

**PROJECT AGREEMENT
TO BUILD AND FINANCE**

**SUNNYBROOK HEALTH SCIENCES CENTRE
M-WING VERTICAL SHELL EXPANSION/PERINATAL AND GYNAECOLOGY
RELATED INTERIOR FIT-UP**

CONFIDENTIAL

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PROJECT AGREEMENT

THIS PROJECT AGREEMENT is made as of the 23rd day of April, 2007.

BETWEEN:

**SUNNYBROOK HEALTH SCIENCES CENTRE, a non-share capital corporation
incorporated under the laws of the Province of Ontario**

(“Hospital”)

AND:

**VANBOTS CONSTRUCTION CORPORATION, a corporation incorporated under
the laws of the Province of Ontario**

(“Contractor”)

AND:

**VANBROOK CONSTRUCTION CORPORATION, a corporation incorporated under
the laws of the Province of Ontario**

(“Project Co”).

WHEREAS:

- A. Hospital, as the owner of the existing facility that is the subject of this Project Agreement, with the assistance of Infrastructure Ontario, wishes to carry out the finance and construction of the M-Wing Vertical Shell Expansion and Perinatal and Gynaecology Related Interior Fit-up Project in Toronto, Ontario in order to improve access to healthcare facilities and the quality and efficiency of the services provided to patients of the Hospital.
- B. Hospital originally issued a Request for Proposals on February 2, 2001 for M-Wing construction, including the possible construction of the M-Wing Vertical Shell Expansion and Perinatal and Gynaecology Related Interior Fit-up Project in Toronto, Ontario, and Contractor submitted its proposal and was determined to be the successful respondent under that Request for Proposals process.
- C. Subsequent to the February 2, 2001 Request for Proposal process which identified Contractor as the successful respondent, Hospital, Contractor and Infrastructure Ontario agreed in an Agreement of Understanding originally dated May 5, 2006 that the Project would be revised to include the construction financing of the Project as part of the obligations of Contractor.
- D. Hospital and the Contractor have agreed, for greater certainty, that except for the Hospital’s obligation to pay the Vanbots Pre-Construction Costs in the event Financial Close is reached by the Parties any and all previous arrangements between them with respect to the M-Wing

Vertical Shell Expansion Process, including any outstanding purchase orders, will be superseded by this Project Agreement;

- E. Contractor and Project Co recognize and understand that Hospital is a public hospital under the *Public Hospitals Act* (Ontario) and is therefore subject to a highly regulated legal and operational environment.
- F. Hospital has been authorized to execute the Project Agreement by the MOHLTC (it being acknowledged by the parties to this Project Agreement that such authorization in no way obligates the Government of Ontario or the Province under the Project Agreement or otherwise in respect of the Project).
- G. The overriding priorities of Hospital in entering into and implementing the Project Agreement are the health and safety of its patients, their healthcare needs and interests and the provision of first-rate healthcare services.
- H. The Project will proceed as an alternative financing and procurement project under PIR's *ReNew Ontario* infrastructure investment plan, and complies with the principles set out in PIR's *Building a Better Tomorrow: An Infrastructure Planning, Financing and Procurement Framework for Ontario's Public Sector* (the "**IPFP Framework**").
- I. 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.
- J. 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.

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:

ARTICLE 1 - DEFINITIONS AND INTERPRETATION

1.1 Definitions

The terms defined in this Section shall have, for all purposes of this Project Agreement the following meanings, unless the context expressly or by necessary implication otherwise requires:

- (a) “**Additional Lender Due Diligence**” has the meaning given to it in Section 2.4(b).
- (b) “**Affiliate**” means an “affiliate” as that term is used in the *Business Corporations Act* (Ontario).
- (c) “**Agent**” has the meaning given to it in the Lender’s Direct Agreement.
- (d) “**Applicable Law**” means:
 - (i) any applicable statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
 - (ii) any applicable judgment of a relevant court of law which is a binding precedent in the Province of Ontario;
 - (iii) any Authority Requirement; and
 - (iv) any applicable judgment of a relevant court of law, board, arbitrator or administrative agency,in each case in force in the Province of Ontario, or otherwise binding on Contracting Parties or Hospital and, in particular, shall include the *Public Hospitals Act* (Ontario).
- (e) “**Article**” and “**Section**” mean and refer to the specified article and section or subsection of this Project Agreement.
- (f) “**Authority Requirement**” means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority.
- (g) **[INTENTIONALLY DELETED]**
- (h) “**Business Day**” has the meaning given to it in the Construction Contract.
- (i) “**Commercial Close**” means the date on which this Agreement has been executed by all Parties.
- (j) “**Confidant**” has the meaning given to it in Section 5.5(i).
- (k) “**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 this Project Agreement, which is clearly marked as confidential or proprietary when first disclosed, including information disclosed orally if it is identified as confidential at the time of disclosure and further confirmed in writing as confidential within fourteen (14) days of disclosure.
- (l) “**Construction Contract**” means the Guaranteed Price Contract entered into by Project Co and Contractor pursuant to the terms of this Project Agreement, the form of which is attached as Schedule 1 – Construction Contract.

- (m) “**Consultant**” has the meaning given to it in the Construction Contract.
- (n) “**Contract Documents**” has the meaning given to it in the Construction Contract.
- (o) “**Contracting Parties**” means collectively the Contractor and Project Co.
- (p) “**Contracting Parties Conditions**” has the meaning given to it in Section 2.6.
- (q) “**Cost of the Financing**” has the meaning given to it in the Construction Contract.
- (r) “**Cost of the Work**” has the meaning given to it in the Construction Contract.
- (s) “**Disclosing Parties**” has the meaning given to it in Section 5.2(c) and “**Disclosing Party**” means any one of them.
- (t) “**Financial Close**” means the date of execution and delivery of the Implementing Agreements and the Lending Agreements.
- (u) “**Financial Close Target Date**” means June 12, 2007, as such date may be abbreviated or extended in accordance with the provisions of this Project Agreement and by mutual agreement of the Parties. The Financial Close Target Date shall be no later than fifty (50) days after Commercial Close.
- (v) “**Financial Model**” means the Financial Model attached hereto as Schedule 5 – Financial Model and Information.
- (w) “**Financing**” has the meaning given to it in the Construction Contract.
- (x) “**FIPPA**” means the *Freedom of Information and Protection of Privacy Act* (Ontario).
- (y) “**Governmental Authority**” means MOHLTC 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, agent, department, or branch of any of the foregoing, having legal jurisdiction in any way over the Project or any aspect of the performance of this Project Agreement or any of the Implementing Agreements, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.
- (z) “**Guaranteed Price**” has the meaning given to it in the Construction Contract.
- (aa) “**Hospital Conditions**” has the meaning given to it in Section 2.5.
- (bb) “**Hospital Master Plan**” means that certain document referred to in the Indenture Amending Lease made as of July 1, 1993 between the Hospital and the Governing Council of the University of Toronto, entitled “Long-Range Planning Framework” prepared by G & G Partnership Architects and identified as Dwg. SKA-10-3a, revised March 31, 2004, together with annexed text entitled “Long Range Planning Framework - Sunnybrook Campus Site

Plan, Approved & Potential Developments & Restrictions on Land Use”, showing, among other things, the Project Lands and the existing buildings on the Project Lands as well as the proposed buildings to be constructed on the Project Lands that have been approved for such construction by the Governing Council of the University of Toronto and the Hospital, as same may have been and may hereafter be supplemented, amended or replaced by the Governing Council of the University of Toronto and the Hospital from time to time.

- (cc) **“Implementing Agreements”** means the Construction Contract, the Limited Assignment of the Construction Contract, the Lender’s Direct Agreement and all other documents and agreements delivered by the Parties at Financial Close under Section 4.1, excluding the Lending Agreements.
- (dd) **“Infrastructure Ontario”** means the Ontario Infrastructure Projects Corporation.
- (ee) **“Insurance Trust Agreement”** means the insurance trust agreement to be entered into by the Hospital, Contractor, Project Co, Agent and insurance trustee in accordance with Section 2.11.
- (ff) **“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, without limitation, credit, swap or otherwise, or fees.
- (gg) **“Lender”** has the meaning given to it in the Lender’s Direct Agreement.
- (hh) **“Lender Conditions”** has the meaning given to it in Section 2.4(b).
- (ii) **“Lender’s Direct Agreement”** means the agreement to be entered into by Hospital, Lender and Contracting Parties pursuant to the terms of this Project Agreement, the form of which is attached as Schedule 3 – Lender’s Direct Agreement.
- (jj) **“Lending Agreements”** has the meaning given to it in the Lender’s Direct Agreement.
- (kk) **[INTENTIONALLY DELETED.]**
- (ll) **“Limited Assignment of Construction Contract”** means the limited assignment to Hospital of the Construction Contract by Project Co to be entered into pursuant to the terms of this Project Agreement, the form of which is attached as Schedule 2 – Limited Assignment of Construction Contract.
- (mm) **“MOHLTC”** means Her Majesty the Queen in Right of Ontario as represented by the Minister of Health and Long-Term Care, and includes any agent thereof or any successors thereto or Persons exercising delegated power under the Minister’s authority.
- (nn) **“Notice”** has the meaning given to it in Section 7.1.

- (oo) **“Party”** means any of Hospital, Contractor or Project Co, and **“Parties”** means all of them, but, for greater certainty, such definitions do not include Infrastructure Ontario or Her Majesty the Queen in Right of Ontario, as represented by either the Minister of Health and Long-Term Care or the Minister of Public Infrastructure Renewal.
- (pp) **“Person”** means any individual, corporation, limited or unlimited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization or Governmental Authority.
- (qq) **“PIR”** means Her Majesty the Queen in Right of Ontario as represented by the Minister of Public Infrastructure Renewal, and includes any successors thereto or Persons exercising delegated power under the Minister’s authority.
- (rr) **“Pre-Construction Costs”** means actual costs incurred by Contractor for those tasks identified in the document entitled “Sunnybrook M-Wing Vertical Expansion Draft Pre-construction Budget, June 19, 2006” and included in Schedule 5 – Financial Model and Information.
- (ss) **“Project”** has the meaning given to it in the Construction Contract.
- (tt) **“Project Agreement”** means this project agreement and all schedules hereto.
- (uu) **“Project Co”** means Vanbrook Construction Corporation.
- (vv) **“Project Debt”** has the meaning given to it in Schedule 5 – Financial Model and Information.
- (ww) **“Project Debt Interest Cost”** has the meaning given to it in Schedule 5 – Financial Model and Information.
- (xx) **“Project Lands”** means the lands located in the City of Toronto, Ontario as described in the Contract Documents as the Place of the Work.
- (yy) **“Proprietor”** has the meaning given to it in Section 5.5.
- (zz) **“Province”** means Her Majesty the Queen in Right of Ontario.
- (aaa) **[INTENTIONALLY DELETED]**
- (bbb) **“Schedule”** means a schedule to this Project Agreement.
- (ccc) **“Subguard Policy”** has the meaning given to it in the Construction Contract.
- (ddd) **[INTENTIONALLY DELETED]**
- (eee) **“Total Completion”** has the meaning given to it in the Construction Contract.
- (fff) **“Work”** has the meaning given to it in the Construction Contract.

1.2 Schedules

This Project Agreement comprises this executed agreement and the following Schedules, all of which are hereby incorporated by reference into and form part of this Project Agreement:

Schedule 1	Construction Contract
Schedule 2	Limited Assignment of Construction Contract
Schedule 3	Lender's Direct Agreement
Schedule 4	[INTENTIONALLY DELETED]
Schedule 5	[REDACTED]

1.3 Interpretation

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

- (a) The tables of contents, headings, marginal notes and references to them in this Project Agreement are for convenience of reference only, shall not constitute a part of this Project Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Project Agreement.
- (b) The Schedules to this Project Agreement are an integral part of this Project Agreement and a reference to this Project Agreement includes a reference to the Schedules.
- (c) All references in this Project Agreement to a Schedule shall be to a Schedule of this Project Agreement.
- (d) All capitalized terms used in a Schedule shall have the meanings given to such terms in the Schedule or, if not defined therein, in the Project Agreement.
- (e) 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.
- (f) 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.
- (g) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Project Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (h) 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.

- (i) References to a statute shall include all regulations, by-laws, decrees, ordinances and orders made under or pursuant to the statute.
- (j) References to Persons shall include their successors and assigns. References to a public organization shall include its 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.
- (k) A reference in this Project Agreement or in any Implementing Agreement 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.
- (l) The words in this Project Agreement or in any Implementing Agreement shall bear their natural meaning.
- (m) Each of Contracting Parties' and Hospital's respective obligations shall be construed as separate obligations owed to the other.
- (n) 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 Project 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".
- (o) In construing this Project Agreement or any Implementing Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach apply to the construction of this Project Agreement or any Implementing 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.
- (p) Where this Project Agreement or any Implementing 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.

- (q) Where this Project Agreement or any Implementing 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.
- (r) Where this 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.
- (s) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (t) Unless otherwise indicated, time periods will be strictly construed.
- (u) Whenever the terms “will” or “shall” are used in this Project Agreement or any Implementing Agreement in relation to Contracting Parties or Hospital they shall be construed and interpreted as synonymous and to read “Contracting Parties shall” or “Hospital shall” as the case may be.
- (v) 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.
- (w) Terms not defined herein and used in this Project Agreement or any Implementing Agreement which have a technical meaning commonly understood by the construction sector in Ontario will be construed as having that meaning unless the context otherwise requires.
- (x) Any term defined in Section 1.1 Definitions herein as having the meaning given to it in the Construction Contract, the Limited Assignment of Construction Contract or the Lender’s Direct Agreement shall have the meaning given to it in the form of such agreement appended hereto as Schedules 1, 2 and 3 respectively; and upon the execution of any such agreement, the defined term in Section 1.1 Definitions herein will have the meaning given to it in the executed version of such agreement whether or not such definition has changed in the executed version.

ARTICLE 2 - FINANCIAL CLOSE

2.1 Effective Date

The provisions of this Project Agreement other than the covenant to complete the Project in Article 4 come into effect on the date of this Project Agreement. Such covenant to complete the Project and all Implementing Agreements will come into effect only on Financial Close.

2.2 [INTENTIONALLY DELETED]

2.3 Financial Close

Subject to Sections 2.4(b) and 2.5, Hospital agrees to execute and deliver all of the Implementing Agreements on or before the Financial Close Target Date. Subject to Section 2.6, the Contracting Parties agree to execute and deliver all of the Implementing Agreements and agree to have completed the Financing and to have entered into the Lending Agreements on or before the Financial Close Target Date.

