

**PROJECT AGREEMENT  
(REDACTED VERSION)  
TO BUILD AND FINANCE**

**ST. THOMAS ELGIN GENERAL HOSPITAL  
EMERGENCY, AMBULATORY AND MENTAL  
HEALTH REDEVELOPMENT PROJECT**

**PROPRIETARY AND CONFIDENTIAL**

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SCHEDULE 4	PROJECT CO INFORMATION
SCHEDULE 5	FORM OF LENDER’S DIRECT AGREEMENT
SCHEDULE 6	<b>[INTENTIONALLY DELETED]</b>
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SCHEDULE 8	<b>[REDACTED]</b>
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**THIS AGREEMENT** is made as of the \_\_\_\_ day of November, 2015

**BETWEEN:**

**THE ST. THOMAS ELGIN GENERAL HOSPITAL, a non-share capital corporation incorporated under the laws of the Province of Ontario**

**(“STEGH”)**

**AND:**

**ELLISDON INFRASTRUCTURE STEGH INC.**

**(“Project Co”)**

**WHEREAS:**

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

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

<u>Schedule No.</u>	<u>Description</u>
Schedule 1	Definitions and Interpretation
Schedule 2	List of Consultants, Drawings and Specifications
Schedule 3	Completion Documents
Schedule 4	Project Co Information
Schedule 5	Form of Lender's Direct Agreement
Schedule 6	<b>[INTENTIONALLY DELETED]</b>
Schedule 7	Key Personnel
Schedule 8	<b>[REDACTED]</b>
Schedule 9	Commissioning Program
Schedule 10	<b>[INTENTIONALLY DELETED]</b>
Schedule 11	Change Procedure
Schedule 12	Compensation on Termination
Schedule 13	Insurance and Performance Security
Schedule 14	Dispute Resolution Procedure
Schedule 15	Procurement Monitoring and Implementation Plan
Schedule 16	Risk Assessment Guidelines
Schedule 17	Form of Insurance and Bonding Trust Agreement
Schedule 18	Payments and Holdbacks
Schedule 19	List of Project Co Parties

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<u>Schedule No.</u>	<u>Description</u>
Schedule 20	Form of Assignable Subcontract Agreement
Schedule 21	Communications Protocol
Schedule 22	Form of Performance Guarantee of Construction Guarantor
Schedule 23	Form of Assignable Subcontract Agreement for Construction Contract
Schedule 24	Form of Trust Account Acknowledgment Agreement
Schedule 25	Legal Description of the Lands
Schedule 26	<b>[INTENTIONALLY DELETED]</b>
Schedule 27A	Standby Letter of Credit
Schedule 27B	Remaining Works Letter of Credit
Schedule 28	Refinancing

- (c) The intent of the Contract Documents is to include the labour, Products and services necessary for the performance of the Work by Project Co in accordance with these documents.
- (d) The documents comprising the Contract Documents 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 conflict, in which case Section 1.2 shall apply.
- (e) Unless it is specifically provided that a consent, approval or satisfaction is in the Sole Discretion of STEGH, no consent, approval or satisfaction of STEGH or the Consultant shall be unreasonably withheld or delayed. If it is specifically provided that a consent, approval or satisfaction may be given or withheld in the Sole Discretion of STEGH, it may be given or withheld in the sole, absolute and unfettered discretion of STEGH, which may be arbitrarily exercised without any requirement to provide reasons or explanations, whatsoever (“**Sole Discretion**”).
- (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 shall be unreasonably withheld or delayed.

- (g) Neither the organization of the Specifications into divisions, sections and parts, nor the arrangement of Drawings shall control Project Co in dividing the Work among the Project Co Parties or in establishing the extent of the Work 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 and the other Contract Documents, the provisions shall govern in the following order of precedence with each taking precedence over those listed subsequently, unless otherwise expressly provided therein or herein:
  - (i) the provisions of amendments in writing to this Project Agreement signed by the Parties and Change Orders shall govern and take precedence only over those specific provisions of this Project Agreement and the other Contract Documents 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) the Schedules to this Project Agreement;
  - (v) the Addenda;
  - (vi) Divisions 00 and 01 of the Specifications;
  - (vii) Divisions 02 through 33 of the Specifications;
  - (viii) material and finishing schedules;
  - (ix) Drawings;
  - (x) drawings of larger scale shall govern over those of smaller scale of the same date;
  - (xi) dimensions shown on drawings shall govern over dimensions scaled from drawings;

- (xii) later dated documents shall govern over earlier documents of the same type;
  - (xiii) if an item is shown on one document, it shall be deemed to be part of the Work; and
  - (xiv) written descriptions and words shall govern over graphic depictions.
- (b) 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 Work, the provision that applies to the specific part of the Work shall govern for that specific part of the Work.
  - (c) If any ambiguity, conflict or inconsistency is not readily resolved by the foregoing provisions of this Section 1.2, then Project Co or STEGH, upon discovery of same, shall immediately give notice to the Consultant. The Consultant 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) STEGH and Project Co shall comply with the determination of the Consultant pursuant to this Section 1.2 unless STEGH or Project Co disputes the decision of the Consultant, in which event such dispute may be referred for resolution in accordance with Schedule 14 – Dispute Resolution Procedure.

### **1.3 Conflict with Lender’s Direct Agreement**

- (a) In the event of ambiguities, conflicts or inconsistencies between or among this Project Agreement and the Lender’s Direct Agreement, the Lender’s Direct Agreement shall prevail. Notwithstanding the forgoing, if there is any right or remedy in favour of STEGH set out in the Lender’s 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. No review by STEGH of the Lending Agreements shall constitute an acceptance of or acquiescence to any of the Lending Agreements or any term or condition thereof by STEGH, and this Project Agreement and the Lender’s Direct Agreement shall not be subject to any of the terms and conditions of the Lending Agreements.

### **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, 7.1, 7.2, 9.4, 10.1(b), 38, 39, 40, 41, 42, 43, Schedule 1, Schedule 8, Schedule 14, Schedule 21, Schedule 22 and Schedule 27 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 STEGH an irrevocable standby letter of credit (the “**Standby Letter of Credit**”) in the amount of \$[REDACTED] substantially in the form of Schedule 27 – Standby Letter of Credit. Project Co may, with the consent of STEGH, which consent may be withheld in the sole discretion of STEGH, provide multiple irrevocable standby letters of credit delivered from Canadian Imperial Bank of Commerce as approved and confirmed by STEGH (each a “**Letter of Credit Provider**”) in an amount totalling \$[REDACTED] and each substantially in the form of Schedule 27 - 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(s) of Credit is drawn by STEGH in accordance with the provisions of this Project Agreement, STEGH 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), Project Co acknowledges and agrees that:
- (i) STEGH may draw upon any Standby Letter of Credit provided by any Letter of Credit Provider in any specified ratable amount;
  - (ii) STEGH may draw on any Standby Letter of Credit provided by any Letter of Credit Provider in a disproportionate amount to such Letter of Credit Provider’s contribution to security;

- (iii) STEGH 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 STEGH 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 STEGH'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) Prior to Financial Close, Project Co shall deliver drafts of all documents referred to in Section 1 of Schedule 3 - Completion Documents to STEGH in order to give STEGH a reasonable opportunity to review such documents.
- (b) On or before the Financial Close Target Date:
  - (i) Project Co shall deliver to STEGH the documents referred to in Section 1 of Schedule 3 - Completion Documents; and
  - (ii) STEGH shall deliver to Project Co the documents referred to in Section 2 of Schedule 3 - Completion Documents.
- (c) If Project Co fails to deliver to STEGH any of the documents referred to in Section 1 of Schedule 3 - Completion Documents by the Financial Close Target Date (other than as a direct result of a breach by STEGH of its obligations under Section 2.3(b)(ii)) and STEGH does not waive such requirement, STEGH will be entitled to draw on the Standby Letter of Credit 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 STEGH is able to obtain from another contractor for the Work, together with all costs reasonably incurred by STEGH 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 STEGH 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 STEGH as a result of Project Co not achieving Financial Close. The Parties agree that such liquidated

damages shall be payable whether or not STEGH incurs or mitigates its damages, and that STEGH shall not have any obligation to mitigate any such damages.

- (d) If STEGH fails to deliver to Project Co any of the documents referred to in Section 2 of Schedule 3 - 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, STEGH 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 STEGH and STEGH will assume:
    - (A) the Project Agreement and the Project Co Permits, Licences and Approvals; and
    - (B) those contracts between Project Co and any Project Co Party which STEGH elects to be assigned.
- (c) If STEGH exercises its rights pursuant to Section 2.4(b), and, provided Project Co has, if directed, delivered the assignments provided for in 2.4(b)(ii)(A) and 2.4(b)(ii)(B) above, Project Co will be entitled to the return of its Standby Letter of Credit. STEGH's obligation to return the Standby Letter of Credit shall be contingent on the receipt of a waiver, in form and substance satisfactory to STEGH, of any obligation or liability of STEGH, IO, the Government of Ontario and any other Government Entity to Project Co and any Project Co Parties in connection with the Project Agreement and the Request for Proposals.

### **3. GUARANTEED PRICE AND ADJUSTMENTS**

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

- (a) Project Co represents and warrants that the Guaranteed Price, exclusive of HST, is \$63,303,384.22, and is equal to the sum of the Cost of the Work and the Cost of the Financing. The Cost of the Work 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 Submission Date.
- (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);
  - (ii) acknowledge that the Cost of the Work is subject to adjustment, where provided for, under any future post-award Addenda issued to Project Co; and
  - (iii) 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 Work 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 Work, unless such changes in the Work constitute a Change in the Scope of the Work. The Parties further agree that the Guaranteed Price will only be adjusted where the Contract Documents specifically and expressly refer 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 Contract Documents will be allowed. In order to be effective, any permitted adjustment to the Guaranteed Price must be provided for in a Change Order under Schedule 11 – Change Procedure.

### **3.2 Cash Allowances**

- (a) The Guaranteed Price includes cash allowances as set out in the Specifications which shall be expended as STEGH directs through the Consultant by a Cash Allowance Disbursement Authorization.
- (b) Unless otherwise indicated, cash allowances cover the net cost to Project Co of services, Products, construction machinery and equipment, freight, unloading, handling, storage, installation, and other authorized expenses incurred in performing the Work stipulated under the cash allowances but do not include any HST payable by STEGH to Project Co.
- (c) Purchases from cash allowances must be authorized by written instructions issued by the Consultant as directed by STEGH and the form and methods of accounting for costs shall be agreed to by STEGH, the Consultant and Project Co before proceeding with the purchase. Cash allowance review will be part of the regular site meeting.
- (d) The parties acknowledge that the following provisions apply to cash allowances included in the Guaranteed Price:
  - (i) Project Co Fee and not the cash allowances include Project Co's overhead and profit in connection with all cash allowances. Where costs under all cash allowances exceed, in the aggregate, the total amount of all cash allowances, Project Co shall be compensated for overhead and profit on the excess, as provided for in Schedule 11 – Change Procedure;
  - (ii) subject to Section 3.2(d)(v), the Guaranteed Price shall be adjusted by Change Order to provide for any aggregate excess or deficit in all cash allowances;
  - (iii) progress payments on account of Work authorized under cash allowances shall be included in the Consultant's monthly certificates for payment;
  - (iv) modifications to the Construction Schedule shall be prepared by Project Co and reviewed by the Consultant to show when items called for under cash allowances must be authorized and/or ordered so that the progress and completion of the Work are not delayed;
  - (v) any surpluses in a cash allowance may, at the election of STEGH, be used to fund other cash allowances or to fund Changes in the Scope of the Work elsewhere in this Project Agreement, as may be authorized under a

Change Order or a Change Directive in accordance with Schedule 11 - Change Procedure, as the case may be, but without the imposition of overhead and profit; and

- (vi) any surplus in the aggregate cash allowances remaining after the application of Section 3.2(d)(v) above, shall be credited to STEGH.
- (e) Notwithstanding any other provision in the Project Agreement, Project Co shall not be entitled to an increase in the Guaranteed Price for an event that is set out in the description of a cash allowance in the Specifications unless and until the amount specified for the particular cash allowance (as such amount is set out in the Specifications) is exhausted.

#### **4. PAYMENT**

##### **4.1 General**

- (a) Subject to the provisions of the Contract Documents, Section 3.1(d), the provisions of Schedule 18 – Payments and Holdbacks, and in accordance with and subject to Applicable Law respecting holdbacks, STEGH shall make the payments set out in this Article 4.
- (b) For the purposes of this Project Agreement, payments made by electronic transfer shall be deemed to have been made on the day and at the time the electronic transfer is initiated, as confirmed by the initiating bank by a confirmation setting out the transfer number and the other details of the transfer.

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

- (a) Project Co acknowledges and agrees with STEGH that, subject to the provisions of Section 8.3 of the Lender's Direct Agreement, STEGH is not responsible for the payment of any Base Progress Payments or any Legislative Holdbacks in respect thereof. In the event STEGH makes any Base Progress Payments, STEGH shall set-off such Base Progress Payments against amounts otherwise payable by STEGH hereunder, including the Substantial Completion Payment, payments with respect to Certified Cost to Complete or otherwise.

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

- (a) Subject to delivery by Project Co to STEGH of the Remaining Works Letter of Credit two Business Days prior to the Substantial Completion Payment Date, and subject to Sections 4.4(a) and 4.10, STEGH covenants and agrees to pay to

Project Co the Substantial Completion Payment on the Substantial Completion Payment Date. It is a condition to the payment of the Substantial Completion Payment that STEGH has the Remaining Works Security. In the event that Project Co delivers to STEGH the Remaining Works Letter of Credit no later than two Business Days prior to the Substantial Completion Payment Date to secure the completion by Project Co of the Remaining Works by the Scheduled Final Completion Date such condition shall be satisfied. If the Remaining Works Letter of Credit has not been delivered to STEGH at least 2 Business Days prior to the Substantial Completion Payment Date, STEGH shall withhold from the Substantial Completion Payment a holdback amount of [REDACTED]% of the cost of the Remaining Works (the “**Remaining Works Cash Amount**”). In such an event, the Remaining Works Cash Amount shall be withheld by STEGH until (i) the date that is two Business Days following the date that the Remaining Works Letter of Credit has been delivered to STEGH and, upon such second Business Day, the Remaining Works Cash Amount shall be paid by STEGH to Project Co, or (ii) the Remaining Works Security is released to Project Co pursuant to Section 16.6(g). Unless STEGH receives the Remaining Works Letter of Credit, STEGH 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.

#### **4.4 Direction of Lump Sum Payments**

- (a) Project Co hereby irrevocably directs STEGH to make the Substantial Completion Payment to Agent or as Agent may direct, as security for the Financing. STEGH shall pay the Substantial Completion Payment as directed by Project Co and shall not accept any redirection without the consent of Agent. Agent, STEGH and Project Co acknowledge that any monies contributed by MOHLTC towards the Substantial Completion Payment, together with any monies payable by STEGH on account of the Substantial Completion Payment from its own resources, shall be deposited directly into the Trust Account. STEGH acknowledges that Project Co’s interest in the Trust Account has been assigned to Agent as part of the security under the Lending Agreements, and agrees that any monies payable to Project Co hereunder that are funded by monies deposited in the Trust Account shall be paid directly to Agent or as Agent may direct out of the Trust Account in accordance with the provisions of the Trust Account Acknowledgement Agreement. STEGH 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 STEGH of the Substantial Completion Payment to Agent in accordance with this Section 4.4(a) constitutes payment by STEGH to Project Co in satisfaction of

STEGH's obligation to pay the Substantial Completion Payment to Project Co under this Project Agreement and in satisfaction of any trust obligation of STEGH with respect to such payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

#### **4.5 Payment of Legislative Holdback and Balance of the Guaranteed Price**

- (a) Subject to Section 4.9, STEGH covenants and agrees with Project Co to pay to Project Co the Legislative Holdback on the Legislative Holdback Payment Date and to pay to Project Co the unpaid balance of the Guaranteed Price on the date provided in Section 6.4 of Schedule 18 – Payments and Holdbacks, or as otherwise directed by Project Co and shall not accept any redirection without the consent of the person to whom payment is directed. STEGH agrees to pay the Legislative Holdback and the balance of the Guaranteed Price as Project Co may direct in accordance with any such direction. Project Co acknowledges and agrees that payment by STEGH of the Legislative Holdback and the balance of the Guaranteed Price in accordance with this Section 4.5(a) as Project Co may direct, constitutes payment by STEGH to Project Co in satisfaction of STEGH's obligation to pay the Legislative Holdback and the balance of the Guaranteed Price to Project Co under this Project Agreement and in satisfaction of any trust obligation of STEGH with respect to such payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

#### **4.6 STEGH Holdback**

- (a) The STEGH Holdback may be reduced from time to time as a result of such actions by Project Co, as confirmed by the Consultant, in accordance with the terms and conditions of this Project Agreement. To the extent the STEGH Holdback is reduced from time to time, Project Co hereby irrevocably directs STEGH to pay the amount of any STEGH Holdback reduction to the Agent or as the Agent may direct, as security for the Financing. STEGH agrees to pay the STEGH Holdback reductions as directed by Project Co and shall not accept any redirection without the consent of the Agent. Any portion of a STEGH Holdback funded by monies deposited to the Trust Account shall be paid directly to Agent or as Agent may direct from the Trust Account in accordance with the provisions of the Trust Account Acknowledgement Agreement. Project Co acknowledges and agrees that payment by STEGH of the STEGH Holdback reductions in accordance with this Section 4.6(a) as Project Co may direct constitutes payment by STEGH to Project Co in satisfaction of STEGH's obligation to pay the STEGH Holdback reductions to Project Co under this Project Agreement and in



satisfaction of any trust obligation of STEGH with respect to such payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

#### **4.7 Additional STEGH Payments**

- (a) Unless otherwise provided in the relevant Change Order or Change Directive or in this Project Agreement, STEGH will pay all Additional STEGH Payments to Project Co on a progress payment basis in the manner and at the times contemplated by Schedule 18 – Payments and Holdbacks, or as otherwise directed by Project Co and shall not accept any redirection without the consent of the person to whom payment is directed. STEGH agrees to pay the Additional STEGH Payments as Project Co may direct in accordance with any such direction. Project Co acknowledges and agrees that payment by STEGH of the Additional STEGH Payments in accordance with this Section 4.7(a) as Project Co may direct, constitutes payment by STEGH to Project Co in satisfaction of STEGH's obligation to pay the Additional STEGH Payments to Project Co under this Project Agreement and in satisfaction of any trust obligation of STEGH with respect to such payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

#### **4.8 Certified Cost to Complete**

- (a) After STEGH has paid the Substantial Completion Payment, it shall thereafter continue to be responsible for payment to Project Co of the Certified Cost to Complete as at the Substantial Completion Payment Date on a progress payment basis in the manner and at the times contemplated in this Project Agreement. Project Co hereby irrevocably directs STEGH to make any payment of the Certified Cost to Complete to Agent, or as Agent may direct, as security for the Financing. STEGH shall pay the Certified Cost to Complete as directed by Agent and shall not accept any redirection without the consent of Agent. STEGH agrees to pay the Certified Cost to Complete as directed by Project Co in accordance with this Section 4.8(a). Any portion of a payment of the Certified Cost to Complete funded by monies deposited to the Trust Account shall be paid directly to Agent or as Agent may direct from the Trust Account in accordance with the provisions of the Trust Account Acknowledgement Agreement. Project Co acknowledges and agrees that payment by STEGH of the Certified Cost to Complete in accordance with this Section 4.8(a) constitutes payment by STEGH to Project Co in satisfaction of STEGH's obligation to pay the Certified Cost to Complete under the Project Agreement and in satisfaction of any trust obligation

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

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

- (a) If this Project Agreement is terminated pursuant to Sections 26.3(a)(i), 27.2(a)(ii), 28.2(a), 28.3(a), 28.3(b) or 28.4(a), then:
  - (i) STEGH shall pay the Compensation Payment to Project Co, calculated and payable in accordance with Schedule 12 – Compensation on Termination; and
  - (ii) the provisions of Sections 4.3 through 4.7, inclusive, shall no longer apply.
- (b) Project Co hereby irrevocably directs STEGH to make any Compensation Payment to Agent, or as Agent may direct, as security for the Financing. STEGH shall pay the Compensation Payment as directed by Agent and shall not accept any redirection without the consent of Agent. Any portion of a Compensation Payment funded by monies deposited to the Trust Account shall be paid directly to Agent or as Agent may direct from the Trust Account in accordance with the provisions of the Trust Account Acknowledgement Agreement. STEGH will pay the Compensation Payment in accordance with the provisions of Schedule 12 – Compensation on Termination. Project Co acknowledges and agrees that payment by STEGH of the Compensation Payment to Agent in accordance with this Section 4.9 constitutes payment by STEGH to Project Co in satisfaction of STEGH's obligation to pay the Compensation Payment to Project Co under this Project Agreement and in satisfaction of any trust obligation of STEGH with respect to such payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

#### **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 and Bonding Trust Agreement.

#### **4.11 [Intentionally Deleted]**

#### **4.12 Establishment of Trust Account and Manner of Payment**

- (a) STEGH agrees that it will make commercially reasonable efforts to establish the Trust Account in conjunction with Project Co on or before Financial Close, but if

not so established, then within 90 days of Financial Close. All costs and expenses associated with the establishment, maintenance and administration of the Trust Account shall be borne solely by Project Co.

#### **4.13 Set-Off**

- (a) The Parties agree that their rights of set-off at law or in equity are limited to the right of:
  - (i) STEGH to set off against any amounts otherwise due to Project Co pursuant to the terms of this Project Agreement, any amounts which are due to STEGH by Project Co pursuant to the terms of this Project Agreement or by the Construction Guarantor pursuant to Schedule 22 – Form of Performance Guarantee of Construction Guarantor; and
  - (ii) Project Co to set off against any amounts otherwise due to STEGH pursuant to the terms of this Project Agreement, any amounts which are due to Project Co by STEGH pursuant to the terms of this Project Agreement,

and are further limited with respect to the Debt Amount as described in Section 4.5 of Schedule 12.

#### **4.14 Effect of Payment**

- (a) Subject to Section 4.5 of Schedule 12 – Compensation on Termination, 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.

#### **4.15 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.

#### **4.16 Taxes**

- (a) All amounts specified in this Project Agreement, including, for clarity, any compensation payable on termination, are expressed exclusive of HST, but

inclusive of all other Taxes payable pursuant to Applicable Law. For clarity, STEGH 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 STEGH, STEGH shall pay such HST to Project Co simultaneously with the amount to which such applicable HST relates or applies.

- (b) STEGH shall pay, when due and payable, all property taxes or payments in lieu of property taxes that are assessed in respect of ownership or use of the Site or the Facility.
- (c) STEGH shall pay all applicable HST properly payable in accordance with the *Excise Tax Act* (Canada) by STEGH upon and in connection with payments by STEGH to Project Co under this Project Agreement.

#### **4.17 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 Work, STEGH 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 Agreement.

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

- (a) STEGH 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 STEGH 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 4.18, 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 STEGH which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Work 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 4.18, the term “**Recoverable Tax**” means HST incurred by Project Co in respect of the supply of any good or service to STEGH which is consumed, used or supplied, or to be consumed, used or supplied, exclusively by Project Co in the course of carrying out the Work to the extent that Project Co is able to recover or be credited with input tax credits, refunds, rebates or exemptions for such HST.

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

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

#### **4.20 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 STEGH’s prior written consent, which consent may be withheld in STEGH’s Sole Discretion.

#### **4.21 Taxes – General**

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

#### 4.22 Taxes – Indemnity

- (a) If (i) Project Co becomes a Non-Resident, or (ii) STEGH 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 STEGH under the Project Agreement or under any of the Project Documents, then STEGH 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) STEGH 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 STEGH under this Project Agreement or under any other Project Document to Project Co or a Project Co Party shall be paid or credited net of such deductions or withholdings.
- (b) If (i) Project Co becomes a Non-Resident, or (ii) STEGH 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 STEGH under the Project Agreement or under any of the Project Documents, Project Co shall, in each case, indemnify and hold harmless STEGH for (A) the full amount of all Taxes (“**Indemnifiable Taxes**”) that arise, are imposed on or are required to be paid by STEGH in respect of any amounts paid or credited by STEGH to Project Co or any Project Co Party under this Project Agreement or under any other Project Document as a result of either of the foregoing items less any amount withheld or deducted by STEGH 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 STEGH 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 STEGH shall be conclusive evidence, absent manifest error, of the amount due from Project Co to STEGH. STEGH shall be entitled to exercise its rights of set off under Section 4.13 against any amounts owing under this indemnification.

## **5. SITE INVESTIGATION AND DOCUMENT REVIEW**

### **5.1 Concealed or Unknown Conditions**

- (a) Project Co acknowledges that it has been provided with the Site Information and has reviewed and is familiar with the Site Information. If Project Co encounters conditions at the Site which are not described in or are not properly inferable, readily apparent or readily discoverable from the documentation included in the Site Information, or would not have been properly inferable, readily apparent or readily discoverable from inspections of the Site carried out by Project Co or any Project Co Party during the Request for Proposals process prior to the Submission Date, Project Co will promptly notify the Consultant who will promptly investigate such conditions and who will then report to STEGH and Project Co with a finding as to whether such conditions were or were not described in or were or were not properly inferable, readily apparent or readily discoverable from the documentation included in the Site Information or would or would not have been properly inferable, readily apparent or readily discoverable from Project Co's inspections of the Site carried out by Project Co or any Project Co Party during the Request for Proposals process prior to the Submission Date.
- (b) If the conditions were described in or were properly inferable, readily apparent or readily discoverable from the documentation included in the Site Information or would have been properly inferable, readily apparent or readily discoverable from Project Co's inspections of the Site carried out by Project Co or any Project Co Party during the Request for Proposals process prior to the Submission Date, then Project Co shall not be entitled to any adjustment in the Guaranteed Price or in the Contract Time.
- (c) If the conditions were not described in or were not properly inferable, readily apparent or readily discoverable from the documentation included in the Site Information, or would not have been properly inferable, readily apparent or readily discoverable from Project Co's inspections of the Site carried out by Project Co or any Project Co Party during the Request for Proposals process prior to the Submission Date, and the conditions justify an increase in the Guaranteed Price or an extension of the Contract Time, or both, the Consultant shall issue appropriate instructions for a Change in the Scope of the Work as provided in Schedule 11 - Change Procedure.

### **5.2 Document Review**

- (a) Project Co acknowledges having conducted a thorough review of the Contract Documents and has reported to the Consultant and STEGH any Design Issue

found by Project Co in the Contract Documents during its review. If Project Co does discover any Design Issue in the Contract Documents, Project Co shall not proceed with the Work affected until Project Co has first complied with the provisions of Section 11.18. Project Co acknowledges that it is responsible for the risks assumed by Project Co in Sections 11.17 and 11.18 and that any additional costs resulting from such risks will form part of the Project Co Design Contingency. It is intended that the review of the Contract Documents conducted by Project Co pursuant to this Section 5.2(a) be carried out by Project Co and the Project Co Parties using their own experiences and expertise in accordance with the standard of care set out in Section 11.2(a)(viii) and in accordance with the representations and warranties of Project Co set out in Section 7.1.

- (b) Except as may constitute a Design Issue properly characterized as a Project Co Design Issue under Section 11.17, and except in respect of those Contract Documents which, under the terms of this Project Agreement, Project Co is required to prepare or produce, Project Co shall not be responsible for verifying that the Contract Documents are in compliance with Applicable Law.
- (c) If the Contract Documents are at variance with Applicable Law, or if, subsequent to the Submission Date, changes are made to Applicable Law which require modification to the Contract Documents, Project Co shall notify the Consultant in writing requesting direction immediately upon such variance or change becoming known. The Consultant will make the changes required to the Contract Documents as provided in Article 21 below and Schedule 11 – Change Procedure.
- (d) If Project Co fails to notify the Consultant in writing, fails to obtain direction as required in Section 5.2(c), and performs Work knowing it to be contrary to any Applicable Law, Project Co shall be responsible for and shall correct the violations thereof, and shall bear the costs, expenses and damages attributable to its failure to comply with the provisions of such Applicable Law.

### **5.3 No Liability for BIM Model**

- (a) Project Co acknowledges and agrees that STEGH may, in its sole discretion, make the BIM Model available to Project Co for reference purposes only and provided that Project Co executes and delivers such documents as STEGH and/or its consultants may require. STEGH, any STEGH Party or any Government Entity shall not be liable to Project Co or any Project Co Party for, and Project Co or any Project Co Party shall not seek to recover from STEGH, any STEGH 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 BIM Model by, or on behalf of, Project Co or any Project Co Party.



