

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

**THE UNIVERSITY OF OTTAWA HEART
INSTITUTE CARDIAC LIFE SUPPORT SERVICES
REDEVELOPMENT PROJECT**

PROPRIETARY AND CONFIDENTIAL

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SCHEDULE 3	COMPLETION DOCUMENTS
SCHEDULE 4	PROJECT CO INFORMATION
SCHEDULE 5	FORM OF LENDER’S DIRECT AGREEMENT
SCHEDULE 6	[INTENTIONALLY DELETED]
SCHEDULE 7	KEY PERSONNEL
SCHEDULE 8	[REDACTED]
SCHEDULE 9	COMMISSIONING PROGRAM
SCHEDULE 10	[INTENTIONALLY DELETED]
SCHEDULE 11	CHANGE PROCEDURE
SCHEDULE 12	COMPENSATION ON TERMINATION
SCHEDULE 13	INSURANCE AND PERFORMANCE SECURITY
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SCHEDULE 26	[INTENTIONALLY DELETED]
SCHEDULE 27	STANDBY LETTER OF CREDIT
SCHEDULE 28	REFINANCING

THIS AGREEMENT is made as of the 27th day of November, 2014.

BETWEEN:

UNIVERSITY OF OTTAWA HEART INSTITUTE, a non-share capital corporation incorporated under the laws of Ontario

(“**UOHI**”)

AND:

PCL OTTAWA HEART INSTITUTE 2014 LTD.

(“**Project Co**”)

WHEREAS:

- A. UOHI, with the assistance of Ontario Infrastructure and Lands Corporation (“**IO**”), wishes to procure the finance and construction of the Facility.
- B. UOHI 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 UOHI 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 MOI’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. Project Co recognizes and understands that UOHI provides cardiac services to patients of The Ottawa Hospital pursuant to the *University of Ottawa Heart Institute Act* (Ontario) and is, therefore, subject to a highly regulated legal and operational environment.
- I. There are a number of statutes which govern the operation and administration of health care facilities in Ontario. Subsection 4(5) of the *University of Ottawa Heart Institute Act* (Ontario) states that UHOI must comply with the same requirements, policies and procedures of MOHLTC that public hospitals are required to comply with to obtain grants, loans and financial assistance under section 5 of the *Public Hospitals Act* (Ontario).
- J. 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 health care facility, 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 health care facility is located and the quality of care and treatment of patients.
- 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 UOHI 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	[INTENTIONALLY DELETED]
Schedule 7	Key Personnel
Schedule 8	[REDACTED]
Schedule 9	Commissioning Program
Schedule 10	[INTENTIONALLY DELETED]
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
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	[INTENTIONALLY DELETED]
Schedule 27	Standby Letter of Credit

<u>Schedule No.</u>	<u>Description</u>
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Schedule 28	Refinancing
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- (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 UOHI, no consent, approval or satisfaction of UOHI 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 UOHI, it may be given or withheld in the sole, absolute and unfettered discretion of UOHI, 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) Division 1 of the Specifications;
 - (vii) Divisions 2 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 UOHI, 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) UOHI and Project Co shall comply with the determination of the Consultant pursuant to this Section 1.2 unless UOHI 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 UOHI 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 UOHI of the Lending Agreements shall constitute an acceptance of or acquiescence to any of the Lending Agreements or any term or condition thereof by UOHI, 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 UOHI 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 UOHI, which consent may be withheld in the sole discretion of UOHI, provide multiple irrevocable standby letters of credit delivered from The Toronto-Dominion Bank as approved and confirmed by UOHI (each a “**Letter of Credit**”).

Provider”) in an amounts 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 UOHI in accordance with the provisions of this Project Agreement, UOHI 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 accordance with Section 2.2(a) with the delivery of multiple Standby Letters of Credit by Letter of Credit Providers, Project Co acknowledges and agrees that:
 - (i) UOHI may draw upon any Standby Letter of Credit provided by any Letter of Credit Provider in any specified ratable amount;
 - (ii) UOHI 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) UOHI 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
 - (i) the provision of multiple Standby Letters of Credit shall not in any way prejudice or adversely affect the rights of UOHI 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 UOHI’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 UOHI in order to give UOHI a reasonable opportunity to review such documents.

- (b) On or before the Financial Close Target Date:
 - (i) Project Co shall deliver to UOHI the documents referred to in Section 1 of Schedule 3 - Completion Documents; and
 - (ii) UOHI 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 UOHI 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 UOHI of its obligations under Section 2.3(b)(ii)) and UOHI does not waive such requirement, UOHI 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 UOHI is able to obtain from another contractor for the Work, together with all costs reasonably incurred by UOHI 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 UOHI 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 UOHI as a result of Project Co not achieving Financial Close. The Parties agree that such liquidated damages shall be payable whether or not UOHI incurs or mitigates its damages, and that UOHI shall not have any obligation to mitigate any such damages.
- (d) If UOHI 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, UOHI 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 UOHI and UOHI 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 UOHI elects to be assigned.
- (c) If UOHI 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. UOHI's obligation to return the Standby Letter of Credit shall be contingent on the receipt of a waiver, in form and substance satisfactory to UOHI, of any obligation or liability of UOHI, 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 \$134,997,869, 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 UOHI 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 UOHI to Project Co.
- (c) Purchases from cash allowances must be authorized by written instructions issued by the Consultant as directed by UOHI and the form and methods of accounting for costs shall be agreed to by UOHI, 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 UOHI, 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 UOHI.

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

4.3 Lump Sum Payments

- (a) Subject to Sections 4.4(a) and 4.10, UOHI covenants and agrees to pay to Project Co the Interim Completion Payment on the Interim Completion Payment Date.
- (b) Subject to Sections 4.4(a) and 4.10, UOHI covenants and agrees to pay to Project Co the Substantial Completion Payment on the Substantial Completion Payment Date.

4.4 Direction of Lump Sum Payments

- (a) Project Co hereby irrevocably directs UOHI to make the Interim Completion Payment to Agent or as Agent may direct, as security for the Financing. UOHI shall pay the Interim Completion Payment, as directed by Project Co and shall not accept any redirection without the consent of Agent. Agent, UOHI and Project Co acknowledge that any monies contributed by MOHLTC towards the Interim Completion Payment, together with any monies payable by UOHI on account of the Interim Completion Payment from its own resources, shall be deposited directly into the Trust Account. UOHI 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 Acknowledgment Agreement. UOHI 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 UOHI of the Interim Completion Payment to Agent in accordance with this Section 4.4(a) constitutes payment by UOHI to Project Co in satisfaction of UOHI's obligation to pay the Interim Completion Payment to Project Co under this Project Agreement and in

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

- (b) Project Co hereby irrevocably directs UOHI to make the Substantial Completion Payment to Agent or as Agent may direct, as security for the Financing. UOHI shall pay the Substantial Completion Payment as directed by Project Co and shall not accept any redirection without the consent of Agent. Agent, UOHI and Project Co acknowledge that any monies contributed by MOHLTC towards the Substantial Completion Payment, together with any monies payable by UOHI on account of the Substantial Completion Payment from its own resources, shall be deposited directly into the Trust Account. UOHI 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. UOHI 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 UOHI of the Substantial Completion Payment to Agent in accordance with this Section 4.4(a) constitutes payment by UOHI to Project Co in satisfaction of UOHI's obligation to pay the Substantial Completion Payment to Project Co under this Project Agreement and in satisfaction of any trust obligation of UOHI 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, UOHI 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. UOHI 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 UOHI 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 UOHI to Project Co in satisfaction of UOHI'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 UOHI 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 UOHI Holdback

- (a) The UOHI 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 UOHI Holdback is reduced from time to time, Project Co hereby irrevocably directs UOHI to pay the amount of any UOHI Holdback reduction to the Agent or as the Agent may direct, as security for the Financing. UOHI agrees to pay the UOHI Holdback reductions as directed by Project Co and shall not accept any redirection without the consent of the Agent. Any portion of an UOHI 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 UOHI of the UOHI Holdback reductions in accordance with this Section 4.6(a) as Project Co may direct constitutes payment by UOHI to Project Co in satisfaction of UOHI's obligation to pay the UOHI Holdback reductions to Project Co under this Project Agreement and in satisfaction of any trust obligation of UOHI 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 UOHI Payments

- (a) Unless otherwise provided in the relevant Change Order or Change Directive or in this Project Agreement, UOHI will pay all Additional UOHI 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. UOHI agrees to pay the Additional UOHI Payments as Project Co may direct in accordance with any such direction. Project Co acknowledges and agrees that payment by UOHI of the Additional UOHI Payments in accordance with this Section 4.7(a) as Project Co may direct, constitutes payment by UOHI to Project Co in satisfaction of UOHI's obligation to pay the Additional UOHI Payments to Project Co under this Project Agreement and in satisfaction of any trust obligation of UOHI 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 UOHI 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 UOHI to make any payment of the Certified Cost to Complete to Agent, or as Agent may direct, as security for the Financing. UOHI shall pay the Certified Cost to Complete as directed by Agent and shall not accept any redirection without the consent of Agent. UOHI 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 UOHI of the Certified Cost to Complete in accordance with this Section 4.8(a) constitutes payment by UOHI to Project Co in satisfaction of UOHI's obligation to pay the Certified Cost to Complete under the Project Agreement and in satisfaction of any trust obligation of UOHI 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) UOHI 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 UOHI to make any Compensation Payment to Agent, or as Agent may direct, as security for the Financing. UOHI 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. UOHI will pay the Compensation Payment in accordance with the provisions of Schedule 12 – Compensation on Termination. Project Co acknowledges and agrees that payment by UOHI of the Compensation Payment to Agent in accordance with this

Section 4.9 constitutes payment by UOHI to Project Co in satisfaction of UOHI's obligation to pay the Compensation Payment to Project Co under this Project Agreement and in satisfaction of any trust obligation of UOHI 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) UOHI 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) UOHI 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 UOHI 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 UOHI pursuant to the terms of this Project Agreement, any amounts which are due to Project Co by UOHI 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, UOHI 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 UOHI, UOHI shall pay such HST to Project Co simultaneously with the amount to which such applicable HST relates or applies.
- (b) UOHI 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) UOHI shall pay all applicable HST properly payable in accordance with the *Excise Tax Act* (Canada) by UOHI upon and in connection with payments by UOHI 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 Works, UOHI 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 Information and Assistance Provided by Project Co

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

4.19 Residency – *Income Tax Act* (Canada)

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

4.20 Taxes – General

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

4.21 Taxes – Indemnity

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

4.22 Changes in Recoverability of Tax Credits

- (a) UOHI 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 UOHI 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 4.22, 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 UOHI 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 4.22, the term “**Recoverable Tax**” means HST incurred by Project Co in respect of the supply of any good or service to UOHI 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.

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 UOHI 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 UOHI 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.

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 UOHI, 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 UOHI, 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 UOHI, 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 UOHI, 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 UOHI or the Consultant, Project Co will deliver or cause to be delivered to UOHI 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 UOHI 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 UOHI 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 Alberta Corporate Registry 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 constating, 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 UOHI, 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 UOHI'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 UOHI (which include, to the extent made available to Project Co by UOHI, 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 UOHI, information regarding the critical requirements to maintain the operations of the Existing Facility, health care facility protocols and rules and regulations, if any, including the Site Information and the Contract Documents referred to in Section 11.7(c)) 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; and
- (xxiii) to the knowledge of Project Co, no Restricted Person has directly or indirectly, an Economic Interest in Project Co or the Project.

7.2 UOHI Representations and Warranties

- (a) UOHI represents and warrants to Project Co that as of the date of this Project Agreement:
 - (i) UOHI 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) UOHI 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 UOHI'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 UOHI and constitutes a legal, valid, and binding obligation of UOHI, enforceable against UOHI 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 UOHI 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 UOHI Event of Default has occurred and is continuing;
- (vii) to the knowledge of UOHI, there are no actions, suits, proceedings, or investigations pending or threatened (in writing) against UOHI or, to UOHI's knowledge, any UOHI Party at law or in equity before any Governmental Authority or arbitral body (whether or not covered by

insurance) of which UOHI 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 UOHI or in any impairment of its ability to perform its obligations under this Project Agreement, and UOHI 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) UOHI is able to meet its obligations as they generally become due;
- (ix) UOHI 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 UOHI 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 UOHI 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 UOHI, Project Co and the Consultant.
- (c) If the Consultant's employment is terminated, UOHI 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 UOHI'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 UOHI 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 21, 2014 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 UOHI or Project Co. Any dispute between UOHI 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 Interim Completion Payment and the Substantial Completion Payment, as provided in Section 16.1 and 16.2, 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 UOHI for UOHI'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) UOHI has retained UOHI's Project Manager to assist UOHI in the overall implementation of the Project. UOHI'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 UOHI. UOHI may, upon notification to Project Co, appoint a new UOHI Project Manager whose status shall be that of the former UOHI Project Manager.
- (r) When UOHI, 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 UOHI'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, UOHI and/or UOHI'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 UOHI 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 UOHI. 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 UOHI's written approval. UOHI shall be entitled to complete information on any such replacement of the Key Personnel, including a current resume. Further, UOHI 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 and the terms set out in the Lease as they relate to the Project, UOHI 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:
 - (i) easements and similar interests of UOHI which benefit the Site, obtained after the date of this Project Agreement, to the extent the same are necessary for the Work; and
 - (ii) any additional access approved by the landlord and UOHI pursuant to section 2.5 of the Lease as UOHI may notify Project Co of in writing from time to time.
- (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 UOHI and any person authorized by UOHI 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 UOHI 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 UOHI 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 UOHI, 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 UOHI.

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, UOHI 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 UOHI mortgages, charges or otherwise encumbers the Site, UOHI 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. UOHI RESPONSIBILITIES

10.1 General

- (a) UOHI 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 UOHI 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 UOHI shall not be under any obligation to perform any of Project Co's obligations under this Project Agreement.
- (b) UOHI shall, and shall cause all UOHI 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 UOHI 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 UOHI'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 UOHI'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 UOHI 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) complete the Phases by the applicable Phased Occupancy Dates;
 - (B) achieve Interim Completion by the Scheduled Interim Completion Date;

- (C) achieve Substantial Completion by the Scheduled Substantial Completion Date; and
 - (D) 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 UOHI and the UOHI 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 UOHI'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 UOHI'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;

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- (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 UOHI'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 health care facility 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 UOHI;

- (x) comply with all requirements of UOHI 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 UOHI regarding the continued operations of the Existing Facility so as not to disrupt the operations of UOHI, and except for any requirements of UOHI 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 UOHI 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 UOHI 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 UOHI 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 UOHI, UOHI'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 the applicable Phased Occupancy Dates, Interim Completion, 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 UOHI that the applicable Phased Occupancy Dates, Interim Completion, 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 UOHI or any UOHI Party, Project Co shall not obtain such Project Co Permits, Licences and Approvals without the prior written consent of UOHI, not to be unreasonably withheld or delayed, provided that UOHI shall not be responsible for obtaining or for the failure of Project Co to obtain any Project Co Permit, Licence or Approval. UOHI shall comply, or shall require compliance, with any conditions, liabilities or obligations that are imposed on UOHI or any UOHI Party by the requirements of any Project Co Permit, Licence or Approval obtained with UOHI's consent.
- (c) UOHI 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 UOHI 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 UOHI 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, UOHI 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. UOHI will contractually require other contractors retained by UOHI and UOHI’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 UOHI and UOHI’s own forces from the Site should they not comply with Project Co’s safety programs and safety instructions. UOHI shall have the right to assign to Project Co the work of other contractors retained by UOHI or the work of UOHI’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 UOHI and the work of UOHI’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 UOHI:
 - (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 UOHI 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 UOHI, 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 Interim Completion, 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 UOHI, 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 UOHI provides cardiac services to patients of The Ottawa Hospital pursuant to the *University of Ottawa Heart Institute 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 UOHI 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 UOHI 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 UOHI 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 Phasing Requirements and Specifications, which will be posted to eBuilder and which include instructions respecting UOHI'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 UOHI 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 UOHI may require Project Co to use particular persons as specified in the Contract Documents for specific building systems of UOHI to ensure UOHI does not lose the benefit of any warranty in respect to such building systems, including building automation, fire alarm and nurse call. UOHI shall have the right to assign to Project Co the work of other contractors retained by UOHI or the work of UOHI'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 UOHI assigns to Project Co the work of other contractors retained by UOHI or the work of UOHI'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 UOHI 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 UOHI's or Agent's option, to UOHI or to Agent or to such other contractor as UOHI or Agent may designate, which rights of assignment shall only be exercised by UOHI, 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 UOHI's option, to UOHI or Agent or to such other contractor as UOHI or Agent may designate, which rights shall only be exercised by UOHI, 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 UOHI 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 UOHI 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 UOHI, 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 UOHI'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 UOHI 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 UOHI 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 UOHI.
- (f) Title to the Products shall pass to UOHI 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 UOHI when paid for.
- (g) Project Co shall promptly execute and deliver to UOHI from time to time, as UOHI may require, any further documentation required to identify, evidence, perfect or protect UOHI'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 with respect to each applicable Phase of the Work until the relevant applicable Phased Occupancy Date and with respect to the balance of the

Work until the date of issuance by the Consultant of its certificate under Section 16.2(e) stating 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 UOHI, Lender's Consultant and the Consultant. Project Co shall keep a daily log available to UOHI, 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 UOHI's own forces or UOHI's other contractors, as set out in the Contract Documents or as UOHI 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 UOHI's other contractors or UOHI'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) UOHI shall have the right to occupy Phases as set out in the Contract Documents and 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 UOHI before Substantial Completion, as provided for in the Construction Schedule. Project Co shall cooperate with UOHI, UOHI’s Project Manager and the Consultant, so as to permit UOHI 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. Subject to Section 11.19(d), Project Co is responsible to ensure the completion of the Phases in accordance with the applicable Phased Occupancy Dates and the Scheduled Substantial Completion Date and that the Phases are ready for occupancy by UOHI in accordance with the Contract Documents including the requirements of paragraphs (b), (c) and, to the extent applicable, paragraph (d) of the definition of “Substantial Completion” in Schedule 1 - Definitions and Interpretation, paragraphs (b), (c) and, to the extent applicable, paragraph (d) of the definitions of “Interim Completion” and “Substantial Completion” in

Schedule 1 – Definitions and Interpretation as applicable to the respective Phase. Project Co acknowledges that Substantial Completion is only achieved in respect of the Work as a whole and not in respect of any Phase.

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 UOHI, UOHI's other contractors or their employees.
- (b) Project Co shall remove waste products and debris, other than that resulting from the work of UOHI, UOHI's other contractors or their employees, and shall leave the Work clean and suitable for occupancy by UOHI on the applicable Phased Occupancy Date for a particular Phase and, on the Interim Completion Date and, in the case of the balance of the Work, 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 UOHI, UOHI'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, UOHI 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, UOHI 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 UOHI 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 UOHI is determined to adversely affect the day to day operation of UOHI.
- (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, UOHI 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 UOHI 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 UOHI'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 UOHI in Sections 7.1 and 5.2(a) and having regard to the standard of care required under Section 11.2(a)(viii).

- (c) UOHI 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 UOHI.

In assessing whether a Design Issue is properly characterized as the responsibility of UOHI, 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 UOHI is responsible. The Contractor and UOHI acknowledge that the Risk Assessment Guidelines are provided for information purposes only and are not complete or exhaustive.

- (d) Subject to and without limiting UOHI's responsibilities under Section 11.17(c) and provided that UOHI 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 UOHI 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 UOHI or Project Co is of the view that the Design Issue is not properly characterized by the Consultant, or if either UOHI or Project Co does not agree with the Consultant's decision regarding what constitutes an acceptable resolution to the Design Issue, then either UOHI 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 UOHI cost. In assessing whether a Design Issue is properly characterized as a Project Co Design Issue, UOHI and Project Co shall have regard to the Risk Assessment Guidelines. Project Co and UOHI 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 UOHI 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 UOHI or Project Co is of the view that the Design Issue is not properly characterized by the Consultant or if either UOHI or Project Co does not agree with the Consultant's decision regarding what constitutes an acceptable resolution to the Design Issue, either UOHI 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 an UOHI cost. In assessing whether a Design Issue is properly characterized as a Project Co Design Issue, UOHI and Project Co shall have regard to the Risk Assessment Guidelines. Project Co and UOHI 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 UOHI; 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 UOHI 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 UOHI 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 UOHI, at UOHI'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 UOHI 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 UOHI for the expenditure of the amount Project Co has carried as the Project Co Design Contingency and UOHI 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, UOHI and UOHI's Project Manager with a detailed weekly update report in form and substance satisfactory to the Consultant and UOHI, on the status of all outstanding Design Issues.

11.19 Construction by UOHI or Other Contractors

- (a) UOHI 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. UOHI may assign

-
- (i) the scheduling and safety training in respect of the work of UOHI's other contractors or UOHI'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 UOHI's own forces, UOHI shall:
- (i) cause UOHI's other contractors or UOHI'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 UOHI'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 UOHI's other contractors or UOHI's own forces.
- (c) When separate contracts are awarded for work related to the Project, or when work is performed by UOHI's own forces, Project Co shall:
- (i) provide for the coordination and scheduling of the activities and work of UOHI's other contractors and UOHI's own forces with the Work to be performed under this Project Agreement;
- (ii) afford UOHI and UOHI'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 UOHI's other contractors and UOHI in reviewing their construction schedules when directed to do so by UOHI, UOHI'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 UOHI's other contractors or UOHI'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 UOHI's other contractors or UOHI's own forces. Failure by Project Co to so report shall invalidate any claims against UOHI by reason of such readily apparent deficiencies;
 - (v) subject to Section 11.6, for UOHI's own forces and for UOHI'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 OHSA; and
 - (vi) respond to and support UOHI and UOHI'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 UOHI's other contractors or UOHI's own forces. If:
- (i) any of UOHI's other contractors or UOHI'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 UOHI's other contractors or UOHI'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 UOHI's other contractors or UOHI's own forces (other than work that is described in the Contract Documents and performed by such other contractors or UOHI's own forces in accordance with Good Industry Practice and in accordance with the terms of their respective contracts or engagements with UOHI),

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 UOHI's other contractors shall be dealt with in substantially the same manner as contemplated in Schedule 14 – Dispute Resolution Procedure, provided UOHI's

other contractors have reciprocal obligations and UOHI has made commercially reasonable efforts to ensure that such provisions are included in the contracts with UOHI's other contractors. Project Co shall be deemed to have consented to arbitration of any dispute with any other contractor whose contract with UOHI contains a similar agreement to arbitrate.

- (f) Placing, installing, application and connection of the work performed by UOHI's own forces or by UOHI'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 UOHI's own forces or by UOHI'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 UOHI 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 UOHI'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 UOHI, the Consultant or any contractor retained by UOHI 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, UOHI'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 UOHI'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 UOHI so directs, to UOHI'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 UOHI 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 UOHI 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 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, 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, UOHI 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 UOHI Data Room Contract

- (a) On Financial Close, Project Co shall execute and deliver the Assignment and Assumption Agreement in respect of the Data Room Contract and shall assume all of the obligations of UOHI thereunder, and thereafter shall execute and deliver such supporting documentation as may be reasonably required by the counterparty Supplier or by UOHI from time to time with respect to the Data Room Contract. For clarity, Project Co acknowledges and agrees that,
 - (i) any and all costs associated with the assumption and performance of UOHI's obligations under the Data Room Contract, including obligations with respect to payment thereunder, is included in and form part of the Guaranteed Price; and

- (ii) any and all obligations of UOHI under the Data Room Contract is included in and forms part of the Work.

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 UOHI. 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 UOHI 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) UOHI may require Project Co to amend its Apprenticeship Plan if, in UOHI's opinion, acting reasonably, Project Co is failing to maximize apprenticeship opportunities on the Project pursuant to the then current Apprenticeship Plan.
- (e) UOHI 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 person's own cost and risk, at all times during the performance of the Work to:
 - (i) obtain, maintain, and, as applicable, renew its Health and Safety Certification; and
 - (ii) 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 to maintain its Health and Safety Certification in accordance with its terms or in accordance with this Project Agreement (an "**H&S Certification Default Event**"); or
 - (ii) UOHI delivers a notice to Project Co indicating that UOHI 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 UOHI that an H&S Certification Default Event has occurred and produce and deliver to UOHI:
 - (A) a report identifying the reasons for the failure to 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 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 UOHI and, to the extent UOHI requires any amendments or revisions to be made to the Health and Safety Certification Reinstatement Plan, Project Co shall take all reasonable steps as may be necessary to make all such required amendments and revisions and deliver to UOHI an amended Health and Safety Certification Reinstatement Plan not more than 5 Business Days from the date on which such request is made by UOHI; 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 (Health and Safety Inspection Reports); or
- (iv) within 5 Business Days of receipt of the notice from UOHI under 11.26(b)(ii), produce and deliver to UOHI:
 - (A) a report identifying the manner in which the Health and Safety Certification shall be maintained;
 - (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 UOHI and, to the extent UOHI 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 UOHI an amended Health and Safety Certification Maintenance Plan not

more than 5 Business Days from the date on which such request is made by UOHI; and

- (C) arrange to have conducted a complete H&S Inspection in accordance with Section 11.28 (Health and Safety Inspection Reports).

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, colour-coded Load-Path Diagrams (which will include a description of the Demolition Requirements set forth herein) to supplement the Site work plans and blueprints relating to the Demolition and all other technical requirements relating to the Complex Structure Demolition (the "**Demolition Specifications**");
 - (B) at all times when a Complex Structure Demolition is being performed that the Demolition Specifications, demolition workplan

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

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

(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 UOHI 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, and any applicable Project Co Party, shall:

- (i) immediately upon the occurrence of a Demolition Default Event, notify UOHI that a Demolition Default Event has occurred, unless UOHI 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 UOHI:
 - (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 UOHI and, to the extent UOHI 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 UOHI an amended and revised Demolition Plan not more than 5 Business Days from the date on which such request is made by UOHI.

- (c) No Demolition shall be recommenced at the Site that was the subject of the Demolition Default Event until:
 - (i) UOHI 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) UOHI has received a report, in form and substance satisfactory to UOHI, 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 Health and Safety Inspection Reports

- (a) Project Co and each applicable Project Co Party shall, at their sole cost and expense, conduct an inspection of its facilities used in connection with the Work 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 Project Co’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 and each applicable Project Co Party shall cause the results of each H&S Inspection (such results referred to as the “**H&S Inspection Report**”) to be delivered to UOHI and 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 UOHI for each Phase and where UOHI has not specified particular dates for occupancy of Phases, Project Co shall set those dates so as to achieve occupancy of such Phases on an as early as achievable basis and include them in its proposed Construction Schedule under Section 12.1(a)(ii);
 - (ii) prepare and submit to UOHI and the Consultant as soon as practical and in any event within 45 days of Financial Close, a detailed computerized Construction Schedule (in both hard paper copy and computer readable soft copy) using a critical path method (“CPM”) network and a Construction Schedule dependent cash flow forecast, each in a form approved by UOHI. For clarity, the 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 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 UOHI’s own forces or by other contractors, the applicable Phased Occupancy Dates, the Scheduled Interim Completion Date, Scheduled Substantial Completion Date, the Scheduled Final Completion Date, 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 applicable Phased Occupancy Dates, the Scheduled Interim Completion Date, Scheduled Substantial Completion Date and the Scheduled Final Completion Date. UOHI and the Consultant will respond to Project Co, in writing, within 10 Business Days of receipt of each Construction Schedule, with either its detailed comments or acceptance of such Construction Schedule as complete;
 - (iii) in the event that UOHI and the Consultant do not accept Project Co’s initial Construction Schedule submission as complete, Project Co shall re-submit such Construction Schedule as many times as necessary, revised in accordance with UOHI’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 UOHI’s detailed comments, who in turn shall also

respond within 5 Business Days. When the Construction Schedule has been accepted as complete by UOHI 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 UOHI 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 Interim Completion Date, 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 UOHI 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 UOHI'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 UOHI's equipment to ensure that the ordering, delivery, receiving and supply of equipment does not impact on the Construction Schedule.
- (b) At any time prior to Final Completion, Project Co shall, no later than 5 Business Days following the written request of UOHI, deliver to UOHI a copy of the most current version of the Construction Schedule and/or any past version of the Construction Schedule requested by UOHI in its native software format.

12.2 Changes to Critical Path

- (a) Any changes to the critical path of the Construction Schedule initiated by Project Co which affect the applicable Phased Occupancy Dates, the Scheduled Interim Completion Date, Scheduled Substantial Completion Date or the Scheduled Final Completion Date must be approved in writing by UOHI. Subject to the terms of Schedule 11 – Change Procedure, any UOHI 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 UOHI, deliver to UOHI a copy of the most current version of the Construction Schedule and/or any past version of the Construction Schedule requested by UOHI 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 UOHI 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 UOHI'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 UOHI:
 - (A) UOHI’s Project Manager; and
 - (B) any individual appointed by UOHI;
 - (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) UOHI’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 UOHI, any UOHI 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 UOHI shall be entitled to replace any of their respective representatives on the Work Committee by written notice to the other and to Project Co. UOHI 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 UOHI, 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 Ottawa, 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,

UOHI 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.
- (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, UOHI and any equipment consultant retained by UOHI.
- (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 UOHI and/or UOHI’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 applicable Phased Occupancy Date, the Interim Completion Date or 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 UOHI and/or UOHI'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 UOHI and/or UOHI'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 applicable Phased Occupancy Date, the Interim Completion Date or 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 Phased Occupancy Date, the Interim Completion Date or the Substantial Completion Date, as applicable, 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 UOHI) 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 applicable Phased Occupancy Date, the Interim Completion Date or 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 UOHI'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, UOHI shall procure such Equipment and complete, or have completed by UOHI'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 UOHI cannot complete, or have completed by UOHI'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 UOHI 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 UOHI cannot complete, or have completed by UOHI'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 Interim Completion or the certificate of Substantial Completion.
- (b) Save and except for those circumstances contemplated by Section 13.13, UOHI'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, UOHI shall procure and deliver to Project Co such Equipment, for installation by Project Co as contemplated hereunder, in

accordance with the Construction Schedule. UOHI shall also be responsible for coordinating and scheduling the associated training in respect of such Equipment.

- (d) For greater certainty, UOHI has no obligations in Section 13 with respect to the Type D Equipment.
- (e) For each item of Type E Equipment, UOHI 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 E equipment by Project Co

- (a) Project Co shall not make any substitutions of any Equipment without the prior written consent of UOHI, in its sole discretion. Project Co shall provide UOHI with sufficient information to allow UOHI 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 E 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 UOHI on the earlier of the applicable Phased Occupancy Date, the Interim Completion Date, 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 UOHI's prior consent, which consent may be withheld in UOHI's sole discretion.

- (c) Project Co shall, as soon as practicable after receiving a request from UOHI's Project Manager, supply to UOHI'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 UOHI'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 UOHI's own forces (including its staff).
- (b) UOHI 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 UOHI to have UOHI'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 UOHI 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 UOHI 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 UOHI and that Project Co has satisfied all payment obligations to the vendors that have accrued prior to and upon any assignment to UOHI.

13.12 Scheduling of E quipment I nstallation and C ommissioning

- (a) Project Co shall prepare a schedule in consultation with UOHI 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 E quipment V endor

- (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 UOHI 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 UOHI 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 a particular Phase in relation to a Phased Occupancy Date, Interim Completion and/or out of Substantial Completion.

14. CONTAMINATION

14.1 Contamination

- (a) For the purposes of applicable environmental legislation, UOHI 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, UOHI 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 UOHI, 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 UOHI 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 UOHI 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 UOHI 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 UOHI 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 UOHI 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 UOHI 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 UOHI 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 UOHI'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 UOHI and/or others.

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

15.1 Objects Property of UOHI

- (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 UOHI.

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 UOHI wishes Project Co to perform actions which are in addition to any required pursuant to Section 15.2(a), then UOHI shall issue an instruction to Project Co specifying what action UOHI 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 Interim Completion

- (a) Project Co shall deliver a notice of the date anticipated to be the Interim Completion Date to UOHI and the Consultant at least 90 days prior to the date anticipated by Project Co to be the Interim Completion Date. Project Co acknowledges that UOHI needs a minimum of 90 days' notice prior to the anticipated Interim Completion Date to prepare for Commissioning. Project Co shall advise UOHI and the Consultant of any change in the anticipated date. Project Co shall, by the date which is 20 days prior to the anticipated Interim 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 ("**Interim 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 Interim Completion Date in a notice given to UOHI and to the Consultant 20 days prior to the anticipated Interim Completion Date which notice shall include a copy of the Interim 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 Interim Completion Date. Project Co shall reconfirm the anticipated Interim Completion Date and when Project Co is satisfied that it has completed all the requirements for Interim Completion, Project Co shall apply to UOHI and the Consultant for certification of Interim Completion in a notice to UOHI and the Consultant by the date which is 10 days prior to the anticipated Interim Completion Date. The Consultant shall in the next following 10 days, proceed to review and inspect the Interim Work and, taking into account the Interim Preliminary Minor Deficiencies List, prepare its own list of Minor Deficiencies (the "**Interim Minor Deficiencies List**") and its estimate of the cost of and the time for rectifying the Interim Minor Deficiencies set out in the Interim Minor Deficiencies List.

- (c) When the Consultant is satisfied that Interim Completion has been achieved, the Consultant shall provide to UOHI and to Project Co a report confirming the Interim Minor Deficiencies List and the date on which the Consultant determines that Interim Completion was achieved. Failure to include an item on the Interim Minor Deficiencies List does not alter the responsibility of Project Co to complete the Interim Work.
- (d) The Consultant shall state the Interim Completion Date as set out in its report delivered under Section 16.1(c) in a certificate.
- (e) The Consultant shall prepare the Interim Minor Deficiencies List before a certificate of Interim Completion is issued, but the Consultant shall not withhold the certificate of Interim Completion by reason solely that there are such Interim Minor Deficiencies in respect of the Interim Work.
- (f) UOHI may withhold from the payment otherwise due on the Interim Completion Payment Date a holdback amount that is [REDACTED]% of the amount estimated by the Consultant for UOHI to complete and rectify the Interim Minor Deficiencies. The Consultant shall inspect the completion of the Interim Minor Deficiencies and shall provide a monthly progress report to UOHI describing the Interim Minor Deficiencies which have been completed to the satisfaction of the Consultant, and UOHI shall release from such holdback the amount of any holdback allocated to the Interim Minor Deficiencies which have been completed. If, at any time after the 120 day period for completion of the Interim Minor Deficiencies referred to in Section 5.2 of Schedule 18 – Payments and Holdbacks, any of the Interim Minor Deficiencies are not completed in 10 Business Days following Project Co's receipt of a written notice from UOHI 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 UOHI otherwise agrees, or the reasons for any delay are acceptable to UOHI, or the delay is caused by UOHI or an UOHI Party, UOHI may engage others to perform the work necessary to complete and rectify the Interim Minor Deficiencies at the risk and cost of Project Co and UOHI may deduct such cost from the holdback amount or any other amount remaining owing by UOHI to Project Co. If the cost of completion and rectification of any Interim Minor Deficiencies exceeds the amount held back by UOHI, then Project Co shall reimburse UOHI for all such excess costs.
- (g) Project Co shall assign to UOHI and submit with the application for Interim 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 Interim Work which for greater certainty, but without limitation, shall include as and when directed, all documentation in connection with any LEED certification as required by the Drawings and Specifications (collectively, the “**Interim 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 Interim Deliverables for any reason, Project Co may submit a list of the outstanding Interim Deliverables and if a delay in the delivery of such outstanding Interim Deliverables will not impair the safety, security or health of the occupants of the Project, such outstanding Interim Deliverables shall be included as Interim Minor Deficiencies. Failure to submit any of the Interim Deliverables that are required for the safe occupation and use of the Interim Work and as may be necessary for the security and health of the occupants of the Project, shall be grounds for the Consultant to state in its report that Interim Completion has not been achieved. For the purposes of Section 16.1(f), and any holdback to be taken as contemplated thereunder, the value of such outstanding Interim Deliverables shall, without regard to the degree or quantum of such outstanding Interim 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 UOHI all of the Interim Deliverables.

16.2 Substantial Completion

- (a) Project Co shall deliver a notice of the date anticipated to be the Substantial Completion Date to UOHI 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 UOHI needs a minimum of 90 days notice prior to the anticipated Substantial Completion Date to prepare for Commissioning. Project Co shall advise UOHI 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 UOHI 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 UOHI and the Consultant for certification of Substantial Completion in a notice to UOHI 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 16.2(d); (ii) certifying substantial performance of the Work in accordance with the *Construction Lien Act* (Ontario) pursuant to Section 16.2(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) 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 UOHI with a certificate of substantial performance in accordance with the *Construction Lien Act* (Ontario).
- (d) When the Consultant is satisfied that Substantial Completion has been achieved, the Consultant shall provide to UOHI 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.
- (e) The Consultant shall state the Substantial Completion Date as set out in its report delivered under Section 16.2(d) in a certificate.
- (f) The Consultant shall prepare the Minor Deficiencies List before a certificate of Substantial Completion is issued, and if the certificate referred to in Section 16.2(c) has been issued, then the Consultant shall not withhold the

certificate of Substantial Completion by reason solely that there are such Minor Deficiencies.

- (g) 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 UOHI.
- (h) UOHI 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 UOHI 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 UOHI describing the Minor Deficiencies which have been completed to the satisfaction of the Consultant, and UOHI 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 UOHI 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 UOHI otherwise agrees, or the reasons for any delay are acceptable to UOHI, or the delay is caused by UOHI or an UOHI Party, UOHI may engage others to perform the work necessary to complete and rectify the Minor Deficiencies at the risk and cost of Project Co and UOHI may deduct such cost from the holdback amount or any other amount remaining owing by UOHI to Project Co. If the cost of completion and rectification of any Minor Deficiencies exceeds the amount held back by UOHI, then Project Co shall reimburse UOHI for all such excess costs.
- (i) Project Co shall assign to UOHI 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 16.2(h), 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], provided that if there has been a holdback established on account of outstanding Interim Deliverables under Section 16.1(f) and on the Substantial Completion Payment Date such holdback amount has not been released then the holdback amount of \$[REDACTED] set in respect to outstanding Project Deliverables shall be deemed included without duplication in the holdback on account of outstanding Interim Deliverables under Section 16.1(f) and the provisions of Section 16.1(f) shall apply to such outstanding Project Deliverables mutatis mutandis. 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 UOHI all of the Project Deliverables.

- (j) The submission of an application for payment upon Substantial Completion shall constitute a waiver by Project Co of all claims whatsoever against UOHI 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 UOHI 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 UOHI or any UOHI 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.

16.3 Final Completion Countdown Notice

- (a) Project Co shall deliver a notice (the “**Final Completion Countdown Notice**”) to UOHI 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.

16.4 Final Completion Certificate

- (a) Project Co shall give the Consultant and UOHI’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 UOHI’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 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) UOHI shall, within 5 Business Days after receipt of the Final Completion Notice, provide the Consultant and Project Co with UOHI'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 UOHI's opinion pursuant to Section 16.4(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 UOHI, and to issue to UOHI 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 16.4(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 UOHI'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 16.4(c) to 16.4(e), inclusive, shall be repeated until the Final Completion Certificate has been issued pursuant to Section 16.4(d)(i).

16.5 Notification of Early Substantial Completion

- (a) Unless Project Co obtains the prior written consent of UOHI, 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 UOHI that Project Co expects to be able to achieve Substantial Completion prior to the Scheduled Substantial Completion Date, UOHI's Project Manager shall be entitled to require Project Co to produce and submit to UOHI'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 UOHI 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. UOHI ACCESS, INSPECTION AND MONITORING

17.1 UOHI Access

- (a) Subject to Section 17.1(b) but without limiting any of UOHI's rights in respect of the Site, Project Co acknowledges and agrees that UOHI, the UOHI 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, UOHI and the Consultant, UOHI'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), UOHI and the UOHI 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) UOHI 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 UOHI 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 UOHI 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 UOHI makes such a request, UOHI 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 UOHI 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 UOHI 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 UOHI, or named by UOHI 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 UOHI 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) UOHI 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 UOHI, is likely to have an adverse effect on the performance of the Work or who, in the reasonable opinion of UOHI, 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 UOHI 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 UOHI 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 UOHI, 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 UOHI, specifying the capacities in which those persons are concerned with this Project Agreement and, subject to Applicable Law, giving such other particulars as UOHI may reasonably require.