2.4 Failure to Reach Financial Close

- (a) Subject to Section 2.4(b), if the Contracting Parties or Lender fail to achieve through no default of Hospital, Financial Close by the Financial Close Target Date (as such date may be extended by Hospital in its sole and absolute discretion upon the request of Project Co) other than as a result of (i) the failure of Hospital to satisfy or waive the Hospital Conditions in Sections 2.5(a)(vi) and 2.5(a)(vii) or the failure of the Hospital to satisfy or waive the Hospital Condition in Section 2.5(a)(v), but only with respect to a failure to satisfy or waive the condition as it relates to the insurance of the Consultant in accordance with GC 12.2.6; (ii) the failure of the Contracting Parties to satisfy or waive the Contracting Parties Conditions; or (iii) circumstances beyond the reasonable control of the Contracting Parties, but not including either (A) lack of funds or, (B) subject to Section 2.4(b), the failure to complete the Financing, Hospital will be entitled at any time thereafter to terminate this Project Agreement. If the Hospital terminates this Project Agreement pursuant to this Section 2.4(a), the Hospital shall have no further obligations whatsoever to the Contracting Parties and the Contractor shall bear all [REDACTED] itself without limitation to the amounts originally budgeted by Hospital and Contractor. The Parties agree that the payment by the Contractor of all [REDACTED] constitute liquidated damages and not a penalty. Such liquidated damages represent a genuine and reasonable pre-estimate of the damages that Hospital would 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 Hospital as a result of Contracting Parties not achieving Financial Close. The Parties agree that such liquidated damages shall be payable whether or not the Hospital incurs or mitigates its damages, and that the Hospital shall not have any obligation to mitigate any such damages.
- (b) The Parties acknowledge that arrangements with respect to Financing may be expressly conditional on the Lender being reasonably satisfied with new information or new reports that arise or are prepared after the date of this Project Agreement (the “**Additional Lender Due Diligence**”) relating to the design, environmental or technical aspects of the Work but expressly excluding satisfaction with the attached forms of Implementing Agreements or any other conditions or matters (the “**Lender Conditions**”). Project Co will use diligent efforts to satisfy the Lender Conditions and shall keep Hospital advised of the status of such efforts. Upon request, and in any event at least fifteen (15) days prior to the Financial Close Target Date, Project Co shall provide a written report to Hospital detailing the status of the Lender's progress in satisfying the Lender Conditions. Project Co shall notify Hospital promptly if at any time it becomes aware the Lender Conditions will not be satisfied or waived and so long

as Hospital is satisfied in its sole and absolute discretion that the Lender Conditions have not been satisfied or waived and that as a direct result thereof the Financing will not be completed, either Hospital or Project Co may terminate this Project Agreement. If Hospital believes that the Lender Conditions will not be satisfied or waived and that as a result thereof the Financing will not be completed, Hospital may terminate this Project Agreement. For the purposes of the foregoing and for greater certainty, the Lender Conditions shall be deemed satisfied on the date which is fifteen (15) days prior to the Financial Close Target Date unless the Lender and Project Co can demonstrate to the reasonable satisfaction of the Hospital, that such Additional Lender Due Diligence has revealed facts or circumstances not previously known to Project Co and/or the Lender which would or are reasonably likely to promptly result in a material increase in the Cost of the Financing.

2.5 Hospital Conditions

- (a) The execution and delivery of the Implementing Agreements by Hospital on the Financial Close Target Date is conditional upon the following:
 - (i) Hospital is satisfied, acting reasonably, with any changes to the attached forms of the Implementing Agreements and with the forms of any other Implementing Agreements and the Implementing Agreements are executed and delivered to Hospital by Project Co, Contractor and Lender, as applicable;
 - (ii) Hospital has received from each of the Contracting Parties a bring-down certificate confirming that their respective representations and warranties in Sections 3.1 and 3.2 continue to be true and correct in all material respects;
 - (iii) Hospital is satisfied, acting reasonably, (A) that it has been given a reasonable opportunity to review the Lending Agreements to ensure that they are consistent in all material respects with the Project Agreement including all schedules thereto as agreed to at Commercial Close, and (B) that the Financing is in place and the Lending Agreements have been executed and delivered by Contracting Parties and Lender;
 - (iv) Hospital has received delivery of the bonds and the Subguard Policy required under the Construction Contract with Hospital as one of the obligees under the performance bond and the performance bond shall include an obligee rider, as required, and the Hospital and Lender shall be loss payees under the Subguard Policy with payment to the loss payees being directed to the insurance trustee under the Insurance Trust Agreement together with the consent of the insurer endorsed on the Subguard Policy;
 - (v) Hospital has received evidence of the insurance to be provided under the Construction Contract, including evidence of the insurance of the Consultant referred to in GC 12.2.6, in form and substance satisfactory to the Hospital acting reasonably together with evidence that payment to the loss payees is directed to the insurance trustee under the Insurance Trust Agreement together with the consent of the insurer endorsed on the Subguard Policy;

- (vi) Hospital is satisfied that all conditions and requirements of any Governmental Authority required to allow construction of the Project to proceed have been or, in the Hospital's sole and absolute discretion, can be obtained without any delay to the initiation of and the progress of construction of the Project by the Contractor;
- (vii) Hospital has received the final approval from MOHLTC to proceed with the Project and to enter into the Implementing Agreements in form and in substance satisfactory to Hospital in its sole and absolute discretion; and
- (viii) Project Co shall have delivered to Hospital drafts of the Lending Agreements prior to Financial Close in order to give Hospital a reasonable opportunity to review the draft Lending Agreements.

(collectively, the "**Hospital Conditions**").

The Hospital Conditions are for the sole benefit of Hospital and may be waived in whole or in part by Hospital by written notice to Contracting Parties on or before the Financial Close Target Date.

- (b) Subject to Section 2.4(a), if Hospital has not satisfied or waived the Hospital Conditions, then the Hospital may terminate this Project Agreement and neither the Hospital nor the Contracting Parties shall be liable to the other for any other damages, costs or losses resulting from the termination of this Project Agreement or for any expenses or costs incurred prior to or after the date of termination of this Project Agreement or related, directly or indirectly, to any negotiations or discussions related to the negotiation of this Project Agreement.

2.6 Contracting Parties Conditions

- (a) The execution and delivery of the Implementing Agreements by the Contracting Parties on the Financial Close Target Date is conditional upon the following:
 - (i) the Contracting Parties have received from Hospital a bring-down certificate confirming that its representations and warranties in Section 3.3 continue to be true and correct in all material respects;
 - (ii) the Contracting Parties are satisfied that all conditions and requirements of any Governmental Authority required to allow construction of the Project to proceed including all building permits (other than those the Contractor is required to obtain under the Construction Contract), have been or, in the Contracting Parties reasonable determination, can be obtained without any material delay to the initiation of and the progress of construction of the Project by Contractor;
 - (iii) the Contracting Parties are satisfied, acting reasonably, that Hospital has received the final approval from MOHLTC to proceed with the Project and to enter into the Implementing Agreements in form and substance satisfactory to the Contracting Parties;

- (iv) the Contracting Parties are satisfied, acting reasonably, that the Project is in accordance with the Hospital's Master Plan; and
- (v) the Contracting Parties have received from the Hospital,
 - (A) an opinion of counsel to the Hospital addressed to the Contracting Parties, Lender and Lender's counsel with respect to the existence of the Hospital and due authorization, execution, delivery and enforceability of the Project Agreement and Implementing Agreements to which the Hospital is a party with reference to the Hospital having obtained the necessary Governmental Authority approvals to commence the Project; and;
 - (B) satisfactory evidence that the Hospital Conditions have been satisfied.

(collectively the "**Contracting Parties Conditions**").

- (b) The Contracting Parties Conditions are for the sole benefit of the Contracting Parties and may be waived in whole or in part by the Contracting Parties by written notice to Hospital on or before the Financial Close Target Date.

2.7 Project Debt Interest Cost Adjustment

The Contracting Parties represent and warrant that the Project Debt Interest Cost is based upon the Interest Reference Rate. The Project Debt Interest Cost will be adjusted on the date of Financial Close on the basis of the actual cost increase or decrease in the Project Debt Interest Cost resulting directly from any change upward or downward of the Interest Reference Rate as at the date of Financial Close compared to the Interest Reference Rate as at the date of execution of this Project Agreement.

2.8 Adjustment to Guaranteed Price

The Contracting Parties represent and warrant that the Guaranteed Price is \$140,470,538.00 exclusive of Value Added Taxes as defined in the Construction Contract and that the Cost of the Financing and the Cost of the Work are set out in the Financial Model attached hereto as Schedule 5 – Financial Model and Information. The Parties 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 2.7 as at the date of Financial Close. The Parties acknowledge and agree that the final Guaranteed Price shall be determined on the basis of (i) such final adjusted Cost of the Financing and (ii) the final adjusted Cost of the Work, both as of the date of Financial Close. As of the date of Financial Close, the Cost of the Work shall be adjusted to take into account only (i) changes, after Commercial Close, to the specifications and drawings listed in the Construction Contract and (ii) [REDACTED]. The Financial Model shall be updated to reflect any adjustment under Section 2.7 and any adjustment to the Cost of the Work under this Section 2.8 and such updated Financial Model shall replace the Financial Model attached hereto at Schedule 5-Financial Model and Information

2.9 Ownership of Project Lands

- (a) The Contracting Parties acknowledge that neither the Contracting Parties nor the Lender shall, under the Project Agreement or any of the Implementing Agreements acquire any interest in the Project Lands or the Project (other than the licence to access the Project Lands and the Project under GC 3.17 of the Construction Contract and under Section 3.3 of the Lender’s Direct Agreement) notwithstanding any provision therein to the contrary and that The Governing Council of the University of Toronto shall at all times retain the fee simple interest in and the freehold title to the Project Lands and the Project, unencumbered by any interest of the Contracting Parties or the Lender. Contracting Parties shall have access to the Project Lands and the Project under and subject to the limited license created in the Construction Contract. Lender shall have access to the Project Lands and the Project in accordance with Section 3.3 of the Lender’s Direct Agreement.
- (b) The Hospital shall use reasonable commercial efforts to renew the existing lease dated October 1, 1966 (as amended by an Agreement Amending Terms of Lease made as of October 10, 1978, as renewed by a Renewal of Lease made as of September 30, 1987 and as further amended by an Indenture Amending Lease made as of July 1, 1993) between the Hospital and The Governing Council of the University of Toronto (in respect of the Project Lands) no later than one year after Financial Close. The Hospital shall provide a copy of the executed renewal of the lease in respect of the Project Lands to the Contracting Parties.

2.10 Acknowledgement of Hospital Authority

- (a) Nothing in this Project Agreement or any of the Implementing Agreements including the Construction Contract shall in any way fetter the right, authority and discretion of Hospital in fulfilling its statutory or other functions under Applicable Law, and Contracting Parties acknowledge and agree that nothing in this Project Agreement or any of the Implementing Agreements including the Construction Contract shall preclude Hospital’s board of directors from performing, discharging or exercising its duties, responsibilities and powers under Applicable Law. Subject to the provisions of the Construction Contract, including without limitation Section 11.8 of Article A-11 thereof, Contracting Parties further agree that they shall comply with all written directions issued by or on behalf of Hospital’s board in furtherance of the board fulfilling its duties, responsibilities and powers under Applicable Law.

2.11 Insurance Proceeds and Insurance Trust Agreement

- (a) The Parties acknowledge and agree that all insurance proceeds under the insurance policies required to be maintained by the Contractor pursuant to GC 11.1.1.2.2 (“**Insurance Proceeds**”) shall be directed, used or advanced, in accordance with the payment requirements of the Construction Contract and the Lending Agreements, and shall be applied only for the following purposes:
 - (i) the repair, reinstatement, restoration or replacement of the Work in respect of which such insurance proceeds have been paid;

- (ii) the completion of the Project; and
 - (iii) the payment of interest in respect of the Financing and other soft costs described in GC 11.1.1.2.2.
- (b) The Parties agree that Insurance Proceeds will, prior to the entering into of the Insurance Trust Agreement, be paid as follows:
 - (i) if the Hospital has not exercised its rights in accordance with Section 6.2 of the Lender’s Direct Agreement, to the Agent to be held in a segregated escrow account and disbursed by the Agent for the purposes set out in Section 2.11(a) in accordance with the provisions applicable to Base Progress Payments in the Construction Contract and subject to satisfaction of the conditions for drawdowns set out in the Lending Agreements; and
 - (ii) if the Hospital has exercised its rights in accordance with Section 6.2 of the Lender’s Direct Agreement, to the Hospital to be disbursed for the purposes set out in Section 2.11(a).
- (c) The Parties shall make reasonable commercial efforts to execute an insurance trust agreement with the Agent and a third-party escrow agent satisfactory to the Parties and the Agent (the “**Insurance Trustee**”) which shall provide for the distribution of Insurance Proceeds in accordance with Sections 2.11(a) and 2.11(b) and shall otherwise be in form and substance satisfactory to the Parties and the Agent (the “**Insurance Trust Agreement**”). In the event the Parties and the Agent enter into the Insurance Trust Agreement, they agree that the Insurance Trust Agreement shall provide for all Insurance Proceeds to be paid to the Insurance Trustee and disbursed:
 - (i) at the direction of the Agent if the Hospital has not exercised its rights in accordance with Section 6.2 of the Lender’s Direct Agreement; and
 - (ii) at the direction of the Hospital if the Hospital has exercised its rights in accordance with Section 6.2 of the Lender’s Direct Agreement,provided, for greater certainty, that such directions of the Agent and Hospital shall only be given in accordance with and subject to the provisions of Sections 2.11(a) and 2.11(b) and otherwise in compliance with the Insurance Trust Agreement.
- (d) In the event that the Parties wish to provide for the distribution of Insurance Proceeds through revised terms and conditions in this Project Agreement, in lieu of an Insurance Trust Agreement, the Parties shall make commercially reasonable efforts, in consultation with the Agent, to revise this Project Agreement accordingly prior to Financial Close. In the event that the Parties set out revised provisions for the distribution of Insurance Proceeds in this Project Agreement prior to Financial Close, those provisions shall provide for the payment and disbursement of Insurance Proceeds in accordance with Section 2.11(c)(i) and (c)(ii) and shall be satisfactory to the Agent in form and substance.

- (e) If the Parties execute an Insurance Trust Agreement in accordance with Section 2.11(c), Project Co and the Hospital shall share equally in the payment of the costs and expenses of the Insurance Trustee.

