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. SMH is a non-share capital corporation formed under the *Corporations Act* (Ontario) (Corporation No. •) and has not been dissolved.

#### *Corporate Power and Capacity*

2. SMH 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. SMH 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. SMH has duly executed and delivered each of the Documents to which it is a party.

#### *Enforceability*

5. Each of the Documents to which SMH is a party constitutes a legal, valid and binding obligation of SMH, enforceable against it in accordance with its terms.

#### *No Breach or Default*

6. The execution and delivery by SMH of the Documents to which it is a party does not, and the performance by SMH 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 SMH 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 SMH 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 SMH 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 SMH 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 and Long-Term Care or the Lieutenant Governor 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,

**[REDACTED]**

**SCHEDULE 3**

**WORKS SCHEDULING REQUIREMENTS**

**1. DEFINITIONS**

- 1.1 “Interim Works Schedule”** means the schedule for the Works identified as the “Interim Works Schedule” agreed to between SMH and Project Co prior to or on the date of the Project Agreement, which sets out in detail the Works that Project Co anticipates it will perform until such time as the draft Works Schedule becomes the Works Schedule pursuant to Section 13.2(a) of the Project Agreement, including, but not limited to all of the applicable Works Milestones to be commenced and/or completed during such period and any anticipated SMH participation required or desired during such period.
- 1.2 “Works Area Micro-Schedule”** means any portion of the Works Schedule for a specific portion of the Works that has been developed in a highly detailed manner to support day-by-day or hour-by-hour coordination with certain SMH Activities that have been identified by SMH. Each Works Area Micro-Schedule shall be in the form of a series of activities and milestones that are logically linked and shall identify the start and finish dates of each applicable event and activity (including Works Milestone). Each Works Area Micro-Schedule shall further contain the dates for events and activities (including Works Milestones) that are consistent with those set out in the remainder of the Works Schedule.
- 1.3 “Works Milestone”** means any of the following milestone events or activities and includes the applicable dates for commencing and completing such event or activity:
- (a) all Phase Completions by the applicable Scheduled Phase Completion Dates;
  - (b) Tower Interim Completion by the Scheduled Tower Interim Completion Date;
  - (c) Substantial Completion by the Scheduled Substantial Completion Date;
  - (d) Final Completion by the Scheduled Final Completion Date;
  - (e) all Warranty Periods;
  - (f) the Schedule Cushion;
  - (g) the application for and obtainment of all Permits, Licences, Approvals and Agreements;
  - (h) the submission of each Works Submittal (including, for clarity, each Design Development Submittal and Construction Document Submittal) and the

associated review period in accordance with Schedule 10 – Review Procedure of the Project Agreement;

- (i) the submittals identified in the Design Quality Plan and the Construction Quality Plan;
- (j) prominent planning and procurement events for equipment, including, but not limited to, the dates when SMH's requirements are validated by SMH, each Equipment procurement will be issued and awarded, all Shop Drawings will be approved, the first item of Equipment will be delivered and the last item of Equipment will be delivered;
- (k) Equipment and Existing Equipment installation and commissioning for each phase of the Works;
- (l) training for Equipment for each phase of the Works;
- (m) prominent ICT events, including, but not limited to, SMH decision points for system requirements confirmation, the confirmation of systems integration requirements, the issuance of procurement documentation, procurement awards, and the delivery, commencement and completion of network and systems testing by SMH;
- (n) HVAC, plumbing, and electrical rough-ins;
- (o) construction for each phase of the Works;
- (p) excavation;
- (q) foundations;
- (r) backfill operations;
- (s) the building's superstructure;
- (t) the building envelope (including, but not limited to, the roof membrane, exterior cladding, exterior doors, louvers, windows, glazing systems, flashings, and sealants);
- (u) interior concrete block and steel stud partitions (sheathing excepted);
- (v) soft and hard landscaping;
- (w) interior finishes (flooring, interior sheathing, painting, ceiling tile);
- (x) life-safety systems (public address, fire alarm, sprinkler systems) and security systems;

- (y) building systems commissioning for each phase of the Works;
- (z) the availability of permanent power serving all building levels;
- (aa) deficiency reviews;
- (bb) the application for and the achievement of a LEED Silver Rating under the LEED Rating System for the applicable Works;
- (cc) Phase SMH Commissioning (including each Phase SMH Commissioning Period);
- (dd) Tower Interim Completion SMH Commissioning (including the Tower Interim Completion SMH Commissioning Period);
- (ee) SMH Commissioning (including the SMH Commissioning Period);
- (ff) each of the Transitions;
- (gg) building systems training for each phase of the Works;
- (hh) the turnover of space by SMH to Project Co in respect of each phase of the Works;

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

## **2. INTERIM WORKS SCHEDULE**

- 2.1** From Financial Close until the draft Works Schedule becomes the Works Schedule pursuant to Section 13.2(a) of the Project Agreement, the Interim Works Schedule shall be deemed to be the Works Schedule and, until such time, all provisions of the Project Agreement applicable to the Works Schedule shall be applicable to the Interim Works Schedule *mutatis mutandis* as though the Interim Works Schedule were the Works Schedule. Upon the draft Works Schedule becoming the Works Schedule, the Works Schedule shall automatically replace the Interim Works Schedule and, from such date, the Interim Works Schedule shall no longer be of any further force or effect.

## **3. WORKS SCHEDULE WORKSHOPS**

- 3.1** Prior to the submission of the draft Works Schedule by Project Co pursuant to Section 13.2(a) of the Project Agreement, Project Co and its primary Subcontractors shall attend two half-day planning workshops with SMH to discuss the scope and phasing of the Project and the Works Milestones and to resolve questions or issues relating to Project Co's preparation of its draft Works Schedule. Project Co and such Subcontractors shall come suitably prepared to participate effectively in such workshops. Each planning workshop shall take place at the date and time determined by SMH and Project Co, both

Parties acting reasonably, following Financial Close provided that both workshops must be completed no later than 15 Business Days following Financial Close. Each planning workshop shall be chaired by Project Co but the agenda shall be jointly prepared by SMH and Project Co.

- 3.2 No fewer than two times per calendar year or otherwise following the reasonable written request of SMH, Project Co and its primary Subcontractors shall conduct a workshop with SMH to explain Project Co's strategy, activities, critical path and areas of concern or particular challenge associated with the performance of the Works or any part thereof in relation to the Works Schedule for the upcoming six month period. Project Co and its Subcontractors shall come suitably prepared to effectively participate in such workshops. Each workshop shall take place at the date and time agreed upon by SMH and Project Co, both Parties acting reasonably. Each workshop shall be chaired by Project Co but the agenda shall be jointly prepared by SMH and Project Co.

#### **4. FORMAT AND CONTENT OF THE WORKS SCHEDULE**

##### **4.1 The Works Schedule**

- (a) Project Co shall prepare a detailed computerized Works Schedule using a critical path method ("CPM") network and a Works Schedule dependent cash flow forecast, each in a form approved by SMH. The planning and schedule software shall be Primavera 6.0 or other software compatible with Primavera 6.0 that supports the completion of the Works in accordance with Section 13.1 of the Project Agreement. For clarity, the draft Works Schedule shall be submitted in hard and soft copy in the native file format prescribed in this Section 4.1(a), showing all the schedule underlying assumptions, including tasks interdependency and schedule floats. The Works Schedule and any other schedule related reporting requirements of Project Co shall also conform to the phasing and sequencing requirements for the Works as set out in the Project Agreement, including the Phasing Requirements, the work to be completed by SMH's own forces or by other contractors, access restrictions, availability of work areas, each Scheduled Phase Completion Date, the Scheduled Tower Interim Completion Date, the Scheduled Substantial Completion Date, the Scheduled Final Completion Date, the Output Specifications, including the sequencing requirements, the schedule for commissioning of the Works and for achieving each Scheduled Phased Completion Date, the Scheduled Tower Interim Completion Date, the Scheduled Substantial Completion Date and the Scheduled Final Completion Date.
- (b) Project Co shall:
- (i) continuously monitor the progress of the Works in relation to the Works Schedule and the cash flow and update the Works Schedule and the cash flow projections set out in the Works Report, maintain the continuity of

- the Works Schedule's CPM network for all updates and revisions and immediately notify SMH of any variance or potential variance in the scheduled completion dates;
- (ii) advise the SMH Representative of any revisions required to the Works Schedule as a result of any extension of a Scheduled Phase Completion Date, the Scheduled Tower Interim Completion Date or the Scheduled Substantial Completion Date in accordance with Schedule 22 – Variation Procedure;
  - (iii) identify potential variances between scheduling and scheduled completion dates, review the schedule of Works not started or incomplete and implement necessary adjustments in the Works Schedule in order to meet each Scheduled Phase Completion Date, the Scheduled Tower Interim Completion Date, the Scheduled Substantial Completion Date and the Scheduled Final Completion Date set out in the Works Schedule, including the movement of manpower and equipment in response to availability of work areas;
  - (iv) comply with the Works Schedule so as not to interfere with the activities of SMH in the Existing Facilities;
  - (v) monitor the Subcontractors' personnel staffing and equipment and the availability of materials and supplies in order to meet the Works Schedule and take appropriate courses of action when the requirements of a Subcontract with any Project Co Party are not met;
  - (vi) obtain from Project Co Parties a schedule showing the order number, vendor's name, Shop Drawing status, manufacturing lead time and delivery date of all critical material and equipment required for the Works;
  - (vii) pre-order equipment, materials and supplies where necessitated by cost and/or time factors and expedite delivery of critical items;
  - (viii) in consultation with the SMH Representative, include in the Works Schedule the integration of the equipment described in the Output Specifications, rough-in requirements, supply and installation, including of the Equipment, to ensure that the ordering, delivery, receiving and supply of Equipment does not adversely affect the Works Schedule.
- (c) 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 SMH 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.

- (d) The total number of activities that Project Co includes in the Works Schedule shall reflect the complexity of the Works and is subject to the prior approval of SMH, provided that the Works Schedule shall contain no fewer than 1000 activities.
- (e) The Works Schedule shall identify:
  - (i) activities in a graphical, time-scaled, horizontal bar chart format;
  - (ii) the first day of each work week as a Monday;
  - (iii) intended working days and holidays that are used as the basis for critical path calculations;
  - (iv) inter-relationships and logic dependencies between activities;
  - (v) sufficient detail to identify the major activities and milestones for planning, coordination and progress assessment purposes;
  - (vi) the name of the Project, the Project's number, the status date, the date submitted and the revision or update number in the title block;
  - (vii) the sequence logic between activities with at least one predecessor and one successor activity for each activity to avoid open-ended logic;
  - (viii) the activity percentage completion, which represents the physical percentage of completion of the underlying activity;
  - (ix) early dates and late dates as well as a clearly-identified critical path of activities and milestones throughout each phase of the Works;
  - (x) the total float and free float for all activities and Works Milestones;
  - (xi) consistent and intuitive terminology for activity descriptions and activity descriptions that begin with verbs; and
  - (xii) when requested by SMH, the crewing assumptions for the activities and the dependency logic that is governed by or represents crewing availability.
- (f) Project Co shall:
  - (i) ensure that all activities in the Works Schedule comply with the Phasing Requirements;
  - (ii) ensure that all activities in the Works Schedule have at least one successor and one predecessor except for the first and last activity;
  - (iii) avoid unnecessary use of imposed date constraints on activities in the Works Schedule;



- (iv) employ the effects of normal inclement weather in establishing durations for activities in the Works Schedule;
  - (v) employ the effects of lesser productivity due to learning curves on the part of Project Co and its Subcontractors in establishing durations for activities in the Works Schedule;
  - (vi) reflect the constraints related to allowable hours of work on the Site in establishing the logical relationships and durations for the activities in the Works Schedule;
  - (vii) schedule the Works to minimize the effects of adverse weather and to allow for protection of the Site from such effects;
  - (viii) employ a coding schema in the Works Schedule that allows for grouping, selecting, sorting and printing of activities for each Subcontractor, as well as activities to be carried out by Project Co and SMH;
  - (ix) provide SMH all of the software settings it has used in its scheduling software, such as calendar settings, user and administrative preferences, schedule settings, etc.; and
  - (x) enter into its scheduling software the estimated cost to perform each activity in the Works Schedule with appropriate distributions to generate cash flow forecasts.
- (g) Project Co shall not:
- (i) include activity durations in the Works Schedule that exceed 45 Business Days except for single process-step activities (such as manufacturing time, delivery periods, etc.);
  - (ii) use negative lags between activities in the Works Schedule; and
  - (iii) use automatic resource levelling functionality in its scheduling software.
- (h) Without limiting the generality of Section 4.1(a), the Works Schedule shall, at a minimum, include:
- (i) major milestone events, which shall include, at a minimum, the Works Milestones; and
  - (ii) all activities and events in the Interim Works Schedule;

- (iii) all Works involving high degrees of interaction with and participation by SMH, including, but not limited to, with respect to key decisions by SMH to support the progress of the Works;
- (iv) the manpower requirements for each activity, including Subcontractor work;
- (v) a manpower histogram, both overall and by trade;
- (vi) a cumulative “S” curve showing planned percent completion for each month from the commencement of the Works until the Scheduled Final Completion Date;
- (vii) projected Design and Construction Contract cash flows;
- (viii) design related activities, including but not limited to:
  - A. activities outlined in the Design Quality Plan and the Construction Quality Plan;
  - B. all design related activities, including the proposed date for each Design Workshop;
  - C. the proposed date of submission of each Works Submittal;
  - D. presentations / workshops on design topics expected to involve multiple SMH stakeholders such as interior design, envelope, security, signage and exterior site works;
  - E. interfaces of the design process with equipment planning, ICT decisions, mock-ups, submissions to authorities having jurisdiction, and on-site construction;
  - F. mock-up review and approvals;
  - G. the process for resolution of non-compliant items after each Design Development Submittal and each Construction Document Submittal;
  - H. specific activities and approvals that are the responsibility of SMH that must coordinate with the Works;
- (ix) equipment related activities, including but not limited to:
  - A. activities associated with establishing the Equipment procurement process for Equipment that is agreed to by both Parties;

- B. activities associated with establishing the Equipment procurement bundling strategy and Equipment procurement priorities that are agreed to by the Parties;
- C. equipment planning and procurement interface points with the design process, construction process, commissioning process, training process, and systems integration process;
- D. in accordance with the requirements of Section 21 of the Project Agreement, Schedule 14 – Outline Commissioning Plan of the Project Agreement and Part 4 of Schedule 15 – Output Specifications, all material equipment planning, procurement, delivery, installation, training and commissioning activities, including, but not limited to:
  - (1) the validation of all Equipment requirements,
  - (2) the issuance of all procurement documentation,
  - (3) Equipment procurement awards,
  - (4) the approval of equipment shop drawings,
  - (5) the first delivery and last delivery of Equipment,
  - (6) the installation of all Equipment, and
  - (7) the commencement and completion of Equipment and Existing Equipment commissioning and Equipment and Existing Equipment and building systems certification and training;
- (x) ICT related activities, including but not limited to:
  - A. prioritized SMH decisions required to support each Design Development Submittal and each Construction Document Submittal;
  - B. activities required to satisfy and demonstrate design compliance;
  - C. decisions that support final design integration between SMH's systems and Project Co's systems;
  - D. systems testing and commissioning; and
  - E. ICT planning and procurement interface points with the design process, construction process, commissioning process, training process, and systems integration process;
- (xi) construction and site logistics related activities, including but not limited to:

- A. all construction activities, including Subcontractor work and cash allowance work, both on and off the Site and the Existing Facilities, as required to define a clear progression of activities for each phase of the Works, including, but not limited to:
- (1) access to space turned over from SMH;
  - (2) demolition;
  - (3) site clearing;
  - (4) site utilities;
  - (5) foundation work;
  - (6) structural framing;
  - (7) special Subcontractor work;
  - (8) partitions including in-wall inspections prior to closing;
  - (9) ceilings, including above ceiling inspections prior to closing;
  - (10) flooring;
  - (11) finishes;
  - (12) equipment installations;
  - (13) mechanical rough-in and finishing;
  - (14) electrical rough-in and finishing;
  - (15) building systems and commissioning;
  - (16) deficiency inspections and correction periods;
  - (17) the typical process for turnover of space by SMH to Project Co in respect of each phase of the Works;
  - (18) the typical process for Project Co acceptance of areas vacated by SMH;
- B. all procurement activities undertaken by Project Co with respect to materials and equipment, including timelines for Shop Drawings, manufacturing periods and dates of delivery to the Site;
- C. Project Co activities that affect the operations of SMH, including but not limited to:
- (1) the erection and removal of construction barriers and other temporary works;
  - (2) changes to access and exiting; and
  - (3) changes/connections/shutdowns/to existing mechanical, electrical, medical, communications systems;
- (xii) testing and commissioning related activities, including but not limited to re-balancing and re-commissioning of systems required as a consequence of the phased nature of the Works; and
- (xiii) Transition related activities, including but not limited to:

- A. activities associated with establishing the plan for each Transition in accordance with Transition Parameters; and
  - B. a detailed plan for each Transition in accordance with Sections 24.14 and 24.15 of the Project Agreement;
- (i) For greater certainty, Project Co shall further develop the Works Schedule in compliance with the requirements of Section 2 of Schedule 10 – Review Procedure of the Project Agreement.
- (j) Project Co shall include in the Works Schedule the minimum schedule durations and sequence relationship constraints for Design Development Submittals and Construction Document Submittals set out in Appendix “A” to this Schedule 3.
- (k) Prior to developing the Works Schedule details for the procurement of Equipment, Project Co and SMH shall agree to the following:
  - (i) the typical Equipment procurement process templates setting out the applicable steps, sequence logic and durations using a swim-lane flowchart approach that captures the requirements of SMH, Project Co, third-party buying groups where applicable, and other key Project stakeholders;
  - (ii) logical Equipment procurement bundles or groupings;
  - (iii) the priority sequence of bundles or groupings for Equipment procurement based on design significance, construction significance, ICT systems integration significance, SMH operational significance; and
  - (iv) the quantity of Equipment bundles or groupings for Equipment procurement that can be underway with procurement at any given time based upon SMH resource limitations.

Following such agreement, such inputs shall be incorporated into the Works Schedule by Project Co.

- (l) At any time during the Project Term, Project Co shall, no later than two Business Days following the written request of SMH, deliver to SMH a hard copy and a soft (non-PDF) copy of the most current version of the Works Schedule and/or any past version of the Works Schedule requested by SMH in its native file format, showing all the schedule's underlying assumptions, including tasks interdependency and schedule floats. At the request of the SMH Representative, the Project Co Representative shall in person review the Works Schedule in such format with the SMH Representative for purposes including, explaining to the SMH Representative the activity logic and planning assumptions contained in the Works Schedule, any proposed changes to the critical path of the Works, and the impact of the Works on the Works Milestones.

**4.2 Works Area Micro-Schedules**

- (a) Upon the written request of SMH and in accordance with the requirements of this Section 4.2, Project Co shall prepare a Works Area Micro-Schedule for the area of the Works specified in such request.
- (b) Each Works Area Micro-Schedule shall be developed by Project Co utilizing the same software that is used for the Works Schedule or an alternative software approved by SMH.
- (c) Project Co shall prepare and submit a draft Works Area Micro-Schedule to SMH in electronic native file format no less than 30 days in advance of the commencement of the applicable Works in order to permit adequate advance review by SMH. SMH shall provide Project Co with comments on the draft Works Area Micro-Schedule in accordance with Schedule 10 - Review Procedure, provided that the period for review of such draft schedule shall be 5 Business Days rather than the 15 Business Days prescribed in Section 2.4 of Schedule 10 - Review Procedure. Project Co shall revise the draft Works Area Micro-Schedule to the extent required by Schedule 10 - Review Procedure within 10 days of receipt of any comments from SMH. When agreed by the Parties, the draft Works Area Micro-Schedule shall become the agreed upon Works Area Micro-Schedule and form the basis for future Project Co and SMH planning and progress tracking for the purposes of coordinating the Works.
- (d) If reasonably required, Project Co shall conduct planning meetings with SMH to accurately establish the objectives, constraints and parameters governing the Works to be included in a Works Area Micro-Schedule.
- (e) Each Works Area Micro-Schedules shall, at a minimum, include the following, if and as applicable:
  - (i) the commencement and completion of each applicable major element of the Works;
  - (ii) the Project Co activities and events that affect the operations of SMH;
  - (iii) the erection and removal of construction barriers and other temporary Works;
  - (iv) changes to access and exits;
  - (v) changes, connections, or shutdowns to mechanical, electrical, medical or communications systems;
  - (vi) Equipment and Existing Equipment decommissioning, installation and re-commissioning; and
  - (vii) activities and milestones that SMH must coordinate with the Works.

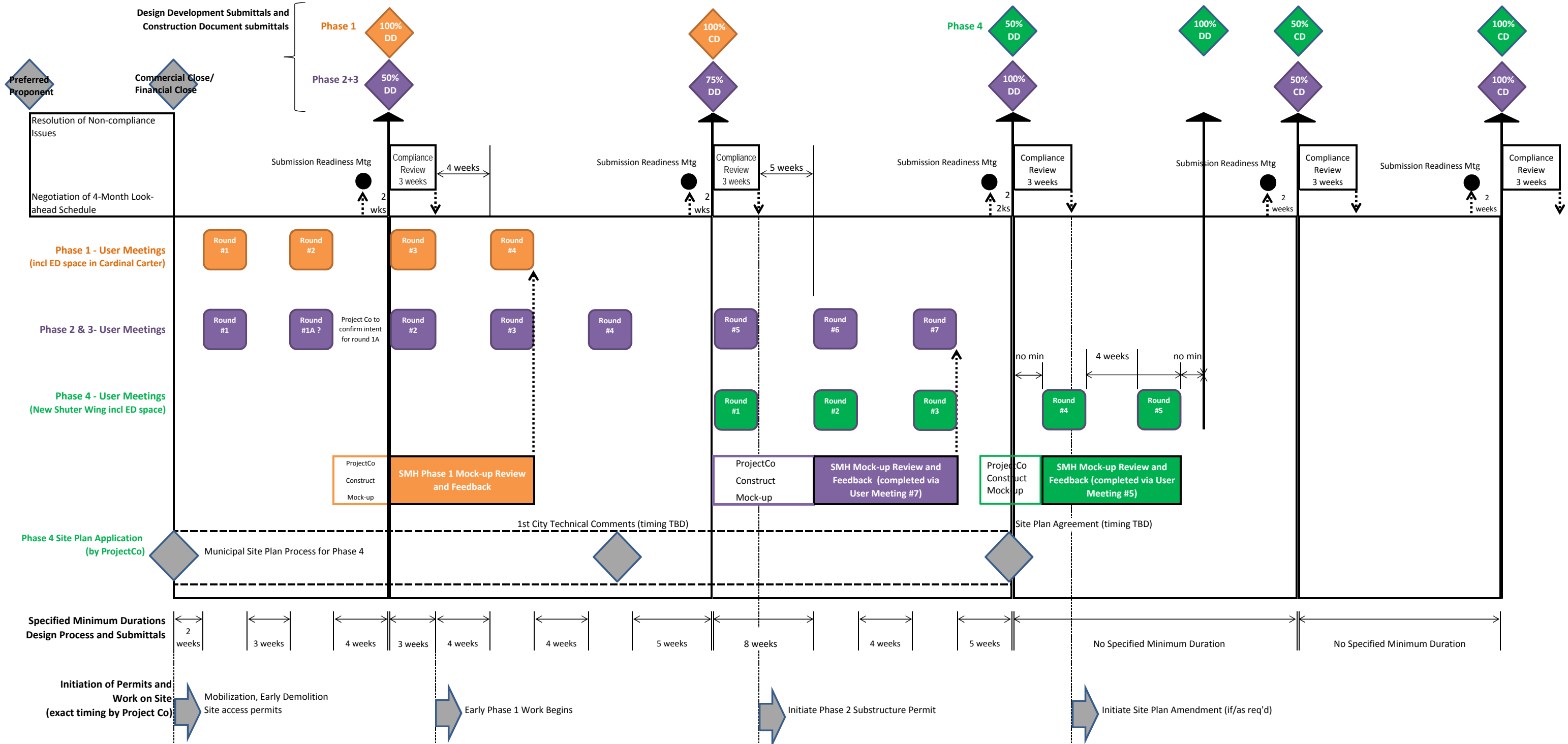
- (f) Each Works Area Micro-Schedules shall:
  - (viii) have activities with maximum durations of no more than 10 Business Days;
  - (ix) identify any Works occurring at night or on Saturdays and Sundays;
  - (x) utilize activity descriptions and terminology that will be understandable to SMH; and
  - (xi) utilize colour coding of activities and other visual means to facilitate the understanding of the Works Area Micro-Schedule by SMH.
- (g) If requested by SMH, Project Co shall provide a drawing of the affected Works areas, which is marked up to illustrate the sequence and timing of the construction activities depicted within any Works Area Micro-Schedule.
- (h) Project Co shall continuously monitor the progress of the Works in relation to the Works Area Micro-Schedule and update the Works Area Micro-Schedule with activity progress and forecasted activity completion no less frequently than every two weeks, and immediately notify SMH of any variance or potential variance in the scheduled completion dates;
- (i) When updating a Works Area Micro-Schedule, Project Co shall:
  - (i) show the projected percentage of completion of each activity as of the progress date;
  - (ii) indicate the progress of each activity;
  - (iii) compare the activity progress to the original approved Works Area Micro-Schedule using graphical means;
  - (iv) highlight activity additions, deletions or changes in activity duration or sequence logic; and
  - (v) identify any impacts to activities in the Works Area Micro-Schedule from progress in the Works Schedule.

**APPENDIX "A"**

**MINIMUM SCHEDULE DURATION AND SEQUENCE RELATIONSHIP  
CONSTRAINTS**

**-Please see attached diagram-**





**NOTES**

- 1. One week represents 5 business days.
- 2. Assumes SMH initiates Minor Variance process for Phase 4 work prior to Financial Close.

**SCHEDULE 4**

**LENDERS' DIRECT AGREEMENT**

**THIS AGREEMENT** is made as of the \_\_\_\_ day of January, 2015

**BETWEEN:**

**ST. MICHAEL'S HOSPITAL**, a non-share capital corporation  
incorporated under the laws of Ontario

(**"SMH"**)

**- AND -**

**[REDACTED]**, a Canadian chartered bank, acting as agent for  
and on behalf of the Lenders

(the **"Lenders' Agent"**)

**- AND -**

**2442931 ONTARIO INC., [REDACTED]**

(**"Project Co"**)

**WHEREAS:**

- A. SMH and Project Co have entered into the Project Agreement.
- B. The overriding priorities of SMH in entering into and implementing the Project Agreement are the health and safety of the patients of the Facility and the Existing Facilities, 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 Works, 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 SMH 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 SMH 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 SMH 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 SMH 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 SMH (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) **"Construction Contractor"** has the meaning given in the Project Agreement.
- (f) **"Construction Contractor's Direct Agreement"** has the meaning given in the Project Agreement.
- (g) **"Default Notice"** has the meaning given in Section 7(b)(i).
- (h) **"Design and Construction Contract"** has the meaning given in the Project Agreement.

- (i) **“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.
- (j) **“Enforcement Event”** means an event of default as defined in the Lending Agreements, or any other event which permits an Enforcement Action.
- (k) **“Exercise Date”** has the meaning given in Section 12(b).
- (l) **“Facility”** has the meaning given in the Project Agreement.
- (m) **“Governmental Authority”** has the meaning given in the Project Agreement.
- (n) **“Indebtedness Notice”** has the meaning given in Section 7(b)(ii).
- (o) **“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.
- (p) **“Lenders”** has the meaning given in the Project Agreement.
- (q) **“Lenders’ Agent”** means [REDACTED], acting as agent for and on behalf of the Lenders.
- (r) **“Lenders’ Construction Contractor Direct Agreement”** means the direct agreement among the Lenders’ Agent, the Construction Contractor and Project Co.
- (s) **“Lenders’ Direct Agreement”** means this lenders’ direct agreement.
- (t) **“Lending Agreements”** has the meaning given in the Project Agreement.
- (u) **“Longstop Date”** has the meaning given in the Project Agreement.
- (v) **“Notice Period”** means the period starting on the date of delivery of a Default Notice and ending 90 days later.
- (w) **“Novation Date”** has the meaning given in Section 10(a).
- (x) **“Novation Notice”** has the meaning given in Section 10(a).
- (y) **“Party”** means any of SMH, Project Co or the Lenders’ Agent, and **“Parties”** means all of SMH, Project Co and the Lenders’ Agent.
- (z) **“person”** has the meaning given in the Project Agreement.

- (aa) **“Phase Completion Date”** has the meaning given in the Project Agreement.
- (bb) **“Project”** has the meaning given in the Project Agreement.
- (cc) **“Project Agreement”** means the project agreement made on or about January \_\_\_\_, 2015 between SMH and Project Co.
- (dd) **“Project Co”** means 2442931 Ontario Inc.
- (ee) **“Project Co Event of Default”** has the meaning given in the Project Agreement.
- (ff) **“Project Co Party”** has the meaning given in the Project Agreement.
- (gg) **“Project Documents”** has the meaning given in the Project Agreement.
- (hh) **“Province”** has the meaning given in the Project Agreement.
- (ii) **“Refinancing”** has the meaning given in the Project Agreement.
- (jj) **“Restricted Person”** has the meaning given in the Project Agreement.
- (kk) **“Scheduled Phase Completion Date”** has the meaning given in the Project Agreement.
- (ll) **“Scheduled Substantial Completion Date”** has the meaning given in the Project Agreement.
- (mm) **“Scheduled Tower Interim Completion Date”** has the meaning given in the Project Agreement.
- (nn) **“Security”** means the security interests granted by Project Co to the Lenders’ Agent pursuant to the Security Documents.
- (oo) **“Security Documents”** means [REDACTED].
- (pp) **“SMH Activities”** has the meaning given in the Project Agreement.
- (qq) **“SMH Project Documents”** means the Project Agreement and all other documents to which both SMH and Project Co are parties pursuant to or in connection with the Project Agreement.
- (rr) **“Step-In Date”** means the date on which SMH receives a Step-In Notice from the Lenders’ Agent.
- (ss) **“Step-In Notice”** means the notice given by the Lenders’ Agent to SMH pursuant to Section 8(a) stating that the Lenders’ Agent is exercising its step-in rights under this Lenders’ Direct Agreement.

- (tt) **“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 SMH 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 SMH 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 120 days after the Longstop Date; or
    - (B) the date falling 2 years after the Step-In Date.
- (uu) **“Step-Out Date”** means the date falling 30 days after the date on which SMH receives a Step-Out Notice.
- (vv) **“Step-Out Notice”** has the meaning given in Section 9(a).
- (ww) **“Subcontractor's Direct Agreement”** has the meaning given in the Project Agreement.
- (xx) **“Subsequent Indebtedness Notice”** has the meaning given in Section 7(c).
- (yy) **“Substantial Completion Date”** has the meaning given in the Project Agreement.
- (zz) **“Suitable Substitute”** means a person, approved in writing by SMH 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 SMH 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 SMH Project Documents.
- (aaa) **“Termination Date”** has the meaning given in the Project Agreement.

(bbb) “**Tower Interim Completion Date**” has the meaning given in the Project Agreement.

(ccc) “**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 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 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 the Construction Contractor’s Direct Agreement, 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 SMH 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 SMH 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 SMH 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 8.3 of the Project Agreement.
- (b) Project Co shall not, prior to the Substantial Completion Date, exercise any rights of voluntary prepayment, voluntary redemption, or other early repayment of loan, as applicable, under the Lending Agreements without the prior written consent of SMH, acting in its sole discretion. In exercising its sole discretion to grant consent, SMH shall be entitled to request and consider, and Project Co shall be required to provide within 10 Business Days of a request by SMH, amongst other things and not limited to, the following:
  - (i) written certification by an officer of Project Co of the Cost to Complete (as such term is defined in the Lending Agreements) the Works at the date of such proposed prepayment and/or redemption;
  - (ii) written certification by an officer of Project Co that no Cost to Complete Deficiency (as such term is defined in the Lending Agreements) would reasonably be expected to arise as a consequence of such prepayment and/or redemption, including any related cancellation of unutilized commitments, if applicable, under the Lending Agreements;
  - (iii) written confirmation from the Lenders' technical advisor, addressed to SMH, that the Project Co's calculation in (i) above and Project Co's certification in (ii) above is, in the opinion of the Lenders' technical advisor, correct;
  - (iv) written confirmation from the Lenders' technical advisor, addressed to SMH, that no incremental delay in achieving a Phase Completion Date (beyond the applicable Scheduled Phase Completion Date), the Tower

Interim Completion Date (beyond the Scheduled Tower Interim Completion Date) or the Substantial Completion Date (beyond the Scheduled Substantial Completion Date) would reasonably be expected as a consequence of such prepayment and/or redemption and related cancellation of unutilized commitments, if applicable, under the Lending Agreements; and

- (v) written confirmation from the Lenders' technical advisor, addressed to SMH, that each Phase Completion Date is likely to occur on or prior to the then applicable Scheduled Phase Completion Date, the Tower Interim Completion Date is likely to occur on or prior to the then Scheduled Tower Interim Completion Date and the Substantial Completion Date is likely to occur on or prior to the then Scheduled Substantial Completion Date.
- (c) Project Co and SMH shall not amend or modify the SMH 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(b) 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) SMH acknowledges having received copies of the Lending Agreements, and confirms that they are in form and substance satisfactory to SMH as at the date of Financial Close.
- (g) SMH 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 SMH Project Documents.
- (h) Project Co and the Lenders' Agent hereby authorize and instruct SMH (and SMH agrees) to pay all sums payable to Project Co under the Project Agreement to the following account:

**[REDACTED]**

and Project Co and SMH agree that upon the occurrence of an Enforcement Event, if so directed in writing by the Lenders' Agent upon giving reasonable notice, SMH 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.

- (i) Prior to the irrevocable payment in full of all amounts owing to the Lenders under the Lending Agreements, SMH 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.
- (j) The Lenders' Agent shall appoint the Lenders' Consultant who shall be responsible to advise the Lenders' Agent and the Lenders with respect to the amount of any Legislative Holdback to be maintained in accordance with the Project Agreement. Project Co agrees that it shall, in respect of all payments under the Project Agreement, comply with Part IV of the *Construction Lien Act* (Ontario). The Lenders' Agent shall cause the Lenders' Consultant to provide SMH with a copy of any written assessment or report prepared by the Lenders' Consultant in relation to the status or progress of the Works under the Design and Construction Contract, including but not limited to, any certificate of payment, concurrently with its delivery to the Lenders' Agent. The Lenders' Agent acknowledges and agrees that this Section 5(j) shall constitute sufficient authority for the Lenders' Consultant to provide, without delay, a copy of any and all of its written assessments and reports to SMH.

## **6. ENFORCEMENT OF SECURITY BY LENDERS' AGENT**

- (a) The Lenders' Agent shall promptly notify SMH 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 29 - 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: (i) are inconsistent with SMH's role as a public hospital or the SMH Activities; (ii) may compromise SMH'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 SMH**

- (a) Subject only to the rights expressly afforded to the Lenders' Agent pursuant to, and the restrictions set forth in, this Section 7, SMH 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)), SMH 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) SMH 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, SMH delivers written notice (an "**Indebtedness Notice**") to the Lenders' Agent setting out:
    - (A) all amounts owed by Project Co to SMH and any other existing liabilities and unperformed obligations of Project Co to SMH of which SMH is aware (having made reasonable enquiry), in each case, as of the date on which SMH sent the Default Notice; and
    - (B) all amounts which will become owing by Project Co to SMH and any other liabilities and obligations of Project Co to SMH of which SMH 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 SMH sends an Indebtedness Notice but before SMH receives a Step-In Notice, if SMH discovers amounts that have become owing by Project Co to SMH or any other liabilities or obligations of Project Co to SMH that have come due but which were not included in the Indebtedness Notice, SMH 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, SMH 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 SMH 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 120 days after the Longstop Date; or
    - (B) 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) SMH 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 SMH 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.

## **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 SMH 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 SMH 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 SMH Project Documents.
- (d) During the Step-In Period, SMH shall deal with the Appointed Representative instead of Project Co in connection with all matters related to the SMH Project Documents. Project Co agrees to be bound by all such dealings between SMH and the Appointed Representative to the same extent as if they had been between SMH 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 SMH 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 SMH under the SMH 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) SMH will no longer deal with the Appointed Representative and will deal with Project Co in connection with all matters related to the SMH Project Documents; and

- (iii) the Appointed Representative and SMH shall be and hereby are released from all obligations and liabilities to one another under the SMH 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 SMH and any Appointed Representative written notice (a "**Novation Notice**") that it wishes to transfer Project Co's rights and obligations under the SMH Project Documents to a proposed transferee, together with all information reasonably necessary for SMH 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 SMH receives the Novation Notice ("**Novation Date**") for the transfer of Project Co's rights and obligations under the SMH Project Documents to the proposed transferee in accordance with the provisions of Section 10(e).

