

**PROJECT AGREEMENT  
(REDACTED VERSION)**

**TO DESIGN, BUILD AND FINANCE  
THE SENECA COLLEGE KING CAMPUS  
EXPANSION PROJECT**

**CONFIDENTIAL**

## TABLE OF CONTENTS

	<b>Page</b>
1. DEFINITIONS AND INTERPRETATION .....	2
1.1 Definitions and Interpretation .....	2
1.2 Conflict of Terms .....	4
1.3 Conflict of Documents .....	5
1.4 Legal Requirements.....	5
2. COMMERCIAL CLOSE AND FINANCIAL CLOSE.....	5
2.1 Effective Date.....	5
2.2 Standby Letter of Credit .....	6
2.3 Financial Close .....	7
2.4 Disruption in Financial Markets.....	7
3. GUARANTEED PRICE.....	8
3.1 Guaranteed Price and Adjustments .....	8
3.2 Cash Allowances .....	9
4. PAYMENT .....	11
4.1 General .....	11
4.2 Acknowledgement by Project Co.....	12
4.3 Lump Sum Payments .....	12
4.4 Direction of Substantial Completion Payment.....	12
4.5 Payment of Legislative Holdback .....	13
4.5A Payment of Finishing Holdback .....	14
4.6 Completion Holdback .....	14
4.7 INTENTIONALLY DELETED.....	15
4.8 INTENTIONALLY DELETED.....	15
4.9 Compensation on Termination .....	15
4.10 Payment Due under Insurance Policies .....	15
4.11 HST .....	15
4.12 Set-Off.....	16
4.13 Effect of Payment.....	16
4.14 No Other Entitlement .....	16
4.15 Taxes .....	16

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
4.16	Changes in Scope of Taxation..... 17
4.17	Changes in Recoverability of Tax Credits ..... 17
4.18	Information and Assistance Provided by Project Co ..... 17
4.19	Residency – <i>Income Tax Act</i> (Canada) ..... 18
4.20	Taxes – General..... 18
4.21	Taxes – Indemnity ..... 18
5.	SCOPE OF AGREEMENT ..... 19
5.1	Scope of Agreement ..... 19
6.	REPRESENTATIONS AND WARRANTIES..... 19
6.1	Project Co Representations and Warranties ..... 19
6.2	College Representations and Warranties..... 22
7.	BACKGROUND INFORMATION ..... 24
7.1	No Liability ..... 24
7.2	No Warranty ..... 24
7.3	No Claims..... 24
7.4	Technical Reports..... 25
8.	PROJECT DOCUMENTS..... 25
8.1	Project Documents ..... 25
8.2	Ancillary Documents..... 26
8.3	Changes to Lending Agreements and Refinancing ..... 26
8.4	Compliance with Lending Agreements..... 27
9.	COLLEGE RESPONSIBILITIES ..... 27
9.1	General ..... 27
10.	PROJECT CO RESPONSIBILITIES – GENERAL ..... 28
10.1	Other Business..... 28
10.2	Complete and Operational Facility ..... 28
10.3	General Responsibilities and Standards ..... 28
11.	PROJECT CO RESPONSIBILITIES – DESIGN AND CONSTRUCTION..... 29
11.1	Development of Design..... 29
11.2	Start-Up Meeting..... 31

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
11.3	Design Workshops ..... 31
11.4	Performance of Design Obligations ..... 34
11.5	Works Submittals ..... 34
11.6	Documents at the Site..... 34
11.7	General Construction Obligations ..... 34
11.8	Permits, Licences, Approvals and Agreements..... 35
11.9	Protection of Work and Property ..... 36
11.10	Liability Unaffected ..... 37
11.11	Safety..... 37
11.12	Additional Works ..... 38
11.13	Defective Works..... 41
11.14	Warranty Obligations ..... 42
11.15	Prompt Repair of Warranty Work..... 43
11.16	Minimize Disturbance and Works in Existing Facilities..... 44
11.17	Substitutions ..... 45
11.18	Change in Standards..... 45
11.19	Subcontractors and Suppliers ..... 46
11.20	Apprenticeship Plan and Program..... 47
11.21	Procurement Monitoring and Implementation Plan ..... 48
11.22	Health and Safety Certification ..... 48
11.23	Demolition Requirements ..... 50
12.	REPRESENTATIVES ..... 52
12.1	The College Representative..... 52
12.2	The Project Co Representative ..... 52
12.3	Communications to Representatives ..... 53
12.4	Key Individuals ..... 53
13.	WORKS SCHEDULE ..... 54
13.1	Completion of the Works ..... 54
13.2	The Works Schedule ..... 54
13.3	Changes to Critical Path ..... 58

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
13.4	Failure to Maintain Schedule ..... 58
13.5	Notification of Early Substantial Completion ..... 59
13.6	Works Report ..... 60
14.	<b>WORKS COMMITTEE</b> ..... 60
14.1	Establishment ..... 60
14.2	Function and Role ..... 61
14.3	Term of Works Committee ..... 62
14.4	Replacement of Committee Members ..... 62
14.5	Procedures and Practices ..... 63
14.6	Proceeding At Risk ..... 64
15.	<b>QUALITY ASSURANCE</b> ..... 65
15.1	Quality Plans and Systems ..... 65
15.2	Changes to Plans ..... 66
15.3	Quality Manuals and Procedures ..... 67
15.4	Quality Monitoring ..... 67
15.5	Health and Safety Inspections ..... 67
16.	<b>LICENCE</b> ..... 68
16.1	Licence to Site ..... 68
16.2	Non-Exclusive Licence/Development of Site ..... 69
16.3	Limited Access Areas ..... 69
16.4	Naming and Signage ..... 69
16.5	No Interest in Land ..... 70
17.	<b>TITLE ENCUMBRANCES</b> ..... 70
17.1	Title Encumbrances ..... 70
17.2	No Lands Encumbrances ..... 71
17.3	Construction Lien Act (Ontario) ..... 71
18.	<b>SITE CONDITION</b> ..... 73
18.1	Acceptance of Site Condition ..... 73
18.2	Contamination ..... 74
18.3	Items of Geological, Historical or Archaeological Interest or Value ..... 75

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
19. THE TOWNSHIP OF KING AND THIRD PARTY FINANCIAL OBLIGATIONS.....	76
19.1 Financial Obligations .....	76
20. COLLEGE ACCESS AND MONITORING.....	77
20.1 College Access During the Works .....	77
20.2 Increased Monitoring .....	77
20.3 Right to Open Up .....	77
20.4 No Relief from Obligations.....	78
20.5 Right of Access of Additional Contractors to Works .....	78
21. FURNITURE, FIXTURES AND EQUIPMENT .....	78
21.1 FF&E Steering Committee.....	78
21.2 Categories of FF&E .....	79
21.3 FF&E Budget .....	80
21.4 College Category 1 FF&E Responsibilities .....	81
21.5 Project Co Responsibilities .....	81
21.6 Category 1 FF&E Procurement and Other Project Co Responsibilities .....	84
21.7 Minimizing Disruptions .....	87
21.8 Scheduling of Procurement, Installation and Commissioning .....	87
22. LEADERSHIP IN ENVIRONMENTAL DESIGN AND OTHER REQUIREMENTS.....	88
22.1 LEED Design and Construction Obligations .....	88
22.2 Mandatory Prerequisites and Credits .....	88
22.3 LEED Progress Reports .....	88
22.4 LEED Gold Rating .....	88
22.5 Greenhouse Gas Credits .....	89
22.6 LEED Obligations in Design and Construction Contract .....	89
23. INDEPENDENT CERTIFIER.....	89
23.1 Appointment.....	89
23.2 Role of Independent Certifier.....	90
23.3 Changes to Terms of Appointment .....	90
23.4 Right to Change Appointment.....	90

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
23.5	Cooperation ..... 90
23.6	Payment of Independent Certifier ..... 90
23.7	Replacement ..... 91
24.	COMMISSIONING AND COMPLETION ..... 91
24.1	Commissioning Activities ..... 91
24.2	Final Commissioning Program..... 91
24.3	Commencement of Project Co Commissioning ..... 93
24.4	Substantial Completion Certificate ..... 93
24.5	Operation and Maintenance Manuals ..... 95
24.6	College Commissioning ..... 95
24.7	Countdown Notice..... 95
24.8	Minor Deficiencies ..... 96
24.9	Rectification of Minor Deficiencies ..... 97
24.10	Failure to Rectify Minor Deficiencies..... 97
24.11	Remaining Works Minor Deficiencies..... 98
24.12	Rectification of Remaining Works Minor Deficiencies..... 98
24.13	Final Completion Countdown Notice ..... 99
24.14	Final Completion Certificate ..... 99
24.15	Effect of Certificates/Use ..... 100
24.16	Remaining Works Letter of Credit..... 101
25.	HUMAN RESOURCES ..... 103
25.1	Admittance of Personnel, Security and Safety..... 103
25.2	Notification of Convictions ..... 104
25.3	Human Resources Policies ..... 104
25.4	Management Organizations..... 104
25A	THE COLLEGE’S REMEDIAL RIGHTS ..... 104
25A.1	Exercise of Remedial Rights ..... 104
25A.2	Emergency..... 105
25A.3	Rectification ..... 105
25A.4	Costs and Expenses ..... 106

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
25A.5 Reimbursement Events.....	106
25A.6 Reimbursement if Improper Exercise of Rights.....	107
26. RECORDS, INFORMATION AND AUDIT .....	107
26.1 Records Provisions .....	107
26.2 Information and General Audit Rights.....	107
26.3 Lenders' Consultant Reports .....	109
27. COMMUNICATIONS .....	109
27.1 Communications.....	109
28. CHANGES IN LAW .....	109
28.1 Performance after Change in Law .....	109
28.2 Works Change in Law.....	109
28.3 Relevant Change in Law .....	110
29. VARIATIONS .....	112
29.1 Variation Procedure.....	112
29.2 Innovation and Value Engineering.....	112
30. DELAY EVENTS.....	114
30.1 Definition .....	114
30.2 Consequences of a Delay Event .....	116
30.3 Mitigation .....	119
31. COMPENSATION EVENTS.....	119
31.1 Definition .....	119
31.2 Consequences of a Compensation Event .....	120
31.3 Mitigation .....	121
31.4 Insured Exposure.....	121
31.5 Delivery of Works Schedule .....	121
32. RELIEF EVENTS.....	121
32.1 Definition .....	121
32.2 Consequences of a Relief Event.....	122
32.3 Mitigation and Process .....	123
32.4 Insured Exposure.....	124

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
33. FORCE MAJEURE .....	124
33.1 Definition .....	124
33.2 Consequences of Force Majeure .....	124
33.3 Mitigation and Process .....	125
33.4 Insured Exposure.....	126
33.5 Modifications .....	126
34. PROJECT CO DEFAULT .....	126
34.1 Project Co Events of Default.....	126
34.2 Notification of Occurrence.....	130
34.3 Right to Termination .....	130
34.4 Remedy Provisions.....	130
34.5 College's Costs.....	132
34.6 No Other Rights to Terminate .....	132
35. COLLEGE DEFAULT .....	132
35.1 College Events of Default .....	132
35.2 Project Co's Options .....	133
35.3 Project Co's Costs .....	133
35.4 No Other Rights to Terminate.....	133
36. RELIEF EVENT AND NON DEFAULT TERMINATION.....	133
36.1 Termination for Relief Event .....	133
36.2 Termination for Force Majeure .....	134
36.3 Termination for Convenience.....	134
36.4 Automatic Expiry on Expiry Date.....	134
37. EFFECT OF TERMINATION .....	134
37.1 Termination .....	134
37.2 Continued Effect – No Waiver.....	134
37.3 Continuing Performance .....	135
37.4 Effect of Notice of Termination .....	135
37.5 Ownership of Information.....	136
37.6 Provision in Subcontracts.....	137

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
37.7	Transitional Arrangements ..... 137
37.8	Termination upon Aforesaid Transfer ..... 137
37.9	Survival ..... 138
38.	COMPENSATION ON TERMINATION ..... 138
38.1	Compensation on Termination ..... 138
38.2	Full and Final Settlement ..... 138
39.	INTELLECTUAL PROPERTY ..... 139
39.1	Representation and Warranty ..... 139
39.2	Delivery of Project Data and Intellectual Property Rights ..... 139
39.3	Licence of Project Data and Intellectual Property Rights ..... 140
39.4	Jointly Developed Materials ..... 140
39.5	Maintenance of Data ..... 141
39.6	Claims ..... 141
39.7	College Trade-Marks ..... 141
39.8	Confidential Information ..... 142
39.9	Government Use of Documents ..... 142
40.	CONFIDENTIALITY ..... 142
40.1	Disclosure ..... 142
40.2	Redaction ..... 143
40.3	Disclosure to Government ..... 143
40.4	Freedom of Information ..... 143
40.5	Use and Disclosure of Confidential Information ..... 143
40.6	Exceptions ..... 144
40.7	Survival of Confidentiality ..... 145
41.	PERSONAL INFORMATION ..... 145
41.1	Protection of Personal Information ..... 145
41.2	Conflict and Survival ..... 146
42.	INSURANCE AND PERFORMANCE SECURITY ..... 147
42.1	General Requirements ..... 147
42.2	No Relief from Liabilities and Obligations ..... 147

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
42.3 Performance Guarantee of Construction Guarantor .....	147
43. TITLE .....	147
43.1 Title .....	147
44. INDEMNITIES .....	148
44.1 Project Co Indemnities to the College.....	148
44.2 College Indemnities to Project Co .....	150
44.3 Conduct of Claims.....	151
44.4 Mitigation – Indemnity Claims .....	153
45. LIMITS ON LIABILITY .....	153
45.1 Indirect Losses.....	153
45.2 No Liability in Tort .....	154
45.3 Sole Remedy .....	154
45.4 Maximum Liability .....	154
46. DISPUTE RESOLUTION PROCEDURE .....	155
47. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL.....	155
47.1 Project Co Assignment.....	155
47.2 College Assignment .....	155
47.3 Subcontracting.....	156
47.4 Changes in Ownership and Control .....	157
47.5 College Due Diligence .....	158
48. PROHIBITED ACTS.....	158
48.1 Definition .....	158
48.2 Remedies .....	159
48.3 Permitted Payments.....	160
48.4 Notification.....	160
48.5 Replacement of Project Co Party .....	160
49. NOTICES.....	161
49.1 Notices to Parties.....	161
49.2 Notices to Representatives .....	162
49.3 Facsimile .....	162

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
49.4	Change of Address ..... 162
49.5	Deemed Receipt of Notices ..... 162
49.6	Service on the College ..... 163
50.	COLLEGE DESIGNATE ..... 163
50.1	Right to Designate ..... 163
51.	GENERAL ..... 164
51.1	Amendments ..... 164
51.2	Waiver ..... 164
51.3	Relationship Between the Parties ..... 164
51.4	General Duty to Mitigate ..... 165
51.5	Actual Knowledge ..... 165
51.6	Entire Agreement ..... 165
51.7	No Reliance ..... 165
51.8	Severability ..... 166
51.9	Enurement ..... 166
51.10	Governing Law and Jurisdiction ..... 166
51.11	Cumulative Remedies ..... 167
51.12	Further Assurance ..... 167
51.13	Costs ..... 167
51.14	Language of Agreement ..... 167
51.15	Proof of Authority ..... 167
51.16	Counterparts ..... 167
51.17	Government Entities as Third Party Beneficiaries ..... 168
51.18	Time is of the Essence ..... 168
51.19	Copyright Notice ..... 168

**SCHEDULES**

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

**THIS PROJECT AGREEMENT** is made as of the 5th day of August, 2016.

**BETWEEN:**

**THE SENECA COLLEGE OF APPLIED ARTS AND TECHNOLOGY**, a college of applied arts and technology established pursuant to Ontario Regulation 34/03 passed under the authority of the *Ontario Colleges of Applied Arts and Technology Act, 2002*

(the “**College**”)

**AND:**

**ELLISDON INFRASTRUCTURE SCKC INC., [REDACTED]**

(“**Project Co**”)

**WHEREAS:**

- A. The College, with the assistance of Ontario Infrastructure and Lands Corporation (“**IO**”), wishes to procure the design, construction and financing of the Facility (the “**Project**”).
- B. The College and Project Co wish to enter into this project agreement (the “**Project Agreement**”) which sets out the terms and conditions upon which Project Co shall perform the Works.
- C. The overriding priorities of the College in entering into and implementing this Project Agreement are to achieve complete design and construction of the Facility in order to enhance the College’s ability to carry out its responsibilities under the *Ontario Colleges of Applied Arts and Technology Act, 2002* (Ontario) (the “**Act**”) and to provide first-rate post-secondary educational services.
- D. The Project will proceed as an alternative financing and procurement project and complies with the principles set out in MEDEI’s Building a Better Tomorrow: An Infrastructure Planning, Financing and Procurement Framework for Ontario’s Public Sector (the “**IPFP Framework**”).
- E. The IPFP Framework establishes 5 fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
  - 1. The public interest is paramount.
  - 2. Value for money must be demonstrable.
  - 3. Appropriate public control/ownership must be preserved.
  - 4. Accountability must be maintained.

- 5. All processes must be fair, transparent and efficient.
- F. The IPFP Framework states that, consistent with the principle of appropriate public ownership/control, public ownership of assets will be preserved in the public sector.
- G. The College is established by *Ontario Regulation 34/03* as a college of applied arts and technology pursuant to Section 2(1) of the Act. Pursuant to Section 2(4) of the Act, the College is an agency of the Crown.
- H. With a view to ensuring that both Parties are able to properly and effectively discharge their respective duties, functions and responsibilities under Applicable Law, it is the intent that the College and Project Co work collaboratively, responsibly and cooperatively throughout the Project Term.

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

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions and Interpretation**

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

<b>Schedule No.</b>		<b>Description</b>
Schedule 1	-	Definitions and Interpretation
Schedule 2	-	Completion Documents
Schedule 3	-	Site
Schedule 4	-	Lenders’ Direct Agreement
Schedule 5	-	Construction Contractor’s Direct Agreement
Schedule 6	-	Independent Certifier Agreement
Schedule 7	-	Subcontractor’s Direct Agreement
Schedule 8	-	Project Co Parties
Schedule 9	-	Key Individuals
Schedule 10	-	Review Procedure
Schedule 11	-	Design Quality Plan and Construction Quality Plan
Schedule 12	-	Performance Guarantee of Construction Guarantor
Schedule 13	-	Project Co Proposal Extracts
Schedule 14	-	Outline Commissioning Program
Schedule 15	-	Output Specifications
Schedule 16	-	Title Encumbrances
Schedule 17	-	Works Report Requirements

Schedule 18	-	Communications
Schedule 19	-	<b>INTENTIONALLY DELETED</b>
Schedule 20	-	Procurement Monitoring and Implementation Plan
Schedule 21	-	<b>INTENTIONALLY DELETED</b>
Schedule 22	-	Variation Procedure
Schedule 23	-	Compensation on Termination
Schedule 24	-	Financial Model
Schedule 25	-	Insurance and Performance Security Requirements
Schedule 26	-	Record Provisions
Schedule 27	-	Dispute Resolution Procedure
Schedule 28A	-	Standby Letter of Credit
Schedule 28B	-	Remaining Works Letter of Credit
Schedule 29	-	Refinancing
Schedule 30	-	Insurance Trust Agreement
Schedule 31	-	Project Co Information

- (c) The documents comprising the Project Agreement are complementary and what is called for by any one of them shall be interpreted as if called for by all, except in the event of ambiguities, conflicts or inconsistencies, in which case Section 1.2 shall apply.
- (d) Except for those parts of Project Co's proposal which are incorporated by reference into this Project Agreement by the Project Co Proposal Extracts, on Financial Close the Request for Proposals and Project Co's proposal shall be superseded entirely by this Project Agreement and rendered null and void, and shall not be relied upon or used by Project Co, the College or any other person (including any other person pursuant to Schedule 27 – Dispute Resolution Procedure or any arbitral body or any court) in any way to interpret or qualify the scope of the Works, any obligations or liabilities of Project Co, or anything else contained in this Project Agreement.
- (e) Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of the College, no consent, approval or satisfaction of the College or the College Representative shall be unreasonably withheld or delayed.
- (f) Unless it is specifically provided that a consent, approval or satisfaction is in the sole discretion of Project Co, no consent, approval or satisfaction of Project Co or the Project Co Representative shall be unreasonably withheld or delayed.
- (g) The organization of the Output Specifications into divisions, sections and parts shall not control Project Co in dividing the Works among the Project Co Parties or in establishing the extent of the Works to be performed by a trade.

**1.2 Conflict of Terms**

- (a) In the event of ambiguities, conflicts or inconsistencies between or among any of the provisions of this Project Agreement, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently:
- (i) the provisions of amendments in writing to this Project Agreement signed by the Parties and Variation Confirmations shall govern and take precedence only over those specific provisions of this Project Agreement expressly amended thereby;
  - (ii) any provision establishing a higher standard of safety, reliability, durability, performance or service shall take precedence over a provision establishing a lower standard of safety, reliability, durability, performance or service;
  - (iii) the body of this Project Agreement;
  - (iv) Schedule 1 – Definitions and Interpretation;
  - (v) Schedule 27 – Dispute Resolution Procedure;
  - (vi) Part 4 of Schedule 15 – Output Specifications
  - (vii) Schedule 15 – Output Specifications (excluding Part 4);
  - (viii) Schedule 25 – Insurance and Performance Security Requirements;
  - (ix) Schedule 22 – Variation Procedure;
  - (x) Schedule 10 – Review Procedure;
  - (xi) Schedule 14 – Outline Commissioning Program;
  - (xii) Schedule 11 – Design Quality Plan and Construction Quality Plan;
  - (xiii) Schedule 29 – Refinancing;
  - (xiv) Schedule 23 – Compensation on Termination;
  - (xv) Schedule 26 – Record Provisions;
  - (xvi) the other Schedules in the order in which they are listed in Section 1.1(b); and
  - (xvii) Schedule 13 – Project Co Proposal Extracts.
- (b) Subject to Section 1.2(a), if the ambiguity, conflict or inconsistency is between a provision of general application and a provision that applies only to a specific part of the Works, the provision that applies to the specific part of the Works shall govern for that specific part of the Works.

- (c) If any ambiguity, conflict or inconsistency is not readily resolved by Section 1.2(a) and 1.2(b), then Project Co or the College, upon discovery of same, shall immediately give notice to the College Representative. The College Representative shall, within 10 Business Days after such notice, make a determination of which provision governs and give notice of such determination, in writing, to Project Co.
- (d) The College and Project Co shall comply with the determination of the College Representative pursuant to this Section 1.2 unless the College or Project Co disputes the decision of the College Representative in which event such Dispute may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

### **1.3 Conflict of Documents**

- (a) In the event of any ambiguities, conflicts or inconsistencies between this Project Agreement and the Lenders’ Direct Agreement, the Lenders’ Direct Agreement shall prevail. Notwithstanding the forgoing, if there is any right or remedy in favour of the College set out in the Lenders’ Direct Agreement or any part thereof which is not set out or provided for in the Project Agreement, such additional right or remedy shall not constitute an ambiguity, conflict or inconsistency.

### **1.4 Legal Requirements**

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

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

### **2.1 Effective Date**

- (a) The provisions of Sections 1.1, 1.2, 1.4, 2.1, 2.2, 2.3, 2.4, 3.1, 4.15 to 4.21, 5 to 15, 16.5, 17 to 23, 25 to 29, and 39 to 51 and Schedules 1, 2, 8 to 13, 16, 18, 19, 22, and 24 to 28A of this Project Agreement will come into effect on the date of this Project Agreement (“**Commercial Close**”). All other provisions and schedules will come into effect only on Financial Close.

## **2.2 Standby Letter of Credit**

- (a) On the date of this Project Agreement, Project Co shall deliver, or cause to be delivered, to the College an irrevocable standby letter of credit (the “**Standby Letter of Credit**”) in the amount of \$[REDACTED] substantially in the form of Schedule 28A – Standby Letter of Credit. Project Co may, with the consent of the College, which consent may be withheld in the sole discretion of the College, provide multiple irrevocable standby letters of credit delivered from Canadian Imperial Bank of Commerce as approved and confirmed by the College (each a “**Letter of Credit Provider**”) in an amount totalling \$[REDACTED] and each substantially in the form of Schedule 28 – Standby Letter of Credit. For the purposes of this Section 2.2, each of the multiple irrevocable standby letters of credit is referred to as a Standby Letter of Credit.
- (b) Unless a Standby Letter of Credit is drawn by the College in accordance with the provisions of this Project Agreement, the College shall release and deliver the Standby Letter(s) of Credit to Project Co on Financial Close.
- (c) Project Co shall ensure that the Standby Letter(s) of Credit (and any replacement therefor) is renewed prior to its expiry date if, as at such date, Financial Close will not, or may reasonably be expected not to, have occurred.
- (d) If Project Co delivers multiple Standby Letters of Credit from multiple Letter of Credit Providers in accordance with Section 2.2(a) with the delivery of multiple Standby Letters of Credit by Letter of Credit Providers, Project Co acknowledges and agrees that:
  - (i) The College may draw upon any Standby Letter of Credit provided by any Letter of Credit Provider in any specified rateable amount;
  - (ii) The College may draw on any Standby Letter of Credit provided by any Letter of Credit Provider in a disproportionate amount to such Letter of Credit Providers’ contribution to security;
  - (iii) The College may draw upon any Standby Letter of Credit provided by any Letter of Credit Provider even in the event that such Letter of Credit Provider is no longer a Project Co Party; and
  - (iv) The provision of multiple Standby Letters of Credit shall not in any way prejudice or adversely affect the rights of the College to draw on the Standby Letter(s) of Credit in accordance with this Project Agreement, including in a circumstance where the default giving rise to the College’s right to draw on the Standby Letter(s) of Credit is not the result of any act or omission of the Letter of Credit Provider(s) whose Standby Letter of Credit is drawn upon.

### **2.3 Financial Close**

- (a) No later than 30 days prior to the Financial Close Target Date, Project Co will deliver to the College drafts of all documents referred to in Section 1 of Schedule 2 - Completion Documents.
- (b) On or before the Financial Close Target Date:
  - (i) Project Co shall deliver to the College the documents referred to in Section 1 of Schedule 2 - Completion Documents; and
  - (ii) the College shall deliver to Project Co the documents referred to in Section 2 of Schedule 2 - Completion Documents.
- (c) If Project Co fails to deliver to the College any of the documents referred to in Section 1 of Schedule 2 - Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by the College of its obligations under Section 2.3(b)(ii)) and the College does not waive such requirement, the College will be entitled to draw on the Standby Letter of Credit immediately and to retain the lesser of (A) the full amount of the Standby Letter of Credit, and (B) the difference between the Guaranteed Price and the price that the College is able to obtain from another contractor for the Works, together with all costs reasonably incurred by the College to enter into binding agreements with such other contractor, and to retain the proceeds thereof as liquidated damages, and may terminate this Project Agreement in its entirety by written notice having immediate effect. The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that the College will suffer as a result of the happening of the specified event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by the College as a result of Project Co not achieving Financial Close. The Parties agree that such liquidated damages shall be payable whether or not the College incurs or mitigates its damages, and that the College shall not have any obligation to mitigate any such damages.
- (d) Intentionally deleted.
- (e) If the College fails to deliver to Project Co any of the documents referred to in Section 2 of Schedule 2 - Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by Project Co of its obligations under Section 2.3(b)(i)) and Project Co does not waive such requirement, Project Co will be entitled to the return of the Standby Letter of Credit and to terminate this Project Agreement in its entirety by written notice having immediate effect.

### **2.4 Disruption in Financial Markets**

- (a) If Financial Close cannot be achieved by the Financial Close Target Date by reason solely of a Severe Market Disruption, subject to Project Co's obligation to renew the Standby Letter of Credit pursuant to Section 2.2, the Financial Close Target Date will be extended until the date falling 10 Business Days (or such other period as the Parties

agree, acting reasonably) after the date on which such Severe Market Disruption ceases.

- (b) If a Severe Market Disruption exists, then, at any time before such Severe Market Disruption ceases and prior to Financial Close, the College may in its sole discretion either:
  - (i) terminate this Project Agreement in its entirety by written notice having immediate effect; or
  - (ii) direct Project Co to assign to the College and the College will assume:
    - (A) the Project Agreement, and all of Project Co's right, title and interest in the Project Data, the Intellectual Property Rights and the Project Co Permits, Licences, Approvals and Agreements; and
    - (B) those contracts between Project Co and any Project Co Party which the College elects to be assigned.
- (c) If the College exercises its rights pursuant to Section 2.4(b), and, provided Project Co has, if directed, delivered the assignments provided for in Section 2.4(b)(ii)(A) and (B) above, Project Co will be entitled to the return of its Standby Letter of Credit and to payment of an amount equal to the Design and Bid Fee pursuant to Section 10.3.2 of the Request for Proposals [REDACTED]. The College's obligation to return the Standby Letter of Credit and to pay such fee shall be contingent on the receipt of a waiver, in form and substance satisfactory to the College, that such fee represents full and final satisfaction of any obligation or liability of the College, IO and any other Government Entity to Project Co and any Project Co Parties in connection with the Project Agreement and the Request for Proposals process.

### **3. GUARANTEED PRICE**

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

- (a) Project Co represents and warrants that the Guaranteed Price, exclusive of HST, is \$70,873,306.00, and is equal to the sum of the Cost of the Works and the Cost of the Financing. The Cost of the Works and the Cost of the Financing are as set out in the Financial Model.
- (b) Project Co represents and warrants that the Project Debt Interest Cost is based upon the Interest Reference Rate. The Project Debt Interest Cost will be adjusted once on, or within the 2 Business Days immediately prior to, Financial Close on the basis of the actual increase or decrease in the Project Debt Interest Cost resulting directly from any change upward or downward in the Interest Reference Rate as compared to the Interest Reference Rate as at the RFP Submission Deadline.

- (c) The Parties:
- (i) acknowledge that the Project Debt Interest Cost is a component of the Cost of the Financing and that the Project Debt Interest Cost is subject to adjustment under Section 3.1(b) as at the date set out in Section 3.1(b); and
  - (ii) acknowledge and agree that subject to adjustments made in accordance with the provisions of this Project Agreement, the final Guaranteed Price shall be determined on the basis of such final adjusted Cost of the Financing and the final adjusted Cost of the Works as of the date of Financial Close.
- (d) Subject to the provisions of Section 3.1(c), the Parties agree that the Guaranteed Price will not be subject to adjustment despite changes in the Works, unless such changes in the Works arise pursuant to a Variation Confirmation. The Parties further agree that the Guaranteed Price will only be adjusted where the Project Agreement specifically and expressly refers to an adjustment to the Guaranteed Price, and no claim for an adjustment to the Guaranteed Price on any legal or equitable basis outside of the specific and express rights to an adjustment of the Guaranteed Price set out in the Project Agreement will be allowed. In order to be effective, any permitted adjustment to the Guaranteed Price must be provided for in a Variation Confirmation under Schedule 22 – Variation Procedure.

### **3.2 Cash Allowances**

- (a) Project Co shall deposit the Cash Allowance Amount into the Cash Allowance Account no later than one (1) month prior to the scheduled commencement of the Works (as set out in the Works Schedule) to which the Cash Allowance shall be applied and shall manage the Cash Allowance Account in accordance with Section 3.2(b).
- (b) The Cash Allowance Account shall be managed in accordance with the following provisions:
- (i) Project Co will hold and manage all monies in the Cash Allowance Account and shall ensure that such monies earn a rate of interest that is no less than the rate of interest that is quoted or published by Schedule I Banks in Canada as payable on interest bearing Canadian dollar demand deposit accounts;
  - (ii) interest earned on the Cash Allowance Account will accrue in the Cash Allowance Account;
  - (iii) Project Co shall provide a reconciliation of the Cash Allowance Account to the College on a monthly basis;
  - (iv) the College shall make deposits into the Cash Allowance Account in the event that the payment requirements, including applicable HST, for invoices approved by the College for Cash Allowance Items exceed the then balance of the Cash Allowance Account prior to approving any such invoices;

- (v) if, on the earlier of (A) Final Completion and (B) the Termination Date, there exists a positive balance in the Cash Allowance Account, such balance will be paid by Project Co to the College or as the College directs; and
  - (vi) the Parties agree to mutually review the operation of the Cash Allowance Account on a regular basis and make any appropriate modifications to ensure its efficient operation.
- (c) Project Co shall provide monthly reports to the College Representative that include the following information:
- (i) itemized and aggregate amounts committed to date for all Cash Allowance Items;
  - (ii) itemized and aggregate amounts spent to date for all Cash Allowance Items as well as the itemized and aggregate amounts spent in the immediately preceding month for all Cash Allowance Items; and
  - (iii) the projected cost of each remaining Cash Allowance Item and the projected effect of such costs on the Cash Allowance Account.
- (d) In addition to the monthly reports described in Section 3.2(c), Project Co shall, on a monthly basis, provide to the College Representative a request for payment approval (each, a “**Request for Payment Approval**”) that includes the following information:
- (i) details of all vendor or Project Co Party invoices related to Cash Allowance Items that are due for payment that month, including relevant supporting documentation, which shall include copies of all vendor and Project Co Party invoices;
  - (ii) evidence that the commitment by Project Co to purchase the Cash Allowance Items has been approved by the College; and
  - (iii) any discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co in connection with the Cash Allowance Items.
- (e) the College shall, within 10 Business Days of receipt of a Request for Payment Approval, advise Project Co, in writing, whether or not payment of the invoices set out in such Request for Payment Approval is approved. The College shall only be permitted to withhold its approval if the College determines that the Request for Payment Approval does not contain the information that the College requires, acting reasonably, to discharge its obligations under this Section 3.2. If the College withholds its approval pursuant to this Section 3.2(e) and subsequently receives the information that the College requires, acting reasonably, to discharge its obligations under this Section 3.2, it shall, within 10 Business Days of its receipt of such information, provide to Project Co, in writing, the College’s approval for the invoices set out in the aforementioned Request for Payment Approval.

- (f) If the College approves the payment of the invoices set out in a Request for Payment Approval, Project Co shall make payment to the relevant vendors or Project Co Parties in accordance with this Section 3.2. To the extent the invoices and/or payments approved by the College in accordance with this Section 3.2 in respect of Cash Allowance Items are in excess of the then current balance in the Cash Allowance Account, the College shall, in accordance with Section 3.2(b)(iv), pay such excess amount into the Cash Allowance Account.
- (g) Project Co acknowledges and agrees that:
  - (i) neither it, nor any Project Co Party, shall be entitled to any mark-ups for profit, overhead or other costs associated with the Cash Allowance Items;
  - (ii) all discounts, rebates, refunds, chargebacks, credits, price adjustments and other allowances available to Project Co or any Project Co Party in connection with the Cash Allowance Items shall be attributed solely to and shall benefit the pricing of the Cash Allowance Items;
  - (iii) all costs and expenses related to the administration of the Cash Allowance Account, including, without limitation, the preparation of Requests for Payment Approval and any required reporting, shall be borne by Project Co and shall not be charged to the Cash Allowance Account; and
  - (iv) the Cash Allowance Amount will be deposited and the Cash Allowance Account will be managed in accordance with the Works Schedule and any costs, expenses or delays related to funding or managing the Cash Allowance Account are the responsibility of Project Co.

#### **4. PAYMENT**

##### **4.1 General**

- (a) Subject to the provisions of the Project Agreement (including, for clarity Section 3.1(d)) and in accordance with and subject to Applicable Law respecting holdbacks, the College shall make the payments set out in this Article 4.
- (b) For the purpose of this Project Agreement, payments made by electronic transfer shall be deemed to have been made on the day and at the time the electronic transfer is initiated, as confirmed by the initiating bank by a confirmation setting out the transfer number and the other details of the transfer.
- (c) Promptly in advance of any payment by the College under this Project Agreement which is subject to the holdback requirements of the CLA, Project Co agrees to conduct or cause to be conducted a sub-search of title to the Lands and provide a copy of such sub-search to the College. For clarity, if such sub-search reveals that a construction lien arising in relation to the performance of the Works has been registered against the Lands, the

Facility or the Existing Facilities, the Parties shall proceed in accordance with the applicable provisions of Section 17.3.