ARTICLE 3- REPRESENTATIONS AND WARRANTIES

3.1 Contractor Representations and Warranties

- (a) Contractor represents and warrants to Hospital that as of the date of this Project Agreement:
 - (i) Contractor is duly organized, validly existing and in good standing 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, and to enter into this Project Agreement and any Implementing Agreements and to perform its obligations hereunder and thereunder;
 - (ii) no steps or proceedings have been taken or are pending to supersede, repeal, or amend its constating documents, articles, by-laws or any shareholders agreement in a manner that would materially impair or limit its ability to perform its obligations under this Project Agreement or any of the Implementing Agreements and they are in full force and effect as of the date hereof;
 - (iii) this Project Agreement and the Implementing Agreements (when executed and delivered) to which Contractor is a party have been duly authorized, executed, and delivered by Contractor and constitute a legal, valid, and binding obligation of Contractor, enforceable against Contractor in accordance with their 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;
 - (iv) the authorization, execution, delivery, and performance by Contractor of this Project Agreement and the Implementing Agreements to which Contractor is a party does 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 Contractor;
 - (B) any Applicable Law; or

- (C) any covenant, contract, instrument or agreement to which it is a party or by which it or any of its properties or assets is bound or affected;
- (v) there are no actions, suits, proceedings, or investigations pending or, to the knowledge of management on the reasonable advice of counsel, threatened against Contractor 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 materially adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Contractor or in any impairment of its ability to perform its obligations under this Project Agreement and the Implementing Agreements to which Contractor is a party, and Contractor has no knowledge of any violation or default with respect to any order, writ, decision, injunction, or decree of any Governmental Authority or arbitral body that would result in any such materially adverse effect or impairment;
- (vi) Contractor is able to meet its obligations as they generally become due;
- (vii) Contractor is registered under Division V of Part IX of the *Excise Tax Act* (Canada); and
- (viii) Contractor has, together with Project Co, secured the Financing and is in a position to implement the Financing on or before the Financial Close Target Date, subject to the satisfaction of reasonable conditions that are customary in securing the financing for projects similar to the Project.

3.2 Project Co Representations and Warranties

- (a) Project Co represents and warrants to Hospital that as at the date of this Project Agreement:
 - (i) Project Co is duly organized, validly existing and in good standing 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, and to enter into this Project Agreement and any Implementing Agreements to which it is a party and to perform its obligations hereunder and thereunder;
 - (ii) no steps or proceedings have been taken or are pending to supersede, repeal or amend its constating documents, articles, by-laws or any shareholders agreement in a manner that would impair or limit its ability to perform its obligations under this Project Agreement or any of the Implementing Agreements to which it is a party and they are in full force and effect as of the date hereof;
 - (iii) this Project Agreement and any Implementing Agreements (when executed and delivered) to which it is a party have been duly authorized, executed, and delivered by Project Co and constitute a legal, valid, and binding obligation of Project Co, enforceable against Project Co in accordance with their terms, subject only to:

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- (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;
- (iv) the authorization, execution, delivery, and performance by Project Co of this Project Agreement and any Implementing Agreements to which it is a party does not and will 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 Project Co;
 - (B) any Applicable Law; or
 - (C) any covenant, contract, instrument or agreement to which it is a party or by which it or any of its properties or assets is bound or affected;
- (v) there are no actions, suits, proceedings, or investigations pending or, to the knowledge of management on the reasonable advice of counsel, threatened against Project Co 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 materially 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 any Implementing Agreements to which it is a party, and Project Co has no knowledge of any violation or default with respect to any order, writ, decision, injunction, or decree of any Governmental Authority or arbitral body that could result in any such materially adverse effect or impairment;
- (vi) Project Co is a wholly owned subsidiary of Vanbots Construction Corporation;
- (vii) Project Co is able to meet its obligations as they generally become due;
- (viii) Project Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada); and
- (ix) Project Co has, together with Contractor, secured the Financing and is in a position to implement the Financing on or before the Financial Close Target Date subject to the satisfaction of reasonable conditions that are customary in securing the financing for projects similar to the Project.

3.3 Hospital Representations and Warranties

Hospital represents and warrants to Contracting Parties that as of the date of this Project Agreement:

- (i) Hospital 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 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, and to enter into this Project Agreement and any Implementing Agreement to which it is a party and to perform its obligations hereunder and thereunder;
- (ii) no steps or proceedings have been taken or are pending to supersede, repeal, or amend its constating documents, letters patent, by-laws or any shareholders agreement in a manner that would impair or limit its ability to perform its obligations under this Project Agreement or any of the Implementing Agreements and they are in full force and effect as of the date hereof;
- (iii) this Project Agreement and the Implementing Agreements (when executed and delivered) to which Hospital is a party have been duly authorized, executed, and delivered by Hospital and constitute a legal, valid, and binding obligation of Hospital, enforceable against Hospital in accordance with their 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;
- (iv) the authorization, execution, delivery, and performance by Hospital of this Project Agreement and the Implementing Agreements to which Hospital is a party does not and will not violate or conflict with, or constitute a default under:
 - (A) its constating or organizational documents;
 - (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; and

- (v) there are no actions, suits, proceedings, or investigations pending or threatened against Hospital 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 materially adverse effect on the business, properties or assets, or the condition, financial or otherwise, of Hospital or in any impairment of its ability to perform its obligations under this Project Agreement, and Hospital has no knowledge of any violation or default with respect to any order, writ, decision, injunction, or decree of any Governmental Authority or arbitral body that could result in any such materially adverse effect or impairment.

ARTICLE 4 - CONSTRUCTION AND FINANCE OBLIGATIONS

4.1 Project Co and Contractor Construction and Financing

The Contracting Parties agree with Hospital to complete the Project in accordance with and subject to the provisions of the Construction Contract and the Financing and in furtherance of such agreement Contracting Parties agree, subject to the Contracting Parties Conditions, to enter into and to cause Lender to enter into, where applicable, the following agreements and otherwise complete the following on Financial Close:

- (i) the execution and delivery of all Lending Agreements and the completion of all arrangements to implement the Financing;
- (ii) the execution and delivery of the Construction Contract between Project Co in the capacity of “**Owner**” thereunder and the Contractor;
- (iii) the execution and delivery of the Limited Assignment of Construction Contract with Hospital and the Lender’s Direct Agreement with Hospital and Lender;
- (iv) the execution and delivery of a certificate confirming the representations and warranties in Sections 3.1 and 3.2; and
- (v) the execution and delivery of such other related and ancillary instruments, agreements and documents as are customary and are necessary to give effect to this transaction.

ARTICLE 5 - COMMUNICATIONS PROTOCOL AND CONFIDENTIALITY

5.1 Communications Protocol

- (a) The Contracting Parties shall not 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 or any matters related thereto, without the prior written consent of Hospital, in its sole and absolute discretion, provided that if a Contracting Party is a public company it shall be

entitled to make such disclosure as is required by Applicable Law subject to reasonable consultation with Hospital prior to such disclosure.

- (b) The Contracting Parties shall, and shall ensure that their subcontractors, agents, Affiliates, employees, officers and directors, in each case, comply, at all times, with Hospital's and Infrastructure Ontario's media release and publicity protocols or guidelines, as such protocols and/or guidelines are updated by Hospital and Infrastructure Ontario from time to time, provided that if any such Person is a public company it shall be entitled to make such disclosure as is required by Applicable Law subject to reasonable consultation with Hospital prior to such disclosure.
- (c) Hospital, either on its own or together with Infrastructure Ontario, propose to establish a public information repository for the Project which may be website based as well as a hard copy document repository for purposes of communicating to the public information respecting the Project and the progress of the construction work. It is not intended that this information repository would include any information which falls within one of the exemptions under FIPPA although the information repository may also contain the redacted versions of the Project Agreement or any of the Implementing Agreements pursuant to Section 5.3 below. Other than in respect to such redacted publications, Hospital on its own or together with Infrastructure Ontario will establish a communications protocol in consultation with Contracting Parties for the development and management of the information repository.

5.2 FIPPA

- (a) Hospital and Contracting Parties acknowledge and agree that, subject only to removal of information that falls within one of the exemptions under FIPPA unless consented to by Contracting Parties under section 17(3) of FIPPA, the Project Agreement and the Implementing Agreements are public documents that may be disclosed or published (including on websites) by Hospital.
- (b) The Contracting Parties further acknowledge and agree that Hospital will be free to disclose any information, including the Project Agreement and the Implementing Agreements and any Confidential Information, to PIR, Infrastructure Ontario, MOHLTC and/or the Province and, subject to compliance with FIPPA, PIR, Infrastructure Ontario, 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 PIR, Infrastructure Ontario, MOHLTC and/or the Province see fit.
- (c) For greater certainty, Contracting Parties acknowledge and agree that, subject only to the removal of any information pursuant to one of the exemptions under FIPPA, this Project Agreement or any of the Implementing Agreements, any contractual submissions or other records kept in accordance with this Project Agreement or any of the Implementing Agreements, any information related to the performance of Contracting Parties or any information derived from this Project Agreement or any of the Implementing Agreements, including Confidential Information are public documents and information and, as such, may

be disclosed by Hospital, PIR, Infrastructure Ontario, MOHLTC and/or the Province (the “Disclosing Parties”).

5.3 Redaction Publication

Prior to disclosing or publishing this Project Agreement or any of the Implementing Agreements the Disclosing Party shall provide notice to Contracting Parties (and Lender in respect to the Lender’s Direct Agreement) and Contracting Parties (and Lender in respect to the Lender’s Direct Agreement) shall have a period of thirty (30) days from receipt of such notice to identify any information contained in or relating to the Project Agreement, any of the Implementing Agreements and/or the Confidential Information which in the view of Contracting Parties may be refused disclosure pursuant to one of the exemptions under FIPPA together with the reasons why such information may be refused disclosure and FIPPA shall govern any disclosure.

5.4 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 5.4 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 or any of the Implementing Agreements.
- (b) The Contracting Parties may:
 - (i) disclose in confidence to Lender and prospective lenders and their professional advisors such Confidential Information as is reasonably required by Lender in connection with the raising of finance for the construction of the Project or which Contracting Parties are obliged to supply by the terms of the Lending Agreements; and
 - (ii) disclose in confidence to Contracting Parties and their professional advisors, such Confidential Information as is necessary for the performance by Contracting Parties of Contracting Parties’ obligations under this Project Agreement or any of the Implementing Agreements.
- (c) The Contracting Parties acknowledge that PIR, Infrastructure Ontario, MOHLTC and/or the Province may use the Confidential Information of Contracting Parties for purposes not specific to the Project, but for other general governmental purposes, such as, among other things, development of the Province’s alternate financing and procurement policies and framework.
- (d) Subject to the foregoing, neither Contracting Parties nor Hospital shall use, or directly or indirectly cause, authorize or permit any other Person to use, any Confidential Information of the other except for the purposes of this Project Agreement or any Implementing Agreement,

as permitted by this Project Agreement or any Implementing 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.

5.5 Exceptions

Information of a Party (the “**Proprietor**”) will not be considered to be Confidential Information in the following circumstances:

- (i) the Proprietor advises the other Party in writing 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;
- (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 where the circumstances reasonably permit the Proprietor with reasonable notification and an opportunity to contest such requirement prior to disclosure;
- (viii) the information is required by Hospital in connection with the construction of the Project; or
- (ix) the information would not be exempt from disclosure under FIPPA.

5.6 Survival of Confidentiality

Except for Confidential Information that the Contracting Parties have identified in writing to Hospital as being commercially sensitive, in which case the obligations of Section 5.1 to

Section 5.5 inclusive shall continue, the obligations in Section 5.1 to Section 5.5, inclusive, will cease on the date that is three (3) years after the Total Completion of the Project.

ARTICLE 6 - ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL

6.1 Contracting Parties Assignment

- (a) Contracting Parties 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, the Construction Contract or any other Implementing Agreement without the prior written consent of Hospital, which consent may be unreasonably withheld or delayed.
- (b) Section 6.1(a) shall not apply to:
 - (i) the grant of security to Lender under any of the Lending Agreements provided that any grantee of such security shall enter into the Lender's Direct Agreement; or
 - (ii) any subcontract or any sub-subcontract entered into by the Contractor or their subcontractors in connection with the Project.

6.2 Hospital Assignment

- (a) Hospital may sell, assign, transfer, dispose of or otherwise alienate all or any part of its interest, whether legal or beneficial, in this Project Agreement or any Implementing Agreement:
 - (i) to the Province;
 - (ii) to the Local Health Integration Network as defined pursuant to the *Local Health System Integration Act* (Ontario);
 - (iii) to any public hospital under the *Public Hospitals Act* (Ontario) to whom MOHLTC, exercising its statutory rights, would be entitled to transfer same;
 - (iv) to any successor of Hospital, where such successor arises as a result of a direction or approval under the *Public Hospitals Act* (Ontario) and/or the *Local Health System Integration Act* (Ontario) or a reorganization of the delivery of health services initiated by the Province;
 - (v) 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; or
 - (vi) in circumstances other than those described in Sections 6.2(a)(i) to 6.2(a)(v), inclusive, with the prior written consent of Contractor, not to be unreasonably withheld or delayed,

provided that in circumstances where the Hospital's sale, assignment, transfer, disposition or other alienation does not arise as a result of an Authority Requirement, the Person to whom any

such sale, assignment, transfer, disposition or other alienation is made has the capacity to perform, and agrees in writing with the Contracting Parties to perform, all the obligations of Hospital hereunder to the extent sold, assigned, transferred, disposed of or alienated and under any of the Implementing Agreements to which any of the Contracting Parties and Hospital are parties.

- (b) Upon any sale, assignment, transfer, disposition or other alienation pursuant to Section 6.2(a), Hospital shall be released of all of its obligations hereunder to the extent sold, assigned, transferred, disposed of or alienated.

ARTICLE 7- NOTICES

7.1 Notices to Parties

All notices, requests, demands, instructions, certificates, consents and other communications (each being a “**Notice**”) required or permitted under this Project Agreement shall be served by sending the same by facsimile or by hand, as follows:

If to Contractor: Vanbots Construction Corporation
50 Acadia Avenue
Suite 200
Markham, Ontario, Canada
L3R 0B3

[REDACTED]

If to Project Co: Vanbrook Construction Corporation
50 Acadia Avenue
Suite 200
Markham, Ontario, Canada
L3R 0B3

[REDACTED]

If to Hospital: Sunnybrook Health Sciences Centre
2075 Bayview Avenue
Toronto, Ontario, Canada
M4N 3M5

[REDACTED]

with a copy to:
Infrastructure Ontario: 777 Bay Street, 9th Floor
Toronto, Ontario, M5G 2C8

[REDACTED]

7.2 Facsimile

Where any Notice is provided or submitted to a Party via facsimile, an original of the Notice sent via facsimile shall promptly be sent by regular mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to provide an original of the Notice in compliance with this Section 7.2.

7.3 Change of Address

Any Party to this Project Agreement may, from time to time, change any of its contact information set forth in Section 7.1 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.

7.4 Deemed Receipt of Notices

Subject to Section 7.4(i), a Notice given by hand delivery shall be deemed to have been received on the day it is delivered. Subject to Sections 7.4(i) and 7.4(ii), a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.

- (i) 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.
- (ii) 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.

ARTICLE 8 - GENERAL

8.1 Amendments

This Project Agreement may not be modified, 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.

8.2 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 Party. No waiver made with respect to any such right, power or remedy, in one instance will be deemed to be a

waiver with respect to any other instance involving the exercise of the right, power, or remedy or with respect to any other such 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.

8.3 Relationship Between the Parties

The Parties are independent contractors. This Project Agreement is not intended to and does not create or establish between the Parties, or between Hospital, Contracting Parties and Infrastructure Ontario, any relationship as partners, joint venturers, employer and employee, master and servant, or of principal and agent, and does not create or establish any relationship whatsoever between Hospital, Infrastructure Ontario and any Affiliate, representative or employee of a Contracting Party.