## **6. PROJECT DOCUMENTS**

### **6.1 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.

### **6.2 Implementing Agreements**

- (a) Project Co shall not:
  - (i) terminate or agree to the termination of all or part of any Implementing Agreement, except pursuant to Sections 19.3, 39.3 and 41.3 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 Implementing Agreement 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 STEGH, 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 Implementing Agreement, that materially adversely affect Project Co's ability to perform its obligations under this Project Agreement or that have the effect of increasing any liability of STEGH, 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 Implementing Agreement, except in the circumstances referenced in Section 6.2(a)(i),

without the prior written consent of STEGH, not to be unreasonably withheld or delayed, provided that, where consent is requested pursuant to Section 6.2(a)(i) or 6.2(a)(iv), such consent shall not be withheld, and shall be provided within a reasonable time, where the relevant matter referred to in Section 6.2(a)(i) or 6.2(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 STEGH, whether actual or potential. In the event of termination or agreement to the termination of all or part of any Implementing Agreement as described in Section 6.2(a)(i), or any agreement replacing all or part of any Implementing Agreement as described in Section 6.2(a)(iv), Project Co shall, to the extent applicable, comply with all provisions herein relating to changes in Subcontractors, including Section 39.3.

- (b) Upon the written request of STEGH or the Consultant, Project Co will deliver or cause to be delivered to STEGH or the Consultant a copy of any notices delivered or received by Project Co under any of the Implementing Agreements.

### **6.3 Changes to Lending Agreements**

- (a) Subject to the terms of the Lender's 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 STEGH whether actual or potential, unless such action is a Permitted Borrowing or a Refinancing effected in accordance with the provisions of Schedule 28 – Refinancing.

### **6.4 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.

## **7. REPRESENTATIONS AND WARRANTIES**

### **7.1 Project Co Representations and Warranties**

- (a) Project Co represents and warrants to STEGH that as of the date of this Project Agreement:
  - (i) Project Co is a corporation formed and validly existing under the laws of the jurisdiction of its organization and has all the requisite corporate power and authority to own, lease and operate its properties and assets, to carry on its business as it is currently being conducted, to enter into this

Project Agreement and the Implementing Agreements to which it is a party, and to perform its obligations hereunder and thereunder;

- (ii) Project Co is in good standing with the Ministry of Government and Consumer Services of Ontario with respect to the filing of annual returns;
- (iii) Project Co has the requisite power, authority and capacity to execute and deliver and perform this Project Agreement and the Implementing Agreements to which it is a party, and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;
- (iv) Project Co has obtained all necessary Project Co Permits, Licences and Approvals required to commence the Work;
- (v) no steps or proceedings have been taken or are pending to supersede, repeal or amend its constating documents, articles or by-laws or any shareholders agreement in a manner that would materially impair or limit its ability to perform its obligations under this Project Agreement or any of the Implementing Agreements to which it is a party, and such documents and agreements are in full force and effect as of the date hereof;
- (vi) this Project Agreement and the Implementing Agreements (when executed and delivered) to which Project Co is a party have been duly authorized, executed, and delivered by Project Co and constitute legal, valid, and binding obligations of Project Co, enforceable against Project Co in accordance with their respective terms, subject only to:
  - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
  - (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (vii) the authorization, execution, delivery and performance by Project Co of this Project Agreement and the Implementing Agreements to which it is a party does not violate or conflict with, or constitute a default under:

- (A) its constituting, formation or organizational documents, or any agreement relating to voting rights in Project Co or the management or control of the business or affairs of Project Co or any similar rights agreement binding on Project Co;
  - (B) any Applicable Law; or
  - (C) any covenant, contract, instrument, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (viii) no Project Co Event of Default has occurred and is continuing;
- (ix) all of the information regarding Project Co set out in Schedule 4 – Project Co Information, is true and correct in all material respects;
- (x) there are no actions, suits, proceedings, or investigations pending or, to the knowledge of its senior management, threatened against Project Co or 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 or any Implementing Agreements to which it is a party, and Project Co has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any Governmental Authority or arbitral body that would result in any such material adverse effect or impairment;
- (xi) Project Co has carefully reviewed the whole of this Project Agreement, including all of the Contract Documents, and all other documents made available to Project Co by or on behalf of STEGH, and, to Project Co's knowledge, nothing contained herein or therein inhibits or prevents Project Co from completing the Work in accordance with this Project Agreement in a good and safe manner so as to achieve and satisfy the requirements of this Project Agreement;
- (xii) Project Co is able to meet its obligations as they generally become due;
- (xiii) Project Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada) and has been assigned HST Number [REDACTED];

- (xiv) the Scheduled Substantial Completion Date is a realistic date and is achievable by Project Co performing the Work in accordance with this Project Agreement;
- (xv) Project Co and the Project Co Parties, collectively, have extensive experience in the construction of health facilities and other public buildings and have the necessary high degree of expertise and experience to perform the services required by the Contract Documents, to review and interpret the Contract Documents and to complete the Work in accordance with the standard of care set out in Section 11.2(a)(viii);
- (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 STEGH'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 Site during the Request for Proposals process and an investigation and examination of the Contract Documents, and any other documents made available to Project Co by STEGH (which include, to the extent made available to Project Co by STEGH, equipment lists, a legal description of the Site, copies of any registered and unregistered agreements affecting the Site, results of tests, reports of independent testing agencies and surveys and documents indicating the location of Utilities and other structures to the extent obtained by STEGH, information regarding the critical requirements to maintain the operations of the Existing Facility, hospital protocols and rules and regulations, if any, including the Site Information and the Contract Documents) so as to ascertain the nature or location of the Work and the Site, the physical conditions of the Site, the interface with the Existing Facility, and protocols, rules and regulations if any, possible delays in commencing the Work, 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 Work and to identify any Design Issues. Project Co has delivered to the Consultant requests for information in respect of all questions arising out of the foregoing inspections, investigations and examinations and in respect of each Design Issue identified. Based on this review, Project Co has established a Project Co Design Contingency adequate, in its judgement,

to fund any change or delay cost that may arise as a result of any further Design Issue that may be identified and properly characterized as a Project Co Design Issue;

- (xix) Project Co has sufficient expertise available to it with the appropriate skills to review the Contract Documents in accordance with the standard of care set out in Section 11.2(a)(viii);
- (xx) Project Co has solicited bids from and will award Subcontracts for the Approved Subcontractor Work only to the applicable Approved Subcontractors and has not solicited bids from and will not award Subcontracts for the Approved Subcontractor Work except to the applicable Approved Subcontractors;
- (xxi) Project Co has secured the Financing and is in a position to implement the Financing on or before the Financial Close Target Date, subject to the satisfaction of reasonable conditions that are customary in closing financing for projects similar to the Project;
- (xxii) 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;
- (xxiii) to the knowledge of Project Co, no Restricted Person has directly or indirectly, an Economic Interest in Project Co or the Project; and
- (xxiv) the 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 term, provisions and conditions.

## **7.2 STEGH Representations and Warranties**

- (a) STEGH represents and warrants to Project Co that as of the date of this Project Agreement:
  - (i) STEGH is a non-share capital corporation incorporated and validly existing under the laws of the Province of Ontario, is in good standing with the Ministry of Government Services (Ontario) with respect to the

filing of annual reports and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and to perform its obligations hereunder;

- (ii) STEGH has the requisite power, authority and capacity to execute, deliver and perform its obligations under this Project Agreement and to do all acts and things, and execute, deliver and perform all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be done, executed, delivered or performed;
- (iii) no steps or proceedings have been taken or are pending to supersede or amend STEGH'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;
- (iv) this Project Agreement has been duly authorized, executed, and delivered by STEGH and constitutes a legal, valid, and binding obligation of STEGH, enforceable against STEGH in accordance with its terms, subject only to:
  - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
  - (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (v) the execution, delivery, and performance by STEGH of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
  - (A) its constating or organizational documents;
  - (B) Applicable Law; or
  - (C) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;

- (vi) no STEGH Event of Default has occurred and is continuing;
- (vii) to the knowledge of STEGH, there are no actions, suits, proceedings, or investigations pending or threatened (in writing), except for the Application, against STEGH or, to STEGH's knowledge, any STEGH Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) of which STEGH has received written notice and that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of STEGH or in any impairment of its ability to perform its obligations under this Project Agreement, and STEGH has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment;
- (viii) STEGH is able to meet its obligations as they generally become due;
- (ix) STEGH 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 STEGH to grant or to cause to be granted to Project Co the licence rights contemplated in Section 9.1;

## **8. CONSULTANT AND KEY PERSONNEL**

### **8.1 Authority of the Consultant**

- (a) The Consultant will have authority to act on behalf of STEGH only to the extent provided in the Contract Documents, unless otherwise modified by written agreement as provided in Section 8.1(b).
- (b) The duties, responsibilities, and limitations of authority of the Consultant as set forth in the Contract Documents shall be modified or extended only with the written consent of STEGH, Project Co and the Consultant.
- (c) If the Consultant's employment is terminated, STEGH shall immediately appoint or reappoint a Consultant whose status shall, upon notification to Project Co of such appointment or reappointment, be that of the former Consultant.

### **8.2 Role of the Consultant**



- (a) The Consultant will provide administration of this Project Agreement as described in the Contract Documents during construction until issuance of the final certificate for payment, and subject to Section 8.1 and with STEGH's concurrence, from time to time until the completion of any correction of defects as provided in Article 36.
- (b) The Consultant will visit the Site at intervals appropriate to the progress of construction to become familiar with the progress and quality of the Work and to determine if the Work is proceeding in general conformity with the Contract Documents.
- (c) If STEGH and the Consultant agree, the Consultant will provide at the Site, one or more project representatives to assist in carrying out the Consultant's responsibilities. The duties, responsibilities, and limitations of authority of such project representatives shall be as set forth in writing to Project Co.
- (d) The Consultant will provide to Project Co a complete set of the issued for construction Drawings and Specifications under the Contract Documents incorporating all Addenda issued by the Consultant from March 9, 2015 to the date of execution of this Project Agreement as soon as reasonably practical following such date of execution. The Consultant shall review the progress of the Work and the general conformance of the Work to the requirements of the Contract Documents. The Consultant shall review the submission of Project Co with respect to Work completed for the purposes of a progress payment application by Project Co under Schedule 18 - Payments and Holdbacks, to verify the extent of the completion of the Work in accordance with the schedule of values and shall perform the other responsibilities of the Consultant under Schedule 18 - Payments and Holdbacks.
- (e) The Consultant will not be responsible for and will not have control, charge, or supervision of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs required in connection with the Work in accordance with Applicable Law or general construction practice. The Consultant will not be responsible for Project Co's failure to carry out the Work in accordance with the Contract Documents. The Consultant will not have control over, charge of, or be responsible for the acts or omissions of Project Co or any Project Co Party or any other persons performing portions of the Work.
- (f) The Consultant will be, in the first instance, the interpreter of the requirements of the Contract Documents and shall make findings as to the performance thereunder by both Parties to this Project Agreement. When making any interpretations or findings or performing any other functions or exercising any right or performing

any obligation under the Contract Documents, the Consultant will act reasonably and in good faith and in accordance with generally accepted professional standards and will not show partiality to either STEGH or Project Co. Any dispute between STEGH and Project Co as to any decision, determination, direction, interpretation or finding of the Consultant or any other action taken by the Consultant pursuant to or in connection with the Contract Documents shall be resolved in accordance with the provisions of Schedule 14 – Dispute Resolution Procedure.

- (g) Claims, disputes, and other matters in question relating to the performance of the Work or the interpretation of the Contract Documents, shall be referred initially to the Consultant by notice in writing given to the Consultant and to the other Party for the Consultant’s interpretation and finding which will be given by notice in writing to the Parties within a reasonable time.
- (h) The Consultant will have authority to reject Work which does not conform to the requirements of the Contract Documents. Whenever the Consultant considers it necessary or advisable, the Consultant will have authority to require inspection or testing of Work in accordance with Section 17.2, whether or not such Work is fabricated, installed, or completed. However, neither the authority of the Consultant to act nor any decision either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Consultant to Project Co, any Project Co Party, or other persons performing any part of the Work.
- (i) When a request for information is submitted by Project Co in accordance with Section 11.2(a)(i), the Consultant will endeavour to provide a response to Project Co as soon as practical, taking into account the impact of the request for information on the critical path. If the request for information relates to an item on the critical path or is reasonably likely to affect an item on the critical path, the Consultant shall respond within 5 Business Days or such longer period of time mutually agreed to by the Consultant and Project Co. If the request for information does not relate to an item on the critical path and is not reasonably likely to affect an item on the critical path, the Consultant and Project Co shall establish a mutually agreed response time that is consistent with the Construction Schedule.
- (j) The Consultant will review and take appropriate action upon Project Co’s submittals such as shop drawings, Product data and samples, as provided in the Contract Documents.
- (k) The Consultant will prepare Contemplated Change Notices, Change Orders and Change Directives as provided in Schedule 11 - Change Procedure.

- (l) The Consultant will conduct reviews of the Work to determine the Substantial Completion Date, as provided in Section 16.1, and make determinations as required in respect of the Commissioning, as contemplated in Schedule 9.
- (m) All certificates issued by the Consultant shall be to the best of the Consultant's knowledge, information and belief. By issuing any certificate, the Consultant does not guarantee that the Work is correct or complete.
- (n) The Consultant will receive and review written warranties and related documents required by this Project Agreement and provided by Project Co and will forward such warranties and documents to STEGH for STEGH's acceptance.
- (o) Without limiting the generality of the responsibilities of the Consultant in accordance with this Section 8.2, the Consultant shall be responsible for reviewing and making a finding on Design Issues and issuing all final documentation in accordance with Section 11.18.
- (p) The Consultant shall cooperate with Lender's Consultant on a reasonable basis to facilitate the responsibilities of Lender's Consultant. No activities of Lender's Consultant under this Project Agreement shall limit in any manner the role and responsibility of the Consultant.
- (q) STEGH has retained STEGH's Project Manager to assist STEGH in the overall implementation of the Project. STEGH's Project Manager shall provide services and interface with Project Co and the Consultant in relation to coordination of the Work for existing operations, schedule overview, and communicating decisions and directions of STEGH. STEGH may, upon notification to Project Co, appoint a new STEGH Project Manager whose status shall be that of the former STEGH Project Manager.
- (r) When STEGH, the Consultant or Project Co provides any written notice under this Project Agreement, they shall also provide a copy of the notice to each other and to STEGH's Project Manager, the Contractor, Agent and Lender's Consultant.
- (s) Notwithstanding the foregoing or anything to the contrary in this Project Agreement or the Contract Documents, the Consultant will not be responsible for the administration or interpretation of those aspects of this Project Agreement that are not related or do not pertain to the construction, installation, testing, Commissioning and completion of the Facility, and other like activities, and for greater certainty, will not have any responsibility or obligation with respect to the matters set out in Article 2, Article 7, Schedule 3 – Completion Documents,

Schedule 4 – Project Co Information, Schedule 5 – Form of Lender’s Direct Agreement, Schedule 22 – Form of Performance Guarantee of Construction Guarantor or Schedule 23 – Form of Assignable Subcontract Agreement for Construction Contract of this Project Agreement, or for any matter related to the Financing.

### **8.3 Supervisors**

- (a) Project Co shall employ competent supervisors and necessary assistants who shall be in attendance at the Site while work is being performed, and shall specifically include a competent mechanical and electrical coordinator and equipment coordinator. Project Co acknowledges that the supervisors are Key Personnel in accordance with Section 8.4. Project Co’s supervisors shall, subject to Section 8.4, devote their full time during working hours to the Project and remain at the Site until Substantial Completion is achieved and thereafter, such supervisors shall, subject to the provisions of Section 8.4, devote sufficient time and effort to the Project as necessary until the final certificate of payment has been issued by the Consultant and all Minor Deficiencies have been rectified. Project Co shall include in its staff separate qualified mechanical and electrical coordinators who shall be responsible for (i) coordinating the general, mechanical and electrical shop drawings submitted by the Subcontractors and Suppliers for various trades or divisions of the Work; (ii) checking for any conflicts or interferences of the Work of one division or trade with another; (iii) checking for completeness of the shop drawings; and (iv) providing direction on any changes that may be required for compliance with the Contract Documents for submission to the Consultant and review of the shop drawings. The mechanical and electrical coordinators shall be active participants in the Commissioning and shall work closely with the Commissioning Agents in accordance with Schedule 9 – Commissioning Program. The mechanical and electrical coordinators shall be Key Personnel in accordance with Section 8.4.
- (b) The supervisor and project manager appointed by Project Co and identified in Schedule 7 – Key Personnel, shall represent Project Co at the Site and shall have full authority to act on written instructions given by the Consultant, STEGH and/or STEGH’s Project Manager. Instructions given to the supervisor or the project manager shall be deemed to have been given to Project Co and both the supervisor and any project manager shall have full authority to act on behalf of Project Co and bind Project Co in matters related to this Project Agreement.

## **8.4 Key Personnel**

- (a) Project Co and the Project Co Parties shall commit as many people and man-hours to the Project as are needed, from time to time, to meet its obligations under this Project Agreement, including the supervisors, project manager and other field management personnel identified in Schedule 7 – Key Personnel (the “**Key Personnel**”).
- (b) Project Co acknowledges that STEGH has relied on Project Co’s representations that the Key Personnel will be available to perform their part of the Work throughout the duration of this Project Agreement as provided for in Section 8.3(a). Key Personnel will be dedicated to the Project on a full-time basis unless noted otherwise. Project Co agrees not to undertake other contracts or projects which could adversely affect or be in conflict with its performance of this Project Agreement.
- (c) Project Co represents that the persons identified in Schedule 7 are the Key Personnel.
- (d) Project Co shall not replace any of the Key Personnel identified in Schedule 7 without the prior written approval of STEGH. If any of the Key Personnel become unavailable to perform services in connection with this Project Agreement due to revisions to the Construction Schedule or ill health or death or discharge by Project Co, then Project Co shall promptly designate a replacement(s) who shall be subject to STEGH’s written approval. STEGH shall be entitled to complete information on any such replacement of the Key Personnel, including a current resume. Further, STEGH shall have the right, acting reasonably, to require Project Co to replace any of the Key Personnel.

## **9. LICENCE AND TITLE**

### **9.1 Licence to Site**

- (a) Effective from Financial Close and subject to this Project Agreement, STEGH hereby grants 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 as are required by Project Co to allow Project Co to perform the Work.
- (b) None of the rights granted pursuant to this Section 9.1 shall extend beyond the boundaries of the Site, or to any lands other than the Site, other than easements and similar interests of STEGH which benefit the Site, obtained after the date of this Project Agreement, to the extent the same are necessary for the Work.

- (c) The licence provided in this Section 9.1 with respect to the Site shall automatically terminate on the Final Completion Date or upon the earlier termination of this Project Agreement in accordance with its terms.
- (d) Project Co agrees to: (i) provide hoarding around the licensed area outside of the Existing Facility in accordance with the Contract Documents; (ii) cordon off areas within the Existing Facility where Project Co is performing the Work required under the Contract Documents and as approved by the Consultant; and (iii) use such access to the Existing Facility, including loading docks, freight elevators and access routes as provided in the Contract Documents and as otherwise directed by the Consultant.

## **9.2 Non-Exclusive Licence 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 STEGH and any person authorized by STEGH may occupy and possess the Site and the Facility. In exercising such rights Project Co shall not, and shall require that the Project Co Parties shall not, compromise patient care and safety and, except as permitted under this Project Agreement, disrupt the ongoing operation of the Existing Facility.
- (b) Without limiting Section 9.2(a), Project Co acknowledges that STEGH may, from time to time, use or develop (including by way of subdivision), or permit the use or development of, portions of the Site other than those portions of the Site contained within the building footprint of the Facility and those other portions of the Site necessary for the performance of the Work. 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 Work, such use or development shall, subject to and in accordance with Schedule 11 – Change Procedure, result in a Change Order.

## **9.3 Naming and Signage**

- (a) Project Co acknowledges that STEGH reserves and retains (i) all rights to designate the name for the Facility and any part of the Facility; (ii) all rights to signage in relation to the Site and the Facility; and (iii) all rights, trade-marks, naming or branding regarding the Facility or any part of the Facility. It is agreed, however, that with the prior written consent of STEGH, not to be unreasonably withheld or delayed and which may take into consideration any applicable governmental guidelines including the guidelines set out in Schedule 21 – Communications Protocol, Project Co, the Project Co Parties and the Agent may,

for the period prior to Substantial Completion, erect and maintain signage at or on the Site or Project (which may include such parties' logos and trade names) identifying their respective roles in connection with the construction of the Project, in a number and location and having a size and quality previously approved by STEGH.

#### **9.4 No Interest in Site or Facility**

- (a) Project Co acknowledges and agrees that, subject to the provisions of the *Construction Lien Act* (Ontario), in accordance with the principles of the IPFP Framework, neither Project Co nor Agent shall acquire any estate, right, title or ownership interest in the Site or the Facility or any other interest in land pursuant to this Project Agreement, the Implementing Agreements or otherwise. Notwithstanding any provision herein or in any of the Implementing Agreements to the contrary, STEGH shall at all times retain the fee simple interest in and freehold title to the Site and the Project, unencumbered by any interest of Project Co or Agent. Project Co and Agent shall have access to the Site and the Facility under and subject to the licenses granted under this Article 9 and the Lender's Direct Agreement, respectively.

#### **9.5 Non-Disturbance Agreement**

- (a) If STEGH mortgages, charges or otherwise encumbers the Site, STEGH shall notify Project Co and, at the request of Project Co, provide Project Co with an agreement executed by the mortgagee of the Site, permitting Project Co, Agent and Lender's Consultant to access and use the Site under the licence granted pursuant to Section 9.1(a) and the Lender's Direct Agreement, respectively, free from interference from the mortgagee or any person claiming by or through the mortgagee. This Section 9.5 shall not apply in respect of any portion of the Site or the Facility used or developed pursuant to Section 9.2(b) if neither the licence granted pursuant to Section 9.1(a) nor the Work pertain to such portion of the Site.

### **10. STEGH RESPONSIBILITIES**

#### **10.1 General**

- (a) STEGH 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, pay for (including all fees and deposits) and as applicable, renew all STEGH Permits, Licences and Approvals;
  - (iii) comply with all Permits, Licences and Approvals 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 STEGH shall not be under any obligation to perform any of Project Co's obligations under this Project Agreement.
- (b) STEGH shall, and shall cause all STEGH Parties to, take reasonable steps to minimize undue interference with the provision of the Work by Project Co or any Project Co Party.
- (c) Nothing in this Project Agreement or any of the Implementing Agreements (including the Construction Contract) shall in any way fetter the right, authority and discretion of STEGH as a public hospital under the *Public Hospitals Act* (Ontario) in fulfilling its statutory or other functions under Applicable Law, and Project Co acknowledges and agrees that nothing in this Project Agreement or any of the Implementing Agreements (including the Construction Contract) shall preclude STEGH's board of directors from performing, discharging or exercising its duties, responsibilities and powers under Applicable Law. Project Co further agrees that it shall comply, and shall cause all relevant Project Co Parties to comply, with all written directions issued by or on behalf of STEGH's board of directors in furtherance of the board of directors fulfilling its duties, responsibilities and powers under Applicable Law in a manner consistent with the rights of STEGH under this Project Agreement, and the cost, if any, of implementing the written directions and the additional time, if any, required to implement such written directions will be implemented by way of a Change Order or Change Directive, as applicable, as provided in Schedule 11 - Change Procedure.

## **11. PROJECT CO RESPONSIBILITIES AND CONSTRUCTION OBLIGATIONS**

### **11.1 General Responsibilities, Standards and Contract Time**

- (a) Project Co shall perform and complete the Work:
  - (i) so as to satisfy and in strict accordance with the Contract Documents;



- (ii) in accordance with the Construction Schedule and in this regard, shall commence the Work 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;
  - (iii) in compliance with Applicable Law, including giving all required notices;
  - (iv) in compliance with all Permits, Licences and Approvals and so as to preserve the existence and continued effectiveness of any such Permits, Licences and Approvals;
  - (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 health facilities and other public buildings 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 that will not impair the ability of and that will enable the STEGH and the STEGH Parties to comply with Applicable Law;
  - (ix) in a manner that does not permit any use of any part of the Site that could constitute a nuisance in, at or on the Site, and that does not allow any waste, damage or disfiguration to the Site;
  - (x) subject to the provisions of this Project Agreement and to the extent reasonably practicable, in a manner which will not impair the on-going operation of the Existing Facility; and
  - (xi) in accordance with all other terms of this Project Agreement and the other Contract Documents.
- (b) Project Co shall furnish necessary certificates as evidence that the Work installed conforms with Applicable Law, including all certificates necessary for the

Consultant to certify as required to obtain a permit for STEGH's occupancy or partial occupancy. These certificates are to be final certificates giving complete clearance for the portions of the Work for which they are obtained.

## **11.2 General Construction Obligations**

- (a) Without limiting Section 11.1, Project Co shall:
- (i) have complete control of the Work and shall effectively direct and supervise the Work so as to ensure conformance with the Contract Documents, including the phasing or sequencing requirements for the Work set out in the Contract Documents. During the progress of the Work, subject to Section 8.2(i), Project Co shall endeavour to submit any request for information to the Consultant in a timely manner having regard to the Construction Schedule, and to identify in the request for information the timeframe within which a Supplemental Instruction is needed to ensure there is no impact on the Construction Schedule, including whether and how the information requested affects the critical path. Project Co shall develop and implement protocols in accordance with the Specifications for the phasing or sequencing of the Work as set out in the Contract Documents, including the coordination of the work of STEGH's own forces or other contractors with the Work. Without limiting the generality of the foregoing, Project Co is responsible for the intermeshing of the various parts and systems comprising any portions of the Work so that no part shall be left in an unfinished or incomplete condition owing to any disagreement between the Project Co Parties or between any of them and Project Co as to where the Work of one begins and ends in relation to the Work of the other;
  - (ii) be solely responsible for all construction means, methods, techniques, sequences and procedures used to undertake the Work and for coordinating the various parts of the Work under this Project Agreement and shall coordinate the Work so as to not interfere, interrupt, obstruct, delay or otherwise affect the work of others;
  - (iii) prior to commencing applicable procurement and construction activities, verify, at the Site, all measurements and levels necessary for proper and complete fabrication, assembly and installation of the relevant Work, and shall further carefully compare such field measurements and conditions with the requirements of the Contract Documents. Where dimensions are not included or exact locations are not apparent, Project Co shall immediately notify the Consultant in writing and obtain written

instructions from the Consultant before proceeding with any part of the Work affected thereby;

- (iv) ensure that no work other than the Work under this Project Agreement is constructed on the Site by Project Co, any Project Co Party or any person for whom Project Co is responsible at law;
- (v) protect the Work and the Site from all of the elements, casualty and damage in accordance with and subject to the Contract Documents;
- (vi) in respect of plant, equipment, Products and materials incorporated in the Work, use plant, equipment, Products and materials that:
  - (A) are of a kind that are consistent with the Contract Documents;
  - (B) are new, of good quality and are used, handled, stored and installed in accordance with Applicable Law, the Contract Documents and Good Industry Practice; and
  - (C) where they differ from the Contract Documents, have been substituted with STEGH's prior written consent;
- (vii) provide all the labour, Products, tools, construction machinery, equipment, water, heat, light, power, transportation and other facilities and services required for the performance and completion of the Work and carry out, perform, observe, fulfil and abide by all the covenants, agreements, stipulations, provisions and conditions mentioned and contained in the Contract Documents on the part of Project Co to be carried out, performed, observed and fulfilled;
- (viii) exercise the standard of care, skill and diligence that would normally be provided by an experienced and prudent contractor supplying similar services for similar hospital projects, in a timely, good and workmanlike manner, it being acknowledged by Project Co that throughout this Project Agreement, Project Co's obligations, duties and responsibilities shall be interpreted in accordance with this standard and any default or alleged default by Project Co in the performance of its obligations, duties and responsibilities shall similarly be interpreted in accordance with this standard;

- (ix) exercise the same standard of due care and diligence as set out in Section 11.2(a)(viii) in respect of any Products, personnel, or procedures which it may recommend to STEGH;
- (x) comply with all requirements of STEGH set forth in the Contract Documents, including, for clarity, the Contract Documents referred to in Section 11.7(c);
- (xi) comply with all rules and directives issued by STEGH regarding the continued operations of the Existing Facility so as not to disrupt the operations of STEGH, and except for any requirements of STEGH described in Section 11.2(a)(x), the cost, if any, and the additional time, if any, required to comply with any such rules and directives issued by STEGH shall be adjusted and compensated for by way of a Change Order or Change Directive, as applicable as provided in Schedule 11 – Change Procedure; and
- (xii) use such project management software system(s) and/or online collaboration system(s) (including software and system(s) for project management, change management, request for information control, document management and other communications) as directed by STEGH at its Sole Discretion from time to time. Project Co shall be responsible for its costs and expenses with respect to the implementation and use of such system(s).

### **11.3 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 Work, to comply with the obligations of Project Co to STEGH 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 STEGH, STEGH's Project Manager, the Consultant, or Lender's 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 Work or any part thereof.

#### **11.4 Project Co Delay**

- (a) It is agreed that one of the reasons Project Co was selected to perform the Work is Project Co's covenant that it will achieve Substantial Completion and Final Completion by the dates set out in Section 11.1(a)(ii) of this Project Agreement, and Project Co acknowledges that it is critical to STEGH that Substantial Completion and Final Completion be achieved by the prescribed dates set out in Section 11.1(a)(ii), and that time is of the essence of this Agreement.