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

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

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

- (a) Subject to Sections 4.4(a) and 4.9, the College covenants and agrees to pay to Project Co the Substantial Completion Payment and the applicable HST on the Substantial Completion Payment Date.
- (b) It is a condition to the payment of the Substantial Completion Payment that, pursuant to and in accordance with Section 24.16, Project Co delivers to the College the Remaining Works Letter of Credit no later than 2 Business Days prior to the Substantial Completion Payment Date. Notwithstanding the foregoing, if the Remaining Works Letter of Credit has not been delivered to the College by the Substantial Completion Payment Date, the College may withhold from the Substantial Completion Payment a holdback amount equal to the amount of the Remaining Works Letter of Credit (the “**Remaining Works Cash Amount**”). In such an event, such Remaining Works Cash Amount may be withheld by the College until the date that is two Business Days following the date that the Remaining Works Letter of Credit has been delivered to the College and, upon such second Business Day, the Remaining Works Cash Amount shall be paid by the College to Project Co. Until receipt of the Remaining Works Letter of Credit, the College may use the Remaining Works Cash Amount in the place of, in the same manner as and for the same purpose as the Remaining Works Letter of Credit. The withholding of the Remaining Works Cash Amount in accordance with this Section 4.3(b) shall be the College’s sole remedy for failure on the part of Project Co to deliver the Remaining Works Letter of Credit by the Substantial Completion Payment Date and, for greater certainty, the College shall not be entitled to withhold payment of the balance of the Substantial Completion Payment as a result of any such failure on the part of Project Co.

#### **4.4 Direction of Substantial Completion Payment**

- (a) Project Co hereby irrevocably directs the College to make any Substantial Completion Payment, together with applicable HST, to the Lenders’ Agent or as the Lenders’ Agent may direct, as security for the Financing. The College shall pay the Substantial Completion Payment as directed by Project Co and shall not accept any redirection without the consent of the Lenders’ Agent. The College will pay the amounts that Project Co is entitled to hereunder once the conditions for payment set out in this Project Agreement, if any, have been satisfied. Project Co acknowledges and agrees that payment by the College of the Substantial Completion Payment to the Lenders’ Agent in accordance with this Section 4.4 constitutes payment by the College to Project Co in

satisfaction of the College's obligation to pay the Substantial Completion Payment to Project Co under this Project Agreement and in satisfaction of any trust obligation of the College with respect to such payments under Section 7 of the CLA pursuant to Section 10 of the CLA.

**4.5 Payment of Legislative Holdback**

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

the certificate for payment of the Legislative Holdback amount pursuant to Section 4.5(c).

#### **4.5A Payment of Finishing Holdback**

- (a) Subject to Section 4.9, the College covenants and agrees with Project Co to pay to Project Co the Finishing Holdback on the Finishing Holdback Payment Date or pay to such party as otherwise directed by Project Co and shall not accept any redirection without the consent of the person to whom payment is directed. The College agrees to pay the Finishing Holdback as Project Co may direct in accordance with any such direction. Project Co acknowledges and agrees that payment by the College of the Finishing Holdback in accordance with this Section 4.5A(a) as Project Co may direct, constitutes payment by the College to Project Co in satisfaction of the College's obligation to pay the Finishing Holdback to Project Co under this Project Agreement and in satisfaction of any trust obligation of the College with respect to such payment under Section 7 of the CLA pursuant to Section 10 of the CLA.
- (b) Upon the date Project Co considers that the Finishing Holdback in respect of an applicable component of the Works may be released, Project Co shall:
  - (i) submit an application for the payment of the Finishing Holdback amount;
  - (ii) submit a written request for the Finishing Holdback, including a declaration that no written notices of lien arising from the performance of the Works have been received by it;
  - (iii) submit a Statutory Declaration CCDC 9A; and
  - (iv) submit an original WSIB Certificate of Clearance.
- (c) After the later of (i) the receipt of the documents set out in Section 4.5A(b), and (ii) the date that all liens that may have been claimed against the Finishing Holdback in respect of the applicable component of the Works have expired as provided in Part V of the CLA or have been satisfied, discharged or provided for under Section 44 of the CLA, the Independent Certifier shall issue a certificate for payment of the Finishing Holdback.
- (d) Subject to the provisions of Section 17.3 and the removal of claims for lien preserved or perfected pursuant to the CLA arising in relation to the performance of the Works, the Finishing Holdback amount authorized by the certificate for payment of the Finishing Holdback amount pursuant to Section 4.5A(c) is due and payable by the College on the second Business Day following the receipt of such certificate for payment.

#### **4.6 Completion Holdback**

- (a) The College covenants and agrees with Project Co to pay to Project Co (or to such other person as Project Co otherwise directs) the Completion Holdback, together with all interest accrued thereon and applicable HST, in accordance with and on the date set out

in Section 24.10(b) and to not accept any redirection without the consent of any such other person to whom payment is directed. Project Co acknowledges and agrees that payment by the College of the Completion Holdback, together with all interest accrued thereon and applicable HST, in accordance with this Section 4.6(a) constitutes payment by the College to Project Co in satisfaction of the College's obligation to pay the Completion Holdback to Project Co under this Project Agreement and in satisfaction of any trust obligation of the College with respect to such payments under Section 7 of the CLA pursuant to Section 10 of the CLA.

**4.7 INTENTIONALLY DELETED**

**4.8 INTENTIONALLY DELETED**

**4.9 Compensation on Termination**

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

**4.10 Payment Due under Insurance Policies**

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

**4.11 HST**

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

**4.12 Set-Off**

- (a) The Parties agree that their rights of set-off at law or in equity are limited to the right of:
  - (i) the College to set off against any amounts otherwise due to Project Co pursuant to the terms of this Project Agreement, any amounts (including, without limitation, any amounts payable in accordance with Article 44) which are due to the College by Project Co pursuant to the terms of this Project Agreement or by the Construction Guarantor pursuant to Schedule 12 – Performance Guarantee of Construction Guarantor; and
  - (ii) Project Co to set off against any amounts otherwise due to the College pursuant to the terms of this Project Agreement, any amounts (including, without limitation, any amounts payable in accordance with Article 44) which are due to Project Co by the College pursuant to the terms of this Project Agreement.

**4.13 Effect of Payment**

- (a) Subject to Section 38.2, no payment hereunder shall be construed as an acceptance or approval of incomplete, defective or improper performance by Project Co of any of its obligations under this Project Agreement, nor shall it operate to relieve Project Co from the performance of any of its obligations under this Project Agreement which have not been performed.

**4.14 No Other Entitlement**

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

**4.15 Taxes**

- (a) All amounts specified in this Project Agreement, including, for clarity, any compensation payable on termination, are expressed exclusive of any HST payable pursuant to Applicable Law. For clarity, the College shall not be required to pay any interest and/or penalties that are imposed on or assessed against Project Co or any Project Co Party for non-compliance with Applicable Law. If Project Co is required by Applicable Law to collect any such HST from the College, the College shall pay such HST to Project Co simultaneously with the amount to which such applicable HST relates or applies.
- (b) The College shall pay, when due and payable, all property taxes or payments in lieu of property taxes that are assessed in respect of ownership or use of the Site, the Facility or the Existing Facilities.
- (c) The College shall pay all applicable HST properly payable in accordance with the *Excise Tax Act* (Canada) by the College upon and in connection with payments by the College to Project Co under this Project Agreement.

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

- (a) If, as a result of a Change in Law, the application of Taxes under Part IX of the *Excise Tax Act* (Canada) or any provincial sales tax legislation changes with respect to the provision of any goods or services by Project Co in connection with the performance of the Works, the College and Project Co agree to co-operate to determine how such change affects their respective obligations under this Project Agreement to the extent not already addressed in this Project Agreement.

#### **4.17 Changes in Recoverability of Tax Credits**

- (a) The College will pay to Project Co from time to time, as the same is incurred by Project Co, amounts equal to any Irrecoverable Tax to the extent such Irrecoverable Tax results from a Change in Law. Project Co will pay to the College from time to time, as the same is incurred by Project Co, amounts equal to any Recoverable Tax to the extent such Recoverable Tax results from a Change in Law.
- (b) For the purposes of this Section 4.17, the term “**Irrecoverable Tax**” means HST or an irrecoverable sales tax levied by the Province in lieu of all or a portion of HST incurred by Project Co in respect of the supply of any good or service to the College which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works or otherwise performing the Works to the extent that Project Co is unable to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.
- (c) For the purposes of this Section 4.17, the term “**Recoverable Tax**” means HST incurred by Project Co in respect of the supply of any good or service to the College which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Works or otherwise performing the Works to the extent that Project Co is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.

#### **4.18 Information and Assistance Provided by Project Co**

- (a) Project Co shall, at the College’s request and cost, assist the College in applying for and obtaining all remissions and credits of Taxes to which the College is entitled.
- (b) The College may apply for a global or general exemption, waiver, remission or refund of some or all Taxes which may otherwise be applicable in relation to this Project Agreement. Project Co shall, at the College’s cost, assist the College in making any applications for such global or general exemption, waiver, remission or refund and shall provide the College with such documentation as the College may reasonably require to support such application and, in any event, shall provide such consent as the College may require. Any exemption, waiver, remission, refund or other recovery of Taxes obtained by the College through such application shall accrue to the sole benefit of the College.

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

**4.19 Residency – *Income Tax Act (Canada)***

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

**4.20 Taxes – General**

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

**4.21 Taxes – Indemnity**

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

College in respect of such Taxes, and (B) any liability payable or incurred in connection with Indemnifiable Taxes (including penalties, interest and reasonable expenses associated with Tax compliance, reporting and contesting such liability for Indemnifiable Taxes, including reasonable professional expenses payable or incurred in connection therewith) arising from or with respect to Indemnifiable Taxes, whether or not they were correctly or legally asserted (“**Associated Liabilities**”). Payment under this indemnification shall be made within 30 days from the date the College makes written demand for it. A certificate containing reasonable detail as to the amount of Indemnifiable Taxes and Associated Liabilities submitted to Project Co by the College shall be conclusive evidence, absent manifest error, of the amount due from Project Co to the College. The College shall be entitled to exercise its rights of set-off under Section 4.12 against any amounts owing under this indemnification.

## **5. SCOPE OF AGREEMENT**

### **5.1 Scope of Agreement**

- (a) Project Co shall undertake the Project and perform the Works in accordance with and subject to the provisions of this Project Agreement.
- (b) Project Co shall exercise its rights and perform its obligations at its own cost and risk without recourse to the College or the Province, except as otherwise provided in this Project Agreement. Project Co’s sole recourse with respect to the subject matter of the Project Agreement shall be to the College.

## **6. REPRESENTATIONS AND WARRANTIES**

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

- (a) Project Co represents and warrants to the College that as of the date of this Project Agreement:
  - (i) Project Co [**REDACTED**]has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder;
  - (ii) Project Co and the Project Co Parties, collectively, have extensive experience and are knowledgeable in the design and construction of post-secondary education facilities and have the required ability, experience, skill and capacity to perform the Works in a timely and professional manner as set out in this Project Agreement;
  - (iii) Project Co has the requisite power, authority and capacity to execute and deliver and perform this Project Agreement, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and

documents as are required by this Project Agreement to be done, executed, delivered or performed;

- (iv) no steps or proceedings have been taken or are pending to supersede or amend the constating documents, articles or by-laws of Project Co in a manner that would impair or limit its ability to perform the obligations of Project Co under this Project Agreement;
- (v) this Project Agreement has been duly authorized, executed, and delivered by Project Co and constitutes a legal, valid, and binding obligation of Project Co, enforceable against Project Co in accordance with its terms, subject only to:
  - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
  - (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (vi) the execution, delivery, and performance by Project Co of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
  - (A) its constating, formation or organizational documents, including any by-laws;
  - (B) any Applicable Law; or
  - (C) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vii) no Project Co Event of Default has occurred and is continuing;
- (viii) all of the information regarding Project Co set out in Schedule 31 – Project Co Information is true and correct in all material respects;
- (ix) there are no actions, suits, proceedings, or investigations pending or threatened against Project Co or, to Project Co's knowledge, any Project Co Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement, and Project Co has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment;

- (x) Project Co has carefully reviewed the whole of this Project Agreement, and all other documents made available to Project Co by or on behalf of the College, and, to Project Co's knowledge, nothing contained herein or therein inhibits or prevents Project Co from completing the Works or performing the Works in accordance with this Project Agreement in a good and safe manner so as to achieve and satisfy the requirements of this Project Agreement;
- (xi) Project Co is able to meet its obligations as they generally become due;
- (xii) Project Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada) and its HST registration number is **[REDACTED]**;
- (xiii) the Scheduled Substantial Completion Date is a realistic date and is achievable by Project Co performing the Works in accordance with this Project Agreement;
- (xiv) Project Co is not a Non-Resident;
- (xv) Project Co has obtained all necessary Project Co Permits, Licences, Approvals and Agreements required to commence the Works;
- (xvi) the manager or supervisory personnel Project Co has assigned to the Project are highly experienced;
- (xvii) Project Co has a sufficient staff of qualified and competent personnel to replace its designated supervisors, subject to the College's approval, in the event of death, incapacity or resignation;
- (xviii) Project Co and certain of the Project Co Parties have conducted inspections of the Lands prior to Commercial Close and an investigation and examination of the Project Agreement, the Background Information and any other documents made available to Project Co by the College so as to ascertain the nature or location of the Works and the Lands, the physical conditions of the Lands, the interface with the Existing Facilities and protocols, rules and regulations if any, conditions relating to the transportation, handling and storage of materials and availability of labour and the character and availability of equipment, materials and facilities needed to perform the Works;
- (xix) Project Co has secured the Financing and is in a position to complete the Financing on or before the Financial Close Target Date, subject to the satisfaction of reasonable conditions that are customary in closing financing for projects similar to the Project;
- (xx) No Restricted Person has Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or in relation to the operation, management and ownership of the Project;

- (xxi) To the knowledge of Project Co, no Restricted Person has directly or indirectly, an Economic Interest in Project Co or the Project; and
- (xxii) The Construction Contractor is in possession of, the Health and Safety Certification as required under this Project Agreement (or has made an application to IHSA for its Health and Safety Certification as required under this Project Agreement) and has the ability to maintain such Health and Safety Certification until the Final Completion Date in accordance with its terms, provisions and conditions.

## **6.2 College Representations and Warranties**

- (a) The College represents and warrants to Project Co that as of the date of this Project Agreement:
  - (i) the College is a corporation without share capital in good standing with the Ministry of Government Services (Ontario) with respect to the filing of annual reports and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement;
  - (ii) the College is a college of applied arts and technology established pursuant to the *Ontario Colleges of Applied Arts and Technology Act, 2002* (Ontario), is an agency of the Crown and, subject to Sections 6.2(a)(vi)(C), (E) and (F), as applicable, has the requisite power, authority and capacity to execute and deliver this Project Agreement and to bind itself to this Project Agreement, and Project Co is entitled to rely upon the College's authority to bind itself in respect of all other agreements, instruments, undertakings and documents executed and delivered by the College that are required by this Project Agreement to be executed and delivered by the College;
  - (iii) subject to Sections 6.2(a)(vi)(C), (E) and (F), the College has the requisite power, authority and capacity to perform its obligations under this Project Agreement and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;
  - (iv) no steps or proceedings have been taken or are pending to supersede or amend the College's constating documents, letters patent or by-laws in a manner that would impair or limit its ability to perform its obligations under this Project Agreement;
  - (v) subject to Section 6.2(a)(vi)(E), the College has obtained all of the necessary approvals to enter into and perform its obligations under this Project Agreement;
  - (vi) this Project Agreement has been duly authorized, executed, and delivered by the College and constitutes a legal, valid, and binding obligation of the College, enforceable against the College in accordance with its terms, subject only to:

- (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally;
  - (B) general equitable principles and the fact that the availability of equitable remedies such as specific performance and injunction are not available against the Province and that a court may stay proceedings or the execution of judgments;
  - (C) statutory limitations of general application respecting the enforceability of claims against the Province or its property;
  - (D) Intentionally Deleted;
  - (E) any terms and conditions as are set out in the approval that has been provided in connection with this Project Agreement for the purposes of Section 28 of the *Financial Administration Act* (Ontario); and
  - (F) the powers of the Minister of Finance to effect set offs against amounts owing by the Province pursuant to Section 43 of the *Financial Administration Act* (Ontario);
- (vii) the execution, delivery, and performance by the College of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
- (A) the Act, or any regulations made in respect thereof;
  - (B) the Corporations Act, R.S.O. 1990, c. C.38, as amended;
  - (C) any Applicable Law;
  - (D) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected; or
  - (E) its constating or organizational documents;
- (viii) no College Event of Default has occurred and is continuing;
- (ix) to the knowledge of the College, there are no actions, suits, proceedings, or investigations pending or threatened (in writing) against the College at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) of which the College has received written notice that individually or in the aggregate could result in a material adverse effect on the Project; and

- (x) the College has rights of use and access to, on and over the Site and the Facility or has the requisite power to obtain such rights that are sufficient to enable the College to grant or cause to be granted to Project Co the licence rights contemplated in Section 16.1.

## **7. BACKGROUND INFORMATION**

### **7.1 No Liability**

- (a) Except as expressly provided in Sections 7.4, 18.2 and 18.3, none of the College, any College Party or any Government Entity shall be liable to Project Co or any Project Co Party for, and Project Co or any Project Co Party shall not seek to recover from the College, any College Party or any Government Entity, any damages, losses, costs, liabilities or expenses which may arise (whether in contract, tort or otherwise) from the adoption, use or application of the Background Information by, or on behalf of, Project Co or any Project Co Party.

### **7.2 No Warranty**

- (a) Except as expressly provided in Sections 7.4, 18.2 and 18.3:
  - (i) none of the College, any College Party or any Government Entity gives any warranty or undertaking of whatever nature in respect of the Background Information and, specifically (but without limitation), none of the College, any College Party or any Government Entity warrants that the Background Information represents all of the information in its possession or power (either during the conduct of the procurement process for the Project or at the time of execution and delivery of this Project Agreement) relevant or material to or in connection with the Project or the obligations of Project Co under this Project Agreement or under any of the Project Documents; and
  - (ii) none of the College, any College Party or any Government Entity shall be liable to Project Co or any Project Co Party in respect of any failure, whether before, on or after the execution and delivery of this Project Agreement:
    - (A) to disclose or make available to Project Co or any Project Co Party any information, documents or data;
    - (B) to review or update the Background Information; or
    - (C) to inform Project Co or any Project Co Party of any inaccuracy, error, omission, defect or inadequacy in the Background Information.

### **7.3 No Claims**

- (a) Project Co acknowledges and confirms that:

- (i) it has conducted its own analysis and review of the Background Information and has, before the execution and delivery of this Project Agreement, satisfied itself as to the accuracy, completeness and fitness for purpose of any such Background Information upon which it places reliance; and
- (ii) except as expressly provided in Sections 7.4, 18.2 and 18.3, it shall not be entitled to and shall not, and shall ensure that no Project Co Party shall, make any claim against the College, any College Party or any Government Entity (whether in contract, tort or otherwise), including, without limitation, any claim in damages, for extensions of time or for additional payments under this Project Agreement on the grounds:
  - (A) of any misunderstanding or misapprehension in respect of the Background Information; or
  - (B) that the Background Information was incorrect or insufficient,nor shall Project Co be relieved from any of its obligations under this Project Agreement on any such ground.

#### **7.4 Technical Reports**

- (a) The College agrees that, if at the date of this Project Agreement, except as disclosed in any Background Information or as otherwise disclosed by the College or any College Party or known by Project Co or any Project Co Party, any of the information in the Technical Reports is, to the actual knowledge of the College, incorrect or there is relevant information in the possession or control of the College that would make any of the information in the Technical Reports incorrect, then, to the extent that such incorrect information materially adversely interferes with Project Co's ability to perform the Works or materially adversely affects Project Co's cost of performing the Works, such incorrect information shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (b) For the purposes of Section 7.4(a), “to the actual knowledge of the College” means to the actual knowledge of the College Representative.

### **8. PROJECT DOCUMENTS**

#### **8.1 Project Documents**

- (a) Project Co shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which it is a party, and shall ensure that each Project Co Party shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which such Project Co Party is a party, so as to ensure that other parties to such Project Documents shall not be entitled to terminate same. In the event that Project Co receives a notice of default under any of the Project Documents, it shall

promptly, and, in any event, no later than 2 Business Days after receipt thereof, deliver a copy of such notice of default to the College.

## **8.2 Ancillary Documents**

(a) Project Co shall not:

- (i) terminate or agree to the termination of all or part of any Ancillary Document, except pursuant to Sections 47.3 and 48.2 or otherwise to prevent or cure a Project Co Event of Default (provided that commercially reasonable alternative measures would not prevent or cure such Project Co Event of Default);
- (ii) make or agree to any amendment, restatement or other modification or waive or exercise any of its rights under any Ancillary Document that materially adversely affects Project Co's ability to perform its obligations under this Project Agreement or that has the effect of increasing any liability of the College, whether actual or potential;
- (iii) breach its obligations (or waive or allow to lapse any rights it may have) or permit others to breach their obligations (or waive or allow to lapse any rights they may have) under any Ancillary Document, if any such breach (or waiver or lapse) would materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or that have the effect of increasing any liability of the College, whether actual or potential; or
- (iv) enter into, or permit the entry into by any other person of, any agreement replacing all or part of any Ancillary Document, except in the circumstances referenced in Section 8.2(a)(i),

without the prior written consent of the College, not to be unreasonably withheld or delayed, provided that, where consent is requested pursuant to Section 8.2(a)(i) or 8.2(a)(iv), such consent shall not be withheld, and shall be provided within a reasonable time, where the relevant matter referred to in Section 8.2(a)(i) or 8.2(a)(iv) will not materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or have the effect of increasing any liability of the College, whether actual or potential. In the event of termination or agreement to the termination of all or part of any Ancillary Document as described in Section 8.2(a)(i), or the entering into of any agreement replacing all or part of any Ancillary Document as described in Section 8.2(a)(iv), Project Co shall, to the extent applicable, comply with all provisions herein relating to changes in Subcontractors, including Section 47.3.

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

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

- (a) Subject to the terms of the Lenders' Direct Agreement, Project Co shall not terminate, amend or otherwise modify the Lending Agreements, or waive or exercise any of its rights under the Lending Agreements, if at the time such action is contemplated and effected, it would materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or the Project Documents or have the effect of increasing the liability of the College whether actual or potential, unless such action is a Permitted Borrowing or a Refinancing effected in accordance with the provisions of Schedule 29 - Refinancing.

#### **8.4 Compliance with Lending Agreements**

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

### **9. COLLEGE RESPONSIBILITIES**

#### **9.1 General**

- (a) The College shall, at its own cost and risk:
  - (i) perform all of its obligations under, and observe all provisions of, this Project Agreement in compliance with Applicable Law;
  - (ii) obtain, maintain, and, as applicable, renew the College Permits, Licences, Approvals and Agreements which may be required for the performance of the Works;
  - (iii) comply with all Permits, Licences, Approvals and Agreements in accordance with their terms; and
  - (iv) cooperate with Project Co in the fulfillment of the purposes and intent of this Project Agreement, provided, however, that the College shall not be under any obligation to perform any of Project Co's obligations under this Project Agreement.
- (b) The College shall, and shall cause all College Parties to, take reasonable steps to minimize undue interference with the provision of the Works by Project Co or any Project Co Party.
- (c) Nothing in this Project Agreement shall in any way fetter the right, authority and discretion of the College, any College Party or any other Government Entity in fulfilling its statutory or other functions under Applicable Law, and Project Co understands and agrees that nothing in this Project Agreement shall preclude the College's board of governors from performing, discharging or exercising their duties, responsibilities, and

powers under Applicable Law. Project Co further agrees that it shall comply, and shall cause all relevant Project Co Parties to comply, with all written directions issued by or on behalf of the College's board of governors from time to time subject to Section 29.1(b).

**10. PROJECT CO RESPONSIBILITIES – GENERAL**

**10.1 Other Business**

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

**10.2 Complete and Operational Facility**

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

**10.3 General Responsibilities and Standards**

- (a) Project Co shall, at its own cost and risk, perform and complete the Works:
  - (i) in accordance with the Works Schedule and, in this regard, shall commence the Works no later than the day following Financial Close and, subject to adjustment as provided for in the Project Agreement, (A) achieve Substantial Completion by the Scheduled Substantial Completion Date; and (B) achieve Final Completion by the Scheduled Final Completion Date;
  - (ii) in compliance with Applicable Law;
  - (iii) so as to satisfy the Output Specifications;
  - (iv) in compliance with all Permits, Licences, Approvals and Agreements and so as to preserve the existence and continued effectiveness of any such Permits, Licences, Approvals and Agreements;
  - (v) in accordance with Good Industry Practice and to meet the standards followed by professionals, manufacturers, contractors and trades who are experienced in work on post-secondary education facilities that are comparable to the Facility;
  - (vi) in a timely and professional manner;
  - (vii) with due regard to the health and safety of persons and property;

- (viii) subject to the other provisions of this Project Agreement, in a manner which will not impair the ability of and which will enable the College and the College Parties to comply with Applicable Law; and
- (ix) in accordance with all other terms of this Project Agreement.
- (b) Project Co shall cooperate with the College in the fulfillment of the purposes and intent of this Project Agreement, provided however that Project Co shall not be under any obligation to perform any of the College's obligations under this Project Agreement.

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

### **11.1 Development of Design**

- (a) Project Co shall, at its own cost, develop and complete the design of the Facility and all Design Data in accordance with the requirements of this Project Agreement, including Schedule 10 – Review Procedure and this Section 11.1.
- (b) The further development of the design and the process by which it is progressed must fully comply with the requirements of this Project Agreement.
- (c) The Parties agree that Appendix A to Schedule 10 – Review Procedure is an initial list of Design Data and other items that will require design review, which Design Data and other items shall include design, procurement and construction documentation (to a scale required by the College Design Team) for each of the following:
  - (i) **[REDACTED]%** and **[REDACTED]%** design development documentation, being design development drawings, reports, schedules and specifications progressed from the date of this Project Agreement with extensive user group input, showing all architectural, engineering and landscape design information sufficient to allow for the development of working drawings (the “**Design Development Submittals**”);
  - (ii) **[REDACTED]%** and **[REDACTED]%** working drawing documentation, being construction drawings, reports, schedules and specifications progressed from the Design Development Submittals, showing all architectural, engineering and landscape design information in accordance with the requirements of this Project Agreement (the “**Construction Document Submittals**”);
  - (iii) Permit, Licence, Approval and Agreement drawings (phased, if applicable); and
  - (iv) all other documentation required pursuant to Schedule 10 – Review Procedure.
- (d) Project Co shall submit to the College Representative for review in accordance with Schedule 10 – Review Procedure all Design Data and other items listed in Section 11.1(c).

- (e) The Design Data and other items listed in Section 11.1(c) must contain, at a minimum, the following additional information:
  - (i) identification of the stage of design or construction to which the documentation relates;
  - (ii) all design or construction drawings and specifications necessary to enable the College Representative to make an informed decision as to whether Project Co is permitted to proceed pursuant to Schedule 10 – Review Procedure;
  - (iii) for each stage of the design or construction documentation, a schedule identifying all changes to the relevant documentation that has occurred from the previous stage of design or construction documentation; and
  - (iv) where changes have been submitted, an indication of how the changes meet the requirements of this Project Agreement.
- (f) All design review meetings held by Project Co which the College wishes to attend shall be held in The Township of King, Ontario unless the College otherwise agrees in writing.
- (g) If Project Co commences or permits the commencement of the next level of design or construction of any part or parts of the Facility prior to being entitled to proceed in accordance with Schedule 10 – Review Procedure and it is subsequently determined in accordance with Schedule 10 – Review Procedure or Schedule 27 – Dispute Resolution Procedure that the design or construction does not comply with this Project Agreement, then Project Co shall forthwith, at its own cost and risk, undo, remove from the Site and/or the Existing Facilities, replace and restore, as applicable, any parts of the design or construction that do not comply with this Project Agreement.
- (h) Subject to Section 11.4, neither the College nor any College Party will have any liability:
  - (i) if a document submitted by Project Co and reviewed by the College, the College Representative or the College Design Team results in non-compliance with this Project Agreement by Project Co or a breach by Project Co of Applicable Law; or
  - (ii) for any loss or claim arising due to some defect in any documents, drawings, specifications or certificates submitted by Project Co.
- (i) Project Co and the College will cooperate with each other in the design review process. Notwithstanding such cooperation by the College, such review shall not, except as provided in Section 11.4, constitute acceptance of the Works, and Project Co shall remain solely responsible for compliance in full with all requirements of this Project Agreement.
- (j) Project Co shall allow the College Design Team, at any time, a reasonable opportunity to view any items of Design Data, which shall be made available to the College Representative as soon as practicable following receipt of a written request from the College Representative.

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

### **11.2 Start-Up Meeting**

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

### **11.3 Design Workshops**

- (a) In order to obtain user input in the preparation of, and prior to submitting, the Design Development Submittals and the Construction Document Submittals, the Parties will hold user group design workshops (the “**Design Workshops**”) upon the following terms:

- (i) the Project Co Representative shall arrange the Design Workshops in consultation with the College Representative;
  - (ii) the Parties shall cooperate to develop a reasonable schedule for the Design Workshops and shall incorporate such schedule into the Works Schedule;
  - (iii) Project Co shall circulate to the College Representative an agenda for each of the Design Workshops no later than 10 Business Days prior to the relevant Design Workshop;
  - (iv) the Design Workshops shall be held in person, except where otherwise agreed by the Parties, acting reasonably;
  - (v) Project Co shall maintain minutes of the Design Workshops, including possible design solutions and changes in design, and, within two Business Days after each Design Workshop, Project Co shall provide to the College Representative a copy of the minutes, together with a copy of any notes, comments, sketches, drawings, tracings, lay-outs, plans or diagrams prepared at the Design Workshop;
  - (vi) the College and Project Co agree that the subject matter of the Design Workshops shall not be regarded as Submittals to which Schedule 10 - Review Procedure applies, and that the College shall not be bound by the input provided in connection with the Design Workshops;
  - (vii) Project Co shall submit to the College the Design Development Submittals or the Construction Document Submittals, as applicable, for review pursuant to Schedule 10 - Review Procedure; and
  - (viii) the Parties agree that, with respect to the Design Development Submittals and the Construction Document Submittals, the period for review shall be 15 Business Days as prescribed in Schedule 10 - Review Procedure.
- (b) Prior to the [REDACTED]% Design Development Submittals, the Parties will hold Design Workshops with respect to the following matters and any other Design Workshops required by Project Co, acting reasonably:
- (i) site plan, including traffic, parking, access and landscaping;
  - (ii) space planning and room layouts, including floor plans and circulation diagrams;
  - (iii) exterior elevations, including materials, finishes and colours;
  - (iv) interior materials, finishes and colours;
  - (v) millwork and FF&E, including coordination and other details;
  - (vi) structural design, including plans and sections;

- (vii) mechanical and electrical systems, including plant layouts and functionality;
  - (viii) civil engineering design, including grading and site servicing;
  - (ix) information and communications technology integration strategy; and
  - (x) sustainable design and LEED features, including a dedicated sustainability workshop.
- (c) Prior to the [REDACTED]% Design Development Submittals, the Parties will hold Design Workshops with respect to the following matters and any other Design Workshops required by Project Co, acting reasonably:
- (i) all items listed in Section 11.3(b) and all items listed in Sections 1.0, 2.0 and 3.0 Appendix A of Schedule 10 – Review Procedure, as required;
  - (ii) physical mock-ups for the College Design Team and user review;
  - (iii) interior elevations;
  - (iv) millwork/modular casework elevations;
  - (v) door/hardware functionality;
  - (vi) FF&E coordination;
  - (vii) audio/visual systems and integration; and
  - (viii) signage and wayfinding.
- (d) Prior to each of the [REDACTED]% and [REDACTED]% Construction Documents Submittals, the Parties will hold Design Workshops with respect to the following matters and any other Design Workshops required by Project Co, acting reasonably:
- (i) millwork details;
  - (ii) ceiling details;
  - (iii) office and classroom area layout details;
  - (iv) FF&E coordination details; and
  - (v) signage and wayfinding.
- (e) The purpose of the Design Workshops is to facilitate the incorporation of the College Design Team and user input, involvement and feedback into the Design Data prior to submission of such Design Data in accordance with Schedule 10 - Review Procedure.

#### **11.4 Performance of Design Obligations**

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

#### **11.5 Works Submittals**

- (a) Any and all items, documents and anything else required or specified by this Project Agreement in respect of the Works to be submitted to, reviewed or otherwise processed by the College prior to Substantial Completion, including any and all subsequent revisions, amendments and changes thereto, shall be subject to review by the College pursuant to Schedule 10 – Review Procedure.

#### **11.6 Documents at the Site**

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

#### **11.7 General Construction Obligations**

- (a) Without limiting Section 10.3:
  - (i) Project Co is solely responsible for all construction means, methods and techniques used to undertake the Works and must provide everything (including labour, plant, equipment and materials) necessary for the construction and commissioning of the Facility, and all other performance of the Works.

- (ii) Project Co shall in a timely and professional manner and in accordance with the requirements of this Project Agreement:
  - (A) construct the Works diligently, expeditiously and in a thorough and workman-like manner;
  - (B) ensure that no works other than the Works under this Project Agreement are constructed on the Lands, the Facility or the Existing Facilities by Project Co, any Project Co Party or any person for whom Project Co is responsible at law;
  - (C) protect the Works from all of the elements, casualty and damage;
  - (D) in respect of plant, equipment, Products and materials incorporated in the Works, use plant, equipment, Products and materials that:
    - (I) are of a kind that are consistent with the Output Specifications;
    - (II) are new, of good quality and are used, handled, stored and installed in accordance with Applicable Law and Good Industry Practice, including, with respect to health and safety, so as not to be hazardous or dangerous; and
    - (III) where they differ from the Output Specifications, have been substituted with the College's prior written consent in accordance with Section 11.17.
- (iii) Without limiting Project Co's obligations pursuant to Section 11.11, the Phasing Requirements or Project Co's indemnity pursuant to Section 44.1, Project Co shall, at all times throughout the progress of the Works, be responsible for maintaining and securing the Site to prevent access onto the Site and the Facility of any persons not entitled to be there, and the licence granted to Project Co pursuant to Section 16.1 shall include rights for Project Co to do so.

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

- (a) Project Co shall, at its own cost and risk:
  - (i) obtain, maintain, and, as applicable, renew all Project Co Permits, Licences, Approvals and Agreements which may be required for the performance of the Works;
  - (ii) except for those obligations which are identified as College obligations in Appendix 1 of Schedule 1 – Definitions and Interpretation, assume all of the obligations of the College under the College Permits, Licences, Approvals and Agreements (and for greater certainty, the Development Approvals); and

- (iii) comply with all Permits, Licences, Approvals and Agreements in accordance with their terms.
- (b) Where any Permits, Licences, Approvals and Agreements have requirements that may impose any conditions, liabilities or obligations on the College or any College Party, Project Co shall not obtain or renew such Permits, Licences, Approvals and Agreements without the prior written consent of the College not to be unreasonably withheld or delayed, provided that neither the College nor any College Party shall be responsible for obtaining or for the failure of Project Co to obtain any Permit, Licence, Approval and Agreement or for the failure of Project Co to renew any College Permit, Licence, Approval and Agreement. The College shall comply, or shall require compliance, with any conditions, liabilities or obligations as are imposed on the College or any College Party by the requirements of any Permit, Licence, Approval and Agreement obtained with the College consent under this Section 11.8(b).
- (c) The College shall provide Project Co with such information and administrative assistance as Project Co may reasonably require in relation to the Permits, Licences, Approvals and Agreements. In respect of Section 11.8(a)(ii), the College shall: (i) provide Project Co with relevant information and copies of notices received under the applicable College Permits, Licences, Approvals and Agreements and (ii) execute any documents under the applicable College Permits, Licences, Approvals and Agreements which Applicable Law dictates that only the College can execute.