8.4 Entire Agreement

Except where provided otherwise in this Project Agreement, this Project Agreement and the Implementing Agreements constitute the entire agreement between the Parties in connection with its subject matter and supersede all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Project Agreement.

8.5 No Reliance

Each of the Parties acknowledge that:

- (i) it has not entered into this Project Agreement on the basis of and does not rely, and has not relied, upon any statement or representation, whether negligent or innocent, or warranty or other provision, whether oral, written, express or implied, made or agreed to by any Person, whether a Party to this Project Agreement or not, except those expressly made, given or repeated in this Project Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be those expressly provided for in this Project Agreement; and
- (ii) this Section 8.5 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 Applicable Law.

8.6 Severability

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.

8.7 Enurement

This Project Agreement and any of the Implementing Agreements to which both Hospital and either of Contracting Parties are parties shall enure to the benefit of, and be binding on, Hospital and Contracting Parties and each of their respective successors and permitted transferees and assigns.

8.8 Governing Law and Jurisdiction

- (a) This Project Agreement, and each of the Implementing Agreements shall be governed by and construed in accordance with the laws of the Province 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 hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

8.9 Cumulative Remedies

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.

8.10 Further Assurance

Each Party shall do all things, from time to time, and execute all further instruments, agreements and documents necessary to give full effect to this Project Agreement.

8.11 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 Project Agreement and the Implementing Agreements.

8.12 Proof of Authority

The Contracting Parties shall provide proof to Hospital in a form acceptable to Hospital, that any Person executing this Project Agreement or any of the Implementing Agreements on behalf of Contractor or Project Co has the requisite authority to execute this Project Agreement on behalf of and to bind Contractor or Project Co.

8.13 Counterparts

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

8.14 Time is of the Essence

Time is of the essence of this Project Agreement.

8.15 Language of Agreement

Each Party 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 anglaise et s'en declare satisfaite.*

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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

**SUNNYBROOK HEALTH SCIENCES
CENTRE**

Per: _____
[REDACTED]

Per: _____
[REDACTED]

I/We have authority to bind the corporation.

**VANBOTS CONSTRUCTION
CORPORATION**

Per: _____
[REDACTED]

I/We have authority to bind the corporation.

**VANBROOK CONSTRUCTION
CORPORATION**

Per: _____
[REDACTED]

I/We have authority to bind the corporation.

SCHEDULE 1

FORM OF CONSTRUCTION CONTRACT

SCHEDULE 2

FORM OF LIMITED ASSIGNMENT OF CONSTRUCTION CONTRACT

THIS LIMITED ASSIGNMENT OF CONSTRUCTION CONTRACT made as of the [•] day of [•], 200•

BETWEEN:

VANBROOK CONSTRUCTION CORPORATION, a corporation incorporated under the laws of the Province of Ontario

(“Project Co”)

AND:

SUNNYBROOK HEALTH SCIENCES CENTRE, a non-share capital corporation incorporated under the laws of the Province of Ontario

(“Hospital”)

AND:

VANBOTS CONSTRUCTION CORPORATION, a corporation incorporated under the laws of the Province of Ontario

(“Contractor”).

WHEREAS:

- A. Project Co, Hospital, and Contractor have entered into a Project Agreement dated the 23rd day of April, 2007 (the “Project Agreement”) in respect to the finance and construction of the M-Wing Vertical Shell Expansion and Perinatal and Gynaecology Related Interior Fit-up Redevelopment Project in Toronto, Ontario.
- B. In furtherance of the provisions of Section 4.1 of the Project Agreement, Project Co and Contractor entered into the Guaranteed Price Contract the [] day of [June], 2007 (the “Construction Contract”) for the construction of the Project an executed copy of which is attached as Schedule A.
- C. Project Co and Contractor have entered into the Financing with Lender for the purpose of financing, among other things, the Base Progress Payments under the Construction Contract during the period from the commencement of construction to and including the Substantial Performance Date.

- D. Contractor has agreed to be a party to this Limited Assignment of Construction Contract to acknowledge the terms of the assignment of the Construction Contract by Project Co to Hospital, the assumption of the Construction Contract by Hospital and the amendment to the Construction Contract.

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:

ARTICLE 1 - DEFINITIONS AND INTERPRETATION

1.1 Definitions

All capitalized terms not otherwise defined in this Limited Assignment of Construction Contract shall have the meanings ascribed to them in the Project Agreement and unless the context otherwise requires:

- (a) “**Additional Owner Payments**” has the meaning given to it in the Construction Contract.
- (b) “**Agent**” means Stonebridge Financial Corporation, acting for and on behalf of Lender.
- (c) “**Assumed Rights and Obligations**” has the meaning given to it in Section 3.3.
- (d) “**Base Progress Payments**” has the meaning given to it in the Construction Contract.
- (e) “**Certified Cost to Complete**” means the value of the Work remaining to be performed under the Construction Contract following the last day of the agreed monthly payment period ending immediately prior to the Reimbursement Payment Date as certified to Hospital by the Consultant and agreed to by Project Co and Contractor.
- (f) “**Change in the Scope of the Work**” has the meaning given to it in the Construction Contract.
- (g) “**Change Order**” has the meaning given to it in the Construction Contract.
- (h) “**Compensation Payment**” means either the Default Termination Payment or the Non-Default Termination Sum as defined in Schedule B.
- (i) “**Construction Contract**” has the meaning given to it in Recital B.
- (j) “**Construction Event of Default**” has the meaning given to it in the Lender’s Direct Agreement.
- (k) “**Enforcement Rights**” means the rights as against Contractor to enforce or terminate the Construction Contract under PART 7 – DEFAULT NOTICE therein.
- (l) “**Hospital Holdback**” means any amount which Hospital may withhold from payment under GC 5.7.3 and GC 5.9 – WITHHOLDING OF PAYMENT of the Construction Contract.

- (m) **“Hospital Reimbursement Payment”** means the amount determined by subtracting from the amount of the Guaranteed Price, as adjusted in accordance with the terms of the Construction Contract as of the Reimbursement Payment Date, the following amounts:
 - (i) all Additional Owner Payments made to the Reimbursement Payment Date;
 - (ii) the Certified Cost to Complete as at the Reimbursement Payment Date;
 - (iii) the Hospital Holdback as at the Reimbursement Payment Date; and
 - (iv) any Legislative Holdback then required to be maintained by Hospital in accordance with Section 3.10 as at the Reimbursement Payment Date.
- (n) **“Legislative Holdback”** means the holdback to be maintained under Part IV of the *Construction Lien Act* (Ontario).
- (o) **“Limited Assignment of Construction Contract”** means this limited assignment of construction contract and the schedules hereto.
- (p) **“Notice”** has the meaning given to it in Section 4.1.
- (q) **“Reimbursement Payment Date”** has the meaning given to it in the Construction Contract.
- (r) **“Retained Payment Obligation”** has the meaning given to it in Section 3.1.
- (s) **“Substantial Performance Date”** has the meaning given to it in the Construction Contract.
- (t) **“Substantial Performance Holdback”** means the holdback pursuant to GC 5.6 - PAYMENT OF HOLDBACK ON SUBSTANTIAL PERFORMANCE OF THE WORK of the Construction Contract.
- (u) **“Substantial Performance Holdback Payment Date”** means the date for payment of the Substantial Performance Holdback pursuant to GC 5.6 - PAYMENT OF HOLDBACK ON SUBSTANTIAL PERFORMANCE OF THE WORK of the Construction Contract.
- (v) **“Value Added Taxes”** has the meaning given to it in the Construction Contract.
- (w) **“Work”** has the meaning given to it in the Construction Contract.

1.2 Schedules

This Limited Assignment of Construction Contract comprises this executed agreement and the following Schedules, which are hereby incorporated by reference into and form part of this Limited Assignment of Construction Contract:

Schedule A – Executed Copy of Construction Contract

Schedule B – Compensation on Termination

Schedule C – Dispute Resolution Procedure.

1.3 Interpretation

The provisions of Section 1.3(a) – (w) inclusive, of the Project Agreement are hereby incorporated in their entirety and all references in same to “Project Agreement” shall be read as “Limited Assignment of Construction Contract”.

ARTICLE 2 - REPRESENTATIONS AND WARRANTIES

2.1 Project Co and Contractor Representations and Warranties

Each of Project Co and Contractor severally represents and warrants to Hospital on behalf of itself that as at the date of this Limited Assignment of Construction Contract:

- (a) the Construction Contract is in full force and effect, unamended and neither Contractor nor Project Co is in default of any of its respective obligations thereunder;
- (b) an executed, true and complete copy of the Construction Contract is attached hereto as Schedule A; and
- (c) Project Co has done no act and has not consented to any proceedings that could create any security interest lien or encumbrance on its interest in the Construction Contract other than any lien or encumbrance in favour of Agent, for itself and for the benefit of the Lender, pursuant to the Lending Agreements.

ARTICLE 3 - ASSIGNMENT

3.1 Assignment by Project Co

Subject to any prior assignment as security pursuant to the Financing, Project Co hereby assigns all of its right, title and interest in the Construction Contract to Hospital save and except the obligation to pay the Base Progress Payments, (the “**Retained Payment Obligation**”) which obligation Project Co specifically retains and Project Co agrees with Hospital and Contractor to pay the Base Progress Payments in accordance with and subject to the applicable provisions of the Construction Contract, including, without limitation, the provisions of Article A-7 – PAYMENTS and PART 5 – PAYMENT of the Construction Contract therein, including any provision of the Construction Contract pursuant to which a Retained Payment Obligation may be subject to holdback.

3.2 Rights to Enforce

Project Co may assign its interest in the Construction Contract to Agent as security for the Financing. Such assignment may include all of Project Co’s Enforcement Rights in order that Agent may enforce the provisions of the Construction Contract as against Contractor in the event of any default under the Construction Contract subject to and in accordance with the provisions of the Lender’s Direct Agreement. Project Co and Contractor acknowledge and agree that Hospital shall be entitled to exercise all rights and, subject to and in

accordance with the terms of the Lender’s Direct Agreement, enforce all of the covenants and obligations of Contractor in accordance with the terms of the Construction Contract.

3.3 Assumption by Hospital

Hospital hereby accepts the assignment of the Construction Contract from Project Co and agrees to assume all of the rights, benefits and obligations save and except the Retained Payment Obligation and subject to the prior rights of Lender (the “**Assumed Rights and Obligations**”) and covenants and agrees with Project Co and with Contractor to observe and perform all of the Assumed Rights and Obligations including, for greater clarity, the payment of all Additional Owner Payments, the Certified Cost to Complete and the Hospital Holdbacks as same become due and payable to Contractor in accordance with the terms of the Construction Contract.

3.4 Hospital Reimbursement Payment

Subject to Sections 3.5 and 3.11, Hospital covenants and agrees with Project Co to pay to Project Co the Hospital Reimbursement Payment and the applicable Value Added Taxes as determined by the Consultant on the Reimbursement Payment Date.

3.5 Direction of Hospital Reimbursement Payment

Project Co hereby irrevocably directs Hospital to make any Hospital Reimbursement Payment to Agent, subject to the terms of the Lender’s Direct Agreement, as security for the Financing. Hospital shall pay the Hospital Reimbursement Payment as directed by Project Co and shall not accept any re-direction without the consent of the Person to whom the Hospital Reimbursement Payment is directed. Hospital declares that it holds any monies received from MOHLTC on account of the Hospital Reimbursement Payment in trust for itself and Project Co. Hospital will pay Project Co the amount that it is entitled to under this Limited Assignment of Construction Contract once it is satisfied that the conditions for payment set out in the Construction Contract have been satisfied.

3.6 Payment of Substantial Performance Holdback

Subject to Section 3.10, Hospital covenants and agrees with Project Co to pay to Project Co the Substantial Performance Holdback and the Value Added Taxes applicable to the Substantial Performance Holdback on the Substantial Performance Holdback Payment Date. In the event that the Hospital receives notice from the Agent that either (i) the Lenders have financed all or any part of the Substantial Performance Holdback or (ii) an event of default has occurred and is continuing under the Lending Agreements (which notice, in either case, the Hospital shall have no obligation to verify and which notice, in either case, the Hospital is entitled to rely upon without further inquiry), Project Co and Contractor hereby irrevocably direct Hospital to pay the Substantial Performance Holdback to Agent, subject to the terms of the Lender’s Direct Agreement, as security *inter alia* for the Financing.

3.7 Hospital Holdback

The Hospital Holdback shall be reduced from time to time as a result of such actions by Contractor as confirmed by the Consultant in accordance with the terms and conditions of the Construction Contract. To the extent the Hospital Holdback is reduced from time to time, Hospital shall pay the amount of the Hospital Holdback reductions and any Value Added Taxes applicable to the Hospital Holdback to the Contractor or as otherwise directed by Contractor and shall not accept any re-direction without the consent of the Person to whom payment is directed. Contractor hereby irrevocably directs Hospital to make any payment in accordance with this Section 3.7 to Project Co. Project Co and Contractor hereby irrevocably direct Hospital to pay the amount of the Hospital Holdback reductions to Agent, subject to the terms of the Lender's Direct Agreement, as security *inter alia* for the Financing.

3.8 Additional Owner Payments

Hospital will pay all Additional Owner Payments and the Value Added Taxes applicable to the Additional Owner Payments to Contractor on a progress payment basis in the manner and at the times contemplated by the Construction Contract. Contractor hereby irrevocably directs Hospital to make any payment in accordance with this Section 3.8 to Project Co. In the event that the Hospital receives notice from the Agent that either (i) the Lenders have financed all or any part of an Additional Owner Payment which notice shall include the explicit identification of the Change Order that has been financed by the Lender or (ii) an event of default has occurred and is continuing under the Lending Agreements (which notice, in either case, the Hospital shall have no obligation to verify and which notice, in either case, the Hospital is entitled to rely upon without further inquiry), Project Co and Contractor hereby irrevocably direct Hospital to make Additional Owner Payments to Agent, subject to the terms of the Lender's Direct Agreement, as security *inter alia* for the Financing.

3.9 Certified Cost to Complete

After Hospital has paid the Hospital Reimbursement Payment, it shall thereafter continue to be responsible for payment of the Certified Cost to Complete as at the Reimbursement Payment Date on a progress payment basis (including Value Added Taxes applicable to that payment) in the manner and at the times contemplated by the Construction Contract. Contractor hereby irrevocably directs Hospital to make any payment in accordance with this Section 3.9 to Project Co. In the event that the Hospital receives notice from the Agent that either (i) Lenders have financed all or any part of the Certified Cost to Complete or (ii) an event of default has occurred and is continuing under the Lending Agreements (which notice, in either case, the Hospital shall have no obligation to verify and which notice, in either case, the Hospital is entitled to rely upon without further inquiry), Project Co and Contractor hereby irrevocably direct Hospital to make payments on account of the Certified Cost to Complete to Agent, subject to the terms of the Lender's Direct Agreement, as security *inter alia* for the Financing.