#### **11.5 Permits, Licences and Approvals**

- (a) Project Co shall:
  - (i) obtain, maintain, pay for (including all fees and deposits) and, as applicable, renew all Project Co Permits, Licences and Approvals which may be required for the performance of the Work, which payments, fees and deposits which were in force as at the Submission Date are included in the Guaranteed Price; and
  - (ii) give the required notices and comply with all Permits, Licences and Approvals in accordance with their terms.
- (b) Where Project Co Permits, Licences and Approvals have requirements that may impose any conditions, liabilities or obligations on STEGH or any STEGH Party, Project Co shall not obtain such Project Co Permits, Licences and Approvals without the prior written consent of STEGH, not to be unreasonably withheld or delayed, provided that STEGH shall not be responsible for obtaining or for the failure of Project Co to obtain any Project Co Permit, Licence or Approval. STEGH shall comply, or shall require compliance, with any conditions, liabilities or obligations that are imposed on STEGH or any STEGH Party by the requirements of any Project Co Permit, Licence or Approval obtained with STEGH's consent.
- (c) STEGH shall provide Project Co with such information and administrative assistance as Project Co may reasonably require in relation to the Project Co Permits, Licences and Approvals.

#### **11.6 Safety**

- (a) From Financial Close until the Substantial Completion Date, Project Co shall:

- (i) keep the Site, the Work 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;
  - (ii) 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;
  - (iii) comply with Applicable Law relating to health and safety, including without limitation, the *Occupational Health and Safety Act* (Ontario) and all regulations thereto; and
  - (iv) perform or cause a Project Co Party to perform, all of the obligations of the “constructor”, and indemnify each of STEGH and any other Government Entity against any and all liabilities of the “constructor” under the *Occupational Health and Safety Act* (Ontario) and all regulations thereto.
- (b) Without limitation, Project Co acknowledges that the security of the occupants of the Existing Facility and the safety of the patients and employees in the Existing Facility is paramount. If any of the employees of Project Co, or any Project Co Party is determined by STEGH to be a concern for the security of the Existing Facility or for the safety of the patients or employees in the Existing Facility, in addition to its rights under Article 19, STEGH may require that Project Co replace such employee or restrict access to the Site to that employee and Project Co shall find or cause the Project Co Parties to find substitute employees to proceed with the Work so as not to jeopardize security or safety or cause delay to the progress of the Work contrary to the Construction Schedule.
- (c) Project Co shall perform all of the obligations of the ‘constructor’, within the meaning of OHSA, and shall be solely responsible for construction safety at the Site and for compliance with the rules, regulations and practices required by OHSA. STEGH will contractually require other contractors retained by STEGH and STEGH’s own forces to comply with Project Co’s safety program and safety instructions, and Project Co, as constructor, will have the right to remove the other contractors retained by STEGH and STEGH’s own forces from the Site should they not comply with Project Co’s safety programs and safety instructions. STEGH shall have the right to assign to Project Co the work of other contractors retained by STEGH or the work of STEGH’s own forces for the purpose of safety training and safety compliance for all persons engaged in such safety training and safety compliance results in a material increase in Project Co’s cost, Project Co

shall be compensated for such safety training and safety compliance in accordance with the provisions of Schedule 11 – Change Procedure. Without limiting Project Co’s obligation pursuant to this paragraph, Project Co shall ensure that the Work of all Project Co Parties is in accordance with OHSA and that the work of all other contractors retained by STEGH and the work of STEGH’s own forces is in accordance with OHSA where such work has been assigned to Project Co in accordance with the foregoing.

- (d) Prior to commencement of the Work, Project Co shall submit to STEGH:
  - (i) documentation of a valid WSIB clearance certificate and confirmation of Project Co’s or Contractor’s WSIB CAD-7 performance rating;
  - (ii) documentation of Project Co’s insurance coverage;
  - (iii) documentation of Project Co’s in-house safety-related programs; and
  - (iv) a copy of the Notice of Project filed with the Ministry of Labour.
- (e) Project Co hereby represents and warrants to STEGH that appropriate health and safety instruction and training have been provided to the Project Co Parties (to the extent same have access to the Site), before the Work of such Project Co Party is commenced, including training regarding the infection control procedures set out in the materials referred to in Section 11.7(c) and agrees to provide to STEGH, if requested, proof of such instruction and training.
- (f) Project Co shall tour the appropriate area to familiarize itself with the Site prior to commencement of the Work.
- (g) Project Co shall perform the Work in accordance with its corporate safety-related programs, the requirements of Section 11.7(c) and Applicable Law. Project Co shall have a competent supervisor on the Site as required under OHSA at all times.
- (h) Prior to commencing the Work and prior to receiving payment on each of the Substantial Completion, Final Completion and the final certificate for payment, and for each application for payment, Project Co shall provide a clearance certificate, obtained by the applicable Project Co Parties from the WSIB, indicating compliance with workers’ compensation legislation, including payments due thereunder. At any time during the term of this Project Agreement, when requested by STEGH, Project Co shall provide such evidence of compliance by Project Co and/or the applicable Project Co Parties.

## **11.7 Minimize Disturbance and Work in Existing Facility**

- (a) Project Co recognizes and understands that STEGH is a public hospital under the *Public Hospitals Act* (Ontario) and is therefore subject to a highly regulated legal and operational environment. Project Co acknowledges that in addition to the use of Good Industry Practice, the Contract Documents, including the Contract Documents referred to in Section 11.7(c), include instructions as to the manner in which the Work is to be performed in order to minimize disturbance to the Existing Facility, including with respect to noise, dust control, access to the Site and the particular requirements in respect of those portions of the Work which are to be carried out within the Existing Facility and in respect of those portions of the Work where connections are being made to the Existing Facility. In addition, Project Co acknowledges that it has familiarized itself with the facility and/or building operations of the Existing Facility and will perform the Work taking into account the requirements of STEGH to maintain normal facility and/or building operations of the Existing Facility. Project Co further acknowledges that the Cost of the Work includes all premium time and overtime that may be required to perform the Work in accordance with the Contract Documents, the instructions contained in the Contract Documents referred to in Section 11.7(c) and Good Industry Practice. Project Co shall develop and implement protocols in furtherance of the foregoing in accordance with the Specifications.
- (b) Project Co recognizes that part of the Work consists of the renovation of existing buildings and structures or the addition of a structure to an existing building and that the provision of patient care during construction is a priority for STEGH and acknowledges that it has reviewed the Contract Documents, including those referred to in Section 11.7(c). Project Co shall use all methods required to comply with the instructions set out in the Contract Documents, including those referred to in Section 11.7(c), during the performance of the Work. Project Co shall fully cooperate with STEGH in complying with said instructions during the performance of the Work. Any costs incurred by Project Co in complying with said instructions shall be part of the Guaranteed Price.
- (c) Project Co acknowledges that the Contract Documents include the Specifications, which include instructions respecting STEGH's use of the Existing Facility and infection control procedures. Project Co acknowledges having read and understood the said instructions and agrees to comply with the procedures set out therein. Project Co shall be responsible for any costs and expenses resulting from its failure to comply with these procedures.



## **11.8 Subcontractors and Suppliers**

- (a) Project Co shall preserve and protect the rights of the parties under this Project Agreement with respect to Work 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 Contract Documents and without limiting the generality of the foregoing, shall advise the Project Co Parties of the transfer to Project Co of the design coordination, design errors and omissions and design completion risk as set out in Section 11.17;
  - (ii) incorporate the relevant terms and conditions of the Contract Documents into all contracts or written agreements with Project Co Parties, including those specified in Article 36; and
  - (iii) be as fully responsible to STEGH for acts and omissions of the Project Co Parties as for acts and omissions of persons directly employed by Project Co.
- (b) Attached as Schedule 19 – List of Project Co Parties is a list of all Project Co Parties which 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 Consultant, provided however, that if the Consultant 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 Consultant does not reasonably object.
- (c) Project Co shall not be required to employ as a Project Co Party, a person to whom Project Co may reasonably object, provided STEGH may require Project Co to use particular persons as specified in the Contract Documents for specific building systems of STEGH to ensure STEGH does not lose the benefit of any warranty in respect to such building systems, including building automation, fire alarm and nurse call. STEGH shall have the right to assign to Project Co the work of other contractors retained by STEGH or the work of STEGH's own forces related to the Project and, if such assignment results in an increase in Project Co's cost or a delay in the Construction Schedule, the same shall be addressed or compensated for in accordance with the provisions of Schedule 11 – Change Procedure. For clarity, if STEGH assigns to Project Co the work of other

contractors retained by STEGH or the work of STEGH's own forces related to the Project, such work shall form part of the Work. Notwithstanding the foregoing provisions of this Section 11.8(c), Project Co shall use the Project Co Parties that have been identified in the Contract Documents for specific portions of the Work and with respect to such Project Co Parties there shall be no increase in Project Co's cost or allowance for any delay in the Construction Schedule.

- (d) Project Co hereby agrees to contractually obligate the Contractor to enter into the Assignable Subcontract Agreement for Construction Contract and, subject to Section 11.8(e), to cause the Contractor to cause each of the other Project Co Parties, including Suppliers leasing any construction machinery and equipment, to enter into the Assignable Subcontract Agreement, to evidence that (i) Agent or STEGH shall have the right to cure any default by the Contractor under the Subcontract and, (ii) each such Subcontract shall be assignable without the further consent of such Project Co Party and without the payment of any penalty or other amount, at STEGH's or Agent's option, to STEGH or to Agent or to such other contractor as STEGH or Agent may designate, which rights of assignment shall only be exercised by STEGH, such Agent or such other contractor in the event that this Project Agreement is terminated as a result of Project Co's default.
- (e) With the exception of the Subcontracts specifically listed in Part 2 of Schedule 19 – List of Project Co Parties, none of Project Co nor the Contractor is obliged to enter into an Assignable Subcontract Agreement in respect of a Subcontract having a total estimated cost of \$[REDACTED] or less, provided that Project Co shall cause the Contractor to ensure that each Subcontract entered into with a Project Co Party is assignable without such Project Co Party's further consent and without the payment of any penalty or other amount at STEGH's option, to STEGH or Agent or to such other contractor as STEGH or Agent may designate, which rights shall only be exercised by STEGH, Agent or such other contractor in the event that this Project Agreement is terminated as a result of Project Co's default.
- (f) Subject to Section 11.8(e), Project Co agrees to deliver to STEGH the Assignable Subcontract Agreements by the applicable due dates set out in Part 2 of Schedule 19 – List of Project Co Parties. If, following 90 days after Financial Close, Project Co or the Contractor is required to enter into any additional Assignable Subcontract Agreement pursuant to this Section 11.8, Project Co shall deliver such Assignable Subcontract Agreement to STEGH within 30 days of execution.

- (g) Notwithstanding Section 1.2(c), in the case of any item of the Work being specified under the heading of more than one trade section, Project Co shall decide which of these trades is to perform the Work.

## **11.9 Labour and Products**

- (a) Unless otherwise stipulated elsewhere in the Contract Documents or in other documents made available to Project Co by STEGH, Project Co shall, as appropriate, provide separate metering for all services and facilities necessary for the performance of the Work. Project Co shall arrange for delivery of materials and equipment to the Project in accordance with the Construction Schedule.
- (b) Products shall be free from faults, improper workmanship and defects and in conformance with the Contract Documents. Products which are not specified shall be of a quality best suited to the purpose required and their use shall be subject to the approval of the Consultant.
- (c) Project Co shall (i) maintain good order and discipline among all personnel engaged in respect of the Work and shall promote and maintain a good relationship with all such personnel; (ii) not employ any persons to perform the Work who is/are incompatible with other labour employed by Project Co in connection with the Work; and (iii) act promptly on all problems of labour relations including grievances and jurisdictional disputes. Project Co shall not employ on the Work anyone not skilled in the task assigned to him and shall adopt and enforce regulations with respect to safety, fire prevention, smoking, the use of alcoholic beverages, illegal drugs and other controlled substances and other activities that will or may constitute a danger to life, health or property.
- (d) At STEGH's instruction, Project Co shall promptly remove from the Site any employee who represents a threat to the safety or progress of the Project or persons on the Project who are not following the control procedures referred to in Section 11.7(c) or whose conduct may be considered as harassment in the workplace of any person who is an employee of STEGH under the *Human Rights Code* (Ontario).
- (e) Project Co is responsible for the safe on-site storage of Products and their protection (including Products supplied by STEGH and other contractors) in such a way so as to avoid dangerous conditions or contamination to the Products or other persons or property, and in locations at the Site satisfactory to STEGH.

- (f) Title to the Products shall pass to STEGH upon payment thereof or upon incorporation into the Project, whichever occurs first. For greater certainty, title to Products delivered but not installed, shall pass to STEGH when paid for.
- (g) Project Co shall promptly execute and deliver to STEGH from time to time, as STEGH may require, any further documentation required to identify, evidence, perfect or protect STEGH's interest in the Products, including any registrations pursuant to the *Personal Property Security Act* (Ontario). Subject to Section 11.19(d), notwithstanding the foregoing, Project Co shall continue to bear the risk of loss or damage to any Products until the Substantial Completion Date.

#### **11.10 Documents at the Site**

- (a) Project Co shall keep one copy of the current digital files of the Contract Documents, Construction Schedule, submittals, reports, Supplemental Instructions, Change Orders, Contemplated Change Notices, Change Directives, Design Issue resolution documents, 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 STEGH, Lender's Consultant and the Consultant. Project Co shall keep a daily log available to STEGH, Lender's Consultant and the Consultant at all times.
- (b) Project Co shall, where practical, keep one copy of current standards and manufacturers' literature specified in the Contract Documents at the Site in good order and available to the Consultant and Lender's Consultant and their representatives for the duration of the Work.

#### **11.11 Shop Drawings**

- (a) Project Co shall provide shop drawings as described in the Contract Documents or as the Consultant may reasonably request.
- (b) Project Co shall review all shop drawings prior to submission to the Consultant. Project Co represents by this review that:
  - (i) Project Co has determined and verified all field measurements, field construction conditions and Product requirements, or will do so; and
  - (ii) Project Co has checked and coordinated each shop drawing with the requirements of the Work and of the Contract Documents.

Project Co shall confirm this review of each shop drawing by stamp, date and signature of the person responsible. At the time of submission, Project Co shall notify the Consultant in writing of any deviations in the shop drawings from the requirements of the Contract Documents.

- (c) At the commencement of the Work, Project Co shall prepare, for the review and acceptance of the Consultant, a schedule (the “**Shop Drawing Schedule**”) of the dates for submission and return (which, in no event, will be less than 10 Business Days following submission and 5 Business Days following any re-submission or such shorter period as may be mutually agreed between Project Co and the Consultant) of shop drawings to ensure there is no impact on the Construction Schedule, including, on a reasonable basis, in respect of the work of STEGH’s own forces or STEGH’s other contractors, as set out in the Contract Documents or as STEGH has otherwise advised Project Co. The Shop Drawing Schedule shall provide for the submission of shop drawings in an orderly sequence and sufficiently in advance to allow for the Consultant’s proper review and so as to cause no delay to the Work or the work of STEGH’s other contractors or STEGH’s own forces which has been incorporated in the Construction Schedule. Project Co shall submit shop drawings to the Consultant and the Consultant shall review and return shop drawings in accordance with the Shop Drawing Schedule. If, at any time, Project Co submits an unusually large number of shop drawings not contemplated by the Shop Drawing Schedule, such that the Consultant cannot process these drawings within the time permitted in the Shop Drawing Schedule, the Consultant will, within 5 Business Days of receipt of such shop drawings, provide Project Co with an estimate of the time necessary for processing such shop drawings. Project Co shall periodically re-submit the Shop Drawing Schedule to correspond to changes in the Construction Schedule for the review and acceptance of the Consultant. Shop drawings which require approval of a Governmental Authority having jurisdiction shall be submitted first to the Consultant for its approval in accordance with the approval process set out in this Section 11.11(c) prior to submission by Project Co to such authority. Should the Consultant’s review of such shop drawings require significant changes to such shop drawings, Project Co shall revise same and resubmit to the Consultant prior to submitting to the Governmental Authority having jurisdiction in accordance with the Shop Drawing Schedule.
- (d) Project Co shall submit shop drawings in the form specified or as the Consultant may direct. The Consultant will review and return shop drawings in accordance with the provisions of Section 11.11(c). The Consultant’s review is for conformity to the design concept and for general arrangement only. The Consultant’s review shall not relieve Project Co of responsibility for errors or

omissions in the shop drawings or for meeting all requirements of the Contract Documents.

- (e) Upon the Consultant's request, Project Co shall revise and resubmit shop drawings which the Consultant rejects as inconsistent with the Contract Documents unless otherwise directed by the Consultant. Project Co shall notify the Consultant in writing of any revisions to the re-submission other than those requested by the Consultant.
- (f) Only shop drawings indicated as 'Reviewed' or 'Reviewed as Noted', or words of similar intent, and bearing the Consultant's review date and initials, shall be used at the Site or for the manufacture or fabrication of Products.
- (g) The review of shop drawings by the Consultant does not authorize a change in the Guaranteed Price or Contract Time.
- (h) Project Co shall prepare and maintain record drawings which shall consist of the shop drawings and Specifications revised by Project Co during the Work, showing changes to the shop drawings and Specifications, which record drawings shall be kept current by Project Co and made available to the Consultant and Lender's Consultant for review with each application for a progress payment.
- (i) All required actions by Project Co under this Section 11.11 shall be taken promptly so as not to cause any delay in the Construction Schedule.

#### **11.12 Use of the Work**

- (a) Project Co shall confine construction machinery and equipment, storage of Products, and operations of employees to limits indicated by Applicable Law or the Contract Documents and shall not unreasonably encumber the Work with Products.
- (b) Project Co shall not load or permit to be loaded any part of the Work with a weight or force that will endanger the safety of the Work.
- (c) STEGH shall have the right to enter and occupy the Work in whole or in part for the purpose of placing fittings, furniture and equipment or for other uses, including the intended use of STEGH before Substantial Completion, as provided for in the Construction Schedule. Project Co shall cooperate with STEGH, the STEGH's Project Manager and the Consultant, so as to permit STEGH to occupy and to place such fittings, furniture and equipment in the most efficient manner possible. Such entry and occupation shall not be considered an acceptance of the

Work or in any way relieve Project Co from responsibility to complete this Project Agreement.

### **11.13 Cutting and Remedial Work**

- (a) Project Co shall do the cutting and remedial work required to integrate the several parts of the Work in a cohesive manner.
- (b) Project Co shall coordinate the Work to ensure that this requirement is kept to a minimum.
- (c) Cutting and remedial work shall be performed by specialists familiar with the Products affected and shall be performed in a manner to neither damage nor endanger the Work.

### **11.14 Cleanup**

- (a) Project Co shall maintain the Work in a tidy condition and free from the accumulation of waste products and debris, other than that caused by STEGH, STEGH's other contractors or their employees.
- (b) Project Co shall remove waste products and debris, other than that resulting from the work of STEGH, STEGH's other contractors or their employees, and shall leave the Work clean and suitable for occupancy by STEGH on the Substantial Completion Date. Project Co shall remove products, tools, construction machinery, and equipment not required for the performance of the remaining Work.
- (c) Prior to application for the final certificate for payment, Project Co shall remove products, tools, construction machinery and equipment, and waste products and debris, other than that resulting from the work of STEGH, STEGH's other contractors or their employees.
- (d) In the event of any dispute regarding the removal of waste products, debris, tools, equipment, and the like, STEGH shall provide a written notice to Project Co to remove the said waste and debris and allow a reasonable period of time for Project Co to remove the said materials. If Project Co fails to remove the materials within the time specified, STEGH may remove the waste products and debris and withhold an amount equal to such cost, in an amount that the Consultant shall determine to be reasonable.

### **11.15 Project Co Attending Meetings**

- (a) Project Co shall attend meetings with respect to the Work as may be directed by the Consultant. Project Co shall not claim any extra compensation for attendance at these meetings. Each of Project Co and STEGH shall designate a representative to attend such meetings who is able to make decisions on each of their respective behalfs.

### **11.16 Defective Work**

- (a) Project Co shall promptly remove from the Site and replace or re-execute defective Work that fails to conform to the Contract Documents whether or not the defective Work has been incorporated in the Work and whether or not the 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 defective Work shall be at Project Co's expense. Project Co shall rectify, in a manner acceptable to the Consultant, all defective Work and deficiencies throughout the Work, whether or not they are specifically identified by the Consultant, and Project Co shall prioritize the correction of any defective Work so as not to interfere with or derogate from the Construction Schedule, provided that Project Co shall prioritize the correction of any defective Work that in the Sole Discretion of STEGH is determined to adversely affect the day to day operation of STEGH.
- (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 Consultant it is not expedient to correct defective Work or Work not performed as provided in the Contract Documents, STEGH may deduct from the amount of the Guaranteed Price the difference in value between the work as performed and that called for by the Contract Documents. If STEGH and Project Co do not agree on the difference in value, they shall refer the matter to the Consultant for a determination and the determination will be issued as a Change Order.

### **11.17 Project Co Design Contingency**

- (a) The Cost of the Work and the Guaranteed Price include the Project Co Design Contingency.



- (b) Subject to STEGH's responsibilities under Section 11.17(c), the Project Co Design Contingency shall apply to any and all changes, extras or costs attributable to:
- (i) Design Issues which are properly inferable, readily apparent or readily discoverable from the Contract Documents as forming part of the Work or contrary to Good Industry Practice as it relates to the constructability of the Work which Design Issues shall, for greater certainty, be limited to those Design Issues arising under, or with respect to, or in connection with, matters requiring clarification, information and/or further instruction in the Contract Documents that do not constitute negligent design or engineering;
  - (ii) Design Issues which are related to design coordination and are caused by inconsistencies, conflicts, exclusions, interferences or gaps that are properly inferable, readily apparent or readily discoverable from the Contract Documents, and particularly, the plans, Drawings and Specifications; and
  - (iii) Design Issues which are related to design completion and where the design intent is properly inferable, readily apparent or readily discoverable from the Contract Documents and has not been fully detailed or specified,
- (collectively, the "**Project Co Design Issues**"). The terms "properly inferable", "readily apparent" and "readily discoverable" as used in this Project Agreement, shall be interpreted by taking into consideration Project Co's and Contractor's experience and the investigations, inspections and examinations of the Site carried out by Project Co or by any Project Co Party during the Request for Proposals process prior to the Submission Date, as represented by Project Co to STEGH in Sections 7.1 and 5.2(a) and having regard to the standard of care required under Section 11.2(a)(viii).
- (c) STEGH shall, as between itself and Project Co, assume full responsibility and liability for the use of the design by Project Co, in all respects other than Project Co Design Issues, including the core efficacy and functionality of the design, both in terms of ability and capacity to:
- (i) produce the desired effect in terms of the building systems, including the structural, mechanical, electrical and information technology systems;
  - (ii) meet the requirements of the Building Code in effect at the time the Building Permit was issued, but this shall not relieve Project Co of the

obligation to provide for all standard Building Code requirements applicable to the installation of the Work, whether or not set out in the Specifications; and/or

- (iii) conform to the functional programming needs of STEGH.

In assessing whether a Design Issue is properly characterized as the responsibility of STEGH, the Consultant shall have regard to the Risk Assessment Guidelines, which provide examples of the types of issues that may be encountered and the findings the Consultant would make regarding the categorization of each as a Project Co Design Issue or a Design Issue for which STEGH is responsible. The Contractor and STEGH acknowledge that the Risk Assessment Guidelines are provided for information purposes only and are not complete or exhaustive.

- (d) Subject to and without limiting STEGH's responsibilities under Section 11.17(c) and provided that STEGH fulfills its responsibilities under Section 11.17(c), Project Co shall deliver fully functional and operational systems and all components shown in the Drawings shall be provided as fully complete and fully functional systems in accordance with the Contract Documents. Project Co shall verify the dimensions shown in the drawings before the layout of the Work.

### **11.18 Procedure for Addressing Design Issues**

- (a) When Project Co identifies a Design Issue, Project Co shall promptly notify the Consultant in writing, under a request for information, of such Design Issue and may propose a resolution to the Design Issue. Upon receipt of Project Co's notification and proposed resolution, if any, the Consultant shall:
  - (i) if a proposed resolution is provided by Project Co, proceed to review the proposed resolution and either:
    - (A) confirm that such resolution is acceptable (and a resolution will be considered acceptable if such resolution meets the requirements of the first sentence of Section 11.18(c));
    - (B) reject the proposed resolution and request that additional information be provided or request that an alternative resolution be proposed by Project Co; or
    - (C) reject the proposed resolution and provide instructions to Project Co setting out an acceptable resolution;

- (ii) if no resolution is proposed by Project Co, provide instructions to Project Co setting out an acceptable resolution.

As soon as the Consultant has confirmed to Project Co an acceptable resolution to the Design Issue, Project Co shall proceed to implement such acceptable resolution. If the Consultant characterizes the Design Issue as a Project Co Design Issue, the Consultant shall issue a Supplemental Instruction and the cost, if any, of implementing the acceptable resolution to the Design Issue shall form part of the Project Co Design Contingency. If the Consultant characterizes the Design Issue as a matter that is not a Project Co Design Issue, the Consultant shall request that STEGH issue a Contemplated Change Notice or a Change Directive, as applicable in the circumstances, and the cost, if any, of implementing the acceptable resolution to the Design Issue and the additional time, if any, required to implement the acceptable resolution to the Design Issue shall be documented in a Change Order. If either STEGH or Project Co is of the view that the Design Issue is not properly characterized by the Consultant, or if either STEGH or Project Co does not agree with the Consultant's decision regarding what constitutes an acceptable resolution to the Design Issue, then either STEGH or Project Co may dispute the characterization of the Design Issue or the Consultant's decision regarding what constitutes an acceptable resolution to the Design Issue, pursuant to Section 11.18(d). The Consultant's response to any Design Issue will be provided in accordance with Section 8.2(i). Any professional design services of the Consultant, whether to issue the Supplemental Instruction, Contemplated Change Notice, Change Directive or otherwise, will be a STEGH cost. In assessing whether a Design Issue is properly characterized as a Project Co Design Issue, STEGH and Project Co shall have regard to the Risk Assessment Guidelines. Project Co and STEGH acknowledge that the Risk Assessment Guidelines are provided for information purposes only and are not complete or exhaustive.

- (b) When the Consultant identifies a Design Issue, the Consultant shall promptly notify Project Co of such Design Issue in writing as a Supplemental Instruction or by providing a Contemplated Change Notice or a Change Directive, as applicable in the circumstances. If issued as a Supplemental Instruction, Project Co may review the Design Issue and propose an alternative resolution to the Consultant. Upon receipt of Project Co's proposed alternative resolution, the Consultant shall proceed to review the proposed alternative resolution and either:
  - (i) confirm that such resolution is acceptable (and a resolution will be considered acceptable if such resolution meets the requirements of the first sentence of Section 11.18(c));

- (ii) reject the proposed resolution, request that additional information be provided or request a further alternative resolution be proposed by Project Co; or
- (iii) reject the proposed resolution and provide instructions to Project Co setting out an acceptable resolution.

As soon as the Consultant has confirmed to Project Co an acceptable resolution to the Design Issue, Project Co shall proceed to implement such acceptable resolution. If the Consultant characterizes the Design Issue as a Project Co Design Issue, the Consultant shall issue a Supplemental Instruction and the cost, if any, of implementing the acceptable resolution to the Design Issue shall form part of the Project Co Design Contingency. If the Consultant characterizes the Design Issue as a matter that is not a Project Co Design Issue, the Consultant shall request that STEGH issue a Contemplated Change Notice or a Change Directive, as applicable in the circumstances, and the cost, if any, of implementing the acceptable resolution to the Design Issue and the additional time, if any, required to implement the acceptable resolution to the Design Issue shall be documented in a Change Order. If either STEGH or Project Co is of the view that the Design Issue is not properly characterized by the Consultant or if either STEGH or Project Co does not agree with the Consultant's decision regarding what constitutes an acceptable resolution to the Design Issue, either STEGH or Project Co may dispute the characterization of the Design Issue or the Consultant's decision regarding what constitutes an acceptable resolution to the Design Issue, pursuant to Section 11.18(d). The Consultant's response shall be provided in accordance with the provisions of Section 8.2(i). Any professional design services of the Consultant, whether to issue the Supplemental Instruction, Contemplated Change Notice or Change Directive or otherwise, will be a STEGH cost. In assessing whether a Design Issue is properly characterized as a Project Co Design Issue, STEGH and Project Co shall have regard to the Risk Assessment Guidelines. Project Co and STEGH acknowledge that the Risk Assessment Guidelines are provided for information purposes only and are not complete or exhaustive.

- (c) An acceptable resolution to a Design Issue shall be a resolution that (i) in all respects is consistent with the design intent and quality standards of the Contract Documents; (ii) will not interfere with the efficient operations of STEGH; and (iii) will not increase the life cycle costs of the Facility. If the resolution to a Design Issue proposed by the Consultant is of a higher quality, not consistent with the design intent and quality standards of the Contract Documents, Project Co

will, subject to and in accordance with Schedule 11 – Change Procedure, be entitled to a Change in the Scope of the Work.