### **11.9 Protection of Work and Property**

- (a) Project Co shall protect the Works and the property of the College at the Site, including the Existing Facilities, from damage which may arise as a result of Project Co's operations under this Project Agreement, and shall be responsible for such damage, except damage which occurs as a result of acts or omissions by the College or any College Party.
- (b) Should Project Co, in the performance of this Project Agreement, damage the Works or the property of the College at the Lands, including the Existing Facilities, Project Co shall be responsible to Make Good such damage at Project Co's expense.
- (c) Should damage occur to the Works or the property of the College at the Lands, including the Existing Facilities, for which Project Co is not responsible, as provided in Section 11.9(a), Project Co shall Make Good such damage to the Works and, if the College so directs, to the property of the College and the Guaranteed Price and Scheduled Substantial Completion Date shall be adjusted in accordance with Schedule 22 – Variation Procedure.
- (d) Project Co shall not undertake to repair and/or replace any damage whatsoever to adjoining property without first consulting the College and receiving written instructions as to the course of action to be followed.

- (e) Notwithstanding Section 11.9(d), where there is danger to life or property which arises out of or in connection with the performance of the Works, either Party may, but Project Co shall, take such emergency action as is necessary to remove the danger.
- (f) If any Project Co Party has caused damage to the work of another contractor related to the Project, Project Co agrees upon due notice to settle with the other contractor by negotiation or arbitration in accordance with Section 11.12(e) and Schedule 27 – Dispute Resolution Procedure. If the other contractor makes a claim against the College on account of damage alleged to have been so sustained, the dispute shall be dealt with in substantially the same manner as contemplated in Section 11.12(e) and Schedule 27 – Dispute Resolution Procedure.

### **11.10 Liability Unaffected**

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

### **11.11 Safety**

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

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

- (vi) provide the College with a certificate of good standing from WSIB or any successor thereto once every 90 days.
- (b) At any time that the Works are being carried out in or around the Existing Facilities Project Co shall at all times:
- (i) ensure that it complies with all safety requirements set out in the Project Agreement, including those set out in Section 11.11(a) above; and
  - (ii) keep the Existing Facilities in a safe and orderly state, as appropriate and in accordance with Good Industry Practice, to avoid any danger to students, faculty, employees and other persons attending the Existing Facilities.

### **11.12 Additional Works**

- (a) The College reserves the right to carry out Additional Works. The College may assign to Project Co responsibility for:
- (i) directing the methods and means of construction of the Additional Works;
  - (ii) coordinating and scheduling the Additional Works; and/or
  - (iii) providing safety training in respect of the Additional Works.
- (b) In connection with the Additional Works, the College shall:
- (i) to the extent that the College has assigned responsibility for such matters to Project Co pursuant to Section 11.12(a), cause Additional Contractors to comply with the instructions of Project Co relating to the methods and means of construction of the Additional Works, coordination and scheduling of the Additional Works and safety training in respect of the Additional Works;
  - (ii) cause Additional Contractors to comply with the instructions of Project Co relating to matters of health and safety on the Site;
  - (iii) enter into separate contracts with Additional Contractors containing terms and provisions which: (A) are consistent with the terms and provisions of this Project Agreement (including Schedule 27 – Dispute Resolution Procedure); (B) to the extent that the College has assigned responsibility for such matters to Project Co pursuant to Section 11.12(a), require Additional Contractors to comply with all directions of Project Co in respect of any matter regarding the methods and means of construction of the Additional Works, coordination and scheduling of the Additional Works and safety training in respect of the Additional Works; and (C)

- require Additional Contractors to comply with the instruction of Project Co relating to matters of health and safety on the Site;
- (iv) ensure that insurance coverage is provided in respect of the Additional Works as would be required by a prudent owner similarly situated and that such insurance is coordinated with the insurance coverage of Project Co as it affects the Works to provide seamless insurance coverage to Project Co and the College (including, if appropriate, naming the College and Project Co as additional insureds and/or loss payees) and in any event, such insurance shall provide for commercial general liability insurance of not less than **[REDACTED]**; and
  - (v) take all necessary steps to avoid labour disputes or other disputes on the Project arising from the Additional Works.
- (c) In connection with the Additional Works, Project Co shall:
- (i) to the extent that the College has assigned responsibility for such matters to Project Co pursuant to Section 11.12(a), and subject to the performance by the College of its obligations under Sections 11.12(b)(i) and (iii), direct the methods and means of construction of the Additional Works, coordinate and schedule the Additional Works with the Works to be performed under this Project Agreement, as applicable, and provide safety training in respect of the Additional Works;
  - (ii) subject to the performance by the College of its obligations under Sections 11.12(b)(i) and (iii), assume overall responsibility for compliance by the Additional Contractors and Additional Works with all aspects of Applicable Law relating to health and safety at the Site, including all the responsibilities of the ‘constructor’ under the *Occupational Health and Safety Act* (Ontario) in accordance with such Act prior to Substantial Completion and, at the request of the College exercised in a manner consistent with the said Act, at any time that Project Co is acting as a ‘constructor’ on the Site following Substantial Completion;
  - (iii) afford Additional Contractors reasonable opportunity to introduce and store their products and use their construction machinery and equipment to execute the Additional Works;
  - (iv) participate with the College and Additional Contractors in reviewing their construction schedules when directed to do so by the College; and
  - (v) where all or part of the performance of the Works is affected by, or depends upon, the completion and/or proper execution of the Additional Works, promptly, and prior to proceeding with the affected Works, report to the College in writing any readily apparent deficiencies in the Additional Works. Failure by Project Co to so report shall invalidate any claims against the College by reason of such readily apparent deficiencies.

- (d) If, in respect of Additional Works carried out prior to Substantial Completion:
- (i) any Additional Contractors cause any damage to the Works;
  - (ii) to the extent that the College has assigned responsibility for such matters to Project Co pursuant to Section 11.12(a), Project Co incurs any additional costs or there is any delay in the Works Schedule as a result of any Additional Contractors not complying with the instructions of Project Co regarding methods and means of construction, coordination, and scheduling or safety; or
  - (iii) Project Co incurs any additional costs or there is any delay in the Works Schedule as a result of any such Additional Works,

then, provided such delay in the Works Schedule or additional costs is not as a result of Project Co's failure to perform its obligations under Sections 11.12(c) or any act or omission of Project Co or a Project Co Party, any such delay in the Works Schedule or additional costs in respect of the Works shall, subject to and in accordance with Section 30, be treated as a Delay Event and, subject to and in accordance with Section 31, be treated as a Compensation Event.

- (e) Claims, disputes, and other matters in question between Project Co and Additional Contractors shall be dealt with in substantially the same manner as contemplated in Schedule 27 – Dispute Resolution Procedure, provided the Additional Contractors are subject to binding reciprocal obligations in the contracts between the College and the Additional Contractors. Project Co shall be deemed to have consented to arbitration of any dispute with any Additional Contractor whose contract with the College contains a binding reciprocal agreement to arbitrate.
- (f) In connection with the Additional Works, Project Co may propose a Variation as follows:
- (i) Project Co shall have a period of 10 Business Days following notice from the College of the College's intention to carry out such Additional Works including a reasonable description of such Additional Works to propose a Variation if such Additional Works are (A) reasonably expected to void a warranty in favour of Project Co from a Project Co Party or equipment supplier and given in accordance with Good Industry Practice, or (B) reasonably expected to have a material negative effect on Project Co's ability to perform the Works including a material delay in the Works or material additional costs in respect of the Works;
  - (ii) if Project Co has proposed a Variation in accordance with Section 11.12(f)(i), the College shall, within 10 Business Days of such proposal, either issue a Variation Enquiry or give notice to Project Co that it does not agree that a Variation is required;
  - (iii) either Party may refer the question of whether a Variation is required pursuant to Section 11.12(f)(i) for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and

- (iv) where the College has, under Section 11.12(f)(ii), given notice to Project Co that it does not agree that a Variation is required, the College shall, within 10 Business Days of a subsequent agreement or of a determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
  - (A) the College shall not be entitled to withdraw any such Variation Enquiry unless the College determines not to proceed with the Additional Works or to proceed only in a manner that the Additional Works will not result in a warranty becoming void (as contemplated in Section 11.12(f)(i)) or will not result in any material negative effect (including material additional costs) on Project Co’s ability to perform any of the Works and Project Co has agreed with such conclusion, or the Parties otherwise agree; and
  - (B) the Parties shall, without prejudice to their respective obligations under this Project Agreement, use commercially reasonable efforts to mitigate any adverse effects of such Additional Works, including, with respect to any void or voidable warranty and any increase in costs arising therefrom.
- (g) Placing, installing, applying or connecting the Additional Works performed by Additional Contractors, on and to the Works performed by Project Co will not relieve Project Co from its obligations under the Project Agreement with respect to the Works, except to the extent Project Co is entitled to a Delay Event in accordance with Section 11.12(d) or as expressly described in any Variation Confirmation.

### **11.13 Defective Works**

Prior to Substantial Completion:

- (a) Project Co shall promptly Make Good any deficiency, defect or error in the Works or failure of the Works to conform to the Project Agreement, or any deficiency, defect or error in relation to any Product (collectively, a “**Construction Defect**”) whether or not such Construction Defect has been incorporated in the Facility and whether or not the Construction Defect is the result of poor workmanship, use of defective Products or damage through carelessness or other act or omission of Project Co. The correction of Construction Defect shall be at Project Co’s expense. Project Co shall Make Good, in a manner acceptable to the Independent Certifier, all Construction Defects, whether or not they are specifically identified by the Independent Certifier, and Project Co shall prioritize the correction of any Construction Defects so as not to interfere with or derogate from the Works Schedule, provided that Project Co shall prioritize the correction of any Construction Defects that in the sole discretion of the College is determined to adversely affect the day to day operation of the College.
- (b) Project Co shall Make Good promptly other contractors’ work destroyed or damaged by such rectifications at Project Co’s expense.

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

#### **11.14 Warranty Obligations**

- (a) Project Co represents, warrants and covenants that:
  - (i) the Works shall conform to the requirements of this Project Agreement, Good Industry Practice, Applicable Law and all professional engineering principles generally accepted as standards of the industry in the Province of Ontario;
  - (ii) the Works shall be free of defects, including design defects, errors and omissions; and
  - (iii) materials and equipment shall be of good quality and in compliance with this Project Agreement.
- (b) For a period from the Substantial Completion Date to one year following the Substantial Completion Date (the “**Warranty Period**”), and subject to Section 11.14(c), Project Co shall promptly, at its sole cost and expense, correct and Make Good all Construction Defects arising in respect of the Works. For greater certainty, Project Co is required to correct and Make Good Construction Defects related to any Product during the Warranty Period despite Project Co having obtained on the College’s behalf industry-standard warranties in accordance with Section 11.14(f). For all work to correct Construction Defects, the Warranty Period shall be extended for a further one year from the date of the last work completed in respect of such corrective Works. For clarity, any extension of the Warranty Period for the purposes of a correction shall only apply to the relevant Construction Defect and not the Works as a whole.
- (c) In addition to the obligation to correct and Make Good Construction Defects during the Warranty Period, Project Co shall at its expense correct and Make Good any Construction Defects that could not reasonably have been ascertained by a competent person in accordance with Good Industry Practice during a visual inspection of the Works (“**Construction Latent Defect**”), provided the College gives Project Co written notice of the Construction Latent Defect within the time frame applicable to such Construction Latent Defect pursuant to the *Limitations Act*, 2002 (Ontario).
- (d) The warranties described in this Section 11.14 shall cover labour and material, including, the costs of removal and replacement of covering materials. The warranties shall not limit extended warranties on any items of equipment or material called for elsewhere in the Output Specifications or otherwise provided by any manufacturer of such equipment or material.

- (e) If Project Co fails to correct and Make Good Construction Defects in accordance with Sections 11.14(b) and 11.14(c) and in the time period specified in Section 11.15(a) or Section 11.15(b), as applicable, without prejudice to any other right or remedy the College may have, the College may correct such Construction Defect at Project Co's expense.
- (f) Project Co shall obtain warranties from the manufacturers of each of the Products for the duration(s) and in accordance with the applicable requirements specified in the Output Specifications in the name of and to the benefit of Project Co. Where, in respect of a Product warranty, the Output Specifications do not specify a specific duration and/or other requirements, Project Co shall obtain industry-standard warranties from the applicable manufacturers in the name of and to the benefit of Project Co and shall use commercially reasonable efforts to ensure that such Product warranties extend for as long a period from the Substantial Completion Date as can be obtained from the applicable manufacturer, but in any event such Product warranties shall extend no less than one year from the Substantial Completion Date. Each Product warranty shall be issued by the applicable manufacturer and delivered to Project Co no later than 30 days prior to the Substantial Completion Date. Project Co shall ensure that each Product warranty, including any Product warranty extended under this Section 11.14(f), is fully assigned to the College, at no cost or expense to the College, at the end of the Warranty Period, as such Warranty Period may be extended in accordance with Section 11.14(b).

#### **11.15 Prompt Repair of Warranty Work**

- (a) Project Co acknowledges that the timely performance of warranty work is critical to the ability of the College to maintain effective operations of the Facility. Project Co shall use commercially reasonable efforts to respond to any requirement by the College to correct Construction Defects within the time periods required by the College (which, for certainty, may, in respect of an Emergency, require immediate correction). Project Co further acknowledges that if the College is unable to contact Project Co and/or the corrective work is not commenced within such time period as may be required by the College, the College's own forces may take such emergency steps as are reasonable and appropriate to correct such Construction Defects, at Project Co's sole cost and expense and, except in the case of damage caused by the College's own forces, such emergency steps taken by the College's own forces shall not invalidate any warranties in respect of such portion of the Works affected by such corrective actions of the College's own forces.
- (b) Subject to Section 11.15(a), Project Co shall promptly, and in any event not more than 30 days after receipt of written notice thereof from the College, Make Good any Construction Defects which may develop within the Warranty Period, and also Make Good any damage to other Work caused by the correction of Construction Defects. All such corrective work shall be at Project Co's sole cost and expense and shall not be treated as, or entitle Project Co to request or form the basis of a claim for, a Variation, additional compensation or damages. The above-noted time period of 30 days shall be subject to the following:

- (i) If the corrective work cannot be completed in the 30 days specified, Project Co shall be in compliance if Project Co:
  - (A) commences and is diligently proceeding with the corrective work within the specified time;
  - (B) provides the College with a schedule acceptable to the College for such correction; and
  - (C) Makes Good the Construction Defect or damage or in accordance with such schedule.
- (c) If Project Co fails to correct and Make Good the Works in the time specified in Section 11.15(a) or Section 11.15(b), as applicable, or subsequently agreed upon, without prejudice to any other right or remedy the College may have, the College may correct such Works and deduct the cost and expense thereof from Completion Holdback or from any payment then or thereafter due to Project Co.
- (d) The performance of corrective work and Making Good of Construction Defects or damage for which Project Co is responsible shall be commenced and completed as expeditiously as possible in accordance with Section 11.15(a) or Section 11.15(b), as applicable, and shall be executed at times convenient to the College and this may require work outside normal working hours at Project Co's expense. Any extraordinary measures required to complete the Work, as directed by the College to accommodate the operation of the Facility or other aspects of the Project as constructed, shall be at Project Co's sole cost and expense.
- (e) The foregoing express warranties shall not deprive the College of any action, right or remedy otherwise available to the College at law or in equity for breach of any of the provisions of the Project Agreement or any Ancillary Document by Project Co, and the periods referred to in this Section 11.15, shall not be construed as a limitation on the time in which the College may pursue such other action, right or remedy.

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

- (a) Project Co recognizes and understands that the College is a college under the *Ontario Colleges of Applied Arts and Technology Act, 2002* and is therefore subject to a highly regulated legal and operating environment. Project Co acknowledges that in addition to the use of Good Industry Practice, this Project Agreement includes instructions as to the manner in which the Works are to be performed in order to minimize disturbance to the Existing Facilities, including with respect to noise, dust control, access to the Site and the particular requirements in respect of those portions of the Works which are to be carried out within the Existing Facilities and in respect of those portions of the Works where connections are being made to the Existing Facilities. In addition, Project Co acknowledges that it has familiarized itself with the facility and/or building operations of the Existing Facilities and will perform the Works taking into account the requirements

of the College to maintain normal facility and/or building operations of the Existing Facilities. Project Co further acknowledges that the Cost of the Works includes all premium time and overtime that may be required to perform the Works in accordance with this Project Agreement and Good Industry Practice. Project Co shall develop and implement protocols in furtherance of the foregoing in accordance with the Output Specifications.

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

**11.17 Substitutions**

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

**11.18 Change in Standards**

- (a) Where this Project Agreement requires Project Co to comply with a technical standard in respect of the design and construction of the Facility, and that standard has changed between the date of this Project Agreement and the date that such compliance is required, then Project Co shall give notice to the College of such change. If, after such notice, the College requires compliance with the changed standard (rather than the standard applicable as of the date of this Project Agreement), then, to the extent such change impacts the Works and would not have otherwise been taken into account by compliance with Good Industry Practice, such changed standard shall, subject to and in accordance with Schedule 22 - Variation Procedure, result in a Variation. If the College does not

require compliance with the changed standard, then Project Co shall continue to comply with the standard applicable as of the date of this Project Agreement, without a Variation therefor. This Section 11.18 shall not apply where a change in a technical standard is also a Change in Law.

**11.19 Subcontractors and Suppliers**

- (a) Project Co shall preserve and protect the rights of the Parties under this Project Agreement with respect to the works to be performed under Subcontract, and shall:
  - (i) enter into Subcontracts or written agreements with Project Co Parties to require them to perform their work as provided in the Project Agreement;
  - (ii) incorporate the relevant terms and conditions of the Project Agreement into all contracts or written agreements with Project Co Parties; and
  - (iii) be as fully responsible to the College for acts and omissions of the Project Co Parties as for acts and omissions of persons directly employed by Project Co.
- (b) Attached in Part 1 of Schedule 8 – Project Co Parties is a list of all Project Co Parties that Project Co has engaged or caused to be engaged for the performance of the Work as of the date of execution of this Project Agreement. Project Co agrees to update such list from time to time as additional Project Co Parties are engaged. Any of these named Project Co Parties listed by Project Co may be changed by Project Co upon prior notice to (but without the approval of) the College Representative, provided however, that if the College Representative reasonably objects to any change to a mechanical or electrical Subcontractor that is a Project Co Party, then Project Co shall select an alternative replacement mechanical or electrical Subcontractor to which the College Representative does not reasonably object.
- (c) Project Co hereby agrees to contractually obligate the Construction Contractor to enter into the Construction Contractor’s Direct Agreement and, subject to Section 11.19(d), to cause the Construction Contractor to cause each of the other Project Co Parties, including Suppliers leasing any construction machinery and equipment, to enter into the Subcontractor’s Direct Agreement, to evidence, among other things, that the College shall have the right to cure any default by the Construction Contractor under the Subcontract.
- (d) With the exception of the Subcontracts specifically listed in items (a) through (g) in Part 2 of Schedule 8 – Project Co Parties, none of Project Co, the Construction Contractor or the applicable Project Co Party are obliged to enter into a Subcontractor’s Direct Agreement in respect of Subcontracts having a total estimated cost of \$[REDACTED] or less.
- (e) Subject to Section 11.19(d), Project Co agrees to deliver to the College the Subcontractor’s Direct Agreements by the applicable due dates set out in Part 2 of Schedule 8 – Project Co Parties. If, following the date that [REDACTED]%

Construction Document Submittals are submitted to the College in accordance with Schedule 10 – Review Procedure, Project Co is required to enter into any additional Subcontractor’s Direct Agreement pursuant to this Section 11.19, Project Co shall deliver such Subcontractor’s Direct Agreements to the College within 30 days of execution.

**11.20 Apprenticeship Plan and Program**

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

- (e) The College may, in its sole discretion, release Project Co's Apprenticeship Plan to the public. Project Co's Apprenticeship Plan shall not be Confidential Information.

### **11.21 Procurement Monitoring and Implementation Plan**

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

### **11.22 Health and Safety Certification**

- (a) Project Co shall cause the Construction Contractor at its own cost and risk, at all times during the performance of the Works to:
  - (i) to the extent the Construction Contractor has not obtained its Health and Safety Certification prior to Financial Close, to use best efforts to obtain its Health and Safety Certification no later than six months following Financial Close. In the event that the College is satisfied, in its sole discretion, that the Construction Contractor has used best efforts to obtain its Health and Safety Certification in accordance with this Section 11.22 and the Construction Contractor has not obtained its Health and Safety Certification by the end of such six month period, then the College shall establish a time period during which the Construction Contractor shall obtain its Health and Safety Certification, which time period shall not be less than 60 days;
  - (ii) maintain, and, as applicable, renew its Health and Safety Certification; and
  - (iii) comply with all requirements of the Health and Safety Certification in accordance with its terms.
- (b) Without limiting any other provision of this Project Agreement, if at any time during the performance of the Works:
  - (i) The Construction Contractor fails,
    - (A) to maintain its Health and Safety Certification in accordance with its terms or in accordance with this Project Agreement; or
    - (B) to obtain its Health and Safety Certification in accordance with this Project Agreement and the College determines that the failure to obtain

the Health and Safety Certification is as a result of the Construction Contractor not using best efforts to obtain such certification and the College delivers a notice to Project Co indicating that the Construction Contractor has failed to obtain its Health and Safety Certification in accordance with this Project Agreement,

(collectively, an “**H&S Certification Default Event**”); or

- (ii) the College delivers a notice to Project Co indicating that the College is of the opinion that the Construction Contractor will fail to maintain its Health and Safety Certification in accordance with its terms or in accordance with this Project Agreement;

Project Co shall either:

- (iii) immediately upon the occurrence of an H&S Certification Default Event, notify the College that an H&S Certification Default Event has occurred and produce and deliver to the College:
  - (A) a report identifying the reasons for the failure to obtain or maintain the Health and Safety Certification;
  - (B) a plan showing the steps that are to be taken to have the Health and Safety Certification reinstated or obtained, as applicable, within a period of not more than 30 days (the “**Health and Safety Certification Reinstatement Plan**”), which Health and Safety Certification Reinstatement Plan shall be subject to review and approval by the College and, to the extent the College requires any amendments or revisions to be made to the Health and Safety Certification Reinstatement Plan, Project Co shall take, and shall cause the Construction Contractor to take, all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to the College an amended Health and Safety Certification Reinstatement Plan not more than 5 Business Days from the date on which such request is made by the College; and
  - (C) no later than 5 Business Days after the H&S Certification Default Event occurs, arrange to have conducted a complete H&S Inspection in accordance with Section 15.5(a); or
- (iv) within 5 Business Days of receipt of the notice from the College under 11.22(b)(ii), produce and deliver to the College:
  - (A) a report identifying the manner in which the Health and Safety Certification shall be maintained or obtained, as applicable;
  - (B) a plan showing the steps that are to be taken to ensure that the Health and Safety Certification will be maintained without interruption (the “**Health and Safety Certification Maintenance Plan**”), which Health and Safety

Certification Maintenance Plan shall be subject to review and approval by the College and, to the extent the College requires any amendments or revisions to be made to the Health and Safety Certification Maintenance Plan, Project Co shall take all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to the College an amended Health and Safety Certification Maintenance Plan not more than 5 Business Days from the date on which such request is made by the College; and

- (C) arrange to have conducted a complete H&S Inspection in accordance with Section 15.5(a).

### **11.23 Demolition Requirements**

- (a) Without limiting Project Co's obligation to perform the Works at all times in accordance with Applicable Law, in respect of any Demolition, Project Co shall, and shall cause each Project Co Party that is performing any part of the Demolition to, at such person's own cost and risk and at all times during the performance of the Works:
  - (i) conduct all work in connection with any Demolition at all times in compliance with section 3 of the Performance Standards Regulation and the Building Code;
  - (ii) ensure that all persons having responsibility for the supervision of any such Demolition are qualified as either a professional engineer, limited license holder or provisional license holder (as such terms are used in the Performance Standards Regulation) (such person is hereinafter referred to as a "**Demolition Supervisor**");
  - (iii) observe and perform the Demolition in a manner that is consistent with the recommendations set forth in the Demolition Guidelines in all material respects; and
  - (iv) in respect of any Complex Structure Demolition to be conducted by Project Co or any Project Co Party:
    - (A) prepare detailed specifications relating to such Complex Structure Demolition which specifications will include, without limitation, a detailed risk assessment and risk mitigation plan assessing all apparent or inferable risks that might be associated with the Demolition, colour-coded Load-Path Diagrams (which will include a description of the Demolition Requirements set forth herein) to supplement the Site work plans and blueprints relating to the Demolition and all other technical requirements relating to the Complex Structure Demolition (the "**Demolition Specifications**");
    - (B) at all times when a Complex Structure Demolition is being performed that the Demolition Specifications, Demolition work plans and Load-Path

Diagram, be present and available at the Site at which such Complex Structure Demolition is being performed; and

- (C) ensure at all times when a Complex Structure Demolition is being performed that a Demolition Supervisor will be on the Site at which such Complex Structure Demolition is being performed and actively supervising all activities in respect of the Complex Structure Demolition,

(collectively, the “**Demolition Requirements**”).

- (b) If at any time while any Demolition is being performed pursuant to this Project Agreement, Project Co or any Project Co Party that is performing any part of any Demolition receives notice from the College or any Governmental Authority that the Demolition is being conducted in a manner that is either not in compliance with the Demolition Requirements or not otherwise in accordance with this Project Agreement (such event referred to as a “**Demolition Default Event**”),

Project Co shall and shall cause any applicable Project Co Party to:

- (i) immediately upon the occurrence of a Demolition Default Event, notify the College that a Demolition Default Event has occurred, unless the College was the person that provided notice of the Demolition Default Event;
  - (ii) cease all work in respect of such Demolition; and
  - (iii) within 5 Business Days of receipt of a notice of a Demolition Default Event, produce and deliver to the College Representative:
    - (A) a report identifying the reasons for the occurrence of the Demolition Default Event; and
    - (B) a Demolition Plan showing the steps that are to be taken to rectify the Demolition Default Event within a period of not more than 30 days from the occurrence of the Demolition Default Event, which Demolition Plan shall be subject to review and approval by the College and, to the extent the College requires any amendments or revisions to be made to such Demolition Plan, Project Co and the applicable Project Co Parties shall take all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to the College an amended and revised Demolition Plan not more than 5 Business Days from the date on which such request is made by the College.
- (c) No Demolition shall be recommenced at the Site that was the subject of the Demolition Default Event until:

- (i) the College is satisfied that Project Co or the applicable Project Co Party has taken all necessary steps to remediate such Demolition Default Event in accordance with Demolition Plan; and
- (ii) the College has received a report, in form and substance satisfactory to the College, prepared by a professional engineer that the Demolition Default Event has been remediated and the Site has been properly prepared for the Demolition to proceed in accordance with the Demolition Plan.

## **12. REPRESENTATIVES**

### **12.1 The College Representative**

- (a) Subject to the limitations set out in Section 12.1(d), the College Representative shall exercise the functions and powers identified in this Project Agreement as functions or powers to be performed by the College Representative and such other functions and powers of the College under this Project Agreement as the College may notify Project Co from time to time.
- (b) The College may, from time to time by written notice to Project Co, change the College Representative. Such change shall have effect on the later of the date of delivery of such notice and the date specified in such notice.
- (c) During any period when no College Representative has been appointed, or when the College Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the College Representative's functions under this Project Agreement, the College shall perform or may, by written notice to Project Co, promptly appoint an alternative College Representative to perform the functions which would otherwise be performed by the College Representative. Upon receipt of such written notice, Project Co and the Project Co Representative shall be entitled to treat any act of such alternative College Representative which is permitted by this Project Agreement as being authorized by the College, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.
- (d) The College Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement or to authorize a Variation.
- (e) Subject to the limitations set out in Sections 12.1(a) and 12.1(d), unless otherwise notified in writing, Project Co and the Project Co Representative shall be entitled to treat any act of the College Representative which is authorized by this Project Agreement as being authorized by the College, and Project Co and the Project Co Representative shall not be required to determine whether authority has in fact been given.

### **12.2 The Project Co Representative**

- (a) Subject to the limitations set out in Section 12.2(d), the Project Co Representative shall have full authority to act on behalf of Project Co for all purposes of this Project Agreement.
- (b) Project Co may change the Project Co Representative with the prior written consent of the College, not to be unreasonably withheld or delayed.
- (c) During any period when the Project Co Representative is unable, through illness, incapacity or any other reason whatsoever, to perform the Project Co Representative's functions under this Project Agreement, Project Co shall perform or may, by written notice to the College, promptly appoint an alternative Project Co Representative to perform the functions which would otherwise be performed by the Project Co Representative, provided that, Project Co must seek the College's consent in accordance with Section 12.2(b) if such alternative Project Co Representative is in place for more than 180 days. Upon receipt of such written notice, the College and the College Representative shall be entitled to treat any act of such alternative Project Co Representative which is permitted by this Project Agreement as being authorized by Project Co, and the College and the College Representative shall not be required to determine whether authority has in fact been given.
- (d) The Project Co Representative shall not, except as otherwise provided in this Project Agreement, be entitled to modify or waive any provision of this Project Agreement.
- (e) Subject to the limitations set out in Section 12.2(d), unless otherwise notified in writing, the College and the College Representative shall be entitled to treat any act of the Project Co Representative which is authorized by this Project Agreement as being authorized by Project Co, and the College and the College Representative shall not be required to determine whether authority has in fact been given.

### **12.3 Communications to Representatives**

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

### **12.4 Key Individuals**

- (a) The individuals who are critical to the performance of the Works are identified in Schedule 9 – Key Individuals. Project Co shall use commercially reasonable efforts to ensure that such persons remain involved in the Works in the capacity set out in Schedule 9 – Key Individuals and, in particular, will not, for the duration of the Works, require or request any such person to be involved in any other project on behalf of Project Co or any Project Co Party if, in the opinion of the College, acting reasonably, such involvement would have a material adverse effect on the Works.

- (b) If Project Co considers it necessary to replace any individual identified in Schedule 9 – Key Individuals, Project Co shall provide the College with relevant information on the proposed replacement and shall consult with the College before finalizing the appointment of such replacement. Project Co shall not replace any of the individuals identified in Schedule 9 – Key Individuals without the prior written consent of the College, which consent shall not be withheld or delayed where the proposed replacement is suitably qualified and experienced and of equal or better quality and experience than the individual being replaced.
- (c) If the College determines, acting reasonably, that it is in the best interests of the College that any individual identified in Schedule 9 – Key Individuals be replaced, the College shall notify Project Co (including a detailed explanation of the reasons for such determination), and, within 30 days of receipt by Project Co of such notice, Project Co shall provide the College with relevant information on the proposed replacement and shall consult with the College before finalizing the appointment of such replacement. Project Co shall not replace any of the individuals identified in Schedule 9 – Key Individuals without the prior written consent of the College, which consent shall not be withheld or delayed where the proposed replacement is suitably qualified and experienced and of equal or better quality and experience than the individual being replaced.

### **13. WORKS SCHEDULE**

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

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

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

- (a) Project Co shall:
  - (i) prepare and submit to the College and the Independent Certifier as soon as practical and in any event within 45 days of Financial Close, a detailed computerized draft Works Schedule using a critical path method (“CPM”) network and a draft Works Schedule dependent cash flow forecast, each in a form approved by the College. The planning and schedule software shall be Primavera 6.0 or other software compatible with Primavera 6.0 that supports the completion of the Works in accordance with Section 13.1. For clarity, the draft Works schedule shall be submitted in hard and soft copy in the native file format prescribed in this Section 13.2(a)(i), showing all the schedule underlying assumptions, including tasks interdependency and schedule floats. The draft Works Schedule and any other schedule related reporting requirements of Project

Co shall also conform to the phasing and sequencing requirements for the Works as set out in the Project Agreement, including the work to be completed by the College's own forces or by other contractors, the Scheduled Substantial Completion Date, the Scheduled Final Completion Date, the Output Specifications, including the sequencing requirements, the schedule for commissioning of the Works and for achieving the Scheduled Substantial Completion Date and the Scheduled Final Completion Date. The College shall provide Project Co with comments on the draft Works Schedule in accordance with Schedule 10 – Review Procedure, provided that the period for review of such draft schedule shall be 20 Business Days rather than the 10 Business Days prescribed in Section 2.4 of Schedule 10 – Review Procedure. Project Co shall revise the draft Works Schedule to the extent required by Schedule 10 – Review Procedure within 30 days of receipt of any comments from the College. Section 31.2(c) shall apply in respect of any Compensation Event that occurs prior to the College assigning the comment “NO COMMENT” or “MINOR NON-CONFORMANCE” to the draft Works Schedule. When agreed by the Parties, the draft Works Schedule shall become the Works Schedule;

- (ii) continuously monitor the progress of the Works in relation to the Works Schedule and the cash flow and update the Works Schedule and the cash flow projections set out in the Works Report, maintain the continuity of the Works Schedule's CPM network for all updates and revisions and immediately notify the College of any variance or potential variance in the scheduled completion dates;
- (iii) advise the College Representative of any revisions required to the Works Schedule as a result of extension of the Scheduled Substantial Completion Date in accordance with Schedule 22 – Variation Procedure;
- (iv) identify potential variances between scheduling and scheduled completion dates, review the schedule of Works not started or incomplete and implement necessary adjustments in the Works Schedule in order to meet the Scheduled Substantial Completion Date and the Scheduled Final Completion Date set out in the Works Schedule, including the movement of manpower and equipment in response to availability of work areas;
- (v) comply with the Works Schedule so as not to interfere with the activities of the College in the Existing Facilities;
- (vi) monitor the Subcontractors' personnel staffing and equipment and the availability of materials and supplies in order to meet the Works Schedule and take appropriate courses of action when the requirements of a Subcontract with any Project Co Party are not met;
- (vii) obtain from Project Co Parties a schedule showing the order number, vendor's name, shop drawing status, manufacturing lead time and delivery date of all critical material and equipment required for the Works;

- (viii) pre-order equipment, materials and supplies where necessitated by cost and/or time factors and expedite delivery of critical items;
  - (ix) in consultation with the College Representative, include in the Works Schedule the integration of the equipment described in the Output Specifications, rough-in requirements, supply and installation, including of the College's equipment and FF&E, to ensure that the ordering, delivery, receiving and supply of equipment and FF&E does not adversely affect the Works Schedule; and
- (b) Without limiting the generality of Section 13.2(a), the Works Schedule shall, at a minimum, include:
- (i) all major milestone events;
  - (ii) the latest dates for receiving approvals from Governmental Authorities;
  - (iii) the dates that key decisions must be made by the College to support the progress of the Works;
  - (iv) a detailed schedule for all activities associated with FF&E, as outlined in Section 21.8 of this Project Agreement;
  - (v) a detailed schedule for all activities associated with the design, procurement, installation and commissioning of the information and communications technology systems, including, but not limited to, the timelines for the College user group engagement and the dates on which key decisions are to be made by the College in confirming systems and systems integration requirements;
  - (vi) all design related activities, including, but not limited to, the proposed date for each Design Workshop and other meetings engaging the College;
  - (vii) the proposed date for the submission of each Works Submittal (including, for clarity, each Design Development Submittal and Construction Document Submittal) and the associated review period in accordance with Schedule 10 – Review Procedure, including, where applicable, any additional activities required to enable the effective implementation of the activities described in the Review Procedure, including, but not limited to the implementation by Project Co of all comments on each Works Submittal provided to Project Co by the College Representative;
  - (viii) the latest dates for applying for, and obtaining, all College Permits, Licenses, Approvals and Agreements;
  - (ix) all construction activities, including subcontract work and Cash Allowance Items work, both on and off the Site and the Existing Facilities, leading up to Substantial Completion;

- (x) all procurement activities undertaken by the Construction Contractor with respect to materials and equipment, including timelines for Shop Drawings, manufacturing periods and dates of delivery to the Site;
  - (xi) all Project Co Commissioning and College Commissioning activities;
  - (xii) a detailed plan of all activities leading up to Final Completion, including, but not limited to, the completion of the Remaining Works and, as appropriate, the completion and rectification of Minor Deficiencies and Remaining Works Minor Deficiencies;
  - (xiii) the manpower requirements for each activity, including subcontract work;
  - (xiv) a manpower histogram, both overall and by trade;
  - (xv) a cumulative “S” curve showing planned percent completion for each month from the commencement of the Works until the Scheduled Final Completion Date; and
  - (xvi) projected Design and Construction Contract cash flows.
- (c) From Financial Close until the draft Works Schedule becomes the Works Schedule pursuant to Section 13.2(a)(i), the Interim Works Schedule shall be deemed to be the Works Schedule and, until such time, all provisions of this Project Agreement applicable to the Works Schedule shall be applicable to the Interim Works Schedule *mutatis mutandis* as though the Interim Works Schedule were the Works Schedule under this Project Agreement. Upon the draft Works Schedule becoming the Works Schedule the Works Schedule shall automatically replace the Interim Works Schedule.
- (d) The Interim Works Schedule shall be prepared in accordance with Good Industry Practice for a large complex project and shall be in sufficient detail so as to enable the College Representative and the Independent Certifier, to monitor the progress of the Works and the likely future progress of the Works.
- (e) From the date of this Project Agreement until the date the draft Works Schedule becomes the Works Schedule pursuant to Section 13.2(a)(i):
- (i) for clarity, Project Co shall update the Interim Works Schedule in accordance with Section 13.6(a). Notwithstanding the foregoing and Section 13.6(a), unless otherwise agreed to by the College Representative, Project Co shall not schedule as part of the Works any new activity that is not included in the Interim Works Schedule on the date of this Project Agreement that requires any material input, review, participation or decision from the College or any College Party without providing the College at least 10 Business Days prior written notice and without obtaining the prior agreement of the College Representative; and
  - (ii) any activity and associated duration to be included in the Works Schedule agreed to by the College and Project Co during the development of the draft Works

Schedule pursuant to Section 13.2(a)(i) that will or may occur prior to the finalization of the draft Works Schedule shall be promptly included by Project Co in an updated Interim Works Schedule which updated Interim Works Schedule for clarity, shall be provided to the College in accordance with Section 13.2(a) or Section 13.6(a).