- (b) SMH shall promptly notify the Lenders' Agent of any additional information it requires in order to assess whether the proposed transferee is a Suitable Substitute. SMH 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 SMH Project Documents is approved by SMH as a Suitable Substitute, on or before the date falling 30 days after the later of the date of receipt by SMH of the Novation Notice and the date of receipt of any additional information requested by SMH. For greater certainty, if SMH fails to respond within such period, SMH shall be deemed not to have approved the proposed transferee.
- (c) SMH shall not unreasonably withhold or delay its approval of a proposed transferee as a Suitable Substitute, but it shall, without limitation, be reasonable for SMH 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 SMH, 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 SMH Project Documents or have the effect of increasing any liability of SMH, whether actual or potential.
- (d) If SMH 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 SMH, acting reasonably, provided that only one Novation Notice may be outstanding at any one time.
- (e) On the Novation Date:
- (i) Project Co and SMH will be released from their obligations under the SMH Project Documents to each other, and the Suitable Substitute and SMH will assume those same obligations towards each other;
  - (ii) each of the rights of Project Co against SMH under the SMH Project Documents and the rights of SMH against Project Co under the SMH Project Documents will be cancelled, and the Suitable Substitute and SMH 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 SMH and the Suitable Substitute, on substantially the same terms as the Project Agreement; and
    - (B) an agreement among SMH, the Suitable Substitute and the Lender Representative on substantially the same terms as this Lenders' Direct Agreement;
  - (iv) any subsisting ground for termination by SMH of the Project Agreement will be deemed to have no effect and any subsisting Default Notice will be automatically revoked.

## **11. TRANSFERS**



SMH 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. CONSTRUCTION CONTRACTOR'S DIRECT AGREEMENT**

- (a) Notwithstanding any provision in the Construction Contractor's Direct Agreement, SMH hereby undertakes that it will not exercise any rights it may have under or arising out of any of the Construction Contractor's Direct Agreement, 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, SMH shall from such date (the "**Exercise Date**") be entitled to exercise its rights under the Construction Contractor's Direct Agreement to step in to and/or novate the Design and Construction Contract in accordance with the Construction Contractor's Direct Agreement.
- (c) Following the Exercise Date, SMH shall not do anything to prejudice the rights which are not transferred to it pursuant to the Construction Contractor's Direct Agreement.
- (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 the Design and Construction Contract assumed or novated by SMH pursuant to the Construction Contractor's Direct Agreement.
- (e) Notwithstanding the terms of the Construction Contractor's Direct Agreement and any other provisions of this Section 12, the Construction Contractor (and any guarantor 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 Design and Construction Contract in respect of the period prior to the Exercise Date.
- (f) Without prejudice to Sections 12(a) to 12(e) inclusive, SMH 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 Construction Contractor's Direct Agreement (and/or the Design and Construction Contract) from the Construction Contractor;

- (ii) take any action to wind-up, liquidate, dissolve or appoint a receiver or receiver and manager of the Construction Contractor or to institute or sanction a voluntary arrangement or any other bankruptcy or insolvency proceedings in relation to the Construction Contractor; or
- (iii) compete with the rights of the Lenders' Agent on a winding-up or other insolvency or bankruptcy of the Construction Contractor, nor claim to be subrogated to any rights of the Lenders' Agent or any Lender.

SMH 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.

#### **12A. SUBCONTRACTOR'S DIRECT AGREEMENT**

Notwithstanding any provision in a Subcontractor's Direct Agreement, SMH hereby undertakes that it will not exercise any rights it may have under or arising out of any Subcontractor's Direct Agreement unless:

- (a) the Project Agreement and the Design and Construction Contract have been terminated;
- (b) SMH is entitled to terminate the Project Agreement pursuant to the terms thereof and of this Lenders' Direct Agreement; or
- (c) SMH is entitled to exercise its rights under the Construction Contractor's Direct Agreement pursuant to Section 12(b).

#### **12B. PERFORMANCE GUARANTEE OF CONSTRUCTION GUARANTOR**

Notwithstanding any provision in the Performance Guarantee of Construction Guarantor, SMH hereby undertakes that it will not exercise any rights it may have under or arising out of the Performance Guarantee of Construction Guarantor unless:

- (a) the Project Agreement has been terminated; or
- (b) SMH is entitled to terminate the Project Agreement pursuant to the terms thereof and of this Lenders' Direct Agreement.

#### **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 47.1 of the Project Agreement and the provisions of the Lending Agreements, and shall provide written notice to SMH 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, SMH and the Lenders' Agent, each acting reasonably. SMH 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) SMH may assign, transfer or otherwise dispose of the benefit of this Lenders' Direct Agreement to any person to whom SMH assigns, transfers or otherwise disposes of its interest in the Project Agreement pursuant to Section 47.2 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 SMH 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 SMH on substantially the same terms as this Lenders' Direct Agreement and Project Co and SMH shall enter into such new agreement with the assignee. Project Co and SMH 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 SMH:

**[REDACTED]**

Fax No.: **[REDACTED]**

Attn: [REDACTED]

With a copy to the following addressees (which shall not constitute notice):

[REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to the Lenders' Agent:

[REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to Project Co:

[REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to the Construction Guarantor:

[REDACTED]

Fax No.: [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 Sections 40 and 41 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 and Personal Information as is necessary for the Lenders' Agent to comply with Applicable Law.

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

**ST. MICHAEL'S HOSPITAL**

**[REDACTED]**

**[REDACTED]**

**2442931 ONTARIO INC.**

**[REDACTED]**



**SCHEDULE 5**

**CONSTRUCTION CONTRACTOR'S DIRECT AGREEMENT**

**THIS AGREEMENT** is made as of the \_\_\_\_ day of January, 2015

**BETWEEN:**

**ST. MICHAEL'S HOSPITAL**, a non-share capital corporation incorporated under the laws of Ontario

(**"SMH"**)

– AND –

**2442931 ONTARIO INC., [REDACTED]**

(**"Project Co"**)

– AND –

**BONDFIELD CONSTRUCTION COMPANY LIMITED**, a corporation incorporated under the laws of the Province of Ontario

(the **"Construction Contractor"**)

– AND –

**BONDFIELD CONSTRUCTION COMPANY LIMITED**, a corporation incorporated under the laws of the Province of Ontario

(the **"Construction Guarantor"**)

**WHEREAS:**

- A. SMH 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 SMH.
- B. Project Co and the Construction Contractor have entered into the Design and Construction Contract, which requires the Construction Contractor and the Construction Guarantor to enter into this Construction Contractor's Direct Agreement with SMH.

**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) **"Approved Purposes"** has the meaning given in the Project Agreement.
- (b) **"Business Day"** has the meaning given in the Project Agreement.
- (c) **"Construction Contractor"** means Bondfield Construction Company Limited.
- (d) **"Construction Guarantor"** means Bondfield Construction Company Limited.
- (e) **"Default Notice"** has the meaning given in Section 5(a).
- (f) **"Design and Construction Contract"** has the meaning given in the Project Agreement.
- (g) **"Governmental Authority"** has the meaning given in the Project Agreement.
- (h) **"Lenders"** has the meaning given in the Project Agreement.
- (i) **"Lenders' Direct Agreement"** has the meaning given in the Project Agreement.
- (j) **"Party"** means SMH, the Construction Contractor, the Construction Guarantor or Project Co, and **"Parties"** means SMH, 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 January \_\_\_\_, 2015 between SMH and Project Co.
- (m) **"Project Co"** means 2442931 Ontario Inc.
- (n) **"SMH"** means St. Michael's Hospital.
- (o) **"Step-In Notice"** has the meaning given in Section 6(a).
- (p) **"Substitute"** has the meaning given in Section 6(a).
- (q) **"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 Design and 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 Design and Construction Contract without the prior written consent of SMH, 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 SMH, whether actual or potential. Project Co and the

Construction Contractor shall provide to SMH 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 Design and Construction Contract.
- (c) If the Construction Contractor gives Project Co any notice of any default(s) under the Design and Construction Contract that may give the Construction Contractor a right to terminate the Design and 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 SMH 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 Design and 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 SMH setting out in reasonable detail the default(s) on which the Construction Contractor intends to rely in terminating the Design and 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 SMH receiving the Default Notice:
    - (i) the default(s) on which the Construction Contractor intends to rely in terminating the Design and 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 SMH,
- provided that if, within such period of 5 Business Days, SMH 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) SMH may at any time:

- (i) within 5 Business Days or, if such period has been extended in accordance with Section 5, 45 days of SMH receiving a Default Notice; or
- (ii) if SMH has not received a Default Notice and if SMH '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 Design and Construction Contract either with SMH or a third party designated by SMH in the Step-In Notice (the **“Substitute”**), provided that SMH 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 Design and 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 Design and 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 SMH 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 Design and 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 SMH 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 SMH if SMH pays for the Construction Contractor's reasonable costs of continued performance pursuant to Section 5;
  - (iii) any guarantee, bond or covenant 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 Design and Construction Contract shall be assigned, novated or granted, as required by SMH or the Substitute, as applicable, each acting reasonably, to SMH 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 or covenant, provided however that where Project Co shall continue to hold, or shall continue to be entitled to or have rights under, such guarantee, bond or covenant as security for any obligations of the Construction Contractor, the assignment, novation or grant of the guarantee, bond or covenant 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 SMH'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 or covenant referred to in Section 6(b)(iii) to enter into, and SMH 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 SMH or the Substitute, as applicable, and the Construction Contractor, acceptable to SMH and the Construction Contractor, each acting reasonably, on substantially the same terms as the Design and Construction Contract.
- (c) Subject to Section 6(d), Project Co shall, at its own cost, cooperate fully with SMH and the Substitute in order to achieve a smooth transfer of the Design and Construction Contract to SMH or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Design and 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 Design and 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 SMH gives a Step-In Notice within the time provided hereunder at any time after the Construction Contractor has terminated the Design and 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 Design and Construction Contract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and SMH shall pay the Construction Contractor's reasonable costs for recommencing the obligations it has under the Design and 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 Design and 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 SMH, or by any failure or omission to carry out any such inspection, investigation or enquiry; or
  - (ii) the appointment by SMH of any other person to review the progress of or otherwise report to SMH 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 SMH,

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 SMH delivers a Step-In Notice, the Construction Contractor shall have no greater liability to SMH or any Substitute than it would have had to Project Co under the Design and Design and Construction Contract, and the Construction Contractor shall be entitled in any proceedings by SMH or any Substitute to rely on any liability limitations in the Design and Construction Contract.

## **8. PROJECT CO AS PARTY**

Project Co acknowledges and agrees that the Construction Contractor shall not be in breach of the Design and Construction Contract by complying with its obligations hereunder.

## **9. CONSTRUCTION GUARANTOR AS PARTY**

The Construction Guarantor agrees with SMH that the Construction Guarantor has entered into a guarantee or covenant referred to in Section 6(b)(iii) and 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 SMH, 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 SMH, 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) SMH 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 SMH may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 47.2 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 SMH 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 Design and 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 SMH:

**[REDACTED]**

Fax No.: **[REDACTED]**

Attn: **[REDACTED]**

With a copy to the following addressees (which shall not constitute notice):

**[REDACTED]**

Fax No.: **[REDACTED]**

Attn.: **[REDACTED]**

If to Project Co:

**[REDACTED]**

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to the Construction Contractor or Construction Guarantor:

[REDACTED]

Fax No.: [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.

**IN WITNESS WHEREOF** the Parties have executed this Construction Contractor's Direct Agreement as of the date first above written.

**ST. MICHAEL'S HOSPITAL**

**[REDACTED]**

**2442931 ONTARIO INC.  
[REDACTED]**

**BONDFIELD CONSTRUCTION  
COMPANY LIMITED, in its capacity as  
Construction Contractor  
[REDACTED]**

**BONDFIELD CONSTRUCTION  
COMPANY LIMITED, in its capacity as  
Construction Guarantor  
[REDACTED]**

**SCHEDULE 6**

**INDEPENDENT CERTIFIER AGREEMENT**

**THIS AGREEMENT** is made as of \_\_\_\_ day of January, 2015

**BETWEEN:**

**ST. MICHAEL'S HOSPITAL**, a non-share capital corporation incorporated under the laws of the Province of Ontario

("SMH")

**AND:**

**2442931 ONTARIO INC., [REDACTED]**

("Project Co")

**AND:**

**ALTUS GROUP LIMITED**, a corporation incorporated under the laws of the Province of Ontario

(the "**Independent Certifier**")

**WHEREAS:**

- A. SMH 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”** means 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 SMH and Project Co to the Independent Certifier for the Certification Services, as such fees are specified and made payable in accordance with 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”** and **“PA Party”** have the meanings given in the recitals to this Independent Certifier Agreement.
- (vii) **“Project Agreement”** means that certain project agreement made on or about the date hereof between SMH and Project Co with respect to the design, construction and financing of the St. Michael's Hospital Redevelopment Project.

## **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 Independent Certifier Agreement.

### **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 or on the Facility, the Existing Facilities 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, each Phase Commissioning Program, the Tower Interim Completion 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 Independent Certifier Agreement and the Project Agreement, including not only the start-up procedures but the pre-commissioning and post-commissioning activities.
- (c) The Independent Certifier shall furnish SMH with evidence satisfactory to SMH 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, each Phase Commissioning Program, the Tower Interim Completion 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 each Phase Completion, Tower Interim Completion, 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 SMH 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 SMH, 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 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 and the Works;
  - (ii) not causing unreasonable delay to the carrying out of the Works by reason of its presence at the Site and the Works; and
  - (iii) not causing any damage to the Site 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 SMH 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 SMH Representative and the Project Co Representative;
- (iii) if satisfactory to each of the SMH Representative and the Project Co Representative, implement such certification quality plan; and
- (iv) if not satisfactory to each of the SMH 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 SMH Representative and the Project Co Representative, and implement it if satisfactory to each of the SMH 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 SMH 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), overhead and profit, all labour and materials, insurance costs, travel, hospitality, food and incidental expenses, 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 SMH 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 SMH 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 SMH 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 SMH 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 SMH 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 Final Completion Date; 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 SMH:

[REDACTED]

Fax No.: [REDACTED]

Attn: [REDACTED]

If to Project Co:

[REDACTED]



Fax No.: [REDACTED]

Attn.: [REDACTED]

If to Independent Certifier: [REDACTED]

Fax No.: [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.

**12.13 Copyright Notice**

- (a) The parties acknowledge that the Queen's Printer for Ontario is the exclusive owner of the copyright in the Project Agreement.

**[EXECUTION PAGES IMMEDIATELY FOLLOW]**

**IN WITNESS WHEREOF** the parties have executed this Independent Certifier Agreement as of the date first above written.

**ST. MICHAEL'S HOSPITAL  
[REDACTED]**

**2442931 ONTARIO INC.  
[REDACTED]**

**ALTUS GROUP LIMITED  
[REDACTED]**

**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 consult with the relevant party;
- (e) In accordance with Section 14.1(b) of the Project Agreement, attend meetings and participate, as necessary, in the activities of the Works Committee;
- (f) Review each draft Phase 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 each Phase Commissioning Program, to identify any errors or omissions, and to report any risks;
- (g) Review the draft Tower Interim Completion 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 Tower Interim Completion Commissioning Program, to identify any errors or omissions, and to report any risks;
- (h) 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;
- (i) 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 each Phase Commissioning Program, the Tower Interim Completion Commissioning Program and the Final Commissioning Program or as otherwise required for Project Co to achieve each Phase Completion, Tower Interim Completion, Substantial Completion and Final Completion;

- (j) Prior to any certification, consider the views and comments of both Project Co and SMH in relation to the satisfaction of the conditions for certification;
- (k) 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;
- (l) 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;
- (m) Monitor the requirements, progress and results of all Phase Project Co Commissioning, Phase SMH Commissioning, Tower Interim Completion Project Co Commissioning, Tower Interim Completion SMH Commissioning, Project Co Commissioning and SMH Commissioning;
- (n) Monitor the conduct of the Commissioning Tests during any seasonal performance testing prescribed in each Phase Commissioning Program, the Tower Interim Completion Commissioning Program and the Final Commissioning Program including, without limitation, any re-tests, review of Commissioning Tests and results, copies of any certificates or other Permits, Licences, Approvals, and Agreements received by Project Co in connection with any Commissioning Tests conducted during the seasonal performance testing, review and accepting performance testing forms required to be delivered pursuant to each Phase Commissioning Program, the Tower Interim Completion Commissioning Program and the Final Commissioning Program and to perform such other similar responsibilities (other than performing Commissioning Tests or performance of inspections) with respect to any matter relating to commissioning of the Facility after Substantial Completion, as applicable, as either party may request and to report to each of the parties thereon;
- (o) Identify any errors or omissions made during the conduct of any such Commissioning Tests referenced in item (m) above and to advise Project Co and SMH with respect to the implications of those errors and omissions, to the extent that the Independent Certifier may reasonably be aware;
- (p) Upon receipt of notice from Project Co requesting the issuance of a Phase Completion Certificate, the Tower Interim Completion Certificate, 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;
- (q) 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 (m) of this Appendix A until the issuance of the applicable certificate;
- (r) Prepare, in consultation with Project Co and SMH, as soon as reasonably practicable and, in any event within, the time periods specified in Sections 23A.8(c), 23B.8(c) and 24.8(c) respectively of the Project Agreement, each Phase Minor Deficiencies List, the Tower Interim Completion Minor Deficiencies List and the Minor Deficiencies List, which each Phase Minor Deficiencies List, Tower Interim Completion Minor Deficiencies List and Minor Deficiencies List will include an estimate of the cost and the time for rectifying any Phase Minor Deficiencies, Tower Interim Completion Minor Deficiencies or Minor Deficiencies, as applicable and a schedule for the completion and rectification of such Phase Minor Deficiencies, Tower Interim Completion Minor Deficiencies or Minor Deficiencies, as applicable;
- (s) Both prior to and following Substantial Completion, review Project Co cash allowance expenditures against the installations in respect of the Cash Allowance Items and the Cash Allowance Amount;
- (t) Review and observe installation of all equipment, furniture, fixtures, information technology, communication equipment, telephone equipment and anything similar to the foregoing (collectively, the **"Installed Equipment"**) into or onto the Facility by SMH or any agent or contractor of SMH either before or after Substantial Completion and provide a report to SMH and Project Co identifying any damage to the Facility which has been caused as a result of the installation of such Installed Equipment into or onto the Facility by SMH, its contractors and/or agents;
- (u) 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;
- (v) 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;
- (w) Provide periodic reports to the PA Parties, copying IO, 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;
- (x) Provide advice on other matters that may arise that both PA Parties may jointly require; and
- (y) Review the reports and plans prepared by Project Co pursuant to Section 13.6(a) of the Project Agreement.

**APPENDIX B**

**INDEPENDENT CERTIFIER FEE**

**[REDACTED]**

**APPENDIX C**

**INDEPENDENT CERTIFIER PERSONNEL**

**[REDACTED]**

## APPENDIX D

## FORM OF QUARTERLY REPORT

[ON THE INDEPENDENT CERTIFIER'S LETTERHEAD]

[date]

St. Michael's Hospital  
[REDACTED]

and to:

2442931 ONTARIO INC.  
[REDACTED]

Fax: [REDACTED]  
Attn: [REDACTED]

with a copy to:

[REDACTED]

Dear [●] and [●]:

This report, for the quarter ending ●, is delivered to you pursuant to Section (u)(ii) of Appendix A of the Independent Certifier Agreement between St. Michael's Hospital, 2442931 Ontario Inc. and us dated [●] (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.
- 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]	[quarter end]	[quarter end]	[quarter end]
--	---------------	---------------	---------------	---------------

	<b>date]</b>	<b>date]</b>	<b>date]</b>	<b>date]</b>
<b>\$</b>	<b>%</b>			

We have prepared this report for the specific use of St. Michael's Hospital, **[Project Co]** 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**

**SUBCONTRACTOR'S DIRECT AGREEMENT**

**THIS AGREEMENT** is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_

**BETWEEN:**

**ST. MICHAEL'S HOSPITAL**, a non-share capital corporation  
incorporated under the laws of Ontario

(**"SMH"**)

– AND –

**2442931 ONTARIO INC., [REDACTED]**

(**"Project Co"**)

– AND –

**BONDFIELD CONSTRUCTION COMPANY LIMITED**, a  
corporation incorporated under the laws of the Province of Ontario

(the **"Construction Contractor"**)

– AND –

**[[•], a corporation incorporated under the laws of Ontario]]**

(the **"Subcontractor"**)

**WHEREAS:**

- A. SMH and Project Co have entered into the Project Agreement, which requires Project Co to enter into, and to cause the Construction Contractor and the Subcontractor to enter into, this Subcontractor's Direct Agreement with SMH.
- B. Project Co and the Construction Contractor have entered into the Design and Construction Contract, which requires the Construction Contractor to enter into, and cause the Subcontractor to enter into, this Subcontractor's Direct Agreement with SMH.

**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 Subcontractor's Direct Agreement, unless the context otherwise requires:

- (a) **"Approved Purposes"** has the meaning given in the Project Agreement.
- (b) **"Business Day"** has the meaning given in the Project Agreement.
- (c) **"Construction Contractor"** means Bondfield Construction Company Limited.
- (d) **"Construction Contractor's Direct Agreement"** has the meaning given in the Project Agreement.
- (e) **"Default Notice"** has the meaning given in Section 5(a).
- (f) **"Design and Construction Contract"** has the meaning given in the Project Agreement.
- (g) **"Governmental Authority"** has the meaning given in the Project Agreement.
- (h) **"Lenders"** has the meaning given in the Project Agreement.
- (i) **"Lenders' Direct Agreement"** has the meaning given in the Project Agreement.
- (j) **"Party"** means SMH, the Construction Contractor, the Subcontractor or Project Co, and **"Parties"** means SMH, the Construction Contractor, the Subcontractor and Project Co.
- (k) **"Project"** has the meaning given in the Project Agreement.
- (l) **"Project Agreement"** means the project agreement made on or about January \_\_\_\_, 2015 between SMH and Project Co.
- (m) **"Project Co"** means 2442931 Ontario Inc.
- (n) **"SMH"** means St. Michael's Hospital.
- (o) **"Step-In Notice"** has the meaning given in Section 6(a).
- (p) **"Subcontract"** means the subcontract [NTD: describe applicable Subcontract].
- (q) **"Subcontractor"** means [●].
- (r) **"Substitute"** has the meaning given in Section 6(a).
- (s) **"Works"** has the meaning given in the Project Agreement.

**2. INTERPRETATION**

This Subcontractor's Direct Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Subcontractor's Direct Agreement are for convenience of reference only, shall not constitute a part of this Subcontractor's Direct Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Subcontractor'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 Subcontractor'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 Subcontractor'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 Subcontractor'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 Subcontractor'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 Subcontractor'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 Subcontractor'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 Subcontractor'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 Subcontractor'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 Subcontractor'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 Subcontractor's Direct Agreement, the Construction Contractor's Direct Agreement, the Project Agreement and the Design and Construction Contract, this Subcontractor's Direct Agreement shall prevail.
- (b) In the event of ambiguities, conflicts or inconsistencies between or among this Subcontractor's Direct Agreement and the Lenders' Direct Agreement, the Lenders' Direct Agreement shall prevail.

### **4. AGREEMENTS**

- (a) If the Subcontractor gives the Construction Contractor any notice of any default(s) under the Subcontract that may give the Construction Contractor a right

to terminate the Subcontract or to treat it as having been repudiated by the Construction Contractor or to discontinue the Subcontractor's performance thereunder, then the Subcontractor shall concurrently provide Project Co and SMH with a copy of such notice, an executed copy of the Subcontract and set out in reasonable detail the default(s).

## **5. NO TERMINATION BY SUBCONTRACTOR WITHOUT DEFAULT NOTICE**

The Subcontractor shall not exercise any right it may have to terminate the Subcontract or to treat it as having been repudiated by the Construction Contractor or to discontinue the Subcontractor's performance thereunder unless:

- (a) the Subcontractor first delivers an executed copy of the Subcontract and a written notice (a **"Default Notice"**) to SMH setting out in reasonable detail the default(s) on which the Subcontractor intends to rely in terminating the Subcontract or to treat it as having been repudiated by the Construction Contractor or to discontinue the Subcontractor's performance thereunder; and
- (b) within a period of 5 Business Days of SMH receiving the Default Notice the default(s) on which the Subcontractor intends to rely in terminating the Subcontract or to treat it as having been repudiated by the Construction Contractor or to discontinue the Subcontractor's performance thereunder have not been remedied; and provided that if, within such period of 5 Business Days, SMH agrees to pay the Subcontractor's reasonable costs of continued performance, such period of 5 Business Days shall be extended to 45 days.

## **6. NOVATION OF THE SUBCONTRACT**

- (a) The Subcontractor acknowledges and agrees that where the Design and Construction Contract has been terminated:
  - (i) by Project Co; or
  - (ii) as a result of the termination of the Project Agreement; or
  - (iii) due to the insolvency of the Construction Contractor,
  - (iv) the Subcontract shall not terminate solely by reason of the termination of the Design and Construction Contract unless SMH shall have failed to request a novation of the Subcontract pursuant to Section 6(b) within 20 days of the date of such termination.
- (b) SMH may at any time if:
  - (i) the Project Agreement and the Design and Construction Contract have been terminated; or

- (ii) SMH's right to terminate the Project Agreement has arisen and is continuing and as a result of such termination of the Project Agreement, the Design and Construction Contract would be terminated,
  - (iii) deliver a notice (a "**Novation Notice**") electing to novate the Subcontract either to SMH or a third party designated by SMH in the Novation Notice (the "**Substitute**"), provided that SMH can demonstrate to the Subcontractor, 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 Subcontract.
- (c) Subject to Section 6(d), upon receipt by the Subcontractor of a Novation Notice:
- (i) the Construction Contractor and the Subcontractor will be deemed to be released from their existing and future obligations under the Subcontract to each other (except with respect to any and all indemnities from the Construction Contractor or the Subcontractor to the other in respect of the period prior to the receipt of the Novation Notice), and SMH or the Substitute, as applicable, and the Subcontractor 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 the Construction Contractor against the Subcontractor under the Subcontract and vice versa will be deemed to be cancelled (except with respect to any and all indemnities from the Construction Contractor or the Subcontractor to the other in respect of the period prior to the receipt of the Novation Notice), and SMH or the Substitute, as applicable, and the Subcontractor 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 Subcontractor to SMH if SMH pays for the Subcontractor's reasonable costs of continued performance pursuant to Section 5;
  - (iii) any guarantee, bond or covenant in favour of the Construction Contractor from any third party in respect of any term, provision, condition, obligation, undertaking or agreement on the part of the Subcontractor to be performed, observed or carried out by the Subcontractor as contained in, referred to, or inferred from the Subcontract shall be assigned, novated or granted, as required by SMH or the Substitute, as applicable, each acting reasonably, to SMH or the Substitute, as applicable, and the Subcontractor shall cause such assignment, novation or grant on substantially the same terms and conditions as the original guarantee, bond or covenant, provided, however, that where Construction Contractor shall continue to hold, or shall continue to be entitled to or have rights under, such guarantee, bond or covenant as security for any obligations of the Subcontractor, the assignment, novation or grant of the guarantee, bond or

covenant to the extent of any such obligations to Construction Contractor shall be conditional on the satisfaction of those obligations to Construction Contractor; and

- (iv) at SMH's request, the Subcontractor shall enter into, and shall cause any guarantor, covenantor or surety under any guarantee, bond or covenant referred to in Section 6(b)(iii) to enter into, and SMH 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 SMH or the Substitute, as applicable, and the Subcontractor, acceptable to SMH and the Subcontractor, each acting reasonably, on substantially the same terms as the Subcontract.
- (d) The Construction Contractor shall, at its own cost, cooperate fully with SMH and the Substitute in order to achieve a smooth transfer of the Subcontract to SMH or the Substitute, as applicable, and to avoid or mitigate in so far as reasonably practicable any inconvenience, including the administration of the Subcontract, ongoing supervisory activities and scheduling.
- (e) The rights granted by Section 6(b) shall be of no force or effect if, at any time the Subcontractor receives a Novation Notice, the Subcontractor has already received notice in writing from another entity entitled to the benefit of step-in rights relating to the Subcontract that it is or has validly exercised those step-in rights. If the Subcontractor receives any such notice on the same day as a Novation Notice, the Novation Notice shall be effective, except where the other notice is given by the Lenders, in which case such other notice and not the Novation Notice shall be effective.
- (f) If SMH gives a Novation Notice within the time provided hereunder at any time after the Subcontractor has terminated the Subcontract or treated it as having been repudiated by Construction Contractor or discontinued the Subcontractor's performance thereunder in accordance with the terms of this Subcontractor's Direct Agreement, the Subcontractor agrees that the Subcontract shall be reinstated and deemed to have continued despite any termination or treatment as having been repudiated, and SMH shall pay the Subcontractor's reasonable costs for re-commencing the obligations it has under the Subcontract and the Subcontractor 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 Subcontract or having treated it as being repudiated by Construction Contractor or having discontinued its performance thereunder.
- (g) The Subcontractor acknowledges that if SMH novates the Subcontract to itself pursuant to Section 6(b), SMH shall have the right to further novate the

Subcontract to a Substitute in accordance with and otherwise on, and subject to, the terms and conditions of this Subcontractor's Direct Agreement.

## **7. SUBCONTRACTOR LIABILITY**

- (a) The liability of the Subcontractor 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 SMH, or by any failure or omission to carry out any such inspection, investigation or enquiry; or
  - (ii) the appointment by SMH of any other person to review the progress of or otherwise report to SMH 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 SMH,

provided always that nothing in this Section 7 shall modify or affect any rights which the Subcontractor might have otherwise had to claim contribution from any other person whether under statute or common law.

- (b) In the event SMH delivers a Novation Notice, the Subcontractor shall have no greater liability to SMH or any Substitute than it would have had to Construction Contractor under the Subcontract, and the Subcontractor shall be entitled in any proceedings by SMH or any Substitute to rely on any liability limitations in the Subcontract.

## **8. PROJECT CO AND CONSTRUCTION CONTRACTOR AS PARTY**

- (a) Project Co acknowledges and agrees that the Construction Contractor shall not be in breach of the Design and Construction Contract by complying with its obligations hereunder.
- (b) Construction Contractor acknowledges and agrees that the Subcontractor shall not be in breach of the Subcontract by complying with its obligations hereunder.

## **9. ASSIGNMENT**

- (a) Construction Contractor shall not, without the prior written consent of SMH, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Subcontractor's Direct Agreement except to the extent entitled to do so under the Design and Construction Contract.
- (b) SMH may assign or otherwise dispose of the benefit of the whole or part of this Subcontractor's Direct Agreement to any person to whom SMH may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 47.2 of the Project Agreement but only in conjunction therewith, and shall provide

written notice to Project Co, the Construction Contractor and the Subcontractor of such assignment or disposition.

- (c) The Construction Contractor shall not, without the prior written consent of SMH and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Subcontractor's Direct Agreement except as may be permitted under the Design and Construction Contract.
- (d) The Subcontractor shall not, without the prior written consent of SMH and Project Co, assign, transfer, charge, subcontract, subparticipate or otherwise dispose of any interest in this Subcontractor's Direct Agreement except as may be permitted under the Subcontract.

## **10. NOTICES**

- (a) All notices, requests, demands, instructions, certificates, consents and other communications required or permitted under this Subcontractor'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 Subcontractor's Direct Agreement) and served by sending the same by registered mail, facsimile or by hand, as follows:

If to SMH:

**[REDACTED]**

Fax No.: **[REDACTED]**

Attn: **[REDACTED]**

With a copy to the following addressees (which shall not constitute notice):

**[REDACTED]**

Fax No.: **[REDACTED]**

Attn.: **[REDACTED]**

If to Project Co:

**[REDACTED]**

Fax No.: **[REDACTED]**

Attn.: **[REDACTED]**

If to the Construction Contractor:

**[REDACTED]**

Fax No.: **[REDACTED]**

Attn.: **[REDACTED]**

If to the Subcontractor:

[Address]

Fax No.: ●

Attn.: ●

- (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 Subcontractor's Direct 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 Subcontractor'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 Subcontractor's Direct Agreement.

## **12. WAIVER**

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

## **13. RELATIONSHIP BETWEEN THE PARTIES**

The Parties are independent contractors. This Subcontractor'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 Subcontractor's Direct Agreement, of principal and agent.

## **14. ENTIRE AGREEMENT**

Except where provided otherwise in this Subcontractor's Direct Agreement, this Subcontractor'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 Subcontractor's Direct Agreement.

## **15. SEVERABILITY**

Each provision of this Subcontractor's Direct Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Subcontractor'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 Subcontractor's Direct Agreement. If any such provision of this Subcontractor'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 Subcontractor's Direct Agreement as near as possible to its original intent and effect.

## **16. ENUREMENT**

This Subcontractor'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.

## **17. GOVERNING LAW AND JURISDICTION**

- (a) This Subcontractor'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 Subcontractor's Direct 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 Subcontractor's Direct Agreement.

## **19. LANGUAGE OF AGREEMENT**

Each Party acknowledges having requested and being satisfied that this Subcontractor'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.

## **20. COUNTERPARTS**

This Subcontractor'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 Subcontractor's Direct Agreement which was so faxed.

**IN WITNESS WHEREOF** the Parties have executed this Subcontractor's Direct Agreement as of the date first above written.

**ST. MICHAEL'S HOSPITAL  
[REDACTED]**

**2442931 ONTARIO INC.  
[REDACTED]**

**BONDFIELD CONSTRUCTION COMPANY  
LIMITED  
[REDACTED]**

**[SUBCONTRACTOR]  
[REDACTED]**

**SCHEDULE 8**

**PROJECT CO PARTIES**

**[REDACTED]**

**SCHEDULE 9  
KEY INDIVIDUALS**

**[REDACTED]**

**SCHEDULE 10**

**REVIEW PROCEDURE**

**1. WORKS SUBMITTALS**

- 1.1** The provisions 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 Section 11, Project Co Responsibilities and Construction Obligations, of 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 SMH in accordance with the Review Procedure prior to each Phase Completion, Tower Interim Completion and Substantial Completion, or after each Phase Completion, Tower Interim Completion and Substantial Completion in respect of the completion of the applicable Phase Minor Deficiencies, Tower Interim Completion Minor Deficiencies and Minor Deficiencies, including any and all subsequent revisions, amendments and changes thereto (collectively and individually, “**Works Submittal**” or “**Works Submittals**” as applicable in this Schedule 10).

**2. SCHEDULE FOR WORKS SUBMITTALS**

- 2.1** Project Co shall develop a Works Schedule in accordance with Section 13 of this Project Agreement that incorporates the design and plan certification process for the Project. The design development and plan submission schedule shall take into account required staged Design Development Submittals as per Section 11.1 of this Project Agreement.
- 2.2** The Works Schedule shall include sufficient time for coordination and required approvals from all regulatory agencies, user groups, stakeholders and the SMH Design Team, as well as time required for construction trade coordination logistics.
- 2.3** The Works Schedule shall provide for a progressive and orderly flow of Works Submittals from Project Co to the SMH Representative to allow sufficient time for review of each Works Submittal by the SMH Representative taking into account both the resources necessary to be available to the SMH 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.
- 2.4** The Works Schedule and any amendment to the Works Schedule shall allow a period of 15 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.
- 2.5** Project Co shall, in scheduling Works Submittals and in the construction of the Works, allow adequate time prior to performing the construction of the Works 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 this Schedule 10.

- 2.6** If the Works Schedule indicates that a large number of Works Submittals will be made at one time, the SMH Representative may, at the SMH 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 SMH 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.
- 2.7** Project Co shall submit all Works Submittals to SMH in accordance with the current Works Schedule.
- 2.8** 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 SMH Representative cannot review the Works Submittals within the time permitted in the Works Schedule, the SMH 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 SMH Representative, Project Co shall issue 4 printed copies of all Works Submittals to SMH, 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 engineers or architects) 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 Works 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, any other applicable Schedule to the Project Agreement 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) clouded revisions (if applicable);
- (d) document or drawing title(s);
- (e) name of entity that prepared the Works Submittal;
- (f) the Works Submittal history showing date and delivery information and/or log number of all previous submissions of that Works Submittal; and
- (g) identification of any previous Works Submittal superseded by the current Works Submittal.