3.10 Assumption Acknowledgement by Contractor

The Contractor hereby consents to the assignment of the Construction Contract by Project Co to Hospital on the terms and conditions of this Limited Assignment of Construction Contract, including, without limitation, all of the provisions of this Article 3 and agrees to the assumption of the Construction Contract on such terms and conditions by Hospital and further agrees that except as set out in Sections 3.1 and 3.2, Hospital is entitled to the benefit of and to enforce all of the covenants and obligations of the “Owner” under the terms of the Construction Contract as if Hospital were an original party to the Construction Contract with Contractor. Contractor further acknowledges and agrees with Hospital that Hospital is not responsible for the payment of any Base Progress Payment nor any Legislative Holdbacks in respect thereof except to the extent deducted from any Hospital Reimbursement Payment and further that the failure of Project Co to make any Base Progress Payment or to release any Legislative Holdbacks in respect thereof except to the extent deducted from any Hospital Reimbursement Payment when due shall not constitute a default under the Construction Contract and shall not give rise to any remedy or right of action on the part of Contractor under the Construction Contract.

3.11 Compensation on Termination

If the Construction Contract is terminated pursuant to GC 7.1.1, GC 7.1.4, GC 7.1.8 or GC 7.2.1, 7.2.2 or 7.2.3 then:

- (a) Hospital shall pay the Compensation Payment to Project Co, calculated and payable in accordance with Schedule B; and
- (b) the provisions of Sections 3.4 through to 3.9 inclusive shall no longer apply.

Project Co hereby irrevocably directs Hospital to make any Compensation Payment to Agent, subject to the terms of the Lender’s Direct Agreement, as security for the Financing. Hospital shall pay the Compensation Payment as directed by Project Co and shall not accept any re-direction without the consent of the Person to whom the Compensation Payment is directed. Hospital declares that it shall hold any monies it may receive from MOHLTC on account of the Compensation Payment in trust for itself and Project Co. Hospital will pay Project Co the amount that it is entitled to under this Limited Assignment of Construction Contract once it is satisfied that the conditions for payment contained herein have been satisfied.

3.12 Agent Notice of Re-Direction

If Hospital receives notice from the Agent in respect of Section 3.5, 3.6, 3.7, 3.8 or 3.9 that Project Co has fulfilled its obligations under the Lending Agreements, which notice the Hospital shall have no obligation to verify and which notice the Hospital is entitled to rely upon without further inquiry, Agent hereby irrevocably directs Hospital to make payments to Project Co.

3.13 GST Indemnity

- (a) In the event that a Governmental Authority determines that the basis for remitting Value Added Tax payable by Hospital to Project Co or Contractor on payments due under the Project Agreement, Limited Assignment of Construction Contract and Construction Contract (including the accounting by Project Co for Value Added Tax on Base Progress Payments) as set out in the Financial Model is not acceptable to the Governmental Authority (the “**Authority Determination**”), the Hospital shall indemnify Project Co and Contractor within a reasonable time after written demand therefor, for any and all liabilities, penalties, fines, interest, assessments, claims, actions, costs, expenses (including the reasonable cost of legal or professional services), suits, proceedings, demands and charges arising as a result of the Authority Determination (the “**Indemnified Tax**”), whether or not such Indemnified Tax was correctly or legally imposed or asserted by the relevant Governmental Authority. If it is determined that the Indemnified Tax was not correctly or legally imposed or asserted by the relevant Governmental Authority, Project Co or Contractor, as the case may be, shall reimburse Hospital for any such Indemnified Tax paid by it pursuant to this indemnity within a reasonable time after demand therefor from Hospital, together with evidence reasonably satisfactory to Project Co confirming that such Indemnified Tax was not correctly or legally imposed or asserted. Hospital shall not indemnify Project Co or Contractor for any Indemnified Tax (i) that results from negligence, carelessness or any omission by Project Co or Contractor in failing to account for such Indemnified Tax, including filing its Value Added Tax returns on a timely basis, as required by law, (ii) arising from Value Added Tax issues in the Project Agreement, Limited Assignment of Construction Contract or Construction Contract that are unrelated to the accounting methodology requested by Infrastructure Ontario, including for greater certainty, changes in law; and (iii) relating to assumptions of Contractor with respect to Value Added Tax accounting that do not arise from instructions for accounting requested by Infrastructure Ontario, including for greater certainty, payments made by Contractor to any Subcontractor or to any other third party. Each of Project Co and Contractor agrees to use its reasonable efforts to give notice to Hospital of the assertion of any claim against Project Co or Contractor, as applicable, relating to such Indemnified Tax reasonably promptly. Hospital shall have the right to take carriage, at its option and its expense, of any defence, dispute, compromise or appeal of any claim with respect to Indemnified Tax and of any incidental negotiations with respect thereto. Project Co and Contractor shall provide Hospital with all relevant documents, correspondence and information relating to such claim and reasonably cooperate in any matter relating thereto. A certificate as to the amount of such payment or liability delivered to Hospital by either Project Co or Contractor shall be conclusive absent manifest error. The obligations of Hospital, Project Co and Contractor under this indemnity shall survive the termination of the Project Agreement and Implementing Agreements and the completion of the Work.
- (b) Hospital may, at its sole discretion, make an application (the “**Application**”) to the relevant Governmental Authority for a joint ruling (“**Ruling**”) on behalf of Hospital and Project Co to determine whether (i) Project Co is entitled to register for Value Added Tax purposes and claim full input tax credits for any Value Added Tax payable to Contractor on payments due under the Project Agreement, Limited Assignment of Construction Contract and/or

Construction Contract, and (ii) Value Added Tax is properly payable by Hospital to Project Co at the completion of the Project, as set out in the Project Agreement. Project Co shall have the right, acting reasonably, to approve the Application prior to its submission to the Governmental Authority. Provided Project Co has approved the Application, Project Co shall provide its written authorization to submit the Application to the Governmental Authority. Hospital shall provide Project Co with a copy of the Ruling when obtained from the Governmental Authority. If the Governmental Authority confirms (i) and (ii) pursuant to a Ruling that continues to bind the Canada Revenue Agency (“CRA”), the obligations of Hospital to Project Co and Contractor with respect to Indemnified Tax as provided in Section 3.11(a) shall terminate forthwith. If after issuing the Ruling, the CRA subsequently gives notice that the Ruling is revoked or that it ceases to be bound by the Ruling, then the indemnity herein shall be immediately reinstated subject to any new arrangements agreed to by the Parties. If the Governmental Authority provides a negative determination to (i) and (ii), Project Co shall cease and desist as of the date of the Ruling from claiming any input tax credits for any Value Added Tax payable to Contractor on payments due under the Project Agreement and Hospital shall thereafter pay to Contractor or Project Co, as appropriate, all applicable Value Added Tax payable on Base Progress Payments and all other amounts payable by Hospital to Project Co and Contractor under the Project Agreement, Limited Assignment of Construction Contract and Construction Contract, as and when such Value Added Tax becomes payable. The Parties agree to reasonably cooperate and to determine a reasonably appropriate manner for Hospital to reimburse Project Co for Indemnified Tax during the term of the Project Agreement in the event of a negative determination by the Governmental Authority to (i) and (ii) or an assessment by the Governmental Authority of Project Co for Indemnified Tax.

ARTICLE 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 Limited Assignment of Construction Contract and/or the Construction Contract shall be served by sending the same by facsimile or by hand, as follows:

If to Contractor:	Vanbots Construction Corporation 50 Acadia Avenue Suite 200 Markham, Ontario, Canada L3R 0B3 Fax: 905-477-8689 Attn.: Doug Smith, Vice President and Chief Financial Officer
If to Project Co:	Vanbrook Construction Corporation 50 Acadia Avenue

- 10 -

Suite 200
Markham, Ontario, Canada
L3R 0B3

Fax: 905-477-8689
Attn.: Doug Smith, Vice President and Chief Financial
Officer

If to Hospital:

Sunnybrook Health Sciences Centre
2075 Bayview Avenue, Suite C1 35
Toronto, Ontario, Canada
M4N 3M5

Attention: Mr. Sam Marafioti,
Vice President, Corporate Strategy &
Development
Chief Information Officer

Tel: (416) 480-4127
Fax: (416) 480-4126

with a copy to:
Infrastructure Ontario:

777 Bay Street, 9th Floor
Toronto, Ontario, M5G 2C8

Fax: 416-326-9291
Tel: 416-326-9807
Attn.: Peter Wilson
Vice President, Projects Delivery

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. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to provide an original of the Notice in compliance with this Section 4.2.

4.3 Change of Address

Any Party to this Limited Assignment of Construction Contract 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

Subject to Section 4.4(i), a Notice given by hand delivery shall be deemed to have been received on the day it is delivered. Subject to Sections 4.4(i) and 4.4(ii), a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.

- (i) 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.
- (ii) 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.

ARTICLE 5 - GENERAL

5.1 Amendments

This Limited Assignment of Construction Contract may not be modified, 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 Limited Assignment of Construction Contract.

5.2 Waiver

- (a) No waiver made or given by a Party under or in connection with this Limited Assignment of Construction Contract 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 such right, power or remedy, in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of the right, power, or remedy or with respect to any other such 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 Relationship Between the Parties

The Parties are independent contractors. This Limited Assignment of Construction Contract is not intended to and does not create or establish between Hospital, Contracting Parties and Infrastructure Ontario, any relationship as partners, joint venturers, employer and employee, master and servant, or of principal and agent, and does not create or establish any relationship whatsoever between Hospital, Infrastructure Ontario and any Affiliate, representative or employee of a Contracting Party.

5.4 Entire Agreement

Except where provided otherwise in this Limited Assignment of Construction Contract, this Limited Assignment of Construction Contract 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 Limited Assignment of Construction Contract.

5.5 No Reliance

Each of the Parties acknowledge that:

- (i) it has not entered into this Limited Assignment of Construction Contract 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 Limited Assignment of Construction Contract or not, except those expressly made, given or repeated in this Limited Assignment of Construction Contract 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 Limited Assignment of Construction Contract; and
- (ii) this Section 5.5 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Limited Assignment of Construction Contract which was induced by fraud, for which the remedies available shall be all those available under the law governing this Limited Assignment of Construction Contract.

5.6 Severability

If any provision of this Limited Assignment of Construction Contract 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 Limited Assignment of Construction Contract. If any such provision of this Limited Assignment of Construction Contract 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 Limited Assignment of Construction Contract as near as possible to its original intent and effect.

5.7 Enurement

This Limited Assignment of Construction Contract shall enure to the benefit of, and be binding on, Hospital and Contracting Parties and each of their respective successors and permitted transferees and assigns.

5.8 Governing Law and Jurisdiction

- (a) This Limited Assignment of Construction Contract shall be governed by and construed in accordance with the laws of the Province 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 hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

5.9 Cumulative Remedies

Except as otherwise set forth in this Limited Assignment of Construction Contract, the rights, powers and remedies of each Party set forth in this Limited Assignment of Construction Contract 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 Limited Assignment of Construction Contract.

5.10 Further Assurance

Each Party shall do all things, from time to time, and execute all further instruments, agreements and documents necessary to give full effect to this Limited Assignment of Construction Contract.

5.11 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 Limited Assignment of Construction Contract.

5.12 Proof of Authority

The Contracting Parties shall provide proof to Hospital in a form acceptable to Hospital, that any Person executing this Limited Assignment of Construction Contract on behalf of Contractor or Project Co provide proof, that they have the requisite authority to execute this Limited Assignment of Construction Contract on behalf of and to bind Contractor or Project Co.

5.13 Counterparts

This Limited Assignment of Construction Contract may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original, faxed or other electronic form provided that any Party providing its signature in faxed or other electronic form shall promptly forward to such Party an original signed copy of this Limited Assignment of Construction Contract which was so transmitted.

5.14 Language of Agreement

Each Party acknowledges having requested and being satisfied that this Limited Assignment of Construction Contract and related documents be drawn in English. *Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglaise et s'en declare satisfaite.*

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the Parties hereto have executed this Limited Assignment of Construction Contract as of the date first above written.

VANBROOK CONSTRUCTION CORPORATION

Per: _____

Name: Doug Smith
Title: Vice President and Chief
Financial Officer

I/We have authority to bind the Corporation.

SUNNYBROOK HEALTH SCIENCES CENTRE

Per: _____

Name: Virginia McLaughlin
Title: Chair, Board of Directors

Per: _____

Name: Leo Steven
Title: Chief Executive Officer

I/We have authority to bind the Corporation.

VANBOTS CONSTRUCTION CORPORATION

Per: _____

Name: Doug Smith
Title: Vice President and Chief
Financial Officer

I/We have authority to bind the Corporation.

SCHEDULE A

EXECUTED COPY OF CONSTRUCTION CONTRACT

SCHEDULE B

COMPENSATION ON TERMINATION

ARTICLE 1 - DEFINITIONS

1.1 Definitions

All capitalized terms not otherwise defined in this Schedule shall have the meanings ascribed to them in the Project Agreement and unless the context otherwise requires:

- (a) “**Debt Amount**” means all accrued and unpaid interest and any “make whole” payments or breakage fees (less any breakage benefits) which Project Co is obligated to pay to Lender pursuant to the Lending Agreements, together with the outstanding principal amount of debt funded under the Lending Agreements.
- (b) “**Default Termination Payment**” has the meaning given in Section 2.1(b) of this Schedule B.
- (c) “**Demobilization Costs**” means all reasonable costs of the Contractor associated with the demobilization of the Work as a result of the termination of the Construction Contract.
- (d) “**Direct Losses**” means all damages, 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.
- (e) “**Equity IRR**” means the projected internal rate of return to all shareholders of Project Co taking into account their shareholdings which internal rate of return is consistent with the Financial Model.
- (f) “**Non-Default Termination Sum**” has the meaning given in Section 3.1(b) of this Schedule B.
- (g) “**Indirect Losses**” means any losses claimed that are (a) for punitive, exemplary or aggravated damages, (b) for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity, or (c) for a claim for consequential loss or for indirect loss of any nature.
- (h) “**Invoice Date**” means the date that is the later of:
 - (i) the date on which Hospital receives an invoice from Project Co for the Non-Default Termination Sum; and
 - (ii) the date on which Hospital receives the supporting evidence required pursuant to Section 4.1(a) of this Schedule B.

- (i) “**Termination Date**” means the date the Construction Contract is terminated pursuant to GC 7.1.1, GC 7.1.4, GC 7.1.8, GC 7.2.1, GC 7.2.2 or GC 7.2.3.
- (j) “**Work**” has the meaning given in the Construction Contract.