17.7 Finality as to Admission

- (a) Any decision of UOHI 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 Edmonton, Alberta 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 UOHI, the Consultant, Lender's Consultant or other persons authorized by UOHI 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 UOHI, a certified copy of any part of the Project records required by UOHI when requested by UOHI.
- (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 UOHI 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 UOHI by the 10th 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 UOHI if UOHI 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 and Phases at a level of detail acceptable to UOHI. 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 UOHI 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 UOHI 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. UOHI’S REMEDIAL RIGHTS

19.1 Exercise of Remedial Rights

- (a) UOHI may exercise all rights set out in this Article 19 at any time and from time to time if:
- (i) UOHI, 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 UOHI 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), UOHI 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 UOHI 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), UOHI 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 UOHI 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(b), Project Co has failed to comply with any written direction issued by or on behalf of UOHI'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; 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, UOHI may exercise all of the rights set out in this Article 19 at any time and from time to time if UOHI, acting reasonably, considers the circumstances to constitute an Emergency.

19.3 Rectification

- (a) Without prejudice to UOHI's rights under Article 26 and any other rights under this Project Agreement, in any of the circumstances set out in Sections 19.1 or 19.2, UOHI may, by written notice, require Project Co to take such steps as UOHI, 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 UOHI's requirements as soon as reasonably practicable.
- (b) If UOHI 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 UOHI to mitigate, rectify and protect against such circumstances that UOHI 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 UOHI, acting reasonably, shall think fit,

then UOHI 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 UOHI 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 UOHI'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 UOHI's rights pursuant to this Article 19; and
 - (ii) Project Co shall reimburse UOHI for all reasonable costs and expenses incurred by UOHI in relation to the exercise of UOHI's rights pursuant to this Article 19, including in relation to UOHI taking such steps, either itself or by engaging others (including a third party) to take any such steps as UOHI 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 UOHI or an UOHI 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 UOHI 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) UOHI shall reimburse Project Co for the reasonable costs and expenses incurred by Project Co in relation to the exercise of UOHI'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) UOHI shall bear all costs and expenses incurred by UOHI in relation to the exercise of UOHI's rights pursuant to this Article 19.

19.6 Reimbursement if Improper Exercise of Rights

- (a) If UOHI exercises its rights pursuant to this Article 19, but UOHI was not entitled to do so, UOHI 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 UOHI issued as a result of UOHI having exercised such rights.
- (b) Project Co acknowledges and agrees that Project Co has no right to require a determination of whether or not UOHI is entitled to exercise its rights pursuant to this Article 19 before taking any such action that UOHI may require and Project Co shall comply with all of UOHI's requirements. Only concurrently with or after complying with UOHI'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 Interim Completion by the Scheduled Interim Completion Date or Substantial Completion by the Scheduled Substantial Completion Date:
 - (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 UOHI of any of UOHI's obligations under this Project Agreement (including, subject to Section 22.2(h), any delay by UOHI 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 UOHI 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 UOHI 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 UOHI, any UOHI Party or any other person permitted to execute such works by UOHI or any UOHI Party;
- (vii) a requirement pursuant to Schedule 14 – Dispute Resolution Procedure, for Project Co to proceed in accordance with the direction of UOHI 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 UOHI 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 UOHI with written notice setting forth the cause of the Delay Event, a description of the impact the Delay Event will have on the Scheduled Interim Completion Date and/or 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 UOHI 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 UOHI to ensure UOHI 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 UOHI 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 UOHI 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 UOHI or others for whom UOHI 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 Interim Completion Date and/or 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) UOHI 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 UOHI 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 Phased Occupancy Dates, the Scheduled Interim Completion Date or 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 UOHI. 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, UOHI 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 UOHI 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 UOHI to Project Co. Project Co shall promptly provide UOHI's Project Manager with any

information UOHI'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 UOHI 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 UOHI is required to compensate Project Co pursuant to this Section 23.2, then UOHI 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 health care facility or construction industry (or a significant sector of that industry) in the Province of Ontario; or
- (vii) any civil disobedience or protest action, including any action taken by any person or persons protesting or demonstrating against the carrying out of any part of the Works or the construction and/or operation of health care facilities 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 UOHI claiming relief, as a result of any act or omission of any UOHI 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, UOHI 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 Section 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 Works 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 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 Section 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, UOHI 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.
 - (iii) If an event of Force Majeure occurs prior to the Substantial Completion Date, Project Co shall not be entitled to receive any compensation other than as expressly provided in Sections 25.2(b)(ii) and 30.
 - (iv) Subject to Section 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 Section 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 Section 25.3(a), such failure shall be taken into account in determining such Party's entitlement to relief pursuant to this Section 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 Section 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 UOHI 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 UOHI 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, UOHI, an UOHI 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 UOHI 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 UOHI;
- (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 UOHI operations or UOHI 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 UOHI of its obligations under this Project Agreement), and upon receiving notice of such breach from UOHI, 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 UOHI;
 - (II) put forward, within 5 Business Days of receipt of notice of such breach from UOHI, 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 UOHI 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 UOHI) 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 UOHI 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 UOHI;
- (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 UOHI 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 UOHI 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 UOHI has given notice to Project Co of the occurrence of a Project Co Event of Default, UOHI 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, UOHI may (without obligation to do so) make payment on behalf of Project Co of such monies and any amount so paid by UOHI 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 UOHI 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 UOHI 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 UOHI on demand. No such action by UOHI shall be deemed to be a termination of this Project Agreement and UOHI shall not incur any liability to Project Co for any act or omission of UOHI in the course of curing or attempting to cure any such Project Co Event of Default. Without limiting the foregoing, UOHI 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 UOHI 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 UOHI 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 UOHI's Costs

- (a) Project Co shall reimburse UOHI 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 UOHI in exercising its rights under this Section 26, including any relevant increased administrative expenses. UOHI shall take commercially reasonable steps to mitigate such costs.

26.5 No Other Rights to Terminate

- (a) UOHI 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. UOHI DEFAULT

27.1 UOHI Events of Default

- (a) For the purposes of this Project Agreement, “**UOHI Event of Default**” means any one or more of the following events or circumstances:
 - (i) UOHI 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, Interim 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 UOHI to Project Co under this Project Agreement, such failure continues for 90 days,

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

- (ii) UOHI 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, UOHI failing to remedy such breach in accordance with all of the following:

- (A) UOHI 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 UOHI or otherwise effecting any set off permitted or contemplated hereunder shall not constitute an UOHI Event of Default permitting Project Co to claim that UOHI is in default of UOHI's contractual obligations.

27.2 Remedies

- (a) On the occurrence of a UOHI Event of Default and while the same is continuing, Project Co may give notice to UOHI of the occurrence of such UOHI 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 UOHI has remedied such UOHI 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 UOHI has disputed the alleged UOHI 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 UOHI has not remedied the UOHI 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) UOHI 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) UOHI may order Project Co in writing to suspend or interrupt all or any part of the Work for such period of time as UOHI may determine to be appropriate for the convenience of UOHI. This right of UOHI to suspend or interrupt the Work shall not give rise to any duty on the part of UOHI to exercise this right for the benefit of Project Co or any other person or entity. In the event of an UOHI-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 UOHI and Project Co, and Project Co shall be reimbursed by UOHI 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 UOHI 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. UOHI 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 UOHI 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, UOHI may, by giving Project Co written notice, terminate this Project

Agreement. Such notice shall, in the case of termination by UOHI, include confirmation that UOHI 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 UOHI 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) UOHI 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 UOHI has, in respect of such termination, obtained prior written consent of MOHLTC.
- (b) In the event of notice being given by UOHI in accordance with this Section 28.4, UOHI 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 UOHI 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 UOHI as shall not already have been transferred to UOHI pursuant to Section 11.9(f), Project Co shall transfer to, and there shall vest in UOHI, free from all Encumbrances other than any Encumbrances derived through UOHI, 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 UOHI so elects:
 - (A) all plant, equipment and materials (other than those referred to in Section 29.4(a)(i)(B)) on or near to the Site shall remain available to UOHI for the purposes of completing the Work; and
 - (B) all construction plant and equipment shall remain available to UOHI for the purposes of completing the Work, subject to payment by UOHI 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 UOHI and turn over to UOHI copies of Project Co's records, documentation and drawings necessary for UOHI to proceed with the Work, including the legal assignment to UOHI of any of Project Co's rights in any agreement relating to the Work as UOHI may require, and Project Co shall not do anything to impede UOHI's ability to proceed with the Work. Further, Project Co agrees to turn over to UOHI, 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 UOHI to such records) and to vacate the Site in accordance with UOHI's reasonable instructions. UOHI 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 UOHI, free of Encumbrances (other than any Encumbrances derived through UOHI), 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 UOHI 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 UOHI, in electronic format where it exists in electronic format, and in its original format, when not in electronic format.

- (b) UOHI 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. UOHI 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 UOHI 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 UOHI 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 UOHI 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. UOHI 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 UOHI 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 UOHI, 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 UOHI. Project Co agrees to endorse over to UOHI any cheques received from the federal or provincial governments as may be required to implement the foregoing, failing which, UOHI 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 UOHI 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 UOHI of their respective liabilities and obligations under this Project Agreement.

33. INDEMNITIES

33.1 Project Co Indemnities to UOHI

- (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 UOHI, the Consultant, UOHI'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 "**UOHI 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 UOHI Indemnified Party due to Project Co's (or any Project Co Party's) violations of any Applicable Law;
 - (vi) without prejudice to UOHI's rights under Article 26 and any other rights under this Project Agreement, any obligations of Project Co assumed by UOHI under the Construction Contract and any reasonable costs and

expenses incurred by UOHI in relation to the exercise by UOHI 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 UOHI 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 UOHI 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) UOHI hereby holds in trust for and on behalf of the UOHI Indemnified Parties other than UOHI the benefit of the indemnities provided by Project Co set out in this Section 33.1.
- (d) Project Co shall indemnify UOHI 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 UOHI 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 UOHI or from the date identified (if any) applicable to an amount determined as payable by Project Co to UOHI 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 UOHI; or
 - (B) any act or omission by UOHI, any UOHI Indemnified Party or any of UOHI's own forces.

33.2 UOHI Indemnities to Project Co

- (a) UOHI 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 “**UOHI Indemnified Hazardous Substances Claims**”), and in this regard, it is expressly agreed and understood that such indemnification shall apply and extend to UOHI Indemnified Hazardous Substances Claims even if such UOHI 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 UOHI or any act or omission of UOHI or any UOHI Party, provided that there shall be excluded from the indemnity given by UOHI 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) UOHI 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 UOHI herein; or
 - (ii) any breach of this Project Agreement or any Implementing Agreement by UOHI.
- (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 UOHI set out in this Section 33.2.
- (d) UOHI shall indemnify Project Co for damages suffered or incurred on account of
 - (i) any payment not duly made by UOHI pursuant to the terms of this Project Agreement on the due date; (ii) any overpayment to or under payment by UOHI; or (iii) an amount determined as payable by UOHI 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 UOHI 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 UOHI under this Section 33.2 shall not be greater than the total cumulative liability of UOHI 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 UOHI or any UOHI 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 UOHI is the Beneficiary, UOHI 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 UOHI from all claims against UOHI, including those that might arise from the wilful misconduct, negligence or breach of contract by UOHI 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 UOHI under this Project Agreement; or
 - (iii) without limiting the provisions of Section 34.1(a)(ii), those arising from UOHI'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, UOHI'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 UOHI 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 UOHI 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 UOHI 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 UOHI under such policies;
- (ii) any claims of Project Co against UOHI for the payment of the Guaranteed Price (including Additional UOHI Payments), the Interim Completion Payment, 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 UOHI 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 UOHI'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. UOHI 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 UOHI 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:
 - (i) the Interim Completion Date with respect to the Interim Work intended to be occupied by UOHI prior to Substantial Completion, but only with respect to those portions of the Work directly affected by the occupancy by UOHI; and
 - (ii) with respect to the balance of the Work, 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 UOHI all such extended warranties in accordance with the provisions of Section 16.2(i).

36.2 Corrections

- (a) Project Co agrees to correct promptly, at its own expense, in a manner approved by UOHI, 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 UOHI to maintain effective operations of the Facility. Project Co shall use commercially reasonable efforts to respond to the requirement of UOHI to correct defective, deficient or non-compliant items in the Work within the time periods required by UOHI 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 UOHI is unable to contact Project Co and/or obtain the corrective work within such time period required by UOHI that UOHI'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 UOHI's own forces, such emergency steps taken by UOHI's own forces shall not invalidate any warranties in respect of such portion of the Work affected by such corrective actions of UOHI'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 UOHI, 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 UOHI with a schedule acceptable to UOHI 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 UOHI may have, UOHI may correct such Work and deduct the cost and expense thereof from any

UOHI Holdback held by UOHI or from any payment then or thereafter due to Project Co provided the Consultant has certified such cost to UOHI.

- (c) After the Final Completion Date, UOHI 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 UOHI.

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 UOHI 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 UOHI 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 UOHI, 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 UOHI, 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 UOHI.

36.6 Remedies Not Exclusive

- (a) The foregoing express warranties shall not deprive UOHI of any action, right or remedy otherwise available to UOHI 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 UOHI may pursue such other action, right or remedy.

36.7 Occupation by UOHI

- (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 UOHI, as more particularly described in the Specifications.

36.8 No Limitation

- (a) Subject to Section 11.19(f), neither the performance of work by UOHI's own forces nor the work of UOHI's other contractors, shall, except with respect to any damage caused by UOHI's own forces or UOHI'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 UOHI's expense are the property of UOHI.

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 UOHI 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 UOHI 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 UOHI'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 UOHI 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 UOHI and Infrastructure Ontario prior to such disclosure.
- (c) UOHI, 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, UOHI 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, UOHI 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 UOHI, in its Sole Discretion, may consider appropriate. In exercising its discretion, UOHI will be guided by the principles set out in Sections 38.2(b), and 38.2(c).

- (b) UOHI 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), UOHI 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), UOHI 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 UOHI 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 UOHI will be free to disclose any information, including Confidential Information, to each MOI, IO, MOHLTC and/or the Province, and, subject to compliance with FIPPA, MOI, 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 MOI, 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 MOI, IO, MOHLTC and/or the Province.

38.5 Freedom of Information

- (a) The Parties acknowledge and agree that FIPPA applies to UOHI, MOI, IO, MOHLTC and the Province and that MOI, 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 MOI, 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. MOI, 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 UOHI upon a termination of this Project Agreement, pursuant to Article 29 or is otherwise reasonably required by UOHI for the purposes of performing (or having performed) the Work, including the construction of the Facility, subject to payment by UOHI 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 UOHI 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 UOHI 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 UOHI 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 UOHI 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) UOHI 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 UOHI, 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 UOHI, which consent may be withheld in the Sole Discretion of UOHI.
- (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 UOHI Assignment

- (a) UOHI 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) UOHI 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 UOHI, 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 UOHI 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), UOHI 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 Construction 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 UOHI's role as a health care facility, (ii) may compromise the reputation of UOHI; (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 UOHI, which may be withheld in the Sole Discretion of UOHI.
- (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 UOHI'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 UOHI, 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 UOHI's role as a health care facility; (ii) may compromise the reputation of UOHI; 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 UOHI, which may be withheld in UOHI'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 UOHI's consent to a Change in Ownership or Change in Control pursuant to this Section 39.4, Project Co shall provide notice to UOHI 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 UOHI 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 UOHI 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 UOHI 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 UOHI 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 UOHI or any public body in connection with the Project;

(ii) entering into this Project Agreement or any other agreement with UOHI 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, UOHI 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 UOHI, 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 UOHI 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 UOHI 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 UOHI or any public body in connection with the Project; or
- (iv) defrauding or attempting to defraud or conspiring to defraud UOHI 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 UOHI 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, UOHI 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 UOHI 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 UOHI 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 UOHI 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 UOHI 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 UOHI 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, UOHI 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 UOHI 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 Contractor:

[REDACTED]

Attention: [REDACTED]

Facsimile No.: [REDACTED]

If to UOHI:

[REDACTED]

Attention: [REDACTED]

Facsimile No.: [REDACTED]

with a copy to the following
address:

Ontario Infrastructure and Lands Corporation

777 Bay Street, 6th Floor

Toronto, Ontario M5G 2C8

Fax No.: [REDACTED]

Attn.: [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:

HDR Architecture Associates Inc.
[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 UOHI

- (a) Where any Notice is required to be served on UOHI, the obligation to serve such Notice shall be fulfilled by serving it on UOHI 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 UOHI, 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 UOHI, 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) UOHI 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 UOHI 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 UOHI and Project Co are parties shall enure to the benefit of, and be binding on, UOHI 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.

**UNIVERSITY OF OTTAWA HEART
INSTITUTE**

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

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

I/We have authority to bind the corporation

**PCL OTTAWA HEART INSTITUTE 2014
LTD.**

Per: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation

SCHEDULE 1
DEFINITIONS AND INTERPRETATION

- 1. Definitions.** In the Project Agreement, unless the context otherwise requires:
- 1.1 “**Addenda**” means addenda Technical Addendum No. 01, Technical Addendum No. 02, Technical Addendum No. 03, Technical Addendum No. 04, Technical Addendum No. 05, Technical Addendum No. 06, Technical Addendum No. 07 and Technical Addendum No. 08 as issued by UOHI.
- 1.2 “**Additional UOHI Payments**” means amounts payable to Project Co pursuant to any Change Order or Change Directive under which UOHI is expressly responsible for an increase to the Guaranteed Price, which includes any cost arising out of a Change in the Scope of the Work initiated by UOHI pursuant to Schedule 11 – Change Procedure, or any payments to be made by UOHI pursuant to Articles 4, 21, 22, 23, 24 or 25 or any other payment to be made by UOHI, which, pursuant to the express provisions of the Project Agreement are to be paid as Additional UOHI Payments, but not including any progress payments made in respect of Base Progress Payments.
- 1.3 “**Affiliate**” means an “**affiliate**” as that term is used in the *Business Corporations Act* (Ontario) and any successor legislation thereto, and, in the case of Project Co, shall include each of the Shareholders.
- 1.4 “**Agent**” means The Toronto-Dominion Bank, acting in its capacity as agent for and on behalf of the Lenders.
- 1.5 “**Anticipated Final Completion Date**” has the meaning given in Section 16.3(a) of the Project Agreement.
- 1.6 “**Applicable Law**” means:
- (a) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
 - (b) any Authority Requirement; and
 - (c) any judgment of a relevant court of law, board, arbitrator or administrative agency which is a binding precedent in the Province of Ontario,
- in each case, in force in the Province of Ontario, or otherwise binding on Project Co, any Project Co Party, UOHI or any UOHI Party and, in particular, shall include the *University of Ottawa Heart Institute Act* and the *Public Hospitals Act* (Ontario).

- 1.7 “**Apprenticeship Plan**” has the meaning given in Section 11.24(a) of the Project Agreement.
- 1.8 “**Approved Subcontractor Work**” means the work to be performed by each of the Approved Subcontractors set out in Schedule 19 – List of Project Co Parties.
- 1.9 “**Approved Subcontractors**” means a subcontractor which is on the list of Subcontractors approved by UOHI pursuant to the Request for Proposals process and included on the list of Project Co Parties set out in Schedule 19 of the Project Agreement.
- 1.10 “**As-Built Drawings**” or “**As-Built**” means a set of Contract Documents marked-up by Project Co or a Project Co Party during construction, to record changes in the Work from the design documents and to illustrate actual locations of hidden utilities or concealed elements. The term may also be interpreted to mean a set of Contract Documents containing Project Co’s annotations.
- 1.11 “**Assignable Subcontract Agreement**” means the form of agreement attached as Schedule 20 to the Project Agreement.
- 1.12 “**Assignable Subcontract Agreement for Construction Contract**” means the form of agreement attached as Schedule 23 to the Project Agreement.
- 1.13 “**Assignment and Assumption Agreement**” means the agreement to be entered into between UOHI, Project Co, the Construction Guarantor and Diligens Inc., in the form set out as Appendix E to Schedule 3 – Completion Documents.
- 1.14 “**Associated Liabilities**” has the meaning given in Section 4.22(b)(ii)(B) of the Project Agreement.
- 1.15 “**Authority Requirement**” means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority to the extent that same have the force of law.
- 1.16 “**Base Progress Payments**” means base progress payments made in accordance with the Construction Contract other than the Interim Completion Payment and the Substantial Completion Payment, but not including Additional UOHI Payments.
- 1.17 “**Beneficiary**” has the meaning given in Section 33.3(a) of the Project Agreement.
- 1.18 “**Bonds**” means any one or more of the Performance Bond and Labour and Material Payment Bond and collectively, means all of them, which Bonds are in the forms attached as Appendices B and C, respectively, to Schedule 13 – Insurance and Performance Security Requirements.

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- 1.19 “**Building Code**” means the regulations made under Section 34 of the *Building Code Act*, 1992 (Ontario), as amended or replaced from time to time.
- 1.20 “**Building Permits**” means City of Ottawa Building Permit #[REDACTED].
- 1.21 “**Business Day**” means any day other than a Saturday, a Sunday, a statutory holiday in the Province of Ontario or any day on which banks are not open for business in the City of Ottawa, Ontario.
- 1.22 “**Cash Allowance Disbursement Authorization**” is an authorization to Project Co by UOHI to expend monies from cash allowances included in the Guaranteed Price, as contemplated under Section 3.2 of the Project Agreement.
- 1.23 “**Certificate of Recognition**” means the certification issued by IHSA to a person confirming that the health and safety management systems of such person comply with the terms, provisions and conditions of the COR Program.
- 1.24 “**Certified Cost to Complete**” means the value of the Work remaining to be performed under the Project Agreement following the last day of the agreed monthly payment period ending immediately prior to the Substantial Completion Payment Date, as certified to UOHI by the Consultant provided that for greater certainty, the Certified Cost to Complete shall not include any amount in respect of Minor Deficiencies (as provided in Sections 16.1(f) and 16.1(h) of the Project Agreement) to the extent that such amount is included in the UOHI Holdback.
- 1.25 “**Certified H&S Inspector**” means an individual having the necessary credentials recognized by the COR Program for the purpose of such individual performing any inspections as may be required to be performed in accordance with Section 11.27 of this Project Agreement.
- 1.26 “**Change Directive**” means a written instruction prepared by the Consultant and signed by UOHI directing a Change in the Scope of the Work within the general scope of the Contract Documents.
- 1.27 “**Change in Control**” means, with respect to a person:
- (a) any Change in Ownership, where the effect of such change is to result in control of the decisions made by or on behalf of such person subsequently being with a different entity or entities than prior to such change;
 - (b) any other change in respect of the power to elect a majority of the directors of the person or otherwise control the decisions made on behalf of such person; or

- (c) any other change of direct or indirect power or authority through any contractual right or other power or interest with or over a person to influence, direct, cause to change or prevent from changing the approval of a decision, direction of the management, actions or policies of such person.
- 1.28 **“Change in Law”** means the coming into effect or repeal (without re-enactment or consolidation) in Ontario of any Applicable Law, or any amendment or variation of any Applicable Law, including any judgment of a relevant court of law which changes binding precedent in Ontario, in each case after the date of the Project Agreement.
- 1.29 **“Change in Ownership”** means, with respect to a person, any change in ownership, whether beneficial or otherwise, of any of the shares or units of ownership of such person, or in the direct or indirect power to vote or transfer any of the shares or units of ownership of such person.
- 1.30 **“Change in the Scope of the Work”** or **“Scope Change”** shall mean any change in the scope of the Work from that shown in or which is properly inferable, readily apparent or readily discoverable from the Contract Documents and relating to the quantity or quality of Products or materials, components or equipment to be incorporated into the Work, or any specified method of installation of materials or equipment into the Work, including changes arising from Design Issues falling within categories “B” and “D” in the Risk Assessment Guidelines, but does not include a Project Co Design Contingency expenditure. It is agreed that refinements and detailing will be accomplished from time to time with respect to the Contract Documents, including the addition of items or materials which may have been omitted from the Contract Documents but which are necessary to complete a detail shown, specified or readily apparent or properly inferable therefrom. Such refinements and detailing shall not constitute a Change in the Scope of the Work and will not result in any adjustment of the Guaranteed Price, but will be treated as a Project Co Design Contingency expenditure in accordance with Section 11.17 of the Project Agreement. For greater certainty, it is understood and agreed that where Project Co is entitled to any extension of time or compensation for additional costs or expenses pursuant to the express provisions of the Contract Documents, the matter giving rise to such extension of time or additional costs or expenses shall be deemed to be a Change in the Scope of the Work and shall be processed as a Change Order pursuant to Schedule 11 – Change Procedure.
- 1.31 **“Change Order”** means a written amendment to the Contract Documents prepared in accordance with Schedule 11 – Change Procedure, by the Consultant and signed by UOHI and Project Co stating their agreement upon:
- (a) a Change in the Scope of the Work;

- (b) the method of adjustment or the amount of the adjustment in the Overhead and Profit Fee, if any;
 - (c) the method of adjustment or the amount of the adjustment in the Guaranteed Price; and
 - (d) the extent of the adjustment in the Contract Time, if any.
- 1.32 “**Clinical Services**” means the direct and/or indirect provision of medical and healthcare services at the Facility and the Existing Facility to or for the benefit of persons requesting or requiring such services, including but, not limited to, all management and administrative operations in support thereof.
- 1.33 “**Commercial Close**” has the meaning given in Section 2.1(a) of the Project Agreement.
- 1.34 “**Commissioning**” shall mean the process of:
- (a) moving a building from a static condition to a dynamic condition;
 - (b) preparing a building, or a system for its intended use; and
 - (c) the management of testing, verifying, recording and documenting and the training of UOHI’s employees regarding the operation of systems within a building to assure specified operations through the range of operating conditions,
- and shall include, for greater certainty but without limitation, the requirement that all active building systems and technologies forming part of the Work perform in accordance with the design intent, manufacturer’s performance specifications and the Contract Documents.
- 1.35 “**Commissioning Agent**” shall mean the person or entity chosen by UOHI, if any, to assist with Commissioning.
- 1.36 “**Compensation Event**” has the meaning given in Section 23.1(a) of the Project Agreement.
- 1.37 “**Compensation Payment**” means the Default Termination Payment or the Non-Default Termination Sum, as defined in Schedule 12 – Compensation on Termination.
- 1.38 “**Complex Structure**” means any post-tensioned or pre-tensioned structure that has undergone significant structural alteration making it difficult for personnel at the Site to predict the direction of forces or likely collapse mechanism to be experienced by such structure in connection with any Demolition of all or any part of such structure.
- 1.39 “**Complex Structure Demolition**” means any Demolition where:

- (a) significant structural elements, such as girders, columns, shearwalls or slabs, or Complex Structures are being removed, de-stressed, altered or removed;
 - (b) large penetrations are being created through slabs;
 - (c) any Demolition may cause the collapse of any building or structure (or any portion thereof) and such collapse may directly impact adjacent occupied areas of a building or structure and potentially jeopardize the safety of workers, staff or the general public using such building or structure; and
 - (d) the Demolition of any building or structure (or any portion thereof) has the potential to result in any materials collapsing onto or interfering with any pedestrian right-of-way or into an occupied part of any building or structure.
- 1.40 “**Confidant**” has the meaning given in Section 38.7(a)(i) of the Project Agreement.
- 1.41 “**Confidential Information**” means all confidential and proprietary information which is supplied by or on behalf of a Party, whether before or after the date of the Project Agreement, which is clearly marked as confidential or proprietary when first disclosed, including information disclosed orally if it is identified as confidential at the time of disclosure and further confirmed in writing as confidential within 14 days of disclosure.
- 1.42 “**Construction Contract**” means the guaranteed price construction contract between Project Co and the Contractor dated on or about the date of the Project Agreement.
- 1.43 “**Construction Guarantor**” means PCL Constructors Canada Inc..
- 1.44 “**Construction Schedule**” means each detailed computerized schedule prepared by Project Co in accordance with the terms and conditions of the Contract Documents, as updated from time to time in accordance with Section 12.1 of the Project Agreement.
- 1.45 “**Construction Work**” means the construction, supply, installation, testing, Commissioning and completion of the Facility, including, rectification of any Minor Deficiencies, all warranty work and any other related activities required pursuant to the provisions of the Project Agreement, provided, however, that for the purpose of this defined term, the term “Project Agreement” shall be deemed not to include any of the activities, covenants, terms or conditions contained in the list set out below in numbered items (a) through (n) inclusive (including the actual executed versions of the documents referred to below), and for greater certainty shall not include any covenant, agreement, undertaking or obligation related to the Financing or the Cost of Financing:
- (a) Recitals
 - (b) Article 2

- (c) Sections 4.2, 4.3, 4.4 and 4.9
 - (d) Sections 6.3 and 6.4
 - (e) Article 7
 - (f) Section 26.1(a)(iii)
 - (g) Sections 39.3(c) and 39.3(d)
 - (h) Article 42
 - (i) Schedule 3 – Completion Documents
 - (j) Schedule 4 – Project Co Information
 - (k) Schedule 5 – Form of Lender’s Direct Agreement
 - (l) Schedule 8 – [REDACTED]
 - (l) Schedule 18 – Payments and Holdbacks
 - (m) Schedule 22 – Form of Performance Guarantee of Construction Guarantor
 - (n) Schedule 23 – Form of Assignable Subcontract Agreement for Construction Contract
 - (o) Schedule 24 – Form of Trust Account Acknowledgment Agreement
- 1.46 “**Consultant**” means HDR Architecture Associates, Inc., or such other architect or engineer or entity licensed to practice in the Province of Ontario, as may be appointed from time to time by UOHI. The term Consultant means the Consultant or the Consultant’s representative.
- 1.47 “**Contamination**” means the presence of any Hazardous Substance in the environment, except Hazardous Substances present in the environment in concentrations below applicable standards as set by Applicable Law. If Contamination is present in soil, surface water or groundwater, then the soil, surface water or groundwater, as applicable, containing the Contamination shall also be deemed for the purposes of the Project Agreement to be Contamination.
- 1.48 “**Contemplated Change Notice**” means a notice from UOHI to Project Co describing a contemplated Change in the Scope of the Work.

- 1.49 “**Contract Documents**” means the Project Agreement, the Construction Contract, the Drawings and Specifications, the Addenda, the Site Information and Assignable Subcontract Agreements.
- 1.50 “**Contract Time**” means the time commencing on the day following Financial Close to each of i) a Phased Occupancy Date, ii) the Scheduled Interim Completion Date, iii) the Scheduled Substantial Completion Date, and iv) the Final Completion Date.
- 1.51 “**Contractor**” means PCL Constructors Canada Inc., engaged by Project Co to perform the Work and any substitute building contractor engaged by Project Co as may be permitted by the Project Agreement.
- 1.52 “**COR Certification**” means, in respect of a person, receipt by such person of its: (i) Certificate of Recognition; and (ii) Letter of Good Standing.
- 1.53 “**COR Program**” means the national safety program known as “The Certificate of Recognition (COR™)”, being a safety program that enables persons to assess their health and safety management systems to manage risks, establish controls, and minimize the incidence of injury and illness to their workers, and being nationally trademarked and endorsed by participating members of the Canadian Federation of Construction Safety Associations, or such other national safety program approved by UOHI.
- 1.54 “**Cost of the Financing**” means all costs and expenses incurred in connection with the Financing pursuant to the indicative financing term sheet included in the Proposal Submission and Lending Agreements, including all interest, fees, expense reimbursements, pre-payment and breakage costs and all other costs and expenses, as set out in Schedule 8 – [REDACTED].
- 1.55 “**Cost of the Work**” means the cost to Project Co of performing the Work as set out in Schedule 8 – [REDACTED] and shall include all amounts to be included in the Cost of the Work set out in the Contract Documents, including, for greater certainty, the Project Co Design Contingency and the Project Co Fee.
- 1.56 “**CPM**” has the meaning given in Section 12.1(a)(ii) of the Project Agreement.
- 1.57 “**Data Room Contract**” means the contract dated January 15, 2014 between Diligens Inc. and The Ottawa Hospital, as assigned by The Ottawa Hospital to UOHI pursuant to an assignment and assumption agreement dated as of November 14, 2014 between The Ottawa Hospital and UOHI.
- 1.58 “**Debt Amount**” has the meaning given in Schedule 12 - Compensation on Termination.

- 1.59 “**Debt Service Amount**” means, for any period, the principal and interest payable by Project Co or any Project Co Party to the Lenders in the normal course under the Lending Agreements.
- 1.60 “**Default Termination Payment**” has the meaning given in Schedule 12 - Compensation on Termination.
- 1.61 “**Delay Events**” has the meaning given in Section 22.1(a) of the Project Agreement.
- 1.62 “**Demolition**” means the removal of a building or structure, as the case may be, or of any material part of a building or structure.
- 1.63 “**Demolition Default Event**” has the meaning given in Section 11.26(b) of the Project Agreement.
- 1.64 “**Demolition Guidelines**” means those guidelines set forth in the document entitled “Professional Engineers Providing Services for Demolition of Buildings and other Structures” published by the Professional Standards Committee established by the Professional Engineers of Ontario and having a publication date of April, 2011.
- 1.65 “**Demolition Plan**” means a plan or other document prepared by a professional engineer, limited licence holder or provisional licence holder in accordance with subsection (3) of the Performance Standards Regulation with respect to the demolition of a building or structure, and includes any changes to the plan or other document that are made by a professional engineer, limited licence holder or provisional licence holder.
- 1.66 “**Demolition Requirements**” has the meaning given in Section 11.26(a) of the Project Agreement.
- 1.67 “**Demolition Specifications**” means those specifications relating to any Demolition prepared by Project Co in accordance with Section 11.26(a)(iv)(A) of this Project Agreement.
- 1.68 “**Demolition Supervisor**” has the meaning given in Section 11.26(a)(ii) of the Project Agreement.
- 1.69 “**Design Issue**” means any matter arising under, with respect to, or in connection with the Contract Documents, and in particular, the Drawings and Specifications, which requires clarification in order to complete the Work.
- 1.70 “**Direct Losses**” means all damages, losses, liabilities, penalties, fines, assessments, claims, actions, costs, expenses (including the reasonable cost of legal or professional services, legal costs being on a full indemnity basis), suits, proceedings, demands and

charges, whether arising under statute, contract or at common law, except Indirect Losses.

1.71 “**Direct or Indirect Power or Control**” means the direct or indirect power or control over the decisions, management, actions or policies of a person, including through the direct or indirect power or control over the decisions, management, actions or policies of any persons having direct or indirect power or control over the decisions, management, actions or policies of any other person, whether through:

- (a) ownership, beneficial or otherwise, of any of the shares, units or equity interests of a person;
- (b) the direct or indirect power to vote any of the shares, units or equity interests of a person; or
- (c) the direct or indirect power or authority to influence or direct the approval of a decision, the management, actions or policies of a person or to prevent the approval of a decision, the management, actions or policies of a person through any contractual right or other power or interest with or over a person.

1.72 “**Disclosed Hazardous Substances**” has the meaning given in Section 14.1(c)(i) of the Project Agreement.

1.73 “**Discriminatory Change in Law**” means any Change in Law the effect of which is to discriminate directly against or impose additional Taxes which apply specifically to:

- (a) health care facilities whose construction and financing are procured by a contract similar to the Project Agreement in relation to other similar health care facilities;
- (b) the Facility in relation to other health care facilities;
- (c) Project Co in relation to other persons; or
- (d) persons undertaking projects for construction and financing that are procured by a contract similar to the Project Agreement in relation to other persons undertaking similar projects procured on a different basis,

except that such Change in Law shall not be a Discriminatory Change in Law:

- (e) where it is in response to any act or omission on the part of Project Co which contravenes Applicable Law (other than an act or omission rendered illegal by virtue of the Discriminatory Change in Law itself);

- (f) solely on the basis that its effect on Project Co is greater than its effect on other companies; or
 - (g) where such Change in Law is a change in Taxes that affects companies generally.
- 1.74 “**Dispute Resolution Procedure**” means the procedure set out in Schedule 14 – Dispute Resolution Procedure.
- 1.75 “**Drawings**” or “**drawings**” means the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location, and dimensions of the Work, and generally including plans, elevations, sections, details, schedules and diagrams and includes those Drawings listed in Schedule 2 – List of Consultants, Drawings and Specifications.
- 1.76 “**Economic Interest**” means any right to receive, directly or indirectly and whether in cash or in kind, a payment, repayment, fee, interest, dividend, distribution, redemption or any other consideration of benefit or value to the recipient of any nature whatsoever.
- 1.77 “**Emergency**” means any situation, event, occurrence, multiple occurrences or circumstances:
- (a) that:
 - (i) constitutes or may constitute a hazard to or jeopardizes or may jeopardize or pose a threat to health and safety of any persons (including UOHI) or any part of or the whole of the Facility;
 - (ii) causes or may cause damage or harm to property, buildings and/or equipment; or
 - (iii) materially interferes with or prejudices or may materially interfere with or prejudice the safe operation of the Facility, any part of the Site or, the conduct of Work,and which, in the opinion of UOHI, requires immediate action to prevent and/or mitigate the occurrence (or risk of the occurrence) of the foregoing; or
 - (b) which gives rise to an emergency, as determined by any statutory body including (notwithstanding the generality of the foregoing) the police, the armed forces, fire or ambulance services.
- 1.78 “**Encumbrance**” means any mortgage, lien, pledge, judgment, execution, charge, security interest, restriction, claim or encumbrance of any nature whatsoever, including

claims of the Workplace Safety and Insurance Board, Canada Revenue Agency, and other Governmental Authorities.

1.79 “**Environmental Reports**” means:

(a) “The Ottawa Hospital – Civic Campus, Phase One Environmental Site Assessment, Area of Proposed University of Ottawa Heart Institute Life Support Capital Project Ottawa, Ontario” prepared by Concentric Associates International Incorporated, dated June 21, 2013; and

(b) “Phase Two Environmental Site Assessment: Area of Proposed University of Ottawa Heart Institute Life Support Capital Project, Ottawa, Ontario” prepared by Concentric Associates International Incorporated, dated December 31, 2013.

1.80 “**Equipment**” means all equipment listed in 11 70 00 S of the Specifications, being the Type A Equipment, the Type B Equipment, the Type C Equipment, the Type D Equipment and the Type E Equipment.

1.81 “**Equipment List**” means the list of the Equipment contained in 11 70 00 S of the Specifications as listed in Schedule 2 - List of Drawings and Specifications.

1.82 “**Equipment Subcommittee**” has the meaning given in Section 13.6(a) of the Project Agreement.

1.83 “**Existing Facility**” means the existing building of UOHI and The Ottawa Hospital within parts of which and adjoining which the Work will occur.

1.84 “**Facility**” means:

(a) all buildings, facilities and other structures;

(b) all site services, utilities, roadways and parking spaces required to support such buildings, facilities and structures; and

(c) all supporting systems, infrastructure and improvements.

required by the Contract Documents and whether or not in the course of construction, installation or completion of the Project and generally described as the University of Ottawa Heart Institute Cardiac Life Support and Services Redevelopment Project. This description does not in any manner limit the scope of the Work as set out in the Contract Documents.