#### **4. COMMENTS**

**4.1** The SMH 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 SMH 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 SMH 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 SMH Representative, generally conform to the requirements of this Project Agreement, but in which immaterial deficiencies have been found by the SMH Representative's review. Project Co shall correct these Works Submittals and provide a copy of the corrected Works Submittals to the SMH Representative no later than 20 Business Days after the comment has been provided to Project Co, or such other time period as determined by the SMH 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 the Works, as required to ensure that the Works comply with the Output Specifications, any other applicable Schedule to the Project Agreement, and the Project Co Proposal Extracts and Project Co may be required, at the SMH Representative's discretion, to resubmit relevant Works Submittals. In such circumstances the SMH 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 SMH Representative, contain significant deficiencies or do not generally conform to 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 SMH Representative, acting in its sole discretion and as set out in writing. The SMH 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 SMH Representative issues the comment "REVIEWED AS NOTED" or "REJECTED", the SMH 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 SMH 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 SMH Representative or Project Co discovers any significant deficiencies or any failure to conform to the requirements of this Project Agreement, the SMH Representative may revise the comment assigned to any Works Submittal. If the Parties agree or it is determined in accordance with Section 5 of this Schedule 10 that the revised comment is correct, Project Co shall make all such corrections to the Works Submittals and the Works. 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 SMH Representative and the Project Co Representative may 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 SMH 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 SMH.
- 4.9** In lieu of returning a Works Submittal, the SMH 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 SMH or the SMH Representative in respect of a Works Submittal under this Schedule 10, Project Co shall promptly notify the SMH 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 SMH 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 SMH 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 of this Schedule 10, 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 of this Schedule 10, SMH may direct Project Co to revise the Works Submittals in accordance with the comments of SMH and proceed to perform and complete the Works on the basis of such revised Works Submittals. For clarity, such direction shall be considered a Dispute and Project Co may proceed in accordance with Section 46 of the Project Agreement and Schedule 27 - Dispute Resolution Procedure.

## **6. EFFECT OF REVIEW**

**6.1** Any review and comment by SMH or the SMH 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 Works 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 SMH. 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 SMH's rights in respect of the Works under this Project Agreement.

## **7. WORKS SUBMITTAL EXPLANATION**

**7.1** At any time, the SMH Representative may, acting reasonably, require Project Co or any Project Co Parties, including Project Co's consultants and any other relevant personnel, at no additional cost to SMH, to explain to the SMH Representative and SMH'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 or any other Schedule to the Project Agreement, as applicable.

## **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, e.g. the use of revision clouds may be employed) 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 current set of all submittal documents available on site in the construction trailer for use by SMH and the SMH Representative. 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 SMH REPRESENTATIVE**

**9.1** Without limiting any other right under this Project Agreement, the SMH 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 SMH or Project Co (or resolved pursuant to Section 9.3 of this Schedule 10) 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 Works to which they relate and shall advise the SMH Representative of all such corrections and modifications.

**9.3** Any Dispute concerning the implementation of a Works Submittal, subject to Section 5.1 of this Schedule 10, 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 Works 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 SMH 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 SMH of the same and, if it is agreed by the Parties that a Variation would arise if the comments were complied with, SMH 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 of this Schedule 10 including for clarity, the exercise by SMH of its rights under Section 5.3 of this Schedule 10. Subject to the foregoing sentence, any failure by Project Co to notify SMH in accordance with this Section 10.2 that Project Co considers compliance with any

comments of the SMH Representative would amount to a Variation shall constitute an irrevocable acceptance by Project Co that any compliance with the SMH Representative's comments shall be without cost to SMH 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 SMH for review and comment in accordance with this Schedule 10:

1.1. Design development documents in accordance with the requirements set forth in Section 11.1 of the Project Agreement, including:

(a) Architectural Design Response:

(i) Site Plan scale - 1:500

Building outline with full hard/soft landscape plan showing:

- A. Property line, site boundary line and lines of municipal conveyances;
- B. Lines of required setbacks;
- C. Integration of landscaping features/areas with floor plan elements and entrances;
- D. Treatment of public sidewalks and interface with hospital entrances;
- E. Hard and soft surfacing, planting;
- F. Site furnishings and signage;
- G. Additional Site features;
- H. Sidewalk treatment at vehicular entrances including Donnelly Wing Entrance, new main entrance, loading entrance, emergency/ambulance entrance;
- I. Service areas;
- J. Dimensions of all vehicles access/egress driveways; and
- K. Dimensions of all Site and building elements sufficient to demonstrate compliance with stand-off and setback requirements.

(ii) Site Details : scale 1:100, 1:50 and greater as required to fully illustrate the landscaping proposal for the Site

(iii) Departmental Block Plan Enhanced Schematics (no scale)

Provide blocking, stacking and zoning diagrams illustrating the planning considerations listed below. Project Co must submit separate diagrams for each construction phase only where their departmental layouts vary sufficiently between phases that a separate drawing is necessary to illustrate the planning approach:

- A. Horizontal and vertical circulation diagrams/overlays at a building as well as a departmental scale indicating, staff, patient, visitor and material flow (clean vs. soiled materials), and including measures for identifying and managing infectious patients;
- B. Zoning diagrams/overlays at a building as well as a departmental scale indicating public, semi-public, and restricted spaces; and
- C. Diagrams/overlays at a building as well as a departmental scale demonstrating flexibility for future renovations and expansion of priority departments;

(iv) Master Floor Plans – 1:500 plans of whole facility floors indicating all rooms and areas, distinguishing areas of renovation and new construction from existing areas to remain. These plans will act as key plans for renovation projects;

(v) Floor plans - 1:100 scale

- A. Indicate individual Functional Program spaces and all service rooms and shafts in the context of the proposed building envelope. Provide Floor Plans of each construction phase;
- B. Rooms will be identified with Functional Program codes as listed in the Space Allocation Tables;
- C. List additional rooms not identified in the Output Specifications and provide additional sequential Room Codes as required;
- D. Include all the walls in their approximate thickness conforming to contemplated wall and partition schedule, all doors, screens, glazing and windows, structural elements, circulation elements (e.g. stairs, elevators) and major service shafts;
- E. Include columns, shear walls, bearing walls and other components required and indicate structural grid;
- F. Include mechanical and electrical systems including service shafts, risers, etc., in sufficient detail to demonstrate that functional and net area requirements are compliant;

- G. Provide reference numbers on stairs and elevators;
- H. Provide drawing index on front sheet of drawing set;
- I. All walls and partitions shall be drawn in actual thickness;
- J. Indicate doors, windows, sidelights and interior glazing;
- K. Indicate structural grid lines and references cross-referenced on all drawings;
- L. Indicate all millwork/casework, built-in and modular;
- M. Indicate all major pieces of Equipment. Indicate configuration of central care stations; Indicate workstation layouts in administrative areas;
- N. All room accessories;
- O. Integration of structural, mechanical, electrical and information & communications technology systems, in terms of columns, service shafts, risers, etc., in sufficient detail to demonstrate that functional and net area requirements are compliant;
- P. Provide perimeter net area poly-lines indicating actual net areas of designed program spaces;
- Q. Dimensions provided for all interior corridors, access aisles and locations of protruding elements that reduce clear width;
- R. Identify clear width at doorways;
- S. Identify, in chart form, ratios of accessible washroom fixtures;
- T. Identify service routes for replacement of major pieces of mechanical and medical equipment; and
- U. Identify areas of refuge;

(vi) Clinical Functionality Plans (1:50 scale)

Provide plans, sections and elevations for a typical Acute Care Department, the MSICU, the CCICU, the Emergency Department, the Perioperative Services Department, the Advanced Ambulatory Care Unit – Infusion Centre; and one (1) Generic Ambulatory Clinic, including:

- A. Interior elevations;
- B. Reflected Ceiling Plans indicating ceiling materials, curtain tracks, patient lifts, configuration of lighting, mechanical diffusers and grilles;

- C. Identification of materials and finishes;
- D. Furniture and equipment layout;
- E. Location of room accessories; and
- F. All other electrical and mechanical items;

(vii) Space Variance Analysis

Using the chart/matrix template “Space Variance Analysis”, provide a full space program reconciliation that compares the floor areas described in the Space Allocation Tables in Part 2 of the Output Specifications. All areas are to be calculated using CAN/CSA-Z317.11-02 Area Measurement for Health Care Facilities. Utilize room names and alphanumeric codes used in the Part 2 Space Allocation Tables and Room Data Sheets. List additional rooms not previously identified and provide additional sequential room codes as required. A Space Variance is required for each of Phase 1 and Phase 2 (Phase 2 to include all Phase 2A Works). Space Variance Analysis charts shall include a column showing the locations of each space by Floor, to assist in evaluation.

(viii) Exterior Building Elevations – Scale 1:200:

- A. Along each frontage showing line of street topography, compound walls, gates, barriers, fenestration, materials, etc., including all hidden or partial elevations with a legend describing the extent of all glazing and cladding materials;
- B. Where different, exterior building elevations will detail the changes to building exterior; and
- C. Elevations to be fully rendered, in colour;

(ix) Building Sections – Scale 1:500 of entire facility and 1:100 through Patient Care Tower indicating relative locations of grade. Building sections to clearly show how access to daylight is achieved where required;

(x) Wall Sections – Scale 1:10 and 1:20 describing wall assemblies and indicating relationship of materials and transitions between Patient Care Tower and the Existing Building and at all areas of infill and addition. Wall sections will be drawn corresponding to same locations as those included in the submissions for design presentation meeting. Include annotation describing proposed wall assembly types;

(xi) Building Perspectives – at a minimum 6 exterior perspectives in full colour describing the developed exterior with context

- A. Aerial perspective view of entire Facility;



- B. Exterior perspective view taken at pedestrian eye level from the southwest corner of Queen and Victoria Streets;
  - C. Exterior perspective view taken at pedestrian eye level from the south east corner of Queen Street and Bond Street;
  - D. Exterior perspective taken along Bond Street indicating the additions to the existing Bond and Shuter wings; and
  - E. Exterior Perspective of the renovated entrance to the Emergency Department;
- (xii) Building Perspectives – at a minimum 13 interior perspectives in full colour describing the developed interior:
- A. Interior perspective view taken at eye level of the new Public Lobby;
  - B. Interior perspective view taken at eye level of the renovated Queen Street Lobby;
  - C. Interior perspective view taken at eye level of the Open/Interactive space and Atrium;
  - D. 2- Interior perspective views taken at eye level of the new north/south circulation path – one looking either north toward the CCW north elevators showing the general character, layout and natural illumination of this space; and the other looking east from toward the Bond Lobby;
  - E. Interior perspective view taken at eye level of the new Bond Entrance Lobby and its relationship with the historic lobby;
  - F. Interior perspective view taken at the entrance of a typical Acute Care unit showing the central communication station and relationship to patient rooms, etc.;
  - G. Interior perspective view taken at the entrance to the MSICU showing the central communication station and relationship to patient rooms, etc.;
  - H. Interior perspective of Emergency Department Entrance/waiting/triage;
  - I. Interior perspective of typical Hybrid Operating Room;
  - J. Interior Perspective of typical Acute Care Patient Room;
  - K. Interior Perspective of typical Critical Care Patient Room; and
  - L. Interior Perspective of typical Ambulatory Generic Clinic reception and waiting area;

- (xiii) Interior Elevations – scale 1:10 of the following areas:
  - A. Key spaces;
  - B. Component reception areas;
  - C. Key Public space (New Main Lobby, renovated Donnelly Wing Lobby, Open/Interactive Space, North/South Circulation Path, Bond Lobby;
  - D. Typical clinical corridors, indicating extents of wall protection, rails, mounting heights for accessories, typical door types, etc.;
  - E. Typical Surgical Program corridor indicating extents of wall protection, rails, mounting heights of accessories, typical doors, etc.;
  - F. Typical Emergency Department corridor indicating extents of wall protection, rails, mounting heights of accessories, typical doors, etc.; and
  - G. Public elevator lobbies;
- (xiv) Public Space Plans – 1:50 scale
  - A. Provide plans, sections and elevations for new Public Lobby, Open/Interactive space (Atrium), North/south circulation path, new Bond Lobby, Donnelly lobby;
- (b) Landscape Design Response
  - (i) Landscape design plans - scale 1:150, including renovated Bond Street streetscape; and
  - (ii) Landscape details – scale 1:25 or 1:10;
- (c) Civil Design Response
  - (i) Provide drawings that illustrate the following for the Site:
    - A. Existing Conditions Plan at a scale of 1:250 or 1:500 that accurately identifies the existing above and below ground infrastructure, easements, contours, geodetic benchmarks, drainage patterns and areas;
    - B. Erosion Control Plan at a scale of 1:250 or 1:500 that illustrates and specifies erosion control measures and tree protection measures (if applicable) to the requirements of the City of Toronto;
    - C. Site Grading Plan at a scale of 1:250 or 1:500 showing proposed grading, retaining walls, curbs and all information required by the City of Toronto Site Grading Guidelines;

- D. Site Servicing Plan at a scale of 1:250 or 1:500 showing all existing and proposed underground infrastructure, pipe lengths and slopes and specifications for materials and construction and all information required by City of Toronto Servicing Guidelines; and
  - E. Stormwater Management Report prepared to the requirements of the City of Toronto;
- (d) Structural Design Response
- (i) Provide a written statement describing the engineering design intent for the construction of the Facility with respect to the following subjects. The statement should be organized as follows:
    - A. General design approach to structural systems, with specific reference to the proposed solutions in regard to subsoil conditions;
    - B. Structural design approach to building structural systems for both the Patient Care Tower and each renovation sub-project, as defined in section 3.9 of Part 3 of the Output Specifications;
    - C. Structural design approach to column locations, and coordination with spatial requirements and building services;
    - D. Structural design approach to specialized equipment loading requirements and vibration sensitivity requirements; and
    - E. Accommodation for green roofs, highly reflective roof and other sustainable technologies;
  - (ii) Drawing Requirements
    - A. Structural floor plans - scale 1:100, of every level, including all buildings, and roof(s) showing foundations, structural systems, framing and lateral force resisting systems; and
    - B. Structural details at appropriate scale;
- (e) Mechanical Design Response
- (i) Provide an updated written statement describing the engineering design intent with respect to the following subjects. The statement should be organized as follows:
    - A. General design approach to mechanical systems (HVAC, plumbing and drainage, medical gases, fire protection, controls, pneumatic tube and noise and vibration mitigation) including services relocations, infrastructure improvements, redundancy, equipment selection,

sustainability, etc. with specific references to the Output Specifications. Describe the mechanical services to be provided and include details of:

- a. Existing services relocation strategy;
  - b. Existing System Improvement strategy;
  - c. Cooling plant;
  - d. Heating plant;
  - e. Steam distribution;
  - f. Domestic hot and cold water systems;
  - g. Plumbing fixtures;
  - h. Medical gases Systems;
  - i. Fire protection systems;
  - j. All major mechanical space locations;
  - k. Building Management System;
  - l. Pneumatic Tube;
  - m. Load calculations per zone basis, including specialized equipment, energy recovery and redundancy;
  - n. Ventilation and total supply air rates for each space in Patient Care Tower and Renovations;
  - o. Smoke control and operations under fire service requirements for Patient Care Tower; and
  - p. Post-disaster provisions;
- (ii) Mechanical floor plans - scale 1:150, of every level, including mechanical room(s) (provide blow ups of mechanical rooms at scale 1:50), service tunnels, equipment rooms, and roof(s) showing location and basic layout of primary mechanical equipment including access routing of main feeds and associated shafts and risers, and preliminary sizing of the primary mechanical equipment;
  - (iii) Mechanical equipment schedules showing capacities of all mechanical equipment;
  - (iv) System schematics for all major systems including, but not limited to:

- A. Natural gas, heating water systems including terminal equipment;
  - B. Chilled water system;
  - C. Steam distribution system;
  - D. Incoming water and fire protection systems, including fire hose cabinet and sprinkler control cabinet risers;
  - E. Plumbing distribution systems including domestic cold, domestic hot and recirculation systems, sanitary and storm water drainage system risers;
  - F. Air handling and air distribution systems including exhaust;
  - G. Controls;
  - H. Pneumatic tube system;
  - I. Zoning diagrams showing zoning for standpipe, sprinkler systems and air distribution systems;
- (f) Electrical Design Response
- (i) General design approach to electrical systems including redundancy, equipment selection, sustainability, etc. with specific references to the Output Specifications. Describe the electrical services to be provided and include details of:
    - A. Power distribution and maximum demand calculations for normal power, emergency power – including loads on the life safety branch – and UPS power;
    - B. The high-voltage switchboard in the new tower, type of new breakers being provided, and feeders;
    - C. Main step-down transformers serving the new tower and their sizing and redundancy parameters;
    - D. Low-voltage network including: type of switchgear proposed; type of breakers and trip units proposed; type of feeders and raceways proposed;
    - E. Standby and uninterrupted power supply requirements and distribution;
    - F. Wiring systems for patient treatment, identifying:
      - a. General and medical treatment areas;
      - b. Power monitoring systems;
      - c. Lighting control systems;

- d. Proposed wiring methodologies, routing, conduit types and cable tray;
- G. Fire alarm system, including details of fire alarm panels, detection and signaling devices. Provide a schematic riser diagram and describe proposed integration with other systems;
- H. Emergency evacuation and intercommunication systems, including details of master emergency control panel, zones, speakers and firefighters' handsets;
- I. Post-disaster provisions; and requirements;
- J. Concept for lighting control, interface with daylight harvesting, integrated bedside terminals, etc.;
- (ii) Provide single line and design drawings (1:150) and design documentation for electrical services and distribution, showing and describing:
  - A. Origin of supply(s);
  - B. Arrangements for service redundancy;
  - C. Main service switchgear and transformer locations, main electrical distribution room and main communication room;
  - D. Sub-electrical room locations and communication room locations; and
  - E. Position, size and capacity for emergency power, associated switchgear and transfer switches;
- (iii) Provide design drawings (1:200) and design documentation for lighting and power, showing and describing:
  - A. Lighting and controls, including proposed day lighting measures and energy management measures;
  - B. Proposed power monitoring systems;
  - C. Main single-line diagram showing sizes of all transformers, generators and distribution breakers, the proposed methodology of distribution, and the general arrangement methodology of supply to the Facility;
  - D. Typical room layouts (1:50) for each type of room for which room data sheets and drawings are required including:
    - a. OR;
    - b. Hybrid;

- c. Nurse station;
- d. CICU patient room;
- e. PACU bay;
- f. Patient room;
- g. Waiting areas;
- h. Washrooms;
- i. Lounge;
- j. Meeting rooms;
- k. Office; and
- l. Sterile core;

Showing location and type of all lighting, switching, receptacles and low-tension and communication. Indicate design illumination levels (including maintenance factors) for each area.

- E. Life safety system riser diagram including sequence of operation;
- F. Lighting control system diagram illustrating concept for lighting controls of exterior, typical rooms and public areas; and
- G. Lightning protection and grounding systems.

(g) Telecommunications Design Response

- (i) Provide a written statement describing the engineering design intent with respect to the following subjects. The statement should be organized as follows:
  - A. Describe the concept for telecommunications design, including fibre optic backbone;
  - B. Describe issues related to CAT6 certification in the various configurations required;
  - C. Describe issues related to security of various networks, and of various distinct users;
  - D. Describe issues related to wireless access points and the creation of wireless networks as per the Output Specifications;

- E. Describe the integration of various systems and how they will be interconnected to each other;
  - F. Describe the various systems (RTLS, Nurse Call etc.) with specific reference to the Output Specifications; and
  - G. Describe the procedure for integrating new systems to existing systems located in the existing building;
- (ii) For each of the following technology and communication systems, describe the system and associated scope, and the typical devices and functions for each area to be served. Describe any integration between each system and any others:
- A. Structured cabling (combined in the same drawing together with power layout);
  - B. Network equipment;
  - C. Telecom equipment;
  - D. Wireless infrastructure;
  - E. Wireless staff communications;
  - F. Nurse call;
  - G. Patient monitoring; and
  - H. Public address;
- (iii) Information Technology floor plans– scale 1:150, of every level including all telecommunications rooms, closets and distribution terminals and showing Telecommunications Backbones, Vertical and Horizontal Distribution Systems as well as routing of main feeds and associated shafts, risers, and IT closets;
- (iv) Provide documentation for both building network systems and BAS network systems with separate drawings showing:
- A. Origin of supply and interconnection with external services, including redundant service;
  - B. Proposed integration with wireless telephone systems;
  - C. Proposed call centre systems and layouts;
  - D. Proposed network diagram;
  - E. Proposed communication room layouts;



- F. Proposed network equipment layouts detailing interconnection details;
- G. Proposed network interface with other systems;
- H. Proposed connection to the WAN service; and
- I. Proposed connections to building and campus-based servers/server room;
- (v) For the proposed network systems set out above, provide:
  - A. Cut sheets of all proposed equipment; and
  - B. Provide a description of building data communication systems showing:
    - a. Location of all data gathering equipment, including file servers, computers; and
    - b. Relationship between data communications and all other items of equipment;
- (vi) In addition to the above data communication system drawings, describe the data communications services and how they will satisfy the needs of related services;
- (vii) Provide details of all standards proposed for supply, installation, testing and commissioning;
- (viii) Communications riser diagram indicating infrastructure for voice and data system;
- (h) Security Design Response
  - (i) Provide a written statement indicating how the proposed design meets the security requirements in the Output Specifications. Indicate how the circulation of the various users of the Facility will be accommodated utilizing a keyless building design and controlled within the building and on the Site, including:
    - A. General Public;
    - B. Students;
    - C. Administrative Staff;
    - D. Building operations staff;
    - E. Support Staff;
    - F. Nurses, doctors;

- G. Provide a threat and risk assessment and explain how that assessment has informed the design. Describe the approach that will be taken to developing a security master plan and an overview of what technologies will be considered to assist in implementing the master plan Electronic Security site and floor plans – scale 1:150, of each level including all equipment distribution rooms, closets and distribution terminals showing location of each electronic security device;
- (ii) Proposed detailed layout of control;
- (iii) Typical electrified portal diagrams – door elevations indicating hardware, devices, conduit, controllers, junction boxes, etc. and the relationship and integration of the work of various trades to ensure operability;
- (i) Lighting Design Requirements
  - (i) Provide a description of how the proposed design complies with the lighting design requirements included in the Output Specifications. Provide type(s) of lighting to be used, incorporating standards of design and exit lighting; and
  - (ii) Lighting Design floor plans– scale 1:150, of every level showing Lighting Design;
- (j) Response to Sustainability
  - (i) Project Co must submit a sustainability plan for the purposed design including the following submission documentation:
    - A. Provide a description of how the proposed design complies with the requirements included in the Toronto Green Development Standard, including the TGS checklist, including the status of each certification item;
    - B. Submit a narrative description of how Project Co intends on achieving the relevant prerequisite;
    - C. For each prerequisite that can only be documented during the construction or post-construction phase, submit a narrative description of the plan for achieving the relevant credit or prerequisite. As well submit a narrative description of proposed training and coordination of all team members to ensure successful implementation of the required design strategies;
    - D. For any sustainable design innovation proposed to be included in the design of the Facility, submit a narrative description identifying the intent of the proposed innovation, the proposed requirement for compliance, the proposed submittals to demonstrate compliance, and design approach (strategies) that might be used to meet the requirements;

- E. LEED® NC project checklist including the status of each credit for required Silver certification level, and the team members responsible for meeting each credit requirement LEED mission statement for the Project;
  - F. Confirmation on LEED point status and level;
  - G. Provide LEED Canada NC (latest version) project checklist provided by the Canada Green Building Council (CaGBC) with all credits annotated as to whether they are: Yes, ? or No. For those credits defined as Yes or ?, provide a description of how that credit will be obtained for this Project;
  - H. For each credit and prerequisite that can be documented during construction, submit a narrative description of the plan for achieving the relevant credit or prerequisite. As well submit a narrative description of proposed training and coordination of all team members to ensure successful implementation of the required design strategies and LEED® credit requirements; and
  - I. For each Innovation and Design Credit (IDc1.1 – Idc1.4) submit a narrative description identifying the intent of the proposed innovation Credit, the proposed requirement for compliance, the proposed submittals to demonstrate compliance, and design approach (strategies) that might be used to meet the requirements;
- (k) Miscellaneous Drawings
- (i) Provide any other documentation supporting the Project Co's submission.
- (l) Materials and Finishes
- (i) Provide material and finish sample boards of:
    - A. all exterior cladding and hard landscaping materials; and
    - B. interior finishes of all public spaces, circulation, and each programmatic Component/Element, where they differ from each other.
- (m) Barrier Free Accessibility Requirements Report
- (i) Provide an updated description of how the proposed design complies with the accessibility requirements included in the Output Specifications.
- (n) Code and Lifesafety Report
- (i) Provide an updated description of design response to the life safety and Building Code requirements including a full analysis of the occupant loads, exiting requirements, the building's fire resistance ratings, stair and corridor widths, washroom requirements. Provide a description of how the

Project is integrated into and affects Code considerations for the Facility as a whole;

(o) Acoustics and Vibration Design Response

- (i) Provide an updated report from an acoustical design specialist describing in detail how the acoustical requirements of the Output Specifications are proposed to be achieved and identifying measures proposed to control the sound environment both during construction and in the completed Project; and

(p) Signage and Wayfinding Design Response

- (i) Provide an updated written statement indicating how the proposed design meets the signage and wayfinding requirements in the Output Specifications.

**2. MINIMUM SUBMITTAL REQUIREMENTS FOR THE 75% DESIGN DEVELOPMENT STAGE**

Project Co shall provide the following Design Development Submittals to SMH for review and comment in accordance with this Schedule 10:

2.1. Design development documents in accordance with the requirements set forth in Section 11.1 of the Project Agreement, including:

(a) Site plan (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 entrance, including street lighting, sidewalks, 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 the Site, loading dock access and location, ambulance access, lay-by's, etc.

(b) 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 – fire-fighting;
- (v) Gas utilities;
- (vi) Hydro utilities;
- (vii) Steam servicing (Enwave); and
- (viii) Main communication trunk entrance points;
- (c) Typical Site and landscape details (prepared at 1:10 scale);
- (d) Whole facility floor plans (prepared at 1:500 scale) of every level, including basements, penthouses and roofs. Identify areas of renovation and building additions;
- (e) Architectural floor plans (prepared at 1:100 scale) of every level, including basements, penthouse(s) and roof(s), for the Tower and of each of the areas of renovation and building addition:
  - (i) All walls and partitions in actual thicknesses;
  - (ii) All program and non-program rooms/areas, colour-coded by component and numbered using the alphanumeric Room Codes (“**Room Codes**”) used in the Space Allocation Tables and Room Data Sheets in Part 2 of the Output Specifications;
  - (iii) List of additional rooms not previously identified with additional sequential Room Codes as required;
  - (iv) Doors, screens, glazing and windows;
  - (v) Location of 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;
  - (vi) All major equipment for the clinical areas for which architectural plan details have been prepared, coordinated with the updated Equipment List; and
  - (vii) 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;

- (f) Preliminary Space Development (prepared at 1:50 scale or 1:100 scale as appropriate with actual room areas, in net square feet (NSF) identified by individual room) for key clinical areas listed below:
  - A. Typical Acute Care Floor;
  - B. Medical/Surgical ICU;
  - C. Coronary Care ICU;
  - D. Peri-Operative Services – Surgical Suite;
  - E. Emergency Department;
  - F. Advanced Ambulatory Services – Infusions Centre;
  - G. Diagnostics Waiting Areas;
  - H. Pre-admission Facility;
  - I. Generic Ambulatory Clinic;
  - J. Typical Administrative suite;
- (g) 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 major equipment requirements in the clinical areas for which architectural plan details have been prepared; and
  - (v) Summary of preliminary structural loads;
- (h) 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;
  - (ii) Routing of main feeds and associated shafts and risers;
  - (iii) Single-line drawings for all services;
  - (iv) Preliminary sizing of equipment;

- (v) Chilled Water Schematics;
- (vi) Heating Schematics;
- (vii) Ventilation Schematics;
- (viii) Provisions for adaptability, flexibility and expandability, removal and replacement of building and medical systems and equipment;
- (ix) Provisions for any major equipment requirements in the clinical areas for which architectural plan details have been prepared;
- (x) Preliminary load estimates for storm and sanitary sewers, potable water supply, heating and cooling plants;
- (xi) Preliminary flow estimates for heating and cooling systems, air supply, return and exhaust systems;
- (xii) Preliminary plumbing fixture schedules; and
- (xiii) Preliminary estimate of annual energy use;
- (i) 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 equipment;
  - (ii) Routing of main feeds and associated shafts and risers;
  - (iii) Single-line drawings for all services;
  - (iv) Preliminary sizing of equipment;
  - (v) Preliminary electrical room layouts;
  - (vi) Preliminary lighting layouts; and
  - (vii) Preliminary load estimates;
- (j) Typical building sections (prepared at 1:100 scale) showing:
  - (i) Relative thickness of floors/walls, including differentiation between opaque and transparent walls;
  - (ii) Major floor elevations, including those below grade;
  - (iii) Finish grades, dotted lines through building section;
  - (iv) Relationship to Site contours and other important Site elements as shown in building elevation drawings; and

- (v) Major room names.
- (k) Detail building sections (prepared at 1:50 scale) through existing building additions;
- (l) Stair and elevator plans, sections and details (scales as appropriate);
- (m) Exterior elevations (prepared at 1:100) showing:
  - (i) Indication of cladding 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 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;
- (n) 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, and canopies;
- (o) Exterior wall sections (prepared at 1:50 scale);

Describe typical wall assemblies and indicate relationship of materials. Include annotation describing proposed wall assembly types;
- (p) Preliminary 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;
- (q) Interior elevations (prepared at 1:100) for public entrances and all other major public spaces, including New Main Lobby, Donnelly Lobby, Open/Interactive Space (Atrium), North/South Circulation Corridor, New Bond Lobby (and existing heritage lobby).
- (r) Preliminary door, window/glazing schedules;



- (s) Preliminary lighting design submittals;
  - (t) Preliminary security systems floor plan layouts;
  - (u) Preliminary 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 and key elevations;
  - (v) Preliminary single line audio/visual distribution diagrams;
  - (w) Preliminary single line information technology distribution diagrams;
- 2.2. Construction specifications related to exterior building envelope identifying all systems, materials, and construction execution methods proposed to be used in the Project;
- 2.3. Design packages for proposed full scale mock-ups with all specified finishes and equipment, in accordance with the SMH design requirements, including fully resolved construction details and methods, for the spaces listed below. Design packages to be prepared and submitted in BIM format (Revit 2013 or later):
- (a) Typical Acute Care Patient Room;
  - (b) Typical Acute Care Airborne Isolation Room (“**AIR**”);
  - (c) Typical MSICU Patient Room;
  - (d) Typical CICU Patient Room;
  - (e) Typical MISCU/CICU AIR Room;
  - (f) Typical Hybrid Operating Suite, complete with interoperable MRI;
  - (g) Typical PACU bay;
  - (h) Typical Examination Room (Generic Ambulatory Clinic);
  - (i) Typical Treatment Room (Emergency Department);
  - (j) Typical Treatment Room (Emergency Department Mental Health);
  - (k) Trauma Room (Emergency Department);
- 2.4. 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 2 of the Output Specifications, in particular, the Clinical Functionality requirements of the key clinical areas listed in Section 1.1(a) of this Appendix A. As a minimum, the following components shall form part of the Clinical Functionality Report:
- (a) Space Reconciliation Table including net and component gross comparison to the space tables contained in Part 2 (Whole Clinical Statement) of the Output

- Specifications (net areas to be +/- 10% compared with the space tables, component gross areas to be +/- 5%);
- (b) Circulation diagrams illustrating proposed intra- and inter-departmental routes for patient access/transport, visitors, staff and supplies;
  - (c) Zoning Diagrams illustrating strategies (physical, visual cues, etc) for creating distinct zones for patients, families and staff (including hand-washing) within individual rooms and /or within the department as applicable;
  - (d) Infection Prevention and Control Diagrams illustrating locations of AIR access to AIRs, strategies for separating clean and soiled flows, handwashing/hand hygiene stations, personal protective equipment accommodations, etc.;
  - (e) Pandemic Planning Diagrams illustrating how each program or department, as well as the overall facility, will operate during an outbreak situation;
  - (f) Surge Capacity Diagrams illustrating the degree to which each program is safely and efficiently able to accommodate an increased number of patients within the space; and
  - (g) Security Planning Diagrams (i.e. illustrating strategies for controlling access to each program area/department, maximizing staff ability for visual oversight through clear sightlines and eliminating blind spots., CCTV camera points, etc.);
- 2.5. Updated Construction Quality Plan;
- 2.6. Updated Phasing Plan (phasing and construction implementation analysis), including demolition, construction, decanting and occupancy;
- 2.7. Updated approvals strategy coordinated with the Phasing Plan;
- 2.8. Comprehensive acoustical and vibration control report reviewing all proposed assemblies, acoustical conditions, and noise and vibration control measures;
- 2.9. Environmental services design report;
- 2.10. Vertical transportation analysis, reviewing vertical transportation strategy with reference to service volumes, flow, and security considerations;
- 2.11. *Ontario Building Code* and *Ontarians with Disabilities Act* analysis and compliance strategy and accessibility measures report;
- 2.12. 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 the Space Program described in the Output Specifications;

- (c) Lists mechanical and electrical spaces outside of departmental areas;
  - (d) Utilizes the alphanumeric Room Codes used in the Space Allocation Tables and Room Data Sheets in Part 2 of the Output Specifications; and
  - (e) Lists additional rooms not previously identified with additional sequential Room Codes as required.
- 2.13. Preliminary micro-climate report to confirm that the findings and anticipated conditions are consistent with the micro-climate studies based on the Indicative 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; and
- 2.14. Follow-up to LEED registration with CaGBC, and LEED credits tracking documentation.

### **3. MINIMUM SUBMITTAL REQUIREMENTS FOR THE 100% DESIGN DEVELOPMENT STAGE**

Project Co shall provide the following updated Design Development Submittals to SMH for review and comment in accordance with this Schedule 10:

- 3.1. Updated design development documents in accordance with the requirements set forth in Section 11.1 of this Project Agreement including:
- (a) Updated Site plan (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 and augmented Site and landscape details (prepared at 1:10 scale).
  - (d) Updated whole Facility plans (prepared at 1:500 scale) showing all previously listed requirements.
  - (e) 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 finishes;
  - (vi) Floor elevations; and
  - (vii) Capacity information (number of beds, seating, etc.).
- (f) Updated enlarged architectural plan, details (prepared at 1:50 scale) for key clinical and other areas including all previously listed areas at 1.1 (e) public entrances and all other major public spaces.
- (g) Interior design – (prepared at 1: 50 scale).

Provide sections and elevations, indicating development of interior design intent and showing architectural features and construction assemblies, including:

- (i) New main lobby; Donnelly lobby; open interactive space and atrium and associated seating areas; north/south circulation path; new Bond Lobby and existing historic lobby; emergency entrance, triage and waiting areas; and
  - (ii) One (1) conference room; patient family waiting room; admitting waiting area.
- (h) Interior Plan and Section Details – (prepared at 1:10 scale).

Provide detail plans, sections and elevations of feature elements, including:

- (i) New main lobby; Donnelly lobby; open interactive space and atrium and associated seating areas; north/south circulation path; new Bond Lobby and existing historic lobby; emergency entrance, triage and waiting areas; and
  - (ii) Representative wall sections at spaces adjacent to the atrium; guardrails; atrium skylight.
- (i) Stair and elevator plans, sections and details (scales as appropriate).
- (j) 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.

- (k) Updated mechanical floor plans (prepared at 1:100 scale) of every level, both new construction and renovation, including penthouse(s) and roof(s), showing all previously listed requirements for both new construction and areas of renovation 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) Preliminary interior building section details coordinating and confirming preliminary fit of structural/electrical/mechanical;
  - (iii) Updated provisions for any equipment requirements;
  - (iv) Updated load estimates for storm and sanitary sewers, potable water supply, heating and cooling plants;
  - (v) Updated 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.
- (l) Updated electrical floor plans (prepared at 1:100 scale) of every level, both new construction and renovation, including penthouse(s) and roof(s), showing all previously listed requirements for both new construction and renovations and:
  - (i) 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) Preliminary interior building section details coordinating and confirming preliminary fit of structural/electrical/mechanical;
  - (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) Finalized load estimates.
- (m) Reflected ceiling plans (prepared at 1:100 scale) for all levels mechanical penthouse, showing all typical rooms and special interest areas with location of major components shown.
- (n) Updated building sections (prepared at 1:100 scale) showing all previously listed requirements and preliminary ceiling space coordination diagram(s).