- (d) If either STEGH or Project Co is of the view that a Design Issue is not properly characterized by the Consultant or does not agree with the Consultant’s decision regarding what constitutes an acceptable resolution to the Design Issue, either STEGH or Project Co may dispute the characterization of the Design Issue or the Consultant’s decision regarding what constitutes an acceptable resolution to the Design Issue, and such issues will be determined in accordance with Schedule 14 – Dispute Resolution Procedure. Project Co acknowledges that notwithstanding any such dispute, the Consultant may issue a Supplemental Instruction to Project Co for a resolution to the Design Issue and Project Co shall proceed to implement such resolution to the Design Issue in accordance with the Supplemental Instruction issued by the Consultant, pending resolution of the dispute and subject to Section 1.3 of Schedule 14 – Dispute Resolution Procedure.
- (e) The Project Co Design Contingency is included in the Cost of the Work and the Guaranteed Price and Project Co is solely responsible for all costs to remedy all Design Issues that are properly characterized as Project Co Design Issues, and Project Co will not be entitled to any additional compensation or change in the Contract Time with respect to any and all Design Issues that are properly characterized as Project Co Design Issues, subject, in each case, to Section 11.18(c), and to the responsibility of STEGH, at STEGH’s cost, for the provision of professional design services as specifically provided in Sections 11.18(a) and 11.18(b). Subject to the preceding sentence, and notwithstanding anything to the contrary in this Project Agreement, Project Co acknowledges and agrees that it shall have no recourse against STEGH in respect of any Project Co Design Contingency or any costs directly or indirectly arising out of a Design Issue that is properly characterized as a Project Co Design Issue. Project Co is not accountable to STEGH for the expenditure of the amount Project Co has carried as the Project Co Design Contingency and STEGH has no entitlement to claim the unused portion, if any, of the Project Co Design Contingency. Payment of the Guaranteed Price to Project Co (which, for greater certainty, shall include any unused portion of the Project Co Design Contingency) shall fully satisfy Project Co in respect of its costs to carry the Project Co Design Contingency and all costs of Project Co to remedy all Design Issues that are properly characterized as Project Co Design Issues. Further to and without limiting the foregoing, but, subject to the limitations set out in Section 35.2(b), Project Co acknowledges and agrees that it shall have no recourse against the Consultant in respect of any Design Issue, except for claims arising in relation to the professional negligence or errors and omissions of the Consultant.

- (f) Project Co shall provide the Consultant, STEGH and STEGH's Project Manager with a detailed weekly update report in form and substance satisfactory to the Consultant and STEGH, on the status of all outstanding Design Issues.

#### **11.19 Construction by STEGH or Other Contractors**

- (a) STEGH reserves the right to award separate contracts in connection with work related to the Project to other contractors and to perform work related to the Project with its own forces. STEGH may assign
  - (i) the scheduling and safety training in respect of the work of STEGH's other contractors or STEGH's own forces in accordance with Section 11.6(c); or
  - (ii) the work related to the Project in accordance with Section 11.8(c),  
to Project Co.
- (b) When separate contracts are awarded for work related to the Project, or when such work is performed by STEGH's own forces, STEGH shall:
  - (i) cause STEGH's other contractors or STEGH's own forces to comply with:  
(A) the instructions of Project Co relating to coordination and scheduling of the activities and work of such contractors or STEGH's own forces with the Work; and (B) all directions of Project Co in respect of any matter regarding site safety or health and safety;
  - (ii) [Intentionally deleted]
  - (iii) ensure that insurance coverage is provided as would be required by a prudent owner similarly situated and coordinate such insurance with the insurance coverage of Project Co as it affects the Work and in any event, such insurance shall provide for liability insurance of not less than \$[REDACTED]; and
  - (iv) take all necessary steps to avoid labour disputes or other disputes on the Project arising from the work of STEGH's other contractors or STEGH's own forces.
- (c) When separate contracts are awarded for work related to the Project, or when work is performed by STEGH's own forces, Project Co shall:

- (i) provide for the coordination and scheduling of the activities and work of STEGH's other contractors and STEGH's own forces with the Work to be performed under this Project Agreement;
  - (ii) afford STEGH and STEGH's other contractors reasonable opportunity to introduce and store their products and use their construction machinery and equipment to execute their work;
  - (iii) participate with STEGH's other contractors and STEGH in reviewing their construction schedules when directed to do so by STEGH, STEGH's Project Manager and/or the Consultant;
  - (iv) where part of the Work is affected by or depends upon, for its proper execution, the work of STEGH's other contractors or STEGH's own forces, promptly report to the Consultant in writing and prior to proceeding with that part of the Work, any readily apparent deficiencies in such work of STEGH's other contractors or STEGH's own forces. Failure by Project Co to so report shall invalidate any claims against STEGH by reason of such readily apparent deficiencies;
  - (v) subject to Section 11.6, for STEGH's own forces and for STEGH's other contractors, assume overall responsibility for compliance with all aspects of Applicable Law relating to health and safety, including all the responsibilities of the 'constructor' under OHSAA; and
  - (vi) respond to and support STEGH and STEGH's own forces or contractors in a timely manner so as not to delay their work relating to planning, scheduling or implementation of their work relating to the Project.
- (d) Project Co shall not be responsible for any failure in the performance of the work of STEGH's other contractors or STEGH's own forces. If:
- (i) any of STEGH's other contractors or STEGH's own forces cause any damage to the Work;
  - (ii) Project Co incurs any additional costs or there is any delay in the Construction Schedule as a result of any of STEGH's other contractors or STEGH's own forces not complying with the coordination, scheduling and safety instructions of Project Co; or
  - (iii) Project Co incurs any additional costs or there is any delay in the Construction Schedule as a result of any work done by STEGH's other

contractors or STEGH's own forces (other than work that is described in the Contract Documents and performed by such other contractors or STEGH's own forces in accordance with Good Industry Practice and in accordance with the terms of their respective contracts or engagements with STEGH),

Project Co shall be entitled to compensation in respect of such damage or for such increased costs and to an extension of time for such delay, in each case, authorized and valued as a Change Order in the manner set forth in Schedule 11 – Change Procedure.

- (e) Claims, disputes, and other matters in question between Project Co and STEGH's other contractors shall be dealt with in substantially the same manner as contemplated in Schedule 14 – Dispute Resolution Procedure, provided STEGH's other contractors have reciprocal obligations and STEGH has made commercially reasonable efforts to ensure that such provisions are included in the contracts with STEGH's other contractors. Project Co shall be deemed to have consented to arbitration of any dispute with any other contractor whose contract with STEGH contains a similar agreement to arbitrate.
- (f) Placing, installing, application and connection of the work performed by STEGH's own forces or by STEGH's other contractors, on and to the Work will not relieve Project Co from the responsibility to provide and maintain the specified warranties with respect to the Work, except to the extent that the placing, installing, application or connection of such work by STEGH's own forces or by STEGH's other contractors on and to the Work gives rise to a claim under warranties provided by Project Co, in which case such warranties shall not apply to such claim.

### **11.20 Temporary Supports, Structures and Facilities**

- (a) Project Co shall have the sole responsibility for the design, erection, operation, maintenance, and removal of temporary supports, structures, and facilities and the design and execution of construction methods required in their use. Any review of Project Co's temporary supports, structures, or facilities or any shop drawings related thereto by STEGH or Consultant does not relieve Project Co of its "sole responsibility" under this section.
- (b) Project Co shall engage registered professional engineering personnel skilled in the appropriate disciplines to perform those functions referred to in Section 11.20(a) where required by law or by the Contract Documents and in all cases, where such temporary supports, structures, and facilities and their method



of construction are of such a nature that professional engineering skill is required to produce safe and satisfactory results.

- (c) Subject to Section 11.17, but notwithstanding the provisions of Sections 11.2, 11.20(a) and 11.20(b) or provisions to the contrary elsewhere in the Contract Documents, where such Contract Documents include designs for temporary supports, structures and facilities or specify a method of construction in whole or in part, such facilities and methods shall be considered to be part of the design of the Work and Project Co shall not be held responsible for that part of the design or the specified method of construction. Project Co shall, however, be responsible for the execution of such design or specified method of construction in the same manner as for the execution of the Work.

### **11.21 Protection of Work and Property**

- (a) Project Co shall protect the Work and STEGH's property at the Site, including the Existing Facility and the property adjacent to the Site, 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:
  - (i) Design Issues (other than Design Issues which are properly characterized as Project Co Design Issues under Section 11.17); or
  - (ii) acts or omissions by STEGH, the Consultant or any contractor retained by STEGH directly and whose contract is not assigned to Project Co, their respective agents and employees.
- (b) Should Project Co, in the performance of this Project Agreement, damage the Work, STEGH's property at the Site, including the Existing Facility or property adjacent to the Site, Project Co shall be responsible to Make Good such damage at Project Co's expense.
- (c) Should damage occur to the Work or STEGH's property at the Site, including the Existing Facility, for which Project Co is not responsible, as provided in Section 11.21(a), Project Co shall Make Good such damage to the Work and, if STEGH so directs, to STEGH's property and the Guaranteed Price and Contract Time shall be adjusted (including on account of the Overhead and Profit Fee) as provided in Schedule 11 – Change Procedure.
- (d) Project Co shall not undertake to repair and/or replace any damage whatsoever to adjoining property or acknowledge the same was caused or occasioned by Project

Co, without first consulting STEGH and receiving written instructions as to the course of action to be followed.

- (e) Notwithstanding Section 11.21(d), where there is danger to life or property which arises out of or in connection with the performance of the Work, 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 11.19(e) and Schedule 14 – Dispute Resolution Procedure. If the other contractor makes a claim against STEGH 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 11.19(e) and Schedule 14 – Dispute Resolution Procedure.

## **11.22 No Site Encumbrances**

- (a) Project Co shall not create, incur, permit or suffer to exist any Encumbrance to be filed, issued or registered against the Site or any part thereof or any interest therein due to an act or omission of Project Co or any Project Co Party.
- (b) Subject to Encumbrances that Project Co shall remove pursuant to Section 11.22(c) and Section 3 of Schedule 18 – Payments and Holdbacks, the performance of the Work shall not give rise to a right for any person to obtain title to or any interest in the Site, the Existing Facility or the Facility or any part of it or them except in accordance with the terms of this Project Agreement.
- (c) In the event that the Site or any part thereof or any interest therein becomes subject to any Encumbrance arising in relation to the performance of the Work which has not been consented to in writing by STEGH, 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, STEGH 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, all of which shall be payable on demand.

- (d) Notwithstanding the provisions of this Section 11.22, the Parties acknowledge that the provisions of Section 3 of Schedule 18 – Payments and Holdbacks shall apply to claims for lien made against the Site, the Facility or the Existing Facility pursuant to the *Construction Lien Act* (Ontario) and shall also apply to claims made against the Legislative Holdback.

### **11.23 STEGH Early Procured Contracts**

- (a) On Financial Close, Project Co shall execute and deliver an Assignment and Assumption Agreement in respect of each of the STEGH Early Procured Contracts and shall assume all of the obligations of STEGH thereunder, and thereafter shall execute and deliver such supporting documentation as may be reasonably required by the counterparty Supplier or by STEGH from time to time with respect to the STEGH Early Procured Contracts. For clarity, Project Co acknowledges and agrees that,
- (i) any and all costs associated with the assumption and performance of STEGH's obligations under the STEGH Early Procured Contracts, including obligations with respect to payment thereunder, are included in and form part of the Guaranteed Price;
  - (ii) any and all obligations of STEGH under the STEGH Early Procured Contracts are included in and form part of the Work; and
  - (iii) all Equipment associated with the STEGH Early Procured Contracts is Type D Equipment for the purposes of this Project Agreement.
- (b) If a STEGH Early Procured Contract that has been assigned to Project Co under an Assignment and Assumption Agreement (each a “**STEGH Assigned Contract**”) has on-going vendor maintenance or other service obligations that extend beyond the Substantial Completion Date, Project Co shall assign such STEGH Assigned Contract, including the benefit of the on-going maintenance, other service obligations, guarantees, warranties and all Project Deliverables relating to such STEGH Assigned Contract, to STEGH immediately following the Substantial Completion Date. The assignment by Project Co of a STEGH Assigned Contract shall expressly reserve the right of Project Co to make any claims with respect to the guarantees and warranties under such STEGH Assigned Contract for the repair or replacement of any Work and such assignment shall in no way prejudice any rights of or benefits accruing to Project Co pursuant to such guarantees and warranties. Project Co acknowledges that STEGH is not liable for any obligation of Project Co under any STEGH Assigned Contract arising prior to such assignment and shall ensure that any STEGH Assigned Contract is in good

standing with the Supplier prior to any assignment to STEGH and that Project Co has satisfied all payment obligations to the Supplier that have accrued prior to and upon any assignment to STEGH.

#### **11.24 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 STEGH. 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 STEGH 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 any barriers that prevented Project Co from achieving its objectives.

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

### **11.25 Procurement Monitoring and Implementation Plan**

- (a) Project Co shall implement the Procurement Monitoring and Implementation Plan attached as Schedule 15 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 15 – 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.

### **11.26 Health and Safety Certification**

- (a) Project Co shall cause the Contractor, at such its own cost and risk, at all times during the performance of the Work to:
  - (i) to the extent the 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 STEGH is satisfied, in its sole discretion, that the Contractor has used best efforts to obtain its Health and Safety Certification in accordance with this Section 11.26 and the Contractor has not obtained its Health and Safety Certification by the end of such six month period, then STEGH shall establish a time period during which the 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 Work:
  - (i) the 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 STEGH determines that the failure to obtain the Health and Safety Certification is as a result of the Contractor not using best efforts to obtain such certification and STEGH delivers a notice to Project Co indicating that the 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) STEGH delivers a notice to Project Co indicating that STEGH is of the opinion that the 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 STEGH that an H&S Certification Default Event has occurred and produce and deliver to STEGH:
  - (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 STEGH and, to the extent STEGH requires any amendments or revisions to be made to the Health and Safety

Certification Reinstatement Plan, Project Co shall take, and shall cause the Contractor to take, all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to STEGH an amended Health and Safety Certification Reinstatement Plan not more than 5 Business Days from the date on which such request is made by STEGH; 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 11.28(a); or
- (iv) within 5 Business Days of receipt of the notice from STEGH under 11.26(b)(ii), produce and deliver to STEGH:
  - (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 STEGH and, to the extent STEGH 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 STEGH an amended Health and Safety Certification Maintenance Plan not more than 5 Business Days from the date on which such request is made by STEGH; and
  - (C) arrange to have conducted a complete H&S Inspection in accordance with Section 11.28(a).

## 11.27 Demolition Requirements

- (a) Without limiting Project Co’s obligation to perform the Work 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 Work:

- (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 STEGH 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 STEGH that a Demolition Default Event has occurred, unless STEGH 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 STEGH:
    - (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 STEGH and, to the extent STEGH 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 STEGH an amended and revised Demolition Plan not more than 5 Business Days from the date on which such request is made by STEGH.
- (c) No Demolition shall be recommenced at the Site that was the subject of the Demolition Default Event until:
- (i) STEGH 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) STEGH has received a report, in form and substance satisfactory to STEGH, 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.

## **11.28 H&S Inspection Report**

- (a) Project Co shall cause the Contractor, at its sole cost and expense, to conduct an inspection of its facilities and of its health and safety management systems on an annual basis until Final Completion or as otherwise required in accordance with Sections 11.26(b)(iii)(C) or 11.26(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 Sites at which the Work is being conducted and (B) a review of the Contractor’s job hazard analysis documentation on any 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 STEGH and to the Work 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 Work Committee at the next meeting of the Work Committee that follows the date on which such H&S Inspection Report was issued.

## **12. CONSTRUCTION SCHEDULE**

### **12.1 The Construction Schedule**

- (a) Project Co shall:
- (i) review the proposed schedules and deadlines of STEGH for the Project and where STEGH has not specified particular dates for occupancy, Project Co shall set those dates so as to achieve occupancy of the Facility on an as early as achievable basis and include them in its proposed draft Construction Schedule under Section 12.1(a)(ii);
  - (ii) prepare and submit to STEGH and the Consultant as soon as practical and in any event within 45 days of Financial Close, a detailed computerized draft Construction Schedule (in both hard paper copy and computer readable soft copy) using a critical path method (“**CPM**”) network and a draft Construction Schedule dependent cash flow forecast, each in a form

approved by STEGH. For clarity, the draft Construction Schedule shall show all the schedule underlying assumptions, including tasks interdependency and schedule floats. The planning and schedule software shall be “Primavera” with the most current release available to be used. The draft Construction Schedule and any other schedule related reporting requirements of Project Co shall conform to the phasing and sequencing requirements for the Work as set out in the Contract Documents, including the work to be completed by STEGH’s own forces or by other contractors, the Scheduled Substantial Completion Date, the Scheduled Final Completion Date, the completion of the Remaining Works, the Specifications included in Division 1 of the Contract Documents, including, the sequencing requirements, the schedule for Commissioning of the Work and for achieving the Scheduled Substantial Completion Date and the Scheduled Final Completion Date. STEGH and the Consultant will respond to Project Co, in writing, within 10 Business Days of receipt of each draft Construction Schedule, with either its detailed comments or acceptance of such Construction Schedule as complete;

- (iii) in the event that STEGH and the Consultant do not accept Project Co’s draft Construction Schedule submission as complete, Project Co shall re-submit such draft Construction Schedule as many times as necessary, revised in accordance with STEGH’s and the Consultant’s detailed comments and each re-submission shall be provided within 5 Business Days of receipt of the Consultant’s and STEGH’s detailed comments, who in turn shall also respond within 5 Business Days. When the draft Construction Schedule has been accepted as complete by STEGH and the Consultant, it shall be the baseline Construction Schedule against which Project Co shall monitor progress of the Work for the Project;
- (iv) advise the Consultant promptly of any error or omission in the Construction Schedule and correct such error or omission;
- (v) continuously monitor the progress of the Work in relation to the Construction Schedule and the cash flow and update the Construction Schedules and the cash flow forecast with the monthly construction status report under Section 18.2(a), maintain the continuity of the Construction Schedule’s CPM network for all updates and revisions and immediately notify STEGH of any variance or potential variance in the scheduled completion dates;

- (vi) advise the Consultant of any revisions required to the Construction Schedule as a result of extension of the Contract Time in accordance with Schedule 11 – Change Procedure;
  - (vii) identify potential variances between scheduling and scheduled completion dates, review the schedule of Work not started or incomplete and implement necessary adjustments in the Construction Schedule in order to meet the Scheduled Substantial Completion Date and the Scheduled Final Completion Date set out in such Construction Schedule, including the movement of manpower and equipment in response to availability of work areas;
  - (viii) comply with the Construction Schedule so as not to interfere with the activities of STEGH in the Existing Facility;
  - (ix) monitor the Subcontractors' personnel staffing and equipment and the availability of materials and supplies in order to meet the Construction Schedules and take appropriate courses of action when the requirements of a Subcontract with any Project Co Party are not met;
  - (x) 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 Work;
  - (xi) pre-order equipment, materials and supplies where necessitated by cost and/or time factors and expedite delivery of critical items; and
  - (xii) in consultation with STEGH's Project Manager and the Consultant, include in the Construction Schedule the integration of the equipment specifications, rough-in requirements, supply and installation, including of STEGH's equipment to ensure that the ordering, delivery, receiving and supply of equipment does not impact on the Construction Schedule.
- (b) From Financial Close until the draft Construction Schedule becomes the Construction Schedule pursuant to Section 12.1(a)(iii), the Interim Construction Schedule shall be deemed to be the Construction Schedule and, until such time, all provisions of this Project Agreement applicable to the Construction Schedule shall be applicable to the Interim Construction Schedule mutatis mutandis as though the Interim Construction Schedule were the Construction Schedule under this Project Agreement. Upon the draft Construction Schedule becoming the Construction Schedule the Construction Schedule shall automatically replace the Interim Construction Schedule.

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- (c) The Interim Construction 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 STEGH and the Consultant, to monitor the progress of the Work and the likely future progress of the Work.
- (d) From the date of this Project Agreement until the date the draft Construction Schedule becomes the Construction Schedule pursuant to Section 12.1(a)(iii):
- (i) for clarity, Project Co shall update the Interim Construction Schedule in accordance with Section 12.1(a)(v). Notwithstanding the foregoing and Section 18.2(a), unless otherwise agreed to by the STEGH, Project Co shall not schedule as part of the Work any new activity that is not included in the Interim Construction Schedule on the date of this Project Agreement that requires any material input, review, participation or decision from STEGH or any STEGH Party without providing STEGH at least 10 Business Days prior written notice and without obtaining the prior agreement of STEGH; and
  - (ii) any activity and associated duration to be included in the Construction Schedule agreed to by STEGH and Project Co during the development of the draft Construction Schedule pursuant to Section 12.1(a)(ii) that will or may occur prior to the finalization of the draft Construction Schedule shall be promptly included by Project Co in an updated Interim Construction Schedule which updated Interim Construction Schedule for clarity, shall be provided to STEGH in accordance with Section 12.1(a)(i) or Section 18.2(a).
- (e) At any time prior to Final Completion, Project Co shall, no later than two Business Days following the written request of STEGH, deliver to STEGH a hard copy and a soft (non PDF) copy of the most current version of the Construction Schedule and/or any past version of the Construction Schedule requested by STEGH in its native file format, showing all the schedule's underlying assumptions, including tasks interdependency and schedule floats. At the request of STEGH, Project Co shall in person review the Construction Schedule in such format with STEGH and the Consultant for purposes including, explaining to STEGH and the Consultant the activity logic and planning assumptions contained in the Construction Schedule any proposed changes to the critical path of the Work, and the impact of the Work on any major milestone event.

## 12.2 Changes to Critical Path

- (a) Any changes to the critical path of the Construction Schedule initiated by Project Co which affect the Scheduled Substantial Completion Date or the Scheduled Final Completion Date must be approved in writing by STEGH. Subject to the terms of Schedule 11 – Change Procedure, any STEGH approval of such changes to the critical path does not entitle Project Co to a Change Order, an extension of the Contract Time or an addition to the Guaranteed Price.
- (b) Where Project Co proposes any change to the critical path of the Construction Schedule, Project Co shall, no later than 2 Business Days following the written request of STEGH, deliver to STEGH a copy of the most current version of the Construction Schedule and/or any past version of the Construction Schedule requested by STEGH in its native software format.

## 12.3 Failure to Maintain Schedule

- (a) If Project Co is not meeting the deadlines set out in the Construction Schedule consistent with its obligations under this Project Agreement, then at the written request of STEGH or the Consultant, Project Co, and the Project Co Parties as required, shall promptly increase efforts on the Project, including the addition of more personnel to the Project during regular times and during periods of time for which overtime may be required, and if the delay is for any reason other than as described in Sections 22.1(a) and 28.1(a), all expenses and costs incurred as a result shall be borne by Project Co. Any dispute between the parties as to whether Project Co is meeting the deadlines set out in the Construction Schedule shall be resolved in accordance with the provisions of Schedule 14 - Dispute Resolution Procedure.
- (b) Project Co shall notify STEGH's Project Manager if, at any time, the actual progress of the Work is significantly ahead of the Construction Schedule.

## 13. WORK COMMITTEE AND EQUIPMENT

### 13.1 Establishment of Works Committee

- (a) The Parties shall, within 30 days following Financial Close, establish a committee (the "**Work Committee**") consisting of:
  - (i) 1 representative appointed by Infrastructure Ontario, from time to time;
  - (ii) the Consultant;

- (iii) the following 2 representatives appointed by STEGH:
  - (A) STEGH's Project Manager; and
  - (B) any individual appointed by STEGH;
- (iv) the following 2 representatives appointed by Project Co:
  - (A) Project Co's project manager identified in Schedule 7 – Key Personnel; and
  - (B) Project Co's site superintendent identified in Schedule 7 – Key Personnel.
- (b) Members of the Work Committee may, on prior notice to all members, invite such advisors and consultants as they require from time to time to attend meetings and to provide briefings to the Work Committee.
- (c) STEGH's Project Manager shall be the chairperson of the Work Committee.

### **13.2 Function and Role**

- (a) The Work Committee shall assist the Parties by:
  - (i) promoting cooperative and effective communication;
  - (ii) performing a consultative and advisory role to facilitate decisions; and
  - (iii) making recommendations as to the optimum or preferred course of action, in each case, with respect to matters related to the Work.
- (b) The Work Committee shall be responsible for receiving and reviewing all matters related to the Work, including:
  - (i) any construction and Commissioning issues;
  - (ii) the identification and resolution of Project Co Design Issues pursuant to Section 11.18;
  - (iii) the Construction Schedule;

- (iv) any issues arising from reports or documents provided by Project Co or the Consultant, including, but not limited to, the monthly construction status reports referred to in Section 18.2(a) and the weekly reports referred to in Section 18.2(b);
- (v) any quality assurance and safety issues;
- (vi) the recommendations of the Equipment Subcommittee;
- (vii) any special matters referred to the Work Committee by STEGH, any STEGH Party, Project Co or any Project Co Party;
- (viii) any community and media relations issues in accordance with Schedule 21 – Communications Protocol; and
- (ix) any other issues pertaining to the Work.

### **13.3 Term of Work Committee**

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

### **13.4 Replacement of Committee Members**

- (a) Infrastructure Ontario and STEGH shall be entitled to replace any of their respective representatives on the Work Committee by written notice to the other and to Project Co. STEGH 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 Work Committee with the prior written consent of STEGH, not to be unreasonably withheld or delayed.

### **13.5 Procedures and Practices**

- (a) The members of the Work Committee may:
  - (i) adopt such procedures and practices for the conduct of the activities of the Work Committee and establish such subcommittees of the Work Committee, as they consider appropriate from time to time;
  - (ii) invite to any meeting of the Work Committee such other persons as the members of the Work Committee may agree;



- (iii) exclude from any meeting of the Work Committee such persons as the members of the Work Committee may agree; and
  - (iv) receive and review reports from any person or organization agreed to by the members of the Work Committee.
- (b) Once established, the Work Committee shall meet at least once each month from the date of this Project Agreement until the Final Completion Date, unless otherwise agreed by the members of the Work Committee or the Parties.
- (c) The Consultant may convene a special meeting of the Work Committee at any time. Special meetings of the Work Committee may be convened on not less than 5 Business Days notice to all members of the Work 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 Work Committee, the Work Committee shall meet at the Site, the Facility or another location in St. Thomas, Ontario. Meetings of the Work 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 Work Committee must attend in person at least once each calendar quarter.
- (e) Minutes of all meetings, recommendations and decisions of the Work Committee, including those made by telephone or other form of communication, shall be recorded and maintained by the Consultant. The Consultant shall circulate copies of such minutes within 5 Business Days of the holding of the meeting. Unless Project Co notifies the Consultant within 5 Business Days of receipt of the minutes that Project Co disagrees with the contents of the minutes, Project Co, STEGH and Infrastructure Ontario shall be deemed to have approved such minutes. The Consultant shall maintain a complete set of all minutes of the meetings of the Work Committee and shall make such minutes available for inspection by Project Co during regular business hours.

### **13.6 Equipment Subcommittee**

- (a) The Parties shall, within 30 days after the date of this Project Agreement, establish an equipment subcommittee of the Work Committee (the “**Equipment Subcommittee**”) consisting of 3 representatives of each Party.

- (b) The Equipment Subcommittee shall assist the Parties by promoting cooperative and effective communication with respect to matters related to the Equipment to be installed in connection with or incorporated into the Work, as contemplated by the Contract Documents.
- (c) The primary role of the Equipment Subcommittee shall be to oversee and coordinate the procurement and installation of all Equipment in a timely and efficient manner and in accordance with the Construction Schedule. Project Co and the Equipment Subcommittee shall work co-operatively with the Consultant, STEGH and any equipment consultant retained by STEGH.
- (d) The Equipment Subcommittee shall be responsible for receiving and reviewing all matters related to the Equipment and shall make recommendations to the Work Committee in connection therewith, which the Work Committee may accept or reject in their sole discretion.
- (e) The members of the Equipment Subcommittee may adopt such procedures and practices for the conduct of the activities of the Equipment Subcommittee as they consider appropriate from time to time.

### **13.7 Project Co Equipment Responsibilities**

- (a) For each item of Type A Equipment and Type C Equipment, that is also designated “1” or “2” in the “Impact Codes” column in the Equipment Lists, Project Co shall:
  - (i) provide, in accordance with the Contract Documents, mechanical, electrical and information technology rough-ins, as applicable, for such Equipment;
  - (ii) with STEGH and/or STEGH’s own forces, coordinate the decommissioning, uninstallation, transfer, delivery, reinstallation, installation and commissioning of, as well as associated training in respect of such Equipment;
  - (iii) be responsible for ensuring that the decommissioning, uninstallation, transfer, delivery, reinstallation, installation, commissioning and training in respect of such Equipment is included in the Construction Schedule and all such activities (save and except for the training) are scheduled to occur prior to the Substantial Completion Date, so that such Equipment may be installed and commissioned in the applicable rooms in accordance with the Construction Schedule; and

- (iv) provide access to such portions of the Work, as may be required by STEGH and/or STEGH's own forces to allow the delivery, reinstallation, installation, commissioning and training in respect of such Equipment, all in accordance with the Construction Schedule.