1.85 “**Final Completion**” shall occur when the Work, except those items arising from the provisions of Article 35, has been deemed to have been completed in accordance with the

- applicable provisions of the *Construction Lien Act* (Ontario) and is so certified by the Consultant in accordance with the Project Agreement, including satisfying the requirements of Section 4 of Schedule 18.
- 1.86 “**Final Completion Certificate**” means the certificate to be issued by the Consultant in accordance with Section 16.4 of the Project Agreement.
- 1.87 “**Final Completion Countdown Notice**” has the meaning given in Section 16.3(a) of the Project Agreement.
- 1.88 “**Final Completion Date**” means the date on which Final Completion is achieved as evidenced by the certificate of Final Completion of the Work issued by the Consultant, as such date shall be stated therein.
- 1.89 “**Final Completion Notice**” has the meaning given in Section 16.4(b) of the Project Agreement.
- 1.90 “**Financial Close**” means the date of execution and delivery of the Implementing Agreements and the Lending Agreements.
- 1.91 “**Financial Close Target Date**” means November 27, 2014 as such date may be extended in accordance with the provisions of the Project Agreement.
- 1.92 “**Financial Model**” means the Financial Model included in Schedule 8 – [REDACTED].
- 1.93 “**Financing**” means the financing with Lender that is consistent in all material respects with Schedule 8 - [REDACTED], to finance the Base Progress Payments until the Substantial Completion Payment Date.
- 1.94 “**FIPPA**” means the *Freedom of Information and Protection of Privacy Act* (Ontario).
- 1.95 “**Force Majeure**” has the meaning given in Section 25.1(a) of the Project Agreement.
- 1.96 “**Funding Letter**” means the funding letter from the MOHLTC to UOHI dated November 18, 2014 evidencing the commitment of the MOHLTC to fund a portion of UOHI’s financial obligations under the Project Agreement and the other Implementing Agreements, as amended, supplemented, restated or replaced from time to time, in accordance with the Project Agreement.
- 1.97 “**Geotechnical Reports**” means:
- (a) “Geotechnical Investigation, University of Ottawa Life Support Project, The Ottawa Hospital Civic Campus, Ruskin Avenue, Ottawa, Ontario” prepared by Golder Associations, dated February 2013;

- (b) “Hydrogeological Study in Support of Category 3 Application for a Permit to Take Water, University of Ottawa Life Support Project, The Ottawa Hospital, Civic Campus, Ruskin Avenue, Ottawa, Ontario prepared by Golder Associates, dated February 2013;
- (c) Technical Memorandum: Ottawa Hospital Civic Campus, Elevator Pit Rock Excavation Analysis prepared by Golder Associates, dated June 14, 2013; and
- (d) Technical Memorandum: Expected Ground Vibration Levels and Limits, University of Ottawa Life Support Project, The Ottawa Hospital Civic Campus, Ottawa, Ontario prepared by Golder Associates, dated July 2, 2013.
- 1.98 “**Good Industry Practice**” means using standards, practices, methods and procedures to a good commercial standard, in conformity with Applicable Law and having regard to the standard of care set out in Section 11.2(a)(viii) of the Project Agreement.
- 1.99 “**Government Entity**” means one or more of the Province, MOI, MOHLTC, UOHI and the Government of Canada.
- 1.100 “**Governmental Authority**” means the MOHLTC and any other federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, department, or branch of any of the foregoing, having legal jurisdiction in any way over the Project, any aspect of the performance of the Project Agreement or any of the Implementing Agreements in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.
- 1.101 “**Guarantee of Construction Guarantor**” means a guarantee given by Construction Guarantor in the form of Schedule 22.
- 1.102 “**Guaranteed Price**” is the amount referred to in Section 3.1(a) of the Project Agreement.
- 1.103 “**Hazardous Substances**” means any contaminant, pollutant, dangerous substance, toxic substance, liquid waste, industrial waste, gaseous waste, hauled liquid waste, hazardous material, or hazardous substance as defined or identified pursuant to any Applicable Law.
- 1.104 “**Health and Safety Certification**” means, in respect of a person, such person having received its COR Certification or its OHSAS 18001 Accreditation.
- 1.105 “**Health and Safety Certification Maintenance Plan**” has the meaning given in Section 11.25(b)(iv)(B).

- 1.106 “**Health and Safety Certification Reinstatement Plan**” has the meaning given in Section 11.25(b)(iii)(B).
- 1.107 “**Health Specific Change in Law**” means any Change in Law which principally affects or principally relates only to the provision or operation of healthcare premises.
- 1.108 “**Hedge Provider**” means a person that has entered into a Hedging Agreement with Project Co pursuant to the Lending Agreements, together with their successors and permitted assigns.
- 1.109 “**Hedging Agreement**” means an agreement relating to the hedging of interest rate risk entered into by Project Co and the Hedge Provider(s) pursuant to the Lending Agreements.
- 1.110 “**Heritage Guidelines and Protocols**” means those heritage guidelines established by Applicable Law.
- 1.111 “**HST**” means the value-added tax payable and imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.
- 1.112 “**H&S Certification Default Event**” has the meaning given in Section 11.25(b)(i).
- 1.113 “**H&S Inspection**” has the meaning given in Section 11.27(a).
- 1.114 “**H&S Inspection Report**” has the meaning given in Section 11.27(a).
- 1.115 “**IHSA**” means Infrastructure Health and Safety Association, a not-for-profit occupational safety organization formed on January 1, 2010 that provides health and safety training material and services to Ontario construction, electrical utilities and transportation industries, and is accredited in Ontario to issue and grant Certificates of Recognition and Letters of Good Standing, or such other person so accredited in Ontario to issue and grant Certificates of Recognition and Letters of Good Standing.
- 1.116 “**Implementing Agreements**” means the Construction Contract, the Guarantee of Construction Guarantor, the Lender’s Direct Agreement and all other documents and agreements delivered by the Parties at Financial Close under Section 2.3 of the Project Agreement, excluding the Project Agreement, the Lending Agreements and Project Co’s public announcement release(s).
- 1.117 “**Indemnifiable Taxes**” has the meaning given in Section 4.22(b)(ii)(A) of the Project Agreement.
- 1.118 “**Indemnifier**” has the meaning given in Section 33.3(a) of the Project Agreement.

- 1.119 “**Indirect Losses**” has the meaning given in Section 35.1(a) of the Project Agreement.
- 1.120 “**Infrastructure Ontario**” or “**IO**” means the Ontario Infrastructure and Lands Corporation.
- 1.121 “**Insurance**” means the insurance contemplated in Schedule 13 – Insurance and Performance Security.
- 1.122 “**Insurance and Bonding Trust Agreement**” means the agreement substantially in the form of Schedule 17 – Form of Insurance and Bonding Trust Agreement.
- 1.123 “**Interest Rate**” means [REDACTED]% as adjusted by the increase or decrease in the Interest Reference Rate as set out in Section 3.1(b) of the Project Agreement.
- 1.124 “**Interest Reference Rate**” means the reference benchmark rate of interest identified in the Financial Model and used in the calculation of the Project Debt Interest Cost, and for greater clarity, is the base rate of interest exclusive of any stated or imbedded spread, (including credit, swap or other types of spread) or fees.
- 1.125 “**Interim Completion**” means that:
- (a) Project Co has performed its obligations under Section 16.1 of the Project Agreement;
 - (b) the Interim Work is available for occupancy by UOHI in accordance with the standards for occupancy set out in the Building Code and the requirements of local municipal building authorities in the City of Ottawa;
 - (c) the Commissioning of the Interim Work has been completed in accordance with the Contract Documents to the extent required to meet the requirements for occupancy of the Interim Work set out in the Building Code and the building services required for UOHI to carry out its Commissioning activities with respect to the Interim Work are available in accordance with the Specifications; and
 - (d) all Interim Deliverables other than those included as Interim Minor Deficiencies in accordance with Section 16.1(g) of the Project Agreement have been assigned and provided to UOHI.
- 1.126 “**Interim Completion Date**” means the date on which Interim Completion is achieved as evidenced by the certificate of Interim Completion issued by the Consultant, as such date shall be stated therein.
- 1.127 “**Interim Completion Payment**” means the amount equal to the lesser of (i) [REDACTED]% of the Cost of the Work and (ii) \$[REDACTED].

- 1.128 “**Interim Completion Payment Date**” means the 10th Business Day following the date of delivery by the Consultant of its report under Section 16.1(c) of the Project Agreement confirming Interim Completion.
- 1.129 “**Interim Deliverables**” has the meaning given in Section 16.1(g) of the Project Agreement.
- 1.130 “**Interim Minor Deficiencies**” means any defects, deficiencies and items of outstanding Interim Work (including in relation to seasonal work), which would not materially impair UOHI’s use and enjoyment of the Interim Work and includes any damage to the Interim Work of UOHI’s own forces or the work of UOHI’s other contractors caused by Project Co.
- 1.131 “**Interim Minor Deficiencies List**” means the list of Minor Deficiencies prepared by the Consultant in accordance with Section 16.1(b) of the Project Agreement.
- 1.132 “**Interim Preliminary Minor Deficiencies List**” means the list of Minor Deficiencies identified by Project Co in accordance with Section 16.1(a) of the Project Agreement
- 1.133 “**Interim Work**” means all work required for completion and commissioning and the achievement of the Phased Occupancy Date in respect of “Phase 3” as such Phase is defined in the Specifications, including the required,
- (a) civil, architectural, mechanical, electrical and structural work; and
 - (b) tie in to the Existing Facility,
- as described in the Contract Documents, and including rectification of any Interim Minor Deficiencies, any portion of the Work requiring completion in order to allow the occupancy by UOHI of the Interim Work, and other activities required pursuant to the provisions of the Project Agreement and, for greater certainty, does not include the Financing.
- 1.134 “**IPFP Framework**” has the meaning given in Recital D of the Project Agreement.
- 1.135 “**Irrecoverable Tax**” has the meaning given in Section 4.22(b) of the Project Agreement.
- 1.136 “**Key Personnel**” has the meaning given in Section 8.4(a) of the Project Agreement.
- 1.137 “**Labour and Material Payment Bond**” means, collectively, the Labour and Material Payment Bond and the Multiple Obligee Rider to Labour and Material Payment Bond in the form attached as Appendix C to Schedule 13 – Insurance and Performance Security Requirements.

- 1.138 “**Lease**” means the ground lease between The Ottawa Hospital and University of Ottawa Heart Institute dated May 15, 2014.
- 1.139 “**Legislative Holdback**” means the holdback to be maintained under Part IV of the *Construction Lien Act* (Ontario).
- 1.140 “**Legislative Holdback Payment Date**” means the date for payment of the Legislative Holdback pursuant to Section 4 of Schedule 18 - Payments and Holdbacks.
- 1.141 “**Lender**” means any or all of the persons acting arm’s length to Project Co and each Project Co Party who provide the Financing, and for greater clarity, excludes any Affiliate of Project Co or of a Project Co Party.
- 1.142 “**Lender’s Consultant**” means any consultant appointed from time to time by Lender providing Financing for the Work. Nothing contained in the Contract Documents and no action taken by Lender’s Consultant in connection with the Work or the Contract Documents shall constitute direction and/or control by UOHI, Project Co or Lender providing Financing for the Work.
- 1.143 “**Lender’s Direct Agreement**” means the direct agreement to be entered into between UOHI, Lender and Project Co in the form set out in Schedule 5 – Lender’s Direct Agreement.
- 1.144 “**Lending Agreements**” has the meaning given in Schedule 5 – Lender’s Direct Agreement.
- 1.145 “**Letter of Credit Provider**” has the meaning given in Section 2.2(a) of the Project Agreement.
- 1.146 “**Letter of Good Standing**” means the document issued by IHSA to a person confirming that the internal maintenance audit performed by such person regarding its health and safety management systems has been approved by ISHA, and that such person has successfully completed such internal audit pursuant to the terms and conditions of the COR Program.
- 1.147 “**Load-Path Diagram**” means a graphically illustrated diagram that indicates in all relevant detail (including by use of colour-coded arrows indicating the directions of forces caused by dead loads, live loads, vertical loads and lateral loads) how the structural loads are transferred throughout a building or structure that is to be the subject of a Demolition.
- 1.148 “**Local Health Integration Network**” means the Local Health Integration Network as defined pursuant to the *Local Health System Integration Act* (Ontario).

- 1.149 “**Longstop Date**” has the meaning given in Section 26.1(a)(ii) of the Project Agreement.
- 1.150 “**Make Good**”, “**Made Good**” and derivatives thereof, means repairing, restoring, refurbishing, rehabilitating or performing filling operation on the Work as required under the Contract Documents or any existing components disturbed due to the Work, to at least the condition existing at the commencement of the Work, in terms of construction integrity, finishes, alignment with existing adjoining surfaces, compatibility of materials, sound attenuation criteria, exfiltration/infiltration requirements, air/vapour barrier and thermal continuity.
- 1.151 “**Minor Deficiencies**” means any defects, deficiencies and items of outstanding Work (including in relation to seasonal work), which would not materially impair UOHI’s use and enjoyment of the Work and includes any damage to the Work of UOHI’s own forces or the work of UOHI’s other contractors caused by Project Co.
- 1.152 “**Minor Deficiencies List**” has the meaning given in Section 16.2(b) of the Project Agreement.
- 1.153 “**MOHLTC**” means Her Majesty the Queen in right of Ontario as represented by the Minister of Health and Long-Term Care, and includes any successors thereto or persons exercising delegated power under such Minister’s authority.
- 1.154 “**MOI**” means Her Majesty the Queen in right of Ontario as represented by the Minister of Infrastructure, and includes any successors thereto or persons exercising delegated power under the Minister’s authority.
- 1.155 “**Multiple Obligee Rider to Labour and Material Payment Bond**” means the Multiple Obligee Rider amending the Labour and Material Payment Bond to add UOHI and Lender as additional named Obligees, in the form attached as Exhibit 1 to Appendix C of Schedule 13 – Insurance and Performance Security Requirements.
- 1.156 “**Multiple Obligee Rider to Performance Bond**” means the Multiple Obligee Rider amending the Performance Bond to add UOHI and Lender as additional named Obligees, in the form attached as Exhibit 1 to Appendix B of Schedule 13 – Insurance and Performance Security Requirements.
- 1.157 “**No-Default Payment Compensation Amount**” means the rate of interest per annum quoted by The Toronto-Dominion Bank from time to time as its reference rate for Canadian Dollar demand loans made to its commercial customers in Canada and which it refers to as its “prime rate”, as such rate may be changed from time to time.
- 1.158 “**Non-Default Termination Sum**” has the meaning given in Schedule 12 – Compensation on Termination.

- 1.159 “**Non-Resident**” means a person that is, at the relevant time, a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).
- 1.160 “**Notice**” has the meaning given in Section 42.1(a) of the Project Agreement.
- 1.161 “**Notice of Project**” means a notice of project filed with the Ministry of Labour in compliance with O. Reg 213/91 under the OHSA.
- 1.162 “**OHSA**” means the *Occupational Health and Safety Act* (Ontario).
- 1.163 “**OHSAS 18001**” means the international standard for occupational health and safety management systems developed by the Occupational Health and Safety Advisory Services Project Group, a British body formed to develop the standard.
- 1.164 “**OHSAS 18001 Accreditation**” means, in respect of a person, such person having received certification in respect of its health and safety management systems that such systems comply with the requirements of OHSAS 18001.
- 1.165 “**Overhead and Profit Fee**” means the amount stipulated in Schedule 11 – Change Procedure, which excludes HST.
- 1.166 “**Party**” means either UOHI or Project Co, and “**Parties**” means both UOHI and Project Co, but, for greater certainty, such definitions do not include IO or the Province, including Her Majesty the Queen in right of Ontario, as represented by either the Minister of Health and Long-Term Care or the Minister of Infrastructure, or otherwise.
- 1.167 “**Patient Information**” means Personal Information of patients and clients of UOHI and other users of the Facility.
- 1.168 “**Payment Compensation Amount**” means an amount equal to simple interest at an annual rate equal to [REDACTED]% over the rate of interest per annum quoted by The Toronto-Dominion Bank from time to time as its reference rate for Canadian Dollar demand loans made to its commercial customers in Canada and which it refers to as its “prime rate”, as such rate may be changed from time to time.
- 1.169 “**Performance Bond**” means collectively, the Performance Bond and the Multiple Oblige Rider to the Performance Bond in the form attached as Appendix B to Schedule 13 – Insurance and Performance Security Requirements.
- 1.170 “**Performance Standards Regulation**” means Ontario Regulation 260/08 made under the Professional Engineers Act (Ontario).
- 1.171 “**Permits, Licences and Approvals**” means the UOHI Permits, Licences and Approvals and the Project Co Permits, Licences and Approvals.

1.172 “**Permitted Borrowing**” means:

- (a) any advance to Project Co under the Lending Agreements;
- (b) any additional financing approved by UOHI in accordance with Section 2.10 of Schedule 11 – Change Procedure to the Project Agreement; and
- (c) any amendment, waiver or exercise of a right under the Lending Agreements made during the Step-In Period that does not increase UOHI’s liabilities under the Project Agreement whether actual or contingent, present or future, known or unknown.

1.173 “**Personal Information**” means all personal information (as the term “personal information” is defined in the *Personal Information and Electronic Documents Act* (Canada) in the custody or control of Project Co or the Project Co Parties, other than personal information of employees of Project Co or the Project Co Parties that is wholly unrelated to the Work and not derived directly or indirectly from UOHI or any UOHI Party in respect of the Project.

1.174 “**Phased Occupancy Date**” means the date when a Phase of the Work intended to be occupied by UOHI as set out in the Contract Documents prior to Substantial Completion or as established by Project Co and UOHI under Section 12.1(a)(i) of the Project Agreement, meets the requirements of Section 11.12(c) of the Project Agreement.

1.175 “**Phases**” means the phases of the Work described in Contract Documents and “Phase” means any of the Phases.

1.176 “**Phasing Requirements**” means the requirements set out in Section 01 12 16 (Phasing of the Work) of Division 1 of the Specifications.

1.177 “**Pre-Existing Environmental Site Conditions**” means the environmental condition of the Site as set out in the Environmental Reports.

1.178 “**Product**” or “**Products**” means material, machinery, equipment and fixtures forming the Work but does not include machinery and equipment used to prepare, fabricate, convey or erect the Work, which is referred to as construction machinery and equipment.

1.179 “**Prohibited Act**” has the meaning given in Section 41.1(a) of the Project Agreement.

1.180 “**Project**” means the construction and financing of the Facility.

1.181 “**Project Agreement**” means this Project Agreement and all schedules hereto, as the same may be amended, modified, restated, supplemented or replaced from time to time and for greater certainty, includes the Addenda but does not include the Proposal

Submission or any of the responses to requests for information submitted by Project Co pursuant to the Request for Proposals, all of which are superseded by this Project Agreement and the Addenda.

- 1.182 **“Project Co”** means PCL Ottawa Heart Institute 2014 Ltd..
- 1.183 **“Project Co Construction Event of Default”** means a Project Co Event of Default relating to a failure or breach by Project Co to perform, observe or comply with any covenants, agreements, obligations or liabilities with respect to the Construction Work, excluding a default under Section 26.1(a)(xii) of the Project Agreement relating to a default by the Construction Guarantor under the guarantee of the Construction Guarantor, the form of which is attached to this Project Agreement as Schedule 22.
- 1.184 **“Project Co Delay”** means any delay in achieving Interim Completion, Substantial Completion or Final Completion by the prescribed dates set out in Section 11.1(a)(ii) of the Project Agreement, other than as expressly permitted under Article 22 of the Project Agreement.
- 1.185 **“Project Co Design Contingency”** or **“PDC”** is the portion of the Guaranteed Price which comprises all the costs (including the Project Co Fee) to implement an acceptable resolution to any and all Design Issues that are properly characterized as Project Co Design Issues.
- 1.186 **“Project Co Design Issue”** has the meaning given in Section 11.17(b)(iii) of the Project Agreement.
- 1.187 **“Project Co Event of Default”** has the meaning given in Section 26.1(a) of the Project Agreement.
- 1.188 **“Project Co Fee”** means a fixed fee payable to Project Co included in the Cost of the Work.
- 1.189 **“Project Co Group”** means Project Co together with any person or group of persons, who, either individually or collectively, have Direct or Indirect Power or Control of Project Co.
- 1.190 **“Project Co Hazardous Substances”** has the meaning given in Section 14.1(d)(i) of the Project Agreement.
- 1.191 **“Project Co Indemnified Hazardous Substances Claims”** has the meaning given in Section 33.1(a)(viii) of the Project Agreement.
- 1.192 **“Project Co Indemnified Parties”** has the meaning given in Section 33.2(a) of the Project Agreement.

1.193 “**Project Co Party**” means:

- (a) the Contractor;
- (b) Construction Guarantor;
- (c) any person engaged by Project Co and/or the Contractor, from time to time, as may be permitted by the Project Agreement to procure or manage the provision of the Work (or any part thereof); and
- (d) in respect of each of the above, their Subcontractors or Suppliers of any tier, agents, employees, officers and directors,

and “**Project Co Parties**” shall be construed accordingly.

1.194 “**Project Co Permits, Licences and Approvals**” means all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorizations to be obtained by Project Co in accordance with the Project Agreement and as required by Applicable Law, other than the UOHI Permits, Licenses and Approvals.

1.195 “**Project Co’s Preliminary Minor Deficiencies List**” has the meaning given in Section 16.2(a) of the Project Agreement.

1.196 “**Project Debt**” means the principal amount issued and secured by the Lending Agreements.

1.197 “**Project Debt Interest Cost**” means the budgeted amount of aggregate interest charges in respect of the Project Debt used to calculate the Cost of the Financing portion of the Guaranteed Price.

1.198 “**Project Deliverables**” has the meaning given in Section 16.2(i) of the Project Agreement.

1.199 “**Project Documents**” means the Implementing Agreements and the Lending Agreements.

1.200 “**Project Term**” means the period commencing on the date of the Project Agreement and expiring at midnight on the Termination Date.

1.201 “**Proposal Submission**” means the proposal submitted by Project Co in accordance with the Request for Proposals.

1.202 “**Proprietor**” has the meaning given in Section 38.7(a) of the Project Agreement.

1.203 “**Province**” means Her Majesty the Queen in Right of Ontario.

- 1.204 “**Record Documents**” means a collection of construction documents, including Shop Drawings, Product data sheets, reports, operation and maintenance information, as well as a revised set of the Contract Documents, recording the actual placement, configuration and nature of the various Products used in the construction of the Work and shall include record drawings prepared pursuant to Section 11.11(h). Record Documents shall include, where available, the pre-start health and safety review reports, and shall include in an electronic format system acceptable to the Consultant, As-Built Drawings on diskette or recordable CD, maintenance and operating instructions manual, 6 sets of prints of record drawings and miscellaneous closeout submittals required by the Contract Documents.
- 1.205 “**Recoverable Tax**” has the meaning given in Section 4.22(c) of the Project Agreement.
- 1.206 “**Recovery Amount**” has the meaning given in Section 33.3(g) of the Project Agreement.
- 1.207 “**Refinancing**” has the meaning given in Schedule 28 – Refinancing.
- 1.208 “**Reimbursement Event**” has the meaning given in Section 19.5(a) of the Project Agreement.
- 1.209 “**Release**” has the meaning given in Section 14.1(c)(iii) of the Project Agreement.
- 1.210 “**Relevant Change in Law**” means any Change in Law that:
- (a) requires Project Co to perform any work of alteration, addition, demolition, extension or variation in the quality or function of the Facility which Project Co would not otherwise be required to perform in order to comply with its obligations under the Project Agreement; and
 - (b) was not reasonably foreseeable at the date of the Project Agreement by an experienced contractor carrying out and performing activities similar to those to be carried out and/or performed by any Project Co Party in relation to the Project,
- and includes a Discriminatory Change in Law and a Health Specific Change in Law.
- 1.211 “**Relief Event**” has the meaning given in Section 24.1(a) of the Project Agreement.
- 1.212 “**Request for Proposals**” or “**RFP**” means the request for proposals issued for the delivery by Infrastructure Ontario and UOHI for the delivery of the Project dated March 21, 2014.
- 1.213 “**Restricted Person**” means any person who, or any member of a group of persons acting together, any one of which:

- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada or Ontario;
- (b) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotics substances or arms, or is or has been involved in terrorism;
- (c) in the case of an individual, he or she (or in the case of a legal entity, any of the members of its board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence, other than a suspended sentence, for any criminal offence or for any offence under any Provincial statute, other than offences under the *Highway Traffic Act* or corresponding legislation in any other jurisdiction, or under any municipal laws, less than five years prior to the date at which the consideration of whether such individual is a “**Restricted Person**” is made hereunder;
- (d) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent;
- (e) is subject to a material claim of UOHI or the Province under any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the consideration of whether such person is a “**Restricted Person**” is made hereunder, and which (in respect of any such pending claim, if it were to be successful) would, in UOHI’s view, in either case, be reasonably likely materially to affect the ability of Project Co to perform its obligations under the Project Agreement; or
- (f) has a material interest in the production of tobacco products.

1.214 “**Risk Assessment Guidelines**” means the Risk Assessment Guidelines for the Project set out in Schedule 16 – Risk Assessment Guidelines.

1.215 “**Schedule**” means a schedule to the Project Agreement.

1.216 “**Schedule Cushion**” means a schedule contingency added to the last activity on the critical path of the Construction Schedule and consisting of 30 days duration. The Schedule Cushion shall be included in the Construction Schedule and, for greater certainty, the Schedule Cushion shall not extend the Contract Time. UOHI has ownership of the Schedule Cushion and can elect to use it at any time in respect of an UOHI initiated Change Order, or upon the occurrence of a Delay Event which would otherwise grant to Project Co an extension of the Contract Time, provided any portion of the Schedule Cushion which has not been used by UOHI prior to the Substantial Completion Date will be given to Project Co. Use of the Schedule Cushion by UOHI

shall not result in any right of Project Co to a claim for an increase in the Cost of the Financing.

- 1.217 “**Scheduled Final Completion Date**” means February 25, 2020.
- 1.218 “**Scheduled Interim Completion Date**” means January 25, 2018, as such date may be extended pursuant to Article 22 of the Project Agreement.
- 1.219 “**Scheduled Substantial Completion Date**” means a date that is no later than October 28, 2019 as such date may be extended pursuant to Article 22 of the Project Agreement.
- 1.220 “**Security**” means the Bonds, the Insurance and any other security interests granted by Project Co to the Agent pursuant to the Security Documents.
- 1.221 “**Security Documents**” means [REDACTED].
- 1.222 “**Senior Lenders**” means the Toronto-Dominion Bank, Alberta Treasury Branches and Caisse centrale Desjardins, and for greater clarity, excludes (i) the Hedge Provider(s) or any other hedge providers and their respective permitted successors and assigns and (ii) any Affiliate of Project Co or of a Project Co Party.
- 1.223 “**Severe Market Disruption**” means any occurrence of exceptional circumstances in financial markets in Europe, the United States of America and/or Canada which:
- (a) results in the suspension or cessation of all or substantially all lending activity in national or relevant international capital or interbank markets; and
 - (b) adversely affects access by Project Co to such markets.
- 1.224 “**Shareholder(s)**” means a Party listed in Schedule 4 – Project Co Information, as amended from time to time in accordance with the Project Agreement.
- 1.225 “**Shop Drawings**” or “**shop drawings**” means drawings, diagrams, illustrations, schedules, performance charts, brochures, samples, Product data, and other data which Project Co provides to illustrate details of a portion of the Work.
- 1.226 “**Shop Drawing Schedule**” means the schedule for the submission of shop drawings described in Section 11.11(c) of the Project Agreement.
- 1.227 “**Site**” means the Demised Premises (as defined in the Lease) and lands to which the grant of licence set out in Section 2.5 of the Lease applies, subject to the terms set out in the Lease.
- 1.228 “**Site Information**” means:

- (a) the Environmental Reports;
- (b) the Geotechnical Reports;
- (c) the Lease;
- (d) other information respecting the Site in the Contract Documents, including infrastructure drawings and other reports, information or plans; and
- (e) information that would have been properly inferable, readily apparent or readily discoverable to Project Co from its 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.

- 1.229 “**Sole Discretion**” has the meaning given in Section 1.1(e) of the Project Agreement.
- 1.230 “**Specifications**” means that portion of the Contract Documents, wherever located and whenever issued, consisting of written requirements and standards for Products, systems, workmanship and the services necessary for the performance of the Work and includes those Specifications listed in Schedule 2 – List of Consultants, Drawings and Specifications.
- 1.231 “**Standby Letter of Credit**” has the meaning given in Section 2.2(a) of the Project Agreement.
- 1.232 “**Sub-Subcontractor**” means a person or entity at any tier of the contracting chain beneath a Subcontractor or Supplier, who performs a part or parts of the Work, or supplies Products worked to a special design for the Work or who supplies work, services, materials, equipment or labour in any respect of the Work or who supplies Products not worked to a special design for the Work.
- 1.233 “**Subcontractor**” means a person or entity having a direct contract with Project Co to perform all or a part or parts of the Work, or to supply Products worked to a special design for the Work or who supplies work, services or labour in any respect of the Work.
- 1.234 “**Subcontracts**” means the contracts entered into by or between Project Co and any Project Co Party at any tier, including the Contractor and any other Subcontractor at any tier in relation to any aspect of the Work.
- 1.235 “**Submission Date**” means September 8, 2014.

1.236 “**Substantial Completion**” means:

- (a) Project Co has performed its obligations under Sections 13.7 to 13.12 and Article 16 of the Project Agreement;
- (b) the Work is available for occupancy by UOHI in accordance with the standards for occupancy set out in the Building Code and the requirements of local municipal building authorities in the City of Ottawa;
- (c) the Commissioning of the Work has been completed in accordance with the Contract Documents to the extent required to meet the requirements for occupancy of the Work set out in the Building Code and the building services required for UOHI to carry out its Commissioning activities are available in accordance with the Specifications; and
- (d) all Project Deliverables, other than those included as Minor Deficiencies in accordance with Section 16.1(h) of the Project Agreement, have been assigned and provided to UOHI.

1.237 “**Substantial Completion Date**” means the date on which Substantial Completion is achieved as evidenced by the certificate of Substantial Completion issued by the Consultant, as such date shall be stated therein.

1.238 “**Substantial Completion Payment**” means the amount determined by subtracting from the amount of the Guaranteed Price, as adjusted in accordance with the terms of the Project Agreement as at the end of the last day of the agreed monthly payment period ending immediately prior to the Substantial Completion Payment Date, the following amounts (without duplication):

- (a) all Additional UOHI Payments (including any payments pursuant to Section 8.5 of Schedule 5 – Form of Lender’s Direct Agreement) paid, payable, or which will become payable by UOHI in respect of Work performed in accordance with the Project Agreement on or before the last day of the agreed monthly payment period ending immediately prior to the Substantial Completion Payment Date;
- (b) the Certified Cost to Complete;
- (c) the UOHI Holdback as at the Substantial Completion Payment Date;
- (d) any Legislative Holdback then required to be maintained by UOHI as at the Substantial Completion Payment Date; and
- (e) the Interim Completion Payment.

- 1.239 “**Substantial Completion Payment Date**” means the 10th Business Day following the later of:
- (a) the date of delivery by the Consultant of a certificate of substantial performance of the Work in accordance with the *Construction Lien Act* (Ontario) pursuant to Section 16.1(c) of the Project Agreement; and
 - (b) the delivery by the Consultant of its report under Section 16.1(d) of the Project Agreement confirming that Substantial Completion has been achieved.
- 1.240 “**Supplemental Instruction**” means an instruction, including a field or site instruction, issued for recording any clarifications or interpretation of the Contract Documents or giving direction on field conditions and not involving adjustment in the Guaranteed Price or Contract Time, in the form of Specifications, Drawings, schedules, samples, models, or written instructions, consistent with the intent of the Contract Documents. A Supplemental Instruction is to be issued by the Consultant to supplement the Contract Documents as required for the performance of the Work.
- 1.241 “**Supplier**” means a person who supplies to Project Co, or to any Subcontractor, any equipment, materials, supplies or services as part of, or for, the Work.
- 1.242 “**Surety**” means the person issuing the Bonds.
- 1.243 “**Tax**” or “**Taxes**” means any and all taxes, levies, imposts, duties, fees, withholdings, assessments, deductions or charges whatsoever, imposed, assessed, levied or collected by any Governmental Authority, together with interest thereon and penalties with respect thereto, and includes all HST except where stated to the contrary, provided however that “**Taxes**” shall not include the UOHI Taxes.
- 1.244 “**Termination Date**” means the earlier of the Final Completion Date and such earlier date, if any, on which termination of the Project Agreement takes effect in accordance with its terms.
- 1.245 “**Trust Account**” means the trust account established by UOHI and Project Co and in respect of which UOHI, Project Co and the financial institution in which such account is established and maintained shall enter into the Trust Account Acknowledgment Agreement.
- 1.246 “**Trust Account Acknowledgment Agreement**” means the agreement substantially in the form of the agreement attached as Schedule 24 to the Project Agreement.
- 1.247 “**Type A Equipment**” means each item of equipment marked “A” in the “Planning Code” column of the Equipment List;

- 1.248 **“Type B Equipment”** means each item of equipment marked “B” in the “Planning Code” column of the Equipment List;
- 1.249 **“Type C Equipment”** means each item of equipment marked “C” in the “Planning Code” column of the Equipment List;
- 1.250 **“Type D Equipment”** means each item of equipment marked “D” in the “Planning Code” column of the Equipment List;
- 1.251 **“Type E Equipment”** means each item of equipment marked “E” in the “Planning Code” column of the Equipment List;
- 1.252 **“Undisclosed Hazardous Substances”** has the meaning given in Section 14.1(e) of the Project Agreement.
- 1.253 **“UOHI”** means University of Ottawa Heart Institute.
- 1.254 **“UOHI Activities”** includes (i) the Clinical Services and (ii) all facilities management services at the Facility and the Existing Facility, including, but not limited to, select general management services, select help desk services, food services (patient), clinical engineering services, environmental services (including housekeeping, waste management and laundry/linen), materials management services (including purchasing, stores, distribution, portering, transportation and central processing), protection services, parking services, information management services, learning centre services, main public facilities services, site administration services, staff facilities services and volunteer/auxiliary services.
- 1.255 **“UOHI Event of Default”** has the meaning given in Section 27.1(a) of the Project Agreement.
- 1.256 **“UOHI Holdback”** means any amount which UOHI may withhold from payment under Section 16.1(f) or 16.2(h) of the Project Agreement, provided for greater certainty, that where this Project Agreement provides for a deduction in respect of any UOHI Holdback, such deduction shall apply to any payments to be made by UOHI hereunder (whether to Project Co or the Agent), notwithstanding that the Project Agreement expressly provides for deductions from payments to be made to Project Co.
- 1.257 **“UOHI Indemnified Hazardous Substances Claims”** has the meaning given in Section 33.2(a)(iv) of the Project Agreement.
- 1.258 **“UOHI Indemnified Parties”** has the meaning given in Section 33.1(a) of the Project Agreement.

- 1.259 “**UOHI Party**” means any of UOHI’s agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged in respect of the Work, including UOHI’s Project Manager and the Consultant but excluding Project Co and any Project Co Party, and the term “UOHI Parties” shall be construed accordingly.
- 1.260 “**UOHI Permits, Licences and Approvals**” means:
- (a) the Permit to Take Water, Surface and Ground Water, Number 6281-9LGKPF;
 - (b) the Building Permits;
 - (c) any permanent easements; and
 - (d) any rights of servitude, pertaining to the Project.
- 1.261 “**UOHI’s Project Manager**” means the individual appointed by UOHI to assist UOHI in the implementation of the Project.
- 1.262 “**UOHI Taxes**” means taxes or payments in lieu of taxes imposed on UOHI, based on or measured by income or profit of UOHI or capital taxes based on or measured by the capital of UOHI and HST and property taxes for which UOHI is responsible pursuant to the provisions of the Project Agreement.
- 1.263 “**Utilities**” means energy/power supplies and waste recovery, including electricity, natural gas/fuel oil, water, sanitary waste, storm water, and bulk medical gas compounds.
- 1.264 “**Utility Company**” means any company or companies designated by Project Co to provide Utilities.
- 1.265 “**Work**” means the construction, installation, testing, Commissioning and completion of the Facility, including rectification of any Minor Deficiencies, and any other activities required pursuant to the provisions of the Project Agreement. For greater certainty, Work does not include the Financing or the work of UOHI’s own forces or other contractors retained by UOHI.
- 1.266 “**Work Committee**” has the meaning given in Section 13.1(a) of the Project Agreement.
- 1.267 “**WSIB**” means the Ontario Workplace Safety and Insurance Board that is responsible for administering the *Workplace Safety and Insurance Act, 1997* (Ontario).
- 2. Interpretation.** Unless otherwise expressly provided in the Contract Documents, the Contract Documents shall be interpreted according to the following provisions, unless the context requires a different meaning:

- 2.1 The tables of contents, headings, marginal notes and references to them in the Contract Documents are for convenience of reference only, shall not constitute a part of the Contract Documents, and shall not be taken into consideration in the interpretation of, or affect the meaning of, the Contract Documents.
- 2.2 Except where the context requires otherwise (irrespective of whether some, but not all, references in a Schedule specifically refer to that Schedule or to other portions of the Project Agreement) references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement are references to such Sections, Clauses, Paragraphs, or Subparagraphs of, Schedules to, or divisions of the Project Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- 2.3 Except where the context requires otherwise, references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Project Agreement followed by a number are references to the whole of the Section, Clause, Paragraph, Subparagraphs, Schedule or other division of the Project Agreement as applicable, bearing that number, including all subsidiary provisions containing that same number as a prefix.
- 2.4 The Schedules to the Project Agreement are an integral part of the Project Agreement and a reference to the Project Agreement includes a reference to the Schedules.
- 2.5 All references in the Project Agreement to a Schedule shall be to a Schedule of the Project Agreement.
- 2.6 All capitalized terms used in a Schedule shall have the meanings given to such terms in Schedule 1, unless stated otherwise in a particular Schedule in which case such definition shall have the meaning given to it in that Schedule solely for the purposes of that Schedule.
- 2.7 Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- 2.8 Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- 2.9 Unless otherwise provided in the Project Agreement, all accounting and financial terms used in the Project Agreement shall be interpreted and applied in accordance with Canadian GAAP.

- 2.10 References to any standard, principle, agreement (including this Project Agreement) or document include (subject to all relevant approvals and any other provisions of the Project Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- 2.11 References to any Applicable Law, including any statutes or other Applicable Law specifically referred to herein, whether or not amendments or successors to such Applicable Law are referred to herein, are to be construed as references to that Applicable Law as from time to time amended or to any Applicable Law covering the same or similar subject matter from time to time replacing, extending, consolidating or amending the same.
- 2.12 References to a statute shall include all regulations, by-laws, ordinances and orders made under or pursuant to the statute.
- 2.13 References to persons shall include their successors and assigns. References to a public organization shall include its successors and assigns, and if a public organization ceases to exist or ceases to perform its functions without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization.
- 2.14 A reference in the Project Agreement or in any Project Document to any right, power, obligation or responsibility of any Governmental Authority shall be deemed to be a reference to the Governmental Authority that, pursuant to Applicable Laws, has such right, power, obligation or responsibility at the relevant time.
- 2.15 The words in the Project Agreement and in any Implementing Agreements shall bear their natural meaning. Words and abbreviations which have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
- 2.16 Each Party's respective obligations shall be construed as separate obligations owed to the other Party or Parties, as the case may be.
- 2.17 References containing terms such as:
- (a) **“hereof”, “herein”, “hereto”, “hereinafter”**, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to the Project Agreement taken as a whole;
 - (b) **“includes”** and **“including”**, whether or not used with the words **“without limitation”** or **“but not limited to”**, shall not be deemed limited by the specific

enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “**includes without limitation**” and “**including without limitation**”; and

- (c) “**accepted**”, “**reviewed**”, “**designated**”, “**directed**”, “**inspected**”, “**instructed**”, “**permitted**”, “**required**” and “**selected**” when used in a Contract Document are deemed to be followed by the words “**by the Consultant**” unless the context provides otherwise; the words “**acceptable**”, “**submit**” and “**satisfactory**” when used in a Contract Document are deemed to be followed by the words “**to the Consultant**” unless the context provides otherwise.
- 2.18 In construing the Project Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach apply to the construction of the Project Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- 2.19 Where the Project Agreement or any Implementing Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.20 Where the Project Agreement or any Implementing Agreement states that an obligation shall be performed “no later than” or “by” a prescribed number of days before a stipulated date or event or “by” a date which is a prescribed number of days before a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.21 Where the Project Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.22 Any reference to time of day or date means the local time or date in Ottawa, Ontario. Any reference to a stipulated “day” which is not specifically referred to as a “Business Day” shall be deemed to be a calendar day.
- 2.23 Unless otherwise indicated, time periods will be strictly construed and time is of the essence of this Project Agreement.

