

LIMITED ASSIGNMENT OF CONSTRUCTION CONTRACT

THIS LIMITED ASSIGNMENT OF CONSTRUCTION CONTRACT made as of the 9th day of May, 2007

BETWEEN:

2128101 ONTARIO INC., a corporation incorporated under the laws of Ontario
(“Project Co”)

AND:

ST. JOSEPH’S HEALTH CARE, LONDON, a non-share capital corporation
incorporated under the laws of the Province of Ontario
(“Hospital”)

AND:

D. GRANT & SONS LIMITED, a corporation incorporated under the laws of Ontario
(“Contractor”).

WHEREAS:

- A. Project Co, Hospital, and Contractor have entered into a Project Agreement dated the 14th day of March, 2007 (the “**Project Agreement**”) in respect to the finance and construction of the St. Joseph’s Hospital Ambulatory Care Renovations, Phase 1.
- 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 9th day of May, 2007 (the “**Construction Contract**”) for the construction of the Project an executed copy of which is attached as Schedule A.
- C. Project Co has 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, and the assumption of the Construction Contract by Hospital.

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) “**Assumed Rights and Obligations**” has the meaning given to it in Section 3.3.
- (c) “**Base Progress Payments**” has the meaning given to it in the Construction Contract.
- (d) “**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 Final Reimbursement Payment Date as certified to Hospital by the Consultant and agreed to by Project Co and Contractor.
- (e) “**Change in the Scope of the Work**” has the meaning given to it in the Construction Contract.
- (f) “**Change Order**” has the meaning given to it in the Construction Contract.
- (g) “**Compensation Payment**” means either the Default Termination Payment or the Non-Default Termination Sum as defined in Schedule B.
- (h) “**Construction Contract**” has the meaning given to it in Recital B.
- (i) “**Construction Event of Default**” has the meaning given to it in the Lender’s Direct Agreement.
- (j) “**Enforcement Rights**” means the rights as against Contractor to enforce or terminate the Construction Contract under PART 7 – DEFAULT NOTICE therein.
- (k) “**Final Reimbursement Payment Date**” has the meaning given to it in the Construction Contract.
- (l) “**Hospital Holdback**” means any amount which Hospital may withhold from payment under GC 5.4A – COMPLETION OF THE INTERIM WORK; GC 5.7 – COMPLETION and GC 5.9 – WITHHOLDING OF PAYMENT of the Construction Contract.
- (m) “**Hospital Final 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 Final Reimbursement Payment Date, the following amounts (without duplication):
 - (i) all Additional Owner Payments made to the Final Reimbursement Payment Date;

- (ii) the Certified Cost to Complete as at the Final Reimbursement Payment Date;
 - (iii) the Hospital Holdback as at the Final Reimbursement Payment Date; and
 - (iv) any Legislative Holdback then required to be maintained by Hospital.
- (n) **“Interim Reimbursement Payment Amount”** has the meaning given to it in the Construction Contract.
 - (o) **“Interim Reimbursement Payment Date”** has the meaning given to it in the Construction Contract.
 - (p) **“Legislative Holdback”** means the holdback to be maintained under Part IV of the *Construction Lien Act* (Ontario).
 - (q) **“Lender’s Consultant”** has the meaning given to it in the Construction Contract.
 - (r) **“Limited Assignment of Construction Contract”** means this limited assignment of construction contract and the schedules hereto.
 - (s) **“Notice”** has the meaning given to it in Section 4.1.
 - (t) **“Retained Payment Obligation”** has the meaning given to it in Section 3.1.
 - (u) **“Substantial Performance Date”** has the meaning given to it in the Construction Contract.
 - (v) **“Substantial Performance Holdback”** means the holdback pursuant to GC 5.6 - PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK of the Construction Contract.
 - (w) **“Substantial Performance Holdback Payment Date”** means the date for payment of the Substantial Performance Holdback pursuant to GC 5.6 - PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK of the Construction Contract.
 - (x) **“Trust Account”** means the trust account established pursuant to the Trust Account Agreement.
 - (y) **“Trust Account Agreement”** means the agreement respecting the Trust Account between Project Co, Hospital and BNY Trust Company of Canada.
 - (z) **“Value Added Taxes”** has the meaning given to it in the Construction Contract.
 - (aa) **“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(1) 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 “Limited Assignment of Construction Contract”.