For greater certainty, Project Co is only responsible for coordinating and scheduling the decommissioning, uninstallation, transfer, delivery, reinstallation, installation, commissioning, and/or training in respect of such Equipment with STEGH and/or STEGH's own forces and is not responsible for actually performing such decommissioning, uninstallation, transfer, delivery, reinstallation, installation, commissioning, and/or training.

- (b) For each item of Type B Equipment, Project Co shall:
  - (i) provide, in accordance with the Contract Documents, mechanical, electrical and information technology rough-ins, as applicable, for such Equipment;
  - (ii) complete and coordinate the delivery, installation and commissioning of such Equipment; and
  - (iii) for Type B Equipment that is also designated either "1" or "2" or "3" in the "Impact Codes" column in the Equipment Lists, be responsible for ensuring that the delivery, installation, and commissioning in respect of such Equipment is included in the Construction Schedule and is scheduled to occur prior to the Substantial Completion Date, so that such Equipment may be installed and commissioned in the applicable rooms in accordance with the Construction Schedule.

For greater certainty, Project Co is not only responsible for coordinating and scheduling the delivery, reinstallation, installation, and commissioning in respect of such Equipment, it is also responsible for actually performing the reinstallation, installation, and commissioning.

- (c) For each item of Type D Equipment, Project Co shall:
  - (i) provide, in accordance with the Contract Documents, mechanical, electrical and information technology rough-ins, as applicable, with respect to such Equipment;

- (ii) be responsible for co-ordinating, scheduling and completing the procurement, delivery, installation, commissioning, and associated training with respect to all such Equipment; and
  - (iii) for Type D Equipment that is also designated either “1” or “2” or “3” in the “Impact Codes” column in the Equipment Lists, be responsible for ensuring that such procurement, delivery, installation and commissioning in respect of such Equipment is included in the Construction Schedule and is scheduled to occur prior to the Substantial Completion Date so that such Equipment may be installed and commissioned in the applicable rooms in accordance with the Construction Schedule.
- (d) For each item of Type E Equipment, Project Co shall:
- (i) provide, in accordance with the Contract Documents, mechanical, electrical and information technology rough-ins, as applicable, for such Equipment;
  - (ii) complete and coordinate the decommissioning, uninstallation, transfer, reinstallation, and commissioning of, as well as associated retraining (as required by STEGH) in respect of such Equipment; and
  - (iii) for Type E Equipment that is also designated either “1” or “2” or “3” in the “Impact Codes” column in the Equipment Lists, be responsible for ensuring that the decommissioning, uninstallation, transfer, reinstallation, commissioning and training in respect of such Equipment is included in the Construction Schedule and all such activities up to and including commissioning are scheduled to occur prior to the Substantial Completion Date, so that such Equipment may be installed and commissioned in the applicable rooms in accordance with the Construction Schedule.

For greater certainty, Project Co is not only responsible for coordinating and scheduling the decommissioning, uninstallation, transfer, delivery, reinstallation, commissioning, and training in respect of such Equipment, it is also responsible for actually performing such decommissioning, uninstallation, transfer, delivery, reinstallation, commissioning, and training.

- (e) Project Co shall supervise delivery of all Equipment in accordance with this Section 13 and provide monthly reports thereon to the Equipment Subcommittee.

- (f) Project Co shall coordinate the installation of all Equipment in accordance with this Section 13 and provide periodic reports thereon to the Equipment Subcommittee.

### **13.8 STEGH's Equipment Responsibility**

- (a) For Type A Equipment and Type C Equipment, that is also designated either "1" or "2" in the "Impact Codes" column in the Equipment Lists, STEGH shall procure such Equipment and complete, or have completed by STEGH's own forces, the decommissioning (as applicable), uninstallation (as applicable), transfer (as applicable), delivery, installation or reinstallation, commissioning and associated training regarding such Equipment in accordance with the Construction Schedule. In the event that STEGH cannot complete, or have completed by STEGH's own forces, through no fault of Project Co, the decommissioning (as applicable), uninstallation (as applicable), transfer (as applicable), delivery, installation or reinstallation, commissioning or training on such Equipment, as per the Construction Schedule, Project Co shall coordinate with STEGH to reschedule the decommissioning (as applicable), uninstallation (as applicable), transfer (as applicable), installation or reinstallation, commissioning or training on such Equipment, such that this rescheduling has no effect on Project Co's ability to complete the Work in accordance with the Construction Schedule. For greater certainty, in the event that STEGH cannot complete, or have completed by STEGH's own forces, through no fault of Project Co, the decommissioning (as applicable), uninstallation (as applicable), transfer (as applicable), installation or reinstallation, commissioning or associated training on such Equipment, such failure to complete shall not prevent the Consultant from issuing the certificate of Substantial Completion.
- (b) Save and except for those circumstances contemplated by Section 13.13, STEGH's obligations with respect to the Type A Equipment and the Type C Equipment, that is also designated either "3" or "4" in the "Impact Codes" column in the Equipment Lists, do not form part of this Project Agreement. For greater certainty, Project Co has no responsibility with respect to such Equipment.
- (c) For each item of Type B Equipment, STEGH shall procure and deliver to Project Co such Equipment, for installation by Project Co as contemplated hereunder, in accordance with the Construction Schedule. STEGH shall also be responsible for coordinating and scheduling the associated training in respect of such Equipment.
- (d) For greater certainty, STEGH has no obligations in Section 13 with respect to the Type D Equipment.

- (e) For each item of Type E Equipment, STEGH shall provide access to such Equipment in the Existing Facility, to allow Project Co to perform its responsibilities in Section 13.7(d) in accordance with the Construction Schedule.

### **13.9 Substitutions of Equipment by Project Co**

- (a) Project Co shall not make any substitutions of any Equipment without the prior written consent of STEGH, in its sole discretion. Project Co shall provide STEGH with sufficient information to allow STEGH to determine whether the proposed substitute is at least equivalent to the item it is to replace and the impact of such substitution on the Construction Schedule.

### **13.10 Standards and Warranties for Type D Equipment**

- (a) Project Co shall ensure that all purchase orders or other legal documentation for the purchase of Type D Equipment shall require that such Equipment be:
  - (i) new and undamaged;
  - (ii) manufactured and able to generate in compliance with all Applicable Law; and
  - (iii) delivered and installed on or before a date to be specified by Project Co in accordance with the Construction Schedule, as more particularly dealt with in Section 13.12.
- (b) Project Co shall ensure that the benefit of all manufacturers' warranties with respect to all Type D Equipment are freely assignable to STEGH on the earlier of the Substantial Completion Date or the termination of this Project Agreement. Project Co shall not enter into any purchase order or contract with respect to any Type D Equipment where the benefit of such warranties are not assignable in accordance with this Section 13.10(b) without STEGH's prior consent, which consent may be withheld in STEGH's sole discretion.
- (c) Project Co shall, as soon as practicable after receiving a request from STEGH's Project Manager, supply to STEGH's Project Manager evidence to demonstrate its compliance with this Section 13.10.

### **13.11 Type D Equipment – Training and Maintenance**

- (a) For and in respect of each item of Type D Equipment which requires STEGH's own forces (including its staff) to be trained in its proper operation and/or

maintenance, Project Co shall ensure that the purchase documentation requires the vendors of such Equipment to provide or, at vendor's cost, arrange for adequate, appropriate and timely training with respect to the proper operation and maintenance of such Equipment for all STEGH's own forces (including its staff).

- (b) STEGH is responsible for making its own forces including its staff available for the training described in 13.11(a) above in accordance with the schedule incorporated into the Construction Schedule. Project Co shall be responsible to coordinate such training and for ensuring the schedule addresses the time periods required for such training, but Project Co shall not be responsible for any delay resulting from the failure of STEGH to have STEGH's own forces (including its applicable staff) available for training in accordance with such schedule nor for the unavailability of training personnel to be supplied by the respective Equipment vendors in accordance with Section 13.11(a).
- (c) If a contract in respect of Type D Equipment has on-going vendor maintenance or other service obligations that extend beyond,
  - (i) the date of commissioning for particular item or items of Type D Equipment; or
  - (ii) the Termination Date,

Project Co shall assign such contract, including the benefit of the on-going maintenance or other service obligations, to STEGH immediately following the earlier of (x) the date of final commissioning for the particular item or items of Type D Equipment and (y) the Termination Date. Project Co acknowledges that STEGH is not liable for any obligation of Project Co under any Type D Equipment contract and shall ensure that Type D Equipment contracts are in good standing with the vendor prior to any assignment to STEGH and that Project Co has satisfied all payment obligations to the vendors that have accrued prior to and upon any assignment to STEGH.

### **13.12 Scheduling of Equipment Installation and Commissioning**

- (a) Project Co shall prepare a schedule in consultation with STEGH for the decommissioning, uninstallation, transfer, delivery, reinstallation, installation, commissioning and training, each as applicable, in respect of all Equipment, as provided in Section 13.7, and shall incorporate the timing of decommissioning, uninstallation, transfer, delivery, reinstallation, installation, commissioning and training in respect of such Equipment into the Construction Schedule.

### **13.13 Delay by Equipment Vendor**

- (a) In the event of a delay in the performance of any obligations by an Equipment vendor or manufacturer of Type A Equipment, Type B Equipment, Type C Equipment or Type D Equipment, under any purchase order or contract with STEGH or Project Co and to the extent any such delay did not result from the failure of Project Co to perform any of its obligations set out in this Section 13 including, without limitation, its obligations regarding the completion, coordination and scheduling of the procurement, decommissioning, uninstallation, transfer, delivery, reinstallation, installation, commissioning and training, each as applicable, in respect of the Equipment and provided that Project Co has diligently investigated commercially reasonable steps to minimize such delay, then STEGH may elect to except the procurement, decommissioning, uninstallation, transfer, delivery, reinstallation, installation, commissioning and training, each as applicable, in respect of a particular item of Equipment out of Substantial Completion.

## **14. CONTAMINATION**

### **14.1 Contamination**

- (a) For the purposes of applicable environmental legislation, STEGH shall be deemed to have control and management of the Site with respect to Pre-Existing Environmental Site Conditions.
- (b) Prior to Project Co commencing the Work, STEGH has:
  - (i) taken all reasonable steps to determine whether any Hazardous Substances are present at the Site; and
  - (ii) provided the Consultant, Lender's Consultant and Project Co with a report on any such Hazardous Substances, which report Project Co acknowledges is included in the Site Information.
- (c) Project Co shall take all reasonable steps to ensure that:
  - (i) no person suffers injury, sickness or death and no property is injured or destroyed as a result of exposure to or the presence of Hazardous Substances which were at the Site prior to Project Co commencing the Work, which are described in or are properly inferable, readily apparent or readily discoverable from the Site Information or would have been properly inferable, readily apparent or readily discoverable from



inspections of the Site carried out by Project Co or by any Project Co Party during the Request for Proposals process prior to the Submission Date (“**Disclosed Hazardous Substances**”);

- (ii) all necessary steps are taken under Applicable Law, to dispose of, store or otherwise render harmless Disclosed Hazardous Substances, save and except those not found on or affecting the area of the Work on the Site, unless otherwise expressly required pursuant to the Contract Documents; and
  - (iii) there is no discharge, escape, emission, leak, deposit, dispersion or migration into the environment (“**Release**”) or threatened Release of any Disclosed Hazardous Substances at or from the Site which has or may have an adverse effect upon the environment or human health or safety as a result of the performance of the Work by Project Co.
- (d) Project Co shall take reasonable steps to ensure that:
- (i) no person suffers injury, sickness or death and no property is injured or destroyed as a result of exposure to or the presence of Hazardous Substances brought to the Site by Project Co or any Project Co Party (“**Project Co Hazardous Substances**”);
  - (ii) Project Co and each Project Co Party is responsible to comply with all Applicable Law relating to Project Co Hazardous Substances; and
  - (iii) there is no Release or threatened Release of any Project Co Hazardous Substances at or from the Site which has or may have an adverse effect upon the environment or human health or safety.
- (e) If Project Co:
- (i) encounters Hazardous Substances at the Site, or
  - (ii) has reasonable grounds to believe that Hazardous Substances are present at the Site,

which were not disclosed by STEGH, as required under Section 14.1(b) or which were not properly inferable, readily apparent or readily discoverable from the Site Information or would have been properly inferable, readily apparent or readily discoverable from inspections of the Site carried out by Project Co or by any

Project Co Party during the Request for Proposals process prior to the Submission Date (the “**Undisclosed Hazardous Substances**”), Project Co shall:

- (iii) take all reasonable steps, including stopping the Work, to ensure that no person suffers injury, sickness or death and that no property is injured or destroyed as a result of exposure to or the presence of the Hazardous Substances; and
- (iv) immediately report the circumstances to the Consultant, Lender’s Consultant and STEGH in writing.
- (f) If Project Co is delayed in performing the Work or incurs additional costs as a result of taking steps required under Section 14.1(e)(iii) (except where a Release or threatened Release is caused by a default by Project Co in the performance of its obligations under this Article 14), the Consultant shall issue appropriate instructions for a Change in the Scope of the Work as provided in Schedule 11 – Change Procedure, and the Contract Time shall be extended for such reasonable time as the Consultant may recommend in consultation with STEGH and Project Co, and the Guaranteed Price shall be adjusted by a reasonable amount for costs incurred by Project Co as a result of the delay and as a result of taking those steps.
- (g) Notwithstanding Sections 8.2(f), 8.2(g) and Schedule 14 – Dispute Resolution Procedure, the Consultant may select and rely upon the advice of an independent expert in a dispute under Section 14.1(f) and, in that case, the expert shall be deemed to have been jointly retained by STEGH and Project Co and shall be jointly paid by them.
- (h) In the event of any Release or threatened Release of any Hazardous Substances at or from the Site, Project Co shall immediately, upon becoming aware of same, notify the Consultant and STEGH of such event.
- (i) This Section 14.1, together with the corresponding indemnities in Section 33.1(a)(viii) and Section 33.2(a)(iv), shall govern over the provisions of Sections 26.3(a)(v) and 27.2(a)(iii);
- (j) If Project Co causes or permits:
  - (i) any Project Co Hazardous Substances to be dealt with by Project Co or any Project Co Party in a manner which does not comply with Applicable Law or which threatens human health and safety or the environment or causes material damage to the Site or the Facility or the property of STEGH or others; or

- (ii) any Disclosed Hazardous Substances which were already at the Site but which were then harmless or stored, contained or otherwise dealt with in accordance with Applicable Law, to be dealt with by Project Co or any Project Co Party in a manner which does not comply with Applicable Law or which threatens human health and safety or the environment or causes material damage to the property of STEGH or others,

Project Co, upon becoming aware of same shall:

- (iii) take all reasonable steps, including stopping the Work, to ensure that no person suffers injury, sickness or death and that no property is injured or destroyed as a result of exposure to or the presence of the Hazardous Substances; and
  - (iv) upon becoming aware of same, report the circumstances to the Consultant and STEGH by telephone, confirmed in writing.
- (k) In the circumstances contemplated in Sections 14.1(c), 14.1(d), 14.1(e) or 14.1(j), Project Co shall perform its obligations thereunder, at Project Co's sole cost and expense (except in the circumstances contemplated by Section 14.1(e), which shall be at STEGH's sole cost and expense in accordance with the provisions of Section 14.1(f)). Project Co shall perform its obligations under Sections 14.1(c), 14.1(d), 14.1(e) or 14.1(j), including, as applicable, any clean up, removal, containment, storage or other dealing with relevant Hazardous Substances and any remediation of damage caused thereby, in a manner which the Governmental Authorities determine will:
- (i) meet all Applicable Law, including the applicable Table of the Soil Groundwater and Sedimentary Standards for use under Part XV.I of the *Environmental Protection Act* (Ontario), dated April 15, 2011, and ensure compliance with any applicable Permits, Licences and Approvals; and
  - (ii) rectify all material damage to the property of STEGH and/or others.

## **15. ITEMS OF GEOLOGICAL, HISTORICAL OR ARCHAEOLOGICAL INTEREST OR VALUE**

### **15.1 Objects Property of STEGH**

- (a) As between the Parties, all fossils, artefacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial

sites, which may be found on or at the Site are or shall be the sole and absolute property of STEGH.

## **15.2 Procedure Upon Discovery of Objects**

- (a) Upon the discovery of any item referred to in Section 15.1(a) during the course of the Work, Project Co shall:
  - (i) immediately inform the Consultant of such discovery;
  - (ii) take all steps not to disturb the item and, if necessary, cease any Work in so far as performing such Work would endanger the item or prevent or impede its excavation;
  - (iii) take all necessary steps to preserve and ensure the preservation of the item in the same position and condition in which it was found; and
  - (iv) comply, and ensure compliance by all Project Co Parties, with Applicable Law and all requirements of Governmental Authorities with respect to such discovery, including the *Funeral, Burial and Cremation Services Act, 2002* (Ontario) and the Heritage Guidelines and Protocols.
- (b) In the event that STEGH wishes Project Co to perform actions which are in addition to any required pursuant to Section 15.2(a), then STEGH shall issue an instruction to Project Co specifying what action STEGH requires Project Co to take and Project Co shall promptly and diligently comply with all such instructions.

## **15.3 Compensation Event**

- (a) If Sections 15.2(a) and 15.2(b) require Project Co to perform any alteration, addition, demolition, extension or variation in the Work or to suspend or delay performance of the Work 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 Work, or suspension or delay in the performance of the Work, shall, subject to and in accordance with Article 22, be treated as a Delay Event and, subject to and in accordance with Article 23, be treated as a Compensation Event, provided however that the foregoing shall not apply to the extent that any item referred to in Section 15.1(a) was disclosed in or properly inferable, readily apparent or readily discoverable from the Site Information or would have been properly inferable, readily apparent or readily discoverable from inspections of the Site carried out by Project Co or by any

Project Co Party during the Request for Proposals process prior to the Submission Date.

## 16. COMMISSIONING AND COMPLETION

### 16.1 Substantial Completion

- (a) Project Co shall deliver a notice of the date anticipated to be the Substantial Completion Date to STEGH and the Consultant at least 90 days prior to the date anticipated by Project Co to be the Substantial Completion Date. Project Co acknowledges that STEGH needs a minimum of 90 days notice prior to the anticipated Substantial Completion Date to prepare for Commissioning. Project Co shall advise STEGH and the Consultant of any change in the anticipated date. Project Co shall, by the date which is 20 days prior to the anticipated Substantial Completion Date as set out in Project Co's notice, prepare a list, in electronic format on software that identifies deficiencies by division, trade and location ("**Project Co's Preliminary Minor Deficiencies List**") of Minor Deficiencies, including an estimate of the cost of and the time for rectifying such Minor Deficiencies.
- (b) Project Co shall reconfirm the anticipated Substantial Completion Date in a notice given to STEGH and to the Consultant 20 days prior to the anticipated Substantial Completion Date which notice shall include a copy of Project Co's Preliminary Minor Deficiencies List. Project Co shall plan for start-up and verification of all systems to be completed no later than 7 days prior to the anticipated Substantial Completion Date. Project Co shall reconfirm the anticipated Substantial Completion Date and when Project Co is satisfied that it has completed all of the requirements for Substantial Completion, Project Co shall apply to STEGH and the Consultant for certification of Substantial Completion in a notice to STEGH and the Consultant by the date which is 10 days prior to the anticipated Substantial Completion Date. The Consultant shall in the next following 10 days, proceed to review and inspect the Work for the purpose of: (i) confirming the achievement of Substantial Completion and providing its report with respect thereto pursuant to Section 16.1(e); (ii) certifying substantial performance of the Work in accordance with the *Construction Lien Act* (Ontario) pursuant to Section 16.1(c); and (iii) taking into account Project Co's Preliminary Minor Deficiencies List, preparing its own list of Minor Deficiencies (the "**Minor Deficiencies List**") and its estimate of the cost of and the time for rectifying the Minor Deficiencies set out in the Minor Deficiencies List.
- (c) For the purposes of determining Substantial Completion, and in accordance with Section 2(2) of the *Construction Lien Act* (Ontario), 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 Work in determining substantial performance. For greater certainty, the Remaining Works shall be completed as a requirement of achieving Final Completion.

- (d) When the Consultant is satisfied that substantial performance of the Work in accordance with the *Construction Lien Act* (Ontario) has been achieved, the Consultant shall provide Project Co and STEGH with a certificate of substantial performance in accordance with the *Construction Lien Act* (Ontario).
- (e) When the Consultant is satisfied that Substantial Completion has been achieved, the Consultant shall provide to STEGH and to Project Co a report confirming the Minor Deficiencies List and the date on which the Consultant determines that Substantial Completion was achieved. Failure to include an item on the Minor Deficiencies List does not alter the responsibility of Project Co to complete the Work.
- (f) The Consultant shall state the Substantial Completion Date as set out in its report delivered under Section 16.1(e) in a certificate.
- (g) The Consultant shall prepare the Minor Deficiencies List before a certificate of Substantial Completion is issued, and if the certificate referred to in Section 16.1(c) has been issued, then the Consultant shall not withhold the certificate of Substantial Completion by reason solely that there are such Minor Deficiencies.
- (h) Project Co shall publish in a construction trade newspaper in the area of the location of the Work, a copy of the certificate of substantial performance in accordance with the *Construction Lien Act* (Ontario) and Project Co shall provide suitable evidence of the publication to the Consultant and STEGH.
- (i) STEGH may withhold from the payment otherwise due on the Substantial Completion Payment Date a holdback amount that is **[REDACTED]**% of the amount estimated by the Consultant for STEGH to complete and rectify the Minor Deficiencies. The Consultant shall inspect the completion of the Minor Deficiencies and shall provide a monthly progress report to STEGH describing the Minor Deficiencies which have been completed to the satisfaction of the Consultant, and STEGH shall release from such holdback the amount of any holdback allocated to the Minor Deficiencies which have been completed. If, at any time after the 120 day period for completion of the Minor Deficiencies referred to in Section 5.2 of Schedule 18 – Payments and Holdbacks, any of the

Minor Deficiencies are not completed in 10 Business Days following Project Co's receipt of a written notice from STEGH to correct the deficient work, or Project Co is not diligently working towards completion of the deficient work to the satisfaction of the Consultant, and unless STEGH otherwise agrees, or the reasons for any delay are acceptable to STEGH, or the delay is caused by STEGH or a STEGH Party, STEGH may engage others to perform the work necessary to complete and rectify the Minor Deficiencies at the risk and cost of Project Co and STEGH may deduct such cost from the holdback amount or any other amount remaining owing by STEGH to Project Co. If the cost of completion and rectification of any Minor Deficiencies exceeds the amount held back by STEGH, then Project Co shall reimburse STEGH for all such excess costs.

- (j) Project Co shall assign to STEGH and submit with the application for Substantial Completion, all guarantees, warranties (whether from manufacturers, or Project Co Parties), certificates, preliminary testing and balancing reports, distribution system diagrams, maintenance and operation instructions, maintenance manuals and materials and any other materials or documentation required to be submitted under this Project Agreement and otherwise required for the proper use and operation of the Work for the Project (collectively, the "**Project Deliverables**"). If Project Co requests, Project Co and the Consultant shall, within 60 days following the request of Project Co, settle and agree upon a list specifying in reasonable detail the items to be assigned and submitted under the foregoing sentence. If Project Co is unable to provide any of the Project Deliverables for any reason, Project Co may submit a list of the outstanding Project Deliverables and if a delay in the delivery of such outstanding Project Deliverables will not impair the safety, security or health of the occupants of the Project, such outstanding Project Deliverables shall be included as Minor Deficiencies. Failure to submit any of the Project Deliverables that are required for the safe occupation and use of the Work and as may be necessary for the security and health of the occupants of the Project, shall be grounds for the Consultant to reject Project Co's application for Substantial Completion. For the purposes of Section 16.1(i), and any holdback to be taken as contemplated thereunder, the value of such outstanding Project Deliverables shall, without regard to the degree or quantum of such outstanding Project Deliverables, be set at \$[REDACTED]. The assignment by Project Co of all guarantees and warranties shall expressly reserve the right of Project Co to make any claims under such guarantees and warranties for the repair or replacement of any Work and such assignment shall in no way prejudice any rights of or benefits accruing to Project Co pursuant to such guarantees and warranties. For greater certainty, nothing herein is intended to constitute a release or waiver of the obligation of Project Co to submit and assign (as applicable) to STEGH all of the Project Deliverables.

- (k) The submission of an application for payment upon Substantial Completion shall constitute a waiver by Project Co of all claims whatsoever against STEGH under this Project Agreement, whether for a change in the Guaranteed Price, extension of the Contract Time or otherwise, except (i) those made in writing prior to Project Co's application for payment upon Substantial Completion and still unsettled; (ii) any third party claim which Project Co was not aware of at such time and with respect to which Project Co is entitled to indemnification from STEGH in accordance with this Project Agreement; and (iii) subject to any subsequent waiver under Section 34.1, claims arising out of any act or omission of STEGH or any STEGH Party after the date of the waiver, and third-party claims arising after the date of the waiver. For greater certainty, for the purposes of clauses (i) and (ii) above, a third party claim does not include any claim by a Project Co Party.

## **16.2 Final Completion Countdown Notice**

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

## **16.3 Final Minor Deficiencies**

- (a) Project Co shall request the Consultant to prepare a list of all Final Minor Deficiencies (the "**Final Minor Deficiencies List**") by delivery of a written request (the "**Final Minor Deficiency Inspection Request**") to the Consultant. The Final Minor Deficiency Inspection Request shall be delivered not less than 15 days prior to the Anticipated Final Completion Date. The Consultant, in consultation with Project Co and STEGH, shall, within 10 Business Days of Project Co's delivery of the Final Minor Deficiency Inspection Request prepare the Final Minor Deficiencies List which shall include an estimate of the cost and the time for rectifying such Final Minor Deficiencies. For greater certainty, Final Minor Deficiencies will include any Minor Deficiencies which at such time have not been completed or rectified.



- (b) The Final Minor Deficiencies List will contain the schedule for the completion and rectification of all Final Minor Deficiencies. In determining the relevant time for rectifying Final Minor Deficiencies, Project Co shall schedule the completion and rectification of Final Minor Deficiencies so as to minimize, to the greatest extent reasonably possible, any impairment of STEGH's use and enjoyment of the Facility and/or the performance of the STEGH Activities.

#### **16.4 Rectification of Final Minor Deficiencies**

- (a) Project Co shall, in consultation with STEGH and so as to minimize, to the greatest extent reasonably possible, any impairment of STEGH's use and enjoyment of the Facility and any disruption of the performance of the STEGH Activities, complete and rectify all Final Minor Deficiencies within 45 days of the issuance of the Final Minor Deficiencies List or such other period as the Consultant may specify in the Final Minor Deficiencies List, and in any event no later than the Scheduled Final Completion Date, other than any items of minor work of a seasonal nature which cannot be completed prior to the Final Completion Date.
- (b) Project Co acknowledges and agrees that the completion and rectification of Final Minor Deficiencies may require work outside of normal working hours in order to accommodate the efficient operation of the Facility.

#### **16.5 Failure to Rectify Final Minor Deficiencies**

- (a) If, within 30 days after the time specified in Section 16.4(a), Project Co has failed to complete and rectify the Final Minor Deficiencies specified in the Final Minor Deficiencies List (other than Minor Deficiencies for which an STEGH Holdback has been withheld, in which case the provisions of Section 16.1(i) shall apply), STEGH may engage others to perform the work necessary to complete and rectify the Final Minor Deficiencies, at the risk and cost of Project Co, and STEGH may draw upon the Remaining Works Security for reimbursement of such costs.

#### **16.6 Final Completion Certificate**

- (a) Project Co shall give the Consultant and STEGH's Project Manager at least 10 Business Days' notice prior to the date upon which Project Co anticipates all requirements for Final Completion shall be satisfied.
- (b) Project Co shall then give the Consultant and STEGH's Project Manager a subsequent 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 written request for release of holdback, including a declaration that no written notices of lien arising from the performance of the Work have been received by it;
  - (ii) Project Co's Statutory Declaration CCDC 9A;
  - (iii) Project Co's WSIB Certificate of Clearance; and
  - (iv) a written statement that the Work has been performed to the requirements of the Contract Documents, itemizing approved changes in the Work, the Consultant's written instructions, and modifications required by Governmental Authorities.
- (c) STEGH shall, within 5 Business Days after receipt of the Final Completion Notice, provide the Consultant and Project Co with STEGH's opinion as to whether the conditions for issuance of the Final Completion Certificate have been satisfied and, if applicable, any reasons as to why it considers that the Final Completion Certificate should not be issued.
- (d) Within 5 Business Days after Project Co's receipt of STEGH's opinion pursuant to Section 16.6(c), the Parties shall cause the Consultant 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 STEGH, and to issue to STEGH 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 Consultant considers are required to be performed by Project Co to satisfy the conditions for issuance of the Final Completion Certificate.
- (e) Where the Consultant has issued a report in accordance with Section 16.6(d)(ii) and Project Co has not referred a dispute in relation thereto for resolution in accordance with Schedule 14 – Dispute Resolution Procedure, Project Co shall,

within 5 Business Days after receipt of such report, provide the Consultant and STEGH's Project Manager 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 16.6(c) to 16.6(e), inclusive, shall be repeated until the Final Completion Certificate has been issued pursuant to Section 16.6(d)(i).