- 2.24 Whenever the terms “**will**” or “**shall**” are used in the Project Agreement in relation to Project Co or UOHI, they shall be construed and interpreted as synonymous and to read “**Project Co shall**” or “**UOHI shall**” as the case may be.
- 2.25 Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.
- 2.26 Unless otherwise identified in the Project Agreement, all units of measurement in any documents submitted by Project Co to UOHI shall be in accordance with the SI system of units.
- 2.27 Terms not defined herein and used in the Project Agreement or any Implementing Agreements which have a technical meaning commonly understood by the health care sector or construction industry in Ontario will be construed as having that meaning unless the context otherwise requires.
- 2.28 **[Intentionally Deleted.]**
- 2.29 Wherever in this Project Agreement Project Co covenants, agrees or undertakes:
- (a) to do any act, matter or thing, that shall be deemed to mean that Project Co will do or cause to be done such act, matter or thing itself or by a Project Co Party; and
 - (b) not to do any act, matter or thing, that shall be deemed to mean that Project Co will not, and will cause each Project Co Party not to do such act, matter or thing.

SCHEDULE 2

LIST OF CONSULTANTS, DRAWINGS AND SPECIFICATIONS

LIST OF DRAWINGS

All of the following drawings were Issued for Construction November 12th 2014.

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All of the following specifications were Issued for Construction November 12th 2014.

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Project Co and UOHI hereby acknowledge and agree that in the event of discrepancies between the drawings and specifications issued and in effect in accordance with the RFP prior to the Submission Date (including the Addenda) (collectively, referred to for purposes of this Schedule 2 as the "**Tender Drawings and Specifications**") and the Drawings and Specifications listed in this Schedule 2, the Tender Drawings and Specifications shall prevail.

SCHEDULE 3

COMPLETION DOCUMENTS

In this Schedule 3, “**certified**” shall mean that the relevant document is certified as a true and complete copy in full force and effect and unamended as of the date of the relevant certificate by an officer or director of the relevant corporation.

1. Documents to be delivered by Project Co

Unless an original document is specifically required, a certified copy of each of the following documents (in each case, executed by the parties to such agreement other than UOHI and in form and substance satisfactory to UOHI, acting reasonably) is to be delivered by Project Co to UOHI on or prior to the Financial Close Target Date:

- (a) an original of this Project Agreement;
- (b) an original of the Lender’s Direct Agreement;
- (c) an original of the Construction Contract;
- (d) an original of the Guarantee of Construction Guarantors;
- (e) an original of the Assignable Subcontract Agreement for Construction Contract;
- (f) those Assignable Subcontract Agreements pursuant to Schedule 19 of this Project Agreement;
- (g) an original of the Insurance and Bonding Trust Agreement;
- (h) an original of the Trust Account Acknowledgment Agreement;
- (i) an original of the release by Project Co of IO, MOI, MOHLTC and the Province in the form attached as Appendix A to this Schedule 3;
- (j) an original of the acknowledgement and undertaking in the form attached as Appendix B to this Schedule 3;
- (k) the Lending Agreements;
- (l) certificates of insurance with respect to the insurances required in accordance with this Project Agreement to be taken out by Project Co;

- (m) originals of the Bonds required in accordance with this Project Agreement or as UOHI may direct in accordance with the Insurance and Bonding Trust Agreement;
- (n) a certificate of an officer of Project Co, Contractor and the Construction Guarantor attesting to the due authorization and execution of the Implementing Agreements to which it is a party, and to which is attached:
 - (i) a certified copy of the articles of incorporation or other organizational document of Project Co;
 - (ii) a certificate of incumbency setting out the names and titles of the authorized signing officers of Project Co; and
 - (iii) a certified copy of any governmental filing required to establish the legal status of Project Co including, with respect to a corporation, a certificate of status,in each case, dated within 3 Business Days prior to the date of Financial Close;
- (o) an original of the Assignment and Assumption Agreement substantially in the form attached as Appendix E to this Schedule 3;
- (p) Project Co's public announcement release(s), to be approved by UOHI and IO;
- (q) an original of the opinion from counsel to Project Co, Contractor, Construction Guarantor and such other Project Co Parties as UOHI may reasonably require, each in the form attached as Appendix C to this Schedule 3;
- (r) one printed copy of the Financial Model (as revised pursuant to Section 3.1(b) of the Project Agreement, if applicable) and two copies on CD-ROM;
- (s) a certificate of an officer of Project Co certifying:
 - (i) a true copy of the Financial Model audit report dated November 27, 2014 prepared by BDO LLP; and
 - (ii) that the Financial Model algorithms have not changed from the audit report referred to Section 1(s)(i) above;
- (t) COR Certification from the Contractor or evidence of application for COR Certification from the Contractor; and

- (u) such other documents as the parties may agree, each acting reasonably.

2. Documents to be delivered by UOHI

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

- (a) an original of this Project Agreement;
- (b) an original of the Lender's Direct Agreement;
- (c) an original of the Assignable Subcontract Agreement for Construction Contract;
- (d) an original of the Insurance and Bonding Trust Agreement;
- (e) an original of the Trust Account Acknowledgment Agreement;
- (f) the Building Permit;
- (g) a copy of the Funding Letter from MOHLTC for the Project;
- (h) a certificate of insurance with respect to the insurances required in accordance with this Project Agreement to be taken out by UOHI;
- (i) a certificate of an officer of UOHI attesting to the due authorization and execution of the Implementing Agreements to which it is a party, to which is attached:
 - (i) a certified copy of the letters patent or other applicable organizational document of UOHI;
 - (ii) a certificate of incumbency setting out the names and titles of the authorized signing officers of UOHI; and
 - (iii) a certified copy of any governmental filing required to establish the legal status of UOHI,in each case, dated within 3 Business Days prior to the date of Financial Close;
- (j) an original of the opinion from counsel to UOHI substantially in the form attached as Appendix D to this Schedule 3;

- (k) an original of the Assignment and Assumption Agreement substantially in the form attached as Appendix E to this Schedule 3; and
- (l) such other documents as the parties may agree, each acting reasonably.

**APPENDIX A
FORM OF RELEASE**

TO: Ontario Infrastructure and Lands Corporation (“**Infrastructure Ontario**”)
AND TO: Her Majesty the Queen in Right of Ontario as represented by the Minister of Economic Development, Employment and Infrastructure (“**MOI**”)

AND TO: Her Majesty the Queen in Right of Ontario as represented by the Minister of Health and Long-Term Care (“**MOHLTC**”)

AND TO: Her Majesty the Queen in Right of Ontario (the “**Province**”)

RE: Project agreement (as amended, supplemented or modified from time to time, the “**Project Agreement**”) dated the [27th] day of [November], 2014 between University of Ottawa Heart Institute (“**UOHI**”) and PCL Ottawa Heart Institute 2014 Ltd. (“**Project Co**”)

In consideration of UOHI entering into the Project Agreement, the undersigned hereby acknowledges and agrees that Infrastructure Ontario, MOI, MOHLTC and the Province have no obligations or liabilities to Project Co or any other person arising out of or in connection with the Project Agreement of any nature or kind whatsoever, including, without limitation, any obligations for payments or other covenants on the part of UOHI contained in the Project Agreement, and hereby releases Infrastructure Ontario, MOI, MOHLTC and the Province from and against any and all claims, demands, causes of action, judgments, costs and liability of any nature or kind whatsoever arising out of or in connection with the Project Agreement and all matters relating thereto, including, without limitation, any act or omission of UOHI, its employees, officers, directors or agents.

[EXECUTION PAGE IMMEDIATELY FOLLOWS]

DATED this _____ day of _____, 2014.

**PCL OTTAWA HEART INSTITUTE 2014
LTD.**

By: _____

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation.

APPENDIX B
FORM OF UNDERTAKING AND ACKNOWLEDGEMENT

TO: UNIVERSITY OF OTTAWA HEART INSTITUTE, a non-share capital corporation incorporated under the laws of the Province of Ontario (“**UOHI**”)

AND TO: Her Majesty the Queen in Right of Ontario as represented by the Minister of Health and Long-Term Care (“**MOHLTC**”)

RE: Project agreement (as amended, supplemented or modified from time to time, the “**Project Agreement**”) dated the [27th] day of [November], 2014 between UOHI and PCL Ottawa Heart Institute 2014 Ltd. (“**Project Co**”)

1. The undersigned acknowledges that:
 - (a) The Project will proceed as an alternative financing and procurement project under the Minister of Economic Development, Employment and Infrastructure’s *ReNew Ontario* infrastructure investment plan, and complies with the principles set out in the IPFP Framework.
 - (b) The IPFP Framework establishes five fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
 - (i) The public interest is paramount.
 - (ii) Value for money must be demonstrable.
 - (iii) Appropriate public control/ownership must be preserved.
 - (iv) Accountability must be maintained.
 - (v) All processes must be fair, transparent and efficient.
 - (c) The IPFP Framework states that, consistent with the principle of appropriate public ownership/control, public ownership of assets will be preserved in the health care facility sector.
2. The undersigned undertakes to comply with the *University of Ottawa Heart Institute Act*, the *Public Hospitals Act* (Ontario) and all regulations thereunder in any direction or order issued by MOHLTC or the Local Health Integration Network to UOHI to the extent that the direction or order affects the Work.

3. Capitalized terms used but not defined herein have the respective meanings ascribed thereto in the Project Agreement.

[EXECUTION PAGE IMMEDIATELY FOLLOWS]

DATED this _____ day of _____, 2014.

**PCL OTTAWA HEART INSTITUTE 2014
LTD.**

By: _____
Name: **[REDACTED]**
Title: **[REDACTED]**

I have authority to bind the corporation.

**APPENDIX C
FORM OF PROJECT CO/CONTRACTOR/CONSTRUCTION GUARANTOR OPINION**

[REDACTED]

APPENDIX
FORM OF UOHI OPINION

D

[INSERT DATE]

PCL Ottawa Heart Institute 2014 Ltd.
9915-56 Avenue
Edmonton, Alberta
T6E 5L7

The Toronto-Dominion Bank, as agent for and
on behalf of itself and the Lenders (as defined
in the Project Agreement (defined below)) (the
“Agent”)
TD Bank Tower
66 Wellington St. W., 9th Floor
Toronto, Ontario, Canada. M5K 1A2

Each of the Lenders and the Hedge Providers
from time to time party to the Lending
Agreements

McCarthy Tétrault LLP
Suite 1300, 777 Dunsmuir Street
Vancouver, British Columbia
V7Y 1K2

Aird & Berlis LLP
Brookfield Place, 181 Bay Street
Suite 1800, Box 754
Toronto, Ontario
M5J 2T9

Dear Sirs/Mesdames:

Re: University of Ottawa Heart Institute Cardiac Life Support Services Redevelopment Project

We have acted as project counsel to the University of Ottawa Heart Institute (“UOHI”) in connection with the alternative financing and procurement transaction whereby UOHI and PCL Ottawa Heart Institute 2014 Ltd. (“Project Co”) have agreed to enter into a build-finance project agreement for the University of Ottawa Heart Institute Cardiac Life Support Services Redevelopment Project.

This opinion is being delivered to Project Co, the Agent and their respective counsel pursuant to Section 2(j) of Schedule 3 – Completion Documents to the project agreement made as of [•],

2014 between UOHI and Project Co (as the same may be amended, supplemented, restated or otherwise modified from time to time, the “**Project Agreement**”).

All capitalized terms used but not otherwise defined in this opinion shall have the respective meanings ascribed thereto in the Project Agreement.

In our capacity as project counsel to UOHI, we have participated in the preparation and negotiation, and have examined an executed copy, of each of the following documents (unless otherwise indicated, all such documents are dated as of [•], 2014):

1. the Project Agreement; and
2. the following project documents (collectively, the “**Implementation Documents**”):
 - (a) the Lender’s Direct Agreement;
 - (b) the Assignable Subcontract Agreement for Construction Contract;
 - (c) the Guarantee of Construction Guarantor;
 - (d) the Insurance and Bonding Trust Agreement;
 - (e) the Trust Account Acknowledgement Agreement; and
 - (f) an assignment and assumption agreement between the UOHI, Project Co, the Construction Guarantor and Diligens Inc.

The Project Agreement and the Implementation Documents are hereinafter collectively referred to as the “**Documents**”, and each is individually referred to as a “**Document**”.

We are qualified to practise law in the Province of Ontario. We have made no investigation of the laws of any jurisdiction other than Ontario, and the opinions expressed below are confined to the laws of Ontario and the federal laws of Canada applicable therein as at the date hereof.

We do not act as corporate counsel to UOHI, nor have we participated in the general maintenance of its corporate records and corporate proceedings. Therefore, in expressing certain of the opinions below, we have, where indicated, relied exclusively, and without any independent investigation or enquiry, on certificates of public officials and a certificate of an officer of UOHI dated as of the date hereof (the “**Officer’s Certificate**”) as to certain factual matters.

Searches and Reliance

We have conducted, or have caused to be conducted, the searches identified in **Schedule “A”** (the “**Searches**”) for filings or registrations made in those offices of public record listed in Schedule “A”. The Searches were conducted against the current name and all former names of UOHI (including, both the English and French versions, if any). The results of the Searches are set out in Schedule “A”.

We have also made such investigations and examined originals or copies, certified or otherwise identified to our satisfaction, of such certificates of public officials and of such other certificates, documents and records as we have considered necessary or relevant for purposes of the opinions expressed below, including, without limitation, the Officer’s Certificate.

We have relied exclusively, and without any independent investigation or enquiry, on the Officer’s Certificate and the certificates of public officials with respect to certain factual matters. In connection with the opinion set forth in paragraph 1 below, under the heading “Opinions”, we have relied exclusively on a Certificate of Status issued by the Ontario Ministry of Government Services dated [●], a copy of which is attached as **Schedule “B”**.

In connection with the opinions set forth in paragraphs 2, 3, 4 and 6, under the heading “Opinions”, as to factual matters, including the accuracy and completeness of the documents made available for review, we have relied exclusively on the Officer’s Certificate referred to above.

Assumptions

For the purposes of the opinions expressed herein, we have assumed:

1. The genuineness of all signatures, the authenticity of all documents submitted to us as originals, the legal capacity of individuals signing such documents, the conformity to originals of all documents submitted to us as certified, true, conformed, photostatic or notarial copies or facsimiles thereof and the authenticity of the originals of such certified, true, conformed, photostatic or notarial copies or facsimiles.
2. Each of the parties (other than UOHI) to each of the Documents is and was, at all relevant times, a subsisting corporation, partnership, limited partnership, limited liability company or trust, as applicable, under the laws of its jurisdiction of formation.
3. Each of the parties (other than UOHI) has (and had) the corporate power, authority and capacity to own or lease its property and assets and to carry on its business as such

business is now (or as was then) being carried on by it, has (or had) all requisite corporate power, authority and capacity to execute and deliver each Document to which it is party and to perform its obligations thereunder, has taken all necessary corporate action, as applicable, to authorize the execution and delivery of each Document to which it is a party and the performance of its obligations thereunder, and has duly executed and delivered each Document to which it is a party, and each Document to which it is a party is a legal, valid and binding obligation of such party enforceable against it in accordance with its terms.

4. The completeness, truth and accuracy of all facts set forth in the Officer's Certificate.
5. The completeness, truth and accuracy of all facts set forth in official public records and certificates and other documents supplied by public officials.
6. Value has been given by each of the parties (other than UOHI) to UOHI.
7. UOHI has obtained or will obtain all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorizations to be obtained by UOHI in connection with the entering into and performance by UOHI of its obligations under the Documents to which it is a party, including, without limitation, any approvals of the Minister of Health and Long-Term Care.

Opinions

Based upon and subject to the foregoing, and subject to the qualifications, exceptions and limitations hereinafter expressed, we are of the opinion that, as of the date hereof:

Incorporation and Existence

1. UOHI is a non-share capital corporation formed under the *Corporations Act* (Ontario) (Corporation No. 1401499) and has not been dissolved.

Corporate Power and Capacity

2. UOHI has the corporate power and capacity to carry on its undertakings, including to own or lease its properties and assets, and to enter into and perform its obligations under each of the Documents to which it is a party.

Corporate Authorization

3. UOHI has taken all necessary corporate action to authorize the execution and delivery of, and the performance of its obligations under, each of the Documents to which it is a party.

Execution and Delivery

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

Enforceability

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

No Breach or Default

6. The execution and delivery by UOHI of the Documents to which it is a party does not, and the performance by UOHI of its obligations under each such Document in accordance with its terms will not, breach or constitute a default under (i) its letters patent or by-laws, or (ii) the provisions of any law, statute, rule or regulation to which UOHI is subject.

Qualifications

Our opinions herein are subject to the following qualifications and reservations, namely:

1. The enforceability of any Document and the rights and remedies set out therein or any judgment arising out of or in connection therewith is subject to and may be limited by any applicable bankruptcy, reorganization, winding-up, insolvency, moratorium or other laws of general application affecting creditors' rights from time to time in effect.
2. The enforceability of any Document will be subject to the limitations contained in the *Limitations Act, 2002* (Ontario), and we express no opinion as to whether a court may find any provision of any Document to be unenforceable as an attempt to vary or exclude a limitation period under that Act.
3. Pursuant to the *Currency Act* (Canada), a judgment in money rendered by a Court in the Province of Ontario must be awarded in Canadian currency and such judgment may be based on a rate of exchange in effect other than the day of payment of the judgment.
4. To the extent that a particular contractual provision is characterized by a Court as a penalty and not as a genuine pre-estimate of damages, it will not be enforceable.

5. A Court may not treat as conclusive those certificates, determinations and calculations which the Documents state are to be so treated.
6. A receiver or receiver and manager appointed pursuant to the provisions of any Document, for certain purposes, may not be treated by a Court as being solely the agent of another party, notwithstanding any agreement to the contrary.
7. The ability to recover or claim for certain costs or expenses may be subject to judicial discretion.
8. With respect to any provisions of the Documents pursuant to which the parties to such Documents are permitted or required to submit a dispute arising out of such Documents to arbitration, we express no opinion as to the enforceability of such arbitration provisions in all circumstances since under the *Arbitration Act, 1991* (Ontario) a court of competent jurisdiction in Ontario may, in its discretion and upon certain grounds, refuse to stay judicial proceedings in which event an arbitration under such arbitration provisions may not be commenced or continued. In addition, the *Arbitration Act, 1991* (Ontario) provides that a court may hear an appeal of an arbitration award on a question of law, or set aside an arbitration award or declare it invalid, in each case on certain prescribed grounds.
9. Any requirement in any of the Documents that interest be paid at a higher rate after than before default may not be enforceable.
10. The effectiveness of provisions which purport to relieve a person from a liability or duty otherwise owed may be limited by law, and provisions requiring indemnification or reimbursement may not be enforced by a Court, to the extent that they relate to the failure of such person to perform such duty or liability.
11. No opinion is expressed as to the enforceability of any provision contained in any Document which purports to sever from the Document any provision therein which is prohibited or unenforceable under applicable law without affecting the enforceability or validity of the remainder of the document.
12. No opinion is expressed regarding any waiver of service of process, presentment, demand, protest or notice of dishonour which may be contained in any of the Documents.
13. Any award of costs is in the discretion of a Court of competent jurisdiction.
14. The enforceability of rights of indemnity set out in the Documents may be limited under applicable law to the extent that they directly or indirectly relate to liabilities imposed by law on Project Co for which it would be contrary to public policy to require UOHI to

- indemnify Project Co or to the extent that they constitute the indirect enforcement of a foreign revenue or penal law.
15. The enforceability of each of the Documents, and any of the obligations of UOHI under any of the Documents to which it is a party, is subject to and may be limited by public policy, or by general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing, the inherent jurisdiction of the Crown in its role as *parens patriae* and the inherent jurisdiction of the court in matters of charity, the role of the Public Guardian and Trustee as overseer of UOHI as a trustee under the *Trustee Act* (Ontario) and the possible unavailability of specific performance, injunctive relief or other equitable remedies. Without limiting the generality of the foregoing, the availability of any particular remedy is subject to the discretion of the court.
 16. Any approval given or deemed to have been given under the *Public Hospitals Act* (Ontario) in respect of UOHI may be suspended by the Minister of Health and Long-Term Care or revoked by the Lieutenant Governor in Council if the Minister of Health and Long-Term Care or the Lieutenant Governor in Council, as the case may be, considers it in the public interest to do so.
 17. We express no opinion with respect to compliance with the *Personal Information Protection and Electronic Act* (Canada) or any other privacy laws of the Province of Ontario.
 18. We express no opinion as to the enforceability of any provision of a Document:
 - (a) Which states that amendments or waivers of or with respect to the Document that are not in writing will not be effective; or
 - (b) Which states that a Document constitutes the entire agreement between the parties thereto, as a court may in certain circumstances give effect to other agreements or representations, whether written or oral, between the parties.
 19. To the extent that any matter is expressly to be determined by future agreement, negotiation or consultation, the relevant provision may be unenforceable as being void for uncertainty.

This opinion is being delivered solely in connection with the transaction addressed herein and may not be relied upon by any person other than the addressees, and their successors and permitted assigns, or for any purpose other than the transaction addressed herein.

Yours very truly,

SCHEDULE A TO FORM OF UOHI OPINION

THE SEARCHES

[Note to Draft: Please Insert Searches.]

SCHEDULE B TO FORM OF UOHI OPINION

CERTIFICATE OF STATUS

[Note to Draft: Please Insert Certificate of Status]

APPENDIX E

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT dated as of the ____ day of _____, 2014,

BETWEEN:

UNIVERSITY OF OTTAWA HEART INSTITUTE, a non-share capital corporation incorporated under the laws of Ontario
(“**UOHI**”)

AND:

PCL OTTAWA HEART INSTITUTE 2014 LTD., a corporation incorporated under the laws of the Province of Alberta
(“**Project Co**”)

AND:

PCL CONSTRUCTORS CANADA INC., a corporation amalgamated under the laws of the Province of Alberta
(“**Construction Guarantor**”)

AND:

DILIGENS INC., a corporation incorporated under the laws of the Province of Ontario
(the “**Supplier**” and, together with the UOHI, Project Co and the Construction Guarantor, the “**Parties**” and, individually, each a “**Party**”)

WITNESS THAT:

- A. The Ottawa Hospital (“**TOH**”) has conducted a request for proposals process for and on behalf of UOHI (the “**RFP**”);
- B. Pursuant to the RFP, TOH for and on behalf of UOHI has entered into an agreement with the Supplier attached hereto as Schedule “A” (the “**Data Room Contract**”);
- C. TOH and UOHI entered into an assignment and assumption agreement dated as of November 14, 2014 whereby TOH assigned all of the TOH’s right, title and interest in and to the Data Room Contract to UOHI and UOHI assumed all of the obligations of TOH under the Data Room Contract;

- D. UOHI and Project Co entered into an agreement dated [●] for the finance and construction of the facilities associated with the Project (the “**Project Agreement**”).
- E. Pursuant to the terms of the Data Room Contract, the Supplier agreed that the Data Room Contract will be assigned to Project Co and pursuant to the terms of the Project Agreement, Project Co agreed to assume all of UOHI’s obligations under the Data Room Contract.
- F. UOHI hereby wishes to assign its rights and obligations under the Data Room Contract to Project Co and the Supplier hereby wishes to consent to such assignment.
- G. As an inducement to Supplier to consent to such assignment, Construction Guarantor has agreed to absolutely, unconditionally and irrevocably guarantee to Supplier, as a direct obligation, the full and prompt performance and observance by Project Co of each and every covenant, agreement, undertaking and obligation of Project Co contained in the Data Room Contract, and in furtherance thereof has agreed to enter into this Assignment and Assumption Agreement.

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties each hereby covenant and agree as follows:

1. **Assignment**

UOHI hereby sells, assigns, transfers, conveys and sets over to Project Co, effective the date hereof, all of UOHI’s rights and obligations in and under the Data Room Contract (the “**Assignment**”).

2. **Assumption**

Project Co hereby confirms and accepts the Assignment and covenants and agrees to fully perform the obligations of UOHI under the Data Room Contract and to be liable to the Supplier in all respects for the due payment and performance of all indebtedness, liabilities and obligations of UOHI under the Data Room Contract.

3. **Consent and Release**

The Supplier hereby irrevocably consents to the grant by TOH to UOHI, and the subsequent grant by UOHI to Project Co, of all of the rights and obligations under the Data Room Contract and hereby releases TOH and UOHI from any and all obligations under the Data Room Contract.

4. **Guarantee**

Construction Guarantor does hereby absolutely, unconditionally and irrevocably guarantee to Supplier, as a direct obligation, the full and prompt performance and observance by

Project Co of each and every covenant, agreement, undertaking and obligation of Project Co contained in the Data Room Contract.

Notwithstanding any other provision of this Assignment and Assumption Agreement, the Construction Guarantor's undertakings and obligations are derivative of and not in excess of Project Co's obligations under the Data Room Contract and the Construction Guarantor retains all rights, claims, defences and limitations of liability possessed by Project Co under the terms of the Data Room Contract or arising from the Parties' performance or failure to perform thereunder and shall be entitled to assert any contractual defences that would have been available to Project Co.

5. **Further Assurances**

The Parties shall execute and deliver all further documents and perform all other acts as may be necessary or desirable to give effect to the terms of this Assignment and Assumption Agreement.

6. **Enurement**

This Assignment and Assumption Agreement shall enure to the benefit of and shall be binding upon the Parties and each of their successors and assigns.

7. **No Assignment**

Project Co hereby sells, assigns, transfers, conveys and sets over to the Construction Guarantor (in its capacity as Contractor (as defined in the Project Agreement)) all of its rights and obligations under this Assignment and Assumption Agreement and the other Parties hereby consent thereto, and the Construction Guarantor (in its capacity as Contractor) hereby confirms and accepts such assignment and agrees to assume such rights and obligations as of the date hereof and agrees to be bound by the terms of this Assignment and Assumption Agreement and the Data Room Contract in the place and stead of Project Co.

Subject to the foregoing, the Parties may only assign any of its rights and obligations under this Assignment and Assumption Agreement to the extent that it may also assign its rights under the Project Agreement (in the case of Project Co and UOHI) and the Data Room Contract (in the case of the Supplier).

8. **Beneficiaries**

None of the provisions of this Assignment and Assumption Agreement is intended to provide any rights or remedies to any person or entity other than the Parties and their respective successors and assigns.

9. **Amendments**

This Assignment and Assumption 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 Assignment and Assumption Agreement.

10. **Counterparts**

This Assignment and Assumption 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 Assignment and Assumption Agreement which was so faxed.

11. **Governing Law and Jurisdiction**

This Assignment and Assumption Agreement, and each of the documents contemplated by or delivered under or in connection with this Assignment and Assumption 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. The Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF the Parties have duly executed and delivered this Assignment and Assumption Agreement.

**UNIVERSITY OF OTTAWA HEART
INSTITUTE**

Per: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

Per: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I/We have authority to bind the corporation

PCL OTTAWA HEART INSTITUTE 2014 LTD.

Per: _____

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation

PCL CONSTRUCTORS CANADA INC.

Per:

Name: [REDACTED]

Title: [REDACTED]

Per:

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation

DILIGENS INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation

SCHEDULE ‘A’

DATA ROOM CONTRACT

Attach Data Room Contract.

**SCHEDULE 4
PROJECT CO INFORMATION**

Project Co represents and warrants that the following information is true and correct as of the date of this Project Agreement:

Project Co

1. Name: PCL Ottawa Heart Institute 2014 Ltd.
2. Date of Incorporation: November 6, 2014
3. Corporation Number: [REDACTED]
4. Directors:

Name	Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

5. Officers:

Name	Address	Office
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

6. Subsidiaries: None.

7. Authorized and issued share capital:

<u>Name and address of registered holder</u>	<u>Number and class of shares held</u>	<u>Amount paid up</u>
[REDACTED]	[REDACTED]	[REDACTED]

Confidential

Page 1

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8. Loans:

[REDACTED]

9. Other outstanding securities (including description of type of securities, name and address of holder and amount):

[REDACTED]

10. Summary of any constitutional, contractual or other special voting rights, restrictions on powers of directors or similar matters relevant to the control of Project Co:

See form of Articles and Bylaws of Project Co attached.

SCHEDULE 5

FORM OF LENDER'S DIRECT AGREEMENT

THIS LENDER'S DIRECT AGREEMENT is made as of the [●] day of [●], 20[●]

BETWEEN:

UNIVERSITY OF OTTAWA HEART INSTITUTE, a non-share capital corporation incorporated under the laws of Ontario

(“**UOHI**”)

AND:

THE TORONTO-DOMINION BANK, acting as agent for and on behalf of Lender

(“**Agent**”)

AND:

PCL OTTAWA HEART INSTITUTE 2014 LTD.

(“**Project Co**”)

WHEREAS:

- A. UOHI and Project Co have entered into the Project Agreement.
- B. The overriding priorities of UOHI in entering into and implementing the Project Agreement are the health and safety of the patients of the Facility and Existing Facility, their healthcare needs and the provision of first-rate healthcare services.
- C. Under the Lending Agreements, the Financing is to be provided to Project Co by Lender to finance the payment of the Project under the Project Agreement, conditional, among other things, on Project Co executing and delivering the Lending Agreements.
- D. Agent has agreed to enter into this lender's direct agreement (the “**Lender's Direct Agreement**”) with UOHI and Project Co in relation to the Lending Agreements, the exercise of its rights under the Lending Agreements and the remedying of breaches by Project Co under the Project Agreement.

- E. Project Co and Agent recognize and understand that UOHI provides cardiac services to patients of The Ottawa Hospital pursuant to the *University of Ottawa Heart Institute Act* (Ontario) and is, therefore, subject to a highly regulated legal and operational environment.
- F. 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 UOHI, Project Co, the Agent and the Lender work collaboratively, responsibly and cooperatively throughout the Project Term.
- G. The Parties hereto agree that in relation to any defaults under the Lending Agreements and/or the Project Agreement and any enforcement action which either wishes to take under any security document entered into in support of the obligations of Project Co thereunder, their joint efforts and cooperation will be needed, together with such statutory approvals and consents as may then be required, given the nature of UOHI.

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

- (a) **“Appointed Representative”** means any of the following to the extent so identified in an Appointed Representative Notice:
 - (i) Agent, Lender or any Affiliate of either of them;
 - (ii) a receiver or receiver and manager or any permutation thereof of Project Co appointed under the Lending Agreements or appointed by a court of competent jurisdiction;
 - (iii) a person directly or indirectly owned or controlled by Agent or Lender; or
 - (iv) any other person approved by UOHI (such approval not to be unreasonably withheld or delayed).
- (b) **“Appointed Representative Notice”** has the meaning given to it in Section 7.2`.

- (c) **“Article”** and **“Section”** mean and refer to the specified article and section or subsection of this Lender’s Direct Agreement.
- (d) **“Construction Contract Assignment”** has the meaning given to it in Section 7.3(c).
- (e) **“Enforcement Action”** means any acceleration of amounts due and owing under any of the Lending Agreements and/or any enforcement proceeding or enforcement action commenced or taken under any of the Lending Agreements.
- (f) **“Enforcement Event”** means an event of default under the Lending Agreements or any event which permits an Enforcement Action.
- (g) **“Enforcement Rights”** means the rights as against Project Co to enforce or terminate the Project Agreement under Article 26 therein.
- (h) **“Lender”** means the Toronto-Dominion Bank, Alberta Treasury Branches and Caisse central Desjardins and such other persons as may become party to the Lending Agreements in the capacity of lenders thereunder from time to time and all such parties’ respective successors and assigns.
- (i) **[INTENTIONALLY DELETED]**.
- (j) **“Lender’s Direct Agreement”** means this lender’s direct agreement.
- (k) **“Lending Agreements”** means **[REDACTED]**.
- (l) **“Lien”** means the lien provided for under Section 14(1) of the *Construction Lien Act* (Ontario).
- (m) **“Notice Period”** means the period starting on the date of delivery of a Project Co Default Notice and ending 120 days later.
- (n) **“Party”** means any of UOHI, Project Co or Agent, and **“Parties”** means all of UOHI, Project Co and Agent, but, for greater certainty, such definitions do not include IO or Her Majesty the Queen in right of Ontario, as represented by either the MOHLTC or the MOI.
- (o) **“Pre-Qualified Proponent”** means an entity listed in Appendix A to this Lender’s Direct Agreement.

- (p) **“Project Agreement Assignment”** means an assignment of the Project Agreement by an Appointed Representative to a Replacement Project Co as contemplated in Section 7.3(a).
- (q) **“Project Co Default Notice”** has the meaning given to it in Section 6.1.
- (r) **“Project Co Event of Default”** means the occurrence of an event under the Project Agreement that upon the expiry of any cure periods provided for therein would entitle UOHI to terminate the Project Agreement.
- (s) **“Proposal Submission”** means the proposal submitted by Project Co in accordance with the Request for Proposals.
- (t) **“Rectification Obligations”** has the meaning given in Section 7.3.
- (u) **“Replacement Construction Contract”** has the meaning given to it in Section 7.3(c).
- (v) **“Replacement Contractor”** means a replacement contractor under a Construction Contract Assignment or a Replacement Construction Contract entered into pursuant to Section 7.3 who must either be a contractor that is a Pre-Qualified Proponent or that is acceptable to UOHI, IO and MOHLTC, acting reasonably.
- (w) **“Replacement Project Agreement”** has the meaning given to it in Section 7.3(b).
- (x) **“Replacement Project Co”** means a replacement project company under a Project Agreement Assignment or a Replacement Project Agreement entered into pursuant to Section 7.3, that must either be (i) a project company that is a Pre-Qualified Proponent or a wholly-owned subsidiary of a Pre-Qualified Proponent (in which event the Pre-Qualified Proponent must be the Construction Guarantor under the Replacement Project Agreement) or (ii) a project company that is acceptable to UOHI, IO and MOHLTC, acting reasonably.
- (y) **“Response Period”** has the meaning given to it in Section 4.1(d).
- (z) **“Step-In Date”** means the date on which UOHI receives a Step-In Notice from Agent.

- (aa) **“Step-In Notice”** means the notice given by Agent to UOHI pursuant to Section 7.1 stating that Agent is exercising its step-in rights under this Lender’s Direct Agreement.
- (bb) **“Step-In Period”** means the period from the Step-In Date up to and including the Step-Out Date.
- (cc) **“Step-Out Amount”** has the meaning given to it in Section 8.3.
- (dd) **“Step-Out Dates”** means the earlier to occur of (i) the expiry of the periods provided for in Sections 6.3(a) and 6.3(b), as the case may be, and (ii) the date on which UOHI receives a Step-Out Notice.
- (ee) **“Step-Out Notice”** has the meaning given to it in Section 8.1.

1.2 Interpretation

- (a) The provisions of Sections 2.1 - 2.29, inclusive, of Schedule 1 – Definitions and Interpretation of the Project Agreement are hereby incorporated in their entirety and all references in same to **“Project Agreement”** shall be read as **“Lender’s Direct Agreement”**.
- (b) This Lender’s Direct 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 Lender’s Direct Agreement.

Appendix No.	Description
Appendix A	Pre-qualified Proponents

2. CONFLICT IN DOCUMENTS

- 2.1 In the event of ambiguities, conflicts or inconsistencies between or among this Lender’s Direct Agreement and the Project Agreement, this Lender’s Direct Agreement shall prevail. Notwithstanding the foregoing, if there is any right or remedy in favour of UOHI set out in this 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. Notwithstanding any provision of any other Implementing Agreement, no review by UOHI of the Lending Agreements shall constitute an acceptance of or acquiescence to any of the Lending Agreements or any

term or condition thereof by UOHI, and this Lender's Direct Agreement and the Project Agreement shall not be subject to any of the terms and conditions of the Lending Agreements.

3. TERM

- 3.1** This Lender's Direct Agreement shall terminate automatically on the date on which all obligations that may be or become owing by Project Co to Agent or Lender under the Lending Agreements have been satisfied in full.
- 3.2** Promptly, and in no event more than 30 days following its occurrence, Agent shall provide notice to UOHI of the date referred to in Section 3.1.
- 3.3** UOHI hereby provides to Lender, Agent and Project Co and agrees to provide to Replacement Project Co, a non-exclusive license to have access to and to use the Site on the same terms and conditions as set out in Section 9.1 of the Project Agreement.

4. AGREEMENTS AND SECURITY

- 4.1** (a) Project Co and Agent shall not amend or modify any Lending Agreements other than as expressly provided for under the terms of those agreements and so long as such amendment:
- (i) is consistent in all material respects with the Financial Model;
 - (ii) does not increase the Cost of the Financing; and
 - (iii) does not increase the amount of any Compensation Payment, if and when payable, or costs of prepayment that were contained in the financing term sheet in the Proposal Submission,
- and shall provide prompt notice to UOHI of any amendments or modifications accompanied by a copy thereof.
- (b) Project Co shall not, prior to the Substantial Completion Date, exercise any rights of voluntary prepayment, voluntary redemption, or other voluntary repayment of loan, as applicable, under the Lending Agreements without the prior written consent of UOHI, acting in its sole discretion. In exercising its sole discretion to grant consent, UOHI shall be entitled to request and consider, and Project Co shall be required to provide within 10 Business Days of a request by UOHI, amongst other things and not limited to, the following:

- (i) written certification by an officer of Project Co of the Project Costs (as such term is defined in the Lending Agreements) the Work at the date of such proposed prepayment and/or redemption;
 - (ii) written certification by an officer of Project Co that no Funding Shortfall (as such term is defined in the Lending Agreements) would reasonably be expected to arise as a consequence of such prepayment and/or redemption, including any related cancellation of unutilized commitments, if applicable, under the Lending Agreements;
 - (iii) written confirmation from the Lenders' technical advisor, addressed to UOHI, that the Project Co's calculation in (i) above and Project Co's certification in (ii) above is, in the opinion of the Lenders' technical advisor, correct;
 - (iv) written confirmation from the Lenders' technical advisor, addressed to UOHI, that no incremental delay in achieving the Substantial Completion Date (beyond the Scheduled Substantial Completion Date) would reasonably be expected as a consequence of such prepayment and/or redemption and related cancellation of unutilized commitments, if applicable, under the Lending Agreements; and
 - (v) written confirmation from the Lenders' technical advisor, addressed to UOHI, that the Substantial Completion Date is likely to occur on or prior to the then Scheduled Substantial Completion Date.
- (c) Project Co and UOHI shall not amend or modify the Project Agreement or any Implementing Agreements to which Project Co or UOHI are parties, without the prior written consent of Agent, not to be unreasonably withheld or delayed, which consent (subject to Section 6.4 of this Lender's Direct Agreement) shall not be withheld if the relevant amendment or modification does not:
- (i) adversely affect the ability of Agent or Lender to exercise its rights under the Lending Agreements;
 - (ii) adversely affect the security of Lenders under the Lending Agreements; or
 - (iii) increase the liability of Agent, Lender or Project Co under the relevant agreement.

Agent shall respond to any request for consent under this Section 4.1(c) within 15 days of receipt thereof, failing which Agent shall be deemed to have consented to the relevant amendment or modification.

- (d) Project Co and UOHI acknowledge and agree that they will not, without the consent of Agent proceed to execute or implement any Change Order and UOHI acknowledges and agrees that it will not issue any Change Directive, which, in either case, is in respect of a discretionary expansion of the construction scope of the Work initiated by UOHI and which would:
- (i) materially alter the scope of the Work; or
 - (ii) materially impact financing of the Project or otherwise materially and adversely alter the risk profile of the Project,

provided the Parties further acknowledge and agree that where such Change Order or Change Directive (A) costs less than \$[REDACTED], or (B) when aggregated with all such other Change Orders and Change Directives previously implemented, costs less than \$[REDACTED], such Change Order or Change Directive shall be deemed not to materially alter the scope of the Work or impact the financing of the Project or otherwise materially and adversely alter the risk profile of the Project. When Agent's approval in respect of a Change Order or Change Directive is required in accordance with this Section 4.1, Agent will respond to a written request within 10 Business Days (“**Response Period**”) of receiving such request for its approval. If Agent intends not to approve the Change Order or the Change Directive, Agent will notify UOHI within the Response Period and will set out its concerns in such notification. If Agent's concerns can be addressed on a basis acceptable to UOHI and Agent, then UOHI may proceed with such Change Order or Change Directive and will concurrently implement or cause to be implemented such agreed-upon solution, including, as appropriate, by way of an amendment to the Change Order or Change Directive or by a related Change Order or Change Directive.

- 4.2** Project Co acknowledges and consents to the arrangements set out in this Lender's Direct Agreement, and agrees not to do or omit to do anything that may prevent any other Party from enforcing its rights under this Lender's Direct Agreement.
- 4.3** Agent acknowledges having received a copy of each of the Implementing Agreements.
- 4.4** UOHI acknowledges having received a copy of each of the Lending Agreements and consents to the granting of security by Project Co over the Project Agreement and Implementing Agreements contained in the Lending Agreements.