ARTICLE 2 COMPENSATION ON TERMINATION FOR CONTRACTOR DEFAULT

2.1 Compensation

- (a) If Hospital terminates the Construction Contract pursuant to GC 7.1.1 or GC 7.1.4 of the Construction Contract, Hospital shall pay to Project Co the Default Termination Payment.
- (b) The “Default Termination Payment” shall be an amount equal to the Guaranteed Price, as adjusted in accordance with the terms of the Construction Contract as of the Termination Date, less the aggregate, without duplication, of each of the following:
 - (i) All Additional Owner Payments made to the Termination Date;
 - (ii) Hospital’s estimate of the cost to complete the Work including the cost to remedy any defective or deficient Work determined on a reasonable basis in consultation with the Consultant and other consultants;
 - (iii) Hospital’s estimate of the aggregate of all Direct Losses suffered, sustained or incurred by Hospital as a result of, in respect of, or arising out of the event or events which resulted in the termination of the Construction Contract and out of the termination together with all costs of entering into a new construction contract; and
 - (iv) any amount that Hospital determines is necessary to hold back under Part IV of the *Construction Lien Act* (Ontario) in order that Hospital may vacate any lien that may arise under the *Construction Lien Act* (Ontario) from the Hospital’s lands in relation to the Work, save and except any liens in respect of work done by contractors directly engaged by Hospital for which Project Co has not assumed responsibility pursuant to an assignment under GC 3.8.3 of the Construction Contract (and provided in such case Project Co has not assumed responsibility for payment of such contractors).
- (c) To the extent that any amounts that Hospital has determined pursuant to Section 2.1(b)(ii), (iii) or (iv) above are in excess of what is required by Hospital to complete the Work, compensate for Direct Losses or vacate liens arising in connection with the Work, as applicable, Hospital shall promptly return such excess amounts to Project Co.
- (d) Hospital shall pay the Default Termination Payment in accordance with Article 4 of this Schedule B.

ARTICLE 3 COMPENSATION ON NON-DEFAULT TERMINATION

3.1 Compensation

- (a) If Contractor terminates the Construction Contract pursuant to GC 7.2.1, 7.2.2 or 7.2.3 or if Hospital terminates the Construction Contract pursuant to GC 7.1.8, Hospital shall pay to Project Co the Non-Default Termination Sum.
- (b) The “Non-Default Termination Sum” shall be an amount equal to the aggregate, without duplication, of:
 - (i) all Base Progress Payments and Additional Owner Payments properly due and payable under the Construction Contract to and including the Termination Date and any Cost of the Financing directly related to such Base Progress Payments to the extent not funded under the Lending Agreements as part of the Debt Amount;
 - (ii) all Demobilization Costs;
 - (iii) the Debt Amount to the date of payment to Project Co;
 - (iv) an amount which, if paid on the Termination Date (but, in any event, excluding all amounts (whether for costs, overhead, profit or otherwise) after the Termination Date), gives an internal rate of return to the Termination Date equal to the Equity IRR on the amount of cash paid to Project Co for subscribed share capital (to the extent that such share capital proceeds have been applied by Project Co for the purposes of the Project); and
 - (v) if Hospital terminates the Construction Contract under GC 7.1.8 “for the convenience of the Owner”, or if Contractor terminates the Construction Contract under GC 7.2.1, or under GC 7.2.2 or under GC 7.2.3, all other Direct Losses suffered, sustained or incurred by Project Co as a result of, or arising out of, the event or events which have resulted in the termination of the Construction Contract and out of the termination.
- (c) Hospital shall pay the Non-Default Termination Sum in accordance with Article 4 of this Schedule B.

ARTICLE 4 GENERAL

4.1 Payment

- (a) In the event of a termination referred to in Section 3.1(a) of this Schedule B, as soon as practicable after, and, in any event, within sixty (60) days after, the Termination Date, Project Co shall give to Hospital an invoice for the Non-Default Termination Sum (reasonably estimated if not then known) and sufficient supporting evidence, reasonably satisfactory to Hospital, justifying the amount of the Non-Default Termination Sum including a detailed breakdown of each of the individual items comprising such sum. To the extent the Non-Default Termination Sum is based on estimates of cost, the Parties will readjust as soon as such estimated costs can be determined.

- (b) Hospital shall pay to Project Co the Non-Default Termination Sum within sixty (60) days after the Invoice Date and so long as all demobilization of the Work has been completed.
- (c) In the event of a termination under Section 2.1(a) of this Schedule B, Hospital shall determine the Default Termination Payment as soon as practical under Section 2.1(b) of this Schedule B and shall deliver to Project Co and to Contractor sufficient supporting evidence of the Default Termination Payment.
- (d) Hospital shall pay to Project Co the Default Termination Payment within sixty (60) days after delivering the evidence described in Section 4.1(c) of this Schedule B.

4.2 Costs

The costs and expenses to be taken into account in the calculation of the Non-Default Termination Sum due pursuant to this Schedule B 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.

4.3 Undisputed Amounts

Either Hospital or Project Co may dispute the calculation of any termination amount and in the event of a dispute then any undisputed amount shall be paid in accordance with this Schedule B and the disputed amount shall be dealt with in accordance with Schedule C - Dispute Resolution Procedure to the Limited Assignment of Construction Contract. Notwithstanding the foregoing, in the event any disputed termination amount exceeds \$10,000,000 then either Party may proceed to court for the resolution of such dispute.

4.4 Outstanding Debt Amount

- (a) Subject to Section 4.3 of this Schedule B, Hospital shall be entitled to rely on a certificate of Agent as to the Debt Amount outstanding at any relevant time.
- (b) If a receipt or other acknowledgement is given by Agent acknowledging or otherwise confirming receipt of payment or payments in respect of the Debt Amount, such receipt or other acknowledgement shall discharge Hospital's obligation to pay such portion of compensation due to Project Co that is equal to the amount acknowledged or confirmed.

4.5 Set-off

Hospital shall be entitled to set off against the Non-Default Termination Sum or the Default Termination Payment, such amounts that Hospital is entitled to set off or withhold pursuant to the Project Agreement or the Construction Contract provided that the amount paid to Project Co on account of the Non-Default Termination Sum shall never be less than the Debt Amount.

4.6 Full and Final Settlement

- (a) Except as otherwise provided in Section 4.6(b) of this Schedule B, any compensation paid pursuant to Section 2.1 or Section 3.1 of this Schedule B in the total amount owing

thereunder shall be in full and final settlement of any claims, demands and proceedings of Project Co and Hospital as between themselves and of Contractor and Hospital as between themselves and each shall be released from all liability to the other in relation to any breaches or other events leading to the termination of the Construction Contract and the circumstances leading to such breach or termination and Project Co and Hospital as between themselves and Contractor and Hospital as between themselves shall be excluded from 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 4.6(a) of this Schedule B shall be without prejudice to any liability of either Party to the other including under the indemnities contained in the Construction Contract that arose prior to the Termination Date (but not from termination itself or the events leading to such termination) to the extent such liability has not already been set off pursuant to Section 4.5 of this Schedule B.

SCHEDULE C

DISPUTE RESOLUTION PROCEDURE

ARTICLE 1 GENERAL

- 1.1** All disputes, controversies, or claims arising out of or relating to the calculation of any termination amount under Section 4.3 of Schedule B to the Limited Assignment of Construction Contract (collectively and individually, a “**Dispute**”) shall be resolved in accordance with the provisions of this Schedule C.

ARTICLE 2 REFERRAL OF DISPUTES TO ARBITRATION

- 2.1** Either Party may, by written notice, require that the Dispute be resolved by arbitration pursuant to Section 3. Such notice will not be effective unless it indicates it is a notice to arbitrate and is delivered to the other Party and provided further that such notice expressly identifies the specific Dispute that is to be the subject of the arbitration.

ARTICLE 3 RESOLUTION BY ARBITRATION

- 3.1** If a Dispute is referred to arbitration by Section 2.1 of this Schedule C, the Dispute shall be resolved by arbitration in accordance with the *Arbitration Act, 1991* (Ontario).
- 3.2** 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 five (5) Business Days after a notice to arbitrate pursuant to Section 2.1 of this Schedule C has been delivered, expressly requires that the Dispute that is the subject of that notice to arbitrate be resolved by a three (3) person arbitration tribunal, in which case that particular Dispute shall be resolved by a three (3) person arbitration tribunal.
- 3.3** 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 ten (10) days after delivery of the notice to arbitrate pursuant to Section 2.1 of this Schedule C; and
 - (b) if the Parties fail to agree or jointly appoint the arbitrator within such ten (10) 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 from the lists of potential arbitrators submitted to the court by the Parties, or 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 and absolute discretion to appoint anyone who meets the requirements set out in this Schedule C for the qualifications and experience of the arbitrator.

3.4 If the arbitration tribunal is comprised of three (3) arbitrators:

(a) the arbitrators shall be appointed as follows:

- (i) each Party shall appoint one arbitrator no later than five (5) Business Days after delivery of the notice to arbitrate pursuant to Section 2.1 of this Schedule C;
 - (ii) if a Party fails to appoint an arbitrator within five (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 3.3(b) of this Schedule C;
 - (iii) the arbitrators appointed in accordance with the foregoing shall, within five (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 (2) arbitrators appointed by the Parties fail to appoint a third arbitrator within the required time, either of the other two (2) 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 3.3(b) of this Schedule C; 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.

3.5 All arbitrators must have qualifications and experience relevant to the issues in the Dispute and also have qualifications and experience as arbitrators.

3.6 No one shall be nominated or appointed to act as an arbitrator who is or was in any way financially interested in the Project or in the business affairs of Hospital, Project Co, Contractor, Lender, Agent or any consultant, subconsultant or subcontractor of any of them.

3.7 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 or other things as the arbitrator(s) may require to assist them in the resolution of the Dispute and rendering of an award; and
 - (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.
- 3.8** The place of arbitration shall at the option of Hospital be the municipality in which Hospital is located or Toronto, Ontario. The language of the arbitration shall be English.
- 3.9** 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.
- 3.10** 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.
- 3.11** 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.
- 3.12** 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 forty-five (45) 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 (3) 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.
- 3.13** This Schedule C constitutes an agreement to arbitrate that shall be specifically enforceable.

SCHEDULE 3

FORM OF LENDER’S DIRECT AGREEMENT

THIS LENDER’S DIRECT AGREEMENT is made as of the [•] day of [•], 2007

BETWEEN:

**SUNNYBROOK HEALTH SCIENCES CENTRE, a non-share capital corporation
incorporated under the laws of the Province of Ontario**

(“Hospital”)

AND:

**STONEBRIDGE FINANCIAL CORPORATION, acting as agent for and on behalf of
Lender**

(“Agent”)

AND:

**VANBROOK CONSTRUCTION CORPORATION, a corporation incorporated under
the laws of the Province of Ontario**

(“Project Co”)

AND:

**VANBOTS CONSTRUCTION CORPORATION, a corporation incorporated under
the laws of the Province of Ontario**

(“Contractor”).

WHEREAS:

- A. Hospital, Project Co and Contractor have entered into the Project Agreement.
- B. Project Co has entered into the Construction Contract in the capacity of “Owner” with Contractor with respect to the Project.
- C. Project Co has under the Limited Assignment of Construction Contract assigned its rights and obligations as “Owner” under the Construction Contract to Hospital, save and except in respect to the obligation to pay any of the Base Progress Payments (the **“Retained Payment Obligation”**).
- D. Under the Limited Assignment of Construction Contract, Hospital has acknowledged the right of Agent as against Contractor to enforce or to terminate the Construction Contract under PART 7 – DEFAULT NOTICE (the **“Enforcement Rights”**).

- E. Under the Lending Agreements, the Financing is to be provided to Project Co by Lender to finance the payment of the Base Progress Payments to Contractor under the Construction Contract, conditional, among other things, on Contractor and Project Co executing and delivering the Lending Agreements.
- F. Agent has agreed to enter into this Lender's Direct Agreement with Hospital, Project Co and Contractor in relation to the Lending Agreements, the exercise of its rights under the Lending Agreements and the remedying of breaches by Project Co under the Project Agreement and by Contractor under the Construction Contract.
- G. Contractor, Project Co and Agent recognize and understand that Hospital is a public hospital under the *Public Hospitals Act* (Ontario) and is therefore subject to a highly regulated legal and operational environment.
- H. Hospital has been authorized to execute this Lender's Direct Agreement by the MOHLTC (it being acknowledged by the parties to this Lender's Direct Agreement that such authorization in no way obligates the Government of Ontario or the Province under this Lender's Direct Agreement or otherwise in respect of the Project).

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:

ARTICLE 1 – DEFINITIONS AND INTERPRETATION

- 1.1** In this Lender's Direct Agreement, all capitalized terms not otherwise defined in this Lender's Direct Agreement shall have the meanings ascribed to them in the Project Agreement and unless the context otherwise requires:

“**Additional Owner Payments**” has the meaning given to it in the Construction Contract.

“**Appointed Representative**” means any of the following to the extent so identified in an Appointed Representative Notice:

- (i) Agent, Lender or any Affiliate of either of them;
- (ii) a receiver or manager or any permutation thereof of Contractor and/or Project Co appointed under the Lending Agreements;
- (iii) a Person directly or indirectly owned or controlled by Agent or Lender; or
- (iv) any other Person approved by Hospital (such approval not to be unreasonably withheld or delayed).

“**Appointed Representative Notice**” has the meaning given to it in Section 7.2.

“**Article**” and “**Section**” mean and refer to the specified article and section or subsection of this Lender's Direct Agreement.

“**Assignable Subcontract Agreement**” has the meaning given to it in the Construction Contract.

“**Assignment of Assignable Subcontracts**” means an agreement dated • whereby Project Co assigned the Assignable Subcontract Agreements to the Hospital.

“**Base Progress Payments**” has the meaning given to it in the Construction Contract.

“**Certified Cost to Complete**” has the meaning given to it in the Limited Assignment of Construction Contract.

“**Compensation Payment**” has the meaning given to it in the Limited Assignment of Construction Contract.

“**Construction Contract**” means the Guaranteed Price Contract entered into between Project Co in the capacity of “Owner” and Contractor with respect to the Project as assigned to Hospital in accordance with the Limited Assignment of Construction Contract.

“**Construction Contract Assignment**” means an assignment of the Construction Contract by an Appointed Representative to a Replacement Contractor as contemplated in Section 7.3.

“**Construction Contract Directed Payments**” has the meaning given to it in Section 9.1.

“**Construction Default Notice**” has the meaning given to it in Section 6.1.

“**Construction Event of Default**” means the occurrence of an event under the Construction Contract that upon the expiry of any cure periods provided for therein would entitle Hospital to terminate the Construction Contract.

“**Construction Security**” means the insurance contemplated under GC 11.1 - INSURANCE of the Construction Contract and the performance bonds and labour and material payment bonds and the Subguard Policy as contemplated in GC 11.2 - BONDS of the Construction Contract.

“**Enforcement Action**” means any exercise by Agent of its rights and remedies under the Lending Agreements.

“**Enforcement Event**” means an event of default under the Lending Agreements or any event which permits an Enforcement Action.

“**Hospital Holdback**” has the meaning given to it in the Limited Assignment of Construction Contract.

“**Hospital Reimbursement Payment**” has the meaning given to it in the Limited Assignment of Construction Contract.

“**Joint Account**” means the account referred to in Section 4.8 of this Lender’s Direct Agreement.

“**LACC Directed Payments**” has the meaning given to it in Section 9.1 .

“**Legislative Holdback**” means the holdback to be maintained under the Construction Contract pursuant to Part IV of the *Construction Lien Act* (Ontario).