- (f) At any time during the Project Term, Project Co shall, no later than 2 Business Days following the written request of the College, deliver to the College a hard copy and a soft (non-PDF) copy of the most current version of the Works Schedule and/or any past version of the Works Schedule requested by the College in its native file format, showing all the schedule's underlying assumptions, including task interdependency and schedule floats. At the request of the College Representative, the Project Co Representative shall in person review the Works Schedule in such format with the College Representative for purposes including, explaining to the College Representative the activity logic and planning assumptions contained in the Works Schedule, any proposed changes to the critical path of the Works and the impact of the Works on any major milestone event.

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

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

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

- (a) Without limiting any other provision of this Project Agreement but subject to Article 30, if, at any time:
    - (i) the actual progress of the Works has fallen significantly behind the Works Schedule; or
    - (ii) the College is of the opinion that:
      - (A) the actual progress of the Works has fallen significantly behind the Works Schedule; or
      - (B) Project Co will not achieve Substantial Completion by the Longstop Date,
- the College may give notice to Project Co and Project Co shall:
- (iii) within 5 Business Days of receipt of notice from the College, produce and deliver to each of the College Representative and the Independent Certifier:
    - (A) a report identifying the reasons for the delay; and

- (B) a plan showing the steps that are to be taken by Project Co to eliminate or reduce the delay to:
  - (I) achieve Substantial Completion by the Scheduled Substantial Completion Date; or
  - (II) if Substantial Completion will not be achieved by the Scheduled Substantial Completion Date, achieve Substantial Completion by the Longstop Date; and
- (C) a revised Works Schedule incorporating the measures required to bring the progress of the Works back on schedule in accordance with the plan delivered under Section 13.4(a)(iii); and
- (iv) bring the progress of the Works back on schedule in accordance with the plan delivered under Section 13.4(a)(iii) and approved by the College Representative.
- (b) Project Co shall notify the College Representative if, at any time, the actual progress of the Works is significantly ahead of the Works Schedule.
- (c) In any of the circumstances set out in Sections 13.4(a)(i) and 13.4(a)(ii), the College may, in its sole discretion, give notice to the Lenders' Agent pursuant to Section 13 of the Lenders' Direct Agreement that the College has delivered notice to Project Co pursuant to Section 13.4(a)(ii) of this Agreement, together with the relevant information support the College's reasons for delivering such notice to Project Co.

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

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

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

### **13.6 Works Report**

- (a) Project Co shall continuously monitor the progress of the Works in relation to the Works Schedule and, within 15 Business Days following the end of each calendar month from Financial Close until the Final Completion Date, Project Co shall provide to the College Representative and the Independent Certifier a works report (each, a “**Works Report**”), which will include:
- (i) an executive summary describing the general status of the Works and progress made over the relevant month;
  - (ii) an updated Works Schedule, in both summary and detailed formats;
  - (iii) a narrative description of any Disputes related to the Works, including any action that has taken place over the relevant month to resolve such Disputes;
  - (iv) a narrative description of the status of any Proceeding At Risk Matter that has not been resolved pursuant to Section 14.6(g), in accordance with Schedule 27 – Dispute Resolution or otherwise;
  - (v) in accordance with Section 22.3, a LEED progress report;
  - (vi) an update on those matters set out in Schedule 17 – Works Report Requirements;
  - (vii) a table setting out and responding to items of Project Agreement non-compliance and deficiencies in ongoing Works as identified by the College and/or Project Co; and
  - (viii) any other information specifically requested by the College on the progress of the Works;

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

- (b) Project Co shall use and interact with, and ensure that the Construction Contractor uses and interacts with, the On-line Project Management (“**OCPM**”) software system specified by the College. It is contemplated that the OCPM software system will automate certain aspects of the processes identified in Schedule 10 – Review Procedure, Schedule 11 – Design Quality Plan and Construction Quality Plan, Schedule 22 – Variation Procedure and Schedule 17 – Works Report Requirements and other processes as determined by the College in its sole discretion.

## **14. WORKS COMMITTEE**

### **14.1 Establishment**

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

#### **14.2 Function and Role**

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

- (vi) any special matters referred to the Works Committee by the College or Project Co;
  - (vii) any Proceeding At Risk Matter referred to the Works Committee in accordance with Section 14.6;
  - (viii) any community and media relations issues in accordance with Schedule 18 – Communications;
  - (ix) monitoring the Final Commissioning Program; and
  - (x) any other issues pertaining to the Works.
- (c) Subject to Section 14.2(d), any unanimous decision of the Works Committee shall be final and binding on the Parties. If the Works Committee is unable to reach a unanimous decision, either Party may refer the matter for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (d) The Works Committee shall not have authority to make decisions with respect to or approve:
- (i) any amendment to or waiver of any provision of this Project Agreement;
  - (ii) any change to a major milestone date set out in the Works Schedule, the Scheduled Substantial Completion Date or the Scheduled Final Completion Date;
  - (iii) any Variation;
  - (iv) any change that may materially adversely affect Project Co’s ability to achieve Substantial Completion by the Scheduled Substantial Completion Date or Final Completion by the Scheduled Final Completion Date; or
  - (v) any matter with respect to which the College has a right of consent or in respect of which the College may exercise discretion pursuant to this Project Agreement.

**14.3 Term of Works Committee**

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

**14.4 Replacement of Committee Members**

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

**14.5 Procedures and Practices**

- (a) The members of the Works Committee may:
  - (i) adopt such procedures and practices for the conduct of the activities of the Works Committee as they consider appropriate from time to time;
  - (ii) invite to any meeting of the Works Committee such other persons as the members of the Works Committee may agree;
  - (iii) exclude from any meeting of the Works Committee such persons as the members of the Works Committee may agree; and
  - (iv) receive and review reports from any person or organization agreed to by the members of the Works Committee.
- (b) Once established, the Works Committee shall meet at least once each month from Financial Close until the Final Completion Date, unless otherwise agreed by the members of the Works Committee or the Parties.
- (c) Any one of the Project Co Representatives or the College Representatives on the Works Committee may convene a special meeting of the Works Committee at any time. Special meetings of the Works Committee may be convened on not less than 5 Business Days' notice to all members of the Works Committee identifying the agenda items to be discussed at the special meeting, provided that, in an Emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- (d) Unless otherwise agreed by the members of the Works Committee, the Works Committee shall meet at the Site, in The Township of King, Ontario. Meetings of the Works Committee may be held by means of such telephonic, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting, provided that each member of the Works Committee must attend in person at least once each calendar quarter.
- (e) 2 representatives appointed by the College (one of whom shall be the College Representative), 2 representatives appointed by Project Co (one of whom shall be the Project Co Representative) and a representative of IO (or a delegate thereof) shall constitute a quorum at any meeting of the Works Committee. A quorum of members may exercise all the powers of the Works Committee. The members shall not transact business at a meeting of the Works Committee unless a quorum is present.
- (f) Minutes of all meetings, recommendations and decisions of the Works Committee, including those made by telephone or other form of communication, shall be recorded and maintained by Project Co. Project Co shall circulate copies of such minutes within 5 Business Days of the holding of the meeting or the making of the recommendation or decision. Unless the College notifies Project Co within 5 Business Days of receipt of the

minutes that Project Co disagrees with the contents of the minutes, Project Co and the College shall be deemed to have approved such minutes. Project Co shall maintain a complete set of all minutes of the meetings of the Works Committee and shall make such minutes available for inspection by the College during regular business hours.

**14.6 Proceeding At Risk**

- (a) If at any time:
  - (i) in the reasonable opinion of the College, Project Co is performing the Works in a manner that may result in Project Co becoming unable to satisfy the requirements for Substantial Completion; or
  - (ii) the College Representative has noted a Works Submittal as “CRITICAL NON-CONFORMANCE” in accordance with Schedule 10 – Review Procedure (each of the matters described in clauses (i) and (ii) of this Section 14.6(a) a “**Proceeding At Risk Matter**”);

then the College may issue to Project Co (with a copy to the Independent Certifier) a notice (the “**Proceeding At Risk Notice**”) identifying the College’s reasons for issuing the Proceeding At Risk Notice and requesting Project Co to deliver any relevant Design Data and any other information reasonably required by the College from Project Co to review the Proceeding At Risk Matter.

- (b) Following the issuance of a Proceeding At Risk Notice, the College Representative and the Project Co Representative, together with the other members of the Works Committee, shall each promptly and diligently make a reasonable bona fide effort to resolve the Proceeding At Risk Matter. The Independent Certifier shall be required to attend all meetings and deliberations of the Works Committee at which the Proceeding At Risk Matter is considered.
- (c) Within 10 Business Days after receipt by Project Co of a Proceeding At Risk Notice, Project Co shall deliver a response to the College and each member of the Works Committee and the Independent Certifier, which shall include:
  - (i) the Design Data and any other information requested by the College in the Proceeding At Risk Notice;
  - (ii) Project Co’s opinion confirming agreement with, or disputing the opinion of, the College regarding the Proceeding At Risk Matter;
  - (iii) any additional Design Data and other information in support of Project Co’s opinion regarding the Proceeding At Risk Matter; and
  - (iv) as applicable, Project Co’s proposal to:
    - (A) ensure the requirements for Substantial Completion are achieved; or

- (B) correct the “CRITICAL NON-CONFORMANCE” noted by the College Representative in a Works Submittal.
- (d) Within 5 Business Days after receipt by the College of the response from Project Co pursuant to Section 14.6(c), the College shall notify Project Co if the College requires any additional information from Project Co. Project Co shall provide such additional information to the College and each member of the Works Committee and the Independent Certifier within 5 Business Days after receipt of such notice.
- (e) The Independent Certifier shall, within 30 Business Days of the Proceeding At Risk Notice, deliver to each of the College and Project Co, its written opinion as to whether the College acted reasonably in delivering the Proceeding At Risk Notice.
- (f) Within 15 Business Days after receipt by the College of all deliverables contemplated by Section 14.6(c) and, if applicable, Section 14.6(d), and in any event, no later than 35 Business Days after receipt by Project Co of the Proceeding At Risk Notice, the Works Committee shall meet in person (the “**PAR Meeting**”) to attempt to resolve the Proceeding At Risk Matter.
- (g) Within 5 Business Days after the PAR Meeting and, in any event, no later than 40 Business Days after receipt by Project Co of the Proceeding At Risk Notice, the Works Committee shall attempt to reach a final decision with respect to the Proceeding At Risk Matter. If the Works Committee is unable to reach a final decision, and the Independent Certifier’s opinion delivered pursuant to Section 14.6(e) confirms that the College acted reasonably in delivering the Proceeding At Risk Notice. Project Co shall be deemed to be “**Proceeding At Risk**” and the College may, in its sole discretion, give notice to the Lenders’ Agent pursuant to Section 13 of the Lenders’ Direct Agreement that Project Co is Proceeding At Risk, together with the relevant information supporting the College’s opinion that Project Co is Proceeding At Risk.
- (h) Regardless of the Independent Certifier’s opinion, if the Works Committee fails to reach a final decision with respect to the Proceeding At Risk Matter by the PAR Meeting Expiry Date, either party may refer the Proceeding At Risk Matter for resolution in accordance with Schedule 27 – Dispute Resolution.
- (i) The Proceeding At Risk Notice, review, and comments made during the process set out in this Section 14.6 are for general conformity to the obligations and requirements of this Project Agreement, and any such notice, review and comment shall not relieve Project Co of the risk and responsibility for the Works and for meeting all of its obligations under and satisfying all requirements of this Project Agreement, and shall not create any new or additional obligations or liabilities for the College.

## **15. QUALITY ASSURANCE**

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

- (a) Project Co shall cause all of the Works to be the subject of quality management systems, which shall include a Design Quality Plan and a Construction Quality Plan (collectively, the “**Quality Plans**”), which may be incorporated into one document.
- (b) All Quality Plans shall be consistent with the requirements of the Output Specifications and the Final Commissioning Program.
- (c) The Design Quality Plan is attached as part of Schedule 11 – Design Quality Plan and Construction Quality Plan.
- (d) The Construction Quality Plan shall, at a minimum, comply with the requirements of the outline of the Construction Quality Plan attached as part of Schedule 11 – Design Quality Plan and Construction Quality Plan. Project Co shall submit its proposed Construction Quality Plan to the College within 60 days following Financial Close.
- (e) All Quality Plans shall be subject to review by the College pursuant to Schedule 10 – Review Procedure, and Project Co shall not be entitled to implement or cause the implementation of any Quality Plan unless and until Project Co is entitled to proceed with such implementation pursuant to Schedule 10 – Review Procedure.
- (f) Project Co shall implement the Quality Plans, shall perform and cause to be performed the Works in compliance with the Quality Plans, including by causing the Construction Contractor to implement the Design Quality Plan and the Construction Quality Plan.
- (g) Where any aspect of the Works is performed by more than one Project Co Party, then this Article 15, in so far as relevant or appropriate to the activities to be performed by such Project Co Party, shall apply in respect of each of them and references in this Article 15 to such Project Co Party, including the Construction Contractor, shall be construed accordingly.

## **15.2 Changes to Plans**

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

### **15.3 Quality Manuals and Procedures**

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

### **15.4 Quality Monitoring**

- (a) Without limiting the College’s other rights pursuant to this Project Agreement, including Section 26, the College may, from time to time, directly or indirectly, perform periodic monitoring, spot checks and auditing of Project Co’s quality management systems, including all relevant Quality Plans and any quality manuals and procedures. Project Co shall ensure that the College also has the right to perform periodic monitoring, spot checks and auditing of the Construction Contractor’s quality management systems.
- (b) Project Co shall cooperate, and shall cause the Construction Contractor to cooperate, with the College in monitoring quality management systems and shall provide the College with all information and documentation reasonably required in connection with the College’s rights under this Section 15.4.

### **15.5 Health and Safety Inspections**

- (a) Project Co shall cause the Construction Contractor, at its sole cost and expense, to conduct an inspection of its facilities and of its health and safety management systems, as applicable to areas of the Site at which the Works are being conducted, on an annual basis until Final Completion or as otherwise required in accordance with Sections 11.22(b)(iii)(C) or 11.22(b)(iv)(C) (each, an “**H&S Inspection**”), which H&S Inspections shall:
  - (i) be conducted by a Certified H&S Inspector; and
  - (ii) include, at a minimum (A) a review of general compliance with all applicable *Occupational Health and Safety Act* (Ontario) requirements, compliance with all safety manuals applicable to Site at which the Works are being conducted and (B) a review of the Construction Contractor’s job hazard analysis documentation on the Site which could endanger or put at risk the safety of any Person working at the Site.

Project Co shall cause the results of each H&S Inspection (such results referred to as the “**H&S Inspection Report**”) to be delivered to the College and to the Works Committee not more than 5 Business Days from the date on which the H&S Inspection is completed. Any H&S Inspection Report arising from an H&S Inspection shall be tabled and presented by Project Co for discussion by the Works Committee at the next meeting of

the Works Committee that follows the date on which such H&S Inspection Report was issued.

- (b) To the extent an H&S Inspection Report discloses any non-compliance by the Construction Contractor with the terms of its applicable Health & Safety Certification, College shall have the right to require Project Co, at its sole cost and expense, to take any corrective and remedial action as College, acting reasonably, believes is necessary to correct any non-compliance and Project Co shall, at its sole cost and expense, comply with all requirements given by College in respect of actions required to be taken to correct any such non-compliance. If Project Co does not take such actions within the time period required by College, College shall have the right to, or to cause a third party to, at the sole cost and expense of Project Co, correct any non-compliance.

## **16. LICENCE**

### **16.1 Licence to Site**

- (a) Effective from the date of Financial Close until the Termination Date and subject to this Article 16, the College hereby grants or shall cause to be granted, and shall continuously until the earlier of the termination of the Project Agreement or Final Completion grant or cause to be granted, to Project Co and all Project Co Parties such non-exclusive licence rights of use and access to, on and over the Site and the Facility in accordance with the Phasing Requirements, except any such rights set out as a Project Co responsibility to obtain under the Permits, Licences, Approvals and Agreements tables attached as Appendix “A” to Schedule 1 – Definitions and Interpretation, as are required by Project Co and sufficient (subject to Project Co performing its obligations described in the Permits, Licences, Approvals and Agreements tables attached as Appendix “A” to Schedule 1 – Definitions and Interpretation) to allow Project Co to perform the Works. Following Final Completion, the College shall grant, or cause to be granted, to Project Co such rights of use and access to, on and over the Site and the Facility as are required by Project Co and sufficient (subject to Project Co performing its obligations described in the Permits, Licences, Approvals and Agreements tables attached as Appendix “A” to Schedule 1 – Definitions and Interpretation) to allow Project Co to carry out its remaining obligations under the Project Agreement.
- (b) In consideration for the licence granted pursuant to Section 16.1(a), Project Co shall provide the Works subject to and in accordance with this Project Agreement.
- (c) Without derogating from any of the College’s rights hereunder, in particular and subject to this Section 16.1(c), the rights of access to the Site prior to the Substantial Completion Date for purposes of the College Commissioning, the College acknowledges that, in respect of the Works, Project Co and the Project Co Parties require, and the College shall provide, access to the Site in accordance with the Phasing Requirements without material interference by the College or any College Party from the date of Financial Close until the Termination Date. Project Co further acknowledges that following Final Completion, its access to the Site and the Facility shall be subject to the College Activities.

- (d) None of the rights granted pursuant to this Section 16.1 shall extend beyond the boundaries of the Site, or to any lands other than the Site, other than easements and similar interests of the College which benefit the Site, obtained after the date of this Project Agreement, to the extent the same are necessary for the Works. Notwithstanding the foregoing, the College shall provide Project Co with limited access to the Existing Facilities in accordance with the Phasing Requirements, to the extent necessary to perform the Works and subject to such reasonable conditions as are imposed by the College.
- (e) Project Co agrees to: (i) provide hoarding around the licensed area outside of the Existing Facilities in accordance with the Project Documents; (ii) cordon off areas within the Existing Facilities where Project Co is performing the Works required under the Project Documents and as approved by the College Representative; and (iii) use such access to the Existing Facilities, including loading docks, freight elevators and access routes as provided in the Output Specifications and as otherwise directed by the College Representative.
- (f) The licence and access rights provided in this Section 16.1 shall terminate as of the Termination Date.

#### **16.2 Non-Exclusive Licence/Development of Site**

- (a) Project Co acknowledges and agrees that the rights granted to Project Co and the Project Co Parties hereunder shall be non-exclusive and that the College and any person authorized by the College may occupy and possess the Site, the Facility and the Existing Facilities.
- (b) Without limiting Section 16.2(a), Project Co acknowledges that the College may from time to time use or develop (including by way of subdivision or expansion), or permit the use or development of, portions of the Site or the Facility. To the extent that such use or development materially adversely interferes with Project Co's licence rights hereunder or materially adversely interferes with Project Co's ability to perform the Works, such use or development shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.

#### **16.3 Limited Access Areas**

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

#### **16.4 Naming and Signage**

- (a) Project Co acknowledges that the College reserves and retains (i) all rights to designate the name for the Facility and any part of the Facility; (ii) all rights to signage in relation

to the Site, the Facility and the Existing Facilities; and (iii) all rights, Trade-Marks, naming or branding regarding the Facility and any part of the Facility and the Existing Facilities. It is agreed, however, that, with the prior written consent of the College, not to be unreasonably withheld or delayed and which may take into consideration any applicable governmental guidelines, including the guidelines set out in Schedule 18 – Communications, Project Co, the Project Co Parties and the Lenders may, for the period prior to Substantial Completion, erect and maintain signage which may include such parties’ logos and trade names identifying their respective roles in connection with the development and construction of the Project.

**16.5 No Interest in Land**

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

**17. TITLE ENCUMBRANCES**

**17.1 Title Encumbrances**

- (a) Project Co shall perform all obligations under the Title Encumbrances for or on behalf of the College, other than:
  - (i) obligations under any Title Encumbrance which Project Co is not legally capable of performing for or on behalf of the College;
  - (ii) obligations under any Title Encumbrance added after the date of this Project Agreement unless such obligations are provided in the Output Specifications as obligations of Project Co or the Parties agree that such obligations are obligations of Project Co;
  - (iii) obligations under any Title Encumbrance which The Township of King may formally relieve or waive, with the consent of the College, with respect to any Development Approval; and
  - (iv) obligations under the Title Encumbrances that Appendix “A” – Permits, Licences, Approvals and Agreements of Schedule 1 – Definitions and Interpretation provide for the College performing.

- (b) Project Co shall perform the Works in a manner which does not breach the Title Encumbrances or any of the Development Approvals.
- (c) Subject to Encumbrances that Project Co shall remove pursuant to Section 17.2 and Section 17.3, the performance of the Works shall not give rise to a right for any person to obtain title to or any interest in the Lands, the Facility or the Existing Facilities or any part of it or them, except in accordance with the terms of this Project Agreement.

## **17.2 No Lands Encumbrances**

- (a) Project Co shall not create, incur, permit or suffer to exist any Encumbrance to be filed, issued or registered against the Lands, the Facility or the Existing Facilities or any part thereof or any interest therein due to an act or omission of Project Co or any Project Co Party.
- (b) In the event that the Lands, the Facility or the Existing Facilities or any part thereof or any interest therein becomes subject to any Encumbrance arising in relation to the performance of the Works which has not been consented to in writing by the College, Project Co shall immediately take all steps necessary to remove, vacate or discharge such Encumbrance. If such Encumbrance is not removed, vacated or discharged within 10 Business Days of the filing, issuance or registration of such Encumbrance then, without prejudice to any other rights or remedies it may have, the College will be at liberty to take whatever steps it deems necessary and appropriate to remove, vacate or discharge the Encumbrance, including payment of any amount owing or claimed thereunder, and seek immediate recovery from Project Co of the amount of any such payment and any associated costs, including legal costs (on a full indemnity basis), all of which shall be payable on demand.
- (c) Notwithstanding the provisions of this Section 17.2, the Parties acknowledge that the provisions of Section 17.3(e) shall apply to claims for lien made against the Lands, the Facility or the Existing Facilities pursuant to the CLA and shall also apply to claims made against the Legislative Holdback.

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

- (a) Project Co shall withhold from each Subcontractor the holdbacks required under the CLA and shall deal with such holdbacks in accordance with the CLA and, for the purposes of the CLA, any contract for the performance of the Works entered into by and between Project Co and any Subcontractor in relation to the performance of the Works shall be considered a “contract” as defined in the CLA.
- (b) In furtherance of Section 17.3(a), Project Co shall, as a condition of final payment under any Subcontract for which lien rights or rights in respect of the holdback may be claimed under the CLA, require that a certificate of completion under Section 33(1) of the CLA for such Subcontract be issued and the relevant Subcontractor provide statutory

declarations or other assurances confirming that all those engaged by the Subcontractor have been paid in accordance with Applicable Law.

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

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

- (f) In the event that a written notice of a construction lien arising in relation to the performance of the Works is received by the College, and unless Project Co makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to the College, acting reasonably, Project Co shall, within 10 Business Days, at its sole expense, arrange for the withdrawal or other disposal of the written notice of a lien pursuant to the CLA.
- (g) If a construction lien arising in relation to the performance of the Works is registered against the Lands, the Facility or the Existing Facilities, and unless Project Co makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to the College, acting reasonably, Project Co shall, within 10 Business Days, at its sole expense, vacate or discharge the lien from title to the Lands, the Facility and the Existing Facilities. If the lien is merely vacated, Project Co

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

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

## **18. SITE CONDITION**

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

- (a) Subject to Sections 7.4, 18.2 and 18.3, Project Co acknowledges and agrees that it has inspected all matters relating to the Site, including the Background Information, prior to executing this Project Agreement and agrees to accept the Site and the Site Conditions on an “as is, where is” basis. Without limiting the generality of the foregoing, but subject to Sections 7.4, 18.2 and 18.3, Project Co shall not be entitled to make any claim of any nature whatsoever against the College or any College Party on any grounds relating to the Site, including the fact that incorrect or insufficient information on any matter relating to the Site was given to it by any person, whether or not the College or a College Party, unless the relevant person has given Project Co an express written entitlement to rely on information relating to the Site provided by such person to Project Co.
- (b) Subject to Sections 7.4, 18.2 and 18.3, Project Co acknowledges and agrees that it has and shall be deemed to have:
  - (i) performed all necessary Site due diligence and investigations and inspected and examined the Site and its surroundings;
  - (ii) satisfied itself as to the nature of the Site Conditions, the ground and the subsoil, the level and quantity of groundwater, the form and nature of the Site, the load bearing and other relevant properties of the Site, the risk of injury or damage to property affecting the Site, the nature of the materials (whether natural or otherwise) to be excavated and the nature of the design, work and materials necessary for the execution and delivery of the Works;
  - (iii) satisfied itself as to the presence of any Contamination on, in or under the Site, or migrating to or from the Site;
  - (iv) satisfied itself as to the adequacy of the rights of access to, from and through the Site and any accommodation it may require for the purposes of fulfilling its obligations under this Project Agreement;
  - (v) satisfied itself as to the possibility of interference by persons of any description whatsoever with access to or use of, or rights in respect of, the Site; and
  - (vi) satisfied itself as to the precautions, times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties.
- (c) Project Co further acknowledges and agrees that, other than as referred to or contained in this Project Agreement, no representations or warranties have been made, nor documentation delivered to Project Co or any Project Co Party, which would indicate that Project Co would be unable to perform the Works in a lawful manner.

## **18.2 Contamination**

- (a) The College shall be responsible for Contamination on, in or under, or migrating to or from, the Site, except for any such Contamination:

- (i) that was described in, or was properly inferable, readily apparent or readily discoverable from, the Environmental Reports, the Geotechnical Reports or the Hazardous Materials Survey Reports;
  - (ii) that could have been properly inferable, readily apparent or readily discoverable on the basis of reasonable, normal course and industry standard investigations, inspections or other due diligence; or
  - (iii) that is caused by Project Co or any Project Co Party.
- (b) Upon the discovery of any Contamination for which the College is responsible pursuant to Section 18.2(a), Project Co shall immediately inform the College Representative and shall comply with all Applicable Law in respect thereof at the College's cost pursuant to Section 18.2(d).
- (c) In the event that the College wishes Project Co to perform actions which are in addition to any required pursuant to Section 18.2(b), then the College shall issue an instruction to Project Co specifying what action the College requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions at the College's cost pursuant to Section 18.2(d).
- (d) If Sections 18.2(b) and 18.2(c) require Project Co to perform any alteration, addition, demolition, extension or variation in the Works as a result of Contamination for which the College is responsible pursuant to Section 18.2(a) and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation in the Works shall, subject to and in accordance with Section 30, be treated as a Delay Event and, subject to and in accordance with Section 31, be treated as a Compensation Event.

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

- (a) As between the Parties, all fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which may be found on or at the Site are or shall be the sole and absolute property of the College.
- (b) Upon the discovery of any item referred to in Section 18.3(a) during the course of the Works, Project Co shall:
- (i) immediately inform the College Representative of such discovery;
  - (ii) take all steps not to disturb the item and, if necessary, cease any Works in so far as performing such Works would endanger the item or prevent or impede its excavation;
  - (iii) take all necessary steps to preserve and ensure the preservation of the item in the same position and condition in which it was found; and

- (iv) comply, and ensure compliance by all Project Co Parties, with Applicable Law and all requirements of Governmental Authorities with respect to such discovery, including the *Funeral, Burial and Cremations Act* and the Heritage Guidelines and Protocols.
- (c) In the event that the College wishes Project Co to perform actions which are in addition to any required pursuant to Section 18.3(b), then the College shall issue an instruction to Project Co specifying what action the College requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions.
- (d) If Sections 18.3(b) and 18.3(c) require Project Co to perform any alteration, addition, demolition, extension or variation in the Works as a result of such discovery and which would not otherwise be required under this Project Agreement, then any such alteration, addition, demolition, extension or variation in the Works shall, subject to and in accordance with Article 30, be treated as a Delay Event and, subject to and in accordance with Article 31, be treated as a Compensation Event.

## **19. THE TOWNSHIP OF KING AND THIRD PARTY FINANCIAL OBLIGATIONS**

### **19.1 Financial Obligations**

- (a) Subject to Section 19.1(c), Project Co shall be responsible for all Financial Obligations under or in respect of all Permits, Licences, Approvals and Agreements including to The Township of King, any Utility Company, any Governmental Authority or any other third party in respect of the Works, including:
  - (i) any development charges relating to the Works, the Facility or the Site;
  - (ii) any engineering administration and inspection fees required in respect of works or services required to be performed;
  - (iii) any security deposits and letters of credit required under any Permits, Licences, Approvals and Agreements; and
  - (iv) any other amounts payable under any Project Co Permits, Licences, Approvals and Agreements.
- (b) The Parties agree that any refund, partial rebate or credit granted by The Township of King, any applicable Utility Company or any applicable Governmental Authority or any other third party relating to the Financial Obligations referred to in Section 19.1(a) shall be for the benefit of the College to the extent such Financial Obligations were paid by the College and shall be for the benefit of Project Co to the extent such Financial Obligations were paid by Project Co.
- (c) The College shall be responsible for all Financial Obligations required under the College Permits, Licences, Approvals and Agreements that are expressly described in Appendix

“A” – Permits, Licences, Approvals and Agreements to Schedule 1 – Definitions and Interpretation as being the responsibility of the College.

## **20. COLLEGE ACCESS AND MONITORING**

### **20.1 College Access During the Works**

- (a) Subject to Section 20.1(b) but without limiting any of the College’s rights in respect of the Site and the Existing Facilities, Project Co acknowledges and agrees that the College, the College Parties and the Government Entities and their respective representatives shall, prior to Final Completion, have unrestricted access to the Site, the Facility and any workshop where materials, plant or equipment are being manufactured, prepared or stored at all reasonable times during normal working hours. For clarity, nothing in this Section 20.1 shall restrict or impede the College’s right to use and access the Existing Facilities or any part of the Site not required at that time for Project Co’s performance of the Works in accordance with the terms hereof.
- (b) In exercising their access rights under Section 20.1(a), the College, the College Parties and the Government Entities shall:
  - (i) provide reasonable prior notice appropriate to the circumstances (other than for any offices or other facilities provided at the Site for the College’s own use);
  - (ii) comply with all relevant safety procedures and any reasonable directions with regard to site safety that may be issued by or on behalf of the Project Co Representative from time to time; and
  - (iii) if required by Project Co, be accompanied by a representative of Project Co or a Project Co Party.

### **20.2 Increased Monitoring**

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

### **20.3 Right to Open Up**

- (a) The College shall have the right, at any time prior to the Final Completion Date to request Project Co to open up and inspect (or allow the College to inspect) any part or

parts of the Works, or to require testing of any part or parts of the Works, where the College reasonably believes that such part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Design Data) relevant to such part or parts of the Works, and Project Co shall comply with such request. When the College makes such a request, the College shall include reasonably detailed reasons with such request.

- (b) If the inspection shows that the relevant part or parts of the Works is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Design Data) relevant to such part or parts of the Works, Project Co shall rectify all such defects and non-compliance diligently and at no cost to the College and Project Co shall not be entitled to any additional compensation or extension of time in relation thereto.
- (c) If the inspection shows that the relevant part or parts of the Works is or are not defective and that Project Co has complied with the requirements of this Project Agreement (including the Design Data) relevant to such part or parts of the Works, the exercise by the College of its rights pursuant to this Section 20.3 shall, subject to and in accordance with Section 30, be treated as a Delay Event and, subject to and in accordance with Section 31, be treated as a Compensation Event.

#### **20.4 No Relief from Obligations**

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

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

- (a) Subject to Section 11.12, Project Co shall grant, and shall cause all Project Co Parties to grant, Additional Contractors access to those parts of the Works as may be necessary for the Additional Contractors to carry out any Additional Works.

### **21. FURNITURE, FIXTURES AND EQUIPMENT**

#### **21.1 FF&E Steering Committee**

- (a) The Parties shall, within 30 days following Financial Close, establish a committee (the “**FF&E Steering Committee**”) consisting of:
  - (i) 1 representative appointed by IO from time to time;
  - (ii) 4 representatives appointed by the College from time to time, namely, the College’s project manager, the College Representative and other technical and facility representatives appointed by the College from time to time;

- (iii) 2 representatives of Project Co, one of whom shall be the Project Co Representative, appointed by Project Co from time to time.
- (b) Members of the FF&E Steering Committee may invite, on prior notice to all members, such advisors and consultants as they require from time to time to attend meetings and provide briefings to the FF&E Steering Committee.
- (c) The FF&E Steering Committee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the FF&E, including the interaction between FF&E commissioning and Plant commissioning.
- (d) The primary role of the FF&E Steering Committee shall be to review all matters, including budget review, and make all required decisions related to Category 1 FF&E, Category 2 FF&E, and Category 3 FF&E, including, without limitation:
  - (i) Project Co proposals and recommendations for the quantity, make, model, vendor, terms and conditions of financing or payment (as the case may be), and the coordination, scheduling and implementation of procurement, installation and commissioning, of all Category 1 FF&E;
  - (ii) Project Co proposals and recommendations for the design, and scheduling the commissioning, of all Category 2 FF&E; and
  - (iii) Project Co proposals and recommendations for the design and the coordination and scheduling of the procurement, installation and commissioning, of all Category 3 FF&E.
- (e) The members of the FF&E Steering Committee may adopt such other procedures and practices for the conduct of the activities of the FF&E Steering Committee as they consider appropriate from time to time.
- (f) 4 members of the FF&E Steering Committee, which must include at least 2 representatives of the College and 1 Project Co representative (including either the Project Co Representative or Project Co's project manager) shall constitute a quorum at any meeting of the FF&E Steering Committee. A quorum of members may exercise all of the powers of the FF&E Steering Committee. The members shall not transact business at a meeting of the FF&E Steering Committee unless a quorum is present.
- (g) Any majority decision of the FF&E Steering Committee shall be final and binding on the Parties.