- (f) For the purposes of the Final Completion Notice, any of the Final Minor Deficiencies which are items of minor work of a seasonal nature which cannot be completed prior to the Final Completion Date shall be identified in the Final Completion Notice, and shall be completed within the period identified in the Final Completion Notice.
- (g) STEGH shall return the unused portion of the Remaining Works Security within 5 Business Days following the issuance of the Final Completion Certificate, provided that if there are any seasonal works identified in the Final Completion Notice:
  - (i) Project Co may fund or provide a new letter of credit for the benefit of STEGH in a form substantially similar to the Remaining Works Letter of Credit in respect of such seasonal works, the amount of which shall be at least **[REDACTED]**% of the estimated cost of completing such seasonal work as identified by the Consultant; or
  - (ii) if Project Co does not fund or provide a new letter of credit in respect of such work, STEGH may draw from the Remaining Works Security a holdback amount equal to **[REDACTED]**% of the estimated cost of completing such work as identified by the Consultant.

Subject to Section 16.6(h), upon completion and rectification of such seasonal works, STEGH shall release to Project Co the new letter of credit or the amount

of the holdback related to such work, together with all interest accrued thereon, as applicable.

- (h) If, within 30 days after the time specified in the Final Completion Notice for completion of seasonal work, Project Co has failed to complete such seasonal work, STEGH may engage others to perform the work necessary to complete the seasonal work, at the risk and cost of Project Co and STEGH may either (i) draw from the new letter of credit identified in Section 16.6(g)(i); or (ii) deduct from the holdback amount identified in Section 16.6(g)(ii), (whichever is applicable) an amount equal to the cost of completing such work as identified by the Consultant. If the cost of such completion and rectification identified by the Consultant exceeds the amount of the new letter of credit or such holdback and interest, then Project Co shall reimburse STEGH for all such excess cost.

### **16.7 Notification of Early Substantial Completion**

- (a) Unless Project Co obtains the prior written consent of STEGH, in its sole discretion, Project Co shall not be entitled to the certificate of Substantial Completion from the Consultant prior to, and the Substantial Completion Date shall not be earlier than, the Scheduled Substantial Completion Date.
- (b) If Project Co advises STEGH that Project Co expects to be able to achieve Substantial Completion prior to the Scheduled Substantial Completion Date, STEGH's Project Manager shall be entitled to require Project Co to produce and submit to STEGH's Project Manager a revised Construction Schedule showing the manner and the periods in which the Work shall be performed and what the revised date for Substantial Completion would be so as to enable STEGH 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.

## **17. STEGH ACCESS, INSPECTION AND MONITORING**

### **17.1 STEGH Access**

- (a) Subject to Section 17.1(b) but without limiting any of STEGH's rights in respect of the Site, Project Co acknowledges and agrees that STEGH, the STEGH Parties and Lender's Consultant shall 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. Project Co shall provide sufficient, safe and proper facilities at all times for the review of the Work by the Consultant and the inspection of the Work by authorized agencies. If parts of the Work are in preparation at locations other than the Site, STEGH and the Consultant, STEGH's Project Manager and Lender's Consultant shall be given access to such Work wherever it is in progress upon reasonable notice and during normal business hours.
- (b) In exercising their access rights under Section 17.1(a), STEGH and the STEGH Parties shall comply with all relevant safety procedures and any reasonable directions with regard to site safety that may be issued by or on behalf of Project Co from time to time.
- (c) If Work is designated for tests, inspections, or approvals in the Contract Documents, or by the Consultant's instructions, or pursuant to Applicable Law, Project Co shall give the Consultant reasonable notice of when the Work will be ready for review and inspection. Project Co shall arrange for and shall give the Consultant reasonable notice of the date and time of inspections by other authorities.
- (d) Project Co shall furnish promptly to the Consultant 2 copies of certificates and inspection reports relating to the Work.

### **17.2 Right to Open Up**

- (a) STEGH and the Consultant shall have the right, at any time prior to the Final Completion Date, to request Project Co to open up and inspect (or allow STEGH or the Consultant, as applicable, to inspect) any part or parts of the Work, or to require testing of any part or parts of the Work, where STEGH or the Consultant, as applicable, reasonably believes that such part or parts of the Work is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Contract Documents) relevant to such part or parts of the Work, and Project Co shall comply with such request. When

STEGH makes such a request, STEGH shall include reasonably detailed reasons with such request.

- (b) If the inspection shows that the relevant part or parts of the Work is or are defective or that Project Co has failed to comply with the requirements of this Project Agreement (including the Contract Documents) relevant to such part or parts of the Work, Project Co shall rectify all such defects and non-compliance diligently (including any re-testing) at no cost to STEGH and Project Co shall not be entitled to any additional compensation (and for clarity, such Work shall not form part of the Cost of the Work) or extension of the Contract Time in relation thereto.
- (c) If the inspection shows that the relevant part or parts of the Work is or are not defective and that Project Co has complied with the requirements of this Project Agreement (including the Contract Documents and the requirements of Sections 17.1(a) and 17.1(c)) relevant to such part or parts of the Work, the exercise by STEGH or the Consultant, as applicable, of its rights pursuant to this Section 17.2 shall, subject to and in accordance with Article 22, be treated as a Delay Event and, subject to and in accordance with Article 23, be treated as a Compensation Event. For greater certainty, if Project Co has failed to comply with the requirements of Sections 17.1(a) or 17.1(c), the provisions of Section 17.2(b) shall apply as if the relevant part or parts of the Work is or are defective.
- (d) Where inspection and testing services are specified, the firm employed for such services shall be the firm named and paid by STEGH, or named by STEGH and paid through a Cash Allowance Disbursement Authorization by Project Co and others (unless otherwise indicated) or named and paid by Contractor. Such inspection shall be identified in the Construction Schedule and Project Co shall give the Consultant timely notice requesting on-site inspection when required.

### **17.3 No Relief from Obligations**

- (a) The Parties acknowledge that the exercise by STEGH or the Consultant of the rights under this Article 17 shall in no way affect the obligations of Project Co under this Project Agreement except as set out in this Article 17.

### **17.4 Admittance of Personnel**

- (a) STEGH shall have the right to refuse admittance to, or order the removal from the Site, of any person employed by (or acting on behalf of) Project Co or any Project Co Party, whose presence, in the reasonable opinion of STEGH, is likely to have

an adverse effect on the performance of the Work or who, in the reasonable opinion of STEGH, is not a fit and proper person to be at the Site for any reason, including a failure to comply with any policy or any immediate obligation of STEGH to ensure the safety and well-being of persons at the Site.

### **17.5 Confirmation of Action**

- (a) Any action taken under Section 17.4 shall promptly be confirmed by STEGH to Project Co and, for greater certainty, shall not relieve Project Co of any of its obligations under this Project Agreement.

### **17.6 Notification of Personnel**

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

### **17.7 Finality as to Admission**

- (a) Any decision of STEGH made pursuant to Section 17.4 shall be final and conclusive.

## **18. RECORDS, AUDIT AND REPORTING**

### **18.1 Accounting and Audit**

- (a) Project Co shall maintain and keep accurate records for the Facility (which means all tangible records, documents, computer printouts, electronic information, books, plans, drawings, specifications, accounts or other information) relating to the Work for a period of 7 years from the Final Completion Date. Project Co shall maintain the original Project records in its office in St. Thomas, Ontario until all claims have been settled as required by Applicable Law.
- (b) In addition to other rights of inspection contemplated in the Contract Documents, Project Co shall allow STEGH, the Consultant, Lender's Consultant or other persons authorized by STEGH access to the Project records as they pertain to Work performed on a reimbursable basis pursuant to Section 2.3.2 of Schedule 11 – Change Procedure, or unit price basis, pursuant to Section 2.3.3 of Schedule 11 – Change Procedure, during the course of the Work and for such period of time

that Project Co is required to maintain the records set out in Section 18.1(a). Project Co shall be provided with 48 hours prior notice for such access. Project Co shall promptly provide, at the sole cost of STEGH, a certified copy of any part of the Project records required by STEGH when requested by STEGH.

- (c) Subject to Section 18.1(d), Project Co shall ensure that equivalent provisions to those provided in Section 18.1(a) and 18.1(b) are made in the Construction Contract (and shall require the Contractor to incorporate same into every level of contract thereunder with a Project Co Party) for any part of the Work in order, among other things, to provide STEGH with access to Project records as contemplated herein.
- (d) The provisions of Section 18.1(b) shall only apply with respect to Change Orders and items under cash allowances.

## **18.2 Reporting**

- (a) Project Co shall submit 7 copies of a monthly construction status report to STEGH by the 10<sup>th</sup> day after the last day of the relevant monthly reporting period which shall include an update of the Construction Schedule prepared in accordance with the requirements of Section 12.1. Project Co shall use the project management software system directed by STEGH if STEGH elects, in its Sole Discretion, to utilize such software. The construction status report will appropriately address significant aspects of, and variances in, the progress of the Work, and shall include (i) an executive bar chart summary of the Construction Schedules; (ii) the current schedule performance index (developed in accordance with Good Industry Practice); (iii) Project Co's narrative report addressing any significant problems, decisions and pending claims; (iv) a detailed report showing the costs to complete the balance of the Work; (v) an executive summary of the progress to date of the building systems; (vi) a financial status report together with a report of any pending or other matters or claims that could have a financial impact on the Project, including a report on any labour disruptions or strikes that may have occurred or are pending; (vii) an updated cash flow report and projections in conjunction with the monthly Construction Schedule update including a cash flow graph that depicts actual cash flow against projected cash flow. The initial cash flow projection shall be based on the baseline Construction Schedules as referenced in Section 12.1(a)(iii), cost loaded by key trades for each division based on the accepted schedule of values, and properly reflective of the true value of each of the components of the schedule over time and shall provide cost loading of the schedule to demonstrate cost allocation by division for all major subtrades and vendors, including all milestones at a level of detail



acceptable to STEGH. For additional clarity, the cash flow used for the basis of this report is different from a lender's drawdown schedule which is used for financial purposes. Subsequent monthly cash flow projections shall be based on the true value of the Work remaining in accordance with the Construction Schedule updates. This report shall also include an explanation for variances in actual cash flow against projected cash flow each period; (viii) progress photos from different views to indicate the progress of the Work in digital format, indicating the date and location of the photograph; (ix) a safety report addressing any incidents or accidents; (x) approved Change Orders, priced change notices awaiting approval and Contemplated Change Notices; and (xi) the status of Project Co Design Issues. Items of immediate concern are to be highlighted, noting when decisions must be reached in order to keep the Project on schedule.

- (b) Project Co shall prepare and deliver a weekly report to STEGH by end of business on Friday of every week between the date of this Project Agreement and the Final Completion Date. The weekly report shall summarize the Work completed by Project Co during the week to which it relates and set out the Work planned to be completed over the two weeks that follow the date of the report. The weekly report shall include the following information:
  - (i) Construction activities by major trade that occurred during the week and those planned over the two (2) weeks that follow;
  - (ii) Major equipment deliveries that occurred during the week and planned major deliveries over the two weeks that follow; and
  - (iii) The workforce average for the week.
- (c) Project Co shall cause Agent to cause, in accordance with Section 5.2 of Schedule 5 – Form of Lender's Direct Agreement, the Lender's Consultant to provide STEGH and Infrastructure Ontario a copy of any written assessment or report prepared by the Lender's Consultant in relation to the status or progress of the Work under the Construction Contract, including but not limited to, any certificate of payment, concurrently with its delivery to Agent and/or Project Co.

## **19. STEGH'S REMEDIAL RIGHTS**

### **19.1 Exercise of Remedial Rights**

- (a) STEGH may exercise all rights set out in this Article 19 at any time and from time to time if:

- (i) STEGH, 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 or safety of any user of any part of or the whole of the Facility, including employees of or patients, volunteers and visitors to the Facility and members of the public; or
  - (B) may potentially compromise the reputation or integrity of STEGH or the nature of the Province's health care system, so as to affect public confidence in that system.

provided that:

- (C) in respect of a breach by Project Co of any obligation under this Project Agreement or any act or omission on the part of Project Co or any Project Co Party which can reasonably be expected to cause any of the consequences set out in Section 19.1(a)(i)(A), STEGH shall not exercise its rights under this Article 19 unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of notice from STEGH 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 19.1(a)(i)(A) actually occur; and
  - (D) in respect of Section 19.1(a)(i)(B), STEGH shall not exercise its rights under this Article 19 unless Project Co has failed to cure the relevant breach, act or omission within 5 Business Days of notice from STEGH 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) subject to Section 10.1(c), Project Co has failed to comply with any written direction issued by or on behalf of STEGH's board of directors;
  - (iii) Project Co has not performed or is not performing its obligations with respect to Health and Safety Certification in accordance with Section

11.26 or Project Co has not performed or is not performing its obligations to rectify any non-compliance noted in any H&S Inspection Report in accordance with Section 11.28(a); or

- (iv) Project Co has not performed or is not performing its obligations in respect of the Demolition Requirements in accordance with Section 11.27 or Project Co has not performed or is not performing its obligations to rectify any Demolition Default Event in accordance with Section 11.27.

## **19.2 Emergency**

- (a) Notwithstanding that Project Co is not in breach of its obligations under this Project Agreement, STEGH may exercise all of the rights set out in this Article 19 at any time and from time to time if STEGH, acting reasonably, considers the circumstances to constitute an Emergency.

## **19.3 Rectification**

- (a) Without prejudice to STEGH's rights under Article 26 and any other rights under this Project Agreement, in any of the circumstances set out in Section 19.1 or 19.2, STEGH may, by written notice, require Project Co to take such steps as STEGH, acting reasonably, considers necessary or expedient to mitigate, rectify or protect against such circumstance, including, if applicable, the termination and replacement of any Project Co Party, and Project Co shall use commercially reasonable efforts to comply with STEGH's requirements as soon as reasonably practicable.
- (b) If STEGH gives notice to Project Co pursuant to Section 19.3(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 STEGH to mitigate, rectify and protect against such circumstances that STEGH 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 STEGH, acting reasonably, shall think fit,

then STEGH 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 19.3, in the event of an Emergency, the notice under Section 19.3(a) shall be given as promptly as possible having regard to the nature of the Emergency and STEGH may, prior to Project Co's confirmation under Section 19.3(b)(i), take such steps as are appropriate having regard to the nature of the Emergency.

#### **19.4 Costs and Expenses**

- (a) Subject to STEGH's obligations pursuant to Sections 19.5 and 19.6:
  - (i) Project Co shall bear all costs and expenses incurred by Project Co in relation to the exercise of STEGH's rights pursuant to this Article 19; and
  - (ii) Project Co shall reimburse STEGH for all reasonable costs and expenses incurred by STEGH in relation to the exercise of STEGH's rights pursuant to this Article 19, including in relation to STEGH taking such steps, either itself or by engaging others (including a third party) to take any such steps as STEGH considers appropriate and as are in accordance with this Article 19.

#### **19.5 Reimbursement Events**

- (a) In this Section 19.5, 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 STEGH or a STEGH 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 STEGH either takes steps itself or requires Project Co to take steps in accordance with this Article 19 as a result of a Reimbursement Event:
  - (i) STEGH shall reimburse Project Co for the reasonable costs and expenses incurred by Project Co in relation to the exercise of STEGH's rights pursuant to this Article 19 that would not otherwise have been incurred by

Project Co in the proper performance of its obligations under this Project Agreement; and

- (ii) STEGH shall bear all costs and expenses incurred by STEGH in relation to the exercise of STEGH's rights pursuant to this Article 19.

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

- (a) If STEGH exercises its rights pursuant to this Article 19, but STEGH was not entitled to do so, STEGH 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 STEGH issued as a result of STEGH having exercised such rights.
- (b) Project Co acknowledges and agrees that Project Co has no right to require a determination of whether or not STEGH is entitled to exercise its rights pursuant to this Article 19 before taking any such action that STEGH may require and Project Co shall comply with all of STEGH's requirements. Only concurrently with or after complying with STEGH's requirements shall Project Co be entitled to refer any dispute for resolution in accordance with Schedule 14 – Dispute Resolution Procedure.

## **20. CHANGES**

### **20.1 Change Procedure**

- (a) Except as otherwise expressly provided in this Project Agreement, Schedule 11 – Change Procedure shall apply with respect to Changes in the Scope of the Work.

## **21. CHANGES IN LAW**

### **21.1 Performance after Change in Law**

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

## **21.2 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 Work 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 21.2.
- (b) On the occurrence of a Relevant Change in Law:
  - (i) either Party may give notice to the other and to the Consultant of the need for a Change Order as a result of such Relevant Change in Law;
  - (ii) the Parties and the Consultant shall meet within 10 Business Days of such notice to consult with respect to the effect of the Relevant Change in Law and to reach an agreement on whether a Change Order is required as a result of such Relevant Change in Law, and if within 10 Business Days of this meeting an agreement has not been reached, 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 14 – Dispute Resolution Procedure; and
  - (iii) within 10 Business Days of agreement or determination that a Change Order is required, the Consultant shall issue a Change Order and the relevant provisions of Schedule 11 – Change Procedure shall apply except that:
    - (A) the Parties shall, without prejudice to their respective general obligations to comply with the terms of this Project Agreement:
      - (I) use commercially reasonable efforts to mitigate the adverse effects of any Relevant Change in Law and take commercially reasonable steps to minimize any increase in costs arising from such Relevant Change in Law; and
      - (II) use commercially reasonable efforts to take advantage of any positive or beneficial effects of any Relevant Change in Law and take commercially reasonable steps to maximize any reduction in costs arising from such Relevant Change in Law; and

- (B) any entitlement to compensation payable shall be in accordance with this Section 21.2, and any calculation of compensation shall take into consideration, *inter alia*:
- (I) any failure by a Party to comply with Section 21.2(b)(iii)(A);
  - (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 22 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 21.2, and Article 23 shall be construed accordingly.

## 22. DELAY EVENTS

### 22.1 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 Change Order to the extent that an increase in the Contract Time has been documented in the Change Order;
  - (ii) any breach by STEGH of any of STEGH’s obligations under this Project Agreement (including, subject to Section 22.2(h), any delay by STEGH in giving access to the Site pursuant to Section 9.1, any obstruction of the rights afforded to Project Co under Section 9.1 and any delay by STEGH in obtaining the Building Permit in accordance with Section 10.1(a)(ii),

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 Work pursuant to Section 17.2 where such Work is not subsequently found to be defective or not in compliance with the requirements of this Project Agreement (including the Contract Documents), unless such opening up of the Work was reasonable in light of other defects or non-compliance previously discovered by STEGH or the Consultant, as applicable, in respect of the same or a similar component of the Work or subset of the Work;
- (iv) a requirement pursuant to Section 14.1(e) for Project Co to take any steps upon the discovery of Contamination, which steps would not otherwise be required under this Project Agreement;
- (v) a requirement pursuant to Sections 15.2(a) or 15.2(b) for Project Co to perform any alteration, addition, demolition, extension or variation in the Work, or to suspend or delay performance of the Work, upon the discovery of any fossils, artefacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites, which alteration, addition, demolition, extension or variation in the Work, or suspension or delay in the performance of the Work, would not otherwise be required under this Project Agreement, provided however that the foregoing shall not apply to the extent that any item referred to in Section 15.1(a) was disclosed in or properly inferable, readily apparent or readily discoverable from the Site Information or would have been properly inferable, readily apparent or readily discoverable from inspections of the Site carried out by Project Co or by any Project Co Party during the Request for Proposals process prior to the Submission Date;
- (vi) subject to Section 11.19, the execution of works on the Site not forming part of this Project Agreement by STEGH, any STEGH Party or any other person permitted to execute such works by STEGH or any STEGH Party;
- (vii) a requirement pursuant to Schedule 14 – Dispute Resolution Procedure, for Project Co to proceed in accordance with the direction of STEGH 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.

## **22.2 Consequences of a Delay Event**

- (a) Upon the occurrence of a Delay Event, the Contract Time will be extended for such reasonable time as the Consultant recommends in consultation with STEGH in accordance with the procedure set out in Schedule 11 – Change Procedure.
- (b) Should Project Co contend that it is entitled to an extension of the Contract Time for completion of any portion of the Work, Project Co shall, subject to Section 25.3(c):
  - (i) as soon as reasonably possible but in any event within 15 days of the occurrence of the Delay Event, provide STEGH with written notice setting forth the cause of the Delay Event, a description of the impact the Delay Event will have on the Scheduled Substantial Completion Date (including an order of magnitude estimate of the cost of the Delay Event), and a description of the portions of the Work affected thereby, together with all pertinent details;
  - (ii) as soon as reasonably possible but in any event within 15 days after the cause of the Delay Event has ceased to exist, submit a written application to STEGH for the specific Contract Time extension requested, and if the Delay Event has arisen as a result of an event described in Sections 22.1(a)(ii), 22.1(a)(iii), 22.1(a)(iv), 22.1(a)(v), 22.1(a)(vi), 22.1(a)(vii), and 22.1(a)(x), submit a breakdown of the actual costs, without mark-up, incurred by Project Co as a result of the Delay Event; and
  - (iii) use all reasonable efforts to anticipate the occurrence of any Delay Event and take appropriate measures to avoid its potential occurrence or minimize the potential effects of its occurrence.
- (c) Project Co acknowledges that the provisions of Section 22.2(b)(i) and Section 22.2(b)(ii) are required by STEGH to ensure STEGH is provided with timely and sufficient information respecting any alleged Delay Event and is not prejudiced in dealing with the claim by Project Co for an extension of the Contract Time or increase to the Guaranteed Price as a consequence of the occurrence of the Delay Event. If Project Co fails to comply with the requirements to provide the information under either Section 22.2(b)(i) or

Section 22.2(b)(ii) within the time periods therein provided, it shall be disentitled to claim an extension to the Contract Time or increase to the Guaranteed Price, but only to the extent that STEGH has been prejudiced by the failure. The onus shall be on Project Co to establish substantial compliance with the said requirements, and to establish that STEGH has not been prejudiced by the failure to provide the required information within the required time period.

- (d) If the Work 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 Work necessary to complete the Work on schedule, Project Co shall use all reasonable measures to bring the Work back on schedule. Project Co shall exercise all means within its discretion, such as directing any Project Co Party creating delays to increase their labour forces and equipment, to improve the organization and expediting of the Work, 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 Contract Time.
- (e) Costs (as defined in Section 2.3.2 of Schedule 11 – Change Procedure) due to delays caused by non-availability of specified items, when such delays could have been avoided or substantially mitigated by Project Co, shall be the responsibility of Project Co.
- (f) Where there are concurrent delays, some of which are caused by STEGH or others for whom STEGH 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 Contract Time 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 where the time period over which such delays occur overlap in time, but only for the duration of the overlap.
- (g) Project Co acknowledges that subject to any extension of the Contract Time that may arise in connection with the Consultant's failure to respond to any Design Issue in accordance with Section 8.2(i), as it applies to the circumstances of either Section 11.18(a) or 11.18(b), or if there is any extension of the Contract Time allowed in the circumstances of a Change in the Scope of the Work under Section 11.18(c), no extension of the Contract Time shall be made for delays

caused by a Design Issue properly characterized as a Project Co Design Issue under Sections 11.17 and 11.18 of this Project Agreement.

- (h) STEGH shall provide Project Co with access to and use of the Site as required pursuant to Article 9 of this Project Agreement in a manner consistent with the Construction Schedule and in accordance with the notification requirements and restrictions set out in the Contract Documents, including the Contract Documents referred to in Section 11.7(c), provided that Project Co agrees that the inability of STEGH to provide Project Co with access to an area for construction activities not on the critical path for reasons generally outlined in Sections 11.7(b) and 11.7(c) will not result in the occurrence of a Delay Event (and, for greater certainty, there shall be no change to the Scheduled Substantial Completion Date, no entitlement to a Compensation Event and no change to the Guaranteed Price).
- (i) Project Co acknowledges and agrees that the Contract Time includes a Schedule Cushion in each Construction Schedule at no additional cost to STEGH. Project Co shall separately identify the extent of the Schedule Cushion in each Construction Schedule.
- (j) Project Co acknowledges and agrees that in the event that an extension of the Contract Time is allowed under any provision of this Project Agreement, STEGH may, in its Sole Discretion, elect to apply any portion of the Schedule Cushion with the result that such extension of the Contract Time shall be reduced or eliminated, as the case may be, by the number of days of the Schedule Cushion STEGH has elected to apply.
- (k) In no event shall the extension of the Contract Time for a Delay Event be more than the necessary extension of the critical path as a result of the Delay Event.

### **22.3 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 to:
  - (i) eliminate, mitigate, overcome or minimize the consequences of such event;
  - (ii) continue to perform its obligations under this Project Agreement to the extent possible notwithstanding the Delay Event; and

- (iii) 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 22.3, such failure shall be taken into account in determining Project Co's entitlement to an extension of the Contract Time pursuant to this Article 22.

## **23. COMPENSATION EVENTS**

### **23.1 Definition**

- (a) For the purposes of this Project Agreement, "**Compensation Event**" means any event referred to in Sections 22.1(a)(ii), 22.1(a)(iii), 22.1(a)(iv), 22.1(a)(v), 22.1(a)(vi) and 22.1(a)(vii) and as a direct result of which Project Co has incurred loss or expense.

### **23.2 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 Article 23. 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 11 – Change Procedure;
  - (ii) Article 24, in the case of a Delay Event referred to in Section 22.1(a)(viii);
  - (iii) Article 25, in the case of a Delay Event referred to in Section 22.1(a)(ix); and
  - (iv) Article 21, in the case of a Delay Event referred to in Section 22.1(a)(x).
- (b) Subject to Sections 23.3 and 23.4, if it is agreed or determined in accordance with Schedule 14 – 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 STEGH to Project Co. Project Co shall promptly provide STEGH's Project Manager with any information STEGH's Project Manager may require in order to determine the amount of such compensation.

- (c) Notwithstanding any other provision in this Project Agreement, including Section 23.2(b), where STEGH elects to apply all or any portion of the number of days of Schedule Cushion, Project Co shall not be entitled to any Direct Losses or any other additional compensation related to the time that is reduced or eliminated by the Schedule Cushion except as otherwise provided in Section 2.11 of Schedule 11 – Change Procedure.
- (d) If STEGH is required to compensate Project Co pursuant to this Section 23.2, then STEGH 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.

### **23.3 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 Article 23 in relation to any Compensation Event.
- (b) To the extent that Project Co does not comply with its obligations under this Section 23.3, such failure shall be taken into account in determining Project Co's entitlement to relief pursuant to this Article 23.

### **23.4 Insured Exposure**

- (a) The compensation payable to Project Co pursuant to this Article 23 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.

## **24. RELIEF EVENTS**

### **24.1 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 Work and/or the Facility or any roads servicing the Site;
- (iv) without prejudice to any obligation of Project Co to provide stand-by power facilities in accordance with this Project Agreement, failure or shortage of power, fuel or transport;
- (v) blockade or embargo falling short of Force Majeure;
- (vi) any official or unofficial strike, lockout, work to rule or other labour-related action generally affecting the hospital or construction industry (or a significant sector of that industry) in the Province of Ontario; or
- (vii) any civil disobedience or protest action, including any action taken by any person or persons protesting or demonstrating against the carrying out of any part of the Work or the construction and/or operation of hospitals in general,

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

## **24.2 Consequences of a Relief Event**

- (a) Subject to Section 24.3, no right of termination, other than either Party's right to terminate this Project Agreement pursuant to Section 28.2, 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 22.1(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 22; and
  - (ii) in respect of a Relief Event referred to in Section 24.1(a)(v), 24.1(a)(vi), 24.1(a)(vii), on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the Non-Default Termination Sum (and as a part thereof) in accordance with Schedule 12 – Compensation on Termination, STEGH shall pay to Project Co an amount equal to the Debt Service Amount accrued and paid or that became payable in accordance with the Lending Agreements during the period of delay by Project Co or any Project Co Party to the Senior Lenders up to and including such date, together with interest thereon at the rate payable on the Debt Amount, which, but for the Delay Event, would have been paid by Project Co to the Senior Lenders.
- (c) If a Relief Event occurs, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 24.2(b)(ii) and 30.
- (d) Subject to Section 30, 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 24.

### **24.3 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 24.3, such failure shall preclude such Party's entitlement to relief pursuant to this Section 24.
- (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 24.3(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 24.3(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.

#### **24.4 Insured Exposure**

- (a) The compensation payable to Project Co pursuant to this Article 24 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.

### **25. FORCE MAJEURE**

#### **25.1 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 Work, 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 Work, the Facility and/or the Site from any event referred to in Section 25.1(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 Work to be abandoned.