- (o) Updated detail building sections (prepared at 1:50 scale) showing all previously listed requirements and preliminary ceiling space coordination diagram(s).
- (p) 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.
- (q) Updated stair, elevator and escalator plans, sections and details (scales as appropriate).
- (r) 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.
- (s) Updated interior elevations (prepared at 1:50) for all previously listed areas and:
  - A. Typical Acute Care Floor;
  - B. Medical/Surgical ICU;
  - C. Coronary Care ICU;
  - D. Peri-Operative Services – Surgical Suite;
  - E. Emergency Department;
  - F. Advanced Ambulatory Services – Infusions Centre;
  - G. Diagnostics Waiting Areas;
  - H. Pre-admission Facility;
  - I. Generic Ambulatory Clinic;
  - J. Typical Administrative suite; and
  - K. Security Office;
- (t) Interior Design – 1:10 scale.

Updated detail plans, sections and elevations of feature elements, including all items previously listed.
- (u) Preliminary interior finishes colour and materials selection boards and preliminary room finishes schedule.
- (v) Updated door, window/glazing and hardware schedules and preliminary hardware cut sheets. Identify separately new construction and all areas of renovation.
- (w) Updated lighting design submittals, including fixture cut sheets and illumination level analysis.

- (x) Updated security systems floor plans and equipment details, locations of all security systems equipment, connection points and control points.
  - (y) 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 as appropriate (1:10 or 1:20 scale, as appropriate).
  - (z) Updated and augmented audio/visual drawings and details.
  - (aa) Updated and augmented information technology drawings and details.
- 3.2. Updated construction specifications, identifying all systems, materials, and construction execution methods proposed to be used in the Project.
- 3.3. Report on review and adjustments of proposed mock-ups.
- 3.4. Updated Clinical Functionality Report, if there are any changes to the previous version, 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(a) of this Appendix A.
- 3.5. Updated building vibration analysis as it relates to relevant medical 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 SMH.
- 3.6. Preliminary medical 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 SMH.
- 3.8. Updated Phasing Plan (phasing and construction implementation analysis), including demolition, construction, decanting 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 SMH.
- 3.11. 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.
- 3.12. 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 SMH.

- 3.13. 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 SMH.
- 3.14. 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*.
- 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.
- 3.18. Outline Commissioning Program, indicating the commissioning plan for each Phase Commissioning Program, the Tower Interim Completion Commissioning Program and the Final Commissioning Program.
- 3.19. Completed full-size mock-ups for the spaces listed below, ready for review by SMH user groups.
  - (a) Typical Acute Care Patient Room;
  - (b) Typical Acute Care Airborne Isolation Room;
  - (c) Typical MSICU Patient Room;
  - (d) Typical CICU Patient Room;
  - (e) Typical MSICU/CICU AIR Room;
  - (f) Typical Operating Suite, interoperable MRI;
  - (g) Typical PACU bay;
  - (h) Typical Examination Room (Generic Ambulatory Clinic);
  - (i) Typical Treatment Room (Emergency Department);
  - (j) Typical Treatment Room (Emergency Department Mental Health); and
  - (k) Trauma Room (Emergency Department).
- 3.20. Mock ups must be full scale using materials that conform to materials specified, including work of all trades required to finish work and the placement of all In-Contact Equipment and Not-In-Contract Equipment. In addition, the installation of any furniture and/or accessories supplied by SMH but not otherwise part of the Works, must allow SMH to properly visualize the space and confirm clearances and operational parameters.
- 3.21. Any other Submittals required or requested by SMH, acting reasonably, in order to understand the Works.



**4. MINIMUM SUBMITTAL REQUIREMENTS FOR THE 50% CONSTRUCTION DOCUMENTS STAGE**

Project Co shall provide the following Construction Document Submittals to SMH for review and comment in accordance with this Schedule 10:

4.1. Updated construction documents in accordance with the requirements set forth in Section 11.1 of the Project Agreement including:

- (a) Updated Site plan (prepared at 1:500 scale) showing all previously listed requirements and planting schedule.
- (b) Updated Site servicing plan (prepared at 1:500) showing all previously listed requirements.
- (c) Updated and augmented Site and landscape details (prepared at 1:10 scale).
- (d) Whole facility plans (prepared at 1:500 scale) showing all previously listed requirements.
- (e) Architectural floor plans (prepared at 1:100 scale) of every department, including basements, penthouse(s) and roof(s), showing all previously listed requirements and:
  - (i) Layout of all spaces;
  - (ii) Fire and life safety plans;
  - (iii) Preliminary material symbols;
  - (iv) Door symbols;
  - (v) Glazed sidelight symbols;
  - (vi) Window types and numbers;
  - (vii) Floor material changes;
  - (viii) Pits, trenches, etc.;
  - (ix) Depressed floor for terrazzo, tile, etc.;
  - (x) Lead and other shielding indications;
  - (xi) Curbs for mechanical room penetrations;
  - (xii) Sump pits, gratings;
  - (xiii) Recessed mats;
  - (xiv) Expansion joints;

- (xv) Pipe trench;
- (xvi) Convectors;
- (xvii) Low partitions; and
- (xviii) Folding partitions.
- (f) Updated and augmented enlarged architectural plan details (prepared at 1:50 scale) for all areas required to explain the design intent.
- (g) 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.
- (h) Updated mechanical floor plans (prepared at 1:100 scale) of every level for both new and existing construction, including penthouse(s) and roof(s), showing all previously listed requirements and “in progress” drawings or reports, as applicable, illustrating:
  - (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) Chilled Water Schematics;
  - (vii) Heating Schematics;
  - (viii) Ventilation Schematics;
  - (ix) Supply air flow diagrams;
  - (x) Control schematics; and
  - (xi) Finalized estimate of annual energy use.
- (i) 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;
  - (ix) Preliminary control schematics; and
  - (x) Electrical details.
- (j) Updated reflected ceiling plans (prepared at 1:100 scale) for all areas, showing:
- (i) Light fixtures;
  - (ii) Grilles;
  - (iii) Diffusers;
  - (iv) Soffits (dotted);
  - (v) Folding partitions;
  - (vi) Cubicle tracks;
  - (vii) Curtain tracks;
  - (viii) Skylights;
  - (ix) Major structural members (if sight exposed);
  - (x) Surgical lights (dotted);
  - (xi) Patient lifts;
  - (xii) Other ceiling-mounted equipment;
  - (xiii) Hoods;
  - (xiv) Gas columns; and

- (xv) Room numbers.
- (k) 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.
- (l) 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 as appropriate.
- (m) Updated and augmented stair and elevator plans, sections and details (scales as required).
- (n) 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.
- (o) 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) Interior finishes;
  - (xii) Wall-mounted accessories; and
  - (xiii) Plumbing fixture foot controls, etc.
- (p) 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) Automatic sliding/swing door details;
  - (xiii) Expansion joint details;
  - (xiv) Typical partition construction;
  - (xv) Exhaust hood details; and
  - (xvi) Corner guard details.
  - (q) Preliminary room finish schedule.
  - (r) Updated door, window/glazing and hardware schedules and preliminary hardware cut sheets.
  - (s) Updated lighting design submittals, including fixture cut sheets.
  - (t) Updated and augmented security systems floor plans and equipment details.
  - (u) 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).
  - (v) Updated and augmented audio/visual drawings and details.
  - (w) Updated and augmented information technology drawings and details.
- 4.2. Updated construction specifications, including all previously listed requirements.
- 4.3. Report on review and adjustments of mock-ups.

- 4.4. Updated Clinical Functionality Report as appropriate, 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(a) of this Appendix A.
- 4.5. Updated building vibration analysis as it relates to relevant medical 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 SMH.
- 4.6. Updated medical equipment procurement and coordination plan and equipment list.
- 4.7. 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 SMH.
- 4.8. Updated Phasing Plan (phasing and construction implementation analysis), including demolition, construction, decanting and occupancy.
- 4.9. Updated approvals strategy coordinated with the Phasing Plan.
- 4.10. 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 SMH.
- 4.11. 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 SMH.
- 4.12. 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 SMH.
- 4.13. Updated *Ontario Building Code* and *Ontarians with Disabilities Act* analysis and compliance strategy.
- 4.14. Updated wayfinding and signage standards, design, layout and specifications for materials and installation, including detail drawings of typical conditions.
- 4.15. Updated Space Program, including all previously listed requirements.
- 4.16. Report on review and adjustments of micro-climate report.
- 4.17. Progress report on LEED credits tracking documentation.
- 4.18. Updated Outline Commissioning Program indicating the commissioning plan for each Phase Commissioning Program, the Tower Interim Completion Commissioning Program and the Final Commissioning Program.
- 4.19. BIM model in native format, in accordance with the BIM requirements and approved BIM Execution Plan as outlined in the Output Specifications, for both new construction and renovations.

4.20. Any other Submittals required or requested by SMH, acting reasonably, in order to understand the Works.

**5. MINIMUM SUBMITTAL REQUIREMENTS FOR THE 100% CONSTRUCTION DOCUMENTS STAGE**

Project Co shall provide the following Construction Document Submittals to SMH for review and comment in accordance with this Schedule 10:

5.1. Updated construction documents in accordance with the requirements set forth in Section 11.1 of the Project Agreement including all previously listed requirements and:

- (a) Whole Facility floor plans (prepared at 1:500 scale) of every level including basements, penthouse(s) and roof(s) indicating all areas of renovation and building addition.
- (b) 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) Material symbols;
  - (iii) Furring notes; and
  - (iv) Hatch walls and partitions.
- (c) Updated and augmented enlarged architectural plan details (prepared at 1:50 scale) for all areas required to explain the design intent.
- (d) Updated structural floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements.
- (e) Updated mechanical floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements.
- (f) Updated electrical floor plans (prepared at 1:100 scale) of every level, including penthouse(s) and roof(s), showing all previously listed requirements.
- (g) Updated reflected ceiling plans (prepared at 1:100 scale) for all areas, showing all previously listed requirements and:
  - (i) Heat detectors;
  - (ii) Smoke detectors;
  - (iii) Exit signs;
  - (iv) Access panels; and



- (v) Hatches.
  - (h) Updated building sections (prepared at 1:100 scale) showing all previously listed requirements.
  - (i) 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 as appropriate.
  - (j) Updated and augmented stair and elevator plans, sections and details (scales as required).
  - (k) Updated exterior elevations (prepared at 1:100) showing all previously listed requirements.
  - (l) Updated interior elevations (prepared at 1:50) for all previously listed areas and showing all previously listed requirements and:
    - (i) Equipment; and
    - (ii) Electrical receptacles, speakers, clocks, light fixtures, etc.
  - (m) Interior details (scaled as appropriate) showing all previously listed requirements and:
    - (i) Pass-windows; and
    - (ii) Supports – patient lifts.
  - (n) Updated room finish schedule.
  - (o) Updated door, window/glazing and hardware schedules and hardware cut sheets.
  - (p) 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).
  - (q) Updated and augmented audio/visual drawings and details.
  - (r) Updated and augmented information technology drawings and details.
- 5.2. Updated construction specifications, including all previously listed requirements.
- 5.3. Updated building vibration analysis as it relates to relevant medical 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 SMH.
- 5.4. Updated medical equipment procurement and coordination plan and equipment list.

- 5.5. 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 SMH.
- 5.6. Updated Phasing Plan (phasing and construction implementation analysis), including demolition, construction, decanting and occupancy.
- 5.7. Updated Approvals Strategy coordinated with the Phasing Plan.
- 5.8. 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 SMH.
- 5.9. 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 SMH.
- 5.10. 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 SMH.
- 5.11. Updated Ontario Building Code and Ontarians with Disabilities Act analysis and compliance strategy.
- 5.12. Updated wayfinding and signage standards, design, layout and specifications for materials and installation, including detail drawings of typical conditions.
- 5.13. Updated Space Program, including all previously listed requirements.
- 5.14. Report on review and adjustments of micro-climate report.
- 5.15. Progress report on LEED credits tracking documentation.
- 5.16. Updated Outline Commissioning Program indicating the commissioning plan for each Phase Commissioning Program, the Tower Interim Completion Commissioning Program and the Final Commissioning Program.
- 5.17. BIM model in native format, in accordance with the BIM requirements and approved BIM Execution Plan as outlined in the Output Specifications, for both new construction and renovations.
- 5.18. Any other Submittals required or requested by SMH, acting reasonably, in order to understand the Works.

## **6. PHASED DEVELOPMENT OF DESIGN SUBMISSIONS**

- 6.1. In recognition of the phased approach to the project construction and the requirements of Site clearing and enabling works, the development of design submissions will follow a similar phased approach, based on the project phases numbered 1-3 contained in Part 3.9 of the Output Specifications. Submission of Design Documents shall be as follows:

(a) **Design Submission #1**

- (i) Phase 1 projects: 100% Design Development; and
- (ii) Phase 2 and 3 projects: 50% Design Development.

Note that it is expected that this Design Submission will be completed and submitted immediately following Financial Close.

(b) **Design Submission #2**

- (i) Phase 1 projects: 100% Construction Documents; and
- (ii) Phase 2 and 3 projects: 75% Design Development documents.

(c) **Design Submission #3**

- (i) Phase 4 projects: 50% DD; and
- (ii) Phase 2 and 3 projects: 100% Design Development documents.

(d) **Design Submission #4**

- (i) Phase 4 projects: 100% DD; and

(e) **Design Submission #5**

- (i) Phase 4 projects: 50% CD
- (ii) Phase 2 and 3 projects: 50% CD.

(f) **Design Submission #6**

- (i) Phase 4 projects: 100% CD
- (ii) Phase 2 and 3 projects: 100% CD.

## **7. MINIMUM SUBMITTAL REQUIREMENTS FOR THE CONSTRUCTION STAGE**

Project Co shall provide the following Construction Document Submittals to SMH for review and comment in accordance with this Schedule 10:

7.1. The Works Schedule in electronic native file format, which must be updated monthly by Project Co and show the complete sequence of construction by activity, identifying Works of separate stages and other logically grouped activities, and indicate the:

- (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) a graphical comparison of the new start and finish dates for activities and events (including Works Milestones) in the Works Schedule with those in the last approved version of the Works Schedule;
- (e) changes occurring since the previous submission of the Works Schedule, including:
  - (i) the addition or deletion of activity relationships;
  - (ii) the addition or deletion of activities;
  - (iii) changes to activity durations;
  - (iv) changes to milestone dates, including to the Works Milestones;
  - (v) other identifiable changes; and
- (f) 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.

7.2. Shop Drawings and samples which will be processed by SMH 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) All in-contract medical equipment;
- (c) Security systems;
- (d) Signage and wayfinding systems;
- (e) Architectural feature elements and assemblies such as handrails, guardrails, feature stairs, canopies, etc.
- (f) Pharmacy medication systems;
- (g) All major mechanical equipment and systems; and
- (h) All major electrical equipment and systems, electrical coordination study and arc flash study.

- 7.3. All review comments from submissions to building authorities, insurance authorities and inspection authorities.
- 7.4. Progress photographs, updated monthly, from four vantage points, locations to be determined by SMH and/or the SMH Representative.
- 7.5. 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 glass cladding or other cladding components;
  - (c) Sunshading devices (fins, louvers etc.);
  - (d) Handrails or guardrails in public spaces; and
  - (e) Significant feature elements, such as convenience stairs and escalators.
- 7.6. 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 medical equipment and furniture, unless otherwise specified, supplied by owner.
- 7.7. Testing and inspection reports.
- 7.8. Project Co proposed substitutions.
- 7.9. Deficiency reports, updated monthly.
- 7.10. Draft of Phase Commissioning Program.
- 7.11. Draft of the Tower Interim Completion Commissioning Program.
- 7.12. Draft of Final Commissioning Program.
- 7.13. Draft Scheduled Maintenance Plan.
- 7.14. Revised Lifecycle Replacement Schedule.
- 7.15. Draft Thirty Year Maintenance Plan.
- 7.16. Phase Commissioning Program.
- 7.17. Tower Interim Completion Commissioning Program.
- 7.18. Final Commissioning Plan.
- 7.19. Phase Completion Certificate.

- 7.20. Tower Interim Completion Certificate.
- 7.21. Substantial Completion Certificate.
- 7.22. Any other Submittals required or requested by SMH, acting reasonably, in order to understand the Works.

## **8. OTHER WORKS DOCUMENTS OR SUBMITTALS**

- 8.1. If Project Co provides SMH with a document or submittal in respect of the Works that is not listed in this Appendix A (except as Project Co is otherwise required to provide pursuant to the Project Agreement or at the request of SMH), then such document or submittal shall not constitute a "Works Submittal" as defined in Section 1 of this Schedule 10 – Review Procedure. SMH may in its discretion, in respect of such document or submittal, respond to or review all or any part of such document or submittal, including pursuant to the procedure set out in Schedule 10 – Review Procedure.

## **9. SUBMISSION READINESS MEETINGS**

- 9.1. No fewer than 10 days prior to the scheduled date of the submission of each Works Submittal, the Project Co Representative shall meet with the SMH Representative and representatives from IO and the PDC Team to review the progress and validate the content of the Works Submittal scheduled to be submitted. The SMH Representative, acting reasonably, may adjust the date of the scheduled submission of the Works Submittal if, in the reasonable opinion of the SMH Representative, such Works Submittal does not or is unlikely to not meet the requirements of the Project Agreement by the date it is scheduled to be submitted.

**SCHEDULE 11**

**DESIGN QUALITY PLAN AND CONSTRUCTION QUALITY PLAN**

**[REDACTED]**

**SCHEDULE 12**

**FORM OF PERFORMANCE GUARANTEE OF CONSTRUCTION GUARANTOR**

**THIS GUARANTEE** is made as of the \_\_\_\_ day of January, 2015.

**BETWEEN:**

**ST. MICHAEL'S HOSPITAL**, a non-share capital corporation incorporated under the laws of Ontario

("SMH")

**AND:**

**BONDFIELD CONSTRUCTION COMPANY LIMITED**, a corporation incorporated under the laws of the Province of Ontario

("Construction Guarantor")

**WHEREAS:**

- A. SMH and 2442931 Ontario Inc., [REDACTED] ("**Project Co**") have entered into a project agreement dated as of the \_\_\_\_ day of January, 2015 (which agreement, including the schedules thereto, as the same may be amended, modified, restated, supplemented or replaced, from time to time, is hereinafter called the "**Project Agreement**").
- B. As an inducement to SMH to enter the Project Agreement with Project Co, Construction Guarantor has agreed to absolutely, unconditionally and irrevocably guarantee to SMH, as a direct obligation, the full and prompt performance and observance by Project Co of each and every covenant, agreement, undertaking and obligation of Project Co contained in the Project Agreement with respect to the Design and Construction Work (as such term is defined in Section 1.1(c) of this Guarantee), and in furtherance thereof has agreed to enter into this Guarantee.

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

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

- (a) Unless otherwise defined herein, all capitalized terms will have the meanings ascribed to them in the Project Agreement.



- (b) Unless otherwise expressly provided herein, this Guarantee shall be interpreted in accordance with Schedule 1 – Definitions and Interpretation of the Project Agreement.
- (c) For the purpose of this Guarantee, the term “**Design and Construction Work**” means:
  - (i) subject to Section 1.1(c)(ii) below, all of Project Co’s covenants, obligations and activities with respect to the Works pursuant to the Project Agreement, and including, for certainty:
    - (A) all of Project Co’s covenants, obligations and activities pursuant to Sections 11.14 (Defective Works), 11.15 (Warranty Obligations), 11.16 (Prompt Repair of Warranty Work), 22.4(d) (LEED Silver Rating) and 22.7 (Energy Matters) of the Project Agreement; and
    - (B) Project Co’s representations and warranties contained in Article 6 of the Project Agreement, except for:
      - (1) Section 6.1(a), which for the purposes of this Guarantee shall be amended by replacing “Project Co Event of Default” with “Project Co Construction Event of Default” as such term is defined in Schedule 1 to the Project Agreement, and
      - (2) Section 6.1(a)(xx), which for the purposes of this Guarantee shall be excluded from the definition of “Design and Construction Work” in accordance with Section 1.1(c)(ii)(5) below;
  - (ii) for the purpose of this Section 1.1(c), the term “Design and Construction Work” shall be deemed not to include any of the following covenants, obligations or activities of Project Co under the Project Agreement (including the delivery of any executed originals of the documents referred to below):
    - (1) any covenant, agreement, undertaking or obligation related to the Financing or the Cost of the Financing;
    - (2) the recitals to the Project Agreement;
    - (3) Article 2;
    - (4) Sections 4.2, 4.3, 4.4 and 4.9;

- (5) Section 6.1(a)(xx);
- (6) Sections 8.3 and 8.4;
- (7) Section 34.1(a)(iv);
- (8) Sections 47.3(c) and (d);
- (9) Article 49;
- (10) Schedule 2 – Completion Documents;
- (11) Schedule 4 – Lenders' Direct Agreement;
- (12) any of Project Co's obligations under Schedule 5 – Construction Contractor's Direct Agreement;
- (13) Schedule 7 – Subcontractor's Direct Agreement;
- (14) Schedule 12 – Performance Guarantee of Construction Guarantor;
- (15) Schedule 23 – Compensation on Termination;
- (16) Schedule 24 – Financial Model;
- (17) Schedule 28 – Standby Letter of Credit; or
- (18) Schedule 31 – Project Co Information.

## **1.2 Survival**

This Guarantee shall survive the termination or other expiry of the Project Agreement.

## **2. GUARANTEE**

### **2.1 Guarantee**

- (a) Construction Guarantor does hereby absolutely, unconditionally and irrevocably guarantee to SMH, as a direct obligation, the full and prompt performance and observance by Project Co of each and every covenant, agreement, undertaking and obligation of Project Co contained in the Project Agreement with respect to the Design and Construction Work (collectively, the “**Guaranteed Obligations**”), and for greater certainty the Guaranteed Obligations do not include any covenants, agreements, undertakings and obligations of Project Co under the Project Agreement which are not expressly defined in this Section 2.1(a).

- (b) Notwithstanding any other provision of this Guarantee, the Construction Guarantor's undertakings and obligations are derivative of and not in excess of Project Co's obligations under the Project Agreement and Construction Guarantor retains all rights, claims, defences and limitations of liability possessed by Project Co under the terms of the Project Agreement or arising from the Parties' performance or failure to perform thereunder and shall be entitled to assert any contractual defences that would have been available to Project Co, including, for greater certainty, that the alleged non-performance or non-observance by Project Co of the Guaranteed Obligations arises out of or is a result of a SMH Event of Default as set out in section 35.1(a) of the Project Agreement.

## **2.2 General Provisions Relating to the Guarantee**

- (a) Each and every default in performance or observance of any of the Guaranteed Obligations by Project Co shall give rise to a separate claim and cause of action hereunder, and separate claims or suits may be made and brought, as the case may be, hereunder as each such default occurs.
- (b) The Guarantee herein provided for shall be a continuing, absolute and unconditional guarantee of performance and observance of the Guaranteed Obligations and shall remain in full force and effect until each and all of the Guaranteed Obligations shall have been fully and satisfactorily discharged in accordance with the terms and provisions of the Project Agreement and Construction Guarantor shall have fully and satisfactorily discharged all of its obligations under this Guarantee.
- (c) The liability of Construction Guarantor hereunder shall remain in full force and effect irrespective of and shall in no way be affected or impaired by (and no notice to Construction Guarantor shall be required in respect of):
- (i) any compromise, waiver, renewal, extension, indulgence, amendment, addition, deletion, change in, modification of, or release of any security (including any other guarantee, letter of credit or bond) for or in respect of any of the Guaranteed Obligations;
  - (ii) any amalgamation, merger or consolidation of Project Co or Construction Guarantor or any sale, lease or transfer of any of the assets of Project Co or Construction Guarantor;
  - (iii) any Change in Ownership of Project Co or Construction Guarantor;
  - (iv) the termination or other expiry of the Project Agreement;
  - (v) any Delay Event (it being acknowledged, however, that the performance of the Guaranteed Obligations shall be extended accordingly);

- (vi) any change in the financial condition of Project Co or Construction Guarantor;
  - (vii) any Project Co Event of Default described in Section 34.1(a)(i) of the Project Agreement, or any resulting release, stay or discharge of any Guaranteed Obligation;
  - (viii) any lack or limitation of power, incapacity or disability on the part of Project Co or any other irregularity, defect or informality on the part of Project Co with respect to the Guaranteed Obligations;
  - (ix) any provision of any laws, statutes, rules or regulations of general application in relation to suretyship or any other circumstance that might constitute, under law generally applicable to suretyship, a defence available to, or a discharge of, Construction Guarantor in respect of the Guaranteed Obligations or this Guarantee;
  - (x) the exercise of any rights under the Lending Agreements, including the right of Lenders to cure any Project Co Event of Default by or on behalf of Project Co hereunder and/or to assume the obligations of Project Co and complete the Design and Construction Work in the manner provided in the Project Agreement;
  - (xi) the assignment by SMH in accordance with the provisions of Section 47.2 of the Project Agreement; or
  - (xii) any other occurrence or circumstance whatsoever, whether similar or dissimilar to the foregoing that, under law generally applicable to suretyship, might otherwise constitute a legal or equitable defence or discharge of the liabilities of a guarantor or surety that might otherwise limit recourse against Construction Guarantor.
- (d) The obligations and liabilities of Construction Guarantor hereunder shall not be impaired, diminished, abated or otherwise affected by the commencement by or against Project Co or Construction Guarantor of any proceedings under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extension or other similar laws.
- (e) SMH shall not be bound to exhaust its recourse against Project Co or others or any securities (including the Security described in Schedule 25 of the Project Agreement) or other guarantees it may at any time hold before being entitled to performance of the Guaranteed Obligations by the Construction Guarantor and Construction Guarantor renounces all benefits of discussion and division.

- (f) It is the intent and purpose hereof that Construction Guarantor shall not be entitled to and does hereby waive any and all defences which are, under law generally applicable to suretyship, available to a guarantor, sureties and other secondary parties at law or in equity. Without limiting the generality of the foregoing, Construction Guarantor hereby waives notice of acceptance of this Guarantee and of the non-performance by Project Co, diligence, presentment, protest, dishonour, demand for performance from SMH and notice of non-performance or failure to perform on the part of Project Co and all other notices whatsoever. The Guarantee hereunder is a guarantee of performance and compliance. In order to hold Construction Guarantor liable hereunder, there shall be no obligation on the part of SMH at any time to demand or resort for performance to Project Co, its properties or assets or to any security, property or other rights or remedies whatsoever, nor shall there be any requirement that Project Co be joined as a party to any proceeding for the enforcement of any provision of this Guarantee and SMH shall have the right to enforce the provisions of this Guarantee irrespective of whether or not legal proceedings or other enforcement efforts against Project Co are pending, seeking resort to or realization upon or from any of the foregoing. Without limiting the foregoing, it is understood that repeated and successive demands may be made and recoveries may be had hereunder as and when from time to time, Project Co shall default under or with respect to any of the Guaranteed Obligations, and that, notwithstanding recovery hereunder for or in respect of any such default, the Guarantee herein shall remain in full force and effect unamended and shall apply to each and every subsequent default.
- (g) Without prejudice to and without releasing, discharging, limiting or otherwise affecting in whole or in part the obligations and liabilities of Construction Guarantor under this Guarantee and without in any way requiring the consent of or giving notice to Construction Guarantor, SMH may grant time, renewals, extensions, indulgences, releases and discharges to and accept compositions from or otherwise deal with Project Co and/or Construction Guarantor or others, including any other guarantor, as SMH may see fit and SMH may take, abstain from taking or perfecting, vary, exchange, renew, discharge, give up, realize on or otherwise deal with security and guarantees in such manner as SMH may see fit.
- (h) Neither an action or proceeding brought under this Guarantee regarding the Guaranteed Obligations nor any judgment or recovery in consequence of that action or proceeding operates as a bar or defence action or defence to any further action that may be brought under this Guarantee. Construction Guarantor acknowledges that, if judgment is granted on an action or proceeding commenced under this Guarantee, the obligations of Construction Guarantor to SMH do not merge with or end Construction Guarantor's obligations hereunder.

- (i) The liability of Construction Guarantor under this Guarantee shall arise forthwith after demand has been made in writing on Construction Guarantor.
- (j) Construction Guarantor agrees to pay to SMH any and all reasonable and direct out-of-pocket costs and expenses, including reasonable legal fees (on a substantial indemnity basis) incurred by it in connection with enforcing any of its rights hereunder.

### **3. REPRESENTATIONS AND WARRANTIES**

#### **3.1 Construction Guarantor Representations and Warranties**

- (a) Construction Guarantor represents and warrants to SMH that as of the date of this Guarantee:
  - (i) Construction Guarantor is a corporation incorporated and validly existing under the laws of the jurisdiction of its organization, is in good standing with the Ministry of Government Services of Ontario with respect to the filing of annual returns, and has all the requisite corporate power and authority to own, lease and operate its properties and assets, to carry on its business as it is currently being conducted, to enter into this Guarantee and the Ancillary Documents to which it is a party and to perform its obligations hereunder and thereunder;
  - (ii) Construction Guarantor has the requisite power, authority and capacity to execute and deliver and perform this Guarantee and the Ancillary Documents to which it is a party, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Guarantee and the Ancillary Documents to which it is a party to be done, executed, delivered or performed;
  - (iii) no steps or proceedings have been taken or are pending to supersede, repeal or amend its constating documents, articles or by-laws or any shareholders agreement in a manner that would materially impair or limit its ability to perform its obligations under this Guarantee or any of the Ancillary Documents to which it is party and such documents and agreements are in full force and effect as of the date hereof;
  - (iv) this Guarantee and the Ancillary Documents (when executed and delivered) to which Construction Guarantor is a party, have been duly authorized, executed, and delivered by Construction Guarantor and constitute legal, valid, and binding obligations of Construction Guarantor, enforceable against Construction Guarantor in accordance with their respective 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 authorization, execution, delivery and performance by Construction Guarantor of this Guarantee and the Ancillary Documents to which it is a party do not violate or conflict with, or constitute a default under:
  - (A) its constating or organizational documents or any unanimous shareholders agreement or similar rights agreement binding on Construction Guarantor;
  - (B) any Applicable Law; or
  - (C) any covenant, contract, instrument, 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) **[REDACTED]**;
- (vii) there are, to the knowledge of its senior management, no actions, suits, proceedings, or investigations pending or threatened against Construction Guarantor, 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 Construction Guarantor or in any impairment of its ability to perform its obligations under this Guarantee or any Ancillary Documents to which it is a party, and Construction Guarantor 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 would result in any such material adverse effect or impairment; and
- (viii) Construction Guarantor is able to meet its obligations as they generally become due.

## **4. NOTICES**

### **4.1 Notices to Parties**

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

If to SMH:

[REDACTED]

Fax No.: [REDACTED]

Attn: [REDACTED]

With a copy to the following addressees (which shall not constitute notice):

[REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to Construction Guarantor:

[REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

### **4.2 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 4.2.

### **4.3 Change of Address**

Either party to this Guarantee may, from time to time, change any of its contact information set forth in Section 4.1 by prior Notice to the other party, and such, change



shall be effective on the Business Day that next follows the recipient party's receipt of such Notice unless a later effective date is given in such Notice.

#### **4.4 Deemed Receipt of Notices**

- (a) Subject to Sections 4.4(b), (c) and (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 Article 4.
- (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.

#### **4.5 Service on SMH**

Where any Notice is required to be served on SMH, the obligation to serve such Notice shall be fulfilled by serving it on SMH in accordance with the provisions of this Article 4.

### **5. GENERAL**

#### **5.1 Amendments**

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

**5.2 Waiver**

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

**5.3 Entire Agreement**

Except where provided otherwise in this Guarantee, this Guarantee, together with the Project Agreement and the Ancillary Documents, constitute the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Guarantee, including the Request for Proposals.

**5.4 Severability**

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

**5.5 Enurement**

This Guarantee shall enure to the benefit of, and be binding on, SMH and Construction Guarantor and their respective permitted successors and assigns. This Guarantee may not be assigned by the Construction Guarantor.

## **5.6 Governing Law and Jurisdiction**

- (a) This Guarantee shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) Both parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

## **5.7 Cumulative Remedies**

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

## **5.8 Further Assurance**

Each party shall do all reasonable things, from time to time, and execute all reasonable further documents necessary to give full effect to this Guarantee.

## **5.9 Costs**

Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Guarantee.

## **5.10 Language of Agreement**

- (a) Each of the parties acknowledges having requested and being satisfied that this Guarantee and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en 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 Guarantee shall be in English.

## **5.11 Proof of Authority**

SMH and Construction Guarantor each reserve the right to require any person executing this Guarantee on behalf of the other party to provide proof, in a form acceptable to SMH

or Construction Guarantor, as applicable, that they have the requisite authority to execute this Guarantee on behalf of and to bind SMH or Construction Guarantor, as applicable.

**5.12 Counterparts**

This Guarantee may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all 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 the other party an original signed copy of this Guarantee which was so faxed.

**5.13 Joint and Several**

If Construction Guarantor is comprised of more than one person, then each such person shall be jointly and severally liable for the obligations and liabilities of Construction Guarantor hereunder.

**5.14 Copyright Notice**

The parties acknowledge that the Queen's Printer for Ontario is the exclusive owner of the copyright in the Project Agreement.

**[SIGNATURE PAGES IMMEDIATELY FOLLOW]**

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

**ST. MICHAEL'S HOSPITAL  
[REDACTED]**

**BONDFIELD CONSTRUCTION COMPANY  
LIMITED  
[REDACTED]**

**SCHEDULE 13**

**PROJECT CO PROPOSAL EXTRACTS**

**[REDACTED]**

**SCHEDULE 14**

**OUTLINE COMMISSIONING PROGRAM**

**[REDACTED]**

## **Form of Commissioning Plan**

**Commissioning Plan (*Template*)**

# **St. Michael's Hospital Redevelopment Project**

**Toronto, Ontario**



## Table of Contents

<b>Executive Summary.....</b>	<b>5</b>
<b>1 Overview.....</b>	<b>7</b>
1.1 Purpose and Objective .....	7
<b>2 Scope .....</b>	<b>7</b>
2.1 General Building Information.....	7
2.2 Commissioning Activities during Design, Construction and Post-Construction Phase.....	7
2.3 Development of Operational Capability .....	8
2.4 Post Occupancy Commissioning .....	8
2.5 Leadership in Energy and Environmental Design (LEED®).....	8
2.6 Building Information Model.....	8
2.7 Reference Standards.....	8
<b>3 Team and Organization.....</b>	<b>9</b>
3.1 Commissioning Organization.....	9
3.2 Project Team Data .....	9
<b>4 Roles and Responsibilities .....</b>	<b>9</b>
4.1 Commissioning Team .....	9
4.2 General Descriptions of Roles .....	9
<b>5 Commissioning and Transition Processes.....</b>	<b>10</b>
5.1 Commissioning- Base Building Systems & Equipment .....	10
5.2 Commissioning- Furniture, Fixtures & Equipment.....	11
5.3 Commissioning Sampling and Witnessing .....	11
5.4 Training.....	11
5.5 Progress Monitoring and Reporting .....	12
5.6 Document Submittal & Review .....	12
5.7 Coordination with SMH & PDC .....	12
5.8 Miscellaneous Management Protocols .....	12
5.9 Regulatory Approvals.....	12
<b>6 Work Products .....</b>	<b>13</b>
6.1 Commissioning Work Products.....	13
6.2 Furniture, Fixtures & Equipment Commissioning Work Products .....	14
<b>7 Meetings.....</b>	<b>14</b>
7.1 Commissioning Scoping Meeting .....	14
7.2 Regular Commissioning Meetings .....	14
7.3 Miscellaneous Meetings .....	14

**St. Michael's Hospital Redevelopment Project**

<b>8</b>	<b>Schedule and Completion .....</b>	<b>14</b>
8.1	<i>Commissioning Schedule .....</i>	<i>14</i>
8.2	<i>Phase Commissioning, Tower Interim Completion Commissioning, Substantial Completion Commissioning and Final Completion Commissioning .....</i>	<i>14</i>
<b>9</b>	<b>Final Commissioning Program Revisions .....</b>	<b>14</b>
9.1	<i>Program Development .....</i>	<i>14</i>
9.2	<i>Revision History .....</i>	<i>14</i>

**List of Appendices:**

- A. Commissioning Organizational Chart
- B. Systems to be Commissioned/Delivery Team Matrix  
NOTE: This matrix broadly denotes the commissioning responsibilities for all systems as defined in Schedule 14. (See sample attached)
- C. Project Team Contact Information
- D. Roles & Responsibilities Matrix
- E. Specification, Equipment & System Cross Reference Table
- F. System Integration Testing Matrix
- G. Architectural and Civil Testing
  - .1 Project Co- Design and Construction Quality Plan- Architectural Testing
  - .2 Consultant- Quality Plan- Civil Testing
- H. Hospital Equipment
  - .1 New Equipment
  - .2 Transfer Equipment
- I. Sample CPM Form
- J. Integrated Master Commissioning Schedule
- K. Post Occupancy Commissioning Schedule
- L. Training Matrix
- M. Glossary of Acronyms & Terms
- N. Integrated Communications Commissioning Plan

### **Purpose of Template**

The purpose of this Commissioning Plan Template is to assist Project Co in the development of a comprehensive commissioning program for the St. Michael's Hospital Redevelopment Project. It does not replace, amend, modify or supersede any portion of the Project Agreement ("PA") whatsoever. Project Co may elect not to use this template, however, it is recommended that Project Co follow the format provided in this template. Following this template does not relieve Project Co from any of its commissioning obligations in the PA.