## **21.2 Categories of FF&E**

- (a) FF&E is divided into the following categories:
  - (i) **Category 1 FF&E:** Project Co shall procure and supply all Category 1 FF&E and install and commission all Category 1 FF&E (other than Category 1 FF&E

that is required to be installed and commissioned by a manufacturer or vendor to meet and/or fulfill equipment warranty conditions), coordinate and schedule installation and commissioning of Category 1 FF&E that is required to be installed by a manufacturer or vendor of Category 1 FF&E, and provide all other services to be performed by Project Co in respect of Category 1 FF&E pursuant to the requirements of this Article 21, including the design and specification services set forth in Section 21.5(a).

- (ii) **Category 2 FF&E:** The College shall be responsible to procure and supply Category 2 FF&E. Project Co shall install and commission Category 2 FF&E (other than Category 2 FF&E that is required to be installed and commissioned by a manufacturer or vendor to meet and/or fulfill equipment warranty conditions), and provide all other services to be performed by Project Co in respect of Category 2 FF&E pursuant to the requirements of this Article 21, including the design and specification services set forth in Section 21.5(a) (including, for clarity, any technical design support to the College in procuring the Category 2 FF&E).
  - (iii) **Category 3 FF&E:** The College shall be responsible to procure, supply, install and commission Category 3 FF&E. The installation and commissioning of Category 3 FF&E is not required to be performed by Project Co, provided that Project Co shall be responsible to perform the Works to the extent necessary to enable the installation and commissioning of Category 3 FF&E in accordance with the Final Commissioning Program. In addition, Project Co shall coordinate and schedule the installation and commissioning of Category 3 FF&E, and provide all other services to be performed by Project Co in respect of Category 3 FF&E pursuant to the requirements of this Article 21, including the design and specification services set forth in Section 21.5(a) (including, for clarity, any technical design support to the College in procuring the Category 3 FF&E).
- (b) For certainty, any item labelled, described or specified as ‘fixed furnishings’, ‘casework’ or ‘millwork’ in the Output Specifications, is not included in any category of FF&E for purposes of this Project Agreement, including, for certainty, this Article 21.
  - (c) For clarity, all work and services to be performed by Project Co pursuant to this Section 21 form part of the Works.
  - (d) The FF&E Steering Committee shall not have authority to make decisions with respect to, or approve any amendment to or increase or decrease of, the College FF&E Budget (as set forth in Section 21.3(a)).

### **21.3 FF&E Budget**

- (a) The College will carry a budget (the “**College FF&E Budget**”) for the purchase and delivery to the Facility loading dock of all Category 1 FF&E.

- (b) The College FF&E Budget is estimated to be \$[REDACTED].

**21.4 College Category 1 FF&E Responsibilities**

- (a) The College shall review and confirm Project Co's proposals for the method of procurement, quantity, make, model, vendor and any terms and conditions of payment, as the case may be, for all Category 1 FF&E based upon tenders, quotations or proposals obtained by Project Co under Section 21.6 and the College shall enter into all purchase orders and other contracts with respect to the purchase of all Category 1 FF&E. For certainty, the cost, if any, of installation by a manufacturer or vendor of Category 1 FF&E, shall be included in any purchase order for Category 1 FF&E and Project Co shall be solely responsible for any costs of installation by a manufacturer or vendor not so included in any purchase order.
- (b) The College, and not Project Co, shall be liable as “purchaser” to the Category 1 FF&E Vendor under every purchase order, contract and vendor’s or manufacturer’s installation invoice related to the Category 1 FF&E in accordance with the relevant provisions of this Section 21, and shall make all payments related thereto in accordance with the relevant invoice terms.

**21.5 Project Co Responsibilities**

(a) **Design**

In addition to any of Project Co's other design responsibilities set forth in this Project Agreement (including, for certainty, the Output Specifications), Project Co shall be responsible for:

- (i) the production of floor layouts showing all FF&E and clearly indicating each of category of Category 1 FF&E, Category 2 FF&E and Category 3 FF&E;
- (ii) the production of all Design Data associated with the layouts and servicing of all FF&E and coordinating all structural, mechanical, and electrical information and communications technology building system services requirements to enable the accurate production of a complete working system for all FF&E; and
- (iii) providing design support to the College in procuring Category 2 FF&E and Category 3 FF&E.

(b) **Category 1 FF&E Inventory**

Project Co shall be responsible for providing to the College an inventory of all Category 1 FF&E, which inventory shall be documented in a detailed spreadsheet the format of which shall be provided by the College.

(c) **Planning and Coordinating**

Project Co shall be responsible for:

- (i) preparing, revising, coordinating and finalizing the plan to procure, install (or cause to be installed) and commission, as applicable, all Category 1 FF&E; and
- (ii) coordinating the design of all Category 2 FF&E and Category 3 FF&E,

in each case, based on the development of Project Co's Design Data and the latest information available from the College Representative and based on the preparation of detailed FF&E floor layouts pursuant to Section 21.5(a).

**(d) Installation and Commissioning**

Project Co shall be responsible for:

- (i) coordinating and scheduling the delivery of all Category 1 FF&E to the loading dock of the Facility;
- (ii) offloading, unpacking, handling, storing, placing and completing (or causing to be completed) the installation of all Category 1 FF&E and Category 2 FF&E in accordance with the Design Data and manufacturer's instructions;
- (iii) coordinating, scheduling, installing and completing the commissioning of all Category 1 FF&E and Category 2 FF&E in accordance with the Final Commissioning Program;
- (iv) coordinating and scheduling the installation and commissioning of all Category 3 FF&E; and
- (v) for further clarity, Project Co shall be responsible to perform Works as set out in Schedule 15 to enable the installation and commissioning of all Category 3 FF&E.

**(e) FF&E Budget**

Project Co shall be responsible for preparing, maintaining, and updating an FF&E budget with respect to Category 1 FF&E, and conducting an ongoing review of the proposed budget with the FF&E Steering Committee.

**(f) FF&E Training**

- (i) For and in respect of each item of Category 1 FF&E and Category 2 FF&E, Project Co shall, in accordance with Schedule 14 – Outline Commissioning Program, provide or arrange for adequate, appropriate and timely training in the item's proper operation and maintenance for the College; and

- (ii) The College shall arrange for College Staff to be available for training purposes in accordance with the Works Schedule and the Final Commissioning Program.

**(g) Substantial Completion**

For the purpose of achieving Substantial Completion, all Category 1 FF&E and Category 2 FF&E must be successfully assembled, installed and commissioned at the Facility in accordance with the Final Commissioning Program provided that such requirements shall be waived by the College in respect of any item of Category 1 FF&E or Category 2 FF&E, if, despite having used commercially reasonable efforts to do so, Project Co is unable to complete the procurement, installation or commissioning of such item of Category 1 FF&E or Category 2 FF&E due to a delay in, or failure of, the performance of any of its obligations by the College or an FF&E vendor or manufacturer.

**(h) Final Completion**

For the purpose of achieving Final Completion, all Category 1 FF&E, Category 2 FF&E, and Category 3 FF&E must be successfully assembled, installed and commissioned at the Facility in accordance with the Final Commissioning Program provided that such requirements shall be waived by the College:

- (i) in respect of any item of Category 1 FF&E, if, despite having used commercially reasonable efforts to do so, Project Co is unable to complete the procurement, installation or commissioning of such item of Category 1 FF&E as required pursuant to Section 21.2(a)(i) due to a delay in, or failure of, the performance of any of its obligations by the College or an FF&E vendor or manufacturer;
- (ii) in respect of any item of Category 2 FF&E, if, notwithstanding Project Co having performed the Works to the extent necessary to enable the installation and commissioning of the Category 2 FF&E as required pursuant to Section 21.2(a)(ii) and in accordance with the Final Commissioning Program and, despite having used commercially reasonable efforts to complete the installation and commissioning of Category 2 FF&E, the procurement, installation or commissioning of such item of Category 2 FF&E is delayed due to a delay in, or failure of, the performance of any of its obligations by the College or an FF&E vendor or manufacturer; and
- (iii) in respect of any item of Category 3 FF&E, if, notwithstanding Project Co having performed the Works to the extent necessary to enable the installation and commissioning of the Category 3 FF&E as required pursuant to Section 21.2(a)(ii) and in accordance with the Final Commissioning Program and, despite having used commercially reasonable efforts to coordinate and schedule the installation and commissioning of the Category 3 FF&E in accordance with the Final Commissioning Program, the procurement, installation or commissioning of such item of Category 3 FF&E is delayed due to a delay in, or failure of, the

performance of any of its obligations by the College or an FF&E vendor or manufacturer.

## **21.6 Category 1 FF&E Procurement and Other Project Co Responsibilities**

Without limiting Project Co's obligations pursuant to Sections 21.5, 21.7 and 21.8:

- (a) Project Co shall act as purchasing and procurement manager for the College in respect of Category 1 FF&E and shall:
  - (i) in consultation with the FF&E Steering Committee, prepare and finalize the list of Category 1 FF&E based on the development of Project Co's Design Data and the latest information available from the College Representative and update the budget for Category 1 FF&E for approval by the FF&E Steering Committee;
  - (ii) in consultation with FF&E Steering Committee, review the Category 1 FF&E building system requirements and the Category 1 FF&E design drawings for reconciliation with the services and space designed prior to purchase of any Category 1 FF&E;
  - (iii) in consultation with the FF&E Steering Committee, establish procurement processes that are fair and competitive, all in accordance with any applicable College policies, good purchasing and procurement practices for Category 1 FF&E and Applicable Law and, notwithstanding the generality of the foregoing, ensure that each procurement process solicits proposals from at least three different suppliers acceptable to the College (acting reasonably) provided that, if it is not possible to solicit proposals from three different suppliers for specific Category 1 FF&E, the FF&E Steering Committee may approve the issuance of an Equipment RFP for fewer than three different suppliers;
  - (iv) in consultation with the FF&E Steering Committee, prepare tenders, requests for quotations or requests for proposals (the "**FF&E Procurement Documentation**") for the procurement of all Category 1 FF&E, which shall be conducted in accordance with Section 21.4(a) and this Section 21.6 and which shall be in form and substance satisfactory to the College;
  - (v) manage the procurement of, on behalf of the College, all Category 1 FF&E, including:
    - (A) providing advice to the FF&E Steering Committee in respect of the evaluation of tenders, quotations or proposals from Category 1 FF&E vendors;
    - (B) assisting the FF&E Steering Committee in the review of the tenders, quotations or proposals from Category 1 FF&E vendors by clearly delineating the costs and performance of the Category 1 FF&E, the training methods and values, the testing and calibration protocols, the

- acceptable end results and the party responsible for such testing, be it the vendor, a third party or individuals engaged by Project Co;
- (C) procuring all purchase orders and other contracts with respect to the purchase by the College of Category 1 FF&E;
  - (D) ensuring that all vendor and manufacturer warranties in respect of Category 1 FF&E are obtained in the name, and for the benefit, of Project Co;
  - (E) ensuring that all vendor and manufacturer warranties in respect of Category 1 FF&E are assignable to the College upon expiry of the Warranty Period, at no cost to the College;
  - (F) providing such documentation as the College requires, acting reasonably, to discharge its obligations under this Article 21;
- (vi) in accordance with the FF&E Procurement Documentation, act as a single point of contact for all Category 1 FF&E;
  - (vii) test and calibrate any Category 1 FF&E not tested and calibrated by vendors; and
  - (viii) for a one-year period following Substantial Completion, coordinate and manage any warranty issues with the Category 1 FF&E vendors.
- (b) The College acknowledges and agrees that it will be reasonable for Project Co not to accept a particular tender, quotation or proposal for the procurement of Category 1 FF&E if:
- (i) the vendor submitting the tender, quotation or proposal will not provide a **[REDACTED]**% performance bond or alternative security in favour of the College with the Construction Contractor named as dual obligee or beneficiary, as the case may be, thereunder; and
  - (ii) the vendor submitting the tender, quotation or proposal will not include a provision in its purchase order/agreement whereby it agrees to execute and deliver, under seal, to the Construction Contractor a covenant to and in favour of the Construction Contractor that such vendor will perform its obligations under such purchase order/agreement.
- (c) Based on the tenders, quotations and proposals received from Category 1 FF&E vendors, Project Co shall make recommendations to the FF&E Steering Committee for the procurement of each item or type of Category 1 FF&E. Each such recommendation shall include the following information:
- (i) item description, item number, and quantities;

- (ii) the manufacturer, model number, vendor, specifications and options for the item;
  - (iii) an analysis and recommendation as to which make, model number and vendor of the item provides the overall best value for the College, and any other benefits of the recommendation;
  - (iv) in respect of Category 1 FF&E only, an analysis of the effect of the items on the overall design of the Facility and the relevant areas within the Facility;
  - (v) details of the warranties, vendor or manufacturer installation, service agreements, training, supplies, spare parts and start-up consumables included with the items by the relevant manufacturer or vendor;
  - (vi) details of training for all applicable College staff;
  - (vii) FF&E acceptance testing procedures (including, without limitation, the results and guidelines for acceptance) proposed by the relevant Category 1 FF&E vendor;
  - (viii) the dates and times when Category 1 FF&E items shall be delivered to the Facility;
  - (ix) all costs, with a breakdown of applicable HST and net of all direct or indirect discounts, rebates, refunds, chargebacks, credits, price adjustments or any other allowances obtained across all categories of FF&E that effectively reduce the net selling price of such FF&E or reduce the service contract price, and any Taxes applicable to the items;
  - (x) the total amounts and timing of cash flows required to implement the recommendation and the full details of the calculation of such amounts;
  - (xi) whether the procurement is part of a managed equipment program, based on usage pricing or any other arrangement, and the terms and timing of payments thereof;
  - (xii) if so requested by the College Representative, a copy of each quote or proposal and all other relevant information in respect of the items and such other documentation as the College may reasonably require, all of which shall be provided on a fully transparent and open basis to the College Representative; and
  - (xiii) if no tenders, quotations and proposals are available or have been received by Project Co, an alternate recommended course of action for procurement by Project Co, including possible substitutes for such items.
- (d) In response to any recommendation made by Project Co in accordance with Section 21.6(c), the College may do any of the following with respect to some or all of the items:

- (i) instruct Project Co to proceed with the procurement;
  - (ii) withdraw the requirement for Project Co to proceed with the procurement;
  - (iii) increase or decrease the quantities of any item, require the procurement of other items in substitution for such items or otherwise change the items to be procured or the terms on which such items are to be procured; and
  - (iv) reject any Category 1 FF&E vendor or item.
- (e) Project Co shall provide to the College Representative, as soon as reasonably practicable following a request therefor, such additional information as the College may require in respect of any recommendation made by Project Co in accordance with Section 21.6(c).
- (f) Project Co shall, in consultation with FF&E Steering Committee, review the Category 2 FF&E, and Category 3 FF&E building system requirements and the Category 2 FF&E, and Category 3 FF&E design drawings for reconciliation with the services and space designed prior to procurement of any Category 2 FF&E and Category 3 FF&E by the College.
- (g) Project Co shall coordinate the scheduling of all acceptance testing of all Category 3 FF&E.

### **21.7 Minimizing Disruptions**

- (a) Project Co shall perform all of its obligations under this Article 21 so as to minimize, to the greatest extent reasonably possible, any disruption of the Works or the operation of the College Activities. Project Co acknowledges and agrees that such activities may require work outside of normal working hours in order to accommodate the efficient operation of the Facility. Project Co shall coordinate any activities undertaken pursuant to this Section 21.7(a) in accordance with its obligations pursuant to Section 25.3 of the Project Agreement.

### **21.8 Scheduling of Procurement, Installation and Commissioning**

- (a) Project Co shall, in consultation with the College, prepare a schedule for the procurement, installation and commissioning of all Category 1 FF&E, and schedules for the installation and commissioning of all Category 2 FF&E and Category 3 FF&E, and shall incorporate the timing of the procurement and/or installation and/or commissioning of such FF&E into the Works Schedule and the Final Commissioning Program. Such schedule shall include the dates by which:
- (i) the College shall make a final determination of the quantity, make, service contract, model and vendor, as the case may be, of each piece or type of Category 1 FF&E;

- (ii) the College shall make a final determination of the quantity, make, service contract, model and vendor, as the case may be, of each piece or type of Category 2 FF&E and Category 3 FF&E so that Project Co can perform its obligations pursuant to this Project Agreement;
  - (iii) the College shall procure Category 2 FF&E; and
  - (iv) the College shall procure, install and commission the Category 3 FF&E.
- (b) The College shall review and confirm Project Co's proposal for the quantity, make, service contract, model and vendor of each piece of Category 1 FF&E, and shall execute any purchase order, contract, manufacturer's installation invoice and/or other documentation related to the Category 1 FF&E, by the relevant date set out in the Works Schedule, provided that the College Representative shall have received such documentation as the College requires, acting reasonably, to discharge its obligations under this Article 21 no later than 30 days prior to the relevant date set out in the Works Schedule.

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

### **22.1 LEED Design and Construction Obligations**

- (a) Project Co shall perform the Works so as to achieve the prerequisites and credits required to achieve the LEED Gold Rating and, except as set out in Section 1.2.2 of Part 1 of Schedule 15 – Output Specifications, Project Co may, in its sole discretion, determine which additional credits to pursue.

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

- (a) Project Co shall, at a minimum, achieve the credits and prerequisites under the LEED Rating System provided for in Section 1.2.2 of Part 1 of Schedule 15 – Output Specifications.

### **22.3 LEED Progress Reports**

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

### **22.4 LEED Gold Rating**

- (a) Project Co shall cause the Project to be registered with CaGBC. Project Co shall verify that the Project is registered with CaGBC within 60 days following Financial Close and confirm to the College that Project Co is satisfied that the registration is valid, and is effective as of the date it was made.

- (b) If there is a change in the requirements for achievement of LEED Gold Rating under the LEED Rating System, and Project Co is required by the CaGBC to comply with such change, then Project Co shall notify the College of such change and such change shall, subject to and in accordance with Schedule 22 – Variation Procedure, result in a Variation.
- (c) Project Co shall apply to the CaGBC to obtain LEED Gold Rating for the Facility as soon as possible.
- (d) In the event that LEED Gold Rating is not obtained by 24 months after the Substantial Completion Date, other than as a direct result of any act or omission of the College, any College Party or Government Entity, the College shall be entitled to be paid liquidated damages by Project Co in the amount of \$[REDACTED]. The Parties agree that such liquidated damages are not a penalty but represent a genuine and reasonable pre-estimate of the damages that the College will suffer as a result of LEED Gold Rating not being obtained by the date that is 24 months after the Substantial Completion Date and would be difficult or impossible to quantify upon the happening of such event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by the College as a result of a failure by Project Co to achieve LEED Gold Rating and, for greater certainty, a failure by Project Co to achieve LEED Gold Rating shall not result in a Project Co Event of Default. The Parties agree that such liquidated damages shall be payable whether or not the College incurs or mitigates its damages, and that the College shall not have any obligation to mitigate any such damages.

## **22.5 Greenhouse Gas Credits**

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

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

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

## **23. INDEPENDENT CERTIFIER**

### **23.1 Appointment**

- (a) On or prior to Financial Close, the Parties shall appoint an independent and suitably qualified and experienced consultant to act as the Independent Certifier for the purposes of this Project Agreement and shall enter into an agreement with the Independent Certifier substantially in the form of Schedule 6 – Independent Certifier Agreement. If the Parties are unable to agree upon the Independent Certifier within such period of time, then the determination of the Independent Certifier shall be made in the same manner as the identification of a replacement Independent Certifier under Section 23.7(b).

- (b) Neither Party shall, without the prior written consent of the other Party, enter into any agreement with the Independent Certifier in connection with the Project other than the Independent Certifier Agreement, and Project Co shall ensure that no Project Co Party enters into any separate agreement with the Independent Certifier in connection with the Project.

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

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

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

- (a) Neither the College nor Project Co shall without the other's prior written approval (not to be unreasonably withheld or delayed):
  - (i) waive, settle, compromise or otherwise prejudice any rights or claims which the other may from time to time have against the Independent Certifier; or
  - (ii) vary the terms of the Independent Certifier Agreement or the service performed or to be performed by the Independent Certifier.
- (b) The Parties shall perform their respective obligations arising under or in connection with the Independent Certifier Agreement.

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

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

### **23.5 Cooperation**

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

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

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

### **23.7 Replacement**

- (a) In the event of the Independent Certifier's engagement being terminated otherwise than for full performance, the Parties shall liaise and cooperate with each other in order to appoint a replacement consultant to act as the Independent Certifier as soon as reasonably practicable. The identity of any such replacement shall be as agreed by the Parties and the terms of his/her appointment shall, unless otherwise agreed, be as set out in the Independent Certifier Agreement.
- (b) In the event the Parties fail to agree upon the identity of a replacement Independent Certifier within five Business Days of the original Independent Certifier's appointment being terminated, then a replacement Independent Certifier shall be chosen as follows:
  - (i) each Party shall, within five Business Days thereafter, select three suitably qualified and experienced replacements that would be acceptable to that Party, and shall provide notice thereof to the other Party, with a ranking of preference for replacements;
  - (ii) if the Parties have both selected a common replacement, then such common replacement shall be the Independent Certifier, and if there is more than one common replacement, then the common replacement with the highest overall ranking (calculated by adding together the ordinal rank assigned by both Parties) shall be selected, and in the event of a tie, the lowest-cost of such tied replacements shall be selected; and
  - (iii) if the Parties have not selected a common replacement, then the determination of the new replacement may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

## **24. COMMISSIONING AND COMPLETION**

### **24.1 Commissioning Activities**

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

### **24.2 Final Commissioning Program**

- (a) Project Co shall prepare a draft of the Final Commissioning Program in respect of the Project Co Commissioning and the College Commissioning and shall provide a copy thereof to the Independent Certifier, the College Commissioning Consultant and the College Representative not less than 365 days prior to the Scheduled Substantial Completion Date.

- (b) The Final Commissioning Program shall, at a minimum:
- (i) describe the requirements, and the timing and sequence of such requirements, necessary in order that the Project Co Commissioning shall be completed to achieve:
    - (A) Substantial Completion on or before the Scheduled Substantial Completion Date; and
    - (B) Final Completion on or before the Scheduled Final Completion Date;
  - (ii) describe the requirements, and the timing and sequence of such requirements, of the College Commissioning activities;
  - (iii) comply with all requirements of the Outline Commissioning Program and include all details, including for all appendices, required to be completed in the Outline Commissioning Program;
  - (iv) be consistent with the Outline Commissioning Program and impose no greater or more onerous obligations on the College than those set out in the Outline Commissioning Program, unless otherwise agreed to by the College;
  - (v) include the names of the individuals or companies proposed to perform all Project Co Commissioning;
  - (vi) include a schedule of each of the Project Co Commissioning Tests and the College Commissioning Tests proposed to be performed and the timeframe for completion, with start and end dates;
  - (vii) include a schedule of meetings to be held between the Parties to coordinate the performance of the Project Co Commissioning and the College Commissioning;
  - (viii) provide for the re-verification of systems following the College Commissioning; and
  - (ix) list the approvals required from any Governmental Authority, manufacturer or other person that are necessary to meet the requirements of the Final Commissioning Program or Applicable Law.
- (c) The College shall provide Project Co with comments on the draft Final Commissioning Program in accordance with the procedures contemplated by Section 4.1 of Schedule 10 – Review Procedure, and Project Co shall revise the draft Final Commissioning Program to the extent contemplated by Schedule 10 – Review Procedure within 30 days of receipt of any comments from the College.
- (d) When agreed by the Parties, the Final Commissioning Program shall replace the Outline Commissioning Program with respect to Substantial Completion and Final Completion.

**24.3 Commencement of Project Co Commissioning**

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

**24.4 Substantial Completion Certificate**

- (a)
  - (i) Project Co shall give the Independent Certifier and the College Representative at least ten Business Days' notice prior to the date upon which Project Co anticipates delivering the Substantial Completion Notice.
  - (ii) For the purposes of determining Substantial Completion, and in accordance with Section 2(2) of the CLA, the Parties have agreed not to expeditiously complete the Remaining Works. The Parties have agreed that the price of the services or materials to be supplied, and required, to complete the Remaining Works shall be deducted from the total Cost of the Works in determining substantial performance. For greater certainty, the Remaining Works shall be completed as a requirement of achieving Final Completion.
- (b) Project Co shall give the Independent Certifier and the College Representative notice (the "**Substantial Completion Notice**") upon the satisfaction of all requirements for Substantial Completion, which Substantial Completion Notice shall describe, in reasonable detail, the satisfaction of the requirements for Substantial Completion, together with Project Co's opinion as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied.
- (c) The College shall, within five Business Days after receipt of the Substantial Completion Notice, provide the Independent Certifier and Project Co with the College's opinion as to whether the conditions for issuance of the Substantial Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Substantial Completion Certificate should not be issued.

- (d) Within five Business Days after Project Co's receipt of the College's opinion pursuant to Section 24.4(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Substantial Completion Certificate have been satisfied, having regard for the opinions of both Project Co and the College, to determine whether any Minor Deficiencies exist, and to issue to the College and to Project Co either:
- (i) the Substantial Completion Certificate confirming the date of issue as the Substantial Completion Date and setting out the Minor Deficiencies List (if applicable) in accordance with Section 24.8; or
  - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Substantial Completion Certificate.
- (e) Where the Independent Certifier has issued a report in accordance with Section 24.4(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, Project Co shall, within 5 Business Days after receipt of such report, provide the Independent Certifier and the College Representative with:
- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
  - (ii) the schedule for completion of all such rectification actions; and
  - (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions,
- and Project Co shall perform all such additional rectification actions and Project Co Commissioning in a timely manner. Upon completion thereof, Project Co may give a further Substantial Completion Notice and Sections 24.4(c) to (e), inclusive, shall be repeated until the Substantial Completion Certificate has been issued.
- (f) The Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate shall be final and binding on the Parties solely in respect of determining the Substantial Completion Payment Date, and a Dispute in relation to the Substantial Completion Payment Date shall not be subject to resolution pursuant to the Dispute Resolution Procedure, provided, however, that any other Dispute in relation to the Independent Certifier's decision to issue or not to issue the Substantial Completion Certificate may be referred for resolution pursuant to the Schedule 27 – Dispute Resolution Procedure.
- (g) Project Co shall provide As-Built Drawings and specifications, Design Data, spare parts and Shop Drawings as soon as possible and in any event no later than 30 days after the Substantial Completion Date.

## **24.5 Operation and Maintenance Manuals**

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

## **24.6 College Commissioning**

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

## **24.7 Countdown Notice**

- (a) Project Co shall deliver a notice (the “**Countdown Notice**”) to the College and the Independent Certifier specifying the date (which, for greater certainty, will be on or before the Scheduled Substantial Completion Date) on which Project Co anticipates that Substantial Completion will be achieved (the “**Anticipated Substantial Completion Date**”).
- (b) The Countdown Notice shall be delivered not less than 90 days prior to the Anticipated Substantial Completion Date. If Project Co fails to deliver the Countdown Notice not less than 90 days prior to the Scheduled Substantial Completion Date, the Anticipated Substantial Completion Date shall be deemed to be the same date as the Scheduled Substantial Completion Date.

- (c) Project Co acknowledges and agrees that the College requires a minimum of 90 days' notice prior to the Anticipated Substantial Completion Date to prepare for the College Commissioning.
- (d) In accordance with Section 13.5(a), the Anticipated Substantial Completion Date shall not be earlier than the Scheduled Substantial Completion Date without the prior written consent of the College, in its sole discretion.

#### **24.8 Minor Deficiencies**

- (a) In the event that any Minor Deficiencies exist when Project Co gives the Substantial Completion Notice, the Independent Certifier, in consultation with Project Co and the College, shall prepare a list of all Minor Deficiencies (the "**Minor Deficiencies List**") identified at that time and an estimate of the cost and the time for completing and rectifying such Minor Deficiencies. The College may withhold from the Substantial Completion Payment a holdback amount that is **[REDACTED]**% of the amount estimated by the Independent Certifier for the College to complete and rectify all Minor Deficiencies identified in the Minor Deficiencies List (the "**Completion Holdback**"), which holdback shall be held in an interest bearing account.
- (b) The Minor Deficiencies List will contain the schedule for the completion and rectification of the Minor Deficiencies. In determining the relevant time for completing and rectifying Minor Deficiencies, Project Co shall schedule the completion and rectification of Minor Deficiencies so as to minimize, to the greatest extent reasonably possible, any impairment of the College's use and enjoyment of the Facility or disruption of the Works.
- (c) The Independent Certifier must prepare the Minor Deficiencies List in relation to the Substantial Completion Notice before the Substantial Completion Certificate is issued, but shall not withhold the Substantial Completion Certificate by reason solely that there are Minor Deficiencies.
- (d) At the direction of the College, the Independent Certifier shall update the Minor Deficiencies List on one occasion to include a list of any and all Minor Deficiencies that were identified after the preparation of, or not included in, the original Minor Deficiencies List at any time prior to the earlier of:
  - (i) the date that is 10 Business Days prior to the date that Project Co is required to complete and rectify the last Minor Deficiency to be completed and rectified pursuant to Sections 24.9(a)(i) and 24.9(a)(ii); and
  - (ii) the date that is 10 Business Days prior to the Anticipated Final Completion Date.

The updated Minor Deficiencies List shall, following its preparation, be deemed to be the Minor Deficiencies List for the purposes of this Project Agreement (including, without limitation, for the purposes of Sections 24.8 to 24.10 (inclusive)). For clarity, the amount of the Completion Holdback withheld from the Substantial Completion Payment pursuant to Section 24.8(a) shall not be affected by the identification of any Minor Deficiency that

was identified after the preparation of, or not included in, the original Minor Deficiencies List and the College shall not be permitted to withhold any additional Completion Holdback amount on account of such Minor Deficiency.

- (e) The College may, in its sole discretion, waive any requirement for Substantial Completion, including with respect to FF&E, and the failure to meet any such requirement shall constitute a Minor Deficiency.

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

- (a) Project Co shall, in consultation with the College Representative and so as to minimize, to the greatest extent reasonably possible, any disruption of the Works, complete and rectify all Minor Deficiencies:
  - (i) within 45 days of the issuance of the original Minor Deficiencies List pursuant to Section 24.8(a) for all Minor Deficiencies where no time for rectification or completion has been specified by the Independent Certifier;
  - (ii) within the time for completion and rectification of any Minor Deficiency where such a time was specified by the Independent Certifier in the original Minor Deficiencies List issued pursuant to Section 24.8(a); or
  - (iii) with respect to Minor Deficiencies that were not set out in the original Minor Deficiencies List issued pursuant to Section 24.8(a) but are set out in the updated Minor Deficiencies List issued pursuant to Section 24.8(d), within 10 Business Days of the date of the preparation of such updated Minor Deficiencies List.
- (b) Project Co acknowledges and agrees that the completion and rectification of Minor Deficiencies may require work outside of normal working hours in order to accommodate the efficient operation of the Facility.

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

- (a) If Project Co fails to complete and rectify any Minor Deficiency within the time for its completion and rectification specified in Section 24.9, the College may engage others to perform the work necessary to complete and rectify such Minor Deficiency at the risk and cost of Project Co, and the College may deduct such cost from the Completion Holdback and interest accrued thereon.
- (b) After the completion and rectification of all Minor Deficiencies:
  - (i) Project Co shall submit to the College the following documentation:
    - (A) Project Co's written request for release of the Completion Holdback, including a declaration that no written notice of lien arising in relation to the performance of the Works has been received by it that has not been withdrawn by the lien claimant;

- (B) Project Co's Statutory Declaration CCDC 9A (2001); and
- (C) Project Co's WSIB Certificate of Clearance; and
- (ii) within 2 Business Days of Project Co submitting such documentation, the College shall release to Project Co the amount of the Completion Holdback (together with all interest accrued thereon and applicable HST) less the amount of any Finishing Holdback required to be maintained by the College as at such date, which Finishing Holdback amount shall be paid by the College to Project Co in accordance with Section 4.5A(d). Where the College exercises its rights pursuant to Section 24.10(a), if the cost of such completion and rectification exceeds the amount of the Completion Holdback and interest, then Project Co shall reimburse the College for all such excess cost.

#### **24.11 Remaining Works Minor Deficiencies**

- (a) Project Co shall request the Independent Certifier to prepare a list of all Remaining Works Minor Deficiencies (the "**Remaining Works Minor Deficiencies List**") by delivery of a written request (the "**Remaining Works Minor Deficiency Inspection Request**") to the Independent Certifier. The Remaining Works Minor Deficiency Inspection Request shall be delivered not less than 60 days prior to the Anticipated Final Completion Date. The Independent Certifier, in consultation with Project Co and the College, shall, within 10 Business Days of Project Co's delivery of the Remaining Works Minor Deficiency Inspection Request prepare the Remaining Works Minor Deficiencies List which shall include an estimate of the time for completing and rectifying all Remaining Works Minor Deficiencies
- (b) The Remaining Works Minor Deficiencies List will contain the schedule for the completion and rectification of all Remaining Works Minor Deficiencies. In determining the relevant time for completing and rectifying Remaining Works Minor Deficiencies, Project Co shall schedule the completion and rectification of Remaining Works Minor Deficiencies so as to minimize, to the greatest extent reasonably possible, any impairment of the College's use and enjoyment of the Facility or disruption of the Works.

#### **24.12 Rectification of Remaining Works Minor Deficiencies**

- (a) Project Co shall, in consultation with the College Representative and so as to minimize, to the greatest extent reasonably possible, any disruption of the Works, complete and rectify all Remaining Works Minor Deficiencies within 45 days of the issuance of the Remaining Works Minor Deficiencies List or such other period as the Independent Certifier may specify in the Remaining Works Minor Deficiencies List, and in any event by no later than the Scheduled Final Completion Date.
- (b) Project Co acknowledges and agrees that the completion and rectification of Remaining Works Minor Deficiencies may require work outside of normal working hours in order to accommodate the efficient operation of the Facility.

**24.13 Final Completion Countdown Notice**

- (a) Project Co shall deliver a notice (the “**Final Completion Countdown Notice**”) to the College and the Independent Certifier specifying the date (which, for greater certainty, will be on or before the Scheduled Final Completion Date) on which Project Co anticipates that Final Completion will be achieved (the “**Anticipated Final Completion Date**”).
- (b) The Final Completion Countdown Notice shall be delivered not less than 90 days prior to the Anticipated Final Completion Date. If Project Co fails to deliver the Final Completion Countdown Notice not less than 90 days prior to the Scheduled Final Completion Date, the Anticipated Final Completion Date shall be deemed to be the same date as the Scheduled Final Completion Date.