- 4.5 Project Co and Agent acknowledge that, subject to the provisions of the *Construction Lien Act* (Ontario) none of Project Co, Agent or Lender shall, under the Project Agreement or any of the Implementing Agreements, acquire any interest in the Site or the Project (other than the licence to access the Site or the Facility provided in Section 3.3 of this Lender's Direct Agreement or in Section 9.1(a) of the Project Agreement) notwithstanding any provision therein to the contrary and that UOHI shall at all times retain the fee simple interest in and freehold title to the Site and the Project to be constructed on the Site under the Project Agreement.
- 4.6 Without limitation of any of their respective rights and remedies under the Implementing Agreements, Project Co and the Agent acknowledge that UOHI provides cardiac services to patients of The Ottawa Hospital pursuant to the *University of Ottawa Heart Institute Act* (Ontario) and nothing in this Lender's Direct Agreement or any of the Implementing Agreements, including the Construction Contract, shall limit or shall be construed as limiting any authority and responsibility of UOHI under the *University of Ottawa Heart Institute Act* (Ontario) or, subject to Section 10.1(c) of the Project Agreement, any directions to UOHI or to the board of directors of UOHI made by a Governmental Authority under Applicable Law, or from being in compliance with all Applicable Law.
- 4.7 The Parties agree that they will enter into the Insurance and Bonding Trust Agreement contemporaneously with the execution of this Lender's Direct Agreement.

5. ENFORCEMENT OF SECURITY BY AGENT

- 5.1 Agent shall concurrently with notice to Project Co notify UOHI and the Surety of any Enforcement Event, any notice of default delivered pursuant to the Lending Agreements, any Enforcement Action, any notice from Agent to Project Co to accelerate the maturity of any amounts owing by Project Co to Agent or Lender under the Lending Agreements or any notice from Agent to Project Co to demand repayment thereof.
- 5.2 Agent shall appoint Lender's Consultant who shall be responsible to advise Agent and Lender with respect to the amount of any Legislative Holdback to be maintained in accordance with the Project Agreement. Project Co agrees that it shall, in respect of all payments under the Project Agreement, comply with Part IV of the *Construction Lien Act* (Ontario). Agent shall cause the Lender's Consultant to provide UOHI and IO with 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 the Agent. The Agent acknowledges and agrees that this Section 5.2 shall constitute sufficient authority for the Lender's Consultant to provide, without delay, a copy of any and all of its written assessments and reports to UOHI and to IO.

- 5.3** UOHI may conduct a subsearch of the Site at any time and from time to time and notify Agent and Project Co if any Lien has been registered against the Site arising from performance of the Work (save and except for any Liens in respect of work done by contractors directly engaged by UOHI for which Project Co has not assumed responsibility pursuant to an assignment under Section 11.8(c) of the Project Agreement, and provided in such case that Project Co has not assumed responsibility for payment of such contractors), and if such a Lien has been registered, Project Co shall immediately take such steps, at its sole cost and expense, as are required to have the Lien vacated or discharged. Agent acknowledges and agrees with UOHI that neither Agent nor Lender shall be entitled to rely on UOHI to conduct a subsearch or on any subsearch result of UOHI and that the result of any such subsearch provided by UOHI is, subject to the obligations of Project Co and Agent hereunder, for information only.
- 5.4** Agent agrees to conduct a subsearch of the Site prior to the advance of any Financing and if a Lien has been registered against the Site arising from the performance of the Work (save and except for any Liens in respect of work done by contractors directly engaged by UOHI for which Project Co has not assumed responsibility pursuant to an assignment under Section 11.8(c) of the Project Agreement, and provided in such case that Project Co has not assumed responsibility for payment of such contractors), Agent shall direct Project Co to proceed to immediately take such steps, at its sole cost and expense, as are required to have the Lien vacated or discharged or to make alternative arrangements to bond or otherwise secure the amount of the Lien and costs associated therewith satisfactory to Agent, acting reasonably, and doing so shall be a condition precedent to the making of any advance of the Financing.

6. PROJECT CO EVENT OF DEFAULT

- 6.1** Subject only to the rights expressly afforded to Agent in this Article 6, UOHI shall serve notice to Agent, with a copy to Project Co, of a Project Co Event of Default (the “**Project Co Default Notice**”) contemporaneously with any notice delivered by UOHI to Project Co under the Project Agreement. Without limiting the rights and remedies of Agent hereunder and without prejudice to Agent’s right to enforce the Lending Agreements against Project Co, upon the occurrence of a Project Co Event of Default, Agent shall forthwith serve notice of default on the Surety and make demand on the Surety under the Performance Bond if the Project Co Event of Default is also a default by the Contractor of its obligations under the Construction Contract (a “**Construction Event of Default**”).
- 6.2** At any time other than during the Step-In Period (with the restriction on termination during the Step-In Period set out in Section 6.3), UOHI shall not exercise any right it may have to terminate the Project Agreement or, except to the extent required to protect legal rights, comply with Applicable Law or preserve its right to make a claim or recover under

the Performance Bond, exercise any other rights or remedies for a Project Co Event of Default unless:

- (a) UOHI delivers to Agent a Project Co Default Notice setting out the nature of the alleged default in reasonable detail; and
- (b) in the case of a Project Co Event of Default which is capable of being cured, the Project Co Event of Default has not been cured by or on behalf of Appointed Representative within 30 days following the time periods set forth in the Project Agreement, or Appointed Representative (either itself or by others on its behalf) is not diligently proceeding to cure the breach in accordance with Section 26.3(a)(iii) of the Project Agreement within the time periods set forth in the Project Agreement, including for greater certainty, prior to the Longstop Date; or
- (c) in the case of a Project Co Event of Default which is incapable of being cured, the Notice Period has expired and Agent has not delivered a Step-In Notice.

6.3 During the Step-In Period, UOHI shall not exercise any right it may have to terminate the Project Agreement or, except to the extent required to protect legal rights, comply with Applicable Law or preserve its right to make a claim or recover under the Performance Bond, exercise any other rights or remedies in respect of a Project Co Event of Default:

- (a) if, in the case of a Project Co Event of Default which is capable of being cured, the Project Co Event of Default has been cured by or on behalf of Appointed Representative within 30 days of the time periods set forth in the Project Agreement, or Appointed Representative (either itself or by others on its behalf) is diligently proceeding to cure the breach in accordance with Section 25.3(a)(iii) of the Project Agreement within the time periods set forth in the Project Agreement, including for greater certainty, prior to the Longstop Date;
- (b) if, in the case of a Project Co Event of Default which is either:
 - (i) not capable of being cured (which, by way of example, would include an event described in Section 26.1(a)(i) of the Project Agreement), or
 - (ii) capable of being cured in the determination of Agent (acting reasonably) only by assigning the Project Agreement to a Replacement Project Co or entering into a Replacement Project Agreement as provided under Section 7.3, a Project Agreement Assignment with a Replacement Project Co or a Replacement Project Agreement with a Replacement Project Co has been entered into in accordance with Section 7.3,

within 120 days of the delivery of the Project Co Default Notice. UOHI and Appointed Representative may agree to extend such time period where Appointed Representative is proceeding diligently. In the case of either a Project Agreement Assignment or a Replacement Project Agreement having been entered into, the Work thereunder is to be completed on or before the date falling 180 days after the Longstop Date.

- 6.4** Agent will not take or consent to any action, including any action contemplated in Section 7.3 of this Lender's Direct Agreement, or any other action otherwise permitted or contemplated in this Lender's Direct Agreement, if such action would compromise the enforceability of the Security or UOHI's entitlement to claim or recover under the Security, unless Agent first obtains the prior approval of UOHI which may be given or withheld in UOHI's Sole Discretion. Agent hereby indemnifies and saves UOHI Indemnified Parties harmless from and against any Direct Losses which may be brought against, suffered, sustained or incurred by any of them as a result of, in respect of, or arising out of any breach by Agent of the provisions of this Section 6.4, arising from the wilful misconduct or gross negligence of Agent.

7. LENDER'S STEP-IN RIGHTS

- 7.1** Subject to Sections 6.2(b) and 7.2 and without prejudice to Agent's rights to enforce the Lending Agreements against Project Co, Agent may give UOHI a Step-In Notice at any time:
- (a) during which a Project Co Event of Default is subsisting (whether or not a Project Co Default Notice has been served);
 - (b) during the Notice Period; or
 - (c) during which an Enforcement Event is subsisting.
- 7.2** At the time Agent delivers a Step-In Notice, Agent shall deliver written notice (an "**Appointed Representative Notice**") to UOHI of the identity of its proposed Appointed Representative.
- 7.3** Subject to Section 6.3(a), upon issuance of a Step-In Notice, Appointed Representative shall cause Project Co to remedy the Project Co Event of Default and shall have the right for such purpose to enforce any of the Enforcement Rights including the right, subject to the prior approval of UOHI, acting reasonably, and subject to the terms and conditions of the Bonds to:

- (a) assign Project Co's interest in the Project Agreement and the other Implementing Agreements (excluding the Bonds) to a Replacement Project Co (the "**Project Agreement Assignment**"), subject to the agreement by the Replacement Project Co to assume the terms and conditions of the Project Agreement and the other Implementing Agreements; or
- (b) terminate the Project Agreement pursuant to the Enforcement Rights, and cause a replacement project agreement to be entered into with a Replacement Project Co (the "**Replacement Project Agreement**") on terms substantially similar to the Project Agreement; and
- (c) (i) assign the Contractor's interest in the Construction Contract to a Replacement Contractor (the "**Construction Contract Assignment**") subject to the agreement by the Replacement Contractor to assume the terms and conditions of the Construction Contract; or (ii) terminate the Construction Contract and to enter into a replacement construction contract with a Replacement Contractor (the "**Replacement Construction Contract**") on terms substantially similar to the Construction Contract;

provided that in either case, the Replacement Project Co covenants in the Project Agreement Assignment or the Replacement Project Agreement, as applicable, to (i) remedy any curable breach of Project Co under the Project Agreement, whether in respect of payment or performance and whether arising prior to or during the Step-In Period, (ii) vacate any Liens from the Site arising from the performance of the Work, whether arising prior to or during the Step-In Period (other than in the circumstances set out in Section 6.3(b)(ii)), and in the case of items (i) and (ii), subject to and within the time period for curing Project Co Events of Default as set out in Section 6.3(a), and (iii) provide replacement or ensure continued maintenance of the Security under the Project Agreement (items (i), (ii) and (iii) of this Section 7.3 are collectively referred to as the "**Rectification Obligations**"). Upon any Project Agreement Assignment, the Project Agreement shall be deemed to be terminated on the date of such Project Agreement Assignment with respect to Project Co, and the provisions of Section 4.6 of Schedule 12 to the Project Agreement – Compensation on Termination, shall be deemed to apply as if compensation had been paid by UOHI pursuant to Section 2.1 of Schedule 12 to the Project Agreement, and the Replacement Project Co shall have no liability for the non-performance of Project Co arising prior to the date of such Project Agreement Assignment, unless same is encompassed in the Rectification Obligations, provided the foregoing shall not limit the rights of UOHI to subsequently deduct from payments owing by UOHI under the Project Agreement those amounts which it would otherwise be entitled to deduct under the Project Agreement.

- 7.4 At the time of a Project Agreement Assignment or the entering into of a Replacement Project Agreement under Section 7.3, the Agent shall be required to cause the Replacement Project Co to enter into a construction contract, on terms substantially similar to the Construction Contract and an assignable subcontract agreement, on terms substantially similar to the form of the Assignable Subcontract Agreement for Construction Contract, and to make such other arrangements satisfactory to UOHI under which the Replacement Project Co stands in the place of Project Co under the Lending Agreements, the Project Agreement and the Implementing Agreements.
- 7.5 During the Step-In Period, UOHI shall deal with Appointed Representative instead of Project Co in connection with all matters related to the Project Agreement. Project Co agrees to be bound by all such dealings between UOHI and Appointed Representative to the same extent as if they had been between UOHI and Project Co.
- 7.6 For greater certainty, Agent acknowledges and agrees that its rights as Obligee under the Performance Bond shall be limited to the enforcement of the obligations of the Surety, as more particularly described in the Performance Bond and shall be subject to Agent's obligation as an Obligee to pay the Balance of the Contract Price. If Agent receives any benefit from the Surety under the Performance Bond and fails to complete or cause to have completed the obligations of the Contractor under the Construction Contract, Agent shall pay to UOHI an amount equal to the amount of the proceeds received by Agent from the Surety and not applied toward obtaining the completion of the unperformed obligations of the Contractor under the Construction Contract. For the purposes of this Section 7.6, the terms "Obligee", "Surety", and "Balance of the Contract Price" have the meanings given to them under the Performance Bonds.

8. STEP-OUT RIGHTS

- 8.1 Appointed Representative may, at any time during the Step-In Period, deliver written notice (a "**Step-Out Notice**") to UOHI to terminate the Step-In Period on the Step-Out Date.
- 8.2 On termination of the Step-In Period, where the Project Agreement has been assigned to the Replacement Project Co or a Replacement Project Agreement has been entered into as contemplated in Section 7.3, UOHI and Appointed Representative shall be released from any obligations to the other arising during the Step-In Period, except as may arise under Sections 6.4, 7.6 or Section 8.6(iii).
- 8.3 On termination of the Step-In Period, if (i) the Project Co Event of Default has not been cured, or (ii) the Project Agreement has not been assigned to a Replacement Project Co or a Replacement Project Agreement has not been entered into and any outstanding Project Co Event of Default has not been cured, then UOHI shall confirm that, as consideration

for the rights and benefits assigned to UOHI pursuant to Section 8.3(c) below, it shall pay to Project Co or as Project Co may direct, an amount equal to the amount that would have been paid by UOHI upon termination of the Project Agreement pursuant to the provisions of Section 2.1 of Schedule 12 to the Project Agreement – Compensation on Termination (and calculated and payable in accordance therewith) as if the date of such confirmation were the Termination Date (the “**Step-Out Amount**”) and upon such confirmation:

- (a) any rights and obligations between Appointed Representative on the one hand and UOHI on the other hand, arising during the Step-In Period, shall be mutually released, except as may arise under Section 6.4, Section 7.6 or Section 8.6(iii);
- (b) subject to payment of the Step-Out Amount by UOHI, UOHI shall have no further obligation to Appointed Representative or Project Co to pay the Substantial Completion Payment to Agent, Lender, Appointed Representative or Project Co on the achievement of Substantial Completion;
- (c) Agent shall permit UOHI thereupon to have the full benefit and entitlement to the Bonds, the Assignable Subcontract Agreement for Construction Contract and the Assignable Subcontract Agreements without regard to any interest therein of Agent, Lender or Project Co, and Agent agrees that UOHI may thereafter proceed to enforce all of its rights under the Bonds, the Assignable Subcontract Agreement for Construction Contract and/or the Assignable Subcontract Agreements without regard to any rights in favour of Agent, Lender or Project Co and Agent shall notify the Surety under the Performance Bond that UOHI is entitled to exercise all rights and take all benefits of the Obligee;
- (d) the provisions of Section 4.6(a) of Schedule 12 to the Project Agreement – Compensation on Termination shall, subject to payment of the Step-Out Amount by UOHI, be, subject to Section 8.5, deemed to apply as between Project Co and UOHI, mutatis mutandis, and the obligation to make Base Progress Payments shall devolve to and thereafter be assumed by UOHI; and
- (e) the provisions of Sections 4.3 to 4.8, inclusive, of the Project Agreement shall no longer apply.

If an Enforcement Event has not been cured on the termination of the Step-In Period as aforesaid, then UOHI may confirm that, as consideration for the rights and benefits assigned to UOHI pursuant to Section 8.3(c), it shall pay to Project Co or as Project Co may direct, the Step-Out Amount, and the provisions of Sections 8.3(a), 8.3(b), 8.3(c), 8.3(d) and 8.3(e) above shall apply upon such confirmation. For greater certainty, nothing in this Section 8.3 shall affect the rights and obligations of the Contractor under the Construction Contract or the rights of the Surety under the Performance Bond.

- 8.4** There will not be more than one Step-In Period following the issuance by UOHI of any one Project Co Default Notice.
- 8.5** UOHI acknowledges and agrees that if UOHI proceeds to exercise its rights as Obligee under the Performance Bond, unless UOHI has arranged for a replacement Financing through Project Co, a Replacement Project Co or a substitute Project Co, then UOHI shall be obligated to make the Base Progress Payments and to pay the applicable HST subject to and in accordance with the requirements of the Construction Contract.
- 8.6** UOHI hereby undertakes that it will not exercise any rights it may have under or arising out of any of the Assignable Subcontract Agreements except following a termination of the Project Agreement in accordance with its terms. For greater certainty, and subject to (i) the consent of UOHI, acting reasonably, (ii) the terms and conditions of or the ensured continuation of the Bonds and (iii) the undertaking of Agent and/or the Appointed Representative that, upon the exercise of any Step-Out Rights pursuant to Article 8, Agent and/or the Appointed Representative shall cause to be assigned to UOHI, or as UOHI may direct, all subcontracts which are assigned to or at the direction of Agent and/or the Appointed Representative as hereinafter provided, to the extent required in connection with the exercise by the Appointed Representative of the rights and remedies set forth in Section 7.3, UOHI covenants and agrees with Agent that it shall, upon written request of Agent and as Agent and/or the Appointed Representative may direct, in respect of each subcontract which is the subject of any Assignable Subcontractor Agreement (an “ASA”), issue (i) an Assignment Notice (in accordance with and as defined in Section 3(c) of the ASA), to the subcontractor party thereto indicating therein as Assignee (as defined in the Section 3(c)), Agent, the Appointed Representative or as Agent or the Appointed Representative may otherwise direct, or (ii) a Direct Assignment Notice (in accordance with and as defined in Section 3(e) of the ASA) to the subcontractor party thereto indicating therein as GC Assignee (as defined in Section 3(d) of the ASA) any Replacement Contractor.
- 9. PAYMENT DIRECTION OF THE INTERIM COMPLETION PAYMENT, THE SUBSTANTIAL COMPLETION PAYMENT, THE UOHI HOLDBACK, COMPENSATION PAYMENT, CERTIFIED COST TO COMPLETE AND STEP-OUT AMOUNT**
- 9.1** UOHI acknowledges the assignment by Project Co of the Interim Completion Payment, the Substantial Completion Payment, the UOHI Holdback, any Compensation Payment, the Certified Cost to Complete and any Step-Out Amount to Agent under the security granted to Agent by Project Co under the Lending Agreements. Project Co hereby irrevocably directs UOHI to pay the Interim Completion Payment, the Substantial Completion Payment, the UOHI Holdback, any Compensation Payment, the Certified

Cost to Complete and any Step-Out Amount which becomes payable to Project Co in accordance with the Project Agreement, to Agent or as Agent may direct. UOHI acknowledges such direction and agrees to pay the Interim Completion Payment, Substantial Completion Payment, the UOHI Holdback, any Compensation Payment, the Certified Cost to Complete and any Step-Out Amount to Agent in accordance with such direction. Project Co acknowledges and agrees that payment by UOHI of the Interim Completion Payment, the Substantial Completion Payment, the UOHI Holdback, any Compensation Payment, the Certified Cost to Complete and any Step-Out Amount in accordance with this Section 9.1 to Agent or as Agent may direct, constitutes payment by UOHI to Project Co in satisfaction of UOHI's obligation to pay the Interim Completion Payment, the Substantial Completion Payment, the UOHI Holdback, any Compensation Payment, the Certified Cost to Complete and any Step-Out Amount, as the case may be. For greater certainty, no Compensation Payment shall be payable on a termination of the Project Agreement by Appointed Representative as a result of Appointed Representative exercising its rights under Section 7.3(b) of this Lender's Direct Agreement.

10. ASSIGNMENT

- 10.1** UOHI may assign or otherwise dispose of the benefit of the whole (but not part) of its interest in this Lender's Direct Agreement to any person to whom UOHI assigns or otherwise disposes of its interest in the Project Agreement and the other Implementing Agreements pursuant to Section 39.2 of the Project Agreement, and shall provide written notice to Project Co and Agent of such assignment or disposition. Such assignee shall assume the obligations and acquire the rights of UOHI under this Lender's Direct Agreement. Upon any such assignment or disposition, UOHI shall be released from all of its obligations hereunder to the extent such obligations are assumed by the assignee. Project Co and Agent shall, at UOHI's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.
- 10.2** Agent may only assign or otherwise dispose of any interest in this Lender's Direct Agreement as permitted by the Lending Agreements, and with the prior written consent of UOHI, such consent not to be unreasonably withheld or delayed. Agent shall cause the assignee to enter into an assumption agreement of this Lender's Direct Agreement in form and substance reasonably satisfactory to UOHI with Project Co and UOHI. Project Co and UOHI shall, at Agent's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.
- 10.3** Project Co may not assign or otherwise dispose of any interest in this Lender's Direct Agreement.

11. NOTICES

11.1 Notices to Parties

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

If to UOHI: **[REDACTED]**

Attention: **[REDACTED]**

Fax No: **[REDACTED]**

With a copy to:

Ontario Infrastructure and Lands Corporation

777 Bay Street, 6th Floor

Toronto, Ontario M5G 2C8

Attn.: **[REDACTED]**

Fax No.: **[REDACTED]**

If to Agent: **[REDACTED]**

Attention: **[REDACTED]**

Fax No: **[REDACTED]**

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

Attention: **[REDACTED]**

Fax No.: **[REDACTED]**

11.2 Facsimile

Where any Notice is provided or submitted to a Party via facsimile, an original of the Notice sent via facsimile shall promptly be sent by regular mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party’s failure to comply with this Section 11.2.

11.3 Change of Address

Any Party to this Lender's Direct Agreement may, from time to time, change any of its contact information set forth in Section 11.1 by prior Notice to the other Party, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such Notice unless a later effective date is given in such Notice.

11.4 Deemed Receipt of Notices

- (a) Subject to Section 11.4(b), a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing. Subject to Section 11.4(c), a Notice given by hand delivery shall be deemed to have been received on the day it is delivered. Subject to Sections 11.4(c) and 11.4(d), a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (b) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 11.4.
- (c) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (d) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

12. GENERAL

12.1 Amendments

This Lender's Direct 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 Lender's Direct Agreement.

12.2 Waiver

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

12.3 Relationship Between the Parties

Each of the Parties acknowledges that it is contracting on its own behalf and not as agent for any other person. This Lender's Direct Agreement is not intended to and does not create or establish between the Parties or between any of the Parties and the Province, including IO, any relationship as partners, joint venturers, employer and employee, master and servant, or of principal and agent, and does not create or establish any relationship whatsoever between UOHI, the Province, including IO, and any Affiliate, representative or employee of Project Co or Agent.

12.4 Entire Agreement

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

12.5 No Reliance

- (a) Each of the Parties acknowledges that:
 - (i) it has not entered into this Lender's Direct Agreement on the basis of and does not rely, and has not relied, upon any statement or representation, whether negligent or innocent, or warranty or other provision, whether oral, written, express or implied, made or agreed to by any person, whether a Party to this Lender's Direct Agreement or not, except those expressly made, given or repeated in this Lender's Direct Agreement, and the only remedy or remedies available in respect of any misrepresentation

or untrue statement or warranty made to it shall be those expressly provided for in this Lender's Direct Agreement; and

- (ii) this Section 12.5 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Lender's Direct Agreement which was induced by fraud, for which the remedies available shall be all those available under Applicable Law.

12.6 Severability

If any provision of this Lender's Direct Agreement is declared invalid, unenforceable or illegal by the courts of a competent jurisdiction, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Lender's Direct Agreement. If any such provision of this Lender's Direct Agreement is invalid, unenforceable or illegal, the Parties shall, acting in good faith, promptly negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Lender's Direct Agreement as near as possible to its original intent and effect.

12.7 Enurement

This Lender's Direct Agreement shall enure to the benefit of, and be binding on each of the Parties and their respective successors and permitted transferees and assigns.

12.8 Governing Law and Jurisdiction

- (a) This Lender's Direct Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

12.9 Cumulative Remedies

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

12.10 Further Assurance

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

12.11 Costs

Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Lender's Direct Agreement.

12.12 Counterparts

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

12.13 Language of Agreement

Each Party acknowledges having requested and being satisfied that this Lender's Direct Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglaise et s'en déclare satisfaite.

12.14 Confidentiality

Agent shall comply with the obligations on the part of Project Co contained in Article 37 of the Project Agreement and this obligation shall survive the termination of this Lender's Direct Agreement.

12.15 Tombstone Marketing

For the purpose of "tombstone marketing", and in the case of UOHI, other promotional purposes, each of UOHI, Agent, Lender and Project Co (collectively, the "Grantors" and individually, a "Grantor") authorizes and consents to the reproduction, disclosure and use by any of them (collectively, the "Grantees" and individually, a "Grantee") of the names and identifying logos of any of the Grantors and the transactions herein

contemplated, to enable each Grantee to publish promotional “tombstones”. Each Grantor acknowledges and agrees that each Grantee shall be entitled to determine, in its discretion, whether to use such information and that no compensation will be payable by any Grantee resulting therefrom. No Grantee shall have any liability whatsoever to any Grantor or any of its employees, officers, directors, affiliates or shareholders, in obtaining and using such information in accordance with this Section 12.15. Notwithstanding the foregoing, each Grantee agrees to provide the applicable Grantor with a mock up of any such information prior to any publication and to obtain the applicable Grantor’s consent to the use thereof, which consent shall not be unreasonably withheld.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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

UNIVERSITY OF OTTAWA HEART
INSTITUTE

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

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

I/We have authority to bind the corporation

THE TORONTO-DOMINION BANK , as Agent

Per: _____

Name:

Title:

**PCL OTTAWA HEART INSTITUTE 2014
LTD.**

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

I have authority to bind the corporation

APPENDIX A

PRE-QUALIFIED PROPONENTS

[REDACTED]

SCHEDULE 6

[INTENTIONALLY DELETED]

**SCHEDULE 7
KEY PERSONNEL**

[REDACTED]

SCHEDULE 8

[REDACTED]

**SCHEDULE 9
COMMISSIONING PROGRAM**

- 1.1** Project Co acknowledges that Commissioning of the Work as required under the Contract Documents is an integral and important part of the Work and undertakes to provide UOHI with any assistance deemed necessary by UOHI, the Consultant and the Commissioning Agent, if any is appointed by UOHI, in respect of the Commissioning for the Project, including ensuring that the Project Co Parties provide whatever assistance UOHI, the Consultant and the Commissioning Agent may reasonably require. Project Co shall be responsible for including in the Construction Schedule the schedule for all Commissioning as it relates to the applicable Phased Occupancy Dates, the Interim Completion Date and the Substantial Completion Date. A portion of the Commissioning may, as set out in the Specifications in the Contract Documents, be completed prior to Substantial Completion of the Work and completion of Commissioning shall be required prior to Final Completion, except to the extent expressly provided in the Contract Documents to occur following Final Completion.
- 1.2** UOHI, the Consultant and the Commissioning Agent will attend, in accordance with the schedule for Commissioning set out in the Construction Schedule, performance tests and demonstrations carried out by Project Co, the Project Co Parties, manufacturers, and other agents, in accordance with the Contract Documents and as is mutually satisfactory to both parties.
- 1.3** Project Co and the Project Co Parties will submit copies of all As-Built Drawings, records, manufacturer's written performance equipment data and specification sheets and shop drawings to UOHI and the Consultant, and as UOHI and the Consultant may reasonably request, and cooperate, and make reasonable efforts to ensure systems designated for Commissioning are complete and pre-tested as fully operational prior to scheduling tests and demonstrations with UOHI, the Consultant and the Commissioning Agent.

SCHEDULE 10

[INTENTIONALLY DELETED]

SCHEDULE 11

CHANGE PROCEDURE

1. GENERAL

- 1.1 UOHI, through the Consultant, without invalidating this Project Agreement, may make Changes in the Scope of the Work consisting of additions, deletions, or other revisions to the Work by Change Order or Change Directive.
- 1.2 Project Co shall not perform a Change in the Scope of the Work without a Change Order or a Change Directive. This requirement is of the essence and it is the express intention of the parties that any claims by Project Co for a change in the Guaranteed Price and/or Contract Time shall be barred unless there has been strict compliance with the requirements of this Schedule. No course of conduct or dealing between the parties, no express or implied acceptance of alteration or additions to the Work and no claims that UOHI has been unjustly enriched by any alteration or addition to the Work, whether in fact there is any such unjust enrichment or not, shall be the basis of a claim for additional payment under this Contract or a claim for any extension of the Contract Time.
- 1.3 Supplemental Instructions are subject to the provisions of the Contract Documents and will not result in a Change Order or a Change Directive. Any actions taken by Project Co in response to such instructions are at Project Co's risk and included in the Guaranteed Price and in the Contract Time.
- 1.4 The Consultant shall copy Lender and Lender's Consultant on all Change Orders, Change Directives and Supplemental Instructions.

2. CHANGE ORDER

- 2.1 When a Change in the Scope of the Work is proposed or required, the Consultant shall provide a Contemplated Change Notice to Project Co. Any adjustment to the Guaranteed Price or to the Contract Time as a result of the proposed Change in the Scope of the Work, shall be recorded in a Change Order in accordance with Section 2.2 of this Schedule 11. If the proposed Change in the Scope of the Work is anticipated by Project Co to result in an adjustment of the Guaranteed Price, Project Co shall provide to UOHI and the Consultant a written explanation and details of the adjustment. Any adjustment to the Contract Time shall only be to the extent that the critical path of the Construction Schedule is affected by the change to the Work and Project Co shall not be entitled to claim any ownership of the Schedule Cushion.
- 2.2 When UOHI and Project Co agree to the adjustments in the Overhead and Profit Fee, Guaranteed Price and Contract Time or to the method to be used to determine the adjustments, such agreement shall be effective immediately and shall be recorded in a Change Order, signed by UOHI and Project Co. The value of the Work performed as a

result of a Change Order shall be included in applications for progress payments as Additional UOHI Payments.

2.3 The value of Changes in the Scope of the Work shall be determined by one of the following methods as selected by UOHI:

1. A lump sum amount (but excluding any amount on account of an increase to the Cost of the Financing) substantiated by an itemized cost breakdown acceptable to the Consultant and UOHI which lump sum shall be reasonable and consistent with market rates in the local market, if available, and if not available, in accordance with competitive market rates for such a project otherwise available at the time such Work is performed, and which will include an Overhead and Profit Fee applied in accordance with Section 2.4 of this Schedule 11.
2. The aggregate of the Cost, as defined herein, and the Overhead and Profit Fee, as determined in accordance with Section 2.4 of this Schedule 11, all substantiated by an itemized cost breakdown acceptable to UOHI and the Consultant, and which may be initiated with a maximum change order amount at the option of UOHI. “Cost” shall be actual net cost to Project Co, excluding its overhead and profit, as agreed to by UOHI and Project Co, and as determined pursuant to the Cost of the Work provisions applicable to Changes in the Scope of the Work set out in Sections 2.5, 2.6, 2.7 and 2.8 of this Schedule 11, provided that all such actual costs must be reasonable, consistent with market rates in the local market, if available, and if not available, in accordance with competitive market rates for such a project otherwise available at the time such Work is performed and substantiated in full detail to the satisfaction of the Consultant and UOHI. Such Costs shall be subject to full and complete audit at all reasonable times by the representatives of the Consultant and UOHI. This method of determining the value of a change in the Work shall extend to the Project Co Parties as applicable. Labour rates, labour productivity rates and discounts of Project Co Parties, and all material and trade rates and discounts applicable to changes, shall be submitted to UOHI and shall be subject to UOHI’s approval prior to the execution of the applicable contracts with Project Co Parties. The pricing of all materials and Products involved in changes shall be at the actual cost, including discounts, and not at manufacturer’s list or suggested retail prices.
3. Unit prices as set out in Appendix A to this Schedule 11 or subsequently agreed upon, which shall include overhead, profit and other reasonable charges of Project Co, which shall be the total cost to UOHI. Where applicable, adjustment to the Guaranteed Price shall be based on net quantity difference from original quantity.

2.4 “Overhead and Profit Fee”, as that term is referred to in Sections 2.3.1 and 2.3.2 of this Schedule 11, shall be a percentage of the Cost, as defined in Section 2.3.2 of this Schedule 11, and as listed below, and shall include Project Co’s, the Contractor’s and the

other Subcontractors' overhead and profit, as applicable; provided that as between Project Co and the Contractor, only one aggregate Overhead and Profit Fee may be charged. "Overhead" means any cost incurred for maintaining a viable business, including:

1. licensing required for conducting business in a jurisdiction;
2. salaries, wages, benefits for office personnel, general management, warehouse personnel, maintenance workers and other employees engaged in daily operations at the place of business;
3. general office expenses not related to an individual project, including rent, leases, mortgages, financing costs including holdback, utilities, disposal charges and related services, telephone, light, power, water, utilities and heat;
4. leased or rented equipment, furniture and facilities not used on the Site;
5. office supplies, including stationery, postage and other office supplies, equipment, computer hardware and software;
6. Project related office expenses, including permits and/or licenses required by authorities having jurisdiction, phone, fax, internet, printing, courier charges, office equipment rentals, lodging and travel;
7. Project related Site expenses, including site/trailer office(s) and sheds, including cost of telephone, light, power, utilities, water and heat used therein, Project safety (hoarding, signage, bump lines, etc.), Site security, fire prevention, snow removal, winter conditions, surveying, coordination of service disruption, Project signage, sanitary facilities, water, power, heat, temporary protection of areas adjacent to the Work, As-Built Drawings and maintenance manuals;
8. salaries, wages, benefits for Project Co's project manager, foreman and supervisor, project superintendent, mechanical and electrical coordinator;
9. licenses, permits, certificates, fees and deposits except when these are special for a particular item of Work; and
10. printing charges for proposed changes, Change Orders and Drawings for use in the Work by Project Co and the Project Co Parties. (the Consultant will provide one (1) copy of change notice documentation and in the event of re-issue of full size Drawings, will provide one (1) reproducible and one (1) print).

At Project Co's option, if the Contract Time is extended as a result of a Change Order, then the expenses referred to in Sections 2.4.6, 2.4.7 and 2.4.8 of this Schedule 11 for the extended period that are specifically related to the Change Order, may be excluded from the Overhead and Profit Fee and included in the Cost of the Work in accordance with Section 2.6 of this Schedule 11, and

the applicable Project Co's and Contractor's Overhead and Profit Fee referred to in Section 2.5 of this Schedule 11, shall be reduced by [REDACTED]% and applied to the entire scope of the Change Order.

In addition, at Project Co's option, if an extension of the Contract Time would have occurred but for the utilization of additional resources by Project Co which may include premium time and overtime, then the expenses referred to Sections 2.4.6, 2.4.7 and 2.4.8 of this Schedule 11 that are specifically related to additional resources utilized by Project Co, may be excluded from the Overhead and Profit Fee and included in the Cost of the Work in accordance with Section 2.6 of this Schedule 11, and the applicable Project Co's and Contractor's Overhead and Profit Fee referred to in Section 2.5 of this Schedule 11 shall be reduced by [REDACTED]% and applied to the entire scope of the Change Order. The determination of whether the utilization of additional resources by Project Co did avoid an extension of the Contract Time shall, subject to the provisions of Schedule 14 – Dispute Resolution Procedure, be determined by the Consultant based on the impact of such utilization of additional resources on the critical path of the Construction Schedule.

2.5 In determining the value of Scope Changes, UOHI will be permitted to aggregate only the value of Changes in the Scope of the Work that arise out of UOHI initiated Change Orders which relate to the same category, location or component of Work.

On Scope Changes having a value of \$[REDACTED] or less:

The aggregate of Project Co's and the Contractor's Overhead and Profit Fee on Scope Changes will be permitted as follows, without duplication:

1. Within the scope of Project Co's and/or the Contractor's own work force, the Overhead and Profit Fee shall not be more than [REDACTED]% of that portion of the Cost performed by Project Co's or the Contractor's own workforce.
2. Project Co's or the Contractor's total Overhead and Profit Fee for the work performed by a Subcontractor shall not be more than [REDACTED]% of that portion of the Cost performed by the Subcontractor.

The Subcontractor's (excluding the Contractor) Overhead and Profit Fee on Scope Changes will be permitted as follows, without duplication:

3. Within the scope of the Subcontractor's own work force, the Overhead and Profit Fee shall not be more than [REDACTED]% of that portion of the Cost performed by the Subcontractor's own workforce.
4. The Subcontractor's total Overhead and Profit Fee for the work performed by a Sub-Subcontractor shall not be more than [REDACTED]% of that portion of the Cost performed by the Sub-Subcontractor.

5. No Overhead and Profit Fee on credits will be permitted.

On Scope Changes having a value of \$[REDACTED] to \$[REDACTED]:

The aggregate of Project Co's and the Contractor's Overhead and Profit Fee on Scope Changes will be permitted as follows, without duplication:

6. Within the scope of Project Co's and/or the Contractor's own work force, the Overhead and Profit Fee shall not be more than [REDACTED] % of that portion of the Cost performed by Project Co's and/or the Contractor's own workforce.
7. Project Co's and/or the Contractor's total Overhead and Profit Fee for the work performed by a Subcontractor shall not be more than [REDACTED]% of that portion of the Cost performed by the Subcontractor.

The Subcontractor's (excluding the Contractor) Overhead and Profit Fee on Scope Changes will be permitted as follows, without duplication:

8. Within the scope of the Subcontractor's own work force, the Overhead and Profit Fee shall not be more than [REDACTED]% of that portion of the Cost performed by the Subcontractor's own workforce.
9. The Subcontractor's total Overhead and Profit Fee for the work performed by a Sub-Subcontractor shall not be more than [REDACTED]% of that portion of the Cost performed by the Sub-Subcontractor.
10. No Overhead and Profit Fee on credits will be permitted.

On Scope Changes having a value of \$[REDACTED] to \$[REDACTED]:

The aggregate of Project Co's and the Contractor's Overhead and Profit Fee on Scope Changes will be permitted as follows, without duplication:

11. Within the scope of Project Co's and/or the Contractor's own work force, the Overhead and Profit Fee shall not be more than [REDACTED]% of that portion of the Cost performed by Project Co's and/or the Contractor's own workforce.
12. Project Co's and/or the Contractor's total Overhead and Profit Fee for the work performed by a Subcontractor shall not be more than [REDACTED]% of that portion of the Cost performed by the Subcontractor.

The Subcontractor's (excluding the Contractor) Overhead and Profit Fee on Scope Changes will be permitted as follows, without duplication:

13. Within the scope of the Subcontractor's own work force, the Overhead and Profit Fee shall not be more than [REDACTED]% of that portion of the Cost performed by the Subcontractor's own workforce.
14. The Subcontractor's total Overhead and Profit Fee for the work performed by a Sub-Subcontractor shall not be more than [REDACTED]% of that portion of the Cost performed by the Sub-Subcontractor.
15. No Overhead and Profit Fee on credits will be permitted.

On Scope Changes having a value of \$[REDACTED] and over:

The aggregate of Project Co's and the Contractor's Overhead and Profit Fee on Scope Changes will be permitted as follows, without duplication:

16. Within the scope of Project Co's and/or the Contractor's own work force, the Overhead and Profit Fee shall not be more than [REDACTED]% of that portion of the Cost performed by Project Co's and/or the Contractor's own workforce.
17. Project Co's and/or the Contractor's total Overhead and Profit Fee for the work performed by a Subcontractor shall not be more than [REDACTED]% of that portion of the Cost performed by the Subcontractor.

The Subcontractor's (excluding the Contractor) Overhead and Profit Fee on Scope Changes will be permitted as follows:

18. Within the scope of the Subcontractor's own work force, the Overhead and Profit Fee shall not be more than [REDACTED]% of that portion of the Cost performed by the Subcontractor's own workforce.
19. The Subcontractor's total Overhead and Profit Fee for the work performed by a Sub-Subcontractor shall not be more than [REDACTED]% of that portion of the Cost performed by the Sub-Subcontractor.
20. No Overhead and Profit Fee on credits will be permitted.