Some sections have been fully assembled while others are only headings with *requirement prompts in italics* to permit flexibility for Project Co and the Project Co Commissioning Authority ("PCCA") to integrate their own methodology for achieving the project's commissioning requirements.

**St. Michael's Hospital Redevelopment Project**

---

***Executive Summary***

Hospital commissioning is a collaborative process which involves all the stakeholders, including the occupant, St. Michael's Hospital ("SMH"), IO, the PDC Team, the Independent Certifier, the facility engineering manager, the Design Team and the construction team. By extension, equipment manufacturers and suppliers are also involved. The commissioning program is led by the PCCA and provides documented confirmation that building systems function according to criteria set forth in the project drawings and specifications to satisfy SMH's operational needs. In addition to building systems, this program includes commissioning of specialty hospital systems such as, but not limited to: Nurse Call, RTLS System, Patient Wandering, Pneumatic Tube System, furniture, fixtures and equipment and hospital commissioning.

The St. Michael's Hospital Redevelopment Project is being delivered using a Design/Build/Finance ("DBF") model, a variant of the Design/Build/Finance/Maintain ("DBFM") model.

This will be the first hospital project delivered in Ontario without the maintenance component and as such presents unique risks for SMH. This commissioning plan template will encompass customized commissioning processes designed to mitigate these risks and successfully achieve the requirements of the PA, including but not limited to, those contained in PA Schedule 15 - Output Specifications and the "Owner's Project Requirements" ("OPR") as well as LEED certification as required in PA Schedule 15 - Output Specifications.

This Project will be completed in phases and this commissioning plan template will provide for a commissioning program for each phase which incorporates Phase Project Co Commissioning and allows for Phase SMH Commissioning. In addition to phase commissioning there will be the Tower Interim Completion Commissioning Program and the Final Commissioning Program. Due to the nature of this project and the requirement for temporary facilities and uses, it will be necessary to commission some parts of the Works more than once.

The commissioning process starts concurrent with the design phase and includes the creation of commissioning specifications and this commissioning plan template to provide guidance to Project Co. The process continues during the design phase and involves the following activities:

- review of the OPR and the Basis of Design ("BOD")
- review of design drawings during design development and again at or near issue for construction; reviewing contractor submittals ("**Shop Drawings**")
- further development of commissioning specifications for inclusion in the master specifications package

During the construction phase the following major activities will be performed:

- participation in focused commissioning meetings
- maintain the commissioning progress management form ("**CPM Form**") and provide input to the Commissioning Schedule
- witnessing/participating in selective equipment start-ups/ lab or factory testing

**St. Michael's Hospital Redevelopment Project**

---

- design, coordinate and conduct tests to rigorously challenge the equipment, the systems and the control sequences to confirm their functionality and performance
- reviewing contractor submittals (“**O&M Manuals**”)
- witnessing training program
- create the Systems Operating Manual (“**SOM**”)

Post construction activities include (but not limited to):

- follow-up testing as required to ensure that items of concern are resolved
- seasonal testing of mechanical systems
- Conduct of a near warrantee end review of the Facility and operation, prior to expiry of warrantee.

Project Co shall prepare a draft of the applicable Phase Commissioning Program in respect of each Phase Project Co Commissioning and Phase SMH Commissioning and shall provide a copy in accordance with the PA.

The Tower Interim Completion Commissioning Program in respect of the Tower Interim Completion Project Co Commissioning and the Tower Interim Completion SMH Commissioning and shall provide a copy in accordance with the PA.

The Final Commissioning Plan will be submitted for final review in accordance with the PA. Through meetings and discussions, all building systems and all procured equipment commissioning activities will be compiled as part of the Final Commissioning Program. This will result in the completion of an agreed Final Commissioning Program, which will then be integrated into the overall project schedule.

**St. Michael's Hospital Redevelopment Project**

---

**1 Overview**

*Clearly state a brief overview of the project.*

**1.1 Purpose and Objective**

*Clearly state Project Co and the PCCA commissioning as stated in the in the PA, Schedule 14 and the references included in Schedule 14.*

**2 Scope****2.1 General Building Information**

*Project Name:*

*Municipal Jurisdiction:*

*Building Type:*

*Building Floor Area:*

*Building Storeys:*

*Construction Period:*

**2.2 Commissioning Activities during Design, Construction and Post-Construction Phase**

*This plan shall provide for:*

- *Pre-commissioning (pre-commissioning is a testing process designed to ascertain the current or as-found condition of all existing equipment in order to assess its suitability to support phased and/or final operational requirements.)*
- *Phase SMH Commissioning*
- *Tower Interim Completion Project Co Commissioning*
- *Tower Interim Completion SMH Commissioning*
- *Project Co Commissioning*
- *SMH Commissioning*

**2.2.1 Commissioning During Design Phase**

*This section shall contain a broad statement of commissioning aims, methodology and activities to be conducted during the design phase.*

**2.2.2 Commissioning During Construction Phase**

*This section shall contain a broad statement of commissioning aims, methodology and activities to be conducted during the construction phase.*

**2.2.3 Commissioning During Post-Construction Phase**

*This section shall contain commissioning aims, methodology and activities to be conducted during the post-construction phase including seasonal performance testing process.*

**St. Michael's Hospital Redevelopment Project**

---

**2.3 Development of Operational Capability***2.3.1 Technical Information, O&M Manuals and SOM Manuals*

*This section shall list all the deliverables that Project Co must supply to SMH to support SMH's operational capability.*

*2.3.2 Maintenance Program*

*This section shall state how Project Co will fulfill its responsibilities with respect to the CMMS.*

*2.3.3 Training Program*

*This section broadly outlines the training scope and training groups in terms of operational capability. More details will be provided in section 5.4.*

**2.4 Post Occupancy Commissioning**

*The post-occupancy commissioning schedule is in Appendix K.*

**2.5 Leadership in Energy and Environmental Design (LEED®)**

*The project has been designed, and is intended to be constructed and certified in accordance with LEED Canada NC v1.1 Green Building Rating System. The target rating level for the Facility is LEED Silver.*

*Provide a list of prerequisites and credits being targeted under commissioning, including measurement and verification.*

*Provide the communications protocol which will be implemented to satisfy the requirements of LEED.*

**2.6 Building Information Model**

In accordance with the SMH's specifications for a building information model ("BIM"), Project Co will be responsible for providing a BIM detailing the Tower, the New Shuter Wing and areas of renovation. Project Co will also be responsible for adding asset information and preventative maintenance information into SMH's CMMS.

The model and Facility data for the commission, operations, and maintenance of the project shall satisfy the construction operations building information exchange ("COBIE") requirements, and be submitted in compliance with the commissioning requirements of Schedule 14 of the PA.

**2.7 Reference Standards**

*The commissioning process of each item of equipment and building system provided as part of the Works will meet the requirements established by the following standards:*

*(a) CAN/CSA Z8001-13 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; and*

*(d) CAN/CSA Z320-11 Building Commissioning.*

**St. Michael's Hospital Redevelopment Project**

*Measuring and recording instruments used on the project will be uniquely identified, recorded and supported by calibration certificates that evidence instrument accuracy at the time of instrument use.*

### **3 Team and Organization**

#### **3.1 Commissioning Organization**

*Provide an organization chart in Appendix A.*

*Provide a combined commissioning delivery matrix and commissioning roles matrix in Appendix B (SEE SAMPLE PROVIDED).*

#### **3.2 Project Team Data**

*Organization and representative contact information is provided in the project team contact information table presented in Appendix C.*

### **4 Roles and Responsibilities**

#### **4.1 Commissioning Team**

*See paragraph 4.1 of Schedule 14 of the PA.*

#### **4.2 General Descriptions of Roles**

<b>General descriptions of the commissioning roles are as follows:</b>	
<i>Project Co</i>	<i>Develop from PA (Schedule 14 and Output Specifications- Schedule 15)</i>
<i>Project Co Commissioning Authority</i>	<i>Develop from PA (Schedule 14 and Output Specifications- Schedule 15)</i>
<i>SMH</i>	<i>Develop from PA (Schedule 14 and Output Specifications- Schedule 15)</i>
<i>SMH engineering/facility staff</i>	<i>Develop from PA (Schedule 14 and Output Specifications- Schedule 15)</i>
<i>PDC Team</i>	<i>Develop from PA (Schedule 14 and Output Specifications- Schedule 15)</i>
<i>SMH Commissioning Consultant</i>	<i>Develop from PA (Schedule 14 and Output Specifications- Schedule 15)</i>
<i>Independent Certifier</i>	<i>Develop from PA (Schedule 14 and Output Specifications- Schedule 15)</i>
<i>Construction Contractor</i>	<i>Develop from PA (Schedule 14 and Output Specifications- Schedule 15)</i>
<i>Design Team</i>	<i>Develop from PA (Schedule 14 and Output Specifications- Schedule 15)</i>
<i>ICT systems, electronic building &amp; hospital systems, electrical, mechanical, architectural, civil and other trades</i>	<i>Develop from PA (Schedule 14 and Output Specifications- Schedule 15)</i>
<i>Manufacturer's Representative</i>	<i>Develop from PA (Schedule 14 and Output Specifications- Schedule 15)</i>



**St. Michael's Hospital Redevelopment Project**

---

*Provide approach to working with the SMH Commissioning Consultant  
List the responsibilities of the Commissioning Team and its members.*

## **5 Commissioning and Transition Processes**

### **5.1 Commissioning- Base Building Systems & Equipment**

*Commissioning activities commenced during the design phase of the project and have been underway since.*

*Project Co shall plan, schedule, coordinate and execute the commissioning of each item of equipment and building systems (as noted in paragraph 9 of Schedule 14 of the PA) provided as part of the Works and included in appendices of this document.*

*As a critical healthcare facility, a key focus of the commissioning program will be specialized integrated electronic, data, network, communication, clinical, security, audio visual system, master clock, and life safety systems.*

*All systems provided as part of Section 9 of Schedule 14 should be commissioned.*

*Project Co and PCCA shall develop test sheets based upon approved Shop Drawings and with sufficient rigor to challenge the equipment/system and the sequence of operations to confirm compliance with the contract documents and the OPR. Sample functional performance tests are attached.*

#### **5.1.1 Pre-functional Test Sheets**

#### **5.1.2 Start-up Plan**

#### **5.1.3 Functional System Test Sheets**

*Functional test scripts for mechanical systems will be based upon approved Shop Drawings and will contain clearly defined pass/fail criteria. Functional testing should include all input and output in the systems as well as all related administrative functions.*

#### **5.1.4 Execution of Pre-functional Test Sheets and Start-up**

#### **5.1.5 Pre-functional Checklist Deficiencies and Non-Conformance**

#### **5.1.6 Architectural and Specialty Equipment & System Checklists & Functional Test Forms**

#### **5.1.7 Specialty Hospital and Electronic System Checkout Plan**

#### **5.1.8 Execution of Functional Testing**

*See Appendix B for details. A sample matrix is included.*

*This matrix is equipment/system based and it lists the various commissioning activities and responsibilities.*

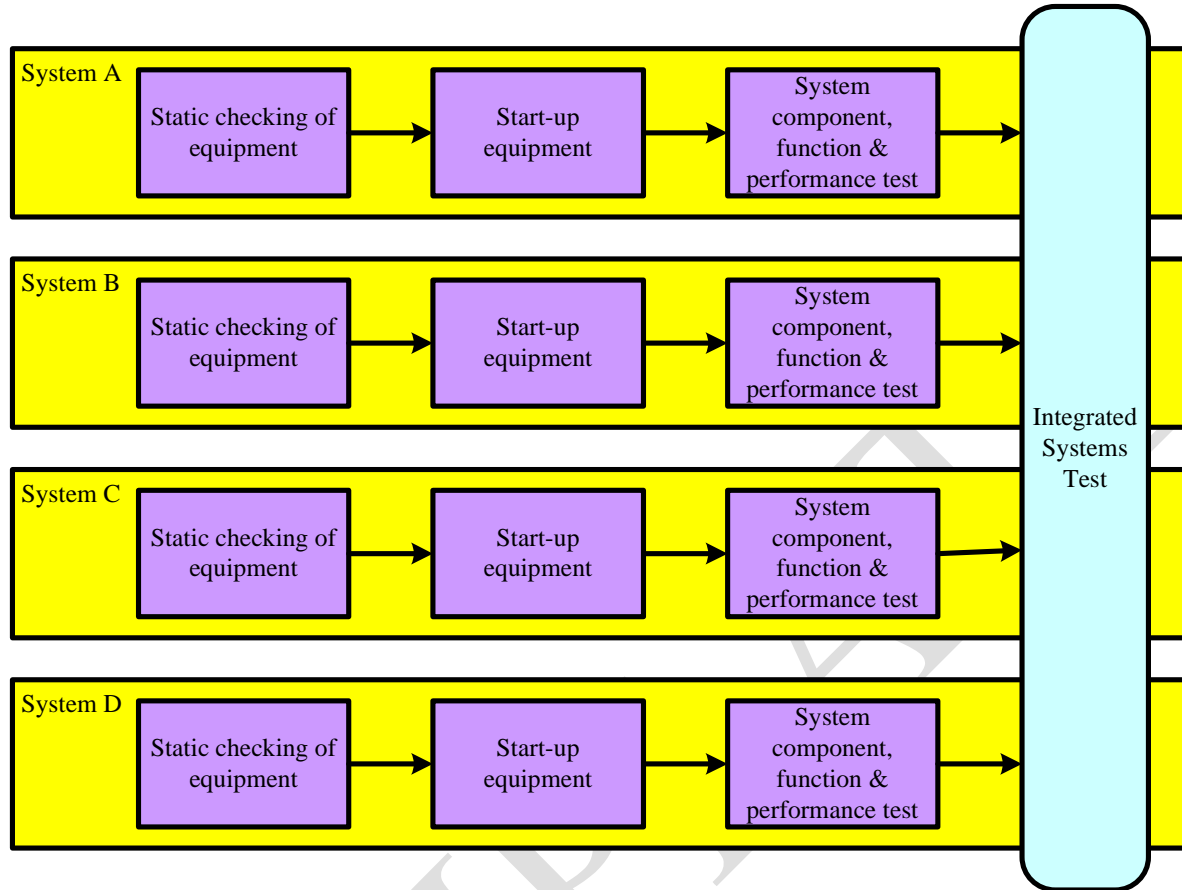
#### **5.1.9 Function System Test Deficiencies and Retesting**

#### **5.1.10 Integrated System Functional Performance Test Sheets**

*Figure 5.2 below provides a graphic depiction of the relationship between testing of elements and equipment within individual systems and subsequent testing of a group of integrated systems. Testing starts at the equipment/component level, then to the system level and integrated system*

**St. Michael's Hospital Redevelopment Project**

*level. Integration testing will not be attempted until all equipment/system testing has been successfully completed.*



**Figure 5.2 –Integrated Systems Commissioning Process**

## **5.2 Commissioning- Furniture, Fixtures & Equipment**

*This section should describe the methodology, responsibility and documentation to be generated to verify the commissioning of furniture, fixture & equipment.*

## **5.3 Commissioning Sampling and Witnessing**

### **5.3.1 Commissioning Sampling**

*This section shall indicate rules for sampling (if applicable).*

### **5.3.2 Witnessing**

*This section shall indicate notification requirements to ensure proper attendance/participation by SMH, engineer, Independent Certifier, etc.*

## **5.4 Training**

*The training program shall include:*

- *training topics;*
- *methods of training;*
- *training resources;*

**St. Michael's Hospital Redevelopment Project**

- *scheduling and coordination of training;*
- *performing training and videotaping training sessions; and,*
- *training administration and record keeping.*

**5.4.1 Systems, Equipment, Process & Facility Features Training:**

*This section shall include classroom based training and describe integration of new equipment into new and/or existing hospital systems.*

**5.5 Progress Monitoring and Reporting****5.5.1 Commissioning Documentation Readiness Tracking****5.5.2 Progress Reporting and Logs**

*A sample CPM Form is provided in Appendix I. The CPM Form will be included within the monthly commissioning report.*

*PCCA shall submit reports to the Works Committee regarding commissioning progress throughout the phases.*

**5.5.3 Final and Addendum Commissioning Summary Reports****5.6 Document Submittal & Review****5.7 Coordination with SMH & PDC****5.8 Miscellaneous Management Protocols**

The following protocols will be used on this project.

<b>Issue (Samples)</b>	<b>Protocol</b>
<i>Any issue that may reflect or appear to reflect on a conflict of interest on the part of PCCA</i>	
<i>For requests for information (“RFI”) or formal documentation requests:</i>	
<i>For minor or verbal information and clarifications:</i>	
<i>For notifying contractors of deficiencies:</i>	
<i>For scheduling functional tests or training:</i>	
<i>For scheduling commissioning meetings:</i>	
<i>For making a request for significant changes:</i>	
<i>For making small changes in specified sequences of operations:</i>	
<i>Subcontractors disagreeing with requests or interpretations by PCCA shall:</i>	

**5.9 Regulatory Approvals**

*The Authority Having Jurisdiction (“AHJ”) items are identified within the Commissioning Schedule and include:*

**St. Michael's Hospital Redevelopment Project**

- Ontario Hospital Association (“OHA”)
- Canadian Nuclear Safety Commission (“CNSC”)
- Transport Canada (“TC”)
- Technical Standards and Safety Authority (“TSSA”)
- The City of Toronto
- Electrical Safety Authority (“ESA”),
- Ministry of Transportation – Ontario (“MTO”)
- Ontario Ministry of the Environment (“MOE”)

## 6 Work Products

### 6.1 Commissioning Work Products

This section shall include a list of the work products that support planning and execution of facility related commissioning work. A suggested format and content Table is provided below.

Product	Product Description and Form	Created By
Scoping Meeting Minutes	Minutes and notes of the scoping meeting	
Final Commissioning Plan	Final commissioning plan to replace outline version of plan in PA	
Commissioning Schedule	Integrated commissioning master schedule	
Pre Functional Tests and Checklists	List by equipment of pre functional checklists and tests	
Start-up and Initial Checkout Plans	Specific listing of procedures for combining CA pre functional checklists with Subcontractors startup and checkout.	
Specialty Systems Contractor Initial Check-out Plan	Complete step-by-step plan on checkout and calibration procedures, including forms for documentation	
Site Instructions	Site instructions that affect commissioned equipment	
Shop Drawing Review Report	Review Shop Drawings and identify any commissioning, design intent, operational or maintenance issues	
Issues Log	Record / track of all issues and deficiencies	
Non-Compliance /Deficiency Reports	List of deficiencies and non-compliance with contract documents identified during commissioning	
Commissioning Progress Record	Record / track of all submittals, checklists, tests, etc.	
Commissioning Progress Reports	Give scheduling needs and update, deficiency report and commissioning progress	
SMH-contracted Functional Test Forms	Full description of test procedures in “form” format	
Functional Test Forms	Full description of test procedures in “form” format	
Functional Test Final Approvals	List of test number, description, date of test, approval signatures of CA and PM	
O&M Manuals	Documentation of design, equipment, operations and maintenance and as-built drawings	
System Operating Manuals	Detailed technical description providing system orientation and design information, operating instructions and a plan for periodic re-commissioning	
Training Modules and Content	Topics and methods	
Training Matrix	Detailed listing of training topics and staff / positions in the organization along with indication of which training and evaluation is required of each person	
Training Completion Records	List of trainees, completed hours and topics and approvals	

**St. Michael's Hospital Redevelopment Project**

Product	Product Description and Form	Created By
<i>Final Commissioning Report</i>	<i>Summary report with important findings</i>	
<i>Post Occupancy Addendum Report</i>	<i>Summary report with important findings</i>	
<i>Deferred Testing Reports</i>	<i>Documentation of seasonal and deferred tests</i>	

**6.2 Furniture, Fixtures & Equipment Commissioning Work Products**

*This section shall include a list of furniture, fixtures and equipment by category, the various test sheets and checklists, the training requirements and the O&M Manuals to be provided.*

**7 Meetings****7.1 Commissioning Scoping Meeting**

*This section describes the attendance and aim of the commissioning scoping meeting.*

**7.2 Regular Commissioning Meetings**

*This section describes the attendance, aim, standard agenda and proposed schedule for commissioning meetings. The frequency of meetings will also be detailed.*

**7.3 Miscellaneous Meetings**

PCCA will attend selected planning and job-site meetings as required.

**8 Schedule and Completion****8.1 Commissioning Schedule**

*This section will contain a detailed schedule of commissioning activities. Commissioning activities are included in the Works schedule.*

**8.2 Phase Commissioning, Tower Interim Completion Commissioning, Substantial Completion and Final Completion**

*The requirements for Substantial Completion are defined in the PA Sections 21 (Equipment), 23A (Phase Commissioning), 23B (Tower Interim Completion Commissioning) and 24 (Commissioning and Completion). Commissioning activities to be complete for Substantial Completion and Final Completion are included in the Works Schedule. This section shall describe how Project Co and PCCA will achieve level of completion as designated in the PA.*

**9 Final Commissioning Program Revisions****9.1 Program Development**

*This commissioning program will continue to be developed over time as details regarding program elements are elaborated.*

**9.2 Revision History**

Revision; Date	Description

St. Michael's Hospital Redevelopment Project

--	--

TEMPLATE

## Pre-Commissioning Summary

### St. Michael's Hospital - Queen-Victoria Redevelopment Project

#### Document: Commissioning Plan - Annex B to Schedule 14 Rev 3

CRITERIA DESCRIPTION	
Physical Condition Assessment	Assessment Condition shall be reported based on expected life expectancy and estimated cost implication.
	"A" - Adequate for Redevelopment Phase and extended warrantee period.
	"B" - Not Adequate for Redevelopment Phase and extended warrantee period.
Capacity Assessment	ProjectCo will report "as-found" condition capacities for systems/equipment supplying areas impacted by redevelopment. This will include physical measurements such as, but not limited to air flows, water flows, sensor values, amperage draws, voltage, continuity, network compatibility, etc. ProjectCo will report these findings to stakeholders in an industry standard reporting format.
Adaptability Assessment	"A" - Equipment can be modified at minimal impact to accept additional control/monitoring elements such as VFD's or Flow metering equipment, controls upgrade, etc.
	"B" - Equipment can not be modified at minimal impact.

### TEMPLATE CHART

<b>Redevelopment Impacted Area:</b>	
-------------------------------------	--

SMH Equipment No.	System / Equipment	Component	Criteria			Recommended Action	Estimated Cost
			Physical Condition Assessment	Capacity Assessment	Adaptability Assessment		
	AHU xxx	AHU					
		Supply Fan					
		Supply Fan Motor					
		Return Fan					
		Return Fan Motor					
		Damper Supply					
		Damper Mixing					
		BAS Sensors					
		BAS End Devices					
	Pump xxx	Pump					
		Pump Motor					
		BAS Sensors					

**SCHEDULE 15**

**OUTPUT SPECIFICATIONS**

**[REDACTED]**



## SCHEDULE 16

## TITLE ENCUMBRANCES

“Title Encumbrances” means:

1. Instrument No. CT310267, registered August 4, 1978, is a development agreement dated April 27, 1978 between The Sisters of St. Joseph, for the Diocese of Toronto, In Upper Canada (the “**Sisters**”) and The Corporation of the City of Toronto (the “**City**”).
2. Instrument No. CT549393, registered September 8, 1982, is an agreement dated August 16, 1982 between the Sisters and the City, which is an amendment to the development agreement registered as Instrument No. CT310267.
3. Instrument No. AT992277, registered November 29, 2005, is a Land Registrar’s Order correcting reference to the unmanned lane in the last line of the thumbnail description from by-law EP6307 to by-law EP4307.
4. Instrument No. AT1057440, registered February 7, 2006, is a charge from SMH in favour the Sisters securing the original principal sum of \$14,000,000 (the “**Sisters First Mortgage**”).
5. Instrument No. AT1057441, registered February 7, 2006, is a charge from SMH in favour of the Sisters, securing the original principal sum of \$21,000,000 (the “**Sisters Second Mortgage**”).
6. Instrument No. AT1078127, registered March 2, 2006, is a Land Registrar’s Order amending Instrument No. AT992277 to correct reference from by-law EP4307 to by-law EP3407 in the last line of the thumbnail description.
7. Instrument No. AT2420898, registered June 23, 2010, is notice of an agreement dated June 10, 2010 between SMH and the Sisters amending the Sisters First Mortgage.
8. Instrument No. AT2420899, registered June 23, 2010, is notice of an agreement dated June 10, 2010 between SMH and the Sisters amending the Sisters Second Mortgage.
9. Instrument No. AT2445023, registered July 13, 2010, is notice of an encroachment agreement dated July 2, 2010 between the City and SMH.
10. Instrument No. AT2445024, registered July 13, 2010, is notice of an encroachment agreement dated July 2, 2010 between the City and SMH.
11. Instrument No. AT2679790, registered May 2, 2011, is notice of a second mortgage amending agreement between SMH and the Sisters, amending the Sisters First Mortgage.

12. Instrument No. AT2679791, registered May 2, 2011, is notice of a second mortgage amending agreement between SMH and the Sisters, amending the Sisters Second Mortgage.
13. Instrument No. AT2694691, registered May 2, 2011 is notice of an encroachment agreement dated October 22, 2010 between the City and SMH.
14. Instrument No. AT2714120, registered June 7, 2011 is notice of a site plan agreement dated January 24, 2011 between SMH and the City.
15. Liens, charges or prior claims for taxes (which term includes charges, rates 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 SMH.
16. 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 SMH pursuant to the CLA 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, SMH 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.
17. The rights reserved to or vested in any municipality or governmental or other public authority by any statutory provision.
18. 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.
19. 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.
20. Any encroachments, easements, rights of way or similar interests which would be revealed by an up-to-date survey of the Site.
21. 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.

22. 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.
23. 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.
24. 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 (b) 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**

**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) planned requests for service or infrastructure shut-downs;
    - (v) update to construction phasing and sequencing activities;
    - (vi) construction milestones; and
    - (vii) submissions schedule;
  - (d) update to construction infection control plan;
  - (e) update to construction access and hoarding plans;
  - (f) contractual outstanding decisions;
  - (g) quality assurance and quality control;
  - (h) organization/staffing changes and additions for Project Co and Construction Contractor;
  - (i) health and safety, including:
    - (i) lost time injuries; and
    - (ii) accidents with no lost time;
  - (j) Subcontract status, including:
    - (i) consultants;
    - (ii) Subcontracts awarded;

- (iii) tenders;
  - (iv) shop drawing submittals status; and
  - (v) labour report (average workforce per sub-trade and the total workforce including own forces for the period reporting);
- (k) financial status, including:
  - (i) progress and Variations;
  - (ii) insurance summary;
  - (iii) Construction Contractor default status; and
  - (iv) cash flow projection (capital cost components);
- (l) risk management, including:
  - (i) claims;
  - (ii) liens;
  - (iii) environmental issues;
  - (iv) labour;
  - (v) market conditions;
  - (vi) outstanding disputes;
  - (vii) operational risks; and
  - (viii) other risks;
- (m) commissioning, occupancy and completion; and
- (n) Equipment status reporting, including:
  - (i) RFP release and close dates;
  - (ii) pending Equipment selections;
  - (iii) financial analysis; and
  - (iv) delivery, installation, commissioning and training dates; and

- (o) reporting on Cash Allowance Items, including financial reporting on Cash Allowance Items in accordance with Section 3.2 of the Project Agreement.

**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 SMH's communications requirements. This plan will support effective communications between Project Co and SMH, and with SMH stakeholders, including the SMH community.

**2 SMH RESPONSIBILITIES****2.1 Lead Communications Role**

SMH will assume the lead communications role. SMH 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 SMH Communications Responsibilities**

SMH 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 SMH and Project Co during a crisis situation.
- (c) SMH Related Communication: To provide all communications related to the provision of SMH Activities.
- (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.

### **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 SMH for website content;
- (d) updating, in collaboration with SMH, internal/ external stakeholders, as required, including involvement and participation in community events, including SMH Activities;
- (e) providing the public/ media reasonable access to the Site for milestone events;
- (f) directing all media enquiries and interview requests to SMH's lead communications contact;
- (g) maintaining a written record of all material public enquiries, complaints and communications and providing copies to SMH's lead communications contact on a weekly basis (or immediately if urgent);
- (h) reporting to SMH on communications matters on an agreed upon basis;
- (i) participating in SMH communications meetings, as required; and



- (j) during a crisis situation, ensuring and making available sufficient resources to work effectively with SMH and proactively manage and perform its communications responsibilities.

### **3.2 Project Co Communications Responsibilities**

Project Co will:

- (a) within 30 days following Financial Close and in collaboration with SMH, 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 (including the SMH community) 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 SMH;
- (c) coordinate with SMH in the implementation of the construction liaison and communications plan;
- (d) attend regular meetings with SMH 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 SMH, 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 SMH related to the management of local traffic during the Works;

- (h) develop, in collaboration with SMH, 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 SMH related to signage or advertising at the Site.

## **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 SMH Activities or any matters related thereto, without the prior written consent of SMH.
- (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 SMH Activities 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 SMH's media release and publicity protocols or guidelines, as such protocols and/or guidelines are updated by SMH 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 SMH 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 the SMH Representative for approval prior to printing; and
- (f) be responsible for installation, maintenance and removal of the signage.

**SCHEDULE 19**

**[INTENTIONALLY DELETED]**

**SCHEDULE 20**

**PROCUREMENT MONITORING AND IMPLEMENTATION PLAN**

**[REDACTED]**

**SCHEDULE 21**

**[INTENTIONALLY DELETED]**

## SCHEDULE 22

### VARIATION PROCEDURE

#### 1. VARIATIONS

##### 1.1 Definitions

- (a) The following terms shall have the following meanings:
- (i) **“Capital Expenditure”** means a capital expenditure as interpreted in accordance with Canadian GAAP.
  - (ii) **“Direct Cost”** has the meaning given in Appendix A of this Schedule 22.
  - (iii) **“Estimate”** has the meaning given in Section 1.4(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 Works.
  - (vi) **“Variation Confirmation”** has the meaning given in Section 1.7(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 SMH 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) SMH 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 SMH 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 SMH is obligated to proceed with a Variation.

- (b) SMH 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.
- (d) Project Co shall not be entitled to claim any ownership of the Schedule Cushion as a result of any Variation Confirmation or Variation Directive issued pursuant to this Schedule 22.

### **1.3 Variation Enquiry**

- (a) If SMH 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 SMH intends to pay for the Variation by way of lump sum payment or payments, adjustment to the Guaranteed Price (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 SMH'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 and Agreements required by Project Co to perform the Works, and any such Permits, Licences, Approvals and Agreements is not, using commercially reasonable efforts, capable of amendment or renewal; or
    - (C) require any new Permits, Licences, Approvals and Agreements for Project Co to perform the Works, any of which Permits, Licences, Approvals and Agreements will not, using commercially reasonable efforts by Project Co or SMH, as applicable, be obtainable;
  - (iii) the proposed Variation would have a material and adverse effect on performance of the Works (except those Works 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) SMH 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); or
  - (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.
- (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 SMH a written notice specifying the grounds upon which Project Co rejects the Variation and the details thereof.

**1.6 Estimate Requirements**

- (a) Unless SMH in a Variation Enquiry requires only specified limited information, each Estimate shall include the following information, sufficient to demonstrate to SMH'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 a Scheduled Phase Completion Date, the Scheduled Tower Interim Completion Date or the Scheduled Substantial Completion Date and any other schedule impact on the provision of any Phase of the Works or the remainder 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 Works 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 amendments to this Project Agreement 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 SMH 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;
  - (v) 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 SMH); 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;
  - (vi) either, subject to Section 1.9:
    - (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;

- (vii) Project Co's preliminary indication of the potential increase or decrease, if any, to the Guaranteed Price;
- (viii) 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;
- (ix) the proposed methods of certification of any construction or operational aspect of the Works required by the Variation if not covered by the provisions of this Project Agreement; and
- (x) the total impact, if any, on the Annual Energy Target and/or the Discrete Energy Target(s) described in Schedule 33 – Energy Matters,

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 SMH's satisfaction, acting reasonably, that:
  - (i) Project Co has used or has obliged each Subcontractor (or will oblige any Subcontractor 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 and the Construction Contractor 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 or the Construction Contractor is calculated on any other margin of Project Co or the Construction Contractor), 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;
  - (v) all costs of providing Works, 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 Works, 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 SMH, 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 SMH receives an Estimate, Project Co and SMH shall discuss and seek to agree on the Estimate, including any amendments to the Estimate agreed to by the Parties.
  - (e) If SMH would be required by Applicable Law or any policy applicable to SMH to competitively tender any contract in relation to the proposed Variation, SMH may require Project Co to seek and evaluate competitive tenders for the proposed Variation in accordance with such Applicable Law or policy.
  - (f) SMH 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 SMH 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 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, SMH shall either:
  - (i) subject to Sections 1.2(b) and 1.7(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 1.8.
- (b) If SMH does not issue a Variation Confirmation within such 15 Business Days, then, subject to Sections 1.2(b) and 1.7(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 1.8:
  - (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 1.7(c)(i), all provisions of this Project Agreement applicable to the Works shall apply to the Works 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 1.7(c)(i).
- (d) If a Variation Confirmation is subject to Project Co obtaining financing pursuant to Section 1.8, then the Variation Confirmation shall not be effective until:
  - (i) Project Co obtains such financing acceptable to SMH in its sole discretion; or
  - (ii) SMH 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 SMH'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) SMH may at any time withdraw a Variation Enquiry and, subject to Section 1.7(f), SMH shall not be obligated to Project Co in respect of a Variation until such time as SMH in its sole discretion issues a Variation Confirmation and, if applicable, Project Co has obtained the financing requested by SMH or SMH has waived such requirement,

provided that SMH may not withdraw (or be deemed to have withdrawn) a Variation Enquiry in circumstances where SMH 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, SMH shall reimburse Project Co for all Direct Costs reasonably and properly incurred by Project Co in connection with preparing the Estimate.

## **1.8 Financing**

- (a) Subject to Section 1.9, if Project Co in its Estimate confirms that existing financing is not available to pay for the proposed Variation and if SMH 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 SMH, provided that, 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 SMH within 60 days of the date that SMH 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 SMH, in its sole discretion, waives the requirement for financing or unless SMH is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (c) Subject to Section 1.9, if Project Co obtains an offer of financing on terms reasonably satisfactory to Project Co, Project Co shall provide SMH with details of such financing, and SMH shall, in its sole discretion, determine whether Project Co should proceed with such financing. If SMH 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 SMH, in its sole discretion, waives the requirement for financing or unless SMH is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.
- (d) Subject to Section 1.9, SMH 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 SMH in its sole discretion waives the requirement for financing or unless SMH is obligated to proceed with the Variation pursuant to the terms of this Project Agreement.

- (e) If SMH waives the requirement for financing or if Project Co has no further obligation to obtain financing for the Variation pursuant to Sections 1.8(b), 1.8(c) or 1.8(d), then Project Co shall proceed with the Variation as set out in the Variation Confirmation and SMH shall pay for the Variation as provided for in Section 1.10(a)(ii).