ARTICLE 2 - REPRESENTATIONS AND WARRANTIES

2.1 Project Co Representations and Warranties

Project Co represents and warrants to Hospital 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 it nor, to the best of its knowledge and belief, Contractor is in material default of any of their 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 the lien or encumbrance in favour of Lender, for itself and for the benefit of Lender, pursuant to the Lending Agreements.

2.2 Contractor Representations and Warranties

Contractor represents and warrants to Hospital 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 it nor, to the best of its knowledge and belief, Project Co is in material default of any of their respective obligations thereunder; and
- (b) an executed, true and complete copy of the Construction Contract is attached hereto as Schedule A.

ARTICLE 3 - ASSIGNMENT

3.1 Assignment by Project Co

Subject to the 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 – PAYMENT and PART 5 – PAYMENT 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 has assigned its interest in the Construction Contract to Lender as security for the Financing. Such assignment includes all of Project Co’s Enforcement Rights in order that Lender 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, subject to Lender’s prior security interest therein and subject to and in accordance with the terms of the Lender’s Direct Agreement, be entitled to exercise all of Project Co’s rights and enforce all of Contractor’s covenants and obligations 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, subject to the prior rights of Lender, assumes all of the rights, benefits and obligations of Project Co thereunder, save and except the Retained Payment Obligation (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 Holdback as same become due and payable to Contractor in accordance with the terms of the Construction Contract.

3.4 Interim Reimbursement Payment

Subject to Sections 3.5, 3.9 and 3.13, Hospital covenants and agrees with Project Co to pay to Project Co the Interim Reimbursement Payment Amount on the Interim Reimbursement Payment Date together with Value Added Taxes thereon at the applicable rate on the Interim Reimbursement Payment Date.

3.5 Direction of Interim Reimbursement Payment

Project Co hereby irrevocably and unconditionally directs Hospital to make any Interim Reimbursement Payment Amount to Lender, subject to the terms of the Lender’s Direct Agreement, to be applied by the Lender in accordance with the Lending Agreements. Hospital shall pay the Interim Reimbursement Payment Amount as directed by Project Co and shall not accept any re-direction without the consent of the Lender. Project Co will be entitled to require Hospital to pay the Interim Reimbursement Payment Amount under this Section 3.5 of this Agreement, which Hospital shall pay, once the conditions for payment contained in the Construction Contract have been satisfied.

3.6 Hospital Final Reimbursement Payment

Subject to Sections 3.7, 3.9 and 3.13, Hospital covenants and agrees with Project Co to pay to Project Co the Hospital Final Reimbursement Payment together with Value Added Taxes thereon at the applicable rate on the Final Reimbursement Payment Date.

3.7 Direction of Hospital Final Reimbursement Payment

Project Co hereby irrevocably and unconditionally directs Hospital to make any Hospital Final Reimbursement Payment to Lender, subject to the terms of the Lender's Direct Agreement, to be applied by the Lender in accordance with the Lending Agreements. Hospital shall pay the Hospital Final Reimbursement Payment as directed by Project Co and shall not accept any re-direction without the consent of the Lender. Project Co will be entitled to require Hospital to pay the Hospital Final Reimbursement Payment under this Section 3.7 of this Agreement, which Hospital shall pay, once the conditions for payment contained in the Construction Contract have been satisfied.

3.8 Payment of Substantial Performance Holdback

Subject to Section 3.13, Hospital covenants and agrees with Contractor to pay to Contractor the Substantial Performance Holdback together with Value Added Taxes thereon at the applicable rate on the Substantial Performance Holdback Payment Date.