**24.14 Final Completion Certificate**

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

- (d) Within five Business Days after Project Co's receipt of the College's opinion pursuant to Section 24.14(c), the Parties shall cause the Independent Certifier to determine whether the conditions for issuance of the Final Completion Certificate have been satisfied, having regard for the opinions of both Project Co and the College, and to issue to the College and to Project Co either:
- (i) the Final Completion Certificate confirming the date of issue as the Final Completion Date; or
  - (ii) a report detailing the matters that the Independent Certifier considers are required to be performed by Project Co to satisfy the conditions for issuance of the Final Completion Certificate.
- (e) Where the Independent Certifier has issued a report in accordance with Section 24.14(d)(ii) and Project Co has not referred a Dispute in relation thereto for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, Project Co shall, within five Business Days after receipt of such report, provide the Independent Certifier and the College Representative with:
- (i) a detailed list indicating the rectification actions proposed for all matters raised in such report;
  - (ii) the schedule for completion of all such rectification actions; and
  - (iii) any additional Project Co Commissioning that needs to be undertaken as a result of the rectification actions,
- and Project Co shall perform all such additional rectification actions and Project Co Commissioning in a timely manner. Upon completion thereof, Project Co may give a further Final Completion Notice and Sections 24.14(b) to (e), inclusive, shall be repeated until the Final Completion Certificate has been issued.
- (f) Any Dispute in relation to the Independent Certifier's decision to issue or not to issue the Final Completion Certificate may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

#### **24.15 Effect of Certificates/Use**

- (a) The issue of the Substantial Completion Certificate and the Final Completion Certificate and any taking over or use by the College of any part of the Facility under the terms of this Project Agreement, shall, in no way:
- (i) limit the obligations of Project Co under this Project Agreement including in respect of any defects, deficiencies or items of outstanding work existing or discovered prior to or after the date of any of such certificates or the date of the Minor Deficiencies List or of the updated Minor Deficiencies List described in Section 24.8(d); or

- (ii) be construed as an approval by the College of the Works or the way in which they have been carried out.

**24.16 Remaining Works Letter of Credit**

- (a) By no later than the date that is 2 Business Days prior to the Substantial Completion Payment Date, Project Co shall deliver to the College the Remaining Works Letter of Credit to secure the completion by Project Co of the Remaining Works by the Scheduled Final Completion Date. Project Co shall (or shall cause the Construction Contractor to) procure the issuance of, deliver to the College, and thereafter maintain in accordance with this Section 24.16, the unconditional and irrevocable Remaining Works Letter of Credit in favour, and for the direct and exclusive benefit, of the College from any one or more of the five largest (by assets) Schedule I Canadian chartered banks or any other financial institutions approved by the College in the College's sole and absolute discretion, in each case, whose current long-term issuer rating is at least "A" by Standard & Poor's and "A2" by Moody's Investor Services or an equivalent rating by another party acceptable to the College in its sole and absolute discretion. Project Co may at any time replace or substitute the Remaining Works Letter of Credit with another letter of credit issued by any one or more such qualified financial institutions and in a form acceptable to and approved by the College, acting reasonably.
- (b) In the event that the Remaining Works Letter of Credit must be renewed at any time, Project Co agrees to provide (or cause the Construction Contractor to provide) to the College reasonable evidence of the renewal of such Remaining Works Letter of Credit no later than 10 Business Days prior to the renewal date, if any, of such Remaining Works Letter of Credit.
- (c) In the event that the Remaining Works, other than in respect of any Remaining Works Minor Deficiencies, have not been completed by the Scheduled Final Completion Date, the College may, upon the delivery of written notice to Project Co at any time following the Scheduled Final Completion Date, engage others to perform the work necessary to complete the Remaining Works at the risk and cost of Project Co and the College may, at any time and from time to time, fund the cost of completing such work by drawing against the Remaining Works Letter of Credit.
- (d) If, by the time specified in Section 24.12(a) Project Co has failed to complete and rectify any of the Remaining Works Minor Deficiencies specified in the Remaining Works Minor Deficiencies List, the College may, upon the delivery of written notice to Project Co at any time following such date, engage others to perform the work necessary to complete and rectify such Remaining Works Minor Deficiencies, at the risk and cost of Project Co and the College may, at any time and from time to time, fund the cost of completing such work by drawing against the Remaining Works Letter of Credit.
- (e) Following the Substantial Completion Date, in the event that:

- (i) a claim for a construction lien arising in relation to the performance of the Remaining Works is registered against the Lands, the Facility or the Existing Facilities, and unless Project Co makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to the College, acting reasonably, or
- (ii) the College receives any written notice of lien arising in relation to the performance of the Remaining Works,

the College shall be entitled to draw down from the Remaining Works Letter of Credit an amount the College reasonably determines would be required to satisfy the applicable lien claimant and any costs and expenses incurred by the College in connection therewith, including such amount on account of costs of the lien claimant such that the College may, upon payment of the amount of the lien claim together with such costs into court, obtain an order vacating such lien pursuant to the CLA, until such time as such claim has been dealt with in accordance with the applicable provisions of Section 17.3.

- (f) Notwithstanding anything to the contrary in this Section 24.16, the College shall be entitled to draw on the Remaining Works Letter of Credit:
  - (i) upon the failure of Project Co to renew the Remaining Works Letter of Credit pursuant to Section 24.16(b);
  - (ii) upon the bankruptcy or insolvency of Project Co or the Construction Contractor, as the case may be;
  - (iii) upon the downgrading of any of the banks or other financial institutions that issued the Remaining Works Letter of Credit below the thresholds set out in Section 24.16(a) where the Remaining Works Letter of Credit has not been replaced by Project Co or the Construction Contractor, as the case may be, with a replacement Remaining Works Letter of Credit in a form acceptable to the College, acting reasonably, and issued by a bank or banks that meet the thresholds set out in Section 24.16(a) within 30 calendar days of such downgrading; or
  - (iv) upon the bankruptcy or insolvency of any of the banks or other financial institutions that issued the Remaining Works Letter of Credit,

provided that the College shall provide Project Co at least two Business Days prior written notice before drawing on the Remaining Works Letter of Credit pursuant to this Section 24.16(f).

- (g) In the event that the Remaining Works Letter of Credit is drawn down in accordance with Section 24.16(f), the College shall hold the cash proceeds thereof in a segregated bank account selected by Project Co (provided that such bank account must be at a bank that meets the thresholds described in Section 24.16(a)) and such cash proceeds shall thereupon stand in place of the Remaining Works Letter of Credit until Project Co delivers (or causes the delivery of) a replacement Remaining Works Letter of Credit to

the College. All interest earned on such cash proceeds shall be for the benefit of Project Co. The College shall be entitled to withdraw such cash proceeds in the same manner that it is permitted to draw upon the Remaining Works Letter of Credit pursuant to Section 24.16(c), Section 24.16(d) or Section 24.16(e). Upon the replacement of the Remaining Works Letter of Credit by Project Co or the Construction Contractor, as the case may be, the College shall return all remaining cash proceeds and all accrued interest thereon from such segregated bank account to Project Co or as Project Co may direct within five Business Days.

- (h) The College may make multiple calls on the Remaining Works Letter of Credit in accordance with this Section 24.16.
- (i) Within five Business Days following the later of (i) the Final Completion Date and (ii) the Finishing Holdback Payment Date, the College shall return the Remaining Works Letter of Credit to Project Co.
- (j) For clarity, this Section 24.16 shall survive the termination of this Project Agreement.

## **25. HUMAN RESOURCES**

### **25.1 Admittance of Personnel, Security and Safety**

- (a) Without limitation, Project Co acknowledges that the security of the occupants of the Site, the Facility and the Existing Facilities and the safety and health of the students, employees, visitors and other persons on the Site and/or in the Facility and the Existing Facilities is paramount. If any employee of Project Co, or any Project Co Party is considered by the College to constitute a concern for the security of the Site, the Facility and/or the Existing Facilities or for the safety or health of the students, employees, visitors and/or other persons on the Site and/or in the Facility or the Existing Facilities, the College may require that Project Co replace such employee or restrict access to the Site, the Facility and/or the Existing Facilities to that employee and Project Co shall engage or cause the Project Co Parties to engage substitute employees to proceed with the Works so as not to jeopardize security or safety or cause delay to the progress of the Works contrary to the Works Schedule.
- (b) The College shall have the right to refuse admittance to, or order the removal from the Site, the Facility and/or the Existing Facilities of any person employed by (or acting on behalf of) Project Co, or any Project Co Party who fails to comply with the Human Rights Policies or who has been convicted of a Relevant Conviction.
- (c) Any decision of the College made pursuant to this Section 25.1 shall be final and conclusive.
- (d) Any action taken under this Section 25.1 shall promptly be confirmed by the College to Project Co and, for greater certainty, shall not relieve Project Co of any of its obligations under this Project Agreement.

**25.2 Notification of Convictions**

- (a) To the extent permitted by Applicable Law, Project Co shall ensure that the College is immediately notified in the event that Project Co or any Project Co Party becomes aware that any person employed or engaged by Project Co or any Project Co Party in the provision of any of the Works has been convicted of a Relevant Conviction. Project Co shall use commercially reasonable efforts to obtain, or to cause all Project Co Parties to obtain, all consents as may be required by Applicable Law or otherwise authorizing the disclosure of such information to the College as contemplated in this Section 25.2.

**25.3 Human Resources Policies**

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

**25.4 Management Organizations**

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

**25A THE COLLEGE'S REMEDIAL RIGHTS**

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

- (a) The College may exercise all rights set out in this Article 25A at any time and from time to time if:
  - (i) the College, acting reasonably, considers that a breach by Project Co of any obligation under this Project Agreement, or any act or omission on the part of Project Co or any Project Co Party:
    - (A) does or can reasonably be expected to create a serious threat to the health, safety or security of any user of any part of or the whole of the Facility and/or Existing Facilities, including employees of and visitors to the Facility and/or Existing Facilities and members of the public; or
    - (B) may potentially compromise the College's reputation or integrity or the nature of the Province's post-secondary education system, so as to affect public confidence in that system,

provided that:

- (C) in respect of a breach by Project Co of any obligation under this Project Agreement or any act or omission on the part of Project Co or any Project Co Party which can reasonably be expected to cause any of the consequences set out in Section 25A.1(a)(i)(A), the College shall not exercise its rights under this Article 25A unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of notice from the College or, if such breach, act or omission cannot reasonably be cured within such 5 Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter, provided that Project Co shall not be entitled to a cure period if any of the consequences set out in Section 25A.1(a)(i)(A) actually occur; and
  - (D) in respect of Section 25A.1(a)(i)(B), the College shall not exercise its rights under this Article 25A unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of notice from the College or, if such breach, act or omission cannot reasonably be cured within such 5 Business Day period, Project Co thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter.
- (ii) Project Co has not caused the Construction Contractor to perform its obligations with respect to its Health and Safety Certification in accordance with Section 11.22 or Project Co has not caused the Construction Contractor to perform its obligations to rectify any non-compliance noted in any H&S Inspection Report in accordance with Section 15.5(b); or
  - (iii) Project Co has not performed or is not performing its obligations in respect of the Demolition Requirements in accordance with Section 11.23(a) or Project Co has not performed or is not performing its obligations to rectify any Demolition Default Event in accordance with Section 11.23(b).

## **25A.2 Emergency**

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

## **25A.3 Rectification**

- (a) Without prejudice to the College's rights under Article 34 and any other rights under this Project Agreement, in any of the circumstances set out in Sections 25A.1 or 25A.2, the College may, by written notice, require Project Co to take such steps as the College, acting reasonably, considers necessary or expedient to mitigate, rectify or protect against such circumstance, including, if applicable, the termination and replacement of any

Project Co Party or a limited suspension of the performance of the Works, and Project Co shall use commercially reasonable efforts to comply with the College's requirements as soon as reasonably practicable.

- (b) If the College gives notice to Project Co pursuant to Section 25A.3(a) and either:
  - (i) Project Co does not either confirm, within 5 Business Days of such notice or such shorter period as is appropriate in the case of an Emergency that it is willing to take the steps required in such notice or present an alternative plan to the College to mitigate, rectify and protect against such circumstances that the College may accept or reject acting reasonably; or
  - (ii) Project Co fails to take the steps required in such notice or accepted alternative plan within such time as set out in such notice or accepted alternative plan or within such longer time as the College, acting reasonably, shall think fit,

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

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

#### **25A.4 Costs and Expenses**

- (a) Subject to the College's obligations pursuant to Sections 25A.5 and 25A.6:
  - (i) Project Co shall bear all costs and expenses incurred by Project Co in relation to the exercise of the College's rights pursuant to this Article 25A; and
  - (ii) Project Co shall reimburse the College for all reasonable costs and expenses incurred by the College in relation to the exercise of the College's rights pursuant to this Article 25A, including in relation to the College taking such steps, either itself or by engaging others (including a third party) to take any such steps as the College considers appropriate and as are in accordance with this Article 25A.

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

- (a) In this Section 25A.5, a "**Reimbursement Event**" means:
  - (i) an act or omission of Project Co or any Project Co Party or a breach of any obligation under this Project Agreement, but only to the extent such act, omission or breach is caused by the College or a College Party; or

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

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

- (a) If the College exercises its rights pursuant to this Article 25A, but the College was not entitled to do so, the College shall reimburse Project Co for the reasonable costs and expenses directly incurred by Project Co over and above those that would otherwise have been incurred by Project Co in the proper performance of its obligations under this Project Agreement and that are directly and reasonably incurred by Project Co in complying with those written requirements of the College issued as a result of the College having exercised such rights.
- (b) Project Co acknowledges and agrees that Project Co has no right to require a determination of whether or not the College is entitled to exercise its rights pursuant to this Article 25A before taking any such action that the College may require and Project Co shall comply with all of the College's requirements. Only concurrently with or after complying with the College's requirements shall Project Co be entitled to refer any dispute for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.

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

#### **26.1 Records Provisions**

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

#### **26.2 Information and General Audit Rights**

- (a) Project Co shall provide, and shall cause each Subcontractor to provide, to the College all information, reports, documents, records and the like, including as referred to in Schedule 26 – Record Provisions, in the possession of, or available to, Project Co as the College may reasonably require from time to time for any purpose in connection with this Project Agreement, other than Sensitive Information. Project Co shall use commercially reasonable efforts to ensure that, for such purpose, all such information, reports, documents, records and the like in the possession of, or available to, the Construction

Contractor shall be available to Project Co and Project Co shall include relevant terms in all Subcontracts to this effect.

- (b) Project Co shall also provide to the College, and shall require each Subcontractor, including the Construction Contractor, to provide to the College (at the College's reasonable cost), all information, reports, documents, records and the like required to be provided pursuant to Section 26.2(a) which subsequently come into the possession of, or become available to, Project Co or each Subcontractor, as the College may reasonably require from time to time to enable the College to provide reports, notices, returns and the like pursuant to Applicable Law, including information and documentation pertaining to the physical condition of the Site, security, health and safety, fire safety, emergency preparedness, environmental matters, employees and human resources related matters other than Sensitive Information.
- (c) Project Co shall promptly after receipt provide the College with a copy of any material notice, order, direction, requirement or other similar communication received by it or by any Subcontractor from any Governmental Authority in relation to any of the Works, or the Site, and Project Co shall include relevant terms in all Subcontracts to this effect.
- (d) Project Co shall promptly notify the College of any actions, suits, proceedings, or investigations commenced, pending or threatened against Project Co or, to Project Co's knowledge, any Subcontractor at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement.
- (e) All information, reports, documents and records in the possession of, or available to, Project Co, including as referred to in Schedule 26 – Record Provisions, which are required to be provided to or available to the College hereunder, shall be subject and open to inspection and audit by the College at any time and from time to time, which inspection and audit shall take place during normal business hours and at Project Co's normal places of business unless the College and Project Co otherwise agree. The College shall also have the right to monitor and audit the performance of any and all parts of the Works wherever located, and Project Co shall cooperate with, and shall require each Subcontractor to cooperate with, and provide access to the representatives of the College monitoring and auditing such parts of the Works, including providing them with access and copies (at the College's reasonable cost) of all relevant information, reports, documents and records pertaining to the performance of such parts of the Works. Except as otherwise provided herein, all of the College's costs for the inspections, audits and monitoring shall be borne by the College.
- (f) In conducting an audit of Project Co under Section 26.2(e) or as otherwise provided under this Project Agreement, the College shall have all rights necessary or incidental to conducting an audit, including the right to have access to and inspect and take copies (at the College's reasonable cost) of all books and records of Project Co required to be

provided to or available to the College hereunder, upon reasonable notice and at reasonable times. Project Co shall fully cooperate with the College and its auditors in the conduct of any audits, including by making available all such records and accounts (other than Sensitive Information) in existence at that time as they may require to perform a full and detailed audit, and Project Co further agrees to promptly review and settle with the College all matters arising from such audits, including the refunding of monies to the College where applicable. At the reasonable request of the College's auditors, Project Co shall provide such information, reports, documents and records as the College's auditors may reasonably require, other than Sensitive Information.

- (g) The College's rights pursuant to this Section 26.2 shall be in addition to, and shall not limit, any other audit, information, inspection or similar rights under this Project Agreement.
- (h) The College's rights pursuant to this Section 26.2 shall not limit or restrict any Governmental Authority's right of review, audit, information or inspection under Applicable Law.

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

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

## **27. COMMUNICATIONS**

### **27.1 Communications**

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

## **28. CHANGES IN LAW**

### **28.1 Performance after Change in Law**

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

### **28.2 Works Change in Law**

- (a) On the occurrence of a Works Change in Law:
  - (i) either Party may give notice to the other of the need for a Variation as a result of such Works Change in Law;

- (ii) the Parties shall meet within ten Business Days of such notice to consult with respect to the effect of the Works Change in Law and to reach an agreement on whether a Variation is required as a result of such Works Change in Law, and, if the Parties have not, within ten Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Works Change in Law has occurred or the effect of any Works Change in Law for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and
- (iii) the College shall, within ten Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
  - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Works Change in Law;
  - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences, Approvals and Agreements required in respect of the Variation;
  - (C) the College shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
  - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Works Change in Law as soon as reasonably practicable; and
  - (E) Project Co shall not be entitled to any payment or other compensation or relief from performance of its obligations under this Project Agreement in respect of any Works Change in Law or associated Variation other than as established pursuant to Schedule 22 – Variation Procedure.

### **28.3 Relevant Change in Law**

- (a) On the occurrence of a Relevant Change in Law, either Party shall be entitled to seek compensation for any increase or decrease (as the case may be) in the net cost to Project Co of performing the Works so as to put such Party in no better and no worse position than it would have been in had the Relevant Change in Law not occurred. Any such compensation shall be calculated in accordance with this Section 28.3.
- (b) On the occurrence of a Relevant Change in Law:
  - (i) either Party may give notice to the other of the need for a Variation as a result of such Relevant Change in Law;
  - (ii) the Parties shall meet within ten Business Days of such notice to consult with respect to the effect of the Relevant Change in Law and to reach an agreement on

whether a Variation is required as a result of such Relevant Change in Law, and, if the Parties have not, within ten Business Days of this meeting, reached an agreement, either Party may refer the question of whether a Relevant Change in Law has occurred or the effect of any Relevant Change in Law for resolution in accordance with Schedule 27 – Dispute Resolution Procedure; and

- (iii) the College shall, within ten Business Days of agreement or determination that a Variation is required, issue a Variation Enquiry and the relevant provisions of Schedule 22 – Variation Procedure shall apply except that:
  - (A) Project Co may only object to any such Variation Enquiry on the grounds that the implementation of the Variation would not enable it to comply with the Relevant Change in Law;
  - (B) Project Co shall be responsible for obtaining all Development Approvals and Project Co Permits, Licences, Approvals and Agreements required in respect of the Variation;
  - (C) the College shall not be entitled to withdraw any such Variation Enquiry unless the Parties otherwise agree;
  - (D) Project Co shall proceed to implement the Variation within such period as will enable it to comply with the Relevant Change in Law as soon as reasonably practicable;
  - (E) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement:
    - (I) use commercially reasonable efforts to mitigate the adverse effects of any Relevant Change in Law and take commercially reasonable steps to minimize any increase in costs arising from such Relevant Change in Law; and
    - (II) use commercially reasonable efforts to take advantage of any positive or beneficial effects of any Relevant Change of Law and take commercially reasonable steps to maximize any reduction in costs arising from such Relevant Change in Law; and
  - (F) any entitlement to compensation payable shall be in accordance with this Section 28.3, and any calculation of compensation shall take into consideration, inter alia:
    - (I) any failure by a Party to comply with Section 28.3(b)(iii);
    - (II) any increase or decrease in its costs resulting from such Relevant Change in Law; and

- (III) any amount which Project Co recovers under any insurance policy (or would recover if it complied with its obligations to insure under this Project Agreement or the terms of any policy of insurance required under this Project Agreement) which amount, for greater certainty, shall not include the amount of any excess or deductibles or any amount above the maximum insured amount applicable to any such insurance policy.
- (c) Project Co shall not be entitled to any payment or compensation or, except as provided in Article 30 or otherwise in this Project Agreement, relief in respect of any Relevant Change in Law, or the consequences thereof, other than in accordance with this Section 28.3, and Article 31 shall be construed accordingly.

## **29. VARIATIONS**

### **29.1 Variation Procedure**

- (a) Except as otherwise expressly provided in this Project Agreement, Schedule 22 – Variation Procedure shall apply in respect of Variations.
- (b) For greater certainty, Project Co shall, subject to and in accordance with Schedule 22 – Variation Procedure, be entitled to a Variation if a written direction issued by or on behalf of the College to Project Co or any Project Co Party results in a variation, addition, reduction, substitution, omission, modification, deletion, removal or other change to the whole or any part of the Works.
- (c) Without limiting Project Co’s obligations pursuant to Section 11.10(a) and Schedule 22 – Variation Procedure, Project Co shall include in each Subcontract, or shall otherwise cause each Project Co Party to comply with, the Variation Procedure, to the extent that the Variation Procedure requires Project Co to minimize the cost and impact of Variations.

### **29.2 Innovation and Value Engineering**

- (a) Project Co acknowledges that the College at all times desires to reduce the overall cost to the College of the Project, and Project Co agrees to cooperate, explore and work with the College in investigating and considering innovation and value engineering and other cost saving measures.
- (b) If an innovation and value engineering proposal is at any time and from time to time originated and initiated solely by Project Co, Project Co may make a proposal (the “**Innovation Proposal**”) by notice to the College.
- (c) The Parties agree that the subject of an Innovation Proposal shall not include:
  - (i) any Variation Enquiry initiated by the College; or

- (ii) any Variation resulting from a Change in Law.
- (d) The Innovation Proposal must:
  - (i) set out sufficient detail to enable the College to evaluate the Innovation Proposal in full;
  - (ii) specify Project Co's reasons and justification for proposing the Innovation Proposal;
  - (iii) request the College to consult with Project Co with a view to deciding whether to agree to the Innovation Proposal and, if so, what consequential changes the College requires as a result;
  - (iv) indicate any implications of the Innovation Proposal, including a difference between the existing and the proposed requirements of this Project Agreement, and the comparative advantages of each to Project Co and the College;
  - (v) indicate if there are any dates by which a decision by the College must be made;
  - (vi) indicate the capital cost of the Innovation Proposal, including the cost of financing; and
  - (vii) include such other information and documentation as may be reasonably requested by the College to fully evaluate and consider the Innovation Proposal.
- (e) The College shall, acting in good faith, evaluate the Innovation Proposal, taking into account all relevant issues, including whether:
  - (i) the Innovation Proposal affects the quality of the Works, the Facility, or the likelihood of successful completion of the Works;
  - (ii) the Innovation Proposal will benefit or interfere with the efficient operation of the Facility or the performance of the College Activities;
  - (iii) the Innovation Proposal will interfere with the relationship between the College and third parties;
  - (iv) the financial strength of Project Co is sufficient to deliver the changed Works, as applicable;
  - (v) the residual value of the Lands or Facility is affected;
  - (vi) the Innovation Proposal materially affects the risks or costs to which the College is exposed; or
  - (vii) any other matter the College considers relevant.

- (f) The College may request clarification or additional information regarding the Innovation Proposal, and may request modifications to the Innovation Proposal.
- (g) The College may, in its sole discretion, accept or reject any Innovation Proposal.
- (h) If the College accepts the Innovation Proposal, with or without modification, the relevant Innovation Proposal shall be documented and evidenced by a written Variation Confirmation, together with any other documents necessary to amend this Project Agreement or any relevant Project Documents to give effect to the Innovation Proposal.
- (i) If, after taking into account the agreed implementation and reasonably allocated development costs incurred by Project Co in connection with the Innovation Proposal and any other uses of the Innovation Proposal by Project Co, the Innovation Proposal causes or will cause the costs of Project Co and/or of a Subcontractor to decrease, the net savings in the costs of Project Co and/or the Subcontractor will be shared equally by Project Co and the College, and the College's share of the net savings shall, if the Parties agree, be reflected in a lump sum payment.
- (j) If an Innovation Proposal causes or will cause the costs of the College to decrease, the net savings in the costs of the College will be shared:
  - (i) equally by Project Co and the College following the implementation of the Innovation Proposal until the Termination Date; and
  - (ii) thereafter, the College shall be entitled to the full benefit of the net savings in costs (if applicable),

and Project Co's share of the net savings shall be reflected in a lump sum payment.

### **30. DELAY EVENTS**

#### **30.1 Definition**

- (a) For the purposes of this Project Agreement, "**Delay Event**" means any of the following events or circumstances only to the extent, in each case, that it causes a delay in achieving Substantial Completion by the Scheduled Substantial Completion Date or a delay in achieving Final Completion by the Scheduled Final Completion Date as it pertains to the Remaining Works:
  - (i) the implementation of a Variation to the extent Project Co has identified such delay in its Estimate and such delay has been documented in the Variation Confirmation;
  - (ii) any breach by the College of any of the College's obligations under this Project Agreement (including, subject to Section 30.2(1), any delay by the College in giving access to the Site or to the Existing Facilities pursuant to Section 16.1), any obstruction of the rights afforded to Project Co under Section 16.1, any delay by

the College in carrying out its obligations set forth in Section 21.4(a) or any delay by the College in carrying out its obligations set forth in Schedule 10 – Review Procedure), except to the extent that any such breach is caused, or contributed to, by Project Co or any Project Co Party;

- (iii) an opening up of the Works pursuant to Section 20.3 where such Works are not subsequently found to be defective or not in compliance with the requirements of this Project Agreement (including the Output Specifications, the Project Co Proposal Extracts and the Design Data), unless such opening up of the Works was reasonable in the light of other defects or non-compliance previously discovered by the College in respect of the same or a similar component of the Works or subset of the Works;
- (iv) a requirement pursuant to Sections 18.2(b) or 18.2(c) for Project Co to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, upon the discovery of Contamination, which alteration, addition, demolition, extension or variation in the Works, or suspension or delay in the performance of the Works, would not otherwise be required under this Project Agreement;
- (v) a requirement pursuant to Sections 18.3(b) or 18.3(c) for Project Co to perform any alteration, addition, demolition, extension or variation in the Works, or to suspend or delay performance of the Works, upon the discovery of any fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which alteration, addition, demolition, extension or variation in the Works, or suspension or delay in the performance of the Works, would not otherwise be required under this Project Agreement;
- (vi) subject to the provisions of Section 11.12, the execution of Additional Works on the Site by Additional Contractors;
- (vii) a requirement pursuant to Section 11.1 of Schedule 27 – Dispute Resolution Procedure for Project Co to proceed in accordance with the direction of the College during the pendency of a Dispute, which Dispute is subsequently determined in Project Co’s favour;
- (viii) a Relief Event;
- (ix) an event of Force Majeure; or
- (x) a Relevant Change in Law.

**30.2 Consequences of a Delay Event**

- (a) Project Co shall provide written notice to the College Representative and the Independent Certifier within 5 Business Days of becoming aware of the occurrence of any event or circumstances that is reasonably likely to become a Delay Event.
- (b) Project Co shall, within 10 Business Days (or such longer period of time as the Parties may agree) after delivering such notification under Section 30.2(a), provide further written details to the College Representative and the Independent Certifier which shall include:
  - (i) a statement of which potential Delay Event Project Co's claim would be based on if such event or circumstances were to become a Delay Event;
  - (ii) details of the circumstances from which the potential Delay Event arises;
  - (iii) details of the contemporary records which Project Co shall maintain to substantiate its claim for extra time if such event or circumstances were to become a Delay Event;
  - (iv) details of the consequences (whether direct or indirect, financial or non-financial) which such Delay Event may have upon the Scheduled Substantial Completion Date or the Scheduled Final Completion Date as it pertains to the Remaining Works if such an event or circumstances were to become a Delay Event; and
  - (v) details of any measures which Project Co proposes to adopt to prevent such event or circumstances from becoming a Delay Event or to mitigate the consequences of such Delay Event if such event or circumstances were to become a Delay Event.
- (c) As soon as possible but in any event within 3 Business Days of Project Co receiving, or becoming aware of, any supplemental information pertaining to the event or circumstances that in Project Co's opinion may become a Delay Event, Project Co shall submit further particulars based on such information to the College Representative and the Independent Certifier.
- (d) The College Representative shall, after receipt of written details under Section 30.2(b), or of further particulars under Section 30.2(c), be entitled by written notice to require Project Co to provide such further supporting particulars as the College Representative may reasonably consider necessary. Project Co shall afford the College Representative and the Independent Certifier reasonable facilities for investigating the potential Delay Event, including, without limitation, on-site inspection.
- (e) Subject to Project Co complying with its obligations under Section 30.2(a) and 30.2(b), Project Co shall provide written notice to the College Representative and the Independent Certifier within 5 Business Days of becoming aware that the potential Delay Event has become a Delay Event. Project Co shall, within 10 Business Days after such notification, provide further written details to the College Representative and the Independent

Certifier to supplement the information given in Section 30.2(a) and, as applicable, Sections 30.2(b) and 30.2(c), to further substantiate or support Project Co's claim which shall include:

- (i) a statement of which Delay Event the claim is based upon;
  - (ii) details of the circumstances from which the Delay Event arises;
  - (iii) details of the contemporary records which Project Co shall maintain to substantiate its claim for extra time;
  - (iv) details of the consequences (whether direct or indirect, financial or non-financial) which such Delay Event may have upon the Scheduled Substantial Completion Date or the Scheduled Final Completion Date as it pertains to the Remaining Works, if such event or circumstances were to become a Delay Event; and
  - (v) details of any measures which Project Co proposes to adopt to mitigate the consequences of such Delay Event.
- (f) As soon as possible but in any event within 3 Business Days of Project Co receiving, or becoming aware of, any supplemental information which may further substantiate or support Project Co's claim under Section 30.2(e), Project Co shall submit further particulars based on such information to the College Representative and the Independent Certifier.
- (g) The College Representative shall, after receipt of written details under Section 30.2(e), or of further particulars under Section 30.2(f), be entitled by written notice to require Project Co to provide such further supporting particulars as the College Representative may reasonably consider necessary. Project Co shall afford the College Representative and the Independent Certifier reasonable facilities for investigating the validity of Project Co's claim, including on-site inspection.
- (h) Subject to the provisions of this Section 30, the College Representative shall allow Project Co an extension of time equal to the delay caused by the Delay Event and shall fix (A) a revised Scheduled Substantial Completion Date; or (B) a revised Scheduled Final Completion Date, as applicable, as soon as reasonably practicable and in any event within 10 Business Days of the later of:
- (i) the date of receipt by the College Representative of Project Co's notice given in accordance with Section 30.2(e) and the date of receipt of any further particulars (if such are required under Section 30.2(f)), whichever is later; and
  - (ii) the date of receipt by the College Representative of any supplemental information supplied by Project Co in accordance with Section 30.2(f) and the date of receipt of any further particulars (if such are required under Section 30.2(g)), whichever is later.

- (i) If:
- (i) the College Representative declines to fix (A) a revised Scheduled Substantial Completion Date; or (B) a revised Scheduled Final Completion Date, as applicable;
  - (ii) Project Co considers that a different (A) Scheduled Substantial Completion Date; or (B) Scheduled Final Completion Date should be fixed; or
  - (iii) there is a dispute as to whether a Delay Event has occurred,
- then Project Co shall be entitled to refer the matter for determination by the Independent Certifier. The decision of the Independent Certifier may be disputed by either Party and referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure.
- (j) If the Works should be behind schedule for a reason other than a Delay Event, or if a Project Co Party delays the progress of any portion of the Works necessary to complete the Works on schedule, Project Co shall use all reasonable measures to bring the Works back on schedule. Project Co shall exercise all means within its discretion, such as directing any Project Co Party that is creating delays to increase their labour forces and equipment, to improve the organization and expediting of the Works, or to work overtime as may be necessary. Project Co shall provide any additional supervision, coordination and expediting, including overtime by its own personnel as may be required to achieve this end. The costs and expenses incurred by the use of such measures and overtime shall be borne by Project Co and/or the Project Co Parties and there shall be no adjustment to the Guaranteed Price as a result of such costs and expenses and for clarity, no extension of the Scheduled Substantial Completion Date.
- (k) Where there are concurrent delays, some of which are caused by the College or others for whom the College is responsible, and some of which are caused by Project Co or others for whom Project Co is responsible, Project Co shall not be entitled to either an extension in the Scheduled Substantial Completion Date or additional compensation to the extent of the concurrent delays. Concurrent delays are those that are caused by two or more independent events which affect the Scheduled Substantial Completion Date, as applicable, where the time period over which such delays occur overlap in time, but only for the duration of the overlap.
- (l) Subject to Sections 11.16(b) and 11.16(c), the College shall provide Project Co with access to and use of the Site and the Existing Facilities as required pursuant to Article 16 of this Project Agreement in a manner consistent with the Works Schedule and in accordance with the notification requirements and restrictions set out in the Project Agreement, provided that Project Co agrees that the inability of the College to provide Project Co with access to an area for construction activities not on the critical path for reasons set out in Sections 11.16(b) and 11.16(c) will not result in the occurrence of a Delay Event (and, for greater certainty, there shall not be a resulting change to the

Scheduled Substantial Completion Date) or a Compensation Event (and, for certainty, there shall not be any resulting change to the Guaranteed Price).

- (m) In no event shall the extension of time for a Delay Event be more than the necessary extension of the critical path as a result of the Delay Event.
- (n) If Project Co does not comply with its obligations under Sections 30.2(a), (b), (c), (d), (e), (f) or (g) it shall be presumed that the College's ability to validate the consequences of the event or circumstances on the College is constrained or otherwise prejudiced and such failure shall be taken into account in determining Project Co's entitlement to an extension of time pursuant to this Section 30.
- (o) If Project Co does not provide further written details to the College Representative and the Independent Certifier as required under Section 30.2(b), then after a further 10 Business Days, Project Co acknowledges and agrees that the notice given under Section 30.2(a) shall be null and void.

### **30.3 Mitigation**

- (a) If Project Co is (or claims to be) affected by a Delay Event, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps:
  - (i) to eliminate or mitigate the consequences of such event upon the performance of its obligations under this Project Agreement;
  - (ii) to continue to perform its obligations under this Project Agreement to the extent possible notwithstanding the Delay Event; and
  - (iii) to resume performance of its obligations under this Project Agreement affected by the Delay Event as soon as practicable.
- (b) To the extent that Project Co does not comply with its obligations under this Section 30.3, such failure shall be taken into account in determining Project Co's entitlement to an extension of time pursuant to this Section 30.

## **31. COMPENSATION EVENTS**

### **31.1 Definition**

- (a) For the purposes of this Project Agreement, "**Compensation Event**" means any event referred to in Sections 30.1(a)(ii) (subject to Section 30.2(1)), 30.1(a)(iii), 30.1(a)(iv), 30.1(a)(v), 30.1(a)(vi) and 30.1(a)(vii) as a direct result of which Project Co has incurred loss or expense, whether or not any of these events has also caused a delay.