### **1.9 Increase or Decrease in the Cost of the Financing**

- (a) If there is an increase or a decrease in the Cost of the Financing as a result of a Variation, the Guaranteed Price shall be increased or decreased by the increase or decrease to the Cost of the Financing. Project Co shall provide the calculation of the increase or decrease in the Cost of the Financing, together with a certificate of the Lenders' Agent verifying such calculation. Where the increase in the Cost of the Financing includes breakage costs, but the impact of the Variation on the Cost of the Financing could also be accommodated without incurring breakage costs, calculations for both options shall be provided to SMH, together with a certificate of the Lenders' Agent addressed to Project Co (which will expressly provide that the certificate may be relied upon by SMH) verifying such calculations. SMH shall, in its sole discretion, within 5 Business Days of receiving such certificate from the Lenders' Agent, select its preferred option by providing written notice to Project Co and the Lenders' Agent. For greater certainty, the increases or decreases in the Cost of the Financing shall be calculated in a commercially reasonable manner and in accordance with the Lending Agreements, and without regard to the identity of the party paying such costs and expenses and, with respect to any swap breakage costs or gains, such costs or gains shall be calculated in accordance with standard market practices.
- (b) SMH may, in its sole discretion, elect to apply any portion of the Schedule Cushion to any extension of the time for achieving a Phase Completion, Tower Interim Completion or Substantial Completion otherwise determined under a Variation, with the result that such extension of time shall be reduced or eliminated, as the case may be, by the number of days of the Schedule Cushion that SMH has elected to apply, and the determination of the increase in the Cost of the Financing associated with such Variation shall be recalculated based on the remaining extension of such time, if any, under such Variation after such application by SMH of the Schedule Cushion. If a Variation gives rise to a net benefit to Project Co through a reduction of the Cost of the Financing, then Project Co shall pay any net benefit received by Project Co to SMH.
- (c) For greater certainty, subject to Section 1.9(b) and notwithstanding Section 31.2(b) of the Project Agreement, where SMH elects to apply all or any portion of the number of days of the Schedule Cushion, Project Co shall only be entitled to compensation valued pursuant to Section 1.6(b), provided, however, the margins for overhead and profit as set out in Appendix B hereto shall be reduced by [REDACTED] percent ([REDACTED]%) and applied to the entire scope of the applicable Variation.

**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 SMH, 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 Guaranteed Price shall be adjusted as set out in the Variation Confirmation;
  - (ii) payment for Capital Expenditures as set out in the Variation Confirmation and not financed by Project Co shall be paid as follows:
    - (A) SMH shall pay such Capital Expenditures in lump sum payments based on a payment schedule agreed by SMH 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 SMH; 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 SMH 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 SMH (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 SMH in time to make payments to that third party in accordance with its contract with Project Co.
- (b) SMH shall make payment to Project Co within 20 Business Days of receipt by SMH of invoices presented to SMH 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 SMH in respect of a Variation shall be subject to applicable holdback provisions of the CLA, 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, SMH shall provide to Project Co copies of any consent or approval issued by MOHLTC, SMH and/or SMH's board of directors in connection with a proposed Variation.

### **1.11 Reduction in Works**

- (a) If a Variation involves any reduction in Works 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 the Substantial Completion Payment or Tower Interim Completion Payment (as applicable, at SMH's discretion) shall be reduced accordingly.

### **1.12 Variation Directive**

- (a) If an Estimate is not promptly agreed upon by SMH and Project Co or if there is a Dispute in relation thereto or if SMH, in its sole discretion, requires a Variation to be implemented prior to issuing a Variation Confirmation, then SMH 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, 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, SMH 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 SMH 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 SMH 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 SMH; and
  - (iv) indicate the latest date by which a Variation Enquiry must be issued.
- (b) If SMH, in its sole discretion, elects to consider the Variation proposed by Project Co, SMH 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 SMH for all costs and expenses reasonably incurred by SMH in connection with SMH'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.

**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 Works 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 the Subcontractors;
- (x) the amount paid for any design services;
- (xi) the cost of third party quality assurance required by SMH, 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, Taxes and without limiting the obligation of SMH to pay HST under the Project Agreement, 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 Works;
- (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 Works, 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 as calculated pursuant to Section 1.9, 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 SMH;

- (xviii) the cost of any additional insurance or performance security required or approved by SMH;
- (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 Works as a result of the Variation shall not exceed commercially competitive rates available in the Province for such materials, products, supplies and equipment from arms-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 Works.

## 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>
<b>Project Co (Own Work)</b>	[REDACTED]	[REDACTED]	[REDACTED]
<b>Construction Contractor (Own Work)</b>	[REDACTED]	[REDACTED]	[REDACTED]
<b>Construction Contractor (Subcontracted Work)</b>	[REDACTED]	[REDACTED]	[REDACTED]

**SCHEDULE 23****COMPENSATION ON TERMINATION****1 DEFINITIONS****1.1 Definitions**

The following terms shall have the following meanings:

- (a) **“Employee Termination Payments”** means termination payments which are required under Applicable Law to be made to employees of Project Co or any Project Co Party 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.
- (b) **“Invoice Date”** means the date that is the later of:
  - (i) the date on which SMH receives an invoice from Project Co for the relevant termination sum; and
  - (ii) the date on which SMH receives the supporting evidence required pursuant to Section 5.1(a) of this Schedule 23.
- (c) **“Junior Debt Amount”** means [REDACTED].
- (d) **“Junior Debt Makewhole”** means [REDACTED].
- (e) **“Non-Default Termination Sum”** has the meaning given in Section 4.1(b) of this Schedule 23.
- (f) **“Project Co Amount”** means any amount payable to Project Co as a return and/or profit to Project Co shown in the Financial Model, including for greater certainty any loans made or capital contributed to Project Co by any Affiliate of Project Co or a Project Co

Party, prorated by a fraction, the numerator of which is the period between the date of commencement of the Works and the Termination Date, and the denominator of which is the period between the date of commencement of the Works and the Scheduled Substantial Completion Date.

- (g) **“Project Co Default Termination Sum”** has the meaning given to it in Section 3.1(b) of this Schedule 23.
- (h) **“Senior Debt Amount”** means [REDACTED].
- (i) **“Senior Debt Makewhole”** means [REDACTED].
- (j) **“SMH Default Termination Sum”** has the meaning given in Section 2.1(b) of this Schedule 23.
- (k) **“Subcontractor Losses”** means, subject to Project Co's obligations under this Project Agreement to limit any compensation to Subcontractors, 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 the Subcontractors fail to take commercially reasonable steps to mitigate such amount; provided that, no account should be taken of any liabilities and obligations of Project Co to the Subcontractors arising out of:
  - (l) 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);
    - (i) 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
    - (ii) 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.

## **2 COMPENSATION ON TERMINATION FOR SMH DEFAULT OR CONVENIENCE**

### **2.1 Compensation**

- (a) If Project Co terminates this Project Agreement pursuant to Section 35 of this Project Agreement or SMH terminates this Project Agreement pursuant to Section 36.3 of this Project Agreement, SMH shall pay to Project Co the SMH Default Termination Sum.



- (b) The “SMH 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 SMH to Project Co in accordance with Sections 32.2(b) and 33.2(b) of this Project Agreement;
  - (iv) the Employee Termination Payments and the Subcontractor Losses;
  - (v) any reasonable costs properly incurred by Project Co to wind up its operations; and
  - (vi) the Project Co Amount;

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 SMH 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 Works, 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 Works, the Project and this Project Agreement) to SMH and, at no additional cost to Project Co, give SMH 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 SMH 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;
- (ix) any amount of the Tower Interim Completion Payment, the Substantial Completion Payment, and any other amounts paid by SMH on or before the Termination Date; and
- (x) amounts which SMH is entitled to set off pursuant to Section 4.12(a)(i) of this Project Agreement,

provided that the SMH 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)(viii) of this Schedule 23 are not realized and applied pursuant thereto, Project Co shall, on payment of the SMH Default Termination Sum, assign such assets and rights to SMH.
- (d) SMH shall pay the SMH Default Termination Sum in accordance with Section 5 of this Schedule 23.

### **3 COMPENSATION ON TERMINATION FOR PROJECT CO DEFAULT**

#### **3.1 Compensation**

- (a) If SMH terminates this Project Agreement pursuant to Section 34 of this Project Agreement, SMH shall pay to Project Co the Project Co Default Termination Sum.
- (b) The "Project Co Default Termination Sum" shall be an amount equal to the Guaranteed Price, as adjusted in accordance with the terms of this Project Agreement as of the Termination Date, less the aggregate, without duplication, of each of the following:
  - (i) any amount of the Tower Interim Completion Payment, the Substantial Completion Payment and any other amounts paid by SMH on or before the Termination Date;
  - (ii) SMH's estimate of the cost to complete the Works, including the cost to remedy any defective or deficient Works determined on a reasonable basis in consultation with the Independent Certifier and SMH's other consultants and including all

reasonable and proper costs incurred by SMH in re-tendering the Works or any portion thereof;

- (iii) SMH's estimate of the aggregate of all Direct Losses suffered, sustained or incurred by SMH as a result of, in respect of, or arising out of the event or events which resulted in the termination of this Project Agreement and arising out of the termination together with all costs of entering into a new design and construction contract to complete the Works, including any warranty obligations for the Works in place and to be performed, on substantially the same terms and conditions as this Project Agreement;
  - (iv) (A) the Completion Holdback and (B) the Tower Interim Completion Holdback, in each case as at the time the Project Co Default Termination Sum is required to be made;
  - (v) the Legislative Holdback required to be maintained by SMH as at the time the Project Co Default Termination Sum is required to be made, which amount will be paid by SMH in accordance with the *Construction Lien Act* (Ontario); and
  - (vi) amounts which SMH is entitled to set off pursuant to Section 4.12(a)(i) of this Project Agreement.
- (c) To the extent that any amounts that SMH has estimated or determined pursuant to Sections 3.1(b)(ii), 3.1(b)(iii) or 3.1(b)(iv) of this Schedule 23, are in excess of what is required by SMH to complete the Work or compensate for Direct Losses, the Completion Holdback, the Tower Interim Completion Holdback or the Legislative Holdback, as applicable, SMH shall promptly return such excess amounts to Project Co.
- (d) SMH shall pay the Project Co Default Termination Sum in accordance with Section 5 of this Schedule 23.

## **4 CONSEQUENCES OF NON-DEFAULT TERMINATION AND TERMINATION FOR RELIEF EVENT**

### **4.1 Consequences**

- (a) If either Party terminates this Project Agreement pursuant to Section 36.1 of this Project Agreement or if either Party terminates this Project Agreement pursuant to Section 36.2 of this Project Agreement, SMH 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 SMH to Project Co in accordance with Sections 32.2(b) and 33.2(b) of this Project Agreement; and
- (iv) the Employee Termination Payments and the Subcontractor Losses (but excluding therefrom any claims for loss of profit);

LESS, the aggregate (without double counting) of the following, to the extent it is a positive amount:

- (v) 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 SMH 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 Works, 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 Works, the Project and this Project Agreement) to SMH and, at no additional cost to Project Co, give SMH reasonable assistance in prosecuting such claims; and
- (vi) 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 SMH 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;

- (vii) any amount of the Tower Interim Completion Payment, the Substantial Completion Payment and any other amounts paid by SMH on or before the Termination Date; and
- (viii) amounts which SMH is entitled to set off pursuant to Section 4.12(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)(vi) of this Schedule 23 are not realized and applied pursuant thereto, Project Co shall, on payment of the Non-Default Termination Sum, assign such assets and rights to SMH.
- (d) SMH shall pay the Non-Default Termination Sum in accordance with Section 5 of this Schedule 23.

## **5 GENERAL**

### **5.1 Payment and Interest Following Termination**

- (a) In respect of the termination payments to be made pursuant to either Section 2 or 4 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 SMH an invoice for the relevant termination sum and sufficient supporting evidence, reasonably satisfactory to SMH, justifying the amount of the relevant termination sum including a detailed breakdown of each of the individual items comprising such sum.
- (b) In respect of the termination payments to be made pursuant Section 3 of this Schedule 23, as soon as practicable, and in any event, within 120 days after the Termination Date, SMH shall calculate and notify Project Co of the Project Co Default Termination Sum under Section 3.1(b) of this Schedule 23, and shall deliver to Project Co sufficient supporting evidence reasonably satisfactory to Project Co.
- (c) SMH shall:
  - (i) pay to Project Co the relevant termination sum within 60 days after the Invoice Date or the date of delivery of the notice described in Section 5.1(b) of this Schedule 23, as applicable, and so long as all of demobilization of the Works has been completed; and
  - (ii) indemnify Project Co as provided in Section 44.2(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 or the date of delivery of the notice described in Section 5.1(b) of this Schedule 23, as applicable; and
  - (B) thereafter, in an amount equivalent to the Payment Compensation Amount until the date of payment.
- (d) In respect of the termination payments to be made pursuant to Section 3 of this Schedule 23, if the applicable termination sum is negative, SMH shall have no obligation to make any payment to Project Co and Project Co shall also thereafter indemnify SMH as provided in Section 44.1(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.

## **5.2 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.

## **5.3 Undisputed Amounts**

- (a) If the calculation of any termination amount is disputed then any undisputed amount shall be paid in accordance with this Section 5 and the disputed amount shall be dealt with in accordance with Schedule 27 – Dispute Resolution Procedure.

## **5.4 Outstanding Debt Amounts**

- (a) SMH 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 SMH's obligation to pay such portion of compensation due to Project Co that is equal to the amount acknowledged or confirmed.

**SCHEDULE 24**

**FINANCIAL MODEL**

**[REDACTED]**

**SCHEDULE 25**

**INSURANCE AND PERFORMANCE SECURITY REQUIREMENTS**

**1. WORKS PHASE INSURANCE COVERAGE**

1.1 Subject to Section 7, 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 IO 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 Pollution Liability (combined Contractors’ Pollution Liability and Pollution Legal Liability); and
- (d) Project Specific Professional Liability.

1.2 Subject to Section 7, 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.

**2. NO LIMIT ON RECOVERY**

2.1 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 SMH or by Project Co, shall in no way limit Project Co's liability or obligations to SMH or SMH's liability or obligations to Project Co, as applicable.

### **3. ADDITIONAL COVER**

- 3.1 Without prejudice to the other provisions of this Schedule 25, SMH 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.
- 3.2 SMH reserves the right to require Project Co to purchase such additional insurance coverage as SMH may reasonably require. SMH 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 Works, contract value, industry standards and availability of insurance) as SMH may reasonably require from time to time. Any additional costs of such additional and/or amended insurance shall be borne by SMH and any cost savings resulting from the implementation of such additional and/or amended insurance shall be for the account of SMH.

### **4. RESPONSIBILITY FOR DEDUCTIBLES**

- 4.1 The Party responsible for the matter giving rise to a claim, to the extent responsible therefor, shall be responsible and liable for the payment of deductibles under any policy of insurance under which it is an insured party or under any policy of insurance 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.

### **5. COOPERATION WITH INSURER'S CONSULTANT**

- 5.1 If an insurer or an insurer's appointed consultant, for underwriting purposes or as a term of an insurance policy, needs to review any part of the performance of this Project Agreement, then SMH and Project Co shall, and shall require the SMH 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 SMH (or, as applicable, and if reasonably required by the insurer, between Project Co and those engaged by or through Project Co).

**6. UNINSURABLE RISKS**

6.1 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 insurance 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 insurance 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.

Project Co has the onus of demonstrating, to SMH's reasonable satisfaction that the foregoing definition applies to a particular risk.

6.2 Project Co shall notify SMH 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 SMH with all relevant details in relation to such risk, including a copy of the relevant insurance policy.

6.3 Project Co and SMH shall, as soon as possible following the provision of the notice referred to in Section 7.2, meet to discuss, in good faith, the appropriate means by which the Uninsurable Risk should be managed and, if Project Co and SMH are able to agree to alternative arrangements, the Uninsurable Risk shall be managed in accordance with such alternative arrangements.

6.4 In the event that Project Co and SMH, 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 7.2, SMH 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 4.9 of the Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 4.9 of the 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.

6.5 On the occurrence of an Uninsurable Risk, SMH 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 4.9 of the Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 4.9 of the 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.

6.6 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 7.6(a), Project Co shall be relieved of its obligation to maintain (or cause to be maintained) insurance in respect of the Uninsurable Risk.

6.7 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 6 shall no longer apply to such risk.

## **7. TOTAL OR SUBSTANTIAL DESTRUCTION**

7.1 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 Works, all in accordance with the terms of the Insurance Trust Agreement.

## **8. SUBCONTRACTORS**

- 8.1 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 SMH may suffer as a direct result of Project Co's failure to comply with the foregoing.
- 8.2 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 cause 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 Works 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 the Project Agreement regarding new and replaced Subcontractors shall be complied with.

## **9. RENEWAL**

- 9.1 Project Co shall provide to SMH, at least 5 Business Days prior to the expiry date of any policy of insurance required to be obtained (or cause to be obtained) by Project Co pursuant to this Schedule 25, evidence of the renewal of each such policy satisfactory to SMH, acting reasonably.

## **10. NAMED AND ADDITIONAL INSUREDS AND WAIVER OF SUBROGATION**

- 10.1 All insurance provided by Project Co, shall:
- (a) include Project Co, SMH and IO as Named Insureds to the extent specified in Appendix A of this Schedule 25;
  - (b) include SMH, IO, MOHLTC, the Lenders and the Lenders' Agent as Additional Insureds, or loss payees to the extent of their respective insurable interests to the extent specified in Appendix A of this Schedule 25;

- (c) except with respect to the Project Specific Professional Liability, Automobile Liability, Comprehensive Crime and WSIB specified in Appendix A to this Schedule 25, contain a waiver of subrogation as against SMH, the SMH Parties, IO 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 SMH or IO without any right of contribution of any insurance carried by SMH or IO.

## **11. CERTIFICATES OF INSURANCE AND CERTIFIED COPIES OF POLICIES**

- 11.1 Prior to the commencement of any part of the Works, Project Co will provide SMH with certified copies of policies, confirming that the insurances specified in Section 1.1 and Section 1.2 have been obtained and are in full force and effect.
- 11.2 Prior to the commencement of any part of the Works, Project Co will provide SMH 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 SMH no later than 90 days after execution of this Project Agreement.

## **12. FAILURE TO MEET INSURANCE REQUIREMENTS**

- 12.1 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 SMH 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 SMH 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 SMH's option, be payable by Project Co to SMH on demand or be deducted by SMH from the next payment or payments otherwise due to Project Co.
- 12.2 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 SMH, all work by Project Co shall immediately cease until satisfactory evidence of renewal is produced.

## **13. MODIFICATION OR CANCELLATION OF POLICIES**

- 13.1 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 SMH, 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.

- 13.2 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 SMH, the Lenders' Agent and IO.
- 13.3 With respect to insurances described in Section 1.1(a), (b) and (c), and Section 1.2(e), 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 SMH, IO, the Lenders or any other Insured, but only to the extent that such breach is not known to these parties.

#### 14. INSURERS

- 14.1 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 SMH and Lenders, acting reasonably, and, where required by statute, be licensed to insure such risk in the Province of Ontario.
- 14.2 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 SMH and Lenders, acting reasonably, with respect to the insurances required by this Schedule 25.

## **15. POLICY TERMS AND CONDITIONS**

- 15.1 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 SMH, its insurance advisors and Lenders, acting reasonably.
- 15.2 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.

## **16. FAILURE TO COMPLY**

- 16.1 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.

## **17. PERFORMANCE SECURITY REQUIREMENTS**

- 17.1 Project Co shall obtain and deliver to SMH, original executed and sealed Bonds in the forms attached as Appendices B and C respectively, to this Schedule 25 on the Financial Close Target Date, each in an amount equal to **[REDACTED]** of the Cost of the Works under the Project Agreement. Each of the Bonds shall be properly executed by a Surety or by an agent or attorney in fact for the Surety, in which latter case, Project Co is required to submit with such Bonds a power of attorney to the signatory agent or the attorney in fact executed by the Surety in a form satisfactory to SMH to evidence the authority of the agent or the attorney in fact.
- 17.2 Such Bonds shall be issued by a duly licensed surety company authorized to transact a business of suretyship in the Province of Ontario and shall be maintained in good standing until the fulfilment of the Project Agreement.
- 17.3 For greater certainty, the obligations of the Surety under the Bonds shall not extend to or include any obligations relating to the Financing or Cost of the Financing, and it is agreed that the Parties intend to benefit the Surety by this Section 17.3 and that the Surety may rely upon and enforce the provisions of this Section 17.3.

**18. INSURANCE TRUST AGREEMENT**

- 18.1 All losses under the “All Risks” Course of Construction Property Insurance policy, including Boiler & Machinery Insurance carried by Project Co prior to Substantial Completion of the Works which relate to equipment purchased by SMH shall be payable solely to SMH and shall not be payable to the Account Trustee or distributed pursuant to the Insurance Trust Agreement.



APPENDIX A TO SCHEDULE 25  
INSURANCE REQUIREMENTS*Works Insurance – St. Michael's Hospital Redevelopment Project*

## From First Access to Site until the Substantial Completion Date

## 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	<p>Value declared to be equal to the estimated completed project value of the Facility, including Property of Every Description and all other property supplied by the SMH Parties for incorporation into the Facility.</p> <p>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 SMH's responsibility.</p> <p>Soft Costs \$[REDACTED] (representing [REDACTED]% of Recurring / Continuing Soft Costs)</p> <p>Extra and Expediting Expense (minimum \$[REDACTED] sub-limit)</p> <p>Principal Extensions:</p> <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</li> </ul>	<p>[REDACTED]% of loss value / \$[REDACTED] minimum Earthquake</p> <p>\$[REDACTED] Flood</p> <p>\$[REDACTED] Testing and Commissioning</p> <p>\$[REDACTED] All other losses</p> <p>30 days waiting period applicable to time element coverages</p> <p>48 hour waiting period applicable to Off Premises Services Service Interruption</p>	<p>"All Risks" Course of Construction Property Insurance covering the full insurable replacement cost of the Works including cold and hot testing / commissioning, of Boiler &amp; Machinery equipment, including HVAC, Delay in Start-Up, Soft Costs, with no early occupancy restriction.</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by SMH, IO or the Lenders.</p>	TBD

St. Michael's Hospital Redevelopment Project

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	media, including data restoration and re-creation costs			
	<ul style="list-style-type: none"> <li>• Transit</li> <li>• Unnamed locations</li> <li>• Bylaws (with respect to Existing or Renovated Buildings) (minimum \$[REDACTED] sub-limit)</li> <li>• Debris Removal (minimum \$[REDACTED] sub-limit)</li> <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>• Valuable Papers (minimum \$[REDACTED] sub-limit)</li> <li>• Accounts Receivable (minimum \$[REDACTED] sub-limit)</li> <li>• Defence Costs (subject to a \$[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>• Contamination Clean-up or Removal (minimum \$[REDACTED] sub-limit)</li> <li>• Ammonia Contamination (minimum \$[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>• Cost of Carrying Project Financing (12 Months), included in Delayed Start-Up or Soft Costs coverage</li> <li>• Margin of Profit Extension for Contractors</li> <li>• Testing and Commissioning (120 limitation each component)</li> </ul>			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
<p>Permitted Exclusions:</p> <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 to a minimum DE4 standard</li> <li>• War risk</li> <li>• Terrorism</li> <li>• Nuclear or radioactive contamination, except re radioactive isotopes intended for scientific, medical, industrial or commercial use</li> <li>• Contractors' equipment</li> </ul>				
<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, sub-consultants, SMH, IO or the Lenders. as their respective interests may appear</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 Project</li> <li>– Losses payable in accordance with the Insurance Trust Agreement</li> <li>– Waiver of subrogation against all Named and Unnamed Insureds, including but not limited to Project Co, IO, SMH, the Construction Contractor, 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</li> <li>– Frost or freezing to concrete – but only resultant damage from a peril not otherwise excluded</li> <li>– Liberalization Clause</li> <li>– Errors and Omissions</li> <li>– Breach of Conditions</li> </ul> </li> </ul>			
<b>Underwriters</b>	Principal underwriters in compliance with Clause 14 of this Schedule 25.			

**St. Michael's Hospital Redevelopment Project**

**Works Insurance –St. Michael's Hospital Redevelopment Project**

**From First Access to Site until the Substantial Completion Date**

**Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program**

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
<b>“Wrap-Up” 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</p> <p>Sub-limits:</p> <ul style="list-style-type: none"> <li>• \$[REDACTED] Non-Owned Automobile Liability</li> <li>• \$[REDACTED] Sudden and Accidental Pollution and Hostile Fire Pollution Liability</li> <li>• \$[REDACTED] “All Risks” Tenants' Legal Liability</li> <li>• \$[REDACTED] Prairie or Forest Fire Fighting Expenses</li> <li>• \$[REDACTED] Employee Benefits Administrative Errors and Omissions</li> <li>• \$[REDACTED] Contractors Rework</li> <li>• \$[REDACTED] Legal Liability for Damages To Non-owned Automobiles (SEF 94)</li> <li>• \$[REDACTED]/\$ [REDACTED] Medical Payments</li> </ul> <p>Principal Extensions:</p> <ul style="list-style-type: none"> <li>• SMH'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</li> </ul>	<p>[\$[REDACTED]] per occurrence</p> <p>[\$[REDACTED]] per claim with respect to Contractors Rework</p> <p>[\$[REDACTED]] per claim with respect to each SEF 94, Tenants' Legal Liability, Employee Benefits Administrative Errors and Omissions and Prairie or Forest Fire Fighting Expenses</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 of the Works.</p> <p>Coverage shall be maintained continuously from the date of the first activities at the Site, until each of the Phase Completion Dates, the Tower Interim Completion Date and the Substantial Completion Date, as applicable, at which time the Products and Completed Operations extension will take effect.</p> <p>Sudden and Accidental Pollution and Hostile Fire Pollution coverage to be not less than IBC 2313 form (240 hours detection/240 hours notice coverage structure).</p> <p>This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by SMH, IO or the Lenders.</p>	TBD

**Confidential**

Page 13

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
	<p>driving/shoring/caisson work/work below ground surface/tunnelling/grading, and similar operations associated with the Works, as applicable</p> <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 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 and Hostile Fire 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 Protect Persons or Property</li> <li>• Accident Benefits</li> <li>• Worldwide Territory, subject to suits being brought in Canada or the US</li> <li>• Aggregate Reinstatement (in the event that the policy aggregate is eroded between any Phase Completion and Substantial Completion)</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</li> <li>• Operation of licensed motor vehicles, other than</li> </ul>			

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> <li>attached machinery while used for its purpose, 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 consultants</li> <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, SMH, IO, the Lenders, Project Co parties involved in the Works, including the Construction Contractor, all 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>Directors, officers, shareholders, employees of the insured parties involved in the Works covered as Additional Insureds</li> <li>MOHLTC is added as an Additional Insured</li> <li>Insurance shall be 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 Pollution and Hostile Fire Pollution 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, SMH, IO, the Construction Contractor, subcontractors, sub-subcontractors, professional consultants, engineers, architects (other than for their professional liability), Lenders, Lenders' Agent, as well as officers, directors, employees, servants and agents of the foregoing</li> </ul>			
<b>Underwriters</b>	Principal underwriters in compliance with Clause 14 of this Schedule 25.			

**St. Michael's Hospital Redevelopment Project**

**Works Insurance –St. Michael's Hospital Redevelopment Project**

**From First Access to Site (Insurance for Works) until the Substantial Completion Date**

**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>  Combined Limit subject to Contractors' Pollution Legal Liability with a minimum \$[REDACTED] sub-limit	\$[REDACTED] per claim and \$[REDACTED] in the aggregate for all claims, inclusive of defense and all costs and expenses  Principal Extensions: <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> <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> </ul>	\$[REDACTED] per claim inclusive of defense and all costs and expenses	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.  Extended Reporting Period: Minimum of 36 months after the Substantial Completion Date.  This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by SMH, IO or the Lenders.	

**Confidential**

Page 16

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> <li>Nuclear Liability</li> <li>Property Damage to Motor Vehicles during Transportation</li> </ul>			
<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 the Construction Contractor, subcontractors, sub-subcontractors, consultants and sub-consultants</li> <li>SMH, 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>			
<b>Underwriters</b>	Principal underwriters in compliance with Clause 14 of this Schedule 25.			



**St. Michael's Hospital Redevelopment Project**

***Works Insurance – St. Michael's Hospital Redevelopment Project***

**From First Access to Site (Insurance for Works) until the Substantial Completion Date**

**Insurances to be provided, or caused to be provided, by Project Co and arranged through the IOCIP program**

Type	Amount	Self-Insured Retention	Principal Cover	Estimated Premium
<b>Project Specific Professional Liability</b>	<p>[\$REDACTED] minimum per claim / [\$REDACTED] in the aggregate (inclusive of defence 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 from a single error, omission or negligent act</li> <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> <li>• Aggregate Reinstatement (in the event that the policy aggregate is eroded between any Phase Completion and</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, plus coverage for an extended reporting period of not less than 36 months immediately following each of the Phase Completion Dates, the Tower Interim Completion Date and the Substantial Completion Date, as applicable.</p> <p>This coverage shall be primary with respect to the Project without right of contribution of any insurance carried by SMH, IO or the Lenders.</p>	

Type	Amount	Self-Insured Retention	Principal Cover	Estimated Premium
Substantial Completion)				
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> <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>				
Comments	<ul style="list-style-type: none"> <li>Named Insured: Construction Contractor (as applicable), all engineers, architects, and other professional consultants that provide professional design services in connection with the Project</li> <li>Professional Services covered: 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>			
Underwriters	<ul style="list-style-type: none"> <li>Principal underwriters in compliance with Clause 14 of this Schedule 25.</li> </ul>			

**St. Michael's Hospital Redevelopment Project**

**Works Insurance –St. Michael's Hospital Redevelopment Project**

**From First Access to Site until the Substantial Completion Date**

**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 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, the Construction Contractor, all subcontractors, sub-subcontractors, consultants and sub-consultants 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 SMH, IO and the Lenders.</p>	
<p><b>Commercial General Liability and Non-Owned Automobile Liability</b></p> <p>For Project Co, the Construction Contractor, all subcontractors, sub-subcontractors, consultants and sub-consultants, including Direct and Contingent Employers Liability, Products and Completed Operations</p>	<p>\$(REDACTED) each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations for Project Co and Construction Contractor</p> <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, 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 plus supplementary layers and Umbrella and/or Excess, or primary plus Umbrella and/or Excess</p> <p>Sub-limits (Project Co and Construction Contractor):</p> <ul style="list-style-type: none"> <li>Full policy limits with respect to Non-Owned Automobile Liability</li> </ul>		<p>Commercial General Liability insurance covering all operations on an occurrence basis against claims for Bodily Injury (including Death), Broad Form Property Damage (including Loss of Use), and including Broad Form Products and Completed Operations Liability.</p> <p>This 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 the earlier of the termination of the insured's person's involvement in the Works and Substantial Completion Date.</p>	

**Confidential**

Page 20

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
Liability, and Owner's and Contractor's Protective extensions	<ul style="list-style-type: none"> <li>• \$[REDACTED] Prairie or Forest Fire Fighting Expenses</li> </ul> <p>Principal Extensions (required to be provided by the Project Co. and the Construction Contractor; shall be endeavoured to be provided by any other contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, 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/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>• 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> <p>Permitted Exclusions:</p> <ul style="list-style-type: none"> <li>• Injury to employees, where WSIB provides valid coverage</li> </ul>		Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to SMH, IO and the Lenders.	

St. Michael's Hospital Redevelopment Project

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"><li>Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations</li><li>Operation of licensed motor vehicles, other than attached machinery while used for its purpose, or at the Project Site</li><li>Cyber risk</li><li>Mould, fungi and fungal derivatives</li><li>Professional liability of engineers, architects, and other professional consultants</li><li>Nuclear or radioactive contamination, except release of radioactive isotopes intended for scientific, medical, industrial or commercial use</li></ul>			
Comments	<ul style="list-style-type: none"><li>SMH, IO and the Lenders will be identified as Additional Insureds or insured clients of Project Co and its Affiliates</li></ul>			
Aircraft and Watercraft Liability	Minimum \$[REDACTED]inclusive, including \$[REDACTED] million passenger hazard – Owned Aircraft	To be determined	Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to SMH, IO and the Lenders.	
(If any exposure)	Minimum \$[REDACTED]inclusive – Non-Owned Aircraft			
	Minimum \$[REDACTED] inclusive Owned or Non-Owned Watercraft			
Comments	<ul style="list-style-type: none"><li>SMH, IO and the Lenders will be identified as Additional Insureds or insured clients of Project Co and its Affiliates</li></ul>			
“All Risks” Ocean Marine Cargo	[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.	
(If any exposure)			This coverage shall be primary with respect to the Facility without right of contribution of any	

Confidential

Page 22

insurance carried by SMH or the Lenders.		
<i>Comments</i>	<ul style="list-style-type: none"> <li>Named Insured includes Project Co, Lenders, Lender's Agent, IO, the Construction Contractor, subcontractors, sub-subcontractors, consultants and sub-consultants and SMH, as their respective interests may appear.</li> </ul>	
<p><b>"All Risks" Contractors' Equipment</b></p> <p>To cover Project Co, the Construction Contractor, subcontractors, sub-subcontractors consultants and sub-consultants</p>	<p>If Site equipment is three years old or less the sum insured shall be equal to [REDACTED]% of the replacement value of all contractors equipment used at the project. If Site equipment is more than three years old, actual cash value basis of loss settlement is acceptable.</p>	<p>"All Risks" coverage on all owned, rented, leased or borrowed contractors' equipment used at the Project Site.</p>
<i>Comments</i>	<ul style="list-style-type: none"> <li>Waiver of subrogation rights against Project Co, SMH, IO, the Construction Contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, Lenders, Lenders' Agent as well as officers, directors, shareholders and employees of the foregoing</li> </ul>	
<p><b>Comprehensive Crime</b></p>	<p>\$(REDACTED) per loss with respect to Employee Dishonesty</p>	<p>Employee Dishonesty insurance against the fraudulent/dishonest acts of employees of Project Co and Project Co Parties including additional 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 SMH or the Lenders.</p>

---

**Underwriters (All non-IOCIP Works Phase insurances that are to be provided or caused to be provided by Project Co)**

---

Principal underwriters in compliance with Clause 14 of this Schedule 25.

**WSIB**

In accordance with Ontario Act's established benefits and schedules

Not Applicable

(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.

(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.

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.

Upon Substantial Completion of the Facility, Project Co shall be provided with satisfactory written confirmation that all required assessments have been paid to date.

On request, within 30 days of such request, Project Co shall deliver to SMH evidence of the WSIB coverage maintained by any person involved in the Works, or confirmation of that person's exemption from WSIB coverage.

---

**APPENDIX B TO SCHEDULE 25  
PUBLIC PRIVATE PARTNERSHIP PERFORMANCE BOND**

**[REDACTED]**



**APPENDIX C TO SCHEDULE 25  
FORM OF LABOUR AND MATERIAL PAYMENT BOND**

**NOTE:** This Bond is issued simultaneously with a Performance Bond and Multiple Obligee Rider and is subject to the terms and conditions of the Labour and Material Payment Bond Multiple Obligee Rider attached hereto

**Bond No.** \_\_\_\_\_ **Bond Amount:** \_\_\_\_\_

**BONDFIELD CONSTRUCTION COMPANY LIMITED** as Principal (hereinafter called the “Principal”), and [REDACTED], a corporation created and existing under the laws of Canada and duly authorized to transact the business of Suretyship in Canada as Surety, (hereinafter called the “Surety”) are subject to the conditions hereinafter contained, held and firmly bound unto **2442931 ONTARIO INC.**, as Trustee (hereinafter called the “Obligee”), for the use and benefit of the Claimants, their and each of their heirs, executors, administrators, successors and assigns, in the amount of [•]• DOLLARS (\$[•]) of lawful money of Canada for the payment of which sum well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the Principal has entered into a written contract entitled Design and Construction Contract with Obligee dated [*Insert Date*] for the St. Michael's Hospital Redevelopment Project (such contract as so amended, and as the same may hereinafter be further amended, whether by way of change, alteration, addition or other modification, and including all of its terms and provisions without limitation, is hereinafter called the Design and Construction Contract and by reference made part hereof). Capitalized terms used in this Bond without definition shall have their respective meanings attributed thereto in the Design and Construction Contract.

**NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION** is such that, if the Principal shall make payment to all Claimants for all labour and material used or reasonably required for use in the performance of the Design and Construction Contract, then this obligation shall be null and void; and otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A Claimant for the purpose of this Bond is defined as one having a direct contract with the Principal for labour, material, or both, used or reasonably required for use in the performance of the Design and Construction Contract, labour and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment directly applicable to the Design and Construction Contract provided that a person, firm or corporation who rents equipment to the Principal to be used in the performance of the Design and Construction Contract under a contract which provides that all or any part of the rent is to be applied towards the purchase price thereof, shall only be a Claimant to the extent of the prevailing industrial rental value of such equipment for the period during which the equipment was used in the performance of the Design and Construction Contract. The prevailing industrial rental value of equipment

shall be determined, insofar as it is practical to do so, in accordance with and in the manner provided for in the latest revised edition of the publication of the Canadian Construction Association titled “Rental Rates on Construction Equipment” published prior to the period during which the equipment was used in the performance of the Design and Construction Contract.