3.9 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. Contractor hereby unconditionally and irrevocably directs Hospital to make any payments of the Hospital Holdback to the Lender, subject to the terms of the Lender's Direct Agreement, to be applied by Lender in accordance with the Lending Agreements. To the extent the Hospital Holdback is reduced from time to time, Hospital shall pay the amount of the Hospital Holdback reductions as directed by Contractor and shall not accept any re-direction without the consent of the Lender. Hospital acknowledges such direction and agrees to pay the Hospital Holdback reductions as Contractor may direct in accordance with such direction. Contractor acknowledges and agrees that payment by Hospital of the Hospital Holdback reductions in accordance with any such direction constitutes payment by the Hospital to Contractor in satisfaction of the Hospital's obligation to make the Hospital Holdback reduction payments to Contractor under the Construction Contract and in satisfaction of any trust obligation of the Hospital in respect to such payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

3.10 Additional Owner Payments

Unless otherwise provided in the Change Order, Change Directive or Construction Contract, Hospital will pay all Additional Owner Payments together with Value Added Taxes thereon at the applicable rate to Contractor on a progress payment basis in the manner and at the times contemplated by the Construction Contract.

3.11 Certified Cost to Complete

After Hospital has paid the Hospital Final Reimbursement Payment, it shall thereafter continue to be responsible for payment to the Contractor of the Certified Cost to Complete as at the Final Reimbursement Payment Date on a progress payment basis in the manner and at the times contemplated by the Construction Contract.

3.12 Assumption Acknowledgement by Contractor

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, subject to the prior assignment of the Construction Contract as security pursuant to the Lending Agreements and 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 to Contractor of any Base Progress Payment nor any Legislative Holdbacks in respect thereof except to the extent deducted from the Hospital Final 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 Final 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 provided nothing in this sentence shall relieve Project Co from its obligation to pay the Base Progress Payments to Contractor or prejudice any claim, right or remedy Contractor may have against Project Co for failure to pay same.

3.13 Compensation on Termination

If 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 then:

- (a) Hospital shall pay the Compensation Payment to Project Co, calculated and payable in accordance with Schedule B; and
- (b) the provisions of Section 3.4 through to 3.10 shall no longer apply.

Project Co hereby irrevocably directs Hospital to make any Compensation Payment to Lender or as Lender may direct 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 Lender. Any portion of a Compensation Payment funded by monies deposited to the Trust Account shall be paid directly to Lender or as Lender may direct from the Trust Account. Hospital will pay the Compensation Payment in accordance with Schedule B.

3.14 Establishment of Trust Account

with a copy to:
Infrastructure Ontario: [REDACTED]r

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 comply 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 Parties, and such change shall be effective on the Business Day that next follows each 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(a), a Notice given by hand delivery shall be deemed to have been received on the day it is delivered. Subject to Sections 4.4(a) and 4.4(b), a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.

- (a) 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.
- (b) 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 Parties. 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.

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 acknowledges 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 the Project Agreement, this Limited Assignment of Construction Contract and the other Implementing Agreements 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 the 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 or at law or in equity.

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

Each Party shall provide proof to each other Party, in a form acceptable to such other Party, that any Person executing this Limited Assignment of Construction Contract or any of the Implementing Agreements on its behalf has the requisite authority to execute this Limited Assignment of Construction Contract or such Implementing Agreement on its behalf.

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 each other 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.

2128101 ONTARIO INC.

Per: _____
Name: [REDACTED]
Title: [REDACTED]

I/We have authority to bind the Corporation.

ST. JOSEPH'S HEALTH CARE, LONDON

Per: _____
Name: [REDACTED]
Title: [REDACTED]

Per: _____
Name: [REDACTED]
Title: [REDACTED]
I/We have authority to bind the Corporation.

D. GRANT & SONS LIMITED

Per: _____
Name: [REDACTED]
Title: [REDACTED]

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 amounts owing to the Lender pursuant to the Lending Agreements including 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 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) **“Non-Default Termination Sum”** has the meaning given in Section 3.1(b) of this Schedule B.
- (f) **“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.
- (g) **“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.
- (h) **“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.