**31.2 Consequences of a Compensation Event**

- (a) If a Compensation Event occurs, Project Co's sole right to compensation shall be as set out in this Section 31. For greater certainty, except as aforesaid, no other Delay Event shall entitle Project Co to receive any compensation, except as otherwise provided in:
  - (i) Schedule 22 – Variation Procedure, in the case of a Delay Event referred to in Section 30.1(a)(i);
  - (ii) Section 33, in the case of a Delay Event referred to in Section 30.1(a)(ix);
  - (iii) Section 32, in the case of a Delay Event referred to in Section 30.1(a)(viii); and
  - (iv) Section 28, in the case of a Delay Event referred to in Section 30.1(a)(x).
- (b) Subject to Sections 31.2(c), 31.2(e), 31.3, 31.4 and 31.5, if it is agreed, or determined in accordance with Schedule 27 – Dispute Resolution Procedure, that there has been a Compensation Event, Project Co shall be entitled to such compensation as would place Project Co in no better or no worse position than it would have been in had the relevant Compensation Event not occurred. For greater certainty, in respect of a Compensation Event that is also a Delay Event, such compensation will include amounts which, but for the Delay Event, would have been paid by the College to Project Co. Project Co shall promptly provide the College Representative with any information the College Representative may require in order to determine the amount of such compensation.
- (c) Notwithstanding Section 31.2(b), in respect of any Compensation Event that occurs prior to the College assigning the comment “NO COMMENT” or “MINOR NON-CONFORMANCE” to the draft Works Schedule referred to in Section 13.2(a):
  - (i) if such Compensation Event is also a Delay Event, any compensation Project Co is entitled to pursuant to Section 31.2(b) shall not exceed the Senior Debt Service Amount and the Junior Debt Service Amount accrued and paid or that became payable in accordance with the Lending Agreements during the period of delay; and
  - (ii) if such Compensation Event is not a Delay Event, Project Co shall not be entitled to any compensation pursuant to this Section 31.
- (d) If the College is required to compensate Project Co pursuant to this Section 31.2, then the College may either pay such compensation as a lump sum payment or payments at times and in a manner to be agreed with Project Co, acting reasonably.
- (e) If Project Co does not comply with its obligations under Sections 30.2(a), 30.2(b), 30.2(c), 30.2(d), 30.2(e), 30.2(f) or 30.2(g) it shall be presumed that the College's ability to validate the consequences of the event or circumstances on the College is constrained or otherwise prejudiced and such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 31.

### **31.3 Mitigation**

- (a) If Project Co is (or claims to be) affected by a Compensation Event, Project Co shall, and shall require all Project Co Parties to, take and continue to take commercially reasonable steps to minimize the amount of compensation due in accordance with this Section 31 in relation to any Compensation Event.
- (b) To the extent that Project Co does not comply with its obligations under this Section 31.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Section 31.

### **31.4 Insured Exposure**

- (a) The compensation payable to Project Co pursuant to this Section 31 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

### **31.5 Delivery of Works Schedule**

- (a) If a Compensation Event occurs prior to Project Co submitting to the College a detailed draft of the Works Schedule referred to in Section 13.2(a), Project Co shall not be entitled to receive any compensation under this Section 31 in respect of such Compensation Event unless such Compensation Event is also a Delay Event, in which case Project Co shall be entitled to compensation in an amount equal to the lesser of:
  - (i) the Senior Debt Service Amount and the Junior Debt Service Amount accrued and paid or that became payable in accordance with the Lending Agreements during the period of delay; and
  - (ii) the compensation which, but for the application of this Section 31.5, Project Co would have been entitled to pursuant to Section 31.2(b).

## **32. RELIEF EVENTS**

### **32.1 Definition**

- (a) For the purposes of this Project Agreement, "**Relief Event**" means any of the following events or circumstances to the extent, in each case, that it causes any failure by a Party to perform any of its obligations under this Project Agreement:
  - (i) fire, explosion, lightning, storm, tempest, hurricane, tornado, flood, bursting or overflowing of water tanks, apparatus or pipes, ionizing radiation (to the extent it does not constitute Force Majeure), earthquake, riot or civil commotion;

- (ii) failure by any Utility Company, local authority or other like body to perform works or provide services;
- (iii) accidental loss or damage to the Works and/or the Facility or any roads servicing the Site;
- (iv) without prejudice to any obligation of Project Co to provide stand-by power facilities in accordance with this Project Agreement, failure or shortage of power, fuel or transport;
- (v) blockade or embargo falling short of Force Majeure;
- (vi) any official or unofficial strike, lockout, work to rule or other labour-related action generally affecting the construction industry (or a significant sector of that industry) in the Province of Ontario; or
- (vii) any civil disobedience or protest action, including any action taken by any person or persons protesting or demonstrating against the carrying out of any part of the Works,

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

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

- (a) Subject to Section 32.3, no right of termination, other than either Party's right to terminate this Project Agreement pursuant to Section 36.1, shall arise under this Project Agreement by reason of any failure by a Party to perform any of its obligations under this Project Agreement, but only to the extent that such failure to perform is caused by the occurrence of a Relief Event (it being acknowledged and agreed by the Parties that all other rights and obligations of the Parties under this Project Agreement remain unaffected by the occurrence of a Relief Event).
- (b) In respect of a Relief Event that is also a Delay Event pursuant to Section 30.1(a)(viii):
  - (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 30; and
  - (ii) in respect of a Relief Event referred to in Section 32.1(a)(v), 32.1(a)(vi) or 32.1(a)(vii), on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the College Default Termination Sum or Non-Default Termination Sum (and as a part thereof) in accordance with Schedule 23 – Compensation on Termination, the College shall pay to Project Co an amount equal to the Senior Debt Service Amount accrued and paid or that became

payable in accordance with the Lending Agreements during the period of delay by Project Co or any Project Co Party to the Senior Lenders up to and including the Scheduled Substantial Completion Date or the date of payment of the College Default Termination Sum or Non-Default Termination Sum, as applicable, together with interest thereon at the rate payable on the Senior Debt Amount, which, but for the Delay Event, would have been paid by the Project Co to the Senior Lenders.

- (c) If a Relief Event occurs, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 32.2(b)(ii) and 38.
- (d) Subject to Section 38, Project Co's sole right to payment or otherwise in relation to the occurrence of a Relief Event shall be as provided in this Section 32.

### **32.3 Mitigation and Process**

- (a) Where a Party is (or claims to be) affected by a Relief Event, such Party shall take commercially reasonable steps to mitigate the consequences of the Relief Event upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by the Relief Event as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform.
- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 32.3, such failure shall preclude such Party's entitlement to relief pursuant to this Section 32.
- (c) The Party claiming relief shall give written notice to the other Party within 5 Business Days of such Party becoming aware of the relevant Relief Event. Such initial notice shall give sufficient details to identify the particular event claimed to be a Relief Event.
- (d) A subsequent written notice shall be given by the Party claiming relief to the other Party within a further 5 Business Days of the initial notice, which notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including, without limitation, the effect of the Relief Event on the ability of the Party to perform, the action being taken in accordance with Section 32.3(a), the date of the occurrence of the Relief Event, and an estimate of the period of time required to overcome the Relief Event and/or its effects.
- (e) The Party claiming relief shall notify the other as soon as the consequences of the Relief Event have ceased and of when performance of its affected obligations can be resumed.
- (f) If, following the issue of any notice referred to in Section 32.3(d), the Party claiming relief receives or becomes aware of any further information relating to the Relief Event and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

### **32.4 Insured Exposure**

- (a) The compensation payable to Project Co pursuant to this Section 32 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

## **33. FORCE MAJEURE**

### **33.1 Definition**

- (a) For the purposes of this Project Agreement, “**Force Majeure**” means any of the following events or circumstances which directly causes either Party to be unable to perform all or a material part of its obligations under this Project Agreement:
  - (i) war, civil war, armed conflict, terrorism, acts of foreign enemies or hostilities;
  - (ii) nuclear or radioactive contamination of the Works, the Facility and/or the Site, unless Project Co or any Project Co Party is the source or cause of the contamination;
  - (iii) chemical or biological contamination of the Works, the Facility and/or the Site from any event referred to in Section 33.1(a)(i);
  - (iv) pressure waves caused by devices traveling at supersonic speeds; or
  - (v) the discovery of any fossils, artefacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which, as a result of Applicable Law, requires the Works to be abandoned.

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

- (a) Subject to Section 33.3, the Party claiming relief shall be relieved from liability under this Project Agreement to the extent that, by reason of the Force Majeure, it is not able to perform its obligations under this Project Agreement.
- (b) In respect of an event of Force Majeure that is also a Delay Event pursuant to Section 30.1(a)(ix):
  - (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Section 30; and
  - (ii) on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the College Default Termination Sum or Non-Default Termination Sum (and as

a part thereof) in accordance with Schedule 23 – Compensation on Termination, the College shall pay to Project Co an amount equal to the Senior Debt Service Amount and the Junior Debt Service Amount accrued and paid or that accrued in accordance with the Lending Agreements during the period of delay by Project Co or any Project Co Party to the Lenders up to and including the Scheduled Substantial Completion Date or the date of payment of the College Default Termination Sum or Non-Default Termination Sum, as applicable, together with interest thereon at the rate payable on the principal amount of debt funded under the Lending Agreements, which, but for the Delay Event, would have been paid by the Project Co to the Lenders.

- (c) If an event of Force Majeure occurs prior to the Substantial Completion Date, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 33.2(b)(ii) and 38.
- (d) Subject to Section 38, Project Co's sole right to payment or otherwise in relation to the occurrence of an event of Force Majeure shall be as provided in this Section 33.

### **33.3 Mitigation and Process**

- (a) Where a Party is (or claims to be) affected by an event of Force Majeure, such Party shall take commercially reasonable steps to mitigate the consequences of such event of Force Majeure upon the performance of its obligations under this Project Agreement, shall resume performance of its obligations affected by the event of Force Majeure as soon as practicable and shall use commercially reasonable efforts to remedy its failure to perform, including efforts to minimize any negative impact of the event of Force Majeure on the Works Schedule.
- (b) To the extent that the Party claiming relief does not comply with its obligations under Section 33.3(a), such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Section 33.
- (c) The Party claiming relief shall give written notice to the other Party within 5 Business Days of such Party becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.
- (d) A subsequent written notice shall be given by the Party claiming relief to the other Party within a further 5 Business Days of the initial notice, which notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including, without limitation, the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Section 33.3(a), the date of the occurrence of the event of Force Majeure, and an estimate of the period of time required to overcome the event of Force Majeure and its effects.

- (e) The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and of when performance of its affected obligations can be resumed.
- (f) If, following the issue of any notice referred to in Section 33.3(d), the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

### **33.4 Insured Exposure**

- (a) The compensation payable to Project Co pursuant to this Section 33 shall be reduced by any amount which Project Co or a Project Co Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of this Project Agreement in respect of insurance or the terms of any policy of insurance required under this Project Agreement, which amount, for greater certainty, shall not include any excess or deductibles or any amount over the maximum amount insured under any such insurance policy.

### **33.5 Modifications**

- (a) The Parties shall use commercially reasonable efforts to agree to any modifications to this Project Agreement which may be equitable having regard to the nature of an event or events of Force Majeure. Schedule 27 – Dispute Resolution Procedure shall not apply to a failure of the College and Project Co to reach agreement pursuant to this Section 33.5.

## **34. PROJECT CO DEFAULT**

### **34.1 Project Co Events of Default**

- (a) For the purposes of this Project Agreement, “**Project Co Event of Default**” means any one or more of the following events or circumstances:
  - (i) the occurrence of any of the following events other than as a consequence of a breach by the College of its payment obligations hereunder:
    - (A) Project Co admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors, or a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or any other like person is appointed by or on behalf of or at the instance of a creditor of Project Co with respect to Project Co or any of the property, assets or undertaking of Project Co, or any creditor of Project Co takes control, or takes steps to take control, of Project Co or any of Project Co’s assets, or any proceedings are instituted against Project Co that result in Project Co being declared or ordered bankrupt or in administration, liquidation, winding-up, reorganization, compromise, arrangement, adjustment,

protection, relief or composition of it or with respect to it or its debts or obligations, or any such proceedings are instituted by Project Co seeking any such result, or any such proceedings are instituted by a person other than Project Co, the College, a College Party or a person related to any of them seeking such result and such proceedings have or will have a material adverse effect on the performance of the Works or of the College Activities (where such proceedings have not been withdrawn, stayed, discharged, or are otherwise of no further effect, within 90 days of being instituted), under any Applicable Law (including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada)) relating to bankruptcy, insolvency or reorganization of or relief with respect to debtors or debtors' obligations or assets or other similar matters, or seeking the appointment of a receiver, manager, administrator, administrative receiver, receiver and manager, trustee, custodian or other similar official or like person for it or with respect to any of its assets, or any resolutions are passed or other corporate actions of Project Co are taken to authorize any of the actions set forth in this Section 34.1(a)(i);

- (B) Project Co ceases performing a substantial portion of its business, or a substantial portion of such business is suspended or is not being performed, whether voluntarily or involuntarily, that has or will have a material adverse effect on Project Co's ability to perform its obligations under this Project Agreement;
  - (C) if any execution, sequestration, extent or other process of any court becomes enforceable against Project Co or if a distress or analogous process is levied against any property of Project Co that materially adversely affects Project Co's ability to perform its obligations hereunder; or
  - (D) Project Co shall suffer any event, or any event or set of circumstances occurs or comes about, analogous to the foregoing events or sets of circumstances set out this Section 34.1(a)(i) in any jurisdiction in which it is incorporated or resident and such event or set of circumstances would, if set out in Section 34.1(a)(i)(A), (B) or (C), constitute a Project Co Event of Default;
- (ii) Project Co failing to achieve Substantial Completion within 180 days after the Scheduled Substantial Completion Date (the "**Longstop Date**");
  - (iii) Project Co either:
    - (A) failing to deliver a rectification plan under Section 13.4(a)(iii)(B);

- (B) delivering a rectification plan under Section 13.4(a)(iii)(B) which indicates that Project Co will not achieve Substantial Completion by the Longstop Date; or
- (C) delivering a rectification plan under Section 13.4(a)(iii)(B) that is not acceptable to the Independent Certifier, acting reasonably, as to the matters set out in Section 13.4(a)(iii)(B)(II);
- (iv) Project Co making any representation or warranty herein that is false or misleading when made, and that has or will have at any time a material adverse effect on the performance of Works, the College Activities, or that may compromise the College's reputation or integrity or the nature of the Province's post-secondary education system so as to affect public confidence in that system, and, in the case of a false or misleading representation or warranty that is capable of being remedied, such breach is not remedied within 10 Business Days of receipt of notice of the same from the College;
- (v) Project Co committing a breach of Sections 40 or 41;
- (vi) Project Co committing a breach of its obligations under this Project Agreement which has or will have a material adverse effect on the performance of the College operations or College Activities (other than a breach that is otherwise referred to in Section 34.1(a)(i) to (v) inclusive or 34.1(a)(vii) to (xvi) inclusive) other than where such breach is a consequence of a breach by the College of its obligations under this Project Agreement, and upon becoming aware of such breach Project Co failing to remedy such breach in accordance with all of the following:
  - (A) Project Co shall:
    - (I) immediately commence and thereafter diligently continue to remedy the breach and to mitigate any adverse effects on the College and the performance of the College operations and the College Activities;
    - (II) put forward, within 5 Business Days of receipt of notice of such breach from the College, a reasonable plan and schedule for diligently remedying the breach and mitigating its effect, which plan and schedule shall specify in reasonable detail the manner in which, and the latest date by which, such breach is proposed to be remedied, which latest date shall in any event be within 60 days of notice of such breach, or if such breach is not capable of being rectified in such period then such longer period as is reasonable in the circumstances; and

- (III) thereafter perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder;
- (vii) Project Co wholly abandoning the Works for a period which exceeds three Business Days from receipt by Project Co of a written request to return to the Site, other than as a consequence of a breach by the College of its obligations under this Project Agreement;
- (viii) Project Co failing to comply with Sections 47.1 or 47.3;
- (ix) the occurrence of any Change in Ownership or Change in Control which is prohibited by Section 47.4;
- (x) Project Co failing to remove an Encumbrance that arose due to an act or omission of Project Co or any Project Co Party (other than a Title Encumbrance and any Encumbrance derived through the College) within 45 days of the earlier of:
  - (A) the registration of such Encumbrance against title to the Lands or any part thereof; and
  - (B) the date on which Project Co or any Project Co Party knew, or ought to have known, about the existence of the Encumbrance;
- (xi) Project Co failing to pay any sum or sums due to the College under this Project Agreement, which sum or sums are not being disputed by Project Co in accordance with Schedule 27 – Dispute Resolution Procedure and which sum or sums, either singly or in aggregate, exceed(s) \$[REDACTED] (index linked), and such failure continues for 30 days from receipt by Project Co of a notice of non-payment from the College;
- (xii) Project Co failing to comply with Section 48;
- (xiii) Project Co failing to comply with Section 8.3 or Schedule 29 - Refinancing;
- (xiv) Project Co failing to obtain any bond, security or insurance required to be obtained by or on behalf of Project Co pursuant to this Project Agreement or any such bond, security or insurance being vitiated or otherwise ceasing to be in full force and effect or in material compliance with the requirements set out in this Project Agreement, other than as a consequence of a breach by the College of its obligations under this Project Agreement, and:
  - (A) in respect of insurance, such breach by Project Co is not remedied within 10 Business Days of the occurrence of the breach; and
  - (B) in respect of a bond or security, such breach by Project Co is not remedied within 5 Business Days of Project Co becoming aware of such breach;

- (xv) Project Co failing to comply with any determination, order or award made against Project Co in accordance with Schedule 27 – Dispute Resolution Procedure;
- (xvi) A default by Project Co or any Project Co Party under any of the Ancillary Documents following the expiry of any applicable notice and cure periods thereunder.

### **34.2 Notification of Occurrence**

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

### **34.3 Right to Termination**

- (a) On the occurrence of a Project Co Event of Default, or at any time after the College becomes aware of a Project Co Event of Default, and, if the occurrence of a Project Co Event of Default is disputed by Project Co in good faith, then following confirmation in accordance with Schedule 27 – Dispute Resolution Procedure that a Project Co Event of Default has occurred, the College may, subject to Section 34.4, terminate this Project Agreement in its entirety by written notice having immediate effect, such notice to be given to Project Co, and to any person specified in the Lenders’ Direct Agreement to receive such notice.

### **34.4 Remedy Provisions**

- (a) In the case of a Project Co Event of Default referred to in Sections 34.1(a)(i)(B), 34.1(a)(i)(C), 34.1(a)(i)(D) (where the Project Co Event of Default referred to in Section 34.1(a)(i)(D) is analogous to a Project Co Event of Default referred to in Section 34.1(a)(i)(B) or 34.1(a)(i)(C)), 34.1(a)(iii), 34.1(a)(iv), 34.1(a)(v), 34.1(a)(vii), 34.1(a)(viii), 34.1(a)(ix), (where the Project Co Event of Default referred to in Section 34.1(a)(ix) is capable of being remedied), 34.1(a)(xi), 34.1(a)(xiii), 34.1(a)(xiv) (where the Project Co Event of Default referred to in Section 34.1(a)(xiv) is not in respect of insurance), 34.1(a)(xv), or 34.1(a)(xvi), the College shall, prior to being entitled to terminate this Project Agreement, give notice of default to Project Co, and to any person specified in the Lenders’ Direct Agreement to receive such notice, and Project Co shall:
  - (i) within five Business Days of such notice of default, put forward a reasonable plan and schedule for diligently remedying the Project Co Event of Default, which schedule shall specify in reasonable detail the manner in, and the latest date by which, such Project Co Event of Default is proposed to be remedied, which latest date shall, in any event, be within 30 days of the notice of default, or if such breach is not capable of being remedied in such period then such longer period as is acceptable to the College, acting reasonably; and

- (ii) thereafter, perform its obligations to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations thereunder.
- (b) Where Project Co puts forward a plan and schedule in accordance with Section 34.4(a)(i) that has a date for the Project Co Event of Default to be remedied that is beyond 30 days from the notice of default, the College shall have 5 Business Days from receipt of the same within which to notify Project Co that the College does not accept such longer period in the plan and schedule and that the 30 day limit will apply, failing which the College shall be deemed to have accepted the longer period in the plan and schedule.
- (c) If a Project Co Event of Default, of which a notice of default was given under Section 34.4(a), occurs and:
  - (i) Project Co fails to immediately commence and thereafter diligently continue to remedy the Project Co Event of Default and to mitigate any adverse effects on the College; or
  - (ii) Project Co fails to put forward a plan and schedule pursuant to Section 34.4(a)(i); or
  - (iii) such Project Co Event of Default is not remedied within 30 days of such notice of default or such longer period as is established pursuant to the plan and schedule established pursuant to Sections 34.4(a) and (b); or
  - (iv) where Project Co puts forward a plan and schedule pursuant to Section 34.4(a)(i) and Project Co fails to perform its obligations thereunder necessary to achieve all elements of such plan and schedule in accordance with its terms within the time for the performance of its obligations,

then the College may terminate this Project Agreement in its entirety by written notice with immediate effect, such notice to be given to Project Co, and to any person specified in the Lenders' Direct Agreement to receive such notice.

- (d) Notwithstanding that the College may give the notice referred to in Section 34.4(a), and without prejudice to the other rights of the College in this Section 34.4, at any time during which a Project Co Event of Default is continuing, the College may, at Project Co's risk and expense, take such steps as the College considers appropriate, either itself or by engaging others (including a third party) to take such steps, to perform or obtain the performance of Project Co's obligations under this Project Agreement or to remedy such Project Co Event of Default.
- (e) Upon the occurrence of a Project Co Event of Default that Project Co has remedied pursuant to this Section 34.4, such occurrence of a Project Co Event of Default shall thereafter cease to be a Project Co Event of Default and the College shall not be entitled to terminate this Project Agreement for that occurrence of a Project Co Event of Default.

**34.5 College's Costs**

- (a) Project Co shall reimburse the College for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by the College in exercising its rights under this Section 34, including any relevant increased administrative expenses. The College shall take commercially reasonable steps to mitigate such costs.

**34.6 No Other Rights to Terminate**

- (a) The College shall have no right or entitlement to terminate this Project Agreement, or to accept any repudiation of this Project Agreement, and shall not purport to exercise any such right or entitlement except as set forth in Sections 34 and 36.

**35. COLLEGE DEFAULT**

**35.1 College Events of Default**

- (a) For the purposes of this Project Agreement, “**College Event of Default**” means any one or more of the following events or circumstances:

- (i) the College failing to pay any sum or sums due to Project Co under this Project Agreement, which sum or sums are not being disputed by the College in accordance with Schedule 27 – Dispute Resolution Procedure and which sum or sums, either singly or in aggregate, exceed(s) \$[REDACTED] (index linked), and:
  - (A) in respect of the Substantial Completion Payment, such failure continues for a period of 10 Business Days; or
  - (B) in respect of any other payment due and payable by the College to Project Co under this Project Agreement, such failure continues for a period of 90 days,

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

- (ii) the College committing a material breach of its obligations under Section 16 (other than as a consequence of a breach by Project Co of its obligations under this Project Agreement), which breach materially adversely affects the ability of Project Co to perform its obligations under this Project Agreement for a continuous period of not less than 60 days; or
- (iii) an act of any Governmental Authority which renders it impossible for Project Co to perform all or substantially all of its obligations under this Project Agreement (other than as a consequence of a breach by Project Co of its obligations under this Project Agreement) for a continuous period of not less than 60 days, provided

that, for greater certainty, the non-issuance of, or the imposition of any conditions or limitations in, any of the Project Co Permits, Licences, Approvals and Agreements shall not constitute an “act of any Governmental Authority”.

### **35.2 Project Co’s Options**

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

### **35.3 Project Co’s Costs**

- (a) The College shall reimburse Project Co for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a full indemnity basis) properly incurred by Project Co in exercising its rights under this Section 35, including any relevant increased administrative expenses. Project Co shall take commercially reasonable steps to mitigate such costs.

### **35.4 No Other Rights to Terminate**

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

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

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

- (a) If a Relief Event occurs and the effects of the Relief Event continue for 180 days from the date on which the Party affected gives notice to the other Party pursuant to Section 32.3(c), either Party may, at any time thereafter, terminate this Project Agreement by written notice to the other Party having immediate effect, provided that the effects of the Relief Event continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.

### **36.2 Termination for Force Majeure**

- (a) If an event of Force Majeure occurs and the Parties, having used commercially reasonable efforts, have failed to reach agreement on any modification to this Project Agreement pursuant to Section 33.5 within 180 days from the date on which the Party affected gives notice to the other Party as set out therein, either Party may, at any time thereafter, terminate this Project Agreement by written notice to the other Party having immediate effect, provided that the effects of the event of Force Majeure continue during such period to prevent either Party from performing a material part of its obligations under this Project Agreement.

### **36.3 Termination for Convenience**

- (a) The College shall, in its sole discretion and for any reason whatsoever, be entitled to terminate this Project Agreement at any time on 180 days written notice to Project Co. Such written notice shall include confirmation that the College has, in respect of such termination, obtained the prior written consent of the Minister of Training, Colleges and Universities.
- (b) In the event of notice being given by the College in accordance with this Section 36.3, the College shall, at any time before the expiration of such notice, be entitled to direct Project Co to refrain from commencing, or allowing any third party to commence, the Works, or any part or parts of the Works where such Works have not yet been commenced.

### **36.4 Automatic Expiry on Expiry Date**

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

## **37. EFFECT OF TERMINATION**

### **37.1 Termination**

- (a) Notwithstanding any provision of this Project Agreement, upon the service of a notice of termination or termination on the Expiry Date pursuant to Section 36.4, this Section 37 shall apply in respect of such termination.

### **37.2 Continued Effect – No Waiver**

- (a) Notwithstanding any breach of this Project Agreement by a Party, the other Party may elect to continue to treat this Project Agreement as being in full force and effect and to enforce its rights under this Project Agreement without prejudice to any other rights which such other Party may have in relation to such breach. The failure of either Party to exercise any right under this Project Agreement, including any right to terminate this

Project Agreement and any right to claim damages, shall not be deemed to be a waiver of such right for any continuing or subsequent breach.

### **37.3 Continuing Performance**

- (a) Subject to any exercise by the College of its rights to perform, or to seek, pursuant to this Project Agreement, a third party to perform, the obligations of Project Co, the Parties shall continue to perform their obligations under this Project Agreement (including, if applicable, pursuant to Schedule 23 – Compensation on Termination) notwithstanding the giving of any notice of default or notice of termination, until the termination of this Project Agreement becomes effective in accordance with this Section 37.

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

- (a) On the service of a notice of termination, or termination on the Expiry Date pursuant to Section 36.4:
  - (i) if termination is prior to the Substantial Completion Date, in so far as any transfer shall be necessary to fully and effectively transfer such property to the College as shall not already have been transferred to the College pursuant to Section 43.1, Project Co shall transfer to, and there shall vest in, the College, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through the College), such part of the Works and Facility as shall have been constructed and such items of the Plant and equipment, including FF&E as shall have been procured by Project Co, and, if the College so elects:
    - (A) all plant, equipment and materials (other than those referred to in Section 37.4(a)(i)(B)) on or near to the Site shall remain available to the College for the purposes of completing the Works; and
    - (B) all construction plant and equipment shall remain available to the College for the purposes of completing the Works, subject to payment by the College of the Construction Contractor's reasonable charges;
  - (ii) if termination is prior to the Substantial Completion Date, Project Co shall deliver to the College (to the extent such items have not already been delivered to the College) one complete set of all Project Data and Intellectual Property relating to the design, construction and completion of the Works and the Facility;
  - (iii) in so far as title shall not have already passed to the College pursuant to Section 43.1 or Section 37.4(a)(i), Project Co shall hand over to, and there shall vest in, the College, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through the College), the Facility together with all other assets and rights capable of being transferred that are necessary for the performance of the Project and the Works and all facilities and equipment, including the FF&E, and to the extent that any such assets or rights are not capable of being transferred by Project Co to the College, Project Co shall enter

into agreements or make other arrangements in order to permit the use of the assets or rights by the College in order to enable it, or its designated agents or subcontractors, to continue to perform the activities which would have otherwise been performed by Project Co if this Project Agreement had not been terminated;

- (iv) if the College so elects, Project Co shall ensure that any of the Subcontracts between Project Co and a Subcontractor (including the Design and Construction Contract), any other instrument entered into between any such Subcontractor and Project Co for securing the performance by such Subcontractor of its obligations in respect of the Works or to protect the interests of Project Co, shall be novated or assigned to the College or its nominee, provided that where termination occurs other than as a result of a Project Co Event of Default, the consent of the relevant Subcontractor shall be required, and further provided that any such novation or assignment of the Design and Construction Contract with the Construction Contractor shall be made by the College pursuant to, and subject to, the terms of the Construction Contractor's Direct Agreement;
- (v) Project Co shall, or shall ensure that any Project Co Party shall, offer to sell (and if the College so elects, execute such sale) to the College at a fair value (determined as between a willing vendor and willing purchaser, with any Disputes as to such fair value being resolved in accordance with Schedule 27 – Dispute Resolution Procedure), free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through the College), all or any part of the stocks of material and other assets, road vehicles, spare parts and other moveable property owned by Project Co or any Project Co Parties and dedicated to or predominantly used in respect of the Facility, and reasonably required by the College in connection with the operation of the Facility;
- (vi) Project Co shall use commercially reasonable efforts to assign, or otherwise transfer, to the College, free from all Encumbrances (other than the Title Encumbrances and any Encumbrances derived through the College), the benefit of all manufacturers' warranties, including all documentation in respect thereof, in respect of mechanical and electrical plant and equipment used or made available by Project Co under this Project Agreement and included in the Facility; and
- (vii) Project Co shall deliver to the College all information, reports, documents, records and the like referred to in Section 26, including as referred to in Schedule 26 – Record Provisions, except where such are required by Applicable Law to be retained by Project Co or the Project Co Parties (in which case complete copies shall be delivered to the College).

### **37.5 Ownership of Information**

- (a) Subject to Section 39, all information obtained by Project Co, including the As Built Drawings and other technical drawings and data, supplier agreements and contracts, utilities consumption information, environmental and technical reports, static building

information, lease, licence and subletting data and contracts, asset condition data, standard operating procedures, processes and manuals and all other information directly related to the Works accumulated over the course of the Project Term shall be the property of the College and upon termination of this Project Agreement shall be provided or returned to the College, as applicable, in electronic format acceptable to the College, acting reasonably, where it exists in electronic format, and in its original format, when not in electronic format.

**37.6 Provision in Subcontracts**

- (a) Project Co shall make provision in all Subcontracts to which it is a party (including requiring the relevant Project Co Parties to make such provision and to require other Project Co Parties to make such provision) to ensure that the College shall be in a position to exercise its rights, and Project Co shall be in a position to perform its obligations, under this Section 37.

**37.7 Transitional Arrangements**

- (a) On the termination of this Project Agreement for any reason, for a reasonable period both before and after any such termination, Project Co shall:
  - (i) as soon as practicable remove from the Site all property belonging to Project Co or any Project Co Party that is not acquired by the College pursuant to Section 37.4 or otherwise, and, if Project Co has not done so within 60 days after any notice from the College requiring it to do so, the College may, without being responsible for any loss, damage, costs or expenses, remove and sell any such property and shall hold any proceeds, less all costs incurred to the credit of Project Co;
  - (ii) forthwith deliver to the College Representative:
    - (A) all keys to, and any pass cards and other devices used to gain access to any part of the Facility; and
    - (B) to the extent transferable and without prejudice to the College's rights pursuant to Section 39, any copyright licences for any computer programs, or licences to use the same, used in connection with the operation of the Facility; and
  - (iii) as soon as practicable vacate the Site and shall leave the Site and the Facility in a safe, clean and orderly condition.

**37.8 Termination upon Aforesaid Transfer**

- (a) On completion of Project Co's obligations pursuant to this Section 37, this Project Agreement shall terminate and, except as provided in Section 37.9, all rights and

obligations of the College and Project Co under this Project Agreement shall cease and be of no further force and effect.

### **37.9 Survival**

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

- (i) all representations, warranties and indemnities under this Project Agreement; and
- (ii) Sections 1.2, 1.3, 4, 6, 7, 8, 11.14, 11.15, 17.2, 18.1, 18.3(a), 23.6, 24.16, 26, 34.5, 35.3, 36.4, 37, 38, 39 (with the exception of 39.4(b)), 40, 41, 42.3, 43, 44, 45, 46, 48.3, 49.1, 51.4, 51.8, 51.9, 51.10, 51.11 and 51.12 of this Project Agreement, Schedule 23 – Compensation on Termination, Schedule 24 – Financial Model, Sections 1.2 to 1.8 of Schedule 26 – Record Provisions, Schedule 27 – Dispute Resolution Procedure and any other provisions of this Project Agreement which are expressed to survive termination or which are required to give effect to such provisions which survive termination or to such termination or the consequences of such termination,

all of which shall survive the termination of this Project Agreement, including for termination on the Expiry Date pursuant to Section 36.4.

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

## **38. COMPENSATION ON TERMINATION**

### **38.1 Compensation on Termination**

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

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

(a) Except as otherwise provided in Section 38.2(b), any compensation paid pursuant to this Section 38, including pursuant to Schedule 23 - Compensation on Termination in the total amount owing thereunder, shall be in full and final settlement of any claims, demands and proceedings of Project Co and the College, and each shall be released from all liability to the other in relation to any breaches or other events leading to such termination of this Project Agreement, and the circumstances leading to such breach or termination, and Project Co and the College shall be precluded from exercising all other

rights and remedies in respect of any such breach or termination whether in contract, tort, restitution, statute, at common law or otherwise.

- (b) Section 38.2(a) shall be without prejudice to:
- (i) any liability of either Party to the other, including under the indemnities contained in this Project Agreement, that arose prior to the Termination Date (but not from the termination itself or the events leading to such termination) to the extent such liability has not already been set off pursuant to Section 4.12 or taken into account pursuant to Schedule 23 - Compensation on Termination in determining or agreeing upon the College Default Termination Sum, Non-Default Termination Sum, Project Co Default Termination Sum or any other termination sum, as the case may be; and
  - (ii) any liabilities arising under or in respect of any breach by either Party of their obligations under Section 37.9 of this Project Agreement, or the Sections referred to therein, which did not lead to such termination and which arises or continues after the Termination Date.

## **39. INTELLECTUAL PROPERTY**

### **39.1 Representation and Warranty**

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

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

- (a) Project Co shall make all Project Data and Intellectual Property Rights available to, and upon request shall deliver to, the College free of charge all Project Data, and shall obtain all necessary licences, permissions and consents to ensure that Project Co shall make the Project Data and Intellectual Property Rights available to and deliver the Project Data to the College on the aforesaid terms of this Section 39.2(a), for any and all of the Approved Purposes.

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

- (a) Project Co:
- (i) hereby grants to the College an irrevocable, worldwide, royalty free, perpetual, non-exclusive and transferable licence, including the right to grant sub-licences, to use the Project Data and the Intellectual Property Rights for any and all of the Approved Purposes;
  - (ii) shall, at Project Co's cost, where any Intellectual Property Rights are or become vested in the Construction Contractor, obtain the grant of an equivalent licence to that referred to in Section 39.3(a)(i), provided that such licence may, in respect of the Construction Contractor's Intellectual Property Rights that are proprietary and subject to trademark or copyright, be limited to the term of the Design and Construction Contract; and
  - (iii) shall, at Project Co's cost, where any Intellectual Property Rights are or become vested in a third party (other than the Construction Contractor), obtain the grant of an equivalent licence to that referred to in Section 39.3(a)(i), provided that Project Co is able to obtain such licence from such third party on reasonable commercial terms and conditions.
- (b) In this Section 39.3 and 39.5(a), "use" includes any and all acts of copying, modifying, adapting, translating, incorporating with other materials, creating derivative works and otherwise using the Project Data and Intellectual Property Rights.

### **39.4 Jointly Developed Materials**

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

Co shall return any and all Jointly Developed Materials in the custody or possession of Project Co to the College.

### **39.5 Maintenance of Data**

- (a) To the extent that any of the data, materials and documents referred to in this Section 39 are generated by, or maintained on, a computer or similar system, Project Co shall procure for the benefit of the College, either at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable the College or its nominee to access and otherwise use (as such term is defined in Section 39.3(b), subject to the payment by the College of any relevant fee) such data, materials and documents for the Approved Purposes.
- (b) Without limiting the obligations of Project Co under Section 39.5(a), Project Co shall ensure the back up and storage in safe custody of the data, materials and documents referred to in this Section 39 in accordance with Good Industry Practice. Project Co shall submit to the College Representative Project Co's proposals for the back up and storage in safe custody of such data, materials and documents and the College shall be entitled to object if the same is not in accordance with Good Industry Practice. Project Co shall comply, and shall cause all Project Co Parties to comply, with all procedures to which the College Representative has not objected. Project Co may vary its procedures for such back up and storage subject to submitting its proposals for change to the College Representative, who shall be entitled to object on the basis set out above. Any Disputes in connection with the provisions of this Section 39.5(b) may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure with reference to Good Industry Practice.