2. The Principal and the Surety hereby jointly and severally agree with the Oblige, as Trustee, that every Claimant who has not been paid as provided for under the terms of his or her contract with the Principal, before the expiration of a period of ninety (90) days after the date on which the last of such Claimant's work or labour was done or performed or materials were furnished by such Claimant, may as a beneficiary of the trust herein provided for, sue on this Bond, prosecute the suit to final judgment for such sum or sums as may be justly due to such Claimant under the terms of his or her contract with the Principal and have execution thereon. Provided that the Oblige is not obliged to do or take any act, action or proceeding against the Surety on behalf of the Claimants, or any of them, to enforce the provisions of this Bond. If any act, action or proceeding is taken either in the name of the Oblige or by joining the Oblige as a party to such proceeding, then such act, action or proceeding, shall be taken on the understanding and basis that the Claimants or any of them, who take such act, action or proceeding shall indemnify and save harmless the Oblige against all costs, charges and expenses or liabilities incurred thereon and any loss or damage resulting to the Oblige by reason thereof. Provided still further that, subject to the foregoing terms and conditions, the Claimants, or any of them may use the name of the Oblige to sue on and enforce the provisions of this Bond.
3. It is a condition precedent to the liability of the Surety under this Bond that such Claimant shall have given written notice as hereinafter set forth to each of the Principal, the Surety and the Oblige, stating with substantial accuracy the amount claimed, and that such Claimant shall have brought suit or action in accordance with this Bond, as set out in sub-clauses 3(b) and 3(c) below. Accordingly, no suit or action shall be commenced hereunder by any Claimant:
  - (a) unless such Claimant shall have given written notice within the time limits hereinafter set forth to each of the Principal, the Surety and the Oblige, stating with substantial accuracy the amount claimed. Such notice shall be served by mailing the same by registered mail to the Principal, the Surety and the Oblige, at any place where an office is regularly maintained for the transaction of business by such persons or served in any manner in which legal process may be served in the Province or other part of Canada in which the subject matter of the Design and Construction Contract is located. Such notice shall be given:
    - (i) in respect of any claim for the amount or any portion thereof, required to be held back from the Claimant by the Principal, under either the terms of the Claimant's contract with the Principal, or under the construction lien legislation applicable to the Claimant's contract with the Principal, whichever is greater, within one hundred and twenty (120) days after such

Claimant should have been paid in full under the Claimant's contract with the Principal;

- (ii) in respect of any claim other than for the holdback, or portion thereof, referred to above, within one hundred and twenty (120) days after the date upon which such Claimant did, or performed, the last of the work or labour or furnished the last of the materials for which such claim is made under the Claimant's contract with the Principal;
  - (b) after the expiration of one (1) year following the date on which the Principal ceased work on the Design and Construction Contract, including work performed under the guarantees provided in the Design and Construction Contract;
  - (c) other than in a Court of competent jurisdiction in the Province or District of Canada in which the subject matter of the Design and Construction Contract, or any part thereof, is situated and not elsewhere, and the parties hereto agree to submit to the jurisdiction of such Court.
- 4. The Surety agrees not to take advantage of Article 1959 of the Civil Code of the Province of Quebec in the event that, by an act or an omission of a Claimant, the Surety can no longer be subrogated in the rights, hypothecs and privileges of said Claimant.
  - 5. Any material change in the Design and Construction Contract between the Principal and the Obligee shall not prejudice the rights or interest of any Claimant under this Bond, who is not instrumental in bringing about or has not caused such change.
  - 6. The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith and in accordance with the provisions hereof, inclusive of the payment by the Surety of construction liens which may be filed of record against the subject matter of the Design and Construction Contract, whether or not claim for the amount of such lien be presented under and against this Bond.
  - 7. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.
  - 8. This Bond may be executed in counterpart, all of which when taken together constitute the Labour and Material Payment Bond.

**IN WITNESS WHEREOF**, the Principal and the Surety have signed and sealed this Bond this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**SIGNED, SEALED AND DELIVERED in the presence of:**

**BONDFIELD CONSTRUCTION COMPANY  
LIMITED  
[REDACTED]**

**[REDACTED]**

## EXHIBIT 1 TO APPENDIX C

**LABOUR AND MATERIAL PAYMENT BOND**  
**MULTIPLE OBLIGEE RIDER**

No. \_\_\_\_\_

**TO BE ATTACHED TO AND FORM PART OF THE LABOUR AND MATERIAL PAYMENT BOND NO. [Insert Bond No.]** dated **[Insert Date]** (the “**L&M Bond**”) concurrently with the execution of this Labour and Material Payment Bond Multiple Obligor Rider (“**L&M Multiple Obligor Rider**”) issued by **[REDACTED]**, as Surety (hereinafter called the “**Surety**”), on behalf of **BONDFIELD CONSTRUCTION COMPANY LIMITED**, as Principal (hereinafter called the “**Principal**”), and in favour of **2442931 ONTARIO INC.**, as Obligor (hereinafter called the “**Obligor**”).

**NOW THEREFORE**, in consideration of **[REDACTED]** (\$**[REDACTED]**) Dollars and other good and valuable consideration, receipt of which is hereby acknowledged by each of the parties hereto, the undersigned hereby agree as follows:

1. The L&M Bond shall and is hereby amended to add **ST. MICHAEL'S HOSPITAL** (hereinafter called the “**Owner**”) and **BANK OF MONTREAL** (hereinafter called the “**Lender**”) as additional named Obligor, in their respective capacities as assignees of the Design and Construction Contract.
2. Capitalized terms used in this L&M Multiple Obligor Rider without definition shall have the respective meanings attributed to them in the L&M Bond and the Design and Construction Contract.
3. All of the terms, conditions and provisions of the L&M Bond are hereby incorporated herein by reference as if fully set forth herein.
4. No alteration or material change in the Design and Construction Contract or any conduct of the Principal, Obligor or Lender, shall prejudice the rights or interest of Owner or Claimant under the L&M Bond or this L&M Multiple Obligor Rider provided that Owner or Claimant have not caused such alteration or material change without the prior written consent of the Surety.
5. In the event of any ambiguity, conflict or inconsistency, the L&M Bond and the L&M Multiple Obligor Rider shall prevail over the Project Agreement and the other Project Documents.
6. Nothing herein shall alter or affect the aggregate liability of the Surety as described in the L&M Bond.

7. This L&M Multiple Obligee Rider may be executed in counterpart, all of which taken together shall constitute the L&M Multiple Obligee Rider.

**IN WITNESS WHEREOF**, the Principal, Surety, Oblige, Owner and Lender have signed and sealed this L&M Multiple Oblige Rider dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**SIGNED, SEALED and DELIVERED**

**BONDFIELD CONSTRUCTION COMPANY  
LIMITED**

**[REDACTED]**

**ZURICH INSURANCE COMPANY LTD.**

**[REDACTED]**

**2442931 ONTARIO INC.**

**[REDACTED]**

**BANK OF MONTREAL, as Agent**

**[REDACTED]**

**ST. MICHAEL'S HOSPITAL**

**[REDACTED]**



**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, 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 and the Construction Contractor'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 26 of the Project Agreement; and
  - (i) in a form that is capable of audit.
- 1.2 Project Co shall retain and maintain all records 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 SMH, and shall conform to the Output Specifications and Good Industry Practice. Where by prior agreement SMH 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 SMH, not to be unreasonably withheld or delayed, be stored in electronic form if SMH has access thereto and will continue to have access thereto, such that SMH 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 for a period of at least 7 years or such longer period as required by Applicable Law.
- 1.7 Project Co shall notify SMH 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, SMH may elect to require Project Co to deliver such records to SMH, in which case Project Co shall, at the expense of SMH, deliver such records (with the exception of Sensitive Information) to SMH in the manner and to the location as SMH shall specify; or
  - (b) if SMH 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 in accordance with its terms, Project Co shall deliver all records that Project Co retains and maintains pursuant to this Schedule 26 to SMH in the manner and to the location that SMH shall reasonably specify. SMH 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 an SMH Event of Default or pursuant to Section 36.3 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 SMH; 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 year or partial year of the Project Term, Project Co shall deliver to SMH a report, as reasonably requested by SMH in connection with SMH'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 SMH or that may be owing by SMH 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 SMH not later than 60 days after the end of each fiscal quarter in each fiscal year, part or all of which falls in a year of the Project Term, a copy of Project Co's unaudited financial statements in respect of that period, and 120 days after the end of each fiscal year, a copy of Project Co's audited financial statements, in respect of that period, 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 40 of the Project Agreement, shall be treated by SMH 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 Ancillary Documents, including all amendments to such agreements;
  - (b) all records relating to the appointment and replacement of the SMH 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 any Phase Completion, Tower Interim Completion, Substantial Completion, Final Completion, Phase Project Co Commissioning, Tower Interim Completion Project Co Commissioning and 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 documents submitted in accordance with Schedule 22 - Variation Procedure;
  - (j) any documents related to decisions resulting from the Dispute Resolution Procedure;
  - (k) any documents related to a Project Co Change in Ownership or Change in Control;
  - (l) any documents relating to any Refinancing;
  - (m) 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;
  - (n) the financial accounts of Project Co referred to in Section 1.11;
  - (o) all records required by Applicable Law (including in relation to health and safety matters) to be maintained by Project Co with respect to the Works;
  - (p) any documents relating to insurance and insurance claims;
  - (q) all Jointly Developed Materials; and
  - (r) 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 Articles 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 SMH 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 Articles 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 SMH Representative, if given by SMH, 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 SMH 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 Article 2 of this Schedule 27 (or as otherwise agreed to in writing by the Parties pursuant to Section 13.6 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 SMH 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 Article 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 Articles 2 and 3 of this Schedule 27 or as otherwise agreed to in writing by the Parties pursuant to Section 13.6 of this Schedule 27.
- 4.2 All Disputes related to the Works and that:
- (a) arise prior to, or otherwise in relation to a Phase Completion, Tower Interim Completion or Substantial Completion;
  - (b) relate to completion of Phase Minor Deficiencies, Tower Interim Completion Minor Deficiencies or 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 Article 38 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:

- (a) the Tower Interim Completion Certificate shall be final and binding on the Parties solely in respect of determining the Tower Interim Completion Payment Date and a Dispute in relation to the Tower Interim Completion Payment Date shall not be subject to resolution pursuant to this Schedule 27; and
- (b) the Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Substantial Completion Payment Date and a Dispute in relation to the Substantial Completion Payment 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 Section 6 of this Schedule 27 shall not apply unless otherwise agreed by the Parties on terms acceptable to the Parties.

**5. [Intentionally Deleted]**

**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 Section 4.2 of this Schedule 27 or a Dispute referred to arbitration or litigation pursuant to Section 4.4 of this Schedule 27 (except as otherwise agreed to in writing by the Parties pursuant to Section 13.6 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) pursuant to the *Arbitration Act* (Ontario) as if the adjudicator was an arbitrator under the *Arbitration Act* (Ontario) and shall:
- (a) be independent of and at arm's length to Project Co, SMH, 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 the 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 SMH Activities, then such qualifications and experience should include relevant experience in the provision of activities similar to the SMH Activities 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 permitting the SMH Activities to proceed 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 and/or Compensation Event. 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* (Ontario) and the law relating to arbitration shall not apply to the Adjudicator (other than as set out in Section 6.2 of this Schedule 27) 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:
  - (i) the Tower Interim Completion Certificate shall be final and binding solely in respect of determining the Tower Interim Completion Payment Date and a Dispute in relation to the Tower Interim Completion Payment Date shall not be subject to resolution pursuant to this Schedule 27; and
  - (ii) the Substantial Completion Certificate shall be final and binding solely in respect of determining the Substantial Completion Payment Date and a Dispute in relation to the Substantial Completion Payment 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 SMH 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, SMH 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 SMH 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 SMH's right to contest the determination made by the Adjudicator in a subsequent proceeding. SMH shall provide Project Co such reasonable extensions of time in respect of Project Co's obligations under this Project Agreement necessary to allow Project Co to effect the corrective measures and such extension of time may be treated as a Delay Event, 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 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 Section 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 10 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 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 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 Section 6 of this Schedule 27 applies 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 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 Adjudicator, shall be confidential and inadmissible in any arbitration or litigation proceeding. For greater certainty, the Adjudicator shall not 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 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.

- 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 SMH Activities, then such qualifications and experience should include relevant experience in the provision of activities similar to the SMH Activities 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 Works or in the business affairs of SMH, 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 Works, 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 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 Section 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 SMH 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 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 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 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 10 of this Schedule 27, that Dispute shall be resolved only by arbitration pursuant to Sections 8.2 to 8.14 of this Schedule 27.

## **10. Consolidation of Project Agreement Adjudication, Arbitration and Litigation**

- 10.1 For all Disputes in respect of a Phase of the Works that arise prior to such Phase of the Works' Phase Completion, unless:

- (a) both Parties otherwise agree;
- (b) the issue in a particular Dispute arises in connection with the Review Procedure;
- (c) the issue in a particular Dispute is such that waiting until after the applicable Phase Completion to resolve that Dispute will cause irreparable harm to one of the Parties;
- (d) the issue in a particular Dispute arises in connection with requirements of achieving or deficiencies in not achieving the applicable Phase Completion; or
- (e) in respect to a particular Dispute, the Dispute is consolidated with any Third Arbitration or Third Party Litigation (as hereinafter defined) pursuant to Section 11 of this Schedule 27,

all adjudication, arbitral and litigation proceedings between the Parties prior to such Phase 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 the such Phase Completion.

10.2 For all Disputes in respect of the Tower (for clarity, which are not Phases of the Works) that arise prior to Tower Interim Completion, unless:

- (a) both Parties otherwise agree;
- (b) the issue in a particular Dispute arises in connection with the Review Procedure;
- (c) the issue in a particular Dispute is such that waiting until after Tower Interim Completion to resolve that Dispute will cause irreparable harm to one of the Parties;
- (d) the issue in a particular Dispute arises in connection with requirements of achieving or deficiencies in not achieving Tower Interim Completion; or
- (e) in respect to a particular Dispute, the Dispute is consolidated with any Third Arbitration or Third Party Litigation (as hereinafter defined) pursuant to Section 11 of this Schedule 27,

all adjudication, arbitral and litigation proceedings between the Parties in respect of the Tower prior to Tower Interim 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 Tower Interim Completion.

10.3 For all Disputes in respect of the Facility except for the Tower and any Phase of the Works that arise prior to Substantial Completion, unless:



- (a) both Parties otherwise agree;
- (b) the issue in a particular Dispute arises in connection with the Review Procedure;
- (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;
- (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 any Third Arbitration or Third Party Litigation (as hereinafter defined) pursuant to Section 11 of this Schedule 27,

all adjudication, arbitral and litigation proceedings between the Parties in respect of the Facility (except for the Tower and any Phase of the Works) 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 SMH, 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. [Intentionally Deleted]**

**13. Miscellaneous**

13.1 Project Co and SMH 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 SMH, and in the event the matter in dispute is determined in favour of Project Co, proceeding in accordance with SMH's position shall: (i) subject to and in accordance with Section 30 of this Project Agreement, be treated as a Delay Event; (ii) subject to and in accordance with Section 31 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.

- 13.2 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.
- 13.3 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 SMH, Project Co shall indemnify SMH as provided for at Section 44.1(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 SMH until the date of payment; or
  - (b) for amounts payable by SMH to Project Co, SMH shall indemnify Project Co as provided for at Section 44.2(c) of this Project Agreement from and against any damages suffered or incurred resulting from any overpayment to SMH or, as applicable, any underpayment or non-payment by SMH from the date of any overpayment to SMH or, as applicable, from the date on which payment was due under this Project Agreement to Project Co until the date of payment.
- 13.4 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 a court of competent jurisdiction, are made available in a timely manner to SMH and the SMH Representative.
- 13.5 SMH shall ensure that any and all documents and other information in the possession or control of any SMH Party that are available to SMH 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.

13.6 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 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; and
- (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.

SCHEDULE 28

STANDBY LETTER OF CREDIT

Letter of Credit: #[●]

Date: [●]

St. Michael's Hospital  
[REDACTED]

Attn: [REDACTED]

Dear Sir/Madam:

**RE: St. Michael's Hospital Redevelopment Project**

---

At the request of our client, 2442931 Ontario Inc. ("**Project Co**"), we, [REDACTED], 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 St. Michael's Hospital ("**SMH**"), 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 SMH certifying that SMH is entitled to draw on this Letter of Credit pursuant to Section 2.3(c) of a project agreement dated [●] (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 [insert the date that is 180 days after the **Financial Close Target Date**] (the "**Expiry Date**"), and SMH 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 [REDACTED] 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,

[REDACTED]

## SCHEDULE 29

## REFINANCING

## 1. DEFINITIONS

1.1 The following terms shall have the following meanings:

(a) **“Exempt Refinancing”** means:

- (i) a change in taxation or change in accounting treatment pursuant to a Change in Law or change in Canadian GAAP;
- (ii) 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;
- (iii) any Qualifying Bank Transaction;
- (iv) any Rescue Refinancing;
- (v) any Refinancing that was approved by SMH prior to the execution of this Project Agreement and occurs during the first six months following the date of this Project Agreement;
- (vi) any amendment, variation or supplement of any agreement approved by SMH as part of any Variation under this Project Agreement; or
- (vii) any Permitted Borrowing.

(b) **“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 SMH's role as a hospital or may compromise SMH's reputation or integrity or the nature of the Province's health care system so as to affect public confidence in that system.

(c) **“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.
- (d) **“Qualifying Refinancing”** means any Refinancing that will give rise to a Refinancing Gain that is not an Exempt Refinancing.
- (e) **“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.
- (f) **“Refinancing Financial Model”** means a comprehensive and detailed financial model satisfactory to SMH, acting reasonably, prepared for the purpose of Section 2 of this Schedule 29, 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 29, 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 Works to the date of the Refinancing;
  - (iv) macroeconomic assumptions; and



- (v) all other relevant factors.
- (g) **“Refinancing Gain”** means an amount equal to the greater of zero and  $(A - B)$ , where:
  - A = the sum of the Senior Debt Amount and Junior Debt Amount as projected to be outstanding at Substantial Completion immediately prior to the Refinancing (using the Refinancing Financial Model but without taking into account the effect of the Refinancing).
  - B = the sum of the Senior Debt Amount and Junior Debt Amount as projected to be outstanding at Substantial Completion immediately prior to the Refinancing (using the Refinancing Financial Model and taking into account the effect of the Refinancing).
- (h) **“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 SMH, 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 SMH, 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 notice of such Refinancing to SMH 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 under a book-based system of a depository and pursuant to a trust indenture that comprises a portion of the Financing.

### 2.2 SMH 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 SMH, whether actual or contingent, present or future, known or unknown.
- 2.3 SMH 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 SMH 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. SMH 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 SMH, provide any information in relation to a proposed Refinancing as SMH may reasonably require. Project Co shall keep SMH informed as to any changes to the terms of the Refinancing. Both SMH and Project Co shall at all time act in good faith with respect to any Refinancing.
- 2.5 SMH's share of the Refinancing Gain shall be received as a reduction in the amount of the Substantial Completion Payment.
- 2.6 SMH and Project Co will negotiate in good faith to agree upon the basis and method of calculation 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 SMH's share, the Dispute shall be determined in accordance with Schedule 27 - Dispute Resolution Procedure. Both SMH and Project Co shall work collaboratively to establish the rate setting process required to complete the Refinancing.
- 2.7 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 SMH for all such reasonable out-of-pocket costs incurred by SMH.

**SCHEDULE 30  
INSURANCE TRUST AGREEMENT**

**THIS AGREEMENT** is made as of the \_\_\_\_ day of January, 2015

**AMONG:**

**ST. MICHAEL'S HOSPITAL**, a non-share capital corporation incorporated under the laws of Ontario

("SMH")

**AND:**

**BANK OF MONTREAL**, a Canadian chartered bank, acting as agent for and on behalf of the Lenders

(the "**Lenders' Agent**")

**AND:**

**2442931 ONTARIO INC., [REDACTED]**

("Project Co")

**AND:**

**BNY TRUST COMPANY OF CANADA**, a company continued under the *Trust and Loan Companies Act*

(the "**Account Trustee**")

**WHEREAS:**

- A. SMH and Project Co have entered into the Project Agreement.
- B. SMH, the Lenders' Agent and Project Co have entered into the Lenders' Direct Agreement.
- C. SMH, 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.
- D. SMH, the Lenders' Agent and Project Co have agreed that the Bonds are to be held in trust by the Account Trustee in accordance with the terms of this Insurance Trust

Agreement and that no releases of the original copy of the Bonds 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 introductory paragraph of this Insurance Trust Agreement.
- (b) **“Appointed Representative”** has the meaning given in the Lenders’ Direct Agreement.
- (c) **“Bank”** means Account No. 37529674-18 at BMO Nesbitt Burns.
- (d) **“Bonds”** has the meaning given in Schedule 1 – Definitions and Interpretations of the Project Agreement.
- (e) **“Business Day”** has the meaning given in the Project Agreement.
- (f) **“Change of Authorization Event”** has the meaning given in Section 9(a)(ii) of this Insurance Trust Agreement.
- (g) **“Change of Authorization Notice”** has the meaning given in Section 9(b)(ii) of this Insurance Trust Agreement.
- (h) **“Default Notice”** means a written notice given by the Lenders’ Agent to the Account Trustee and SMH that an event of default under the Lending Agreements has occurred and is continuing.
- (i) **“Default Period”** means the period commencing on the date upon which the Account Trustee and SMH receives a Default Notice and ending on the date upon which the Account Trustee and SMH 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.
- (j) **“Governmental Authority”** has the meaning given in the Project Agreement.
- (k) **“Insurance Policies”** has the meaning given in Section 4 of this Insurance Trust Agreement.
- (l) **“Insurance Proceeds”** has the meaning given in Section 7(a) 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 introductory paragraph of this Insurance Trust Agreement.
- (q) **“Lenders’ Direct Agreement”** means the Lenders’ Direct Agreement made on or about the date hereof between SMH, Project Co and the Lenders’ Agent.
- (r) **“Lending Agreements”** has the meaning given in the Project Agreement.
- (s) **“Multiple Obligee”** means a multiple obligee under the applicable Bond.
- (t) **“Multiple Obligee Rider(s)”** means the multiple obligee rider(s) applicable to the Bonds pursuant to which Project Co, SMH and the Lenders’ Agent are multiple obligees under the Bonds.
- (u) **“Notice Period”** has the meaning given in the Lenders’ Direct Agreement.
- (v) **“Order”** has the meaning given in Section 8(k) of this Insurance Trust Agreement.
- (w) **“Party”** means any of SMH, Project Co, the Lenders’ Agent or the Account Trustee, and **“Parties”** means all of SMH, Project Co, the Lenders’ Agent and the Account Trustee.
- (x) **“Project”** has the meaning given in the Project Agreement.
- (y) **“Project Agreement”** means the project agreement made on or about the date hereof between SMH and Project Co.
- (z) **“Project Co”** has the meaning given in the introductory paragraph of this Insurance Trust Agreement.
- (aa) **“Project Co Event of Default”** has the meaning given in the Project Agreement.
- (bb) **“Replacement Project Agreement”** has the meaning given in the Lenders’ Direct Agreement.
- (cc) **“Replacement Project Co”** has the meaning given in the Lenders’ Direct Agreement.
- (dd) **“SMH”** has the meaning given in the introductory paragraph of this Insurance Trust Agreement.

- (ee) **“Step-In Notice”** has the meaning given in the Lenders’ Direct Agreement.
- (ff) **“Step-In Period”** has the meaning given in the Lenders’ Direct Agreement.
- (gg) **“Surety”** has the meaning given in the Project Agreement.
- (hh) **“Trust Property”** means all of the property held in trust by the Account Trustee pursuant to this Insurance Trust Agreement, including, without limitation, the original copy of the Bonds, 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 and shall not constitute a part of this Insurance Trust Agreement or 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 Toronto, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed and time shall be of the essence hereof.
- (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. BONDS AND INSURANCE TRUST ACCOUNT**

- (a) Prior to the commencement of a Default Period, the original copy of the Bonds 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 original copy of the Bonds and 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 original copy of the Bonds, 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 SMH.

- (b) The Account Trustee shall not release the original copy of the Bonds or 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, SMH, and Project Co agree that (x) if Project Co or the Lenders' Agent receives the original copy of the Bonds, the Bonds will be enforced for the purpose of completion of the Project or for such other purpose as may be expressly set out in the Bonds, and (y) 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 Works in respect of which such Insurance Proceeds have been paid;
  - (ii) the completion of the Project; or
  - (iii) indemnification for any SMH 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 Works.

- (d) Notwithstanding anything in this Insurance Trust Agreement, if SMH is entitled to indemnification under the Insurance Policies in respect of any loss incurred by SMH, such related insurance proceeds are to be paid directly to SMH 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 SMH 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. DELIVERY OF ORIGINAL BONDS AND INSURANCE POLICIES**

Project Co shall deliver, or cause to be delivered, to the Account Trustee an original copy of all Bonds Project Co is required to obtain under the Project Agreement and all originals of all insurance policies that Project Co is required to maintain under the Project Agreement (collectively, the “**Insurance Policies**”), and the Account Trustee shall hold the original copy of the Bonds and Insurance Policies in trust for the benefit of each of the beneficiaries and loss payees, as the case may be, thereunder.

**5. BONDS**

- (a) If the Account Trustee and SMH have received a Default Notice, and if Lender's Agent presents to the Account Trustee (and the other parties to this Insurance Trust Agreement) a declaration that it or any person Lender's Agent designates requires possession of the original copy of the Bonds for the purpose of establishing and/or enforcing the rights of any Multiple Obligee thereunder, and the Account Trustee has received written authorization from SMH confirming Lender's Agent's right to receive the original copy of the Bonds, the Account Trustee shall provide the original copy of the Bonds to Lender's Agent or such designated party, without the need for further investigation or inquiry by the Account Trustee, provided that, if at any time prior to the release of the original copy of the Bonds to Lender's Agent or a person designated by it, pursuant to the foregoing, the Account Trustee receives a Change of Authorization Notice and SMH presents to the Account Trustee a declaration that it or any person designated by it requires possession of the original copy of the Bonds for the purpose of establishing and/or enforcing the rights of any Multiple Obligee thereunder, the Account Trustee shall provide the same to SMH or such designated party, without the need for further investigation or inquiry by the Account Trustee that SMH or the designated party presenting the declaration is entitled to receive the original copy of the Bonds. SMH shall provide, no later than 5 Business Days following receipt by SMH of a request by the Lender's Agent, either (i) the written authorization referred to in this Section 5(a); or (ii) written justification detailing SMH's rationale for refusing to provide such authorization.
- (b) Project Co agrees to obtain or cause to be obtained from the Surety any required amendment to the Bonds to provide for the foregoing provisions by way of amendment or replacement of the Multiple Obligee Rider now attached to and forming part of the Bonds.
- (c) SMH, Lender's Agent and Project Co covenant and agree to observe and perform their respective covenants, agreements and obligations under the provisions of the Lender's Direct Agreement and further covenant and agree as between them, that if there is any conflict or inconsistency between the provisions of Lender's Direct Agreement and this Insurance Trust Agreement, the provisions of the Lender's

Direct Agreement shall govern and prevail to the extent of such conflict or inconsistency.

**6. INSURANCE PROCEEDS**

- (a) Subject to Section 3(d), 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 SMH (the **"Insurance Proceeds"**) as follows:
- (i) in the case of third party legal liability or employer's liability insurance, to the relevant claimant in satisfaction of the claim, demand, proceeding or liability in respect of which such Insurance Proceeds are payable;
  - (ii) in the case of any property builders' risk "All Risk" insurance, 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 in respect of the assets in respect of which such Insurance Proceeds have been paid in the same calendar month, 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 in respect of the assets in respect of which such Insurance Proceeds have been paid in the same calendar month, 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 SMH 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

- (iii) 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 SMH, to be distributed to the parties entitled thereto.
- (b) The Account Trustee shall distribute any excess Insurance Proceeds remaining after the distributions contemplated in Section 5(a) 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, SMH, may at any time or from time to time direct in writing.
- (c) Each of Project Co, the Lenders' Agent and SMH shall forthwith deliver, or cause to be delivered, to the Account Trustee, any and all Insurance Proceeds it received from time to time and is not otherwise entitled to in accordance with the terms of this Insurance Trust Agreement.
- (d) The Account Trustee shall deposit to the Insurance Trust Account all amounts that are paid over to it pursuant to the Insurance Policies or otherwise by Project Co, SMH or the Lenders' Agent and shall not transfer, release or distribute any such proceeds other than in accordance with this Insurance Trust Agreement.

## **7. 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 SMH 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 SMH may from time to time request in writing.

## **8. 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, SMH 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, SMH 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, SMH, 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 8(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 or of SMH or of Project Co, 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 8(b).
- (f) Except as otherwise provided in Sections 8(c), 8(d) and 8(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 SMH 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 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 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, SMH 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, SMH, 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, SMH, 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, SMH, 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 SMH 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 SMH.
- (o) Each of the Lenders' Agent and SMH 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 SMH, as applicable. The Account Trustee shall refuse to act upon any instruction given by the Lenders' Agent or SMH 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 SMH, as applicable, pursuant to this Section 8(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 SMH, as applicable, pursuant to Section 8(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 SMH, or any shorter period of time as agreed to by Project Co and SMH, notwithstanding the provisions of Section 8(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.

## 9. LENDER'S AGENT AND SMH RIGHTS TO DIRECT

- (a) Until the first to occur of:
- (i) the expiry of the Notice Period under the Lenders' Direct Agreement where no Step-In Notice has been delivered thereunder;
  - (ii) the expiry of the Step-In Period under the Lenders' Direct Agreement where:
    - (A) there has been no assignment to a Replacement Project Co;
    - (B) no Replacement Project Agreement has been entered into; or
    - (C) the Appointed Representative has not cured the Project Co Event of Default,
- (each, 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, the Bonds and the Insurance Proceeds.
- (b) Upon the occurrence of a Change of Authorization Event:
- (i) the Lenders' Agent shall cease to be entitled, and SMH shall thenceforth be entitled, to direct the Account Trustee with respect to the Insurance Trust Account, the Insurance Policies, the Bonds and the Insurance Proceeds; and



- (ii) the Lenders' Agent and SMH shall jointly provide notice to the Account Trustee (a "**Change of Authorization Notice**") that SMH shall, as of the date of such Change of Authorization Event, have the exclusive right to direct the Account Trustee with respect to the original copy of the Insurance Trust Account, the Insurance Policies, the Bonds and the Insurance Proceeds.

## **10. TERMINATION**

- (a) Subject to the provisions of Section 10(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 SMH have been paid and performed in full.
- (b) The Account Trustee may terminate this Insurance Trust Agreement at any time upon 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 Lenders' Agent, SMH, 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 SMH.

## **11. ASSIGNMENT**

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, SMH and Project Co.

## **12. 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 SMH:

**[REDACTED]**

Fax No.: [REDACTED]

Attn: [REDACTED]

With a copy to the following addressees (which shall not constitute notice):

[REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to the Lenders' Agent:

[REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to Project Co:

[REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to the Account Trustee:

[REDACTED]

Fax No.: [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(b).
- (c) Any Party to this Insurance Trust Agreement may, from time to time, change any of its contact information set forth in Section 12(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(e), 12(f) and 12(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.
- (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.

### **13. 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.

### **14. 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.

## **15. 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.

## **16. 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.

## **17. 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.

## **18. 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.

## **19. 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.

**20. FURTHER ASSURANCE**

Each Party shall do all things, from time to time, and execute all reasonable further documents necessary to give full effect to this Insurance Trust Agreement.

**21. 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.

**22. 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.

**23. COPYRIGHT NOTICE**

The Parties acknowledge that the Queen's Printer for Ontario is the exclusive owner of the copyright in the Project Agreement.

**[EXECUTION PAGES IMMEDIATELY FOLLOW]**

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

**ST. MICHAEL'S HOSPITAL**

**[REDACTED]**

**BANK OF MONTREAL**

**[REDACTED]**

**2442931 ONTARIO INC.**

**[REDACTED]**

**BNY TRUST COMPANY OF CANADA**

**[REDACTED]**

**SCHEDULE 31**

**PROJECT CO INFORMATION**

**[REDACTED]**



**SCHEDULE 32**

**TRUST ACCOUNT AGREEMENT**

**THIS TRUST ACCOUNT AGREEMENT** is made as of the \_\_\_\_\_ day of January, 2015

**BETWEEN:**

**ST. MICHAEL'S HOSPITAL**, a non-share capital corporation incorporated under the laws of Ontario

("SMH")

**AND:**

**2442931 ONTARIO INC., [REDACTED]**

("Project Co")

**AND:**

**BNY TRUST COMPANY OF CANADA**, a company continued under the *Trust and Loan Companies Act*

(the "Trustee")

**WHEREAS:**

- A. SMH 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. SMH is, under the Project Agreement, obligated to pay certain amounts to Project Co, including the Tower Interim Completion Payment, Substantial Completion Payment and any Compensation Payment.
- D. Under the Lenders' Direct Agreement, SMH has been authorized and instructed to pay all 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. SMH has irrevocably designated the Trust Account as the "Bank Account" under the SMH Funding and Approval Letter into which payments from MOHLTC of MOHLTC's share of

the Tower Interim Completion Payment, Substantial Completion Payment, any Compensation Payment and any other amounts that may from time to time be payable by SMH to Project Co under the Project Agreement pursuant to the SMH Funding and Approval Letter will be made.

**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”** has the meaning given in the Project Agreement.
- (d) **“Dispute Resolution Procedure”** has the meaning given in the Project Agreement.
- (e) **“Governmental Authority”** has the meaning given in the Project Agreement.
- (f) **“IO”** has the meaning given in the Project Agreement.
- (g) **“Lenders”** has the meaning given in the Project Agreement.
- (h) **“Lenders’ Agent”** means Bank of Montreal, acting as agent for and on behalf of the Lenders.
- (i) **“Lenders’ Direct Agreement”** means the lenders’ direct agreement made on or about the date hereof between SMH, Project Co and the Lenders’ Agent.
- (j) **“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.
- (k) **“MOHLTC”** has the meaning given in the Project Agreement.
- (l) **“Non-Payment Notice”** has the meaning given in Section 4(d)(ii) of this Trust Account Agreement.
- (m) **“Party”** means any of SMH, Project Co or the Trustee, and **“Parties”** means all of SMH, Project Co and the Trustee.
- (n) **“Payment Instruction”** means a written instruction to the Trustee from:
  - (i) SMH in accordance with Section 4(b)(iii) and in the form attached as **Appendix A hereto**; or

- (ii) SMH and Project Co in accordance with Section 4(b)(i) or 4(b)(ii) and in the form attached as **Appendix B** hereto,  
  
in each case directing the disposition of Trust Funds.
- (o) **“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).
- (p) **“Privacy Laws”** has the meaning given in Section 7(g) of this Trust Account Agreement.
- (q) **“Proceeds Account”** means [REDACTED].
- (r) **“Project”** has the meaning given in the Project Agreement.
- (s) **“Project Agreement”** means the project agreement made on or about the date hereof between SMH and Project Co (as may be amended, restated and/or supplemented from time to time).
- (t) **“SMH Funding and Approval Letter”** has the meaning given in the Project Agreement.
- (u) **“Substantial Completion Payment”** has the meaning given in the Project Agreement.
- (v) **“Termination Date”** has the meaning given in the Project Agreement.
- (w) **“Tower Interim Completion Payment”** has the meaning given in the Project Agreement.
- (x) **“Trust Account”** means [REDACTED].
- (y) **“Trust Account Agreement”** means this trust account agreement.
- (z) **“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.

- (aa) “**Trustee**” means BNY Trust Company of Canada.