## **25.2 Consequences of Force Majeure**

- (a) Subject to Section 25.3, the Party claiming relief shall be relieved from liability under this Project Agreement to the extent that, by reason of the event of 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 22.1(a)(ix):
  - (i) Project Co shall only be relieved of its obligations under this Project Agreement to the extent, if any, provided for in Article 22; and
  - (ii) on the earlier of (A) the Substantial Completion Date and (B) the date of payment of the Non-Default Termination Sum (and as a part thereof) in accordance with Schedule 12 – Compensation on Termination, STEGH shall pay to Project Co an amount equal to the Debt Service Amount accrued and paid or that accrued in accordance with the Lending Agreements during the period of delay by Project Co or any Project Co Party to the Lenders up to and including such date, together with interest thereon at the rate payable on the Debt Amount, which, but for the Delay Event, would have been paid by Project Co to the Lenders.
- (c) If an event of Force Majeure occurs prior to the Substantial Completion Date, Project Co shall not be entitled to receive any compensation other than as expressly provided in Section 25.2(b)(ii) and Article 30.
- (d) Subject to Article 30, 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 Article 25.

### **25.3 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 Construction Schedule.
- (b) To the extent that the Party claiming relief does not comply with its obligations under this Section 25.3, such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Article 25.
- (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 25.3(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 25.3(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.

### **25.4 Insured Exposure**

- (a) The compensation payable to Project Co pursuant to this Article 25 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.

## **25.5 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 14 – Dispute Resolution Procedure shall not apply to a failure of STEGH and Project Co to reach agreement pursuant to this Section 25.5.

## **26. PROJECT CO DEFAULT**

### **26.1 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 STEGH 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 any proceedings are instituted against Project Co for the 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, STEGH, a STEGH 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 Work (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 26.1(a)(i)(A);

- (B) Project Co ceases performing a substantial portion of its business, or a substantial portion of such business is suspended or is not being performed, whether voluntarily or involuntarily, that has or will have a material adverse effect on Project Co's ability to perform its obligations under this Project Agreement;
  - (C) if any execution, sequestration, extent or other process of any court becomes enforceable against Project Co or if a distress or analogous process is levied against any property of Project Co that materially adversely affects Project Co's ability to perform its obligations hereunder; or
  - (D) Project Co shall suffer any event, or any event or set of circumstances occurs or comes about, analogous to the foregoing events or sets of circumstances set out in this Section 26.1(a)(i) in any jurisdiction in which it is incorporated or resident and such event or set of circumstances would, if set out in Sections 26.1(a)(i)(A), (B) or (C), constitute a Project Co Event of Default;
- (ii) subject to the occurrence of a Delay Event, Project Co failing to achieve Substantial Completion within 180 days after the Scheduled Substantial Completion Date (the "**Longstop Date**");
  - (iii) 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 the Work, or that may compromise the reputation or integrity of STEGH or the nature of the Province's health

care system, so as to affect public confidence in that system, and, in the case of a false or misleading representation or warranty that is capable of being remedied, such breach is not remedied within 10 Business Days of receipt of notice of the same from STEGH;

- (iv) 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 STEGH operations or STEGH Activities (other than a breach that is otherwise referred to in this Section 26.1 and other than as a consequence of a breach by STEGH of its obligations under this Project Agreement), and upon receiving notice of such breach from STEGH, 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 STEGH;
    - (II) put forward, within 5 Business Days of receipt of notice of such breach from STEGH, 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;
- (v) Project Co wholly abandoning the Work for a period which exceeds 3 Business Days from receipt by Project Co of a written request to return to the Site, other than as a consequence of a Delay Event or a breach by STEGH of its obligations under this Project Agreement;
- (vi) Project Co failing to comply with Sections 39.1 or 39.3;

- (vii) the occurrence of any Change in Ownership or Change in Control which is prohibited by Section 39.4;
- (viii) subject to the provisions of Section 3.1 of Schedule 18 – Payments and Holdbacks, 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 any Encumbrances derived through STEGH) within 30 days of the earlier of:
  - (A) the registration of such Encumbrance against title to the Site or any part thereof; and
  - (B) the date on which Project Co or any Project Co Party knew, or ought to have known, about the existence of the Encumbrance;
- (ix) Project Co failing to pay any sum or sums due to STEGH under this Project Agreement, which sum or sums are not being disputed by Project Co in accordance with Schedule 14 – Dispute Resolution Procedure, and which sum or sums, either singly or in aggregate, exceed(s) \$[REDACTED], and such failure continues for 30 days from receipt by Project Co of a notice of non-payment from STEGH;
- (x) Project Co failing to comply with Article 41;
- (xi) Project Co failing to comply with Section 6.3 or Schedule 28 – Refinancing;
- (xii) 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 STEGH 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;

- (xiii) Project Co failing to comply with any determination, order or award made against Project Co in accordance with Schedule 14 – Dispute Resolution Procedure; and/or
- (xiv) a default by Project Co or any Project Co Party under any of the Implementing Agreements following the expiry of any applicable notice and cure periods thereunder.

## **26.2 Notification of Occurrence**

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

## **26.3 Remedies**

- (a) Upon the occurrence of a Project Co Event of Default under this Project Agreement and subject to the Lender’s Direct Agreement, and provided STEGH has given notice to Project Co of the occurrence of a Project Co Event of Default, STEGH may do any or all of the following as it in its Sole Discretion shall determine:
  - (i) 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 Lender’s Direct Agreement to receive such notice;
  - (ii) if Project Co is in default under this Project Agreement by reason of its failure to pay any monies, STEGH may (without obligation to do so) make payment on behalf of Project Co of such monies and any amount so paid by STEGH plus the Payment Compensation Amount;
  - (iii) without termination of this Project Agreement, cure or attempt to cure the Project Co Event of Default (but this shall not obligate STEGH to cure or attempt to cure the Project Co Event of Default, or after having commenced to cure or attempt to cure such Project Co Event of Default, to continue to do so or to cure or attempt to cure any subsequent Project Co Event of Default) and all costs and expenses incurred by STEGH in curing or attempting to cure the Project Co Event of Default, together with the Payment Compensation Amount, shall be payable by Project Co to STEGH on demand. No such action by STEGH shall be deemed to be a

termination of this Project Agreement and STEGH shall not incur any liability to Project Co for any act or omission of STEGH in the course of curing or attempting to cure any such Project Co Event of Default. Without limiting the foregoing, STEGH may deduct the cost and expense of curing or attempting to cure the Project Co Event of Default, plus the Payment Compensation Amount thereon, from any payment then or thereafter due to Project Co, provided the Consultant has certified such cost to STEGH and Project Co;

- (iv) bring any proceedings in the nature of specific performance, injunction or other equitable remedy, it being acknowledged that damages at law may be an inadequate remedy for a Project Co Event of Default;
- (v) bring any action at law as may be necessary or advisable in order to recover damages and costs, subject to Section 35.2;
- (vi) make demand on the Surety in accordance with the terms of the Bonds;
- (vii) take possession of the Work and Products, utilize the construction machinery and equipment (subject to the rights of third parties and to the payment of reasonable rental fees in respect of construction machinery and equipment owned by Project Co), and finish the Work by whatever method STEGH may consider expedient; and
- (viii) exercise any of its other rights and remedies provided for under this Project Agreement or otherwise available to it.

#### **26.4 STEGH's Costs**

- (a) Project Co shall reimburse STEGH for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a substantial indemnity basis) properly incurred by STEGH in exercising its rights under this Article 26, including any relevant increased administrative expenses. STEGH shall take commercially reasonable steps to mitigate such costs.

#### **26.5 No Other Rights to Terminate**

- (a) STEGH 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 expressly set forth in this Project Agreement.



## 27. STEGH DEFAULT

### 27.1 STEGH Events of Default

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

(i) STEGH failing to pay any sum or sums due to Project Co under this Project Agreement, which sum or sums have been certified by Consultant or awarded by arbitration or court, and,

(A) in respect of the Substantial Completion Payment or Legislative Holdback payment, such failure continues for a period of 10 Business Days; or

(B) in respect of any other payment due and payable by STEGH to Project Co under this Project Agreement, such failure continues for 90 days,

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

(ii) STEGH committing a material breach of its obligations under this Project Agreement (other than a breach that is otherwise referred to in this Section 27.1 and other than as a consequence of a breach by Project Co of its obligations under this Project Agreement), and upon becoming aware of such breach, STEGH failing to remedy such breach in accordance with all of the following:

(A) STEGH shall:

(I) immediately commence and thereafter diligently continue to remedy the breach and to mitigate any adverse effects on Project Co;

(II) put forward, within 5 Business Days of receipt of notice of such breach from Project Co, 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 day 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,

provided that any withholding of holdback and final payments by STEGH or otherwise effecting any set off permitted or contemplated hereunder shall not constitute a STEGH Event of Default permitting Project Co to claim that STEGH is in default of STEGH's contractual obligations.

## **27.2 Remedies**

- (a) On the occurrence of a STEGH Event of Default and while the same is continuing, Project Co may give notice to STEGH of the occurrence of such STEGH 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, Project Co may:
  - (i) suspend performance of its obligations under this Project Agreement until such time as STEGH has remedied such STEGH Event of Default;
  - (ii) terminate this Project Agreement in its entirety by notice in writing having immediate effect; or
  - (iii) bring any action at law as may be necessary or advisable in order to recover damages and costs, subject to Section 35.2.
- (b) Where STEGH has disputed the alleged STEGH Event of Default set out in the Notice under Section 27.2(a), the remedies available to Project Co as set out in Section 27.2(a) shall be suspended and not available to Project Co until such time as the dispute has been resolved pursuant to Schedule 14 – Dispute Resolution Procedure and if the dispute is resolved in favour of Project Co and STEGH has not remedied the STEGH Event of Default within the applicable time period to remedy set out in Section 27.1 which time period shall commence on the issue of the decision under the Dispute Resolution Procedure.

### **27.3 Project Co's Costs**

- (a) STEGH shall reimburse Project Co for all reasonable costs (including all applicable Taxes and all legal or professional services, legal costs being on a substantial indemnity basis) properly incurred by Project Co in exercising its rights under this Article 27, including any relevant increased administrative expenses. Project Co shall take commercially reasonable steps to mitigate such costs.

### **27.4 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.

## **28. NON-DEFAULT SUSPENSION AND TERMINATION**

### **28.1 Suspension**

- (a) STEGH may order Project Co in writing to suspend or interrupt all or any part of the Work for such period of time as STEGH may determine to be appropriate for the convenience of STEGH. This right of STEGH to suspend or interrupt the Work shall not give rise to any duty on the part of STEGH to exercise this right for the benefit of Project Co or any other person or entity. In the event of a STEGH-ordered suspension of Work not resulting from Project Co or a Project Co Party not performing its obligations under this Project Agreement, the Contract Time will be extended for such reasonable time as the Consultant shall recommend in consultation with STEGH and Project Co, and Project Co shall be reimbursed by STEGH for the Cost (as defined in Section 2.3.2 of Schedule 11 – Change Procedure) incurred by Project Co as a result of the suspension of the Work, and such extension of the Contract Time and reimbursement of the Cost shall be valued and processed as a Change Order in accordance with the Change Order procedure set out in Schedule 11. The Consultant is not authorized to order a suspension of the Work. The Work shall only be suspended by written notice from STEGH to Project Co.
- (b) If the Work is stopped for any reason, Project Co shall provide protection for any part of the Work likely to become damaged during the Work stoppage. STEGH shall pay the costs of such protection only if stoppage occurs due to the occurrence of a Delay Event.

## **28.2 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 24.3(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

## **28.3 Termination for Delay or Force Majeure**

- (a) If all or substantially all of the Work should be stopped or otherwise delayed for a continuous period of 180 days or more (or if STEGH reasonably believes that such a delay is reasonably likely to occur) as a result of the occurrence of any one or more events of Force Majeure, which may result in an extension of the Contract Time, STEGH may, by giving Project Co written notice, terminate this Project Agreement. Such notice shall, in the case of termination by STEGH, include confirmation that STEGH has, in respect of such termination, obtained prior written consent of MOHLTC.
- (b) If all or substantially all of the Work should be stopped or otherwise delayed for a continuous period of 180 days or more as a result of the occurrence of any one or more events of Force Majeure or events described in Sections 22.1(a)(i) to 22.1(a)(vii) or 28.1(a), Project Co may, by giving STEGH written notice, terminate this Project Agreement provided that Project Co shall:
  - (i) at all times following the occurrence of any one or more of the events described in Section 22.1(a)(ii), take all reasonable steps to prevent and mitigate the effects of any delay;
  - (ii) at all times during which any one or more of the events described in Section 22.1(a)(ii) is subsisting, take all steps in accordance with Good Industry Practice to overcome or minimize the consequences of the event; and
  - (iii) take all reasonable steps to mitigate its losses and costs resulting from the occurrence of any one or more of the events described in Section 22.1(a)(ii).

#### **28.4 Termination for Convenience**

- (a) STEGH 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 notice shall, include confirmation that STEGH has, in respect of such termination, obtained prior written consent of MOHLTC.
- (b) In the event of notice being given by STEGH in accordance with this Section 28.4, STEGH 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 Work, or any part or parts of the Work, where such Work has not yet been commenced.

### **29. EFFECT OF TERMINATION**

#### **29.1 Termination**

- (a) Notwithstanding any provision of this Project Agreement, upon the service of a notice of termination, this Article 29 shall apply in respect of such termination.

#### **29.2 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.

#### **29.3 Continuing Performance**

- (a) Subject to any exercise by STEGH of its right 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 12 – 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 Article 29.

## **29.4 Effect of Notice of Termination**

- (a) On the service of a notice of termination:
- (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 STEGH as shall not already have been transferred to STEGH pursuant to Section 11.9(f), Project Co shall transfer to, and there shall vest in STEGH, free from all Encumbrances other than any Encumbrances derived through STEGH, such part of the Work and the Facility as shall have been constructed and such items of the plant and equipment as shall have been procured by Project Co, and if STEGH so elects:
    - (A) all plant, equipment and materials (other than those referred to in Section 29.4(a)(i)(B)) on or near the Site shall remain available to STEGH for the purposes of completing the Work; and
    - (B) all construction plant and equipment shall remain available to STEGH for the purposes of completing the Work, subject to payment by STEGH of Project Co's reasonable charges;
  - (ii) in the event of a termination as provided for pursuant to this Project Agreement, Project Co shall cooperate with STEGH and turn over to STEGH copies of Project Co's records, documentation and drawings necessary for STEGH to proceed with the Work, including the legal assignment to STEGH of any of Project Co's rights in any agreement relating to the Work as STEGH may require, and Project Co shall not do anything to impede STEGH's ability to proceed with the Work. Further, Project Co agrees to turn over to STEGH, on a timely basis, enabling Project Co to make and retain copies as it may reasonably deem necessary, all of Project Co's records, files, documents, materials, drawings, and any other items relating to the Project, whether located on the Site, at Project Co's office or elsewhere (including all records as described in Section 18.1(a) and notwithstanding the fact that such provision only permits access by STEGH to such records) and to vacate the Site in accordance with STEGH's reasonable instructions. STEGH may retain such records, files, documents, materials, drawings and any other items for such time as it may need them and may reproduce any and all such items for its own use;
  - (iii) Project Co shall use commercially reasonable efforts to assign or otherwise transfer to STEGH, free of Encumbrances (other than any

Encumbrances derived through STEGH), 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

- (iv) Project Co's obligation under this Project Agreement as to quality, correction and warranty of the Work up to the time of termination shall continue in force after such termination.

## **29.5 Ownership of Information**

- (a) Subject to Article 37, all information obtained by Project Co, including the Drawings and Specifications, the As-Built Drawings and other technical drawings and data, environmental and technical reports, and all other information directly related to the Work accumulated over the course of the performance of the Work shall be the property of STEGH or the Consultant and Project Co shall have no right, title or interest therein whatsoever, and hereby waives any moral rights it may have under Applicable Law. Upon termination of this Project Agreement, all such information shall be provided or returned by Project Co to STEGH, in electronic format where it exists in electronic format, and in its original format, when not in electronic format.
- (b) STEGH shall provide Project Co, without charge, 10 hard copies of the Contract Documents (including all Addenda), 2 of which shall be used for record drawings, and 1 electronic copy in PDF format of the Contract Documents (including all Addenda) contained on a CD. STEGH shall also provide Project Co, without charge, 1 hard copy of all administrative documents such as Change Orders, Contemplated Change Notices, Change Directives, Supplemental Instructions and Design Issue resolution forms. Any additional copies of the Contract Document or part thereof including additional copies of administrative documents, shall be provided to Project Co at its expense. Project Co shall ensure that all copies of the Contract Documents received from STEGH are kept in a secure location.

## **29.6 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) to ensure that STEGH shall be in a position to exercise its rights, and Project Co shall be in a position to perform its obligations, under this Article 29.

## **29.7 Survival**

- (a) The provisions of this Project Agreement which by their nature are continuing shall survive termination of this Project Agreement.

### **30. COMPENSATION ON TERMINATION**

#### **30.1 Compensation on Termination**

- (a) If this Project Agreement is terminated in accordance with the terms hereof, then Schedule 12 – Compensation on Termination shall apply and STEGH shall pay Project Co any applicable compensation on termination.

### **31. TAXES**

#### **31.1 Project Co to Pay Taxes**

- (a) Project Co shall pay all Taxes in effect during the performance of the Work. The amount incurred (excluding HST) shall be included in the Cost of the Work. The Guaranteed Price shall exclude HST.

#### **31.2 Changes in Rates**

- (a) Any increase or decrease in costs to Project Co due to changes in such included Taxes after the Submission Date shall increase or decrease the Guaranteed Price accordingly, except for changes announced before the Submission Date and to take effect at some time thereafter, which shall, except as expressly set forth in Section 31.1, be deemed to have been taken into account in the Guaranteed Price.

#### **31.3 Mark Up**

- (a) Project Co is not entitled to any mark-up for profit, overhead or otherwise, due to an increase in any Taxes included in the Cost of the Work. Project Co shall be entitled to claim for the increase in cost equal to the amount of such included Tax on the uncompleted Cost of the Work. STEGH will be entitled to withhold payment to Project Co of a sum equal to the amount of any reduction in such included Tax on the uncompleted portion of the Work, only if STEGH has not already benefited from said reduction in such included Tax by a decrease in the Guaranteed Price in accordance with Section 31.2.

#### **31.4 Exemptions**

- (a) When an exemption or recovery of Taxes included in the Cost of the Work is applicable to this Project Agreement, Project Co shall, at the request of STEGH,



assist, join in, or make application for an exemption, recovery or refund of all such included Taxes and all amounts recovered or exemptions obtained shall be for the sole benefit of STEGH. Project Co agrees to endorse over to STEGH any cheques received from the federal or provincial governments as may be required to implement the foregoing, failing which, STEGH is hereby authorized to deduct the amount from any payment that is then or may thereafter become due to Project Co hereunder.

### **31.5 Records**

- (a) Project Co shall maintain and make available to the Consultant accurate records, tabulating equipment and component costs showing Taxes.

## **32. INSURANCE AND PERFORMANCE SECURITY**

### **32.1 General Requirements**

- (a) Project Co and STEGH shall comply with the provisions of Schedule 13 – Insurance and Performance Security.

### **32.2 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 STEGH of their respective liabilities and obligations under this Project Agreement.

## **33. INDEMNITIES**

### **33.1 Project Co Indemnities to STEGH**

- (a) In addition to any other indemnification provided in this Project Agreement or in law or in equity, Project Co shall indemnify and save harmless STEGH, the Consultant, STEGH's Project Manager, Infrastructure Ontario and each of their respective directors, officers, consultants, employees, agents, representatives, successors and assigns, Her Majesty the Queen in right of Ontario, Her ministers, agents and employees, and any person for whom they are in law responsible (collectively, the "**STEGH Indemnified Parties**") from and against any and all Direct Losses (including, with respect to the indemnity set out in Section 33.1(a)(viii), all clean up costs), which may be brought against them, suffered, sustained or incurred as a result of, in respect of, or arising out of any one or more of the following:

- (i) the death, sickness, disease or personal or bodily injury of any person;
  - (ii) any loss, damage or destruction of tangible or intangible property;
  - (iii) any safety infractions committed by Project Co or any Project Co Party under OHSA, or resulting from any failure by Project Co to fulfill its obligations under Section 11.6, including the failure to exercise any of the rights or powers given to Project Co under Section 11.6(b) at the Site in respect of any person for whom Project Co is responsible under OHSA in connection with the Project;
  - (iv) any infringement or alleged infringement of a patent of invention by Project Co or any Project Co Party, other than infringements or alleged infringements described in Section 33.2(a)(iii);
  - (v) any fines levied against Project Co or any STEGH Indemnified Party due to Project Co's (or any Project Co Party's) violations of any Applicable Law;
  - (vi) without prejudice to STEGH's rights under Article 26 and any other rights under this Project Agreement, any obligations of Project Co assumed by STEGH under the Construction Contract and any reasonable costs and expenses incurred by STEGH in relation to the exercise by STEGH of its step-in rights under the Assignable Subcontract Agreement for Construction Contract;
  - (vii) any obligations of Project Co to satisfy judgements and pay costs resulting from construction liens arising from the performance of the Work or actions brought in connection with any such liens, or in connection with any other claim or lawsuit brought against STEGH by any person that provided services or materials to the Site which constituted part of the Work in accordance with Section 3.2 of Schedule 18 – Payments and Holdbacks;
  - (viii) Project Co's obligations under Article 14; and
  - (ix) Project Co Hazardous Substances,
- (collectively, the “**Project Co Indemnified Hazardous Substances Claims**”), which indemnification shall apply and extend to:

- (A) Project Co Indemnified Hazardous Substances Claims made by federal, provincial or local government entities or agencies, and
- (B) all Project Co Indemnified Hazardous Substances Claims arising out of such actual Release of Hazardous Substances even if such Project Co Indemnified Hazardous Substances Claims are not discovered or made until after the performance of the Work or after conclusion of this Project Agreement, provided this indemnity shall not be construed to negate, abridge or reduce other rights or obligations of indemnity set out in this Section 33.1, or which otherwise exist respecting a person or party described in this Section 33.1,

in each case, arising directly or indirectly out of, or in consequence of, any breach of this Project Agreement by Project Co or any act or omission of Project Co or any Project Co Party.

- (b) Project Co shall indemnify and save harmless the STEGH Indemnified Parties from and against any and all Direct Losses which may be suffered, sustained or incurred as a result of, in respect of, or arising out of:
  - (i) any breach of any representation or warranty by Project Co herein;
  - (ii) any claims with respect to the Project, by any Project Co Party that Project Co has replaced pursuant to Section 11.8(b); or
  - (iii) any breach of this Project Agreement or any Implementing Agreement by Project Co.
- (c) STEGH hereby holds in trust for and on behalf of the STEGH Indemnified Parties other than STEGH the benefit of the indemnities provided by Project Co set out in this Section 33.1.
- (d) Project Co shall indemnify STEGH 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 under payment by Project Co; or (iii) an amount determined as payable by Project Co to STEGH under Schedule 14 – Dispute Resolution Procedure, by payment of the amount equal to the Payment Compensation Amount calculated from the day after the date on which payment was due, the day on which overpayment was made by STEGH or from the date identified (if any) applicable to an amount determined as

payable by Project Co to STEGH under Schedule 14 – Dispute Resolution Procedure, up to and including the date of payment.

- (e) For greater certainty:
  - (i) the liability of Project Co under this Section 33.1 shall not be greater than the total cumulative liability of Project Co under Section 35.2; and
  - (ii) the indemnities set out in this Section 33.1 shall not apply to the extent the breach of the Project Agreement or the act or omission of Project Co or any Project Co Party was caused or contributed to by:
    - (A) the breach of this Project Agreement by STEGH; or
    - (B) any act or omission by STEGH, any STEGH Indemnified Party or any of STEGH’s own forces.

### **33.2 STEGH Indemnities to Project Co**

- (a) STEGH shall indemnify and save harmless Project Co and the Project Co Parties and each of their respective directors, officers, consultants, employees, agents, representatives, successors and assigns (the “**Project Co Indemnified Parties**”) from and against any and all Direct Losses (including, with respect to the indemnity set out in Section 33.2(a)(iv), all clean up costs) which may be suffered, sustained or incurred as a result of, in respect of, or arising out of any one or more of the following:
  - (i) the death, sickness, disease or personal or bodily injury of any person;
  - (ii) any damage or destruction of tangible or intangible property;
  - (iii) any infringement or alleged infringement of a patent of invention in executing anything for the purpose of this Project Agreement, the model, plan, Specification or design of which was supplied to Project Co as part of the Contract Documents;
  - (iv) exposure to, or the presence of, Hazardous Substances at the Site other than Project Co Hazardous Substances;
  - (v) the breach of any Applicable Law relating to such Hazardous Substances; and

- (vi) any Release or threatened Release at or from the Site of any such Hazardous Substances which has or may have an adverse effect upon the environment or human health or safety,

other than Project Co Indemnified Hazardous Substances Claims as set out in Section 33.1(a)(viii) (collectively, the “**STEGH Indemnified Hazardous Substances Claims**”), and in this regard, it is expressly agreed and understood that such indemnification shall apply and extend to STEGH Indemnified Hazardous Substances Claims even if such STEGH Indemnified Hazardous Substances Claims are not discovered or made until after the performance of the Work or after conclusion of this Project Agreement, provided this indemnity shall not be construed to negate, abridge or reduce other rights or obligations of indemnity set out in this Section 33.2 or which otherwise exist respecting a person or party described in Section 33.1, in each case, arising directly or indirectly out of or in consequence of any breach of this Project Agreement by STEGH or any act or omission of STEGH or any STEGH Party, provided that there shall be excluded from the indemnity given by STEGH any liability for the occurrence of risks against which Project Co is bound 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 properly insure in accordance with the terms hereof.

- (b) STEGH shall indemnify and save harmless the Project Co Indemnified Parties from and against any and all Direct Losses which may be suffered, sustained or incurred as a result of, in respect of, or arising out of:
  - (i) any breach of a representation or warranty by STEGH herein; or
  - (ii) any breach of this Project Agreement or any Implementing Agreement by STEGH.
- (c) Project Co hereby holds in trust for and on behalf of Project Co Indemnified Parties other than Project Co the benefit of the indemnities provided by STEGH set out in this Section 33.2.
- (d) STEGH shall indemnify Project Co for damages suffered or incurred on account of (i) any payment not duly made by STEGH pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or under payment by STEGH; or (iii) an amount determined as payable by STEGH to Project Co under Schedule 14 – Dispute Resolution Procedure, by payment of the amount equal to the Payment Compensation Amount calculated from the day after the date on which payment was due, the day on which overpayment was made by Project Co or from the date identified (if any) applicable to an amount determined as payable

by STEGH to Project Co under Schedule 14 – Dispute Resolution Procedure, up to and including the date of payment.

- (e) For greater certainty:
  - (i) the liability of STEGH under this Section 33.2 shall not be greater than the total cumulative liability of STEGH under Section 35.2; and
  - (ii) the indemnities set out in this Section 33.2 shall not apply to the extent the breach of the Project Agreement or the act or omission of STEGH or any STEGH Party was caused or contributed to by:
    - (A) the breach of this Project Agreement by Project Co; or
    - (B) any act or omission of Project Co or any Project Co Indemnified Party.

### **33.3 Conduct of Claims**

- (a) This Section 33.3 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 33.3, the Beneficiary shall give written notice to the Indemnifier as soon as reasonably practicable and in any event within 10 Business Days of receipt of the same. Such notice shall specify with reasonable particularity, to the extent that information is available, the factual basis for the claim and the amount of the claim.
- (c) Subject to Sections 33.3(d), 33.3(e) and 33.3(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 33.3 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 33.3(c);
  - (ii) the Indemnifier fails to notify the Beneficiary of its intention to take conduct of the relevant claim within 10 Business Days of the notice from the Beneficiary under Section 33.3(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 33.3(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 33.3(c) applies. For greater certainty, Project Co acknowledges and agrees that where STEGH is the Beneficiary, STEGH may retain or take over such conduct in any matter involving patient, clinical or research confidentiality or any matter involving public policy. On receipt of such notice the Indemnifier shall promptly take all steps necessary to transfer the conduct of such claim to the Beneficiary, and shall provide to the Beneficiary all relevant documentation and all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If the Beneficiary gives any notice pursuant to this Section 33.3(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 33.3 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.



### **33.4 Mitigation – Indemnity Claims**

- (a) For greater certainty, Section 43.4 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.

## **34. WAIVER OF CLAIMS**

### **34.1 Waiver of Claims by Project Co**

- (a) As of the date of the final certificate for payment, Project Co expressly waives and releases STEGH from all claims against STEGH, including those that might arise from the wilful misconduct, negligence or breach of contract by STEGH except:
  - (i) those made in writing prior to Project Co's application for final payment and still unsettled;
  - (ii) those arising from the provisions of any indemnity given by STEGH under this Project Agreement; or
  - (iii) without limiting the provisions of Section 34.1(a)(ii), those arising from STEGH's obligations under Article 14 and Section 33.2(a)(iv).

## **35. LIMITS ON LIABILITY**

### **35.1 Indirect Losses**

- (a) Without prejudice to the Parties' rights in respect of payments provided for herein which may, in accordance with their terms or by necessary implication, include the payment of Indirect Losses, subject to the provisions hereof, 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 income, loss of use, loss of production, loss of business or loss of business opportunity; or
  - (iii) for consequential loss or for indirect loss of any nature suffered or allegedly suffered by either Party,

provided that the exceptions in (ii) and (iii) shall not apply as a result of, or in relation to, STEGH's loss of use of the Facility and/or the Existing Facility or a portion thereof, which shall be Direct Losses for all purposes of this Project Agreement, (collectively, "**Indirect Losses**").