2.6 For the purposes only of determining the value of Changes in the Scope of the Work under Section 2.3.2 of this Schedule 11, the Cost of the Work, which excludes HST, shall mean the actual cost, without mark-up or Project Co assessments as necessarily incurred by Project Co in the performance of a Change in the Scope of the Work, and shall be restricted to the following:

1. wages and benefits paid for labour in the direct employ of Project Co under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by UOHI and Project Co;

2. salaries, wages and benefits of Project Co's personnel, when stationed at the field office, in whatever capacity employed; or personnel engaged at shops or on the road, in expediting the production or transportation of materials or equipment excluding the costs identified in Sections 2.4.2 and 2.4.8 of this Schedule 11;
3. contributions, assessments or taxes incurred for items such as employment insurance, provincial or territorial health insurance, workers' compensation, and Canada or Quebec Pension Plan, insofar as such cost is based on wages, salaries or other remuneration paid to employees of Project Co and included in the Cost of the Work, as provided in Sections 2.6.1 and 2.6.2 of this Schedule 11;
4. the cost of all Products, including cost of transportation thereof;
5. the cost of materials, supplies, equipment, temporary services and facilities and hand tools not owned by Project Co or any Project Co Party, including transportation and maintenance thereof, which are consumed in the performance of the Work that is the subject of the Change Order, and cost less salvage value on such items used but not consumed, which remain the property of Project Co or any Project Co Party;
6. the cost of all tools, machinery and equipment used in the performance of the Work that is the subject of the Change Order, exclusive of hand tools, whether rented from or provided by Project Co or any Project Co Party, including the installation, minor repairs and replacements, dismantling, removal, transportation and delivery cost thereof;
7. the net amounts of all payments paid to Subcontractors and Suppliers in accordance with agreed to charge out rates after deduction of any back-charges, set offs or other similar charges but excluding costs to Project Co that result from the insolvency or failure to perform of any Project Co Party;
8. the cost of quality assurance, such as independent inspection and testing services, except for any such cost excluded under Section 2.8.19 of this Schedule 11;
9. charges levied by authorities having jurisdiction at the Site;
10. royalties, patent license fees, and damages for infringement of patents and cost of defending suits therefor, subject always to Project Co's obligations to indemnify UOHI as provided in Sections 33.1 and 37.2(a) of the Project Agreement;
11. changes to premiums, if any, for all bonds and insurance in relation to the performance of the Work resulting directly from the Changes in the Scope of the Work;

12. all taxes, other than HST, and duties for which Project Co is liable in relation to the performance of the Work;
13. charges for long distance telephone and facsimile communications, courier services, expressage, photocopying, reproduction of Contract Documents, and petty cash items incurred in relation to the performance of the Work;
14. the cost of removal and disposal of waste products and debris;
15. costs incurred due to Emergencies affecting the safety of persons or property;
16. the cost of removal or containment of Hazardous Substances;
17. where there is a reduction in the construction scope of the Work, demobilization costs and costs incurred for cancellation or reduction of contracts entered into with a Project Co Party, on an arm's length basis; and
18. any other cost to Project Co expressly or properly inferable from any provision of this Project Agreement.

2.7 All cash discounts shall accrue to Project Co unless UOHI deposits funds with Project Co with which to make payments, or where UOHI pays the costs of financing the Work, in which case the cash discounts shall accrue to UOHI. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment applicable to the Work shall accrue to UOHI, and Project Co shall make provisions so that they can be secured.

2.8 The following costs shall not be reimbursed or otherwise included in the Cost of the Work in connection with any Change Order or Change Directive and are deemed to be included in the Overhead and Profit Fee:

1. any cost not specifically and expressly described in Section 2.6 of this Schedule 11, unless otherwise approved by UOHI;
2. overhead, profit and general expenses;
3. Project Co's capital expenses, including interest on Project Co's capital employed in the Work;
4. costs due to the fault or negligence of Project Co, any Project Co Party or anyone for whose acts any of them may be liable, including costs for the correction of damaged, defective or non-conforming work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and Making Good damage to property not forming part of the Work;

5. losses or costs chargeable to any Project Co Party pursuant to its Subcontract;
6. fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal due, in whole or in part, to the action or inaction of Project Co, any Project Co Party or any person for whom they are responsible in law;
7. costs associated with Project Co's failure to obtain any and all Project Co Permits, Licenses and Approvals in a timely manner, including the costs of any delays resulting therefrom, unless such failure is due to the failure of the Drawings and Specifications to conform with Applicable Law or unless such failure is directly and solely attributable to the delay of UOHI;
8. costs of accelerating the Work in accordance with Section 22.2(d) of the Project Agreement;
9. costs resulting from the failure of Project Co or any Project Co Party to procure and maintain insurance as required by the Contract Documents;
10. overtime and premium time required under Section 22.2(d) of the Project Agreement;
11. Project incentive bonuses except as approved in advance in writing by UOHI;
12. costs (including legal fees and expenses) of bonding, securing or removing liens or defending claims filed by a Project Co Party arising directly from a default by Project Co in properly making any payment in connection with the Work, unless such default by Project Co is due to the wrongful failure by UOHI to make a progress payment to Project Co;
13. any fines levied against Project Co or UOHI due to Project Co's (or any Project Co Party's) violations of any Applicable Law, which fines shall be paid by Project Co;
14. losses or expenses for which Project Co is compensated by insurance;
15. salaries or other compensation (including salaries of Project Co's officers and employee's benefits) of any employee of Project Co (or related companies) not working on matters relating to the Project, except as agreed to in writing by UOHI;
16. expenses of Project Co's head and district offices other than the field office, except as agreed to in writing by UOHI;

17. salaries and other compensation of Project Co's personnel stationed at Project Co's principal office or offices other than the field office;
18. cost of all deductibles arising out of the misconduct, fault, negligent act or omissions of Project Co or any Project Co Party or anyone for whose act any of them may be liable;
19. costs for re-inspections and re-testing of non conforming Work not carried out in accordance with the Contract Documents;
20. legal costs, incurred by Project Co, in relation to the performance of the Work;
and
21. all taxes on income, capital or real property of Project Co.

2.9 For greater certainty, any charges or back charges as collected and if collected by Project Co from the Project Co Parties, including for equipment rentals, hoisting, clean up costs or any other expenses for which Project Co is otherwise entitled to reimbursement pursuant to Section 2.6 of this Schedule 11, shall be credited to and thereby reduce the Cost of the Work in connection with any Change Order or Change Directive.

2.10 If there is an increase or a decrease in the Cost of the Financing as a result of a Change Order, the Guaranteed Price shall be increased or decreased by the increase or decrease to the Cost of the Financing. Project Co shall provide the calculation of the increase or decrease in the Cost of the Financing, together with a certificate of Lender verifying such calculation. Where the increase in the Cost of the Financing includes breakage costs, but the impact of the Change Order on the Cost of the Financing could also be accommodated without incurring breakage costs, calculations for both options shall be provided to UOHI, together with a certificate of Lender addressed to Project Co (which will expressly provide that the certificate may be relied upon by UOHI) verifying such calculations. UOHI shall, in its Sole Discretion, within 5 Business Days of receiving such certificate from Lender, select its preferred option by providing written notice to Project Co and Lender. For greater certainty, the increases or decreases in the Cost of the Financing shall be calculated in a commercially reasonable manner and in accordance with Lender's standard banking practices and the Lending Agreements, and without regard to the identity of the party paying such costs and expenses and, with respect to any swap breakage costs or gains, such costs or gains shall be calculated in accordance with standard market practices. UOHI may, in its Sole Discretion, elect to apply any portion of the Schedule Cushion to any extension of the Contract Time otherwise determined under a Change Order, 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 that UOHI has elected to apply, and the determination of the increase in the Cost of the Financing associated with such Change Order shall be recalculated based on the remaining extension of the Contract Time, if any, under such Change Order after such application by UOHI of the Schedule Cushion. If a Change Order gives rise to a net

benefit to Project Co through a reduction of the Cost of the Financing, then Project Co shall pay any net benefit received by Project Co to UOHI.

- 2.11** For greater certainty, subject to Section 2.10 of this Schedule 11 and notwithstanding Section 23.2(c) of the Project Agreement, where UOHI elects to apply all or any portion of the number of days of the Schedule Cushion, Project Co shall only be entitled to compensation valued pursuant to Sections 2.3.2 and 2.5 of this Schedule 11 provided, however, the Overhead and Profit Fee shall be reduced by **[REDACTED]** (**[REDACTED]**%) and applied to the entire scope of the applicable Change Order.

3. CHANGE DIRECTIVE

- 3.1** If UOHI requires Project Co to proceed with a Change in the Scope of the Work prior to UOHI and Project Co agreeing upon the adjustment in the Guaranteed Price and in the Contract Time, UOHI, through the Consultant, shall issue a Change Directive.
- 3.2** A Change Directive can only be used by UOHI to direct a Change in the Scope of the Work which is within the general scope of the Contract Documents.
- 3.3** Upon receipt of a Change Directive, Project Co shall proceed promptly with the Change in the Scope of the Work, in which case, any adjustment to the Guaranteed Price shall be determined on the basis set forth in Section 2.3.2 of this Schedule 11 having regard to Sections 2.4 and 2.10 of this Schedule 11.
- 3.4** Pending determination of the Overhead and Profit Fee, the adjustment to the Guaranteed Price and to the Contract Time required as a result of a Change Directive, the Cost of the Work incurred (determined on the basis of the “Cost” as set out in Section 2.3.2 of this Schedule 11 having regard to Sections 2.4 and 2.10 of this Schedule 11) as a result of a Change Directive, is eligible to be included in the Additional UOHI Payments, notwithstanding the limit imposed by the Guaranteed Price. Costs to complete the Work authorized by the Change Directive, including all labour and materials, shall be authorized by UOHI daily or every other day.
- 3.5** If UOHI and Project Co do not reach agreement on the Overhead and Profit Fee, the proposed adjustment in the Guaranteed Price, the adjustment in the Contract Time, or in the method of determining them, the adjustment shall be referred to the Consultant for determination on the same basis as a Change Order and shall be recorded in a Change Order.
- 3.6** If at any time after the commencement of the Work directed by a Change Directive, UOHI and Project Co reach agreement on the Overhead and Profit Fee, the adjustment to the Guaranteed Price and the adjustment to the Contract Time, this agreement shall be recorded in a Change Order signed by UOHI and Project Co.

- 3.7** Following the commencement of the Work directed by a Change Directive, Project Co will maintain, in accordance with industry standards, records to support the Cost of the Work under Section 2.6 of this Schedule 11, in respect of the Work undertaken in accordance with the Change Directive.

APPENDIX A TO SCHEDULE 11

UNIT PRICES FOR FACILITY

[REDACTED]

**SCHEDULE 12
COMPENSATION ON TERMINATION**

1. DEFINITIONS

1.1 Definitions

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

- (a) **“Debt Amount”** means all accrued and unpaid interest and any “make whole” payments or breakage fees (less any breakage benefits) which Project Co is obligated to pay to Agent pursuant to the Lending Agreements, together with the outstanding principal amount of debt funded under the Lending Agreements.
- (b) **“Default Termination Payment”** has the meaning given in Section 2.1(b) of this Schedule 12.
- (c) **“Demobilization Costs”** means all reasonable costs of Project Co associated with the demobilization of the Work as a result of the termination of the Project Agreement.
- (d) **“Invoice Date”** means the date that is the later of:
 - (i) the date on which UOHI receives an invoice from Project Co for the Non-Default Termination Sum; and
 - (ii) the date on which UOHI receives the supporting evidence required pursuant to Section 4.1(a) of this Schedule 12.
- (e) **“Non-Default Termination Sum”** has the meaning given in Section 3.1(b) of this Schedule 12.
- (f) **“Project Co Amount”** means any amount payable to Project Co as a return and/or profit to Project Co shown in the Financial Model, including for greater certainty any loans made or capital contributed to Project Co by any Affiliate of Project Co or of a Project Co Party, pro rated by a fraction, the numerator of which is the period between the date of commencement of the Work and the Termination Date, and the denominator of which is the period between the date of commencement of the Work and the Scheduled Substantial Completion Date.
- (g) **“Termination Date”** has the meaning given in the Project Agreement.
- (h) **“Work”** has the meaning given in the Project Agreement.

2. COMPENSATION ON TERMINATION FOR PROJECT CO DEFAULT

2.1 Compensation

- (a) If UOHI terminates the Project Agreement pursuant to Section 26.3(a)(i) of the Project Agreement, UOHI shall pay the Default Termination Payment to Project Co.
- (b) The “**Default Termination Payment**” shall be an amount equal to the Guaranteed Price, as adjusted in accordance with the terms of the Project Agreement as of the Termination Date, less the aggregate, without duplication, of each of the following:
 - (i) any amount of the Interim Completion Payment, the Substantial Completion Payment and any other amounts paid by UOHI on or before the Termination Date;
 - (ii) all Additional UOHI Payments paid by UOHI on or before the Termination Date;
 - (iii) UOHI’s estimate of the cost to complete the Work, including the cost to remedy any defective or deficient Work determined on a reasonable basis in consultation with the Consultant and other consultants and including all reasonable and proper costs incurred by UOHI in re-tendering the Work or any portion thereof;
 - (iv) UOHI’s estimate of the aggregate of all Direct Losses suffered, sustained or incurred by UOHI as a result of, in respect of, or arising out of the event or events which resulted in the termination of the Project Agreement and out of the termination together with all costs of entering into a new construction contract to complete the Work, including any warranty obligations for the Work in place and to be performed, on substantially the same terms and conditions as the Project Agreement;
 - (v) the UOHI Holdback as at the time the Default Termination Payment is required to be made; and
 - (vi) the Legislative Holdback required to be maintained by UOHI as at the time the Default Termination Payment is required to be made, which amount will be paid by UOHI in accordance with the *Construction Lien Act* (Ontario).
- (c) To the extent that any amounts that UOHI has estimated or determined pursuant to Sections 2.1(b)(iii), 2.1(b)(iv) or 2.1(b)(v) above, are in excess of what is

required by UOHI to complete the Work or compensate for Direct Losses, the UOHI Holdback or the Legislative Holdback, as applicable, UOHI shall promptly return such excess amounts to Project Co.

- (d) UOHI shall pay the Default Termination Payment in accordance with Article 4 of this Schedule 12.

3. COMPENSATION ON NON-DEFAULT TERMINATION

3.1 Compensation

- (a) If Project Co terminates the Project Agreement pursuant to Sections 27.2(a)(ii), 28.2(a) or 28.3(b) of the Project Agreement or if UOHI terminates the Project Agreement pursuant to Sections 28.2(a), 28.3(a) or 28.4(a) of the Project Agreement, UOHI shall, in each case, pay to Project Co the Non-Default Termination Sum.
- (b) The “**Non-Default Termination Sum**” shall be an amount equal to the aggregate, without duplication, of:
- (i) all Additional UOHI Payments properly due and payable under the Construction Contract and the Project Agreement to and including the Termination Date;
 - (ii) all Demobilization Costs;
 - (iii) the Debt Amount calculated as at the date of payment of the Non-Default Termination Sum to Project Co plus the Interim Completion Payment paid by UOHI on or before the Termination Date, provided the Interim Completion Payment has been applied to reduce the Debt Amount as of the Termination Date in accordance with the Lending Agreements;
 - (iv) the Project Co Amount calculated as at the date of payment of the Non-Default Termination Sum to Project Co; and
 - (v) all other Direct Losses suffered, sustained or incurred by Project Co and the Contractor as a result of, or arising out of, the event or events which have resulted in the termination of the Project Agreement and out of the termination

less the aggregate of (A), (B) and (C) of this Section 3.1(b):

- (A) the UOHI Holdback as at the time the Non-Default Termination Sum is required to be made;

- (B) any Legislative Holdback required to be maintained by UOHI at the time the Non-Default Termination Sum is required to be made; and
 - (C) any amount of the Interim Completion Payment, the Substantial Completion Payment and any other amounts paid by UOHI on or before the Termination Date.
- (c) To the extent that any amounts that UOHI has determined pursuant to Section 3.1(b)(v)(A) or Section 3.1(b)(v)(B) above are in excess of what is required by UOHI to holdback under the Project Agreement or maintain as Legislative Holdback, as applicable, UOHI shall promptly return such excess amounts to Project Co.
 - (d) UOHI shall pay the Non-Default Termination Sum in accordance with Article 4 of this Schedule 12.

4. GENERAL

4.1 Payment

- (a) In the event of a termination referred to in Section 3.1(a) of this Schedule 12, as soon as practicable, and in any event, within 60 days, after the Termination Date, Project Co shall give to UOHI an invoice for the Non-Default Termination Sum (reasonably estimated if not then known) and sufficient supporting evidence, reasonably satisfactory to UOHI, justifying the amount of the Non-Default Termination Sum, including a detailed breakdown of each of the individual items comprising such sum. To the extent the Non-Default Termination Sum is based on estimates of cost, the Parties will readjust as soon as such estimated costs can be determined.
- (b) UOHI shall pay to Project Co the Non-Default Termination Sum within 60 days after the Invoice Date and so long as all demobilization of the Work has been completed.
- (c) In the event of a termination referred to in Section 2.1(a) of this Schedule 12, as soon as practicable, and in any event, within 120 days after the Termination Date, UOHI shall calculate and notify Project Co of the Default Termination Payment under Section 2.1(b) of this Schedule 12, and shall deliver to Project Co sufficient supporting evidence reasonably satisfactory to Project Co.
- (d) UOHI shall pay to Project Co the Default Termination Payment as soon as reasonably practicable, and in any event within 30 days after delivering the notice described in Section 4.1(c) of this Schedule 12.

- (e) UOHI shall indemnify Project Co as provided in Section 33.2(d) of the Project Agreement in respect of damages suffered or incurred as the result of the relevant termination sum (or any part of such sum that remains outstanding) not being received on the Termination Date:
 - (i) in an amount equivalent to the No-Default Payment Compensation Amount for the period from (but excluding) the Termination Date (and including) the date which is 60 days after the Invoice Date; and
 - (ii) thereafter, in an amount equivalent to the Payment Compensation Amount until the date of payment.
- (f) Notwithstanding anything to the contrary contained herein, in no event will the Default Termination Payment be greater than the Non-Default Termination Sum.

4.2 Costs

The costs and expenses to be taken into account in the calculation of the Non-Default Termination Sum due pursuant to this Schedule 12 shall only be such costs and expenses that are reasonable and proper in quantum and that have been or will be reasonably and properly incurred.

4.3 Undisputed Amounts

Either UOHI or Project Co may dispute the calculation of any Compensation Payment and in the event of a dispute, any undisputed amount shall be paid in accordance with this Schedule 12 and the disputed amount shall be dealt with in accordance with Appendix A to this Schedule 12 – Dispute Resolution Procedure. Notwithstanding the foregoing, in the event any disputed amount exceeds \$[REDACTED], either party may proceed to court for the resolution of such dispute.

4.4 Outstanding Debt Amount

- (a) Subject to Section 4.3 of this Schedule 12, UOHI shall be entitled to rely on a certificate of Agent as conclusive evidence as to the Debt Amount outstanding at any relevant time.
- (b) If a receipt or other acknowledgement is given by the Agent acknowledging or otherwise confirming receipt of payment or payments in respect of the Debt Amount, such receipt or other acknowledgement shall discharge UOHI's obligation to pay such portion of compensation due to Project Co that is equal to the amount acknowledged or confirmed.

4.5 Set-off

UOHI shall be entitled to set off against the Non-Default Termination Sum or the Default Termination Payment, such amounts not already taken into account in calculating the relevant Compensation Payment that UOHI is entitled to set off or withhold pursuant to the Project Agreement, provided that the amount paid to Project Co on account of the Non-Default Termination Sum shall never be less than the Debt Amount.

4.6 Full and Final Settlement

- (a) Except as otherwise provided in Section 4.6(b) of this Schedule 12, any compensation paid pursuant to Section 2.1 or Section 3.1 of this Schedule 12 in the total amount owing thereunder shall be in full and final settlement of any claims, demands and proceedings of Project Co and UOHI and each shall be released from all liability to the other in relation to any breaches or other events leading to the termination of the Project Agreement and the circumstances leading to such breach or termination, and Project Co and UOHI shall be excluded from all other rights and remedies in respect of any such breach or termination, whether in contract, tort, restitution, statute, at common-law or otherwise.
- (b) Section 4.6(a) of this Schedule 12 shall be without prejudice to any liability, whether arising before, on or after the Termination Date, of either Party to the other, including under the indemnities contained in the Project Agreement that arose with respect to acts or omissions on or prior to the Termination Date (but not from termination itself or the events leading to such termination), to the extent such liability has not already been taken into account in calculating the relevant Compensation Payment in Section 4.5 of this Schedule 12.
- (c) Project Co acknowledges that under the provisions of Section 4.9 of the Project Agreement, UOHI shall pay the Compensation Payment to Project Co and Project Co has irrevocably directed UOHI to make the Compensation Payment to Agent or as Agent may direct, as security for the Financing. UOHI acknowledges such direction and agrees to pay the Compensation Payment to Agent or as Agent may direct in accordance with such direction. Project Co acknowledges and agrees that payment by UOHI of the Compensation Payment in accordance with any such direction constitutes payment by UOHI to Project Co in satisfaction of UOHI's obligation to make:
 - (i) the Compensation Payment under the Project Agreement; and
 - (ii) any payment to Project Co under the Project Agreement, to the extent made in relation to the Guaranteed Price,

as the case may be, and in satisfaction of any trust obligation of UOHI in respect of such payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

APPENDIX A TO SCHEDULE 12
DISPUTE RESOLUTION PROCEDURE

1 GENERAL

- 1.1** All disputes, controversies, or claims arising out of or relating to the calculation of any Compensation Payment under Section 4.3 of Schedule 12 to the Project Agreement (collectively and individually, a “**Dispute**”) shall, subject to the last sentence of Section 4.3 of Schedule 12, be resolved in accordance with the provisions of this Appendix A.

2 REFERRAL OF DISPUTES TO ARBITRATION

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

3 RESOLUTION BY ARBITRATION

- 3.1** If a Dispute is referred to arbitration pursuant to Section 2.1 of this Appendix A, the Dispute shall be resolved by arbitration in accordance with the *Arbitration Act*, 1991 (Ontario).
- 3.2** Disputes referred to arbitration shall be resolved by a single arbitrator unless one of the Parties, by notice in writing delivered to the other Party within 5 Business Days after a notice to arbitrate pursuant to Section 2.1 of this Appendix A has been delivered, expressly requires that the Dispute that is the subject of that notice to arbitrate be resolved by a 3 person arbitration tribunal, in which case that particular Dispute shall be resolved by a 3 person arbitration tribunal.
- 3.3** If the arbitration tribunal is comprised of a single arbitrator, the arbitrator shall be appointed as follows:
- (a) if the Parties agree on the arbitrator, the Parties shall jointly appoint the arbitrator as soon as possible and in any event within 10 days after delivery of the notice to arbitrate pursuant to Section 2.1 of this Appendix A; and
 - (b) if the Parties fail to agree or jointly appoint the arbitrator within such 10 day period, either Party may apply to the Ontario Superior Court of Justice for appointment of the arbitrator, in which case the court shall appoint the arbitrator at the earliest opportunity from the lists of potential arbitrators submitted to the court by the Parties, or if no list is submitted by either Party, or if the list or lists submitted do not include potential arbitrators with the necessary qualifications and experience, the court shall be entitled, at its sole and absolute discretion, to

appoint anyone who meets the requirements set out in this Appendix A for the qualifications and experience of the arbitrator.

3.4 If the arbitration tribunal is comprised of 3 arbitrators:

- (a) the arbitrators shall be appointed as follows:
 - (i) each Party shall appoint one arbitrator no later than 5 Business Days after delivery of the notice requiring a 3 person arbitration panel pursuant to Section 2.1 of this Appendix A;
 - (ii) if a Party fails to appoint an arbitrator within 5 Business Days after delivery of the notice requiring a 3 person arbitration panel, the other Party is entitled to apply to the Ontario Superior Court of Justice to appoint that arbitrator, in which case the court shall appoint that arbitrator at the earliest opportunity using a comparable process to that described in Section 3.3(b) of this Appendix A;
 - (iii) the arbitrators appointed in accordance with the foregoing shall, within 5 Business Days after their appointment, jointly appoint a third arbitrator who shall also act as the chair of the arbitration tribunal and who, in addition to all other required qualifications, shall have experience in arbitration or judicial processes and procedures; and
 - (iv) if the 2 arbitrators appointed by the Parties fail to appoint a third arbitrator within the required time, either of the other 2 arbitrators may apply to the Ontario Superior Court of Justice for appointment of the third arbitrator, in which case the court shall appoint the third arbitrator at the earliest opportunity using a comparable process to that described in Section 3.3(b) of this Appendix A; and
- (b) the arbitrators appointed by the Parties shall at all times be neutral and act impartially and shall not act as advocates for the interests of the Party who appointed them.

- 3.5** All arbitrators must have qualifications and experience relevant to the issues in the Dispute and also have qualifications and experience as arbitrators.
- 3.6** No one shall be nominated or appointed to act as an arbitrator who is or was in any way financially interested in the Project or in the business affairs of UOHI, Project Co, Contractor, Lender, Agent or any consultant, subconsultant or subcontractor of any of them.
- 3.7** The arbitrator(s) shall have the jurisdiction and power to:
- (a) amend or vary any and all rules under the *Arbitration Act*, 1991 (Ontario), including rules relating to time limits, either by express agreement of the Parties or, failing such agreement, as the arbitrator(s) consider appropriate and necessary in the circumstances to resolve the Dispute and render an award;
 - (b) require some or all of the evidence to be provided by affidavit;
 - (c) hold a hearing at which evidence and submissions are presented by the Parties;
 - (d) direct either or both Parties to prepare and provide the arbitrator(s) with such documents or other things as the arbitrator(s) may require to assist them in the resolution of the Dispute and rendering of an award; and
 - (e) require either Party to supply or prepare for examination by the arbitrator(s) and the other Party, any document or information the arbitrator(s) considers necessary.
- 3.8** The place of arbitration shall, at the option of UOHI, be the municipality in which UOHI is located or Toronto, Ontario. The language of the arbitration shall be English.
- 3.9** The costs of an arbitration are in the discretion of the arbitrator(s) who, in addition to any jurisdiction and authority under applicable law to award costs, has the jurisdiction and authority to make an order for costs on such basis as the arbitrator(s) considers appropriate in the circumstances, including to award actual legal fees and disbursements and expert witness fees, and to specify or order any or all of the following:
- (a) the Party entitled to costs;
 - (b) the Party who must pay the costs;
 - (c) the amount of the costs or how that amount is to be determined; and
 - (d) how all or part of the costs must be paid.

- 3.10** In exercising discretion to award costs, however, the arbitrator(s) will take into account the desire of the Parties that costs should generally be awarded to each Party in proportion to the relative success that each Party has in the arbitration.
- 3.11** The award of the arbitrator(s) shall be final and binding upon both Parties, and both Parties expressly waive all rights of appeal in connection with the award of the arbitrator(s). Judgment may be entered upon the award in accordance with Applicable Law in any court having jurisdiction.
- 3.12** The Parties agree to and shall co operate fully with the arbitrator(s) and proceed with the arbitration expeditiously, including in respect of any hearing, in order that an award may be rendered as soon as practicable by the arbitrator(s), given the nature of the Dispute. The arbitrator(s) shall render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than 45 days after the date of the hearing, or such longer period of time as agreed to in writing by the Parties. If the arbitration tribunal is comprised of 3 arbitrators, the decision of a majority of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal, and where there is no majority decision, the decision of the chair of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal.
- 3.13** This Appendix A constitutes an agreement to arbitrate that shall be specifically enforceable.

**SCHEDULE 13
INSURANCE AND PERFORMANCE SECURITY**

**INSURANCE AND PERFORMANCE
SECURITY REQUIREMENTS**

1. WORKS PHASE INSURANCE COVERAGE

1.1 Subject to Section 6, from and after execution of this Project Agreement and until the Substantial Completion Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, exclusively through the Infrastructure Ontario Construction Insurance Program (“**IOCIP**”) the following insurances as further described in Appendix A to this Schedule 13:

- (a) “All Risks” Course of Construction Property, including Boiler and Machinery;
- (b) “Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability; and
- (c) Project Specific Pollution Liability (combined Contractors’ Pollution Liability and Pollution Legal Liability).

1.2 Subject to Section 6, from and after execution of this Project Agreement and until the Substantial Completion Date, Project Co shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, the following insurances as further described in Appendix A to this Schedule 13:

- (a) Automobile Liability;
- (b) Commercial General Liability and Non-Owned Automobile Liability (to be maintained by the Contractor and each of the Subcontractors involved in the Works) with respect to off-site operations and activities;
- (c) Aircraft and Watercraft Liability (if any exposure);
- (d) “All Risks” Marine Cargo (if any exposure);
- (e) “All Risks” Contractors’ Equipment;
- (f) Comprehensive Crime; and
- (g) WSIB.

2. NO LIMIT ON RECOVERY

2.1 Notwithstanding any other provision of this Project Agreement, it is hereby agreed that the limits of liability specified in this Schedule 13 for insurance policies, whether such policies are required to be obtained by UOHI or by Project Co, shall in no way limit Project Co's liability or obligations to UOHI or UOHI's liability or obligations to Project Co, as applicable.

3. ADDITIONAL COVER

3.1 Without prejudice to the other provisions of this Schedule 13, UOHI and Project Co shall, at all relevant times and at their own expense, obtain and maintain those insurances which they are required to obtain and maintain by Applicable Law, or that they consider necessary.

3.2 UOHI reserves the right to require Project Co to purchase such additional insurance coverage as UOHI may reasonably require. UOHI also reserves the right to request such higher or lower limits of insurance or otherwise alter the types of coverage requirements, their minimum amounts and deductibles (taking into consideration such matters as the nature of the Works, contract value, industry standards and availability of insurance) as UOHI may reasonably require from time to time. Any additional costs of such additional and/or amended insurance shall be borne by UOHI and any cost savings resulting from the implementation of such additional and/or amended insurance shall be for the account of UOHI.

4. RESPONSIBILITY FOR DEDUCTIBLES

4.1 The Party responsible for the matter giving rise to a claim, to the extent responsible therefor, shall be responsible and liable for the payment of deductibles under any policy of insurance under which it is an insured party or under any policy of insurance Project Co is required to maintain under this Schedule 13. In the event that responsibility for the matter giving rise to the claim is indeterminable, the First Named Insured under the policy of insurance is responsible and liable for the payment of deductibles.

5. COOPERATION WITH INSURER'S CONSULTANT

5.1 If an insurer or an insurer's appointed consultant, for underwriting purposes or as a term of an insurance policy, needs to review any part of the performance of this Project Agreement, then UOHI and Project Co shall, and shall require the UOHI Parties and the Project Co Parties, respectively, to:

- (a) cooperate with the insurer and its consultant, including providing them with such information and documentation as they may reasonably require; and
- (b) allow the insurer and its consultant to attend meetings between Project Co and UOHI (or, as applicable, and if reasonably required by the insurer, between Project Co and those engaged by or through Project Co).

6. UNINSURABLE RISKS

6.1 The term “**Uninsurable Risk**” means a risk, or any component of a risk, against which Project Co is required to insure pursuant to this Schedule 13 and for which, at any time after the date of this Project Agreement, either:

- (a) the insurance required pursuant to this Schedule 13 (including the terms and conditions specified for such insurance herein) is not available in relation to that risk from insurers licensed in the Province of Ontario; or
- (b) the insurance premium payable or the terms and conditions for insuring that risk are such that the risk is not generally being insured against in the worldwide insurance market.

Project Co has the onus of demonstrating, to UOHI’s reasonable satisfaction that the foregoing definition applies to a particular risk.

6.2 Project Co shall notify UOHI as soon as possible and, in any event, within 15 Business Days of becoming aware of same, that a risk, or any component of a risk, has become an Uninsurable Risk, and shall provide UOHI with all relevant details in relation to such risk, including a copy of the relevant insurance policy.

6.3 Project Co and UOHI shall, as soon as possible following the provision of the notice referred to in Section 6.2, meet to discuss, in good faith, the appropriate means by which the Uninsurable Risk should be managed and, if Project Co and UOHI are able to agree to alternative arrangements, the Uninsurable Risk shall be managed in accordance with such alternative arrangements.

6.4 In the event that Project Co and UOHI, each acting in good faith, are unable to agree to alternative arrangements with respect to the management of an Uninsurable Risk within 15 Business Days of the expiry of the period referred to in Section 6.2, UOHI may, in its absolute discretion, either:

- (a) elect to assume responsibility for the Uninsurable Risk and, in respect of the year in which the relevant risk becomes an Uninsurable Risk and every year thereafter,

withhold, in equal installments over the course of such year, from the payment or payments otherwise due to Project Co an amount equal to the annual premium (index linked) relating to the Uninsurable Risk as was current on the date immediately prior to the date on which the relevant risk became an Uninsurable Risk, in which case this Project Agreement shall continue in full force and effect; or

- (b) terminate this Project Agreement in accordance with Section 4.9 of the Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 25.5 of the Project Agreement following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 12 – Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.

6.5 On the occurrence of an Uninsurable Risk, UOHI may, in its absolute discretion, either:

- (a) pay to Project Co an amount equal to the insurance proceeds that would have been payable to Project Co in connection with such Uninsurable Risk had the relevant insurance continued to be available, in which case this Project Agreement shall continue in full force and effect; or
- (b) terminate this Project Agreement in accordance with Section 4.9 of the Project Agreement as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 25.5 of the Project Agreement following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 12 – Compensation on Termination, pay to Project Co an amount equal to the Non-Default Termination Sum.

6.6 With respect to any Uninsurable Risk:

- (a) Project Co shall continue to approach the insurance market on a regular basis and, in any event, at intervals of not less than 180 days and use reasonable efforts to obtain insurance to cover as much or all of the Uninsurable Risk as can be insured in the available insurance market from time to time; and
- (b) Subject to Section 6.6(a), Project Co shall be relieved of its obligation to maintain insurance in respect of the Uninsurable Risk.

6.7 Where a risk which was previously an Uninsurable Risk ceases to be so, Project Co shall, at its own expense, obtain and maintain insurance in accordance with the requirements of

this Schedule 13 in respect of the risk and the provisions of this Section 6 shall no longer apply to such risk.

- 6.8** From and after the Substantial Completion Date, the Parties shall meet on an annual basis to review the scope of insurance coverage and deductibles provided in this Schedule 13, and may make mutually agreed changes thereto.

7. TOTAL OR SUBSTANTIAL DESTRUCTION

- 7.1** In the event of damage to, or destruction of, all or substantially all of the Facility for which there is coverage under an insurance policy, any insurance proceeds received by Project Co shall first be applied so as to ensure the performance by Project Co of its obligations under this Project Agreement, including, where appropriate, the reinstatement, restoration or replacement of the Facility or any other assets, materials or goods necessary or desirable for the carrying out of the Work, all in accordance with the terms of the Insurance and Bonding Trust Agreement.

8. SUBCONTRACTORS

- 8.1** Project Co shall require that all Subcontractors are covered by, or obtain, the insurance described in this Schedule 13, provided that Project Co shall determine the applicable limits to be obtained for such insurance. Project Co shall be solely responsible and liable for any damages which UOHI may suffer as a direct result of Project Co's failure to comply with the foregoing.
- 8.2** If Project Co receives notice that any Subcontractor employed by or through Project Co is not covered by any insurance required by this Schedule 13 to be obtained by Project Co, Project Co shall:
- (a) ensure that such insurance coverage is put in place;
 - (b) remove the Subcontractor from the Site and ensure that such Subcontractor does not perform any further part of the Work until after such insurance coverage is put in place; or
 - (c) if the Subcontractor cannot be covered by a particular policy as required by this Schedule 13, replace the Subcontractor with a new Subcontractor who can obtain the required insurance coverage; it being acknowledged by Project Co that the requirements and restrictions set forth in the Project Agreement regarding new and replaced Subcontractors shall be complied with.

9. RENEWAL

9.1 Project Co shall provide to UOHI, at least 5 Business Days prior to the expiry date of any policy of insurance required to be obtained by Project Co pursuant to this Schedule 13, evidence of the renewal of each such policy satisfactory to UOHI, acting reasonably.

10. NAMED AND ADDITIONAL INSUREDS AND WAIVER OF SUBROGATION

10.1 All insurance provided by Project Co, shall:

- (a) include Project Co, UOHI and IO as Named Insureds to the extent specified in Appendix A of this Schedule 13;
- (b) include UOHI, IO, the Lenders, the Agent and The Ottawa Hospital as Additional Insureds, or loss payees to the extent of their respective insurable interests to the extent specified in Appendix A of this Schedule 13;
- (c) except with respect to the Automobile Liability, Comprehensive Crime and WSIB specified in Appendix A to this Schedule 13, contain a waiver of subrogation as against UOHI, UOHI Parties and their respective shareholders, officials, directors, officers, employees, servants, consultants (other than Design Consultants) and agents;
- (d) contain a breach of warranty provision whereby a breach of a condition by Project Co will not eliminate or reduce coverage for any other insured; and
- (e) be primary insurance with respect to any similar coverage provided by any insurance obtained by or available to UOHI without any right of contribution of any insurance carried by UOHI.

11. CERTIFICATES OF INSURANCE AND CERTIFIED COPIES OF POLICIES

11.1 Prior to the commencement of any part of the Works, Project Co will provide UOHI with certified copies of policies, confirming that the insurances specified in Section 1.1 have been obtained and are in full force and effect.

11.2 Prior to the commencement of any part of the Works, Project Co will provide UOHI with certificates of insurance or certified copies of policies, confirming that the insurances specified in Section 1.2 have been obtained and are in full force and effect. If certificates of insurance are provided, certified copies of the entire contents of all relevant insurance policies will be subsequently provided to UOHI no later than 90 days after execution of this Project Agreement.

12. FAILURE TO MEET INSURANCE REQUIREMENTS

- 12.1** If Project Co fails to obtain or maintain the insurance required by this Schedule 13, fails to furnish to UOHI a certified copy of each policy required to be obtained by this Schedule 13 or if, after furnishing such certified copy, the policy lapses, is cancelled, or is materially altered, then UOHI shall have the right, without obligation to do so, to obtain and maintain such insurance itself in the name of Project Co, and the cost thereof shall either, at UOHI's option, be payable by Project Co to UOHI on demand or be deducted by UOHI from the next payment or payments otherwise due to Project Co.
- 12.2** If coverage under any insurance policy required to be obtained by Project Co should lapse, be terminated or be cancelled, then, if directed by UOHI, all work by Project Co shall immediately cease until satisfactory evidence of renewal is produced.

13. MODIFICATION OR CANCELLATION OF POLICIES

- 13.1** Except as noted in Appendix A to this Schedule 13, all insurance provided by Project Co shall contain endorsements confirming that the policy will not be cancelled, adversely reduced, adversely materially altered or adversely materially amended without the insurer(s) giving at least ninety (90) days prior written notice by registered mail, at the address specified, to UOHI, the Agent and IO. For greater certainty, the terms “adversely reduced”, “adversely materially altered” and “adversely materially amended” as used in this provision shall mean any decrease or reduction in policy limits, aggregate limits or sub-limits (other than as a result of claims under the policy), any increase in any policy deductible or self-insured retention, any reduction in the policy coverage period, cancellation or suspension of coverage with respect to any insured parties from the time the policy was issued for that policy period, addition of any exclusions or restrictions from the time the policy was issued for that policy period and any reduction or restriction in the scope of coverage provided under the policy, in all cases when such adverse reduction, adverse material alteration or adverse material amendment is initiated by the insurer.
- 13.2** All insurance provided by Project Co shall contain endorsements confirming that, in the event of cancellation for non-payment of premium, the insurer(s) will give at least fifteen (15) days prior written notice by registered mail, at the address specified, to UOHI, the Agent and IO.
- 13.3** With respect to insurances described in Section 1.1(a), 1.1(b) and 1.1(c) and Section 1.2(d), breach of any of the terms or conditions of the policies required to be provided by Project Co, or any negligence or wilfull act or omission or false representation by an Insured under these policies, shall not invalidate the insurance with respect to UOHI, IO,

the Lenders or any other Insured, but only to the extent that such breach is not known to these parties.

14. INSURERS

14.1 All policies of insurance to be obtained by Project Co in accordance with this Schedule 13 shall be issued by financially sound Insurers acceptable to UOHI and the Lenders, acting reasonably, and, where required by statute, be licensed to insure such risk in the Province of Ontario.