“**Lender**” means The Manufacturers Life Insurance Company, The Canada Life Assurance Company, Industrial Alliance Insurance and Financial Services Inc., BCE Master Trust Fund and The Equitable Life Insurance Company of Canada and their successors and assigns under the Lending Agreements.

“**Lender Decision Period**” has the meaning given to it in Section 7.1.

“**Lender’s Consultant**” has the meaning given to it in the Construction Contract.

“**Lender’ Direct Agreement**” means this lender’s direct agreement.

“**Lending Agreements**” means any or all of the agreements or instruments to be entered into by Contractor or Project Co or any of their Affiliates relating to the financing of the Project by the Lender and includes but is not limited to:

[Note: List loan and security documents required by the Lender.]

“**Lien**” means the lien provided for under Section 14(1) of the *Construction Lien Act* (Ontario).

“**Limited Assignment of Construction Contract**” means the Limited Assignment of Construction Contract between Project Co, Hospital and Contractor made as of the date of Financial Close.

“**Longstop Date**” has the meaning given to it in the Construction Contract.

“**Notice Period**” means the period starting on the date of delivery of a Construction Default Notice and ending one hundred and twenty (120) days later.

“**Party**” means any of Hospital, Project Co, Contractor or Agent, and “**Parties**” means all of Hospital, Project Co, Contractor and Agent, but, for greater certainty, such definitions do not include Infrastructure Ontario or Her Majesty the Queen in Right of Ontario, as represented by either the Minister of Health and Long-Term Care or the Minister of Public Infrastructure Renewal.

“**Reimbursement Payment Date**” has the meaning given to it in the Construction Contract.

“**Replacement Construction Contract**” has the meaning given to it in Section 7.3.

“**Replacement Contractor**” means a replacement contractor under a Construction Contract Assignment or a Replacement Construction Contract entered into pursuant to Section 7.3 who must be a contractor that is capable of performing the obligations set out in the Contract and that is acceptable to Hospital, acting reasonably.

“**Step-In Date**” means the date on which Hospital receives a Step-In Notice from Agent.

“**Step-In Notice**” means the notice given by Agent to Hospital pursuant to Section 7.1 stating that Agent is exercising its step-in rights under Article 7 of this Lender’s Direct Agreement.

“**Step-In Period**” means the period from the Step-In Date up to and including the Step-Out Date.

“**Step-Out Date**” means the earlier to occur of (i) the expiry of the periods provided for in Sections 6.3(a) or 6.3(b), as the case may be, and (ii) the date on which Hospital receives a Step-Out Notice.

“**Step-Out Notice**” has the meaning given to it in Section 8.1.

“**Substantial Performance Date**” has the meaning given to it in the Construction Contract.

“**Substantial Performance Holdback**” has the meaning given to it in the Limited Assignment of Construction Contract.

“**Substantial Performance of the Work**” has the meaning given to it in the Construction Contract.

1.2 Interpretation

The provisions of Section 1.3(a) and (e)-(x), inclusive, of the Project Agreement are hereby incorporated in their entirety and all references in same to “Project Agreement” shall be read as “Lender’s Direct Agreement”.

1.3 Default Interest Rate

The Parties acknowledge and agree that if any party to the Construction Contract or Limited Assignment of Construction Contract fails to make payments as they become due, in accordance with the Construction Contract or the Limited Assignment of Construction Contract, paragraph 7.3 of Article A-7 of the Construction Contract shall apply.

ARTICLE 2 - CONFLICT IN DOCUMENTS

2.1 In the event of ambiguities, conflicts or inconsistencies between or among this Lender’s Direct Agreement, the Project Agreement, the Construction Contract and the Limited Assignment of Construction Contract, this Lender’s Direct Agreement shall prevail. Notwithstanding the foregoing, if there is any right or remedy in favour of Hospital set out in this Lender’s Direct Agreement or any part thereof which is not set out or provided for in the Construction Contract, such additional right or remedy shall not constitute an ambiguity, conflict or inconsistency. No review by Hospital of the Lending Agreements shall constitute an acceptance in or acquiescence to any of the Lending Agreements or any term or condition thereof by Hospital and this Lender’s Direct Agreement, the Project Agreement and the

Construction Contract shall not be subject to any of the terms and conditions of the Lending Agreements.

ARTICLE 3 - TERM

- 3.1** This Lender's Direct Agreement shall terminate automatically on the date on which all obligations that may be or become owing by Project Co to Agent or Lender under the Lending Agreements have been satisfied in full.
- 3.2** Promptly, and in no event more than thirty (30) days following its occurrence, Agent shall provide notice to Hospital of the date referred to in Section 3.1.
- 3.3** Hospital hereby provides to Lender, Agent and Project Co, and agrees to provide to Replacement Contractor, a non-exclusive license to have access to and to use the Place of the Work on the same terms and conditions as set out in GC 3.17.1 of the Construction Contract.

ARTICLE 4 - AGREEMENTS AND SECURITY

- 4.1** Contractor, Project Co and Agent shall not amend or modify any Lending Agreements other than as expressly provided for under the terms of those agreements and so long as such amendment is consistent in all material respects with Schedule 5 to the Project Agreement and shall provide prompt notice to Hospital of any amendments or modifications accompanied by a copy thereof.
- 4.2** Contractor, Project Co and Hospital shall not amend or modify any Implementing Agreements (other than Change Orders or Change Directives contemplated by the Construction Contract) without the prior written consent of Agent, not to be unreasonably withheld or delayed, which consent shall not be withheld if the relevant amendment or modification does not (i) adversely affect the ability of Agent or Lender to exercise its rights under the Lending Agreements, (ii) adversely affect the security of the Lending Agreements, or (iii) increase the liability of Agent, Lender, Contractor or Project Co under the relevant agreement. Agent shall respond to any request for consent under this Section 4.2 within fifteen (15) days of receipt thereof, failing which Agent shall be deemed to have consented to the relevant amendment or modification.
- 4.3** Project Co and Contractor acknowledge and consent to the arrangements set out in this Lender's Direct Agreement, and agree not to do or omit to do anything that may prevent any other Party from enforcing its rights under this Lender's Direct Agreement.
- 4.4** Agent acknowledges having received a copy of each of the Implementing Agreements.
- 4.5** The Hospital acknowledges having received a copy of each of the Lending Agreements and consents to the granting of security by Project Co and Contractor over the Implementing Agreements contained in the Lending Agreements. The Hospital acknowledges and agrees that Agent shall be entitled, subject to and in accordance with this Lender's Direct Agreement, to exercise all rights and enforce all of the covenants and obligations of the Contractor in accordance with the terms of the Construction Contract.
- 4.6** Contractor, Project Co and Agent acknowledge that none of Contractor, Project Co, Agent or Lender shall, under the Project Agreement or any of the Implementing Agreements acquire any interest in the Project Lands or the Project notwithstanding any provision therein to the contrary and that The Governing Council of the University of Toronto shall at all times retain the fee simple interest in and freehold title to the Project Lands and the Project to be constructed on the Project Lands under the Construction Contract. Contracting Parties, Agent and Lender shall have access to the Project Lands and the Project under and subject to the limited license created in the Construction Contract and Section 3.3 of this Lender's Direct Agreement, as applicable.
- 4.7** Without limitation of any of their respective rights and remedies under this Lender's Direct Agreement, Contractor, Project Co and Agent acknowledge that Hospital is a public hospital under the *Public Hospitals Act* (Ontario) and nothing in this Lender's Direct Agreement or any of the Implementing Agreements including the Construction Contract shall limit or shall be construed as limiting any authority and responsibility of Hospital under the *Public*

Hospitals Act (Ontario) or any directions to Hospital or to the Board of Directors of Hospital made by a Governmental Authority under Applicable Law or in compliance with all Applicable Law.

- 4.8 Joint Account.** Hospital agrees with Project Co to establish a joint account (“Joint Account”) no later than 150 days after the Financial Close Target Date. Hospital acknowledges that any monies contributed by MOHLTC towards the costs of the Project shall be deposited by MOHLTC directly into the Joint Account. Hospital acknowledges that Project Co’s interest in the Joint Account will be assigned to the Agent as part of the security under the Lending Agreements.
- 4.9 Insurance Trust Agreement.** The Parties to this Lenders Direct Agreement agree to the distribution of insurance proceeds in respect of GC 11.1.1.2.2 of the Construction Contract in accordance with Section 2.11 of the Project Agreement and to enter into an Insurance Trustee Agreement, or agree to such alternative arrangements, all as contemplated in Section 2.11 of the Project Agreement.

**ARTICLE 5 - ENFORCEMENT OF SECURITY BY AGENT;
LEGISLATIVE HOLDBACK**

- 5.1** Agent shall concurrently with notice to Project Co notify Hospital of any Enforcement Event, any notice of default delivered pursuant to the Lending Agreements, any Enforcement Action, any notice from Agent to Project Co to accelerate the maturity of any amounts owing by Project Co to Agent or Lender under the Lending Agreements or any notice from Agent to Project Co to demand repayment thereof.
- 5.2** Agent shall appoint Lender’s Consultant who shall be responsible to advise Agent and Lender with respect to the amount of any Legislative Holdback to be maintained in respect to all Base Progress Payments. Agent shall withhold the required Legislative Holdback amount to the intent that at any point in time up to and including the Substantial Performance Date there is under the Financing an unadvanced holdback amount representing the required Legislative Holdback amount in respect to the Base Progress Payments certified for payment under the Construction Contract and whether or not any such Base Progress Payment has in fact been paid to such point in time.
- 5.3** Hospital may conduct a subsearch of the Project Lands at any time and from time to time and notify Agent, Project Co and Contractor if any Lien that relates to the Project has been registered and if a Lien has been registered Contractor shall immediately take such steps, at its sole cost and expense, as are required to have the Lien vacated. Agent acknowledges and agrees with Hospital that neither Agent nor Lender shall be entitled to rely on Hospital to conduct a subsearch or on any subsearch result of Hospital and that the result of any such subsearch provided by Hospital is, subject to the obligations of Contractor, Project Co and Agent hereunder, for information only.
- 5.4** Agent agrees to conduct a subsearch of the Project Lands prior to the advance of any Financing and if a Lien has been registered that relates to the Project, save and except any liens in respect of work done by contractors directly engaged by Hospital for which Project

Co has not assumed responsibility pursuant to an assignment under GC 3.8.3 of the Construction Contract (and provided in such case Project Co has not assumed responsibility for payment of such contractors), Agent shall direct Project Co to proceed to immediately take such steps, at its sole cost and expense, as are required to have the Lien vacated and doing so shall be a condition precedent to the making of any advance of the Financing.

ARTICLE 6 - CONSTRUCTION EVENT OF DEFAULT

- 6.1** Subject only to the rights expressly afforded to Agent in this Article 6, Hospital shall serve notice to Agent of a Construction Event of Default (the “**Construction Default Notice**”) contemporaneously with any notice delivered by Hospital to Contractor under the Construction Contract.
- 6.2** At any time other than during the Step-In Period (with the restriction on termination during the Step-In Period set out in Section 6.3), Hospital shall not exercise any right it may have to terminate the Construction Contract or exercise any other rights or remedies for a Construction Event of Default unless:
- (a) Hospital delivers to Agent a Construction Default Notice setting out the nature of the alleged default in reasonable detail; and
 - (b) the Notice Period has expired and Agent has not delivered a Step-In Notice.
- 6.3** During the Step-In Period, Hospital shall not exercise any right it may have to terminate the Construction Contract or, except to the extent required to protect legal rights or comply with Applicable Law, exercise any other rights or remedies for a Construction Event of Default:
- (a) if, in the case of a Construction Event of Default which is capable of being cured, the Construction Event of Default has been cured by or on behalf of Appointed Representative or Appointed Representative is diligently proceeding to cure the breach in accordance with GC 7.1 of the Construction Contract within the time periods set forth in the Construction Contract together with an additional time period of thirty (30) days (and where appropriate, Hospital and Appointed Representative may agree to amend the applicable time periods set out in GC 7.1 of the Construction Contract) provided that where the Appointed Representative is diligently proceeding to cure the breach beyond such period of thirty (30) days such breach is cured prior to the Longstop Date; or
 - (b) if, in the case of a Construction Event of Default which is either (i) not capable of being cured (which, by way of example, would include an event described in GC 7.1.1 of the Construction Contract) or (ii) can only be cured in the determination of Agent (acting reasonably) by assigning the Construction Contract to a Replacement Contractor or entering into a Replacement Construction Contract as provided under Section 7.3, a Construction Contract Assignment or a Replacement Construction Contract with a Replacement Contractor has been entered into in accordance with Section 7.3 within one hundred and twenty (120) days of the delivery of the Construction Default Notice. Hospital and Appointed Representative may agree to

extend such time period if Appointed Representative is proceeding diligently. In the case of either a Construction Contract Assignment or a Replacement Construction Contract having been entered into the Work thereunder is to be completed by the Longstop Date plus the period of time commencing on the date of delivery of the Construction Default Notice until the date that the Construction Contract Assignment or the Replacement Construction Contract has been entered into.

- 6.4 The Lender shall not take any action that would compromise the enforceability of the Construction Security.

ARTICLE 7 - LENDER'S STEP-IN RIGHTS

7.1 Subject to Section 7.2 and without prejudice to Agent's rights to enforce the Lending Agreements against Project Co and Contractor, Agent may give Hospital a Step-In Notice at any time:

- (a) during which a Construction Event of Default is subsisting (whether or not a Construction Default Notice has been served);
- (b) during the Notice Period; or
- (c) during which an Enforcement Event is subsisting,

(which periods are jointly referred to herein as "**Lender Decision Period**").

7.2 At the time Agent delivers a Step-In Notice, Agent shall deliver written notice (an "**Appointed Representative Notice**") to Hospital of the identity of its proposed Appointed Representative.

7.3 Upon issuance of a Step-In Notice, Appointed Representative shall perform or cause to be performed all of Project Co's rights and obligations to enforce the covenants and obligations of Contractor under the Construction Contract pursuant to the Enforcement Rights and cause Contractor to remedy the Construction Event of Default and shall have the right if it is permitted to do so under the Lending Agreements, subject to the prior approval of Hospital, acting reasonably, and subject to the terms and conditions of the Construction Security, to:

- (a) access the Construction Security and assign, pursuant to the Lending Agreements Contractor's interest in the Construction Contract and the other Implementing Agreements to a Replacement Contractor (the "**Construction Contract Assignment**") subject to the agreement by the Replacement Contractor to assume the terms and conditions of the Construction Contract; or
- (b) terminate the Construction Contract pursuant to the Enforcement Rights and enter into a replacement construction contract with a Replacement Contractor (the "**Replacement Construction Contract**") on terms substantially similar to the Construction Contract, provided in either case the Replacement Contractor covenants in the Construction Contract Assignment or the Replacement Construction Contract, as applicable, to remedy any curable breach of Contractor under the Construction Contract whether in respect to payment or performance and whether arising prior to or during the Step-In Period and to vacate any Liens from the Project Lands in all cases whether arising

prior to or during the Step-In Period. Further, the Replacement Contractor must provide replacement or otherwise ensure continued maintenance of the Construction Security under the Construction Contract in the event of a Construction Contract Assignment or under the Replacement Construction Contract in the event a Replacement Construction Contract is entered into.