### **39.6 Claims**

- (a) Where a demand, claim, action or proceeding is made or brought against the College, any College Party or any Government Entity which arises out of the alleged infringement or misappropriation of any rights in or to any Project Data or Intellectual Property Rights or the use thereof by the College, any College Party or any Government Entity or because the use of any materials, machinery or equipment in connection with the Works infringes any rights in or to any Intellectual Property of a third party then, unless such infringement has arisen out of the use of any Project Data or Intellectual Property Rights by the College otherwise than in accordance with the terms of this Project Agreement, Project Co shall indemnify, defend and hold harmless the College and each College Party and Government Entity from and against all such demands, claims, actions and proceedings and Section 44.3 shall apply.

### **39.7 College Trade-Marks**

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

**39.8 Confidential Information**

- (a) It is expressly acknowledged and agreed that nothing in this Section 39 shall be deemed to create or convey to a Party any right, title, or interest in and/or to the Confidential Information of the other Party.

**39.9 Government Use of Documents**

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

**40. CONFIDENTIALITY**

**40.1 Disclosure**

- (a) Subject to Sections 40.1(b), 40.1(c) and 40.2, but notwithstanding anything else in this Project Agreement to the contrary, Project Co acknowledges and agrees that, in accordance with the transparency and accountability principles of the IPFP Framework, the College has a right to disclose or publish (including on websites) this Project Agreement, any or all terms hereof, including any or all contractual submissions and other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) as the College, in its sole discretion, may consider appropriate. In exercising its discretion, the College will be guided by the principles set out in Sections 40.1(b) and 40.1(c).
- (b) The College will not disclose portions of this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party) which would be exempt from disclosure under Section 17(1) of FIPPA.
- (c) Notwithstanding Section 40.1(b), but subject to Section 40.2, where a compelling public interest in the disclosure of the information clearly outweighs the public interest in limiting the disclosure of the information supplied by Project Co (or any Project Co Party), the College may disclose such information.

## **40.2 Redaction**

- (a) Prior to disclosing or publishing this Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with this Project Agreement, any information related to the performance of Project Co (or any Project Co Party) or any information derived from this Project Agreement or the information related to the performance of Project Co (or any Project Co Party), the College shall provide to Project Co a redacted version of this Project Agreement or other documents or information to be disclosed or published, on the basis that the information so redacted constitutes information which should not be disclosed pursuant to Section 40.1(b). The Parties acknowledge and agree that the Guaranteed Price, but not any breakdown thereof, may be disclosed.
- (b) If Project Co, acting in good faith, contends that any of the information not redacted constitutes information that falls within the scope of Section 40.1(b) and, accordingly, would be exempt from disclosure under FIPPA, the dispute may be referred for resolution in accordance with Schedule 27 – Dispute Resolution Procedure, and the College shall not disclose any information in dispute until a determination is made. Any such determination shall be made with reference to the text and principles of FIPPA.

## **40.3 Disclosure to Government**

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

## **40.4 Freedom of Information**

- (a) The Parties acknowledge and agree that FIPPA applies to each Government Entity, and that each Government Entity is required to fully comply with FIPPA.

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

- (a) Except as authorized hereunder, each Party shall hold in confidence, not disclose and not permit any person any manner of access to, whether directly or indirectly, any Confidential Information of the other Party, provided that this Section 40 shall not restrict

either Party from disclosing such Confidential Information to its professional advisors, to the extent necessary, to enable that Party to perform, to cause to be performed, or to enforce, its rights or obligations under this Project Agreement.

- (b) Project Co may:
  - (i) disclose in confidence to the Lenders and prospective Lenders, including any trustee or agent of the Lenders and the Lenders' Agent, and their respective professional advisors such Confidential Information as is reasonably required by the Lenders in connection with the raising or syndication of the financing or any sub-participation in the financing of the Works or which Project Co is obliged to supply by the terms of the Lending Agreements; and
  - (ii) disclose in confidence to any Project Co Party and their professional advisors, such Confidential Information as is necessary for the performance by that Project Co Party of that Project Co Party's obligations under this Project Agreement.
- (c) Project Co acknowledges that each Government Entity may use the Confidential Information of Project Co for purposes not specific to the Project, but for other general governmental purposes, such as development of the Province's alternate procurement and financing policies and framework. A Government Entity will advise Project Co prior to using any Confidential Information of Project Co for non-Project purposes.
- (d) Subject to the foregoing, neither Party shall use, or directly or indirectly cause, authorize or permit any other person to use, any Confidential Information of the other Party except for the purposes of this Project Agreement, as permitted by this Project Agreement or as authorized by the disclosing Party in writing.
- (e) Each Party shall protect all Confidential Information of the disclosing Party with the same degree of care as it uses to prevent the unauthorized use, disclosure, publication, or dissemination of its own confidential information of a similar nature or character, but in no event less than a reasonable degree of care.

#### **40.6 Exceptions**

- (a) Information of a Party (the "**Proprietor**"), other than Personal Information, will not be considered to be Confidential Information in the following circumstances:
  - (i) the Proprietor advises the other Party to whom the information has been disclosed (the "**Confidant**") that the information is not required to be treated as Confidential Information;
  - (ii) the information is as of the date of this Project Agreement, or becomes at any time thereafter, generally available to or accessible by the public through no fault or wrongdoing of the Confidant;
  - (iii) the information is a matter of public record or in the public domain;

- (iv) the information was in the possession of the Confidant prior to its disclosure and the Confidant came into possession of such information without being in breach of this Project Agreement;
- (v) the information is received by the Confidant on a non-confidential basis from a source other than the Proprietor, provided that to the best of the Confidant's knowledge such source is not bound by a confidentiality agreement with the Proprietor or otherwise prohibited from disclosing the information to the Confidant by a contractual, legal or fiduciary obligation;
- (vi) the information was independently developed by the Confidant without access to the Confidential Information, as evidenced by written records;
- (vii) the information is required to be disclosed pursuant to Applicable Law, provided that the Confidant provides the Proprietor with reasonable notification and an opportunity to contest such requirement prior to disclosure;
- (viii) the information is disclosed to the College upon a termination of this Project Agreement, pursuant to Section 36 or is otherwise required by the College for the purposes of performing (or having performed) the Works, including the design or construction of the Facility, or any other operations or services the same as, or similar to, the Works; or
- (ix) the information would not be exempt from disclosure under FIPPA.

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

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

### **41. PERSONAL INFORMATION**

#### **41.1 Protection of Personal Information**

- (a) Project Co acknowledges the importance of maintaining the confidentiality and privacy of Personal Information.
- (b) Project Co shall, and shall require each Project Co Party to, only collect, hold, process, use, store and disclose Personal Information with the prior consent of the College and: (i) shall not collect, hold, process, use or store Personal Information except to the extent necessary to perform Project Co's obligations under this Project Agreement; and (ii) shall not disclose Personal Information or otherwise permit access to or make Personal Information available to any person except as expressly permitted or instructed by the College.

- (c) Project Co shall, and shall require each Project Co Party to, at all times treat Personal Information as strictly confidential and shall comply with all applicable requirements of the Output Specifications and the requirements of Applicable Law, including FIPPA, the Personal Information Protection and Electronic Documents Act (Canada) and any other Canadian federal or provincial legislation now in force or that may in the future come into force governing the collection, use, disclosure and protection of personal information applicable to Project Co, each Project Co Party or to the Works.
- (d) Any part of the Works that involves or may involve the collection, use, storage, processing or any other handling of Personal Information shall be performed by Project Co and each Project Co Party within Canada, and Project Co shall, and shall cause each Project Co Party to, not store, process, communicate, transfer, access or permit or enable direct or remote access to any Personal Information outside of Canada.
- (e) Project Co shall, and shall cause each Project Co Party to, implement, maintain and adhere to appropriate policies, procedures and controls to ensure that Personal Information is not stored or processed in, communicated or transferred to, or accessed from, outside of Canada, and that the requirements of this Section 41 are otherwise complied with.
- (f) Project Co shall take all necessary and appropriate action, and shall require each Project Co Party to take all necessary and appropriate action, against any person who fails to comply with this Section 41.
- (g) Project Co shall allow the College on reasonable notice to inspect any Personal Information in the custody or possession of Project Co or a Project Co Party and to audit Project Co and each Project Co Party's compliance with this Section 41 including, without limitation, the measures used by Project Co and each Project Co Party to protect Personal Information, and otherwise promptly and properly respond to all reasonable inquiries of the College with respect to Project Co or each Project Co Party's handling of Personal Information.
- (h) Project Co shall not subcontract or delegate to any third party any of the Works that involve or may involve the collection, use, storage, processing or any other handling of Personal Information without the express consent of the College and without obtaining written contractual commitments of such third party substantially the same as those of this Section 41.

#### **41.2 Conflict and Survival**

- (a) To the extent of any conflict of inconsistency between this Section 41 and any other provisions of the Project Agreement, this Section 41 shall prevail.
- (b) The obligations in this Section 41 shall survive the termination of this Project Agreement.

**42. INSURANCE AND PERFORMANCE SECURITY**

**42.1 General Requirements**

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

**42.2 No Relief from Liabilities and Obligations**

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

**42.3 Performance Guarantee of Construction Guarantor**

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

**43. TITLE**

**43.1 Title**

- (a) Title to each item and part of the Facility and the FF&E, including any materials, supplies, equipment, facilities, parts and any other deliverable or component items, but not the risk of loss or damage or destruction thereto or thereof, shall pass to the College (or as the College may direct) upon the receipt of such item on the Site, provided however that title to items of tangible personal property (personal property that can be seen, weighed, measured, felt or touched or that is in any way perceptible to the senses and includes computer programs, natural gas and manufactured gas) that comprise the Facility or are to be affixed or attached to the Facility prior to Substantial Completion shall pass to the College (or as the College may direct) at the time that such items are included in the Facility or affixed or attached to the Facility.

**44. INDEMNITIES**

**44.1 Project Co Indemnities to the College**

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

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

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

- (vi) the breach of this Project Agreement by the College; or
  - (vii) in respect of Section 44.1(a)(i), any deliberate or negligent act or omission of the College, any College Party or any Government Entity; or
  - (viii) in respect of Sections 44.1(a)(ii), 44.1(a)(iii), 44.1(a)(iv) or 44.1(a)(v), any act or omission of the College, any College Party or any Government Entity.
- (b) Project Co shall indemnify and save harmless the College and each Government Entity and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any breach of a representation or warranty by Project Co herein.

- (c) Project Co shall indemnify and save harmless the College and each Government Entity and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, arising out of, or involving or relating to any one or more of the following:
- (i) the performance by Project Co of this Project Agreement not in accordance with or in breach of the requirements of any Permits, Licences, Approvals and Agreements, Applicable Law or requirements of Governmental Authorities, or the failure of Project Co to obtain all necessary Project Co Permits, Licences, Approvals and Agreements in accordance with this Project Agreement; or
  - (ii) any Contamination on, in or under, or migrating to or from, the Site, except for Contamination for which the College, is responsible pursuant to Section 18.2(a);
- except to the extent that such Direct Losses are caused, or contributed to, by the breach of this Project Agreement by the College or by any act or omission of the College, any College Party or any Government Entity.
- (d) Without prejudice to the College's rights under Section 34 and any other rights under this Project Agreement, if the College exercises its step-in rights under the Construction Contractor's Direct Agreement, Project Co shall indemnify the College for all obligations of Project Co assumed by the College under the Design and Construction Contract, as the case may be, and for all reasonable costs and expenses incurred by the College in relation to the exercise of the College's rights.
- (e) Project Co shall indemnify the College for damages suffered or incurred on account of (i) any payment not duly made by Project Co pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or underpayment by Project Co; or (iii) an amount determined as payable by Project Co to the College under Schedule 27 – Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from day to day at a rate per annum from the day after the date on which payment was due, the day on which overpayment was made by the College, or from the date identified (if any) applicable to an amount determined as payable by Project Co to the College under Schedule 27 – Dispute Resolution Procedure, up to and including the date of payment.

**44.2 College Indemnities to Project Co**

- (a) The College shall indemnify and save harmless Project Co and the Project Co Parties and each of their respective directors, officers, employees, agents and representatives from and against any and all Direct Losses which may be suffered, sustained, incurred or brought against them as a result of, in respect of, or arising out of any one or more of the following:
- (i) the death or personal injury of any person arising, directly or indirectly, out of, or in consequence of, or involving or relating to, the performance or breach of this Project Agreement by the College or any act or omission of the College, any College Party or any Government Entity, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party;
  - (ii) any physical loss of or damage to all or any part of any property or assets of Project Co or any Project Co Party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by the College or any deliberate or negligent act or omission of the College, any College Party or any Government Entity, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party; and
  - (iii) any physical loss of or damage to property or assets of any third party, or any other loss or damage of any third party, arising, directly or indirectly, out of, or in consequence of, or involving or relating to, breach of this Project Agreement by the College or any deliberate or negligent act or omission of the College, any College Party or any Government Entity, except to the extent caused, or contributed to, by the breach of this Project Agreement by Project Co or by any act or omission of Project Co or any Project Co Party,

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

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

Dispute Resolution Procedure, by payment of an amount equal to the Payment Compensation Amount calculated from day to day at a rate per annum from the day after the date on which payment was due, the day on which overpayment was made by Project Co, or from the date identified (if any) applicable to an amount determined as payable by the College to Project Co under Schedule 27 – Dispute Resolution Procedure, up to and including the date of payment.

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

- (a) This Section 44.3 shall apply to the conduct of claims, made by a third person against a party having, or claiming to have, the benefit of an indemnity pursuant to this Project Agreement. The party having, or claiming to have, the benefit of the indemnity is referred to as the “**Beneficiary**” and the Party giving the indemnity is referred to as the “**Indemnifier**”.
- (b) If the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this Section 44, the Beneficiary shall give written notice to the Indemnifier as soon as reasonably practicable and in any event within ten Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (c) Subject to Sections 44.3(d), 44.3(e) and 44.3(f), on the giving of such notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all, but not part only, of the liability arising out of the claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to the Beneficiary’s reasonable satisfaction against all costs and expenses that the Beneficiary may incur by reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. The Beneficiary shall have the right to employ separate counsel in respect of such claim and the reasonable fees and expenses of such counsel shall be to the account of the Indemnifier only where representation of both the Indemnifier and Beneficiary by common counsel would be inappropriate due to any actual or potential conflicting interests between the Indemnifier and Beneficiary.
- (d) With respect to any claim conducted by the Indemnifier:
  - (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
  - (ii) the Indemnifier shall not bring the name or reputation of the Beneficiary into disrepute;

- (iii) the Indemnifier shall not pay, compromise or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed;
  - (iv) the Indemnifier shall not admit liability or fault to any third party without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
  - (v) the Indemnifier shall use commercially reasonable efforts to have the Beneficiary named as a beneficiary under any release given by the persons bringing the claim to which this Section 44.3 relates.
- (e) The Beneficiary shall be free to pay or settle any such claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Project Agreement if:
- (i) the Indemnifier is not entitled to take conduct of the claim in accordance with Section 44.3(c);
  - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim as soon as reasonably practicable and in any event within 10 Business Days of the notice from the Beneficiary under Section 44.3(b) or notifies the Beneficiary that the Indemnifier does not intend to take conduct of the claim; or
  - (iii) the Indemnifier fails to comply in any material respect with Section 44.3(d).
- (f) The Beneficiary shall be free at any time to give notice to the Indemnifier that the Beneficiary is retaining or taking over, as the case may be, the conduct of any defence, dispute, compromise or appeal of any claim, or of any incidental negotiations, to which Section 44.3(c) applies. For greater certainty, Project Co acknowledges and agrees that where the College is the Beneficiary, the College may retain or take over such conduct in any matter involving Personal Information or any matter involving public policy. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section 44.3(f), then the Indemnifier shall be released from any liabilities arising under the applicable indemnity hereunder in respect of the applicable claim.

- (g) If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers, whether by payment, discount, credit, saving, relief or other benefit or otherwise, a sum or anything else of value (the “**Recovery Amount**”) which is directly referable to the fact, matter, event or circumstances giving rise to the claim under the indemnity, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
  - (i) an amount equal to the Recovery Amount less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering the same; and
  - (ii) the amount paid to the Beneficiary by the Indemnifier in respect of the claim under the relevant indemnity,

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

- (h) Any person taking any of the steps contemplated by this Section 44.3 shall comply with the requirements of any insurer who may have an obligation to provide an indemnity in respect of any liability arising under this Project Agreement.

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

- (a) For greater certainty, Section 51.4 applies to any indemnity given under this Project Agreement and any such indemnity shall not extend to Direct Losses which could have been reduced or avoided by the Beneficiary complying with such Section.

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

#### **45.1 Indirect Losses**

- (a) Subject to Section 45.1(b) and without prejudice to the Parties’ rights in respect of payments provided for herein, the indemnities under this Project Agreement shall not apply and there shall be no right to claim damages for breach of this Project Agreement, in tort or on any other basis whatsoever, to the extent that any loss claimed by either Party is:
  - (i) for punitive, exemplary or aggravated damages;
  - (ii) for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity; or
  - (iii) is a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by either Party,

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

- (b) With respect to the indemnity in Section 44.1(a)(i) only, the exceptions in Sections 45.1(a)(ii) and (iii) shall not apply as a result of, or in relation to, the College’s loss of use of the Facility and/or the Existing Facilities or a portion thereof, which for the purposes of Section 44.1(a)(i), shall be Direct Losses.

#### **45.2 No Liability in Tort**

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

#### **45.3 Sole Remedy**

- (a) Nothing in this Project Agreement shall prevent or restrict the right of the College to seek injunctive relief or a decree of specific performance or other discretionary remedies of a court of competent jurisdiction.
- (b) Notwithstanding any other provision of this Project Agreement, and except to the extent recovered under any of the insurances required pursuant to Schedule 25 – Insurance and Performance Security Requirements, neither Party shall be entitled to recover compensation or make a claim under this Project Agreement, or any other agreement in relation to the Project, in respect of any loss that it has incurred (or any failure of the other Party) to the extent that the Party has already been compensated in respect of that loss or failure pursuant to this Project Agreement, or otherwise.

#### **45.4 Maximum Liability**

- (a) Subject to Section 45.4(b), the maximum aggregate liability of each Party in respect of all claims under Section 44 shall not exceed \$[REDACTED]. This limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to performance security or policies maintained in accordance with Schedule 25 – Insurance and Performance Security Requirements. This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.
- (b) Project Co’s maximum aggregate liability in respect of all claims under Section 44.1(a)(i) shall not exceed \$[REDACTED]. This limit shall be index linked and shall be exclusive of any insurance or performance security proceeds received or which will be received pursuant to performance security or policies maintained in accordance with Schedule 25 – Insurance and Performance Security Requirements. This limit shall not apply in cases of wilful misconduct or deliberate acts of wrongdoing.

- (c) Nothing in this Section 45.4 shall restrict, limit, prejudice or in any other way impair the rights and/or remedies of the Parties under any other provision of this Project Agreement.

**46. DISPUTE RESOLUTION PROCEDURE**

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

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

**47.1 Project Co Assignment**

- (a) Project Co shall not sell, assign, transfer, charge, mortgage, encumber, dispose of or otherwise alienate all or any part of any interest, whether legal or beneficial, in this Project Agreement or any Ancillary Document without the prior written consent of the College, which consent may be withheld in the sole discretion of the College, provided however that no assignment, transfer, charge, disposition or other alienation shall be permitted to a person where that person or its Affiliates is a Restricted Person or a person whose standing or activities are inconsistent with the College’s function as a post-secondary education provider, or may compromise the College’s reputation or integrity or the nature of the Province’s post-secondary education system, so as to affect public confidence in that system.
- (b) Section 47.1(a) shall not apply to:
  - (i) the grant of any security for any loan made to Project Co under the Lending Agreements provided that any grantee of such security shall enter into the Lenders’ Direct Agreement in relation to the exercise of its rights, if the College so requires; or
  - (ii) any Subcontract or sub-subcontract entered into by Project Co, the Project Co Parties or any sub-subcontractor in connection with the Project.

**47.2 College Assignment**

- (a) The College may assign, transfer, dispose of or otherwise alienate any interest in this Project Agreement or any agreement in connection with this Project Agreement to which Project Co and the College are parties:
  - (i) to the Province or to any minister of the Province;
  - (ii) in circumstances other than those described in Section 47.2(a)(i), as may be required to comply with Applicable Law;
  - (iii) to an agency of the Province having the legal capacity, power, authority and ability to become a party to and to perform the obligations of the College under this Project Agreement provided that such person confirms in writing to Project

Co that it will perform all of the College's obligations hereunder and under the other Project Documents to which the College is a party in respect of the period from and after the assignment; and

- (iv) in circumstances other than those described in Sections 47.2(a)(i) to 47.2(a)(iii), with the prior written consent of Project Co, not to be unreasonably withheld or delayed; provided that the person to whom any such assignment, transfer, disposition or other alienation is made has the capacity to perform, and confirms in writing to Project Co that it will perform all the obligations of the College hereunder and under any agreement in connection with this Project Agreement to which Project Co and the College are parties in respect of the period from and after the assignment.
- (b) The College shall not be released of any of its obligations under this Project Agreement except upon an assignment, transfer, disposition or other alienation of its interest in this Project Agreement in accordance with this Section 47.2.

### **47.3 Subcontracting**

- (a) Project Co shall not subcontract any interest in this Project Agreement or the Design and Construction Contract, and shall not permit the Construction Contractor to subcontract any interest in the Design and Construction Contract, to a Restricted Person, or any Affiliate thereof, or a person whose standing or activities: (i) are inconsistent with the College's function as post-secondary education provider; (ii) may compromise the reputation of the College and/or the Province; (iii) may compromise the integrity of the Province or the Project; or (iv) are inconsistent with the nature of the Province's public post-secondary education system, so as to affect public confidence in that system.
- (b) Project Co shall not terminate, agree to the termination of or replace the Construction Contractor unless Project Co has complied with Sections 8.2(a), 47.3(c) and 47.3(d) or received the prior written consent of the College, not to be unreasonably withheld or delayed.
- (c) Subject to Section 47.3(d), if the Design and Construction Contract shall at any time lapse, terminate or otherwise cease to be in full force and effect, whether by reason of expiry, default or otherwise, with the effect that the Construction Contractor shall cease to act in relation to the Project, Project Co shall forthwith appoint a replacement, subject to the College's prior written consent, acting reasonably, as to the suitability of the replacement.
- (d) It is a condition of replacement of the Construction Contractor, and Project Co shall require, that any replacement enter into a contract upon the same or substantially similar terms as the Design and Construction Contract so replaced, including the provision of replacement Security and an agreement on the same or substantially similar terms as the Construction Contractor's Direct Agreement unless any material variations are approved by the College, acting reasonably.

**47.4 Changes in Ownership and Control**

- (a) No Restricted Person or a person whose standing or activities are inconsistent with the College's and/or Province's reputation or integrity shall be permitted to have at any time or acquire, Direct or Indirect Power or Control over any member of the Project Co Group in relation to the decisions, management, actions or policies of Project Co or in relation to the operation, management, and ownership of the Project.
- (b) No Change in Ownership of Project Co or of any Control Party shall be permitted:
  - (i) where the person acquiring the ownership interest is a Restricted Person or a person whose standing or activities: (A) are inconsistent with the College's function (in the College's reasonable opinion) as a post-secondary education provider; (B) may compromise the reputation of the College and/or the Province; or (C) may compromise the integrity of the Province, the College or the Project; or (D) are inconsistent with the nature of the Province's public post-secondary education system, so as to affect public perception of that system; or
  - (ii) if such Change in Ownership would have a material adverse effect on the performance of the Works.
- (c) Project Co shall provide notice to the College of any Change in Ownership of Project Co or of any Control Party, as the case may be, that is not a Change in Control within 5 Business Days after such Change in Ownership, and such notice shall include a statement identifying all persons with an ownership interest in Project Co or the relevant Control Party, as the case may be, and their respective holdings of such ownership interests, in each case prior to and following such Change in Ownership.
- (d) Subject to Sections 47.4(a) and (b), no Change in Control of Project Co or of any Control Party shall be permitted without the prior written consent of the College, which shall not be unreasonably withheld or delayed.
- (e) Project Co shall provide notice to the College of any proposed Change in Control of Project Co or of any Control Party, as the case may be, not less than 20 Business Days prior to such proposed Change in Control and such notice shall include:
  - (i) a statement identifying all persons with an ownership interest in Project Co or the relevant Control Party, as the case may be, and their respect holdings of such ownership interests, in each case prior to and following any such proposed Change in Control; and
  - (ii) as applicable, the legal name, registered address, directors and officers of, and nature of the business and activities carried on by, the person who would acquire control over Project Co or the relevant Control Party pursuant to such Change in Control.

Following the delivery to the College of the notice referred to in this Section 47.4(e), Project Co shall provide the College with such other information pertaining to the proposed Change in Control as the College may reasonably request.

- (f) This Section 47.4 shall not apply to a Change in Ownership or Change in Control of persons whose equity securities, units evidencing ownership or any other ownership interests are listed on a recognized stock exchange.

#### **47.5 College Due Diligence**

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

### **48. PROHIBITED ACTS**

#### **48.1 Definition**

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

provided that this Section 48.1(a)(i) shall not apply to Project Co or any Project Co Party (or anyone employed by or acting on their behalf) providing consideration to the College or any public body in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with the College or any public body in connection with the Project;

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

disclosed in writing to the College, provided that this Section 48.1(a)(ii) shall not apply to a fee or commission paid by Project Co or any Project Co Party (or anyone employed by or acting on their behalf) to the College or any public body pursuant to an agreement where such fee or commission is paid in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Project Co under this Project Agreement or any other agreement with the College or any public body in connection with the Project without contravening the intent of this Section 48;

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

## **48.2 Remedies**

- (a) If Project Co or any Project Co Party (or anyone employed by or acting on their behalf) commits any Prohibited Act, then the College shall be entitled to act in accordance with the following:
  - (i) if the Prohibited Act is committed by Project Co or by an employee acting under the direction of a director or officer of Project Co, then the College may give written notice to Project Co and Section 34 shall apply;
  - (ii) if the Prohibited Act is committed by an employee of Project Co acting independently of a direction of a director or officer of Project Co, then the College may give written notice to Project Co and Section 34 shall apply, unless, within 30 days of receipt of such notice, Project Co terminates the employee's employment and ensures that the relevant part of the Works shall be performed by another person;
  - (iii) if a Prohibited Act is committed by a Project Co Party or by an employee of that Project Co Party not acting independently of a direction of a director or officer of that Project Co Party, then the College may give written notice to Project Co and Section 34 shall apply, unless, within 30 days of receipt of such notice, Project Co terminates the relevant Subcontract and ensures that the relevant part of the Works shall be performed by another person, where relevant, in accordance with Section 47.3;
  - (iv) if the Prohibited Act is committed by an employee of a Project Co Party acting independently of a direction of a director or officer of that Project Co Party, then the College may give notice to Project Co and Section 34 shall apply, unless, within 30 days of receipt of such notice, Project Co causes the termination of the

employee's employment and ensures that the relevant part of the Works shall be performed by another person; and

- (v) if the Prohibited Act is committed on behalf of Project Co or a Project Co Party by a person not specified in Sections 48.2(a)(i) to 48.2(a)(iv), then the College may give notice to Project Co and Section 34 shall apply, unless, within 30 days of receipt of such notice, Project Co causes the termination of such person's employment or the appointment of their employer and, if necessary, ensures that the relevant part of the Works shall be performed by another person.
- (b) Any notice of termination under this Section 48.2 shall specify:
- (i) the nature of the Prohibited Act;
  - (ii) the identity of the person whom the College believes has committed the Prohibited Act; and
  - (iii) the date of termination in accordance with the applicable provisions of this Project Agreement.
- (c) Without prejudice to its other rights or remedies under this Section 48.2, the College shall be entitled to recover from Project Co any Direct Loss sustained in consequence of any breach of this Section 48.

#### **48.3 Permitted Payments**

- (a) Nothing contained in this Section 48 shall prevent Project Co or any other person from paying any proper commission, fee or bonus whether to its employees within the agreed terms of their employment or otherwise, and such commission fee or bonus shall not constitute a Prohibited Act.

#### **48.4 Notification**

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

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

- (a) Where Project Co is required to replace any Project Co Party pursuant to this Section 48, the party replacing such Project Co Party shall from the time of the replacement be deemed to be a Project Co Party and the provisions of this Project Agreement shall be construed accordingly.

**49. NOTICES**

**49.1 Notices to Parties**

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

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

Fax No.: **[REDACTED]**

Attn.: **[REDACTED]**

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

**[REDACTED]**

If to the College: **[REDACTED]**

**[REDACTED]**

Attn.: **[REDACTED]**

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

**49.2 Notices to Representatives**

- (a) In addition to the notice requirements set out in Section 49.1, where any Notice is to be provided or submitted to the College Representative or the Project Co Representative it shall be provided or submitted by sending the same by registered mail, facsimile or by hand, as follows:

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

Fax No.: **[REDACTED]**

Attn.: **[REDACTED]**

**[REDACTED]**

If to the College Representative:

Fax No.: **[REDACTED]**

Attn.: **[REDACTED]**

**49.3 Facsimile**

- (a) Where any Notice is provided or submitted to a Party via facsimile, an original of the Notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 49.3.

**49.4 Change of Address**

- (a) Either Party to this Project Agreement may, from time to time, change any of its contact information set forth in Sections 49.1 or 49.2 by prior Notice to the other Party, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such Notice unless a later effective date is given in such Notice.

**49.5 Deemed Receipt of Notices**

- (a) Subject to Sections 49.5(b), 49.5(c) and 49.5(d):
  - (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;

- (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
  - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (b) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 49.
  - (c) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
  - (d) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

#### **49.6 Service on the College**

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

### **50. COLLEGE DESIGNATE**

#### **50.1 Right to Designate**

- (a) At any time and from time to time, the Province may designate any ministry, branch, agency, division, department or office of the Government of Ontario to carry out administrative responsibility for the rights and obligations of the College under this Project Agreement (including, without limitation, review of all documentation submitted by Project Co, a Project Co Representative or a Project Co Party to the College for review, approval, comment, evaluation or otherwise as described in this Project Agreement, engage in discussions, consultations and meetings with Project Co, submitting notices and documentation to the College, issuances of notices, documentation, Variation Confirmations and related matters) and Project Co may deal exclusively with the designated person in respect of all such matters and each of them is entitled to rely on the actions, directions, requests, notices, consents, approvals, waivers, comments relating to the review of documentation and other administrative matters and decisions determined by such designated person from time to time, until the Province has notified Project Co in writing that such designated person is no longer the person designated by the College hereunder and such notice shall have effect on the later of the date of delivery of such notice and the date specified in the written notice). The Province shall advise Project Co in writing of any designation hereunder. The rights and

obligations of the parties to this Project Agreement shall be in no way affected by reason of any such designation. Project Co acknowledges the right of the Province to delegate administrative responsibilities hereunder as set forth in this Section 50.1.

**51. GENERAL**

**51.1 Amendments**

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

**51.2 Waiver**

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

**51.3 Relationship Between the Parties**

- (a) The Parties are independent contractors. This Project Agreement is not intended to and does not create or establish between the Parties, or between the College and any Project Co Party, any relationship as partners, joint venturers, employer and employee, master and servant, or (except as provided in this Project Agreement), of principal and agent, and does not create or establish any relationship whatsoever between the College and any representative or employee of Project Co or the Project Co Parties.
- (b) The Parties further agree that:
  - (i) except as expressly provided in this Project Agreement, neither Party shall be, or be deemed to be, an agent of the other Party, and neither Party shall have authority hereunder to represent it that is an agent of the other Party, or to accept any order, or enter into any contract or agreement, or make any representations or warranties of any kind to any person, or to assume or create any obligation, express or deemed, on behalf of or binding, or purportedly binding upon, the other Party;

- (ii) neither Party shall be required to make or pay employment benefits, contributions for Employment Insurance, Canada Pension Plan, Workers' Compensation Board or other similar levies with respect to any persons employed or engaged by the other Party;
- (iii) except as otherwise expressly provided in this Project Agreement, each Party shall be free from the control of the other Party as to the manner in which it shall perform its obligations, or cause same to be performed, under this Project Agreement; and
- (iv) any person which a Party may engage as an agent, employee, subcontractor or otherwise, to perform such Party's obligations under this Project Agreement, as permitted hereby, shall, unless the Parties otherwise agree in writing, be engaged by such Party to act solely on behalf of such Party, and such person shall not act, or be deemed to act, on behalf of the Party that did not engage its services.

#### **51.4 General Duty to Mitigate**

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

#### **51.5 Actual Knowledge**

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

#### **51.6 Entire Agreement**

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

#### **51.7 No Reliance**

- (a) Each of the Parties acknowledges that:
  - (i) it has not entered into this Project Agreement on the basis of and does not rely, and has not relied, upon any statement or representation, whether negligent or

innocent, or warranty or other provision, whether oral, written, express or implied, made or agreed to by any person, whether a Party to this Project Agreement or not, except those expressly made, given or repeated in this Project Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be those expressly provided for in this Project Agreement; and

- (ii) this Section 51.7 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Project Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Project Agreement.

### **51.8 Severability**

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

### **51.9 Enurement**

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

### **51.10 Governing Law and Jurisdiction**

- (a) This Project Agreement, and each of the documents contemplated by or delivered under or in connection with this Project Agreement, shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) Subject to Schedule 27 – Dispute Resolution Procedure, both Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.
- (c) Nothing in this Project Agreement affects the rights, protections and immunities of the Crown under the *Proceedings Against the Crown Act* (Ontario).

**51.11 Cumulative Remedies**

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

**51.12 Further Assurance**

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

**51.13 Costs**

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

**51.14 Language of Agreement**

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

**51.15 Proof of Authority**

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

**51.16 Counterparts**

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

**51.17 Government Entities as Third Party Beneficiaries**

- (a) The provisions of Sections 2.4, 5.1(b), 7.1, 7.2(a), 7.3(a), 9.1(c), 11.11(a), 39.6, 39.7, 39.9, 40, 44.1 and 45.2 and each other provision of the Project Agreement which is to the benefit of a Government Entity are:
  - (i) intended for the benefit of each entity and, if set out in the relevant Section, each entity’s directors, officers, employees, board appointees, agents and representatives, and shall be enforceable by each of such persons and his or her heirs, executors, administrators and other legal representatives (collectively, the “**Third Party Beneficiaries**”); and
  - (ii) are in addition to, and not in substitution for, any other rights that the Third Party Beneficiaries may have by contract or otherwise.
- (b) The College shall hold the rights and benefits of Sections 2.4, 5.1(b), 7.1, 7.2(a), 7.3(a), 9.1(c), 11.11(a), 39.6, 39.7, 39.9, 40, 44.1 and 45.2 and each other provision of the Project Agreement which is to the benefit of each Government Entity in trust for and on behalf of the Third Party Beneficiaries and the College hereby accepts such trust and agrees to hold the benefit of and enforce performance of such covenants on behalf of the Third Party Beneficiaries.

**51.18 Time is of the Essence**

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

**51.19 Copyright Notice**

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

**[EXECUTION PAGE IMMEDIATELY FOLLOWS]**

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

**THE SENECA COLLEGE OF APPLIED  
ARTS AND TECHNOLOGY**

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**[REDACTED]**

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**[REDACTED]**

We have authority to bind the corporation.

**ELLISDON INFRASTRUCTURE SCKC INC.**

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

I have authority to bind the corporation.