14.2 To be eligible to provide insurance, an Insurer must have the capacity to provide the particular insurance and shall have current ratings from time to time of either:

- (a) a Financial Strength Rating of not lower than “A-” for three out of the previous five years but not lower than “B” at any time during those five years, and a Financial Size Category not lower than VII, such ratings being those established by A.M. Best Company (Best); or
- (b) a Long-Term Financial strength Rating of not lower than “A-” for three out of the past five years but not less than “BBB” at any time during those five years, a Short-Term Financial Strength Rating of not lower than “A-3” for three out of the previous five years and a Financial Enhancement Rating of not lower than “A-” for three out of the previous five years but not less than “BB+” at any time during those five years, such ratings being those established by Standard and Poor’s (S&P); or
- (c) if the Insurer is not rated by Best or S&P, an Insurer that is acceptable to UOHI and Lenders, acting reasonably, with respect to the insurances required by this Schedule 13.

15. POLICY TERMS AND CONDITIONS

15.1 All policies of insurance to be obtained by Project Co in accordance with this Schedule 13 shall be in form and substance satisfactory to UOHI, its insurance advisors and the Lenders, acting reasonably.

15.2 To achieve the minimum limits for any type of insurance required under Appendix A, it is permissible to arrange the insurance under a single policy, or by a combination of primary, umbrella and/or excess policies.

16. FAILURE TO COMPLY

16.1 Neither failure to comply nor full compliance by Project Co with the insurance provisions of this Schedule 13 shall relieve Project Co of its liabilities and obligations under this Project Agreement.

17. PERFORMANCE SECURITY REQUIREMENTS

17.1 Project Co shall obtain and deliver to UOHI, original executed and sealed Bonds in the forms attached as Appendices B and C respectively, to this Schedule 13 on the Financial Close Target Date, each in an amount equal to **[REDACTED]**% of the Cost of the Works under the Project Agreement. Each of the Bonds shall be properly executed by a Surety or by an agent or attorney in fact for the Surety, in which latter case, Project Co is required to submit with such Bonds a power of attorney to the signatory agent or the attorney in fact executed by the Surety in a form satisfactory to UOHI to evidence the authority of the agent or the attorney in fact.

17.2 Such Bonds shall be issued by a duly licensed surety company authorized to transact a business of suretyship in the Province of Ontario and shall be maintained in good standing until the fulfillment of the Project Agreement.

17.3 For greater certainty, the obligations of the Surety under the Bonds shall not extend to or include any obligations relating to the Financing or Cost of the Financing, and it is agreed that the Parties intend to benefit the Surety by this Section 17.3 and that the Surety may rely upon and enforce the provisions of this Section 17.3.

18. INSURANCE AND BONDING TRUST AGREEMENT

18.1 All losses under the “All Risks” Course of Construction Property Insurance policy, including Boiler & Machinery Insurance carried by Project Co prior to Substantial Completion which, in each case, relate to Equipment purchased by UOHI shall be payable solely to UOHI and shall not be payable to the Account Trustee or distributed pursuant to the Insurance and Bonding Trust Agreement.

**APPENDIX A TO SCHEDULE 13
INSURANCE REQUIREMENTS**

[REDACTED]

**APPENDIX B TO SCHEDULE 13
PERFORMANCE BOND**

**THIS BOND IS SUBJECT TO THE TERMS AND CONDITIONS OF
THE MULTIPLE OBLIGEE RIDER ATTACHED HERETO**

No. [REDACTED]

Bond Amount: \$[REDACTED]

PCL Constructors Canada Inc., as Principal, hereinafter called the Principal, and [REDACTED], all of whom are duly authorized to transact the business of suretyship in Canada, jointly and severally as co-sureties, hereinafter collectively called the Surety, are held and firmly bound unto **PCL Ottawa Heart Institute 2014 Ltd.** as Obligee, hereinafter called the Obligee, in the amount of [REDACTED] (\$[REDACTED]) of lawful money of Canada, for the payment of which sum the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, the Principal has entered into a written contract entitled Construction Contract with **PCL Ottawa Heart Institute 2014 Ltd.** dated _____, 2014 for the University of Ottawa Heart Institute Cardiac Life Support Services Redevelopment Project (such contract as so amended, and as the same may hereinafter be further amended, whether by way of change, alteration, addition or other modification, and including all of its terms and provisions without limitation, is hereinafter called the Construction Contract and by reference made part hereof). Capitalized terms used in this Bond without definition shall have their respective meanings attributed thereto in the Construction Contract.

The condition of this obligation is such that if the Principal shall promptly and faithfully perform its obligations to the Obligee under the Construction Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Whenever the Principal shall be, and declared by the Obligee to be in default in respect of its obligations to the Obligee under the Construction Contract (a “**Contractor Event of Default**”), the Obligee having performed the Obligee’s obligations under the Construction Contract, the Surety shall promptly select and carry out one of the four following options:

1. remedy any default, or;
2. complete the Construction Contract in accordance with its terms and conditions, or;
3. obtain a bid or bids for submission to the Obligee for completing the Construction Contract in accordance with its terms and conditions and upon determination by the Obligee and the Surety of the lowest responsible bidder, acceptable to UOHI acting reasonably, arrange for a contract between such bidder and the Obligee or between such bidder and such other party as an Additional Named Obligee shall be entitled to direct, and the Surety shall make available as work progresses (even though there should be a default, or a succession of defaults, under the contract or contracts of completion,

arranged under this paragraph) sufficient funds to pay to complete the Principal's obligations in accordance with the terms and conditions of the Construction Contract, less the Balance of the Construction Contract Price and to pay all expenses incurred by the Obligee as a result of the Principal's default relating directly to the performance of the Construction Work under the Construction Contract, but not exceeding the Bond Amount. The Balance of the Construction Contract Price is the total amount of the Cost of the Work payable to the Principal under the Construction Contract, less the amount properly paid by the Obligee to the Principal under the Construction Contract; or

4. pay the Obligee the lesser of (1) the Bond Amount or (2) the Obligee's proposed cost to complete the Construction Contract in accordance with its terms and conditions less the Balance of the Construction Contract Price.

The Surety shall not be discharged or released from liability hereunder and such liability shall not be in any way affected by any changes, alterations, additions or variations, taking or receiving of security between the Principal and the Obligee, or extension of time, or other modification of the Construction Contract, by the exercise by the Obligee of any of the rights or powers reserved to it under the Construction Contract or by its forbearance to exercise any such rights or powers, including (but without restricting the generality of the foregoing) any changes in the extent or nature of the Work under the Construction Contract or by any dealing, transaction, forbearance or forgiveness which may take place between the Principal and the Obligee.

The Surety agrees that for the purposes of determining its liability under this Bond, findings or decisions against the Principal under the terms of the Construction Contract, that are binding on the Principal and the Obligee shall also bind the Surety.

It is a condition of this Bond that any suit or action must be commenced before the expiration of two (2) years from the earlier of (1) the Substantial Completion Date, or (2) the date on which the Principal is declared in default by the Obligee and such notice of default is provided to **UOHI and The Toronto-Dominion Bank, as Agent.**

The Surety shall, in no event, be liable for a greater sum than the Bond Amount. Further, and notwithstanding anything else in this Bond, the Surety's liability hereunder for any default under Section 26.1(a)(x) of the Project Agreement shall be limited to any default by the Principal resulting in the non-performance or non-observance by the Principal of any of its other obligations under the Construction Contract.

No right of action shall accrue on this Bond, to or for the use of, any person or corporation other than the Obligee named herein, or the heirs, executors, administrators, successors or assigns of the Obligee.

IN WITNESS WHEREOF, the Principal and the Surety have signed and sealed this Bond dated the _____ day of _____, 2014.

SIGNED, SEALED AND DELIVERED
in the presence of:

PLC CONSTRUCTORS CANADA INC.

[REDACTED]

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

Per: _____
Name: **[REDACTED]**
Title: **[REDACTED]**
I have authority to bind the corporation

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

[REDACTED]

I/We have authority to bind the corporation

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

I have authority to bind the corporation

[REDACTED]

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

I have authority to bind the corporation

EXHIBIT 1 TO APPENDIX B

FORM OF MULTIPLE OBLIGEE RIDER TO PERFORMANCE BOND

No. [REDACTED]

TO BE ATTACHED TO AND FORM PART OF THE PERFORMANCE BOND NO. [REDACTED] dated _____, 2014 (the “**Bond**”) concurrently with the execution of this Multiple Obligee Rider, issued by [REDACTED], as Surety (hereinafter collectively called the “**Surety**”), on behalf of **PCL Constructors Canada Inc.**, as Principal (hereinafter called the “**Principal**”), and in favour of **PCL Ottawa Heart Institute 2014 Ltd.**, as Obligee (hereinafter called the “**Obligee**”).

NOW THEREFORE, in consideration of [REDACTED] (\$[REDACTED]) Dollars and other good and valuable consideration, receipt of which is hereby acknowledged by each of the parties hereto, the undersigned hereby agree as follows:

1. The Bond shall be and is hereby amended to add University of Ottawa Heart Institute (“**UOHI**”) and **The Toronto-Dominion Bank, as Agent**, in their respective capacities as assignees of the Construction Contract, as Additional Named Obligees, which Additional Named Obligees (which hereinafter may from time to time be referred to simply as “**Obligee(s)**”) shall, subject to the terms of the Bond and this Multiple Obligee Rider, be entitled to enforce the obligations of the Principal and the Surety under the Bond and this Multiple Obligee Rider.
2. Capitalized terms used in this Multiple Obligee Rider without definition shall have the respective meanings attributed to them in the Bond and the Construction Contract.
3. If there is an event of default by Contractor under the Construction Contract (a “**Construction Event of Default**”) and **The Toronto-Dominion Bank, as Agent** or **UOHI** makes a claim under the Bond, **The Toronto-Dominion Bank, as Agent** or **UOHI**, as the case may be, shall make available to the Surety in accordance with the terms of the Construction Contract the Balance of the Construction Contract Price.
4. All of the terms, conditions and provisions of the Bond are hereby incorporated herein by reference as if fully set forth herein.
5. No alteration or material change in the Construction Contract or any conduct of the Principal, Obligee or **The Toronto-Dominion Bank, as Agent**, prior to the Principal being declared in default, shall prejudice the rights or interest of **UOHI** under the Bond or this Multiple Obligee Rider provided that **UOHI** has not caused such alteration or material change without the prior written consent of the Surety.

6. The Obligee, Principal, Surety and **The Toronto-Dominion Bank, as Agent** acknowledge and agree that they will not remedy any default, settle, waive, reduce or otherwise compromise any claims under the Bond without the prior written approval of **UOHI**, acting reasonably, and the Surety shall provide reasonable notice to **UOHI** prior to remedying any default, settling, waiving, reducing or otherwise compromising any claim or making any payment under the Bond, provided that the Surety shall not be precluded from tendering upon the Obligee(s) performance pursuant to one of the four numbered options in the Bond.
7. The Surety acknowledges the process in the Lender's Direct Agreement for making a claim against the Bond, including, but not limited to, the Lender's Step In Period (as defined in the Lender's Direct Agreement) rights; provided that such acknowledgement shall in no way limit or otherwise abrogate from the Surety's rights under the Bond or this Multiple Obligee Rider.
8. In the event of any ambiguity, conflict or inconsistency, the Bond and this Multiple Obligee Rider shall prevail over the Project Agreement and the other Project Documents.
9. Nothing herein shall alter or affect the aggregate liability of the Surety as described in the Bond.

IN WITNESS WHEREOF, the Principal, Surety, Obligee, UOHI and Lender have signed and sealed this Multiple Obligee Rider dated the ____ day of _____, 2014.

SIGNED, SEALED and DELIVERED

in the presence of:

PLC CONSTRUCTORS CANADA INC.

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

[REDACTED]

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

I have authority to bind the corporation

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

[REDACTED]

I/We have authority to bind the corporation

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

I have authority to bind the corporation

[REDACTED]

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

I have authority to bind the corporation

**PCL OTTAWA HEART INSTITUTE 2014
LTD.**

Per: _____

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation

THE TORONTO-DOMINION BANK, as Agent

Per: _____

Name:

Title:

I have authority to bind the corporation

**UNIVERSITY OF OTTAWA HEART
INSTITUTE**

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

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

I/We have authority to bind the corporation

APPENDIX C TO SCHEDULE 13

FORM OF LABOUR AND MATERIAL PAYMENT BOND

NOTE: This Bond is issued simultaneously with a Performance Bond and Multiple Obligee Rider and is subject to the terms and conditions of the Labour and Material Payment Bond Multiple Obligee Rider attached hereto

Bond No. [REDACTED]

Bond Amount: \$[REDACTED]

PCL Constructors Canada Inc. as Principal (hereinafter called the “**Principal**”), and **[REDACTED]**, all of whom are duly authorized to transact the business of suretyship in Canada as Surety (hereinafter collectively called the “**Surety**”), are subject to the conditions hereinafter contained, held and firmly bound unto **PCL Ottawa Heart Institute 2014 Ltd.**, as Trustee (hereinafter called the “**Obligee**”), for the use and benefit of the Claimants, their and each of their heirs, executors, administrators, successors and assigns, in the amount of **[REDACTED]** (**[\$REDACTED]**) of lawful money of Canada for the payment of which sum well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a written contract entitled Construction Contract with **PCL Ottawa Heart Institute 2014 Ltd.** dated _____, 2014 for the University of Ottawa Heart Institute Cardiac Life Support Services Redevelopment Project (such contract as so amended, and as the same may hereinafter be further amended, whether by way of change, alteration, addition or other modification, and including all of its terms and provisions without limitation, is hereinafter called the Construction Contract and by reference made part hereof). Capitalized terms used in this Bond without definition shall have their respective meanings attributed thereto in the Construction Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall make payment to all Claimants for all labour and material used or reasonably required for use in the performance of the Construction Contract, then this obligation shall be null and void; and otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A Claimant for the purpose of this Bond is defined as one having a direct contract with the Principal for labour, material, or both, used or reasonably required for use in the performance of the Construction Contract, labour and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment directly applicable to the Construction Contract provided that a person, firm or corporation who rents equipment to the Principal to be used in the performance of the

Construction Contract under a contract which provides that all or any part of the rent is to be applied towards the purchase price thereof, shall only be a Claimant to the extent of the prevailing industrial rental value of such equipment for the period during which the equipment was used in the performance of the Construction Contract. The prevailing industrial rental value of equipment shall be determined, insofar as it is practical to do so, in accordance with and in the manner provided for in the latest revised edition of the publication of the Canadian Construction Association titled “Rental Rates on Construction Equipment” published prior to the period during which the equipment was used in the performance of the Construction Contract.

2. The Principal and the Surety hereby jointly and severally agree with the Oblige, as Trustee, that every Claimant who has not been paid as provided for under the terms of his or her contract with the Principal, before the expiration of a period of ninety (90) days after the date on which the last of such Claimant’s work or labour was done or performed or materials were furnished by such Claimant, may as a beneficiary of the trust herein provided for, sue on this Bond, prosecute the suit to final judgment for such sum or sums as may be justly due to such Claimant under the terms of his or her contract with the Principal and have execution thereon. Provided that the Oblige is not obliged to do or take any act, action or proceeding against the Surety on behalf of the Claimants, or any of them, to enforce the provisions of this Bond. If any act, action or proceeding is taken either in the name of the Oblige or by joining the Oblige as a party to such proceeding, then such act, action or proceeding, shall be taken on the understanding and basis that the Claimants or any of them, who take such act, action or proceeding shall indemnify and save harmless the Oblige against all costs, charges and expenses or liabilities incurred thereon and any loss or damage resulting to the Oblige by reason thereof. Provided still further that, subject to the foregoing terms and conditions, the Claimants, or any of them may use the name of the Oblige to sue on and enforce the provisions of this Bond.
3. It is a condition precedent to the liability of the Surety under this Bond that such Claimant shall have given written notice as hereinafter set forth to each of the Principal, the Surety and the Oblige, stating with substantial accuracy the amount claimed, and that such Claimant shall have brought suit or action in accordance with this Bond, as set out in sub-clauses 3(b) and 3(c) below. Accordingly, no suit or action shall be commenced hereunder by any Claimant:
 - (a) unless such Claimant shall have given written notice within the time limits hereinafter set forth to each of the Principal, the Surety and the Oblige, stating with substantial accuracy the amount claimed. Such notice shall be served by mailing the same by registered mail to the Principal, the Surety and the Oblige, at any place where an office is regularly maintained for the transaction of business by such persons or served in any manner in which legal process may be served in

the Province or other part of Canada in which the subject matter of the Construction Contract is located. Such notice shall be given:

- (i) in respect of any claim for the amount or any portion thereof, required to be held back from the Claimant by the Principal, under either the terms of the Claimant's contract with the Principal, or under the construction lien legislation applicable to the Claimant's contract with the Principal, whichever is greater, within one hundred and twenty (120) days after such Claimant should have been paid in full under the Claimant's contract with the Principal;
 - (ii) in respect of any claim other than for the holdback, or portion thereof, referred to above, within one hundred and twenty (120) days after the date upon which such Claimant did, or performed, the last of the work or labour or furnished the last of the materials for which such claim is made under the Claimant's contract with the Principal;
 - (b) after the expiration of one (1) year following the date on which the Principal ceased work on the Construction Contract, including work performed under the guarantees provided in the Construction Contract;
 - (c) other than in a Court of competent jurisdiction in the Province or District of Canada in which the subject matter of the Construction Contract, or any part thereof, is situated and not elsewhere, and the parties hereto agree to submit to the jurisdiction of such Court.
4. The Surety agrees not to take advantage of Section 1959 of the Civil Code of the Province of Quebec in the event that, by an act or an omission of a Claimant, the Surety can no longer be subrogated in the rights, hypothecs and privileges of said Claimant.
 5. Any material change in the Construction Contract between the Principal and the Obligeé shall not prejudice the rights or interest of any Claimant under this Bond, who is not instrumental in bringing about or has not caused such change.
 6. The amount of this Bond shall be reduced by and to the extent of any payment or payments made in good faith and in accordance with the provisions hereof, inclusive of the payment by the Surety of construction liens which may be filed of record against the subject matter of the Construction Contract, whether or not claim for the amount of such lien be presented under and against this Bond.
 7. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

IN WITNESS WHEREOF, the Principal and the Surety have signed and sealed this Bond this _____ day of _____, 2014.

SIGNED, SEALED AND DELIVERED

in the presence of:

PLC CONSTRUCTORS CANADA INC.

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

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

I have authority to bind the corporation

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

[REDACTED]

I/We have authority to bind the corporation

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

I have authority to bind the corporation

[REDACTED]

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

I have authority to bind the corporation

**EXHIBIT 1 TO APPENDIX C
LABOUR AND MATERIAL PAYMENT BOND
MULTIPLE OBLIGEE RIDER**

No. [REDACTED]

TO BE ATTACHED TO AND FORM PART OF THE LABOUR AND MATERIAL PAYMENT BOND NO. [REDACTED] dated _____, 2014 (the “**L&M Bond**”) concurrently with the execution of this Labour and Material Payment Bond Multiple Obligee Rider (“**L&M Multiple Obligee Rider**”) issued by [REDACTED], all of whom are duly authorized to transact the business of suretyship in Canada as Surety (hereinafter collectively called the “**Surety**”), on behalf of **PCL Constructors Canada Inc.**, as Principal (hereinafter called the “**Principal**”), and in favour of **PCL Ottawa Heart Institute 2014 Ltd.**, as Obligee (hereinafter called the “**Obligee**”).

NOW THEREFORE, in consideration of [REDACTED] (\$[REDACTED]) Dollars and other good and valuable consideration, receipt of which is hereby acknowledged by each of the parties hereto, the undersigned hereby agree as follows:

1. The L&M Bond shall and is hereby amended to add **University of Ottawa Heart Institute** (hereinafter called the “**UOHI**”) and **The Toronto-Dominion Bank, as Agent** (hereinafter called the “**Lender**”) as additional named Obligees, in their respective capacities as assignees of the Construction Contract.
2. Capitalized terms used in this L&M Multiple Obligee Rider without definition shall have the respective meanings attributed to them in the L&M Bond and the Construction Contract.
3. All of the terms, conditions and provisions of the L&M Bond are hereby incorporated herein by reference as if fully set forth herein.
4. No alteration or material change in the Construction Contract or any conduct of the Principal, Obligee or Lender, shall prejudice the rights or interest of UOHI or Claimant under the L&M Bond or this L&M Multiple Obligee Rider provided that UOHI or Claimant have not caused such alteration or material change without the prior written consent of the Surety.
5. In the event of any ambiguity, conflict or inconsistency, the L&M Bond and the L&M Multiple Obligee Rider shall prevail over the Project Agreement and the other Project Documents.

6. Nothing herein shall alter or affect the aggregate liability of the Surety as described in the L&M Bond.

IN WITNESS WHEREOF, the Principal, Surety, Obligee, UOHI and Lender have signed and sealed this L&M Multiple Obligee Rider dated the ____ day of _____, 2014.

SIGNED, SEALED AND DELIVERED

in the presence of:

PLC CONSTRUCTORS CANADA INC.

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

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

I have authority to bind the corporation

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

[REDACTED]

I/We have authority to bind the corporation

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

I have authority to bind the corporation

[REDACTED]

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

I have authority to bind the corporation

**PCL OTTAWA HEART INSTITUTE 2014
LTD.**

Per: _____

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation

THE TORONTO-DOMINION BANK, as Agent

Per: _____
Name:
Title:

I have authority to bind the corporation

**UNIVERSITY OF OTTAWA HEART
INSTITUTE**

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

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

I/We have authority to bind the corporation

**SCHEDULE 14
DISPUTE RESOLUTION PROCEDURE**

1. AUTHORITY OF THE CONSULTANT

- 1.1** Subject to the limitation set out in Section 8.2(s) of the Project Agreement, differences between the Parties as to the interpretation, application or administration of the Project Agreement or any other disagreement between the Parties including any disagreement as to any decision, finding or determination by the Consultant (herein collectively called “**disputes**”) which are not resolved to the mutual satisfaction of the Parties in the first instance by findings of the Consultant subject to and as provided in Section 8.2 of the Project Agreement, shall be settled in accordance with the requirements of this Schedule 14.
- 1.2** If the matter in dispute is not resolved promptly, the Consultant will give such instructions as in the Consultant’s opinion are necessary for the proper performance of the Work. The Parties shall act immediately according to such instructions, subject to Section 1.3 of this Schedule 14, it being understood that by so doing neither Party will jeopardize any claim they may have. If it is subsequently determined that such instructions were in error or at variance with the Contract Documents, Project Co shall be entitled to payment for carrying out such instructions in accordance with the Change Order procedures pursuant to Schedule 11 of the Project Agreement – Change Procedure.
- 1.3** As time is of the essence, it is essential that performance of the Work continue notwithstanding any dispute. In the event the dispute is referred to an adjudicator pursuant to Section 2.4 of this Schedule 14, the Parties shall, in accordance with Section 2.4(f) of this Schedule 14 and notwithstanding Section 1.2 of this Schedule 14, comply with any decision of the adjudicator including the payment of any amounts the adjudicator determines are owing. For greater certainty the Parties will comply with the decision of the adjudicator notwithstanding any referral of the dispute to arbitration or to the courts in accordance with Section 2.5 of this Schedule 14, until a final determination of the matter is made by any arbitrator or a court, as the case may be.

2. NEGOTIATION, ADJUDICATION AND ARBITRATION

- 2.1** A Party shall give written notice of a dispute to the other Party, no later than 5 Business Days after the receipt of the Consultant’s decision, finding or determination in the case of a dispute as to a decision, finding or determination made by the Consultant, given under Section 8.2 of the Project Agreement. Such notice shall set forth particulars of the matters in dispute, the probable extent and value of the damage and the relevant provisions of the Contract Documents. Such notice shall be copied to IO at the address set out in Section 42.1 of the Project Agreement, for information purposes only. The other Party shall reply to such notice no later than 5 Business Days after it receives or is

considered to have received it, setting out in such reply its grounds and other relevant provisions of the Contract Documents.

- 2.2** The Parties shall first make good faith efforts to promptly resolve their disputes by amicable negotiations conducted by the senior representatives of UOHI and Project Co at the Site. If, following good faith negotiations between them, resolution of a dispute has not been reached within 10 Business Days of the request for negotiations, then upon the written request of either Party, senior executive officers of each Party shall attempt to resolve the dispute. If the dispute is resolved, such resolution shall be evidenced by an instrument in writing.
- 2.3** If a dispute has not been resolved within 10 Business Days of a Party's written request for senior executive officer negotiation, then upon the written request of either Party, the dispute shall be submitted to adjudication in accordance with Section 2.4 of this Schedule 14. If the Parties do not agree to submit the dispute to adjudication within such 10 Business Day period, either Party may then refer the dispute to arbitration pursuant to Section 2.5 of this Schedule 14.
- 2.4** Adjudication shall be conducted in accordance with the following:
- (a) If the Parties are unable to agree upon an adjudicator within the prescribed time, then either Party may request that a judge of the Superior Court for the Province of Ontario appoint the adjudicator.
 - (b) The Parties may refer a dispute to the adjudicator by providing written notice of the intention to the adjudicator at least 3 Business Days prior to making the referral.
 - (c) Once a dispute has been referred to the adjudicator, the adjudicator is required to make a decision within 28 days of the referral, or such longer period as agreed to by the Parties after the dispute has been referred, and such decision shall be in writing.
 - (d) The adjudicator is required to act impartially in fulfilling his/her duties and the adjudicator may take whatever initiative he/she deems necessary in order to resolve the dispute, including requiring the Parties to submit whatever documents, statements of position or other information the adjudicator requires.
 - (e) The adjudicator may decide that any of the Parties to the dispute is liable to make a payment under the Project Agreement and when that payment is due.
 - (f) In the absence of any directions by the adjudicator relating to the time for performance of his/her decision, and notwithstanding any instruction received from the Consultant in accordance with Section 1 hereof, the Parties shall be

required to comply with any decision of the adjudicator immediately on delivery of the decision to the Parties in accordance with this Section 2.4.

- (g) If requested by one or both of the Parties to the dispute, the adjudicator shall provide reasons for his/her decision.
- (h) The adjudicator shall be entitled to the payment of such reasonable amount as he/she may determine by way of fees and expenses reasonably incurred by him/her which the adjudicator may apportion between the Parties as he/she considers appropriate. Notwithstanding the foregoing, the Parties shall be jointly and severally liable for any sum which remains outstanding following the making of any determination on how payment shall be apportioned, such that if the adjudicator is unable to recover his/her fees and expenses from one Party, he/she may recover from the other.
- (i) The adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his/her functions as adjudicator unless the act or omission is in bad faith.

2.5 By giving notice in writing to the other Party, at any time after receipt of the decision of the adjudicator, and subject to the Parties' obligation to comply with the adjudicator's decision in accordance with Section 1.3 of this Schedule 14, or if the parties do not agree to submit the dispute to adjudication within the timeframe set out in Section 2.3 hereof, either Party may (i) elect by written notice to the other Party, to refer the dispute to be finally resolved by arbitration under the latest edition of the Rules for Arbitration of Construction Disputes as provided in CCDC 40, or (ii) elect by written notice to the other Party (and regardless of whether the other Party has given a notice under clause (i) above electing to refer the dispute to be finally resolved by arbitration) to require that the dispute be referred to and resolved solely by litigation in the Ontario Superior Court of Justice, and both Parties agree to attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of the dispute, provided if the actual or potential total value or amount at issue in the dispute (as determined by adding all claims and counterclaims) is less than \$[REDACTED], taking into account recurrence over time if the dispute involves a recurring matter, the Party which has not referred the dispute to be resolved by litigation may elect, by written notice given to the other Party within 10 Business Days after receipt of the notice requiring that the dispute be resolved by litigation, to refer the dispute to be finally resolved by arbitration. Such notice of arbitration shall be copied to IO at the addresses set out in Section 41.1 of the Project Agreement, for information purposes only. Notwithstanding that a notice of arbitration has been delivered, if the actual or potential total value or amount at issue (as determined by adding all claims and counterclaims) is \$[REDACTED] or more, taking into account recurrence over time if the dispute involves a recurring matter, then either Party may elect, by written notice to the other Party, to require that the dispute be referred to and resolved solely by litigation in the Ontario Superior Court of Justice, and both Parties

agree to attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of the dispute.

- 2.6** Except as otherwise provided in the Contract Documents, no arbitration arising out of or relating to the Contract Documents shall include by consolidation, joinder or in any other manner any other individual or entity who is not a Party to the Project Agreement unless:
- (a) the inclusion of such other individual or entity is necessary if complete relief is to be afforded among those who are already Parties to the arbitration;
 - (b) such other individual or entity is substantially involved in a question of law or fact which is common to those who are already Parties to the arbitration and which will arise in such proceedings; and
 - (c) the written consent of the other individual or entity sought to be included and of UOHI and Project Co has been obtained for such inclusion, which consent shall make specific reference to this paragraph; but no such consent shall constitute consent to arbitration of any dispute not specifically described in such consent or to arbitration with any Party not specifically identified in such consent.

Notwithstanding the preceding paragraph, if a claim, dispute or other matter in question between UOHI and Project Co involves the work of a Subcontractor or Supplier either UOHI or Project Co may join such entity as a Party to the arbitration between UOHI and Project Co hereunder. Project Co shall include in all subcontracts a specific provision whereby the Subcontractor consents to being joined in an arbitration between UOHI and Project Co involving the Work of such Subcontractor, in accordance with this Schedule 14, including, this Section 2.6. Nothing in this paragraph or in the provision of such Subcontract consenting to joinder shall create any claim, right or cause of action in favour of the Subcontractor or the Supplier against UOHI.

- 2.7** Project Co agrees that any claims made by it against any other contractors or UOHI, based (in whole or in part) as a result of any acts or omissions of other contractor(s) shall, in the first instance, be submitted to UOHI. UOHI shall then, with the assistance of Project Co, present the claim to the other contractor(s) for resolution under the terms of the applicable contract(s). Project Co has the full responsibility for the preparation of such claims and Project Co shall bear the complete expense of preparing and presenting its claim, including legal fees. Project Co agrees that it will not pursue or will stay any legal proceeding relating to the claim(s) with the exception of initiating legal proceedings to assert any statutory right to a lien under the *Construction Lien Act* (Ontario) for a reasonable period of time to allow UOHI to reach a resolution acceptable to Project Co under the terms of the applicable contract. If such resolution has not been achieved within a reasonable period of time, Project Co may then proceed with any legal proceeding against the other contractor of UOHI. Project Co shall proceed diligently with its Work under the Project Agreement pending resolution of any such claim or dispute when directed to do so by UOHI.

3. RETENTION OF RIGHTS

- 3.1** It is agreed that no act by either Party shall be construed as a renunciation or waiver of any rights or recourses, provided the Party has given the notices required under this Schedule 14 and has carried out the instructions as provided in paragraph 2.2 of this Schedule 14.
- 3.2** Nothing in this Schedule 14 shall be construed in any way to limit a Party from asserting any statutory right to a lien under applicable lien legislation of the jurisdiction of the Site and the assertion of such right by initiating judicial proceedings is not to be construed as a waiver of any right that Party may have under paragraph 2.5 to proceed by way of arbitration to adjudicate the merits of the claim upon which such a lien is based.

4. INDEMNITY RE AMOUNTS DUE

- 4.1** The parties shall indemnify each other in respect of any damages suffered or incurred on amounts agreed to be paid pursuant to resolution of a dispute pursuant to Section 1 or Sections 2.1 or 2.2 of this Schedule 14 and on the amount of any award or judgment as follows:
- (a) for amounts payable by Project Co to UOHI, Project Co shall indemnify UOHI as provided for in Section 33.1(d) of this Project Agreement from and against any damages suffered or incurred resulting from any overpayments to Project Co or, as applicable, any underpayment or non-payment by Project Co from the date of any overpayment to Project Co or, as applicable, from the date on which payment was due under this Project Agreement to UOHI until the date of payment; or
 - (b) for amounts payable by UOHI to Project Co, UOHI shall indemnify Project Co as provided for at Section 33.2(d) of this Project Agreement from and against any damages suffered or incurred resulting from any overpayment to UOHI or, as applicable, any underpayment or non-payment by UOHI from the date of any overpayment to UOHI or, as applicable, from the date on which payment was due under this Project Agreement to Project Co until the date of payment.

5. NOTICES

- 5.1** The Parties agree to copy the Consultant on all notices given hereunder.

SCHEDULE 15
PROCUREMENT MONITORING AND IMPLEMENTATION PLAN

Procurement Monitoring and Implementation Plan

The following response is a preliminary plan for insertion into the Project Agreement as Schedule 15, the procurement monitoring and implementation plan (“**Procurement Monitoring and Implementation Plan**”).

Procurement Monitoring and Implementation Plan

PCL Constructors Canada Inc. (“PCL”) recognizes the importance of sound and ethical procurement practices. As such, PCL is required to comply with the ‘PCL Code of Conduct’ which includes a Canadian competition law compliance policy. Adherence to the ‘PCL Code of Conduct’ and its associated policies supports PCL’s core values of **Honesty, Integrity, Respect, Dynamic Culture and Passion**. The Sponsors can be confident that all procurement practices undertaken by PCL and its Proponent Team Members will be in accordance with Canadian competition law, including the Competition Act.

Consistent with Canadian competition law, it is a standard PCL business practice to maintain the confidentiality of subcontractor bid submissions. Additionally, PCL reinforces this confidentiality obligation upon the other PCL Proponent Team Members via its standard procurement documentation and subcontract agreements.

PCL confirms that all of its employees are appropriately trained in their legal obligations with respect to procurement in Ontario and Canada.

PCL confirms that PCL and PCL Proponent Team Members shall engage in regular monitoring and reporting of the procurement practices to ensure compliance with this Procurement Monitoring and Implementation Plan.

PCL confirms that the respective subcontractors (at all levels of subcontracting) of PCL and the other PCL Proponent Team Members are contractually obliged to adhere to Canadian competition law, including the Canadian Competition Act.

PCL confirms that a complaints system was in place for the RFP Process and will continue to be in place for the Project which addresses complaints brought by Subcontractors (at all levels of subcontracting) as to the procurement practices of PCL, the other PCL Proponent Team Members, and any subcontractor.

PCL recognizes that this Procurement Monitoring and Implementation Plan will be included as a contractual obligation in Schedule 15 of the Project Agreement.

APPENDIX 1

FORM OF PROJECT CO DECLARATION

Declaration of a Director or Officer of

PCL OTTAWA HEART INSTITUTE 2014 LTD.

(“Project Co”)

**TO: UNIVERSITY OF OTTAWA HEART INSTITUTE, a non-share capital corporation
incorporated under the laws of the Province of Ontario (“UOHI”)**

I, [●], being the [●] of Project Co and an authorized signatory of Project Co and being duly authorized by Project Co to deliver this declaration, hereby make the following declaration and confirmation for and on behalf of Project Co and without incurring personal liability and that the same may be relied upon by you without further inquiry:

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.

DATED this ____ day of _____, 201●.

Name:

Title:

**SCHEDULE 16
 RISK ASSESSMENT GUIDELINES**

The following chart illustrates the expected treatment of a number of possible changes in the Work:

<u>RISK ASSESSMENT GUIDELINE:</u>	A = Project Co's Design Contingency (PDC)			
	B = Unforeseen (UOHI's cost)			
	C = Scope Change (UOHI's cost)			
	D = Core design functionality (UOHI's cost)			
	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>
1. At SPD level, add 5 fire dampers. Fire rated partition shown on drawings.	P			
2. 2-hour fire separation required for stairwell. One wall does not show proper Fire Resistance Rating (rated door, hardware, fire damper also required).	P			
3. Add starter for fan EF-E7 located on roof.	P			
4. Cost for preparation of interference drawings.	P			
5. Structural design insufficient to accommodate loading requirements of the specified equipment in penthouse.				P
6. Provide 7 lab sinks complete with taps, wastes and fittings.			P	
7. Furred out space in existing construction not sufficient for ducts shown, existing conditions did not conform to the Consultant's assumptions.		P		
8. Final equipment selection requires modifications to services/space outside the tolerances specified.			P	
9. Reinforcing to install wall mounted equipment not shown, but is required by manufacturer.	P			
10. Replace 20' of underground broken drainage pipe.		P		
11. As per industry standards, maintain or reroute existing services running through existing spaces.	P			
12. Testing and removal of abandoned fire alarm system		P		

<u>RISK ASSESSMENT GUIDELINE:</u>	A = Project Co's Design Contingency (PDC)			
	B = Unforeseen (UOHI's cost)			
	C = Scope Change (UOHI's cost)			
	D = Core design functionality (UOHI's cost)			
	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>
in existing facility, not identified or readily inferable on the documents.				
13. Existing duct riser is removed and resulting opening needs to be firestopped.	P			
14. Existing duct to remain in existing building, firestopping around floor opening to be upgraded to meet <i>Building Code</i> requirements.		P		
15. Upgrade fire separation of existing stairwell: building inspector rules that existing conditions do not meet <i>Building Code</i> with extensive renovations proposed.		P		
16. Emergency voice communications speakers volume meets specification, but not sufficient when tested by building inspector. Relocation or additional speakers required.		P		
17. Sprinkler layout does not comply with code requirements. (note: Project Co/Contractor provides sprinkler layout).	P			
18. Re: exit requirements, building inspector rules that travel distance is exceeded (different method of measuring) Additional measures to be implemented.		P		
19. Building inspector and Fire Marshall have different interpretations of whether standpipe enclosure to be fire rated. Additional cost incurred.		P		
20. Bulkhead impedes visibility of exit sign. Modifications to exit sign placement required.	P			
21. Headroom does not meet <i>Building Code</i> or design requirements due to lack of design coordination and Contractor, Subcontractor coordination.	P			
22. Headroom does not meet <i>Building Code</i> or design requirements due to initial design fundamentally				P

<u>RISK ASSESSMENT GUIDELINE:</u>	A = Project Co's Design Contingency (PDC)			
	B = Unforeseen (UOHI's cost)			
	C = Scope Change (UOHI's cost)			
	D = Core design functionality (UOHI's cost)			
	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>
unable to meet headroom requirements.				
23. Barrier free washrooms do not achieve turning radius due to Project Co-initiated change to toilet size.	P			
24. Barrier free washrooms do not achieve turning radius due to design/construction coordination issues.	P			
25. Barrier free washrooms do not achieve turning radius due to initial design fundamentally unable to provide required turning radius.				P
26. Compliance with CSA Z32-04 electrical receptacles in patient care areas not achieved because regular receptacles specified.				P
27. Testing for compliance with CSA Z32-04 electrical receptacles in-patient care areas not achieved because they are not properly grounded.	P			
28. Providing additional electrical connections (not on the drawings) to supply fans (on the drawings) required additional capacity in the electrical panel. (a) Electrical connections: PDC (b) Capacity of panel: UOHI	P			P
29. Interference drawings and on-site conditions require additional lengths of ductwork/insulation.	P			
30. Floor layout requires a total of 20,000 cfm air supply but unit is sized at 10,000 cfm.				P
31. Drains required for refrigerator/freezers shown on equipment schedule but not on drawings. Requires larger main drain. (a) Drains: PDC (b) Main drain size increase: UOHI	P			P

<u>RISK ASSESSMENT GUIDELINE:</u>	A = Project Co's Design Contingency (PDC)			
	B = Unforeseen (UOHI's cost)			
	C = Scope Change (UOHI's cost)			
	D = Core design functionality (UOHI's cost)			
	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>
32. New structural openings required (not shown on Drawings) in existing or new construction due to new duct risers (shown on Drawings).	P			
33. Infilling of existing structural openings found after demolition (not on existing documentation nor properly inferable, readily apparent or readily discoverable from such existing documentation)		P		
34. Shower specified would not fit through door in existing facility.				P
35. Shower specified would not fit through door in new facility. (Project Co/Contractor can install prior to installing door).	P			
36. UOHI's food service provider requires changes to M&E Services supplying coffee shop.			P	
37. Sump pit shown on Drawings but sump pit cover missing from specification.	P			
38. Millwork schedule for a patient room shows nothing, but plans show millwork for clothing storage in patient room.	P			
39. Fan shown on mechanical drawing but not connected on electrical drawings. Connection of fan to closest Motor Control Centre.	P			
40. Same as 39 above but the feeder to Motor Control Centre needs to be modified to suit additional increase in Load.				P
41. Five fire shutters shown, one additional fire shutter required on 6th opening adjacent to other five.	P			
42. Five fire shutters shown, one additional fire shutter required because building inspector interprets building code differently from the consultants and on which		P		

<u>RISK ASSESSMENT GUIDELINE:</u>	A = Project Co's Design Contingency (PDC)			
	B = Unforeseen (UOHI's cost)			
	C = Scope Change (UOHI's cost)			
	D = Core design functionality (UOHI's cost)			
	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>
basis the building permit was received.				
43. Mechanical specifications heat wheels as equipment in the Project, but they do not appear on the drawings so quantity and location not known.				P

Note 1: Project Co shall be responsible to meet all codes, regulations, bylaws and standards to the same extent as per industry standard on similar projects in Ontario.