- (i) “**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 Hospital’s architect 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 to complete the Work on substantially the same terms and conditions as the Construction Contract; and
 - (iv) any amount that is required to be held back by the Hospital under Part IV of the *Construction Lien Act* (Ontario) in relation to the Work performed by Contractor (including in respect of Additional Owner Payments) except to the extent of any amounts similarly withheld by Hospital under the Construction Contract, which amounts will be paid by Hospital in accordance with the *Construction Lien Act* (Ontario).
- (c) To the extent that any amounts that Hospital has estimated or 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 and vacate liens arising in connection with the Work performed by Contractor, as applicable, Hospital shall promptly pay such excess amounts to Project Co or in accordance with its written direction.
- (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 calculated as at the date of payment to Project Co;
 - (iv) an amount equal to the sum of the “Other Transaction Costs” shown in the Financial Model for the period to and including the Termination Date pro-rated for any partial month at the end of such period; and
 - (v) all other Direct Losses suffered, sustained or incurred by Contractor and 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 Direction

- (a) Project Co hereby irrevocably and unconditionally directs Hospital to make any Default Termination Payment or Non-Default Termination Sum, as applicable, to Lender, subject to the terms of the Lender’s Direct Agreement, to be applied by the Lender in accordance with the Lending Agreements. Hospital shall pay the Default Termination Payment or Non-Default Termination Sum, as applicable, as directed by Project Co and shall not accept any re-direction without the written consent of the Lender.
- (b) Contractor acknowledges and agrees that payment by Hospital of the Default Termination Payment or Non-Default Termination Sum, as applicable, in accordance with the foregoing direction constitutes payment by the Hospital to Contractor in satisfaction of the Hospital’s obligation to make any payments to Contractor under the Construction Contract and in satisfaction of any trust obligation of the Hospital in

respect of such payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

4.2 Payment

- (a) In the event of a termination referred to in Section 3.1(a) of this Schedule B, as soon as practicable, 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 referred to in Section 2.1(a) of this Schedule B, as soon as practicable, and, in any event, within one hundred and twenty (120) days, after the Termination Date, Hospital shall calculate and notify Project Co of the Default Termination Payment under Section 2.1(b) of this Schedule B and shall deliver to Project Co sufficient supporting evidence, reasonably satisfactory to Project Co.
- (d) Hospital shall pay to Project Co the Default Termination Payment as soon as reasonably practicable and in any event within thirty (30) days after delivering the notice described in Section 4.1(c) of this Schedule B.

4.3 Costs

The costs and expenses to be taken into account in the calculation of the Non-Default Termination Sum (other than, except in case of manifest error, the Debt Amount) 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.

4.4 Undisputed Amounts

Either Hospital or Project Co may dispute the calculation of any Compensation Payment 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 amount exceeds \$[REDACTED] then either party may proceed to court for the resolution of such dispute.

4.5 Outstanding Debt Amount

- (a) Subject to Section 4.3 of this Schedule B, Hospital shall be entitled to rely on a certificate of Lender as to the Debt Amount outstanding at any relevant time. Hospital agrees that any

dispute that Project Co and Contractor may have with such amount shall be dealt with as between them and the Lender and Hospital shall not make any deduction from the Debt Amount by reason of any such dispute except in the case of manifest error. If as the result of any such dispute it is determined that the Lender has been overpaid, any such overpayment shall be returned to Hospital.

- (b) If a receipt or other acknowledgement is given by Lender 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.

4.6 Set-off

Hospital shall be entitled to set off against the Non-Default Termination Sum or the Default Termination Payment such amounts not already taken into account in calculating the relevant Compensation Payment that Hospital is entitled to set off or withhold pursuant to the Project Agreement or the Construction Contract provided that the Non-Default Termination Sum shall never be less than [REDACTED].

4.7 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 taken into account in calculating the relevant Compensation Payment or 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 Compensation Payment under Section 4.3 of Schedule B to the Limited Assignment of Construction Contract (collectively and individually, a “Dispute”) shall, subject to the last sentence of Section 4.3, 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 pursuant to 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 requiring a three (3) person arbitration panel pursuant to Section 3.2 of this Schedule C;
 - (ii) if a Party fails to appoint an arbitrator within five (5) Business Days after delivery of the notice requiring a three (3) person arbitration panel, 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 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.