- 7.4 At the time of a Construction Contract Assignment or the entering into of a Replacement Construction Contract under Section 7.3, unless Agent transfers the shares of Project Co to the Replacement Contractor pursuant to its rights under the Lending Agreements, the Replacement Contractor shall be required to form a substitute Project Co (the “**Substitute Project Co**”). If a Substitute Project Co is formed, then Agent shall assign the interests of Project Co under the Lending Agreements and the Implementing Agreements to Substitute Project Co or make such other arrangements under which Substitute Project Co stands in the place of Project Co under the Lending Agreements and the Implementing Agreements.
- 7.5 During the Step-In Period, Hospital shall deal with Appointed Representative instead of Project Co in connection with all matters related to the Construction Contract. Project Co agrees to be bound by all such dealings between Hospital and Appointed Representative to the same extent as if they had been between Hospital and Project Co.
- 7.6 The Hospital may provide a notice in writing (the “**Hospital Default Notice**”) to the Surety under this Lender’s Direct Agreement, stating that the Hospital is thereby entitled to exercise all rights and to take all benefits of the Obligee, to the exclusion of Project Co and the Agent at any time that Hospital is, in accordance with Section 6.2, entitled to terminate the Construction Contract or exercise any other rights or remedies for a Construction Event of Default.
- 7.7 For greater certainty, Agent acknowledges and agrees that its rights as Obligee under the performance bond (being a component of the Construction Security) shall be limited to the enforcement (for the purpose of completing or arranging for the completion of the unperformed obligations of the Contractor under the Construction Contract) of the obligations of the Surety as more particularly described in the performance bond and are subject to the Agent’s obligation as an Obligee to pay the balance of the Contract price (“**Obligee**”, “**Surety**”, “**Principal**” and “**balance of the Contract price**” having the meanings given to them under the performance bond). If the Agent receives any benefit from the Surety under the performance bond or from the insurer under the Subguard Policy (being a component of the Construction Security) that is not applied to the Work and fails to complete or cause to have completed the obligations of the Contractor under the Construction Contract the Agent shall pay to the Owner an amount equal to the lesser of (a) the amount of the benefit obtained by the Agent from the Surety or from the insurer under the Subguard Policy and not applied to the Work and (b) the Owner’s costs of obtaining the completion of the unperformed obligations of the Contractor under the Construction Contract.

ARTICLE 8 - STEP-OUT RIGHTS

- 8.1** Appointed Representative may, at any time during the Step-In Period, deliver written notice (a “**Step-Out Notice**”) to Hospital to terminate the Step-In Period on the Step-Out Date.
- 8.2** On expiry of the Step-In Period, where the Construction Contract has been assigned to the Replacement Contractor or a Replacement Construction Contract has been entered into as contemplated in Section 7.3, Hospital and Appointed Representative shall be released of any obligations to the other arising during the Step-In Period.
- 8.3** On expiry of the Step-In Period, if the Construction Contract has not been assigned to a Replacement Contractor or a Replacement Construction Contract has not been entered into or the Construction Event of Default has not been remedied by Appointed Representative, then:
- (a) any rights and obligations between Appointed Representative on the one hand and Hospital on the other hand, arising during the Step-In Period, shall be mutually released;
 - (b) for greater certainty, Hospital shall have no further obligation to Appointed Representative or Project Co to pay the Hospital Reimbursement Payment to Agent, Lender, Appointed Representative, Project Co or Contractor on the achievement of Substantial Performance of the Work under the Construction Contract other than the payment of the Default Termination Payment under Schedule B – Compensation on Termination to the Limited Assignment of Construction Contract; and
 - (c) subject to the Hospital making the payment required under Section 8.3(b), Agent shall permit Hospital to thereupon have the full benefit and entitlement to the Construction Contract and the Construction Security without regard to any interest therein of Agent, Lender or Project Co and Agent agrees that Hospital may thereafter proceed to enforce all of its rights under the Construction Contract against Contractor without regard to any rights in favour of Agent, Lender or Project Co including the Enforcement Rights.
- 8.4** In the event that Hospital has, following the expiry of the Step-In Period, exercised the enforcement of its rights under the Construction Contract and the Construction Security in respect of a Construction Event of Default which is capable of being cured, and has caused the Construction Event of Default to be cured or has caused the Contractor to diligently proceed to cure the breach in accordance with GC 7.1 of the Construction Contract, then the provisions of Section 8.3(b) shall not apply and provided the Construction Event of Default is remedied, Hospital shall pay the Hospital Reimbursement Payment on the achievement of Substantial Performance of the Work under the Construction Contract less Hospital’s costs and expenses including, without limitation, legal and consultant costs in enforcing all of its rights under the Construction Contract against the Contractor. Hospital shall have a period of one hundred and twenty (120) days from the expiry of the Step-In Period to either cause the Construction Event of Default to be cured or to be satisfied that the Contractor is diligently proceeding to cure the Construction Event of Default, provided if at any earlier

point in time within the one hundred and twenty (120) day period Hospital reasonably determines that the Construction Event of Default is not capable of being cured and gives notice of same to the other Parties, then the provisions of Section 8.3(b) shall apply.

- 8.5** There will not be more than one Step-In Period following the issuance by Hospital of any one Construction Default Notice.
- 8.6** Hospital acknowledges and agrees that if Hospital proceeds to exercise its rights as Obligee under the Construction Security, unless Hospital has arranged for a replacement Financing through the Replacement Contractor and/or Project Co or a Substitute Project Co then Hospital shall be obligated to make the Base Progress Payment subject to and in accordance with the requirements of the Construction Contract and such payments shall be deemed to be Additional Owner Payments.

ARTICLE 9 - PAYMENT DIRECTION OF LACC DIRECTED PAYMENTS AND CONSTRUCTION CONTRACT DIRECTED PAYMENTS

9.1 Hospital acknowledges the assignment by Project Co of the Hospital Reimbursement Payment, Hospital Holdback, and any Compensation Payment (the “**LACC Directed Payments**”) to Agent under the security granted to Agent by Project Co under the Lending Agreements. Project Co and Contractor each hereby irrevocably direct Hospital to pay the LACC Directed Payments to Agent. Hospital acknowledges such direction and agrees to pay the LACC Directed Payments to Agent in accordance with such direction. Hospital further acknowledges the assignment by Project Co and Contractor of the Additional Owner Payments, Substantial Performance Holdback and Certified Cost to Complete (the “**Construction Contract Directed Payments**”) to Agent under the security granted pursuant to the Lending Agreements which assignment shall apply in the circumstances set out in the Limited Assignment of Construction Contract. Project Co and Contractor hereby irrevocably direct Hospital to pay any Construction Contract Directed Payments to Agent in the circumstances set out in the Limited Assignment of Construction Contract. Hospital acknowledges such direction and agrees to pay Construction Contract Directed Payments to Agent in accordance with such direction.

9.2

- (a) Project Co and the Contractor acknowledge and agree that payment by the Hospital of the Construction Contract Directed Payments, in accordance with Section 9.1, to the Agent constitutes payment by the Hospital to Contractor in satisfaction of the Hospital’s obligation to make the Construction Contract Directed Payments to Contractor under the Construction Contract and satisfies the Hospital’s trust obligation in respect of such Construction Contract Directed Payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).
- (b) Project Co and Contractor further acknowledge and agree that payment by the Hospital of the LACC Directed Payments, in accordance with Section 9.1, to the Agent constitutes payment by the Hospital to Project Co of all LACC Directed Payments payable by

Hospital in accordance with the provisions of the Limited Assignment of Construction Contract and the Contractor acknowledges and agrees that such payment satisfies the Hospital's trust obligation in respect to such LACC Directed Payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

- (c) Project Co and Contractor further acknowledge and agree that any Construction Contract Directed Payments and LACC Directed Payments made by the Hospital to the Agent as aforesaid, shall to the extent such Construction Contract Directed Payments and LACC Directed Payments relate to amounts funded by the Lender under the Lending Agreements, be used by the Agent to repay said loans and such repayments shall not constitute a breach of any trust obligations to the Contractor under the *Construction Lien Act* (Ontario).
- (d) Until termination of this Lender's Direct Agreement pursuant to Section 3.1, Hospital is irrevocably directed by Project Co and Contractor to pay the Construction Contract Directed Payments and the LACC Directed Payments to Agent as provided in Section 9.1; provided that and notwithstanding the provisions of Section 9.1, upon termination of this Lender's Direct Agreement pursuant to Section 3.1, all unpaid Construction Contract Directed Payments and/or LACC Directed Payments shall be paid to Project Co.

ARTICLE 10 - ASSIGNMENT

- 10.1** Hospital may assign or otherwise dispose of the benefit of the whole or part of this Lender's Direct Agreement to any Person to whom Hospital may assign or otherwise dispose of its interest in the Project Agreement pursuant to Section 6.2 of the Project Agreement, and shall provide written notice to Project Co and Agent of such assignment or disposition. Such assignee shall assume the obligations and acquire the rights of Hospital under this Lender's Direct Agreement. Upon any such assignment or disposition, Hospital shall be released of all its obligations hereunder. Project Co and Agent shall, at Hospital's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.
- 10.2** Agent may only assign or otherwise dispose of any interest in this Lender's Direct Agreement as permitted by the Lending Agreements, and with the prior written consent of Hospital, such consent not to be unreasonably withheld or delayed. Agent shall cause the assignee to enter into an assumption agreement of this Lender's Direct Agreement in form and substance reasonably satisfactory to Hospital with Project Co, Contractor and Hospital. Project Co, Contractor and Hospital shall, at Agent's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

ARTICLE 11 - NOTICES

11.1 Notices to Parties

All notices, requests, demands, instructions, certificates, consents and other communications (each being a "**Notice**") required or permitted under this Lender's Direct Agreement shall be served by sending the same by facsimile or by hand, as follows:

If to Contractor: Vanbots Construction Corporation
50 Acadia Avenue
Suite 200
Markham, Ontario, Canada
L3R 0B3

Fax: 905-477-8689
Attn: Doug Smith, Vice President and
Chief Financial Officer

If to Project Co: Vanbrook Construction Corporation
50 Acadia Avenue
Suite 200
Markham, Ontario, Canada
L3R 0B3

Fax: 905-477-8689
Attn: Doug Smith, Vice President and
Chief Financial Officer

If to Hospital: Sunnybrook Health Sciences Centre
2075 Bayview Avenue
Toronto, Ontario, Canada
M4N 3M5

Fax: (416) 480-4126
Attn: Mr. Sam Marafioti, Vice President,
Corporate Strategy & Development
Chief Information Officer

with a copy to
Infrastructure Ontario: 777 Bay Street, 9th Floor
Toronto, Ontario, M5G 2C8

Fax: 416-326-9291
Attn: Peter Wilson,
Vice President, Projects Delivery

If to Agent: Stonebridge Financial Corporation
20 Adelaide Street East, Suite 1201
Toronto, Ontario
M5C 2T6
Fax: (416) 364-1557
Attn.: Vice President Portfolio and Administration

11.2 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. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to provide an original of the Notice in compliance with this Section 11.2.

11.3 Change of Address

Any Party to this Lender's Direct Agreement may, from time to time, change any of its contact information set forth in Section 11.1 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.

11.4 Deemed Receipt of Notices

Subject to Section 11.4(i), a Notice given by hand delivery shall be deemed to have been received on the day it is delivered. Subject to Sections 11.4(i) and 11.4(ii), a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.

- (i) 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.
- (ii) 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.

ARTICLE 12 - GENERAL

12.1 Amendments

This Lender's Direct Agreement may not be modified, 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 Lender's Direct Agreement.

12.2 Waiver

- (a) No waiver made or given by a Party under or in connection with this Lender'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 Party. No waiver made with respect to any such right, power or remedy, in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of the right, power, or remedy or with respect to any other such 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.

12.3 Relationship Between the Parties

The Parties are independent contractors. This Lender's Direct Agreement is not intended to and does not create or establish between the Parties or between Infrastructure Ontario or the Contracting Parties any relationship as partners, joint venturers, employer and employee, master and servant, or of principal and agent, and does not create or establish any relationship whatsoever between Hospital and any Affiliate, representative or employee of Contracting Parties or Agent.

12.4 Entire Agreement

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

12.5 No Reliance

Each of the Parties acknowledge that:

- (a) it has not entered into this Lender's Direct 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 Lender's Direct Agreement or not, except those expressly made, given or repeated in this Lender's Direct 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 Lender's Direct Agreement; and
- (b) this Section 12.5 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Lender's Direct Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Lender's Direct Agreement.

12.6 Severability

If any provision of this Lender'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 Lender's Direct Agreement. If any such provision of this Lender'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 Lender's Direct Agreement as near as possible to its original intent and effect.

12.7 Enurement

This Lender'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.

12.8 Governing Law and Jurisdiction

- (a) This Lender's Direct Agreement shall be governed by and construed in accordance with the laws of the Province 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 hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

12.9 Cumulative Remedies

Except as otherwise set forth in this Lender's Direct Agreement, the rights, powers and remedies of each Party set forth in this Lender's Direct 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 Lender's Direct Agreement.

12.10 Further Assurance

Each Party shall do all things, from time to time, and execute all further instruments, agreements and documents necessary to give full effect to this Lender's Direct Agreement.

12.11 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 Lender's Direct Agreement.

12.12 Counterparts

This Lender'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, faxed or other electronic form provided that any Party providing its signature in faxed or other electronic form shall promptly forward to such Party an original signed copy of this Lender's Direct Agreement which was so transmitted.

12.13 Language of Agreement

Each Party acknowledges having requested and being satisfied that this Lender'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 anglaise et s'en declare satisfaite.

12.14 Confidentiality

Agent shall comply with the obligations on the part of the Contracting Parties contained in Article 5 of the Project Agreement and this obligation shall survive the termination of this Lender's Direct Agreement.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the Parties have executed this Lender’s Direct Agreement as of the date first above written.

**SUNNYBROOK HEALTH SCIENCES
CENTRE**

Per: _____
Name: Virginia McLaughlin
Title: Chair, Board of Directors

Per: _____
Name: Leo Steven
Title: Chief Executive Officer

I/We have authority to bind the corporation.

**STONEBRIDGE FINANCIAL
CORPORATION**

Per: _____
Name: James M. Cahill
Title: Vice President, Structured and
Project Finance

I/We have authority to bind the corporation.

**VANBROOK CONSTRUCTION
CORPORATION**

Per: _____

Name: Doug Smith

Title: Vice President and Chief
Financial Officer

I/We have authority to bind the corporation.

**VANBOTS CONSTRUCTION
CORPORATION**

Per: _____

Name: Doug Smith

Title: Vice President and Chief
Financial Officer

I/We have authority to bind the corporation.

SCHEDULE 4

INTENTIONALLY DELETED

SCHEDULE 5

FINANCIAL MODEL AND INFORMATION SCHEDULE

12111765.1