Note 2: These examples are illustrative examples of the types of Design Issues which may be encountered, and the findings the Consultant might reasonably make as to whether the issues are properly characterized as Project Co Design issues. These examples are not intended to be definitive or complete.

Note 3: It is the intent that the Project Co Parties should also be aware of the Project Co Design Contingency, as defined in the Project Agreement.

SCHEDULE 17

FORM OF INSURANCE AND BONDING TRUST AGREEMENT

THIS AGREEMENT is made as of the [●] day of [●], 20[●]

AMONG:

UNIVERSITY OF OTTAWA HEART INSTITUTE, a non-share capital corporation incorporated under the laws of Ontario

(“**UOHI**”)

AND:

THE TORONTO-DOMINION BANK, acting as agent for and on behalf of Lender

(the “**Agent**”)

AND:

PCL OTTAWA HEART INSTITUTE 2014 LTD.

(“**Project Co**”)

AND:

BNY TRUST COMPANY OF CANADA

(the “**Account Trustee**”)

WHEREAS:

- A. UOHI and Project Co have entered into the Project Agreement.
- B. UOHI, Agent and Project Co have entered into the Lender’s Direct Agreement.
- C. UOHI, Agent and Project Co have agreed that all amounts from time to time contained in the Insurance Trust Account are to be held in trust by the Account Trustee in accordance with the terms of this Insurance and Bonding Trust Agreement, and that no releases, distributions or transfers of any funds from the Insurance Trust Account shall be made other than in accordance with the terms of this Insurance and Bonding Trust Agreement.

- D. UOHI, Agent and Project Co have agreed that the Bonds are to be held in trust by the Account Trustee in accordance with the terms of this Insurance and Bonding Trust Agreement and that no releases of the original copy of the Bonds shall be made other than in accordance with the terms of this Insurance and Bonding Trust Agreement.

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

1. DEFINITIONS

In this Insurance and Bonding Trust Agreement, unless the context otherwise requires:

- (a) “**Account Trustee**” has the meaning given in the introductory paragraph of this Insurance and Bonding Trust Agreement.
- (b) “**Agent**” has the meaning given in the introductory paragraph of this Insurance and Bonding Trust Agreement.
- (c) “**Appointed Representative**” has the meaning given in the Lender’s Direct Agreement.
- (d) “**Bank**” means [REDACTED].
- (e) “**Bonds**” means has the meaning given in the Project Agreement.
- (f) “**Business Day**” has the meaning given in the Project Agreement.
- (g) “**Change of Authorization Event**” has the meaning given in Section 9(a) of this Insurance and Bonding Trust Agreement.
- (h) “**Change of Authorization Notice**” has the meaning given in Section 9(b)(ii) of this Insurance and Bonding Trust Agreement.
- (i) “**Default Notice**” means a written notice given by Agent to the Account Trustee and UOHI that an event of default under the Lending Agreements has occurred and is continuing.
- (j) “**Default Period**” means the period commencing on the date upon which the Account Trustee and UOHI receives a Default Notice and ending on the date upon which the Account Trustee and UOHI receives written notice from Agent that the event of default which was the subject matter of the applicable Default Notice has been cured.
- (k) “**Facility**” has the meaning given in the Project Agreement.

- (l) “**Governmental Authority**” has the meaning given in the Project Agreement.
- (m) “**Insurance and Bonding Trust Agreement**” means this insurance and bonding trust agreement.
- (n) “**Insurance Policies**” has the meaning given in Section 4 of this Insurance and Bonding Trust Agreement.
- (o) “**Insurance Proceeds**” has the meaning given in Section 6(a) of this Insurance and Bonding Trust Agreement.
- (p) “**Insurance Trust Account**” means [REDACTED].
- (q) “**Lender**” has the meaning given in the Project Agreement.
- (r) “**Lender’s Direct Agreement**” means the Lender’s Direct Agreement made on or about the date hereof between UOHI, Project Co and Agent.
- (s) “**Lending Agreements**” has the meaning given in the Project Agreement.
- (t) “**Multiple Obligee Rider(s)**” means the multiple obligee rider(s) applicable to the Bonds pursuant to which Project Co, UOHI and Agent are multiple obligees under the Bonds.
- (u) “**Multiple Obligees**” means a multiple obligee under the applicable Bond.
- (v) “**Notice Period**” has the meaning given in the Lender’s Direct Agreement.
- (w) “**Order**” has the meaning given in Section 8(k) of this Insurance and Bonding Trust Agreement.
- (x) “**Party**” means any of UOHI, Project Co, Agent or the Account Trustee, and “**Parties**” means all of UOHI, Project Co, Agent and the Account Trustee.
- (y) “**Project**” has the meaning given in the Project Agreement.
- (z) “**Project Agreement**” means the project agreement made on or about the date hereof between UOHI and Project Co.
- (aa) “**Project Co**” has the meaning given in the introductory paragraph of this Insurance and Bonding Trust Agreement.
- (bb) “**Project Co Event of Default**” has the meaning given in the Project Agreement.

- (cc) “**Replacement Project Agreement**” has the meaning given in the Lender’s Direct Agreement.
- (dd) “**Replacement Project Co**” has the meaning given in the Lender’s Direct Agreement.
- (ee) “**Step-In Notice**” has the meaning given in the Lender’s Direct Agreement.
- (ff) “**Step-In Period**” has the meaning given in the Lender’s Direct Agreement.
- (gg) “**Trust Property**” means all of the property held in trust by the Account Trustee pursuant to this Insurance and Bonding Trust Agreement, including, without limitation, the original copy of the Bonds, the Insurance Trust Account, and all amounts from time to time contained therein, the Insurance Policies and the Insurance Proceeds.
- (hh) “**UOHI**” has the meaning given in the introductory paragraph of this Insurance and Bonding Trust Agreement.

2. INTERPRETATION

This Insurance and Bonding Trust Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The headings in this Insurance and Bonding Trust Agreement are for convenience of reference only, shall not constitute a part of this Insurance and Bonding Trust Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Insurance and Bonding Trust Agreement.
- (b) Unless the context otherwise requires, references to specific Sections, Clauses, Paragraphs, Subparagraphs, and other divisions are references to such Sections, Clauses, Paragraphs, Subparagraphs, or divisions of this Insurance and Bonding Trust Agreement and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.

- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Insurance and Bonding Trust Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) The words in this Insurance and Bonding Trust Agreement shall bear their natural meaning.
- (g) References containing terms such as:
 - (i) “hereof”, “herein”, “hereto”, “hereinafter”, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Insurance and Bonding Trust Agreement taken as a whole; and
 - (ii) “includes” and “including”, whether or not used with the words “without limitation” or “but not limited to”, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean “includes without limitation” and “including without limitation”.
- (h) In construing this Insurance and Bonding Trust Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach to the construction of this Insurance and Bonding Trust Agreement and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (i) Where this Insurance and Bonding Trust Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (j) Where this Insurance and Bonding Trust Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00

p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.

- (k) Any reference to time of day or date means the local time or date in Ottawa, Ontario.
- (l) Unless otherwise indicated, time periods will be strictly construed and time shall be of the essence hereof.
- (m) Whenever the terms “will” or “shall” are used in this Insurance and Bonding Trust Agreement they shall be construed and interpreted as synonymous and to read “shall”.

3. BONDS AND INSURANCE TRUST ACCOUNT

- (a) Prior to the commencement of a Default Period, the Insurance Trust Account and all amounts from time to time contained therein, including interest thereon, shall be held in trust by the Account Trustee for the benefit of Project Co. During a Default Period, the original copy of the Bonds and Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of Agent and Lender, provided that, upon receipt by the Account Trustee of a Change of Authorization Notice, the original copy of the Bonds, the Insurance Trust Account, and all amounts from time to time contained therein, shall be held in trust by the Account Trustee for the benefit of UOHI.
- (b) The Account Trustee shall not release the original copy of the Bonds or release, distribute or transfer any funds from the Insurance Trust Account other than in accordance with the terms of this Insurance and Bonding Trust Agreement.
- (c) Notwithstanding any other provision of this Insurance and Bonding Trust Agreement, Agent, UOHI, and Project Co agree that (x) if Project Co or Agent receives the original copy of the Bonds, the Bonds will be enforced for the purpose of completion of the Project, and (y) if any of them either receives any Insurance Proceeds from the Insurance Trust Account or has the right to direct the Account Trustee to advance funds in respect of any Insurance Proceeds from the Insurance Trust Account to third parties, such funds shall be directed, used or advanced only for one of the following purposes:
 - (i) the repair, reinstatement, restoration or replacement of the Facility or any other assets, materials or goods necessary or desirable for the carrying out of the Work in respect of which such Insurance Proceeds have been paid;
 - (ii) the completion of the Project; or

- (iii) indemnification for any UOHI loss for which the subject Insurance Proceeds were paid under the Insurance Policies (as defined below).

For greater certainty, use of any Insurance Proceeds received in respect of a claim by Project Co for delay in start-up or soft costs may be applied in accordance with the terms of the Lending Agreements so as to enable Project Co to carry out the Work.

- (d) Notwithstanding anything in this Insurance Trust and Bonding Agreement, if UOHI is entitled to indemnification under the Insurance Policies in respect of any loss incurred by UOHI, such related insurance proceeds are to be paid directly to UOHI by the insurer or the Account Trustee and shall not be Insurance Proceeds subject to Sections 3(c)(i) or 3(c)(ii) of this Insurance Trust and Bonding Agreement. For greater certainty, it is understood and agreed that UOHI shall be required to use such proceeds for carrying out the purposes referred to in Sections 3(c)(i) and 3(c)(ii) in respect of which such proceeds have been paid.

4. DELIVERY OF ORIGINAL BONDS AND INSURANCE POLICIES

Project Co shall deliver, or cause to be delivered, to the Account Trustee an original copy of all Bonds Project Co is required to obtain under the Project Agreement and certified copies or originals of all insurance policies that Project Co is required to maintain under the Project Agreement (collectively, the “**Insurance Policies**”), and the Account Trustee shall hold the original copy of the Bonds and Insurance Policies in trust in accordance with the provisions of this Insurance and Bonding Trust Agreement.

5. BONDS

- (a) If the Account Trustee and UOHI have received a Default Notice, and if Agent presents to the Account Trustee (and the other parties to this Insurance and Bonding Trust Agreement) a declaration that it or any person Agent designates requires possession of the original copy of the Bonds for the purpose of establishing and/or enforcing the rights of any Multiple Obligee thereunder, and the Account Trustee has received written authorization from UOHI confirming Agent’s right to receive the original copy of the Bonds, the Account Trustee shall provide the original copy of the Bonds to Agent or such designated party, without the need for further investigation or inquiry by the Account Trustee, provided that, if at any time prior to the release of the original copy of the Bonds to Agent or a person designated by it, pursuant to the foregoing, the Account Trustee receives a Change of Authorization Notice and UOHI presents to the Account Trustee a declaration that it or any person designated by it requires possession of the original copy of the Bonds for the purpose of establishing and/or enforcing the rights of any Multiple Obligee thereunder, the Account Trustee shall provide the same to UOHI or such designated party, without the need for further investigation

or inquiry by the Account Trustee that UOHI or the designated party presenting the declaration is entitled to receive the original copy of the Bonds. UOHI shall provide, no later than 5 Business Days following receipt by UOHI of a request by the Lenders' Agent, either (i) the written authorization referred to in this Section 5(a) or (ii) written justification detailing UOHI's rationale for refusing to provide such authorization.

- (b) Project Co agrees to obtain or cause to be obtained from the Sureties any required amendment to the Bonds to provide for the foregoing provisions by way of amendment or replacement of the Multiple Obligee Rider now attached to and forming part of the Bonds.
- (c) UOHI, Agent and Project Co covenant and agree to observe and perform their respective covenants, agreements and obligations under the provisions of the Lender's Direct Agreement and further covenant and agree as between them, that if there is any conflict or inconsistency between the provisions of Lender's Direct Agreement and this Insurance and Bonding Trust Agreement, the provisions of the Lender's Direct Agreement shall govern and prevail to the extent of such conflict or inconsistency.

6. INSURANCE PROCEEDS

- (a) The Account Trustee shall distribute any proceeds of any Insurance Policy that are paid over to it by any insurer, Project Co, Agent or UOHI (the "**Insurance Proceeds**") as follows:
 - (i) in the case of third party legal liability or employer's liability insurance, to the relevant claimant in satisfaction of the claim, demand, proceeding or liability in respect of which such Insurance Proceeds are payable;
 - (ii) in the case of any property builders' risk "All Risk" insurance, boiler and machinery insurance or property insurance policies that Project Co is required to maintain under the Project Agreement:
 - (A) if the Account Trustee has not received a Default Notice and:
 - (1) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds in respect of the assets in respect of which such Insurance Proceeds have been paid in the same calendar month, is less than \$[REDACTED], to Project Co to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; or

- (2) if the amount of such Insurance Proceeds, together with the aggregate of all Insurance Proceeds in respect of the assets in respect of which such Insurance Proceeds have been paid in the same calendar month, is equal to or greater than \$[REDACTED], to Agent to reimburse Project Co for the costs of repairing, restoring or replacing the assets in respect of which such Insurance Proceeds have been paid; or
- (B) if the Account Trustee has received a Default Notice, to the Insurance Trust Account to be distributed by the Account Trustee in such amounts and to such persons as Agent may at any time or from time to time direct in writing, provided that, if the Account Trustee has received a Change of Authorization Notice, the Account Trustee shall release such Insurance Proceeds from the Insurance Trust Account in such amounts and to such parties as UOHI may at any time or from time to time direct in writing, in each case, to repair, restore or replace the assets in respect of which such Insurance Proceeds have been paid; and
- (iii) in the case of all other insurance, to Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, to UOHI, to be distributed to the parties entitled thereto.
- (b) The Account Trustee shall distribute any excess Insurance Proceeds remaining after the distributions contemplated in Section 6(a) have been made, including any Insurance Proceeds held in the Insurance Trust Account:
 - (i) if the Account Trustee has not received a Default Notice, to Project Co; and
 - (ii) if the Account Trustee has received a Default Notice, to such persons as Agent, or, following receipt by the Account Trustee of a Change of Authorization Notice, UOHI, may at any time or from time to time direct in writing.
- (c) Each of Project Co, Agent and UOHI shall forthwith deliver, or cause to be delivered, to the Account Trustee, any and all Insurance Proceeds it received from time to time and is not otherwise entitled to in accordance with the terms of this Insurance and Bonding Trust Agreement.
- (d) The Account Trustee shall deposit to the Insurance Trust Account all amounts that are paid over to it pursuant to the Insurance Policies or otherwise by Project Co,

UOHI or Agent and shall not transfer, release or distribute any such proceeds other than in accordance with this Insurance and Bonding Trust Agreement.

7. ACCOUNT AGREEMENT

- (a) The Account Trustee hereby agrees to promptly provide to Agent all monthly statements and other information with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as Agent may from time to time request in writing.
- (b) The Account Trustee hereby agrees to provide to UOHI all monthly statements and other information, through online viewing access, with respect to the Insurance Trust Account provided to the Account Trustee by the Bank pursuant to the relevant account agreement. The Account Trustee further agrees that it shall make such requests to the Bank for additional information with respect to the Insurance Trust Account as UOHI may from time to time request in writing.

8. THE ACCOUNT TRUSTEE

- (a) The Account Trustee shall not have any duty or obligation to manage, control, use, make any payment in respect of, register, record, insure, inspect, sell, dispose of or otherwise deal with any part of the Trust Property except as expressly provided by the terms of this Insurance and Bonding Trust Agreement. The Account Trustee shall carry out all written directions given by Agent, UOHI or Project Co, as applicable, in accordance with this Insurance and Bonding Trust Agreement and shall not be required to exercise any discretion in exercising any of its duties under this Insurance and Bonding Trust Agreement in pursuance of such written directions. The Account Trustee shall not be bound to do or take any act, action or proceeding by virtue of the powers conferred on it hereby unless and until it shall have been required to do so under the terms hereof and has received instruction, advice or direction from Agent, UOHI or Project Co, as applicable, as to the action to be taken (except with respect to actions specifically set out herein to be performed by the Account Trustee).
- (b) The Account Trustee will exercise its powers and carry out its obligations hereunder as account trustee honestly, in good faith and in the best interests of the beneficiaries hereunder and in connection therewith will exercise that degree of care, diligence, and skill that a reasonably prudent professional trustee would exercise in comparable circumstances. Unless otherwise required by law, the Account Trustee will not be required to give bond surety or security in any jurisdiction for the performance of any duties or obligations hereunder. No provision of this Insurance and Bonding Trust Agreement shall be construed to

relieve the Account Trustee from liability for its own dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.

- (c) The Account Trustee will not be subject to any liability whatsoever, in tort, contract or otherwise in connection with the Trust Property or the carrying out of its duties under this Insurance and Bonding Trust Agreement to Agent, Lender, UOHI, Project Co or any other person for any action taken or permitted by it to be taken, or for its failure to take any action, or for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Account Trustee (including any act or provision of any present or future law or of any Governmental Authority, any act of God or war, or the unavailability of any wire or communication facility), provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with wilful misconduct, negligence or reckless disregard of duty by the Account Trustee. The Account Trustee in doing anything or permitting anything to be done in respect of the Trust Property or the carrying out of its duties under this Insurance and Bonding Trust Agreement is, and will be conclusively deemed to be, acting as trustee for the beneficiaries hereunder and not in any other capacity. Except to the extent provided in this Section 8(c), the Account Trustee will not be subject to any liability for debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust Property, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of its duties hereunder and resort will be had solely to the Trust Property for the payment or performance thereof, and no other property or assets of the Account Trustee, whether owned in its personal capacity or otherwise, will be subject to levy, execution or other enforcement procedure with regard to any obligation under this Insurance and Bonding Trust Agreement.
- (d) The Account Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers hereunder, or in acting at the request or direction of Agent on behalf of Lender or of UOHI or of Project Co, unless it shall have received adequate indemnity or security against such risk or liability satisfactory to it.
- (e) Notwithstanding the foregoing, the Account Trustee shall be liable for any action or failure to act arising from or in connection with the dishonesty, fraud, negligence (including, without limitation, negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder by the Account Trustee or any of its directors, officers or employees, or the failure to comply with the standard of care referred to in Section 8(b).

- (f) Except as otherwise provided in Sections 8(c), 8(d) and 8(e):
- (i) the Account Trustee may rely and shall be protected in acting or refraining from acting upon any signature, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document reasonably believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties; and
 - (ii) the Account Trustee may exercise its powers and perform its duties by or through such attorneys, representatives, agents and employees as it shall appoint; and may consult with counsel, accountants and other skilled persons selected and employed or retained by it, and the Account Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the written advice of such counsel, accountants or other skilled persons (provided that such advice pertains to such matters as the Account Trustee may reasonably presume to be within the scope of such person's area of competency) and not contrary to any express provision in this Insurance and Bonding Trust Agreement.
- (g) Project Co hereby agrees to pay, indemnify and hold harmless the Account Trustee from and against any and all loss, liability, cost, claim and expense incurred by the Account Trustee with respect to the performance of this Insurance and Bonding Trust Agreement by the Account Trustee or any of the Account Trustee's directors, officers or employees, unless arising from its or their own dishonesty, fraud, negligence (including negligence in the handling of funds), wilful misconduct, bad faith or reckless disregard of any duty hereunder.
- (h) Subject to the terms and conditions set forth in the Account Trustee fee letter, the Account Trustee shall receive from the Trust Property reasonable compensation for its services hereunder and shall be reimbursed by Project Co for its reasonable fees and expenses (including the disbursements and reasonable fees of counsel).
- (i) The Account Trustee agrees to look solely to Project Co, and not, except as expressly set forth herein, to Agent, Lender or UOHI for any claim for indemnification which may arise under this Insurance and Bonding Trust Agreement.
- (j) The Account Trustee shall be responsible for keeping all appropriate books and records relating to the receipt and disbursement of all money which it receives hereunder.
- (k) If at any time the Account Trustee is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process

which in any way affects the Trust Property held by it hereunder (including orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Trust Property) (each, an “**Order**”), the Account Trustee is authorized to comply therewith in any manner as it or legal counsel of its own choosing deems appropriate. The Account Trustee shall in no way be bound to call for further evidence (whether as to due execution validity or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so. If the Account Trustee complies with any Order, the Account Trustee shall not be liable to any of the parties hereto or to any other person or entity even though such Order may be subsequently modified or vacated or otherwise determined to have been without legal force or effect. If the Account Trustee is served with any Order, it shall forthwith and, in any event, within three (3) Business Days, deliver a copy of such Order to each of Agent, UOHI and Project Co.

- (l) Unless otherwise specifically set forth herein, the Account Trustee shall proceed as soon as practicable to collect any cheques or other collection items at any time deposited hereunder. All such collections shall be subject to the Account Trustee’s usual collection practices or terms regarding items received by the Account Trustee for deposit or collection. Except and to the extent provided herein, the Account Trustee shall not be required, or have any duty, to notify any person of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any cheque, note or security deposited hereunder, or to exercise any right or privilege which may be afforded to the holder of any such security.
- (m) In the event that the Account Trustee determines that any direction, instruction, notice or other communication given under this Insurance and Bonding Trust Agreement by Agent or, where the Account Trustee has received a Change of Authorization Notice, UOHI, is ambiguous or uncertain, the Account Trustee may, in its sole discretion, refrain from taking any action other than retaining possession of the Trust Property, unless the Account Trustee has received written instructions, signed by Agent or, if the Account Trustee has received a Change of Authorization Notice, UOHI, which resolve such ambiguity or uncertainty, provided that the Account Trustee shall, forthwith upon determining that such direction, instruction, notice or other communication is ambiguous or uncertain, seek clarification from Agent, or where the Account Trustee has received a Change of Authorization Notice, UOHI, to resolve such ambiguity or uncertainty.
- (n) Prior to receipt of a Change of Authorization Notice by the Account Trustee, any instruction, notice or other communication delivered to the Account Trustee by Agent shall be paramount to and supersede any direction, instruction, notice or other communication from any other party to this Insurance and Bonding Trust

Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from Agent. After the Account Trustee has received a Change of Authorization Notice, any instruction, notice or other communication delivered to the Account Trustee by UOHI shall be paramount to and supersede any direction, instruction, notice or other communication from any other party to this Insurance and Bonding Trust Agreement, and the Account Trustee shall comply with such direction, instruction, notice or other communication from UOHI.

- (o) Each of Agent and UOHI shall provide to the Account Trustee an incumbency certificate setting out the names and sample signatures of individuals authorized to give instructions to the Account Trustee hereunder. The Account Trustee shall be entitled to rely on each such incumbency certificate until a revised or replacement incumbency certificate is provided to the Account Trustee by Agent or UOHI, as applicable. The Account Trustee shall refuse to act upon any instruction given by Agent or UOHI which is signed by any person other than an individual named in the incumbency certificate provided to the Account Trustee by Agent or UOHI, as applicable, pursuant to this Section 8(o), as any such incumbency certificate may be amended, supplemented or replaced from time to time.
- (p) The Account Trustee shall be entitled to rely, and act upon, on any direction, instruction, notice or other communication provided to it hereunder which is sent to it by facsimile transmission, provided that any such direction, instruction, notice or other communication is signed by an individual named in the incumbency certificate delivered to the Account Trustee by Agent or UOHI, as applicable, pursuant to Section 8(o).
- (q) The Account Trustee shall retain the right not to act and shall not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Account Trustee, in its sole judgment, determines that such act might cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Account Trustee, in its sole judgment, determine at any time that its acting under this Insurance Trust Agreement has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then it shall have the right to resign on 10 days' written notice to Project Co and UOHI, or any shorter period of time as agreed to by Project Co and UOHI, notwithstanding the provisions of Section 8(a) of this Insurance and Bonding Trust Agreement, provided that (i) the Account Trustee's written notice shall describe the circumstances of such non-compliance; and (ii) if such circumstances are rectified to the Account Trustee's satisfaction within such 10 day period, then such resignation shall not be effective.

9. AGENT AND UOHI RIGHTS TO DIRECT

- (a) Until the first to occur of:
- (i) the expiry of the Notice Period under the Lender's Direct Agreement where no Step-In Notice has been delivered thereunder;
 - (ii) the expiry of the Step-In Period under the Lender's Direct Agreement where none of the following has occurred:
 - (A) an assignment to a Replacement Project Co;
 - (B) a Replacement Project Agreement has been entered into; or
 - (C) the Appointed Representative has cured the Project Co Event of Default,

(each, a “**Change of Authorization Event**”), Agent shall, subject to Articles 3 and 4 of this Insurance and Bonding Trust Agreement, have the exclusive right to direct the Account Trustee with respect to the original copy of the Bonds, the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.

- (b) Upon the occurrence of a Change of Authorization Event:
- (i) Agent shall cease to be entitled, and UOHI shall thenceforth be entitled, to direct the Account Trustee with respect to the original copy of the Bonds, the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds; and
 - (ii) Agent and UOHI shall jointly provide notice to the Account Trustee (a “**Change of Authorization Notice**”) that UOHI shall, as of the date of such Change of Authorization Event, have the exclusive right to direct the Account Trustee with respect to the original copy of the Bonds, the Insurance Trust Account, the Insurance Policies and the Insurance Proceeds.

10. TERMINATION

- (a) Subject to the provisions of Section 10(b), this Insurance and Bonding Trust Agreement shall remain in full force and effect and be binding in accordance with and to the extent of its terms until:
- (i) the obligations of Project Co to Agent and Lender under the Lending Agreements have been paid and performed in full and Lender has no

further obligation to make any further advances or other credit accommodations under the Lending Agreements; and

- (ii) the obligations of Project Co to UOHI have been paid and performed in full.
- (b) The Account Trustee may terminate this Insurance and Bonding Trust Agreement at any time upon 60 days prior written notice to the other parties hereto, provided that no termination of this Insurance and Bonding Trust Agreement by the Account Trustee shall be effective until such time as Agent, UOHI, and Project Co have entered into a replacement Insurance and Bonding Trust Agreement on the same terms and conditions as this Insurance and Bonding Trust Agreement with a replacement account trustee satisfactory to Agent, Lender and UOHI.

11. ASSIGNMENT

The Account Trustee shall not assign, transfer or otherwise dispose of any of its rights or obligations under this Insurance and Bonding Trust Agreement without the prior written consent of Agent, UOHI and Project Co.

12. NOTICES

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

If to UOHI: [REDACTED]

Fax No.: [REDACTED]

Attn: [REDACTED]

with a copy to: Ontario Infrastructure and Lands Corporation
777 Bay Street, 6th Floor
Toronto, Ontario M5G 2C8

Fax No.: [REDACTED]

Attn: [REDACTED]

If to Agent: [REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to Project Co: [REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to the Account Trustee: [REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

- (b) Where any notice is provided or submitted to a Party via facsimile, an original of the notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 12(b).
- (c) Any Party to this Insurance and Bonding Trust Agreement may, from time to time, change any of its contact information set forth in Section 12(a) by prior notice to the other Parties, and such change shall be effective on the Business Day that next follows the recipient Party's receipt of such notice unless a later effective date is given in such notice.
- (d) Subject to Sections 12(e), 12(f) and 12(g):
 - (i) a notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (e) If the Party giving the notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Article 12.
- (f) If any notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such notice shall be deemed to have been received by such recipient on the next Business Day.

- (g) A notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such notice was successful.

13. AMENDMENTS

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

14. WAIVER

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

15. RELATIONSHIP BETWEEN THE PARTIES

The Parties are independent contractors. This Insurance and Bonding Trust Agreement is not intended to and does not create or establish between the Parties any relationship as partners, joint venturers, employer and employee, master and servant, or, except as provided in this Insurance and Bonding Trust Agreement, of principal and agent.

16. ENTIRE AGREEMENT

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

17. SEVERABILITY

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

18. ENUREMENT

This Insurance and Bonding Trust Agreement shall enure to the benefit of, and be binding on, each of the Parties and their respective successors and permitted transferees and assigns.

19. GOVERNING LAW AND JURISDICTION

- (a) This Insurance and Bonding Trust Agreement shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties agree that the courts of the Province of Ontario and all courts competent to hear appeals therefrom shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Insurance and Bonding Trust Agreement and hereby irrevocably attorn to the exclusive jurisdiction of such courts.

20. FURTHER ASSURANCE

Each Party shall do all things, from time to time, and execute all reasonable further documents necessary to give full effect to this Insurance and Bonding Trust Agreement.

21. LANGUAGE OF AGREEMENT

Each Party acknowledges having requested and being satisfied that this Insurance and Bonding Trust Agreement and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.

22. COUNTERPARTS

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

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the Parties have executed this Insurance and Bonding Trust Agreement as of the date first above written.

**UNIVERSITY OF OTTAWA HEART
INSTITUTE**

Per: _____

Name: [REDACTED]

Title: [REDACTED]

Per: _____

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation

THE TORONTO-DOMINION BANK

Per: _____

Name:

Title:

PCL OTTAWA HEART INSTITUTE 2014 LTD.

Per: _____

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation

BNY TRUST COMPANY OF CANADA

By: _____

Name:

Title:

I have authority to bind the corporation

SCHEDULE 18

PAYMENTS AND HOLDBACKS

1. APPLICATIONS FOR PAYMENT

- 1.1 The provisions of Sections 1 and 2 apply to progress payments on account of Additional UOHI Payments and to progress payments to be made by UOHI in respect of the period following the Substantial Completion Date, including the Certified Cost to Complete.
- 1.2 Applications for payment on account may be made monthly as the Work progress.
- 1.3 Application for payment by Project Co shall be dated the last day of the agreed monthly payment period and the amount claimed shall be:
1. with respect to the Certified Cost to Complete, based on the value, proportionate to the Cost of the Work, of the Work performed, including Products delivered to the Site at that date, and
 2. with respect to Change Orders or Change Directives, the payment of which UOHI is responsible for and which are included within Additional UOHI Payments, the value of such additional Work performed, including Products delivered to the Site at that date.
- 1.4 Claims for Products delivered to the Site but not yet incorporated into the Work shall be supported by such evidence as the Consultant may reasonably require to establish the value and delivery of the Products.
- 1.5 Project Co shall submit to UOHI and the Consultant a Workplace Safety & Insurance Board Certificate of Clearance, an updated Construction Schedule in accordance with Section 12.1 of the Project Agreement and an updated cash flow with each application for payment.

2. PROGRESS PAYMENTS

- 2.1 The Consultant will issue to UOHI, no later than 10 Business Days after the receipt of an application for payment from Project Co submitted in accordance with Section 1 of this Schedule 18, a certificate addressed to UOHI of the progress of the Work. The Consultant will issue a certificate for payment to UOHI of Additional UOHI Payments payable by UOHI with respect to the application for payment from Project Co in the amount applied for or in such other amount as the Consultant determines to be properly due. If the Consultant requires amendments to the application, the Consultant will promptly notify Project Co in writing giving reasons for the amendment.

- 2.2** Payment to Project Co on account of a monthly progress payment in respect of Additional UOHI Payments, or progress payments for the period following the Substantial Completion Date in respect of the Certified Cost to Complete, shall be made no later than 10 Business Days after the date of a certificate for payment issued by the Consultant.
- 2.3** As long as any UOHI Holdback is retained by UOHI or any other amount has been held back by UOHI in respect of Work completed prior to the Substantial Completion Date and remains unpaid or is deducted from the Substantial Completion Payment, applications for progress payments pursuant to this Schedule 18 will be provided to Lender's Consultant.
- 2.4** Notwithstanding the time periods provided regarding the approval and certification of payment by the Consultant in Section 2.1 of this Schedule 18, and for payment in Section 2.2 of this Schedule 18, respectively, the total period of time between receipt of the application for payment by Project Co and payment by UOHI shall be no more than 25 Business Days, except with respect to any amount held back from such payment by UOHI in accordance with the Project Agreement.

3. CONSTRUCTION LIENS

- 3.1** Notwithstanding anything to the contrary in this Schedule 18 – Payments and Holdbacks, in the event that: (a) a claim for a construction lien arising in relation to the performance of the Work is registered against the Site, the Facility or the Existing Facility, and unless Project Co makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to UOHI, acting reasonably, or (b) UOHI receives any written notice of lien arising in relation to the performance of the Work, UOHI shall be entitled to withhold such portion of any payment otherwise due to Project Co in an amount UOHI reasonably determines would be required to satisfy the applicable lien claimant and any costs and expenses incurred by UOHI in connection therewith, including such amount on account of costs of the lien claimant such that UOHI may, upon payment of the amount of the lien claim together with such costs into court, obtain an order vacating such lien pursuant to the *Construction Lien Act* (Ontario), until such time as such claim has been dealt with as provided below.
- 3.2** In the event that a written notice of a construction lien arising in relation to the performance of the Work is received by UOHI, and unless Project Co makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to UOHI, acting reasonably, Project Co shall, within 10 Business Days, at its sole expense, arrange for the withdrawal or other disposal of the written notice of a lien pursuant to the *Construction Lien Act* (Ontario).
- 3.3** If a construction lien arising in relation to the performance of the Work is registered against the Site, the Facility or the Existing Facility, and unless Project Co makes

alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to UOHI, acting reasonably, Project Co shall, within 10 Business Days, at its sole expense, vacate or discharge the lien from title to the Site, the Facility and the Existing Facility. If the lien is merely vacated, Project Co shall, if requested, undertake UOHI's defence of any action commenced in respect of the lien at Project Co's expense and (i) if an action against UOHI has been commenced in respect of the lien, Project Co shall, at its sole cost and expense, promptly use best efforts to obtain a discontinuance of such action as it relates to UOHI, or (ii) if no action has been commenced in respect of the lien, Project Co shall, at its sole cost and expense, promptly use best efforts to obtain a release from the lien claimant releasing UOHI from all claims of such claimant that arise from the subject matter of the lien.

- 3.4** If Project Co fails or refuses to (i) vacate or discharge a construction lien or obtain the withdrawal or other disposal of a written notice of lien arising in relation to the performance of the Works within the time prescribed above, or (ii) promptly obtain the discontinuance of action or release described in Section 3.3 above, if applicable, and (iii) unless Project Co makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to UOHI, acting reasonably, then UOHI shall, at its option, be entitled to take all steps necessary to vacate and/or discharge the lien, and all costs incurred by UOHI in doing so (including legal fees on a full indemnity basis and any payment which may ultimately be made out of or pursuant to security posted to vacate the lien) shall be for the account of Project Co, and UOHI may deduct such amounts from the amounts otherwise due or owing to Project Co.
- 3.5** Without limiting any of the provisions of this Section 3, Project Co shall satisfy all judgments and pay all costs resulting from any construction liens arising in relation to the performance of the Work, or any actions brought in connection with any such liens, or in connection with any other claim or lawsuit brought against UOHI by any person that provided services or materials to the Site, the Facility or the Existing Facility in relation to the Work.
- 3.6** The provisions of Sections 3.1 and 3.5 (inclusive) do not apply to construction liens (i) filed by Project Co which are claimed as a result of any default of UOHI to make payments to Project Co in accordance with the terms of the Project Agreement or (ii) filed by any UOHI Party, including for greater certainty UOHI's own forces or UOHI's other contractors, which are claimed as a result of work in relation to the Project.
- 3.7** With each application for payment, Project Co shall submit a Statutory Declaration on CCDC Form 9A.

4. PAYMENT OF LEGISLATIVE HOLDBACK

4.1 After the issuance by the Consultant of the certificate of substantial performance of the Work under Section 16.2(c) of the Project Agreement and the certificate of Substantial Completion under Section 16.2(e) of the Project Agreement, Project Co shall:

1. submit an application for payment of the Legislative Holdback amount;
2. submit a written request for release of Legislative Holdback including a declaration that no written notices of lien arising from the performance of the Work have been received by it;
3. submit a Statutory Declaration CCDC 9A; and
4. submit an original Workplace Safety & Insurance Board Certificate of Clearance.

4.2 After the later of (i) the receipt of the documents set out in Section 4.1 of this Schedule 18, and (ii) the expiration of a period of 45 days from the date of publication of the certificate of substantial performance pursuant to the *Construction Lien Act* (Ontario), the Consultant shall issue a certificate for payment of the Legislative Holdback amount.

4.3 Prior to the date of the release of the Legislative Holdback, Project Co shall have removed from the Site all supplies, waste materials, rubbish and temporary facilities and all personnel except as required to achieve Final Completion or to correct any remaining Minor Deficiencies.

4.4 Subject to the provisions of Section 3 of this Schedule 18 and the removal of claims for lien preserved or perfected pursuant to the *Construction Lien Act* (Ontario) arising from the performance of the Work, the Legislative Holdback amount authorized by the certificate for payment of the Legislative Holdback amount is due and payable on the second Business Day following the receipt of the certificate for payment of the Legislative Holdback amount pursuant to Section 4.2 of this Schedule 18.

5. COMPLETION

5.1 Project Co shall provide As-Built Drawings, specifications, Record Documents, spare parts and Shop Drawings as soon as possible and in any event no later than 30 days after the Substantial Completion Date.

5.2 Save and except with UOHI's prior written approval, Project Co shall complete all deficient Interim Work and assign and provide all of the Interim Deliverables that remain outstanding no later than 120 days from the date when Interim Completion is certified and shall complete all Minor Deficiencies and assign and provide all of the Project Deliverables that remain outstanding no later than 120 days from the date when

Substantial Completion is certified, unless the reasons for any delay are acceptable to UOHI or delay is caused by UOHI or an UOHI Party.

6. FINAL PAYMENT

6.1 When Project Co considers that the Work is completed, Project Co shall submit an application for final payment. Project Co's application for final payment and release of finishing construction lien Legislative Holdback, shall include the following documentation:

1. Project Co's written request for release of Legislative Holdback, including a declaration that no written notices of lien arising from the performance of the Work have been received by it;
2. Project Co's Statutory Declaration CCDC 9A;
3. Project Co's Workplace Safety and Insurance Board Certificate of Clearance; and
4. 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.

6.2 The Consultant will, no later than 10 days after the receipt of an application from Project Co for final payment, complete its review of the Work to verify the validity of the application, and no later than the 3rd Business Day after completing the review, will notify Project Co whether the application is valid or give reasons why it is not valid.

6.3 When the Consultant finds Project Co's application for final payment valid, the Consultant will issue a final certificate for payment.

6.4 Subject to the other requirements of this Project Agreement, the unpaid balance of the Guaranteed Price shall become payable to Project Co on the later of:

1. the 2nd Business Day following the expiration of all liens pursuant to the *Construction Lien Act* (Ontario); and
2. the 2nd Business Day following the issuance of the Consultant's final certificate for payment,

subject to UOHI's right under the Project Agreement to withhold payment from the unpaid balance of the Guaranteed Price, including for any amounts required pursuant to this Article 6 of Schedule 18, and any sums required to satisfy any lien or trust claims arising from the Work.

7. WITHHOLDING OF PAYMENT

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

8. NON-CONFORMING WORKS

8.1 No payment by UOHI under the Project Agreement nor partial or entire use or occupancy of the Work by UOHI shall constitute an acceptance of any portion of the Work or Products which are not in accordance with the requirements of the Contract Documents.

SCHEDULE 19

PART 1: LIST OF PROJECT CO PARTIES

Type of Trade	Name of Project Co Party
[REDACTED]	[REDACTED]

PART 2: PROJECT AGREEMENT SECTION 11.8(F) – ASSIGNABLE SUBCONTRACT AGREEMENTS

Type of Subcontract	Name of Project Co Party	Due Date for Delivery of Executed Assignable Subcontract Agreement to UOHI