## **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 Toronto, 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 SMH (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) SMH 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 SMH Funding and Approval Letter, for payment of MOHLTC’s share of the Tower Interim Completion Payment, Substantial Completion Payment, any Compensation

Payment and any other amounts that may from time to time be payable by SMH 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 the Tower Interim Completion Payment, the Substantial Completion Payment or a Compensation Payment to Project Co, in accordance with a Payment Instruction signed by both SMH and Project Co;
  - (ii) for any other amounts that may from time to time be payable by SMH to Project Co under the Project Agreement, in accordance with a Payment Instruction signed by both SMH and Project Co; or
  - (iii) in accordance with a Payment Instruction signed only by SMH if:
    - (A) the monies are to reimburse MOHLTC for any amount over-contributed by MOHLTC in respect of MOHLTC's share of the Tower Interim Completion Payment, the Substantial Completion Payment, any Compensation Payment or any other amounts that may from time to time be payable by SMH to Project Co under the Project Agreement;
    - (B) the monies are to reimburse SMH for any monies expended by SMH in respect of which SMH 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 SMH interest earned in accordance with Section 8(b),and SMH certifies as to (A) and/or (B), as applicable. A Payment Instruction given by SMH pursuant to this 4(b)(iii) 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 SMH under Section 4(b)(iii) 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)(iii)(A), 4(b)(iii)(B) or 4(b)(iii)(C) in whole or in part; or

- (ii) that SMH 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 SMH under Section 35.1(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 SMH, such dispute shall be resolved in accordance with the Dispute Resolution Procedure and, to the extent that such resolution confirms the entitlement of SMH to a withdrawal of disputed Trust Funds, the Trustee shall distribute such Trust Funds pursuant to a supplementary Payment Instruction signed only by SMH.

## **5. PAYMENT OF TRUST PROPERTY**

- (a) Subject to Sections 4(c) to 4(g), the Trustee will comply with Payment Instructions from SMH under Section 4(b)(iii) and from SMH and Project Co under Sections 4(b)(i) and 4(b)(ii) from time to time given to the Trustee. SMH 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, SMH 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, SMH 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 SMH 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 SMH against any amounts that may from time to time be payable by SMH 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 SMH 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 SMH 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 SMH and Project Co may accept. SMH and Project Co may, by instrument in writing, jointly appoint a successor trustee that is acceptable to replace the Trustee. If SMH 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 Toronto 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, SMH and Project Co may, by instrument in writing, jointly appoint a trustee to replace the Trustee. If SMH 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 Toronto 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 SMH 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 SMH 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 SMH against any amounts that may from time to time be payable by SMH 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 SMH 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 SMH, or any shorter period of time as agreed to by Project Co and SMH, 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, neither party shall take or direct any action that would contravene, or cause the other to contravene, applicable Privacy Laws. Project Co and SMH 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 or any other such individual or individuals designated to ensure compliance with all Privacy Laws; (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 SMH 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 SMH 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 IO 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 SMH. 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 SMH.

## **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 SMH 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 SMH: **[REDACTED]**

Fax No.: **[REDACTED]**

Attn.: **[REDACTED]**

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

Fax No.: **[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 SMH 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.

**ST. MICHAEL'S HOSPITAL  
[REDACTED]**

**2442931 ONTARIO INC.  
[REDACTED]**

**BNY TRUST COMPANY OF CANADA  
[REDACTED]**

**APPENDIX A**

**FORM OF PAYMENT INSTRUCTION BY SMH ONLY**

**BNY Trust Company of Canada**

**[REDACTED]**

Dear Sir or Madam,

**Re: Instruction for Payment**

We refer to the Trust Account Agreement made as of January \_\_\_, 2015 (the “**Trust Account Agreement**”), between SMH, 2442931 Ontario Inc. and BNY Trust Company of Canada.

In accordance with Section 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. **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 SMH pursuant to Section 4(b)(iii), SMH must also certify that the monies are being drawn as permitted by Section 4(b)(iii) and the Payment Instruction must also be addressed to each of Project Co and Lenders' Agent.]**

**ST. MICHAEL'S HOSPITAL**

**[REDACTED]**

**APPENDIX B**

**FORM OF PAYMENT INSTRUCTION BY SMH AND PROJECT CO**

**BNY Trust Company of Canada**

**[REDACTED]**

Dear Sir or Madam,

**Re: Instruction for Payment**

We refer to the Trust Account Agreement made as of January \_\_\_\_, 2015 (the “**Trust Account Agreement**”), between SMH, 2442931 Ontario Inc. and BNY Trust Company of Canada.

In accordance with Section 4(b)(i) or 4(b)(ii) 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 [•].

**ST. MICHAEL'S HOSPITAL**

**[REDACTED]**

**2442931 ONTARIO INC.**

**[REDACTED]**

## SCHEDULE 33

## ENERGY MATTERS

## 1. DEFINITIONS

- 1.1 “**Actual Consumption**” means the actual consumption of all Energy at the Tower as determined by the relevant metering data for the Initial Period and the Energy Year, provided that where Energy is provided to the Tower by existing equipment (e.g. existing chillers) then actual consumption shall be determined by the consumption of the provided Energy (e.g. chilled water) by that equipment as measured by installed energy meters.
- 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 End User Load consumption for the Initial Period and the Energy Year in accordance with this Schedule 33.
- 1.3 “**Adjusted Discrete Annual Energy Target**” or “**ADAET**” means the Discrete Energy Target derived from the Aggregate Energy Model after adjusting pursuant to Sections 2.3 and 2.4 and adjusting for End User Load consumption for the Initial Period and the Energy Year in accordance with this Schedule 33, provided that where Energy is provided to the Tower by existing equipment (e.g. existing chillers) then the ADAET includes Energy delivered by that equipment and not the Energy required to operate the existing equipment; for example, in the case of an existing chiller, the supplied chilled water is included in the ADAET, not the consumption of Energy by any upstream equipment (e.g. electricity used by chillers and distribution pumps).
- 1.4 “**Aggregate Energy Model**” or “**AEM**” means the energy model prepared by Project Co in accordance with Section C.1.28 of Part 1 of Schedule 3 to the Request for Proposals and which shall be submitted to SMH within thirty (30) days after the date of the Project Agreement; as such AEM may be adjusted pursuant to the Final Energy Target Letter and to reflect the Operational Parameters and as may be further adjusted pursuant to this Schedule 33 from time to time.
- 1.5 “**Annual Energy Target**” or “**AET**” means the target consumption of Energy in the Initial Period and the Energy Year in respect of each of the Tower Load, the Secondary Tower Load and the End User Load; provided that where Energy is provided by existing equipment (e.g. existing chillers) then the Annual Energy Target includes Energy delivered by that equipment and not the Energy required to operate the existing equipment; for example, in the case of an existing chiller, the supplied chilled water is included in the Annual Energy Target, not the consumption of Energy by any upstream equipment (e.g. electricity used by chillers and distribution pumps).
- 1.6 “**Annual Review Date**” means the anniversary of the end of the Initial Period.

- 1.7 **“Discrete Energy Unit Cost”** means the cost of each unit of an individual Energy Service indexed to CPI in accordance with Section 2.31 of Schedule 1 of the Project Agreement, which as of the date of the Project Agreement shall be as follows:

[REDACTED]

provided that where Energy is provided to the Tower by existing equipment (e.g. an existing chiller) reasonable operating efficiencies must be assumed and agreed upon by Project Co and SMH in determining the applicable unit cost of that Energy and provided further that if the Parties are unable to agree upon the unit cost of such Energy, the matter shall be resolved pursuant to the Dispute Resolution Procedure, which may, for clarity, require a determination of the unit cost of such Energy by adjudication in accordance with Section 6 of Schedule 27.

- 1.8 **“Discrete Energy Service Actual Consumption”** means the actual consumption of an individual Energy Service at the Tower as determined by the relevant metering data for such Energy Service for the Initial Period and the Energy Year. In addition, the Energy provided to the Tower by existing equipment (e.g. existing chillers) will be determined by additional metering data from installed Energy meters as adjusted by modeling for reasonable operating efficiencies for such existing equipment as agreed upon by Project Co and SMH, both acting reasonably, provided that if Project Co and SMH are unable to reach such an agreement, the matter shall be resolved pursuant to the Dispute Resolution Procedure.
- 1.9 **“Discrete Energy Target(s)” or “DET”** means the target consumption of an individual Energy Service in the Initial Period and Energy Year in respect of the Tower Load, the Secondary Tower Load and the End User Load. Energy Service shall include any energy provided by existing equipment.
- 1.10 **“End User Equipment Ratios”** means the ratios of the increases or decreases of the Tower Load to the corresponding End User Load consumption which caused the increase or decrease in the Tower Load as determined pursuant to Section 2.4(c). For greater certainty, the End User Equipment Ratios may vary over time depending on the season and other factors.
- 1.11 **“End User Load”** means the provision of Energy other than Tower Load (including Secondary Tower Load) as defined in this Schedule 33 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 SMH and not by Project Co.
- 1.12 **“Energy”** means energy, including electricity, natural gas, district steam, oil and any other energy source used at the Tower measured at the utility connection and measured at installed energy meters for energy provided by existing equipment (e.g. chillers).
- 1.13 **“Energy Analysis Report”** is described in Sections 8.7, 8.8 and 8.9 of this Schedule 33.

- 1.14 **“Energy Service”** means any metered provision of Energy in respect of the Tower Load (including the Secondary Tower Load) and the End User Load, and including any metered or modeled provision of Energy supplied by any existing equipment (e.g. chillers).
- 1.15 **“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.
- 1.16 **“Final Energy Target Letter”** means the letter submitted by Project Co to SMH pursuant to Schedule 2 to the Project Agreement.
- 1.17 **“Gainshare Adjustment”** means the adjustment calculated in accordance with this Schedule 33.
- 1.18 **“Initial Period”** means the period beginning on the first day of the fourth full calendar month immediately after the Tower Interim Completion Date and ending one year thereafter.
- 1.19 **“Operational Parameters”** are those inputs into the Aggregate Energy Model that are under the control of SMH or its designated responsible person for the operations and maintenance of HVAC, lighting, mechanical, electrical, architectural and structural systems, and other energy consuming systems that impact the Tower Load, as may be adjusted pursuant to this Schedule 33 from time to time. The Parties shall agree upon the original Operational Parameters within sixty (60) days after the date of the Project Agreement.
- 1.20 **“Operational Watchdog”** is described in Section 9 of this Schedule 33.
- 1.21 **“Painshare Adjustment”** means the adjustment calculated in accordance with this Schedule 33.
- 1.22 **“Periodic Energy Report”** shall have the meaning given to it in Section 4.1 of Appendix B of this Schedule 33.
- 1.23 **“Quarterly Monitoring Meeting”** has the meaning set out in Section 2.2 of Appendix B of this Schedule 33.
- 1.24 **“Review Meeting”** has the meaning set out in Section 8.4.
- 1.25 **“Secondary Tower Load”** means that portion of the Tower Load that varies in response to and dependent on the End User Loads. The Secondary Tower Load is a type of Tower Load which is included in the Adjusted Annual Energy Target and is a product of the applicable End User Equipment Ratios and corresponding End User Loads.
- 1.26 **“Tower Load”** means provision of Energy for the base building systems and equipment designed and provided by Project Co for the basic functioning of the Tower. 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 AV systems.

- 1.27 **“Unit of Energy”** means one GigaJoule (GJ) or such other applicable unit of Energy, as the case may be. .
- 1.28 **“Utilities Management Subcommittee”** has the meaning set out in Section 2.3 of Appendix B of this Schedule 33.
- 1.29 **“Weather Data”** means meteorological data as reported by Environment Canada and provided 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 in respect of the entire Tower pursuant to Section 2.3. The Adjusted Annual Energy Target and the Adjusted Discrete Annual Energy Target upon which any Painshare Adjustment or Gainshare Adjustment calculations are made shall be based upon subtracting End User Load consumption and making any adjustments pursuant to Sections 2.3 and 2.4 for the Initial Period and the Energy Year.
- (b) After the Parties agree to the Operational Parameters following the date of the Project Agreement, the Operational Parameters may be adjusted, from time to time, by Project Co following consultation with, and approval of SMH, acting reasonably, during the Initial Period and Energy Year to reflect changes in the manner in which the Tower is being operated by SMH. The impact of such adjustments shall be reflected and accounted for in the Adjusted Annual Energy Target and the Adjusted Discrete Annual Energy Target pursuant to and in accordance with Section 2.4(e).
- (c) If separate or additional meters or metering plans are required to implement the terms of this Schedule 33 which are in addition to the metering or metering plans required by the terms of the Project Agreement (including the Output Specifications), Project Co shall provide notice thereof to SMH and the Parties shall meet within ten (10) Business Days of such notice to consult with respect to such separate or additional meters or metering plans and to reach an agreement on whether a Variation is required as a result of such separate or additional meters or metering plans, and, if the Parties have not, within ten (10) Business Days of this meeting, reached an agreement, either Party may refer the Dispute for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

- (d) The Parties acknowledge and agree that nothing in this Schedule 33 limits, amends or constitutes a waiver of SMH's rights or remedies under the Project Agreement in respect of any failure of the Facility or the Works to satisfy the Output Specifications or any other term or condition of the Project Agreement, including but not limited to, in respect of Phase Minor Deficiencies, Minor Deficiencies, Construction Defects and Construction Latent Defects.

## 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) If Section 3.1(a)(i) applies in respect of the Initial Period, Project Co shall, at its sole cost and expense, take corrective action in accordance with Section 3.1(b) to improve the energy performance of the Tower.
- (c) The Annual Energy Target and the Discrete Energy Target(s) shall be adjusted in accordance with this Schedule 33.

## 2.3 Program or Variation Adjustments to the Annual Energy Target

- (a) At any time commencing after the first anniversary of the date that is four months following the Tower Interim Completion Date, either Project Co or SMH may request an energy audit as contemplated in Section 2.3(c), and Project Co and SMH 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 Tower Load and/or Secondary Tower Load changes or other changes in Energy usage; or
  - (ii) changes in the utilization, occupancy or operations of the Tower 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), a partial or complete energy audit, as may be required by the circumstances, to be conducted by a third party auditor. With respect to Section 2.3(a)(i) and Section 2.3(a)(ii), the Party responsible for the changes will be responsible for the cost of the audit. With respect to Section 2.3(b), Project Co will be responsible for the cost of the audit. 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 SMH 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 end of each of the Initial Period and the Energy Year, Project Co shall provide to SMH a certificate showing the Actual Consumption and the Discrete Energy Service Actual Consumption in each calendar month during the Initial Period or the Energy Year, as applicable, expressed as a number of Units of Energy and measured in accordance with Section 8.
- (b) Project Co and SMH shall obtain the Weather Data from Environment Canada. Project Co and SMH 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, dew point temperature, total horizontal radiation, atmospheric pressure, wind speed and wind direction. Hourly values for the Initial Period or the Energy Year, as applicable, 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 by Project Co and agreed upon between Project Co and SMH at the end of the Initial Period. The End User Equipment Ratio for a particular time period will be equal to the weighted-average ratio of the sum of increases or decreases in the Tower Loads that are attributable to the increases or decreases in the End User Load Consumption to the corresponding sum of the End User Loads or based on the affected equipment's manufacturer's data, as the case may be, for the applicable time period. 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 in the calculation of the Adjusted Annual Energy Target and the ADAET. If manufacturer's data is not available for specific pieces of such equipment, a reasonable ratio will be determined and agreed upon between

Project Co and SMH for such equipment. The product of the End User Equipment Ratios with their corresponding End User Load, will be represented in the Aggregate Energy Model as Secondary Tower Load, so that the internal gains or losses associated with the changes in the End User Load consumption are appropriately captured in the Annual Energy Target and the Discrete Energy Target. When equipment is added to or removed from the Tower, the End User Equipment Ratios may be adjusted, in the year following the Initial Period upon the written consent of both SMH 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 during the Initial Period and the Energy Year. Project Co shall provide metering such that End User Loads are on separate meters from other Tower Loads, provided that if any separate or additional meters are required to meter End User Loads which are in addition to the metering required by the terms of the Project Agreement, the provisions of Section 2.1(c) shall apply with respect to the costs associated with such separate or additional meters. Project Co and SMH shall then adjust the Annual Energy Target accordingly.

- (d) Project Co shall provide SMH 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 the Initial Period and the 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 Tower Load.
- (e) The Operational Parameters used in the Aggregate Energy Model will be updated in accordance with the reasonable observations made by the Operational Watchdog and following the obtainment of the approval of SMH, acting reasonably. Subject to the approval of SMH, acting reasonably, the Operational Parameters will be updated at the end of the Initial Period and throughout the Energy Year if changes to the Operational Parameters are required as a result of the observations of the Operational Watchdog. These observations will be provided to SMH and Project Co at the end of the Initial Period as well as throughout the Energy Year through the quarterly energy meetings. The potential changes include all operation and maintenance items that are within the control of SMH that impact the Tower Load, including, without limitation, system set points, operational schedules (including those controlled by end-users) for fans, pumps, lights, ventilation, expected occupancy (e.g. office hours) that can drive changes in Tower Loads outside of the Secondary Tower Loads, the maintenance of energy saving control devices and sensors (e.g. occupancy and daylighting sensors), VFD pumps, VFD fans, filter maintenance, ventilation rates and demand control ventilation controls and sensors (if any) and minimum supply fan flow rates.

- (f) Notwithstanding the Annual Energy Target, SMH acknowledges that changes to the Operational Parameters from the design intent specified in Schedule 15 – Output Specifications may not be modelled within the Aggregate Energy Model. In addition, some changes to the Operational Parameters may have knock-on effects or other implications in the Aggregate Energy Model. Should such changes be identified by the Operational Watchdog, Project Co and SMH shall negotiate in good faith their impact on the Annual Energy Target and Discrete Energy Targets, if any.
- (g) Any other modifications to the Aggregate Energy Model are subject to the procedure outlined in Section 2.3(c) of this Schedule 33.
- (h) SMH 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 materially overestimated the adjustments to the Aggregate Energy Model, then Project Co shall reimburse SMH for its costs incurred in respect of the audit.

### 3. COMPARING ACTUAL CONSUMPTION OF ENERGY WITH TARGET

#### 3.1 Comparing Annual Energy Target

- (a) After the acceptance of the Energy Analysis Report described in Sections 8.7 to 8.9 for each of the Initial Period and the 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 if such calculation is in respect of the Initial Period, Section 3.1(b) shall apply, and if such calculation is in respect of the Energy Year, Project Co shall calculate the Painshare Adjustment for the applicable Energy Services set out in Section 4.1(b); and
  - (ii) if the Discrete Energy Service Actual Consumption in respect of any discrete Energy Service is less than [REDACTED]% of the Adjusted Discrete Annual Energy Target in respect of such Energy Service then if such calculation is in respect of the Energy Year, Project Co shall calculate the Gainshare Adjustment for the applicable Energy Services set out in Section 0;

For greater certainty, it is possible for both the Gainshare Adjustment and the Painshare Adjustment to apply, where certain Energy Services exceed the applicable Adjusted Discrete Annual Energy Target and others are less than the Adjusted Discrete Annual Energy Target.

## Illustration for the Energy Year

Energy Service	Year “X”	Painshare Adjustment/Gainshare Adjustment then equals:
If the positive or negative variance from ADAET for the purposes of calculating the Painshare Adjustment or Gainshare Adjustment in the Energy Year was:	[REDACTED]	0
If the positive or negative variance from ADAET for the purposes of calculating the Painshare Adjustment or Gainshare Adjustment in the Energy Year was:	[REDACTED]	To be calculated in accordance with Section 4.1

- (b) If Section 3.1(a)(i) applies in respect of the Initial Period, then Project Co and SMH shall meet within fourteen (14) days of the calculation pursuant to Section 3.1(a) to discuss means and measures to reduce the relevant Discrete Energy Service Actual Consumption such that it will not exceed the [REDACTED]% threshold established in Section 3.1(a)(i) for the Energy Year. Within no more than thirty (30) days of such meeting, Project Co shall submit to SMH a detailed plan to implement means and measures to reduce the relevant Discrete Energy Service Actual Consumption. Subject to and following the approval of such plan by SMH, acting reasonably, and with the reasonable assistance and coordination of SMH, Project Co shall use commercially reasonable efforts to implement such plan. If the implementation of such plan by Project Co is not successful such that the Painshare Adjustment in Section 3.1(a)(i) is applied with respect to such Discrete Energy Service Actual Consumption for the 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:

- (a) For the purposes of Section 4.1(b):

[REDACTED]

- (b) In respect of the Energy Year:

**[REDACTED]**

- (c) In respect of the Energy Year:

**[REDACTED]**

- (d) Any disputes regarding the determination of whether a Painshare Adjustment or Gainshare Adjustment for an Energy Service shall apply in respect of the Energy Year or regarding the calculation of the amount of a Painshare Adjustment or Gainshare Adjustment for an Energy Service shall be subject to the Dispute Resolution Procedure.

**5. [Intentionally Deleted]**

**6. APPLICATION OF GAINSHARE ADJUSTMENT OR PAINSHARE ADJUSTMENT**

- 6.1 Where it is established in accordance with this Schedule 33 that a Painshare Adjustment arises, upon Notice from SMH to Project Co, provided that such Notice shall not be provided until after the payment of the Substantial Completion Payment by SMH, the amount of such Painshare Adjustment shall automatically become an amount due and owing by Project Co to SMH under the Project Agreement and shall be paid by Project Co to SMH within 30 days following the date such Notice is received. If such payment is not made by Project Co to SMH by the expiry of such 30 day period, SMH may, in its sole discretion:

- (a) draw down on the Warranty Letter of Credit for up to an amount equal to the amount of the Painshare Adjustment, and/or
- (b) without duplication of any amount drawn down by SMH from the Warranty Letter of Credit, demand in a Notice to the Construction Guarantor that the Construction Guarantor make such payment (or any portion thereof) for and on behalf of Project Co pursuant to the Performance Guarantee of Construction Guarantor, which payment shall be promptly made to SMH by the Construction Guarantor without further inquiry within 10 Business Days following the Construction Guarantor's receipt of such Notice.

- 6.2 Where it is established in accordance with this Schedule 33 that a Gainshare Adjustment arises, upon Notice from Project Co to SMH, provided that such Notice shall not be provided until after the payment of the Substantial Completion Payment by SMH, the amount of such Gainshare Adjustment shall automatically become an amount due and owing by SMH to Project Co under the Project Agreement and shall be paid by SMH to Project Co within 30 days following the date such Notice is received.

- 6.3 The Parties confirm that the Financial Model contains no provision for the cost of purchasing Energy.

## **7. SUPPLY OF ENERGY**

- 7.1 SMH shall from time to time as required enter into contracts with Energy suppliers for the supply of Energy to the Tower 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.

## **8. MEASUREMENT**

- 8.1 Without prejudice to Schedule 15 – Output Specifications or anything else in this Schedule 33, Project Co shall measure the amount of Actual Consumption and Discrete Energy Service Actual Consumption for the Tower in respect of each calendar month beginning at the start of the Initial Period and ending on the expiry of the Energy Year.
- 8.2 Without prejudice to Schedule 15 – Output Specifications or anything else in this Schedule 33, Project Co shall provide to SMH a summary of Actual Consumption and Discrete Energy Service Actual Consumption in respect of each type of Energy at the Tower, at the end of each month of the Initial Period and the Energy Year, in the form of a monthly report. For greater certainty, End User Loads, Tower Loads and Secondary Tower Loads should be set out separately in the monthly report.
- 8.3 Project Co shall provide SMH with a draft Energy Analysis Report within sixty (60) days following the end of each of Initial Period and the 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 Sections 8.7 to 8.9 of this Schedule 33.
- 8.4 As soon as practicable and in any event within eighty (80) days following the end of each of the Initial Period and the Energy Year (or on such other date as may be agreed between SMH and Project Co), Project Co and SMH shall convene a review meeting to be attended by the Project Co Representative, the SMH Representative and such other individuals as may be agreed to by the Parties (the “**Review Meeting**”). At the Review Meeting, Project Co shall present the draft Energy Analysis Report to SMH, and SMH and Project Co shall discuss the Actual Consumption and the Discrete Energy Service Actual Consumption for each discrete Energy Service for the preceding year and Energy Services.

- 8.5 SMH 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 SMH Representative and the Project Co Representative, acting reasonably) it shall be dealt with in accordance with the Dispute Resolution Procedure.
- 8.6 Subject to Section 8.5, within twenty (20) days following the Review Meeting, or within such period as may be otherwise agreed between the SMH Representative and the Project Co Representatives, acting reasonably:
- (i) SMH 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 SMH shall agree to any adjustments to the Annual Energy Target and the Discrete Energy Target(s) after taking into account load, changes to the Operational Parameters or usage changes as a result of any changes in occupancy, utilization or operations.
- 8.7 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 each of the Initial Period and the Energy Year and shall include the following:
    - (i) a summary of actual usage and breakdown by utility in megajoules, kilowatt-hours and cubic meters, or other utility rate units, and shall include the actual usage and breakdown by Energy Service in the Unit of Energy. The summary should also highlight any exceptional changes in consumption or pattern of use since any previous survey; and
    - (ii) accurate and precise metering and consumption data.
- 8.8 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 Tower in each of the Initial Period and the Energy Year and to provide data to calculate Adjusted Annual Energy Target and Adjusted Discrete Annual Energy Target for each individual Energy Service.
- 8.9 Consistent with the objectives set out in Section 8.8 of this Schedule 33, Project Co shall ensure that the 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 metering data collected by Project Co shall be presented in the table set out in Appendix A to this Schedule 33.
- (e) Detailed analysis of metered end-uses:
  - Lighting systems and controls;
  - Steam supplied by Enwave;
  - Heating water supplied by Enwave;
  - HVAC distribution pump energy;
  - Chiller plant;
  - Chilled water – tenants;
  - 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 supplied by Enwave;



- Building related process energy and equipment;
  - IT server room and associated cooling;
  - Vertical transportation systems;
  - Pneumatic Tube System Blowers;
  - Security Systems;
  - Electrical energy – tenants;
  - 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) Adjustments to the Annual Energy Target and Discrete Energy Target(s), complete with detailed explanations of any changes made to the Aggregate Energy Model.
- (h) Adjustments made to the Annual Energy Target and Discrete Energy Target(s) due to the implementation of any Variations pursuant to Schedule 22 – Variation Procedure of the Project Agreement.
- (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 33 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.

## 9. OPERATIONAL WATCHDOG

- 9.1 The Actual Consumption of the Tower is significantly impacted by Operational Parameters that are primarily within the control and responsibility of SMH during the Initial Period, the Energy Year and the remaining lifetime of the Tower. These Operational Parameters may contradict the design intent (e.g. temperature setpoints for space temperature, hot/cold water supply) as well as the inputs used to develop the Aggregate Energy Model and the Aggregate Energy Target. SMH's primary responsibility is to operate and maintain the Tower to minimize complaints, and reduce operating costs. However, SMH may be partially insulated from Energy cost increases due to energy impacting operational adjustments to the buildings systems, and Project Co may take on cost responsibility for aspects of the operation that it has no authority over. Therefore, the Operational Watchdog will observe the operations of the Tower and report on Operational Parameters that change inputs to the Aggregate Energy Model and that will impact the Adjusted Annual Energy Target.
- 9.2 Project Co may, at its sole cost and expense, appoint an energy consultant (the "**Operational Watchdog**") acceptable to SMH, acting reasonably, to perform the functions of the Operational Watchdog set out in this Schedule 33. The Operational Watchdog is responsible for observing the Operational Parameters used in the Tower that will impact the Actual Consumption of the Tower. The Operational Watchdog will report to SMH and Project Co on areas of concern or on areas that deviate from design assumptions, provided that SMH may continue to operate the Tower as SMH sees fit.
- 9.3 During the Initial Period, the Operational Watchdog, working with the Commissioning Agent, will review the Operational Parameters implemented by SMH in connection with the operation of the Tower. The Commissioning Agent will instruct the operators of the Tower on the design intents and best practices to maintain the intended energy performance of the Tower. The Operational Watchdog will observe the Operational Parameters that impact the Aggregate Energy Model and the Annual Energy Target and report back to Project Co and SMH.
- 9.4 During the Initial Period and the Energy Year, the Operational Watchdog will, at a minimum, visit the Existing Facilities and the Facility once a month, for 2-3 days. SMH will accommodate these visits, giving the Operational Watchdog complete access to the Tower, its systems, building automation systems and other items that are identified by the Operational Watchdog.
- 9.5 The Operational Watchdog will participate in the Energy Protocol as described in Appendix B.

- 9.6 The Operational Watchdog will report their findings in the Energy Analysis Report.
- 9.7 Consistent with the objectives set out in Section 8.8 of this Schedule 33, the Operational Watchdog shall ensure that the Energy Analysis Report has the components required by Section 8.9 of this Schedule 33.

## **10. ENERGY MODEL INTELLECTUAL PROPERTY OWNERSHIP AND LIABILITIES**

### **10.1 Intellectual Property**

- (a) For greater certainty, the provisions of Article 39 – Intellectual Property of the Project Agreement shall apply in respect of the Aggregate Energy Model and the Energy Analysis Report or Periodic Energy Reports delivered to SMH or the Energy Model Services Provider pursuant to this Schedule 33.
- (b) For greater certainty, Project Co acknowledges and agrees that SMH shall not be liable to Project Co for, and Project Co shall not seek to recover from SMH, any Government Entity or any SMH 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 Aggregate Energy Model, the Energy Analysis Report or the Periodic Energy Reports.

## **11. ENERGY INCENTIVE PROGRAMS**

- 11.1 Project Co shall provide reasonable assistance and information to SMH during the Initial Period and Energy Year relating to the energy performance of the Tower in connection with SMH's applications for energy incentive programs for which the Tower qualifies, including, but not limited to, the High Performance New Construction (HPNC) programs administered by City of Toronto Better Building Partnerships New Construction.

## APPENDIX A

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 applicable Discrete Energy Unit Cost)	Usage (Units of Energy)		Usage (Units of Energy)	Cost for Energy Year ( for each of the discrete Energy multiplied by Discrete Energy Unit Cost of each such discrete Energy)		
	i	ii	iii		V	vi	vii	viii
Electricity								
Steam								
Natural Gas								
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 SMH 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 Tower.

**2. UTILITIES MANAGEMENT SUBCOMMITTEE AND CONTINUAL ADVICE**

- 2.1 Project Co shall provide an energy monitoring, energy targeting and energy management service to SMH in accordance with this Appendix B.
- 2.2 A joint working group responsible for the management of the energy provisions within this Schedule 33 shall meet each quarter throughout the Initial Period and the Energy Year (each is a “**Quarterly Monitoring Meeting**”) to 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. The Commissioning Agent, during the Initial Period, and the Operational Watchdog, during the Initial Period and the Energy Year, shall be permitted to attend all meetings of such joint working group for the purpose of providing assistance, consultation and advice to such group.
- 2.3 The joint working group shall be composed of three (3) representatives nominated by Project Co and three (3) representatives nominated by SMH (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 SMH 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 SMH 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 At the Quarterly Monitoring Meetings, SMH 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 Tower and the Utilities Management Subcommittee will review and provide feedback on such report.

- 2.7 Without limiting any of Project Co's obligations under Section 3.1(b), Project Co will be proactive at the Quarterly Monitoring Meetings and shall undertake regular value management reviews for the Tower to ascertain whether minor design alterations, technology changes or other technological enhancements will further improve energy performance of the installations to the joint and equal benefit of the Parties. SMH 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.
- 2.8 SMH will be proactive at the Quarterly Monitoring Meetings and shall undertake regular value management reviews for the Tower to ascertain whether operational adjustments or other technological enhancements will further improve energy performance of the installations to the joint and equal benefit of the Parties. SMH may, but shall not be obliged to invoke the Variation Procedure, as outlined in Schedule 22 - Variation Procedure, in respect of the implementation of any such operational adjustments or technological enhancements.
- 2.9 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.
- 2.10 Project Co (acting through the Utilities Management Subcommittee and on the advice and reporting of the Operational Watchdog) will advise SMH in relation to the following measures which it will expect SMH and SMH Parties to implement:
- (a) control, operational setpoints and other operational parameters impacting the efficient use of space heating and cooling;
  - (b) control operational setpoints and other operational parameters impacting the efficient use of lighting;
  - (c) control operational setpoints and other operational parameters impacting the efficient use of hot water;
  - (d) control operational setpoints and other operational parameters impacting the 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 SMH'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 SMH shall review Operational Parameters established during the Initial Period and confirm that they are reasonably representative of how SMH will operate the Tower throughout the Energy Year. Notwithstanding such confirmation, Operational Parameters may be adjusted during the Energy Year in accordance with this Schedule 33 and their impact accounted for with respect to the Adjusted Annual Energy Target in accordance with Sections 2.3 and 2.4.
- 3.4 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 SMH as part of the Periodic Energy Reports.

### **4. REPORTING SERVICES**

- 4.1 From the commencement of the Initial Period, Project Co shall provide to SMH a periodic report of the energy efficiency performance (each a "**Periodic Energy Report**") which shall be provided on a quarterly basis unless such report indicates that the actual consumption of Energy at the Tower for the Initial Period or the Energy Year, as applicable, determined in accordance with this Schedule 33 is expected to exceed [REDACTED]% of the Annual Energy Target, in which case the Periodic Energy Report shall be provided monthly.
- 4.2 Each Periodic Energy Report shall compare actual performance to date with the performance targets as required by this Schedule 33 and quarterly monitoring of the Tower shall include data on the thermal efficiency of the entire plant and equipment and operational efficiency of distribution systems, observed changes to Operational Parameters and concerns reported by the Operational Watchdog 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 Tower shall be monitored using the building management system, capable of verification by SMH.

**6. COMPLIANCE**

- 6.1 SMH 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 Tower, all energy records and all facilities management maintenance data as such consultant may reasonably require.

**7. SMH AND PROJECT CO'S UNDERTAKINGS**

- 7.1 SMH shall assist, and shall encourage the SMH 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 SMH staff. SMH will ensure that SMH Parties involve management, clinical and non-clinical staff in energy efficiency focus in order to incorporate good practice as part of SMH and SMH Parties' overall activities.
- 7.2 SMH 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 SMH 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 SMH, SMH 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;



- (i) distributing appropriate promotional and publicity material to raise awareness of energy efficiency measures and achievements; and
  - (j) providing access to information on Operational Parameters to the Operational Watchdog upon request as described in Section 9 of this Schedule 33.
- 7.3 SMH 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, BAS setpoints, maintenance considerations, identification of recalibration requirements or failure of controls and assisting the Operational Watchdog with their reporting of items outlined in Section 9.7 of this Schedule 33.
- 7.4 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 Tower.

**2. ENERGY MONITORING**

Subject to Section 2.1(c) of this Schedule 33, Project Co will provide, as a minimum, the metering required pursuant to Schedule 15 –Output Specifications and this Schedule 33 (including Section 8.9) and the following metering within the Tower:

- (a) electrical consumption;
- (b) steam consumption;
- (c) gas consumption;
- (d) chilled water; and
- (e) 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 Periodic 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 33. 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 Periodic 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 Periodic 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 33. 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 which may be subject to Schedule 22 - Variation Procedure to the Project Agreement;
- (d) incidence of misuse of energy by SMH; 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. VARIATIONS DUE TO CHANGES IN OPERATIONAL PARAMETERS**

Project Co will use available information and the Operational Watchdog reporting to determine the current Operational Parameters, adjustments to BAS equipment, the usage of "hand" or "manual" on energy consumption equipment and where appropriate inform the SMH operators of the potential impact on energy 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 Periodic Energy Report.

Project Co will evaluate all deviations from the current Operational Parameters as part of its duties to the Utilities Management Subcommittee as defined in Appendix B to this Schedule 33. The results will be logged as either:

- (a) deficient operations or maintenance by SMH operators requiring rectification;
- (b) deviations which may be subject to Schedule 22 - Variation Procedure to the Project Agreement; and

- (c) incidence of disabling energy saving controls, setpoints, schedules by SMH;

All deviations from the current Operational Parameters 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.

## **6. TOTAL ENERGY CONSUMPTION**

Total Energy consumption for the Tower will be recorded on a monthly basis and will be included in the Periodic Energy Report. This will be identified separately as steam, fossil (gas), and electricity consumption using industry standard units of measurement.

**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  
SMH Representatives

Item 1 Apologies for absence

Item 2 Recorded energy consumption for the quarter

Steam: \_\_\_\_\_

Gas: \_\_\_\_\_

Electric: \_\_\_\_\_

Chilled

Water: \_\_\_\_\_

Item 3 Report on Weather Data for corresponding period

Item 4 SMH Variations under Schedule 22 - Variation Procedure

Item 5 Actual energy consumption compared against target

Item 6 Review Painshare Adjustment and Gainshare Adjustment mechanisms  
and projected Painshare Adjustment or Gainshare Adjustment, if any

Item 7 Report on Procedures

Item 8 Report on plant and systems performance

Item 9 Review of energy trends and recommendations for improved energy  
efficiency and training

Item 12 Disputes subject to Schedule 27 - Dispute Resolution Procedure

Item 13 AOB and date of next meeting