### **35.2 Maximum Liability**

- (a) Subject to and save and except in respect of:
  - (i) any claims of STEGH against Project Co:
    - (A) for the cost to perform and complete the Work in accordance with the Contract Documents, including the reasonable and proper costs of STEGH incurred in carrying out any re-tendering of the Work or any applicable portion thereof;
    - (B) for the costs that may arise under Sections 36.2 and 36.3 to correct defects, deficiencies or non-compliant items in the Work;
    - (C) for the costs that may arise in the circumstances of Section 26.1(a)(i); or
    - (D) to recover from Project Co payment of any amount that would have been payable to STEGH under policies of insurance described under Schedule 13 but for the breach by Project Co under any such policies, which breach relieved the insurer of its obligation to pay STEGH under such policies;
  - (ii) any claims of Project Co against STEGH for the payment of the Guaranteed Price (including Additional STEGH Payments), the Substantial Completion Payment or any Compensation Payment;
  - (iii) any claims by either Party against the other for:
    - (A) damages for fraud, material misrepresentation, wilful misconduct or deliberate acts of wrongdoing;
    - (B) costs arising from each Party's obligations under Article 14 and corresponding indemnities in Sections 33.1(a)(viii) and 33.2(a)(iv), respectively; or

- (C) any insurance proceeds where such funds have been misapplied by such Party or which, under the terms of this Project Agreement should have been paid to the other Party,

but notwithstanding any other provision of this Project Agreement, the total cumulative liability of either Party to the other for all costs, damages or losses of any kind, in law or in equity, whether based on tort, negligence, contract, warranty, strict liability or otherwise arising from or relating to this Project Agreement (including, for clarity, in respect of a Project Co Delay or any indemnity provided by either Party under this Project Agreement), shall not be greater than a total cumulative liability of \$[REDACTED]. Each of these limits shall be exclusive of any insurance proceeds received or which will be received pursuant to policies maintained by or on behalf of Project Co in accordance with Schedule 13 – Insurance and Performance Security. For greater certainty, nothing herein is intended to limit the rights of STEGH in respect of any Security required to be provided by Project Co under Schedule 13 – Insurance and Performance Security and nothing herein shall limit either STEGH's or Project Co's ability to pursue claims against the Consultant for indemnity with respect to negligent design or engineering, subject to the limitations set out in Section 35.2(b).

- (b) Project Co acknowledges that the aggregate liability of the Consultant in all claims arising under or in respect of this Project Agreement shall be limited to the amount of the errors and omissions insurance coverage available to the Consultant in respect of such claim. STEGH covenants with Project Co to cause errors and omissions insurance to be in place covering the Consultant with indemnity limits of not less than \$[REDACTED]. For greater certainty, Project Co shall not seek to recover from the Consultant or from any other person that might seek indemnity or contribution from the Consultant any amount in excess of the amount of the available indemnity under any errors and omissions insurance coverage available to the Consultant and responsive to such claim. Project Co acknowledges that the Consultant is a third party beneficiary under this Section 35.2(b) and that the Consultant shall be entitled to plead this Section 35.2(b) in its defence to any action brought by Project Co and Project Co waives any defence to such pleading by the Consultant. Project Co further acknowledges that STEGH is contracting in this respect as agent for the Consultant.

## **36. WARRANTY**

### **36.1 Project Co Warranty**

- (a) Project Co warrants that the Work, including all Products, and in addition, all parts and workmanship replaced during the initial warranty period, shall conform to the specifications set out in the Contract Documents in all respects and shall be new, of good quality material, of merchantable quality and fit for their intended purpose, as described in the Contract Documents, and free of defects in materials, equipment and workmanship for a period of one (1) year from the Substantial Completion Date. This warranty shall not limit extended warranties on any items of equipment or material called for elsewhere in the Specifications or otherwise provided by any manufacturer of such equipment or material. Project Co shall ensure that all extended warranties specified in the Contract Documents are provided and shall assign to STEGH all such extended warranties in accordance with the provisions of Section 16.1(j).

### **36.2 Corrections**

- (a) Project Co agrees to correct promptly, at its own expense, in a manner approved by STEGH, defects, deficiencies or non-compliant items in the Work which appear prior to and during the warranty periods set out in Section 36.1. Project Co acknowledges that the timely performance of warranty work is critical to the ability of STEGH to maintain effective operations of the Facility. Project Co shall use commercially reasonable efforts to respond to the requirement of STEGH to correct defective, deficient or non-compliant items in the Work within the time periods required by STEGH which, for example, in relation to critical areas can require immediate correction (for example, isolation room air handling or a roof leak which makes a clinical care area unavailable). Project Co further acknowledges that if STEGH is unable to contact Project Co and/or obtain the corrective work within such time period required by STEGH that STEGH's own forces may take such emergency steps as are reasonable and appropriate to correct such defects, deficiencies or non-compliant items in the Work, at Project Co's sole cost and expense, and except in the case of damage caused by STEGH's own forces, such emergency steps taken by STEGH's own forces shall not invalidate any warranties in respect of such portion of the Work affected by such corrective actions of STEGH's own forces.

### **36.3 Make Good Any Damage**

- (a) Subject to Section 36.2, Project Co shall promptly, and in any event not more than 30 days after receipt of written notice thereof from the Consultant or STEGH, Make Good any defects, deficiencies or non-compliant items in the Work which may develop within periods for which said materials, equipment, Products and workmanship are warranted, and also Make Good any damage to other Work

caused by the repairing of such defects, deficiencies or non-compliant items. All of such Work shall be at Project Co's expense. None of such Work shall be the basis of a claim for a Change Order, 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 correction of the Work within the specified time;
  - (B) provides STEGH with a schedule acceptable to STEGH for such correction; and
  - (C) corrects the Work in accordance with such schedule.
- (b) If Project Co fails to correct the Work in the time specified or subsequently agreed upon, without prejudice to any other right or remedy STEGH may have, STEGH may correct such Work and deduct the cost and expense thereof from any STEGH Holdback held by STEGH or from any payment then or thereafter due to Project Co provided the Consultant has certified such cost to STEGH.
- (c) After the Final Completion Date, STEGH shall cause Project Co to be granted access to the Site for the purpose of performing the warranty work that is required pursuant to Sections 36.2 and 36.3. Project Co acknowledges that such access to the Site may be subject to such limitations as may be imposed by STEGH.

#### **36.4 Performance of Replacement Work**

- (a) The performance of replacement work and Making Good of defects, deficiencies or non-compliant items for which Project Co is responsible, shall be commenced and completed as expeditiously as possible, and shall be executed at times convenient to STEGH 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 STEGH to accommodate the operation of the Facility or other aspects of the Project as constructed shall be at Project Co's expense.

#### **36.5 Opening, Tests, Inspections**

- (a) Project Co shall, at any time or times prior to the expiry of said warranty period and when required to do so by STEGH, make such openings, tests, inspections, excavations, examinations, or other investigations in, through, of or in the vicinity

of the Work as directed and shall, if required, Make Good again, to the satisfaction of STEGH, any openings, excavations or disturbances of any property, real or personal, resulting therefrom. If any defect, deficiency or non-compliant item for which Project Co is responsible is found in the Work by such investigations, the cost of such investigations and such Making Good shall be borne by Project Co; but if no such defect, deficiency or non-compliant item for which Project Co is responsible is found by such investigations, the said cost shall be borne by STEGH.

### **36.6 Remedies Not Exclusive**

- (a) The foregoing express warranties shall not deprive STEGH of any action, right or remedy otherwise available to STEGH at law or in equity for breach of any of the provisions of the Contract Documents by Project Co, and the periods referred to in this Article 36, shall not be construed as a limitation on the time in which STEGH may pursue such other action, right or remedy.

### **36.7 Occupation by STEGH**

- (a) For the purposes of this Article 36, completion of a milestone other than Substantial Completion is signified by availability of the relevant space for occupation by STEGH, as more particularly described in the Specifications.

### **36.8 No Limitation**

- (a) Subject to Section 11.19(f), neither the performance of work by STEGH's own forces nor the work of STEGH's other contractors, shall, except with respect to any damage caused by STEGH's own forces or STEGH's other contractors, limit the availability or terms of any warranty.

## **37. INTELLECTUAL PROPERTY**

### **37.1 Ownership of Specifications and Models**

- (a) Specifications, Drawings, models, and copies thereof furnished by the Consultant are and shall remain the Consultant's property, with the exception of the signed Contract Document sets, which shall belong to each Party to this Project Agreement. All Specifications, Drawings and models furnished by the Consultant are to be used only with respect to the Work and are not to be used on other work. These Specifications, Drawings and models are not to be copied or altered in any manner except in accordance with the Contract Documents without the written authorization of the Consultant.

- (b) Models (other than financial models) furnished by Project Co at STEGH's expense are the property of STEGH.

### **37.2 Patent Fees**

- (a) Project Co shall pay the royalties and patent licence fees required for the performance of this Project Agreement. The amount incurred shall be included in the Guaranteed Price.

### **37.3 Copyright Notice**

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

## **38. COMMUNICATIONS PROTOCOL AND CONFIDENTIALITY**

### **38.1 Communications Protocol**

- (a) Project Co shall not, and shall ensure that the Project Co Parties and any person affiliated with Project Co do not, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, this Project Agreement or any matters related thereto, without the prior written consent of STEGH and Infrastructure Ontario, in their Sole Discretion, provided that if Project Co, a Project Co Party or any person affiliated with Project Co is a public company, it shall be entitled to make such disclosure as is required by Applicable Law, subject to notification and reasonable consultation with STEGH and Infrastructure Ontario prior to such disclosure.
- (b) Project Co shall, and shall ensure that the Project Co Parties and any person affiliated with Project Co, in each case, comply, at all times, with STEGH's and Infrastructure Ontario's media release and publicity protocols or guidelines, including the Communications Protocol set out in Schedule 21, as such protocols and/or guidelines are updated by STEGH and Infrastructure Ontario from time to time, provided that if any such person is a public company, it shall be entitled to make such disclosure as is required by Applicable Law, subject to notification and reasonable consultation with STEGH and Infrastructure Ontario prior to such disclosure.
- (c) STEGH, either on its own or together with Infrastructure Ontario, propose to establish a public information repository for the Project which may be website based as well as a hard copy document repository for purposes of communicating

to the public information respecting the Project and the progress of the Construction Work. It is not intended that this information repository would include any information which falls within one of the exemptions under FIPPA, though the information repository may also contain the redacted versions of the Project Agreement or any of the Implementing Agreements pursuant to Section 38.3 below. Other than in respect of such redacted publications, STEGH on its own or together with Infrastructure Ontario, will establish a communications protocol in consultation with Project Co for the development and management of the information repository.

### **38.2 Disclosure**

- (a) Subject to Sections 38.2(b), 38.2(c) and 38.3, 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, STEGH 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 STEGH, in its Sole Discretion, may consider appropriate. In exercising its discretion, STEGH will be guided by the principles set out in Sections 38.2(b), and 38.2(c).
- (b) STEGH 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 FIPPA.
- (c) Notwithstanding Section 38.2(b), but subject to Section 38.3, 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), STEGH may disclose such information.

### **38.3 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), STEGH 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 38.2(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 38.2(b) and, accordingly, would be exempt from disclosure under FIPPA, the dispute may be referred for resolution in accordance with Schedule 14 – Dispute Resolution Procedure, and STEGH 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.

#### **38.4 Disclosure to Government**

- (a) Project Co acknowledges and agrees that STEGH will be free to disclose any information, including Confidential Information, to each MEDEI, IO, MOHLTC and/or the Province, and, subject to compliance with FIPPA, MEDEI, IO, MOHLTC and/or the Province will be free to use, disclose or publish (including on websites) the information on such terms and in such manner as MEDEI, IO, MOHLTC and/or the Province 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 MEDEI, IO, MOHLTC and/or the Province.

#### **38.5 Freedom of Information**

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

### **38.6 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 any other Party, provided that this Section 38.6 shall not restrict either Party from disclosing such Confidential Information to its professional advisors, to the extent necessary, to enable that Party to perform, to cause to be performed, or to enforce, its rights or obligations under this Project Agreement or any of the Implementing Agreements.
- (b) Project Co may:
  - (i) disclose in confidence to Agent and prospective lenders and their professional advisors such Confidential Information as is reasonably required by Agent or any such prospective lender in connection with the raising of financing for the Work 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 such Project Co Party of its obligations under this Project Agreement or any of the Implementing Agreements.
- (c) Project Co acknowledges that MEDEI, IO, MOHLTC and/or the Province may use Confidential Information of Project Co for purposes not specific to the Project, but for other general governmental purposes, such as development of the Province's alternate procurement and financing policies and framework. MEDEI, IO, MOHLTC and/or the Province will advise Project Co prior to using any Confidential Information of Project Co for non-Project purposes.
- (d) Subject to the foregoing, neither Party shall use, or directly or indirectly cause, authorize or permit any other person to use, any Confidential Information of the other Party except for the purposes of this Project Agreement or any Implementing Agreements, as permitted by this Project Agreement or any Implementing Agreement, or as authorized by the disclosing Party in writing.
- (e) Each Party shall protect all Confidential Information of the disclosing Party with the same degree of care as it uses to prevent the unauthorized use, disclosure, publication, or dissemination of its own confidential information of a similar nature or character, but in no event less than a reasonable degree of care.

### **38.7 Exceptions**

- 
- (a) Information of a Party (the “**Proprietor**”) will not be considered to be Confidential Information in the following circumstances:
- (i) the Proprietor advises the other Party to whom the information has been disclosed (the “**Confidant**”) in writing 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, where the circumstances reasonably permit, the Proprietor with reasonable notification and an opportunity to contest such requirement prior to disclosure;
  - (viii) the information is disclosed to STEGH upon a termination of this Project Agreement, pursuant to Article 29 or is otherwise reasonably required by STEGH for the purposes of performing (or having performed) the Work, including the construction of the Facility, subject to payment by STEGH of any royalties or patent license fees that were payable by Project Co in respect of such information (if any) and to any related confidentiality obligations disclosed to STEGH to which such information is subject; or
  - (ix) the information would not be exempt from disclosure under FIPPA.

### **38.8 Survival of Confidentiality**

- (a) Except for Confidential Information that Project Co has identified in writing to STEGH as being commercially sensitive, in which case the obligations in this Article 38 shall continue, the obligations in Sections 38.1 to 38.7 will cease on the date that is 3 years after the Final Completion Date.

### **38.9 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 STEGH and only to the extent necessary to perform Project Co's obligations under this Project Agreement.
- (c) Project Co shall, and shall require each Project Co Party to, at all times treat Personal Information as strictly confidential and shall comply with all applicable requirements of the Contract Documents and the requirements of Applicable Law, including FIPPA and the *Personal Health Information Protection Act*, 2004 (Ontario).
- (d) Project Co shall take all necessary and appropriate action, and shall require each Project Co Party to take all necessary and appropriate action, against any person who fails to comply with this Section 38.
- (e) Project Co shall allow STEGH on reasonable notice to inspect the measures of Project Co and each Project Co Party to protect Personal Information.

### **38.10 Protection of Patient Information**

- (a) Project Co shall take all necessary steps, including the appropriate technical and organizational and physical security measures, and shall require each Project Co Party to take all necessary steps and to include provisions in Subcontracts to require each Project Co Party and other Project Co Parties to take all necessary steps, such that Project Co, the Project Co Parties, and its and their staff shall protect, secure and keep confidential any Patient Information.
- (b) Project Co shall keep confidential, and shall require each Project Co Party to keep confidential and to include provisions in all Subcontracts to require all Project Co

Parties to keep confidential, all Patient Information that any of them may encounter or obtain during the course of their duties.

- (c) STEGH may from time to time require that Project Co and any Project Co Party or members of its or their staff execute and deliver within 2 Business Days of such request an agreement satisfactory to STEGH, acting reasonably, requiring such person to keep Patient Information confidential.
- (d) This Section 38.10 shall not limit Section 38.9.

### **38.11 Survival**

- (a) Subject to Section 38.8, the obligations in Sections 38.1 to 38.10 shall survive the termination of this Project Agreement.

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

### **39.1 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 Implementing Agreement without the prior written consent of STEGH, which consent may be withheld in the Sole Discretion of STEGH.
- (b) Section 39.1(a) shall not apply to:
  - (i) the grant of any security or any other interest to Agent under any of the Lending Agreements; or
  - (ii) subject to Section 7.1(a)(xx), any Subcontract or sub-subcontract entered into by Project Co, the Project Co Parties or any Sub-Subcontractor in connection with the Project.

### **39.2 STEGH Assignment**

- (a) STEGH shall not charge, mortgage or encumber, or except in accordance with Section 39.2(b), sell, assign, transfer, charge, mortgage, encumber, dispose of or otherwise alienate, all or any part of its interest in this Project Agreement or any Implementing Agreement.

- (b) STEGH may sell, assign, transfer, dispose of or otherwise alienate all (but not less than all) of its interest in this Project Agreement and the Implementing Agreements:
- (i) to the Local Health Integration Network;
  - (ii) to any public hospital under the *Public Hospitals Act* (Ontario) to whom MOHLTC, exercising its statutory rights, would be entitled to transfer same;
  - (iii) to any successor of STEGH, where such successor arises as a result of a direction or approval under the *Public Hospitals Act* (Ontario) and/or the *Local Health System Integration Act* (Ontario) or a reorganization of the delivery of health services initiated by the Province; or
  - (iv) to any person that is regulated and funded by the Province as a healthcare institution and is approved by MOHLTC as a transferee of same;

provided that (A) the person to whom any such sale, assignment, transfer, disposition or other alienation is made has the legal capacity, power and authority to accept such sale, assignment, transfer, disposition or other alienation, and agrees in writing with Project Co and Agent to assume and perform all of the obligations of STEGH hereunder and under all of the Implementing Agreements, and (B) MOHLTC confirms to the assignee or transferee its commitment to fund the assignee or transferee on terms and conditions no less favourable than those set out in the Funding Letter and a copy of such confirmation is provided to Project Co and Agent.

- (c) Upon any sale, assignment, transfer, disposition or other alienation in accordance with Section 38.2(b), STEGH shall be released from all of its obligations under this Project Agreement to the extent assumed by the assignee or transferee.

### **39.3 Subcontractors**

- (a) Project Co shall not subcontract any interest in this Project Agreement or the Construction Contract, and shall not permit the Contractor to subcontract any interest in the Construction Contract, to a Restricted Person, or any Affiliate thereof, or a person whose standing or activities: (i) are inconsistent with STEGH's role as a hospital, (ii) may compromise the reputation of STEGH; (iii) may compromise the integrity of the Province or the Project; or (iv) may compromise the nature of Province's health care system, so as to affect public confidence in that system.

- (b) Project Co shall not terminate, agree to the termination of or replace the Contractor unless Project Co has complied with Sections 6.2(a), 39.3(c) and 39.3(d) or received the prior written consent of STEGH, which may be withheld in the Sole Discretion of STEGH.
- (c) Subject to Section 39.3(d), if the Construction Contract shall at any time lapse, terminate or otherwise cease to be in full force and effect, whether by reason of default or otherwise, with the effect that the Contractor shall cease to act in relation to the Project, Project Co shall forthwith appoint a replacement, subject to STEGH's prior written consent, acting reasonably, as to the suitability of the replacement.
- (d) It is a condition of replacement of the Contractor, and Project Co shall require, that any replacement enter into a contract upon the same or substantially similar terms as the Construction Contract so replaced, including the provision of replacement Security and an assignment agreement on the same or substantially similar terms as the Assignable Subcontract Agreement for Construction Contract unless any material variations are approved by STEGH, acting reasonably.

#### **39.4 Changes in Ownership**

- (a) No Change in Ownership of Project Co, or any company of which Project Co is a subsidiary, shall be permitted:
  - (i) where the person acquiring the ownership interest is a Restricted Person or a person whose standing or activities (i) are inconsistent with STEGH's role as a hospital; (ii) may compromise the reputation of STEGH; or (iii) may compromise the integrity or the nature of the Province's health care system, so as to affect public confidence in that system; or
  - (ii) if such Change in Ownership would have a material adverse effect on the performance of the Work.
- (b) No Change in Control of Project Co, or any company of which Project Co is a subsidiary, shall be permitted without the prior written consent of STEGH, which may be withheld in STEGH's Sole Discretion.
- (c) This Section 39.4 shall not apply to a Change in Ownership or Change in Control of companies whose equity securities are listed on a recognized stock exchange.
- (d) Whether or not Project Co is required to obtain STEGH's consent to a Change in Ownership or Change in Control pursuant to this Section 39.4, Project Co shall

provide notice to STEGH of any Change in Ownership or Change in Control of Project Co, or any company of which Project Co is a subsidiary, as the case may be, within 5 Business Days of such Change in Ownership or Change in Control, and such notification shall include a statement identifying the then current shareholders and their respective holdings in the voting securities of Project Co, or any company of which Project Co is a subsidiary, as the case may be.

- (e) No Restricted Person or a person whose standing or activities are inconsistent with the 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.

#### **40. DISPUTE RESOLUTION PROCEDURE**

##### **40.1 Dispute Resolution**

- (a) All disputes shall be resolved in accordance with, and the Parties shall comply with, Schedule 14 – Dispute Resolution Procedure.

#### **41. PROHIBITED ACTS**

##### **41.1 Definition**

- (a) The term “**Prohibited Act**” means:
  - (i) offering, giving or agreeing to give to STEGH 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 STEGH 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 STEGH or any public body in connection with the Project;

provided that this Section 41.1(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 STEGH 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 STEGH or any public body in connection with the Project;

- (ii) entering into this Project Agreement or any other agreement with STEGH or any public body in connection with the Project for which 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, STEGH 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 STEGH, provided that this Section 41.1(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 STEGH 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 STEGH or any public body in connection with the Project without contravening the intent of this Article 41;
- (iii) breaching or committing any offence under any Applicable Law in respect of corrupt or fraudulent acts, or at common law, in respect of fraudulent acts in relation to this Project Agreement or any other agreement with STEGH or any public body in connection with the Project; or
- (iv) defrauding or attempting to defraud or conspiring to defraud STEGH or any other public body.

## **41.2 Warranty**

- (a) Project Co warrants that, in entering into this Project Agreement, it has not committed any Prohibited Act.

## **41.3 Remedies**

- (a) If Project Co or any Project Co Party (or anyone employed by or acting on their behalf) commits any Prohibited Act, then STEGH 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, STEGH may give written notice to Project Co and a Project Co Event of Default shall be deemed to have occurred;
  - (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 STEGH may give written notice to Project Co and a Project Co Event of Default shall be deemed to have occurred, unless, within 30 days of receipt of such notice, Project Co terminates the employee's employment and ensures that the relevant part of the Work 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 STEGH may give written notice to Project Co and a Project Co Event of Default shall be deemed to have occurred, unless, within 30 days of receipt of such notice, Project Co terminates the relevant Subcontract and ensures that the relevant part of the Work shall be performed by another person, where relevant, in accordance with Section 39.2(b)(i);
  - (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 STEGH may give written notice to Project Co and a Project Co Event of Default shall be deemed to have occurred, 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 Work 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 Section 41.3(a)(i) to 41.3(a)(iv), then STEGH may give notice to Project Co and a Project Co Event of Default shall be deemed to have occurred, 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 Work shall be performed by another person.
- (b) Any notice of termination under this Section 41.3 shall specify:
- (i) the nature of the Prohibited Act;

- (ii) the identity of the person whom STEGH 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 41.3, STEGH shall be entitled to recover from Project Co any Direct Loss sustained in consequence of any breach of this Article 41.

#### **41.4 Permitted Payments**

- (a) Nothing contained in this Article 41 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.

#### **41.5 Notification**

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

#### **41.6 Replacement of Project Co Party**

- (a) Where Project Co is required to replace any Project Co Party pursuant to this Article 41, 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.

### **42. NOTICES**

#### **42.1 Notices to Parties**

- (a) All notices, requests, demands, instructions, certificates, consents, approvals 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]

Attention: [REDACTED]  
Facsimile No.: [REDACTED]

with a copy to:

EllisDon Corporation  
[REDACTED]

Attention: [REDACTED]  
Facsimile No.: [REDACTED]

with a copy to Contractor:

[REDACTED]

Attention: [REDACTED]  
Facsimile No.: [REDACTED]

If to STEGH:

[REDACTED]

Attention: [REDACTED]  
E-mail: [REDACTED]  
Facsimile No.: [REDACTED]

with a copy to:

Ontario Infrastructure and Lands Corporation

777 Bay Street, 6th Floor  
Toronto, Ontario M5G 2C8

Attention:[REDACTED]  
Facsimile No.: [REDACTED]

## **42.2 Notice to Consultant**

- (a) In addition to the notice requirements set out in Section 42.1, where any Notice is to be provided or submitted to the Consultant, it shall be provided or submitted by sending the same by registered mail, facsimile or by hand, as follows:

Kahler Slater + Montgomery Sisam, in Joint Venture  
[REDACTED]

Attention:[REDACTED]  
Facsimile No.: [REDACTED]

#### **42.3 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 provide an original of the Notice in compliance with this Section 42.3.

#### **42.4 Change of Address**

- (a) Either Party to this Project Agreement may, from time to time, change any of its contact information set forth in Section 42.1 or 42.2 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.

#### **42.5 Deemed Receipt of Notices**

- (a) Subject to Sections 42.5(b), 42.5(c) and 42.5(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 Article 42.
- (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.

#### **42.6 Service on STEGH**

- (a) Where any Notice is required to be served on STEGH, the obligation to serve such Notice shall be fulfilled by serving it on STEGH in accordance with the provisions of this Article 42.

### **43. GENERAL**

#### **43.1 Amendments**

- (a) This Project Agreement may not be amended, restated, supplemented or otherwise modified 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, supplement or other modification, as the case may be, to this Project Agreement.

#### **43.2 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 or the Consultant 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.

### **43.3 Relationship Between the Parties**

- (a) Each of the Parties acknowledges that it is contracting on its own behalf and not as an agent for any other person and subject to Schedule 20 – Form of Assignable Subcontract Agreement, this Project Agreement is not intended to and does not create or establish between the Parties, or between any of STEGH, any Project Co Party, and the Province, including Infrastructure Ontario, 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 STEGH, the Province, including Infrastructure Ontario, and any representative or employee of Project Co or the Project Co Parties.
- (b) The Parties further agree that:
  - (i) except as expressly provided in this Project Agreement, neither Party shall be, or be deemed to be, an agent of the other Party, and neither Party shall have authority hereunder to represent that it is an agent of the other Party, or to accept any order, or enter into any contract or agreement, or make any representations or warranties of any kind to any person, or to assume or create any obligation, express or deemed, on behalf of or binding, or purportedly binding upon, the other Party;
  - (ii) neither Party shall be required to make or pay employment benefits, contributions for Employment Insurance, Canada Pension Plan, Workers' Compensation Board or other similar levies with respect to any persons employed or engaged by the other Party;
  - (iii) except as otherwise expressly provided in this Project Agreement, each Party shall be free from the control of the other Party as to the manner in which it shall perform its obligations, or cause same to be performed, under this Project Agreement; and
  - (iv) any person which a Party may engage as an agent, employee, subcontractor or otherwise, to perform such Party's obligations under this Project Agreement, as permitted hereby, shall, unless the Parties otherwise agree in writing, be engaged by such Party to act solely on behalf of such Party, and such person shall not act, or be deemed to act, on behalf of the Party that did not engage its services.

#### **43.4 General Duty to Mitigate**

- (a) STEGH 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.

#### **43.5 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 STEGH 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 and officers.

#### **43.6 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, including the Request for Proposals and the Proposal Submission, but excepting any of the Contract Documents and the Implementing Agreements, which agreements shall continue in full force and effect in accordance with their terms.

#### **43.7 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 other Implementing Agreements and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be those expressly provided for in this Project Agreement or the other Implementing Agreements; and
  - (ii) this Section 43.7 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 Applicable Law.

#### **43.8 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.

#### **43.9 Enurement**

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

#### **43.10 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 14 – 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.

#### **43.11 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 at law or in equity.

#### **43.12 Further Assurance**

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

#### **43.13 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.

#### **43.14 Language of Agreement**

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

#### **43.15 Proof of Authority**

- (a) Each Party shall provide proof to each other Party in a form acceptable to such other Party, that any person executing this Project Agreement or any of the Implementing Agreements on its behalf, has the requisite authority to execute this Project Agreement or such Implementing Agreements on its behalf.

#### **43.16 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 each other Party an original signed copy of this Project Agreement which was so faxed.

**43.17 Time is of the Essence**

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

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

**THE ST. THOMAS ELGIN GENERAL  
HOSPITAL**

Per:

---

Name: **[REDACTED]**

Title: **[REDACTED]**

Per:

---

Name: **[REDACTED]**

Title: **[REDACTED]**

I/We have authority to bind the corporation

**ELLISDON INFRASTRUCTURE STEGH INC.**

Per:

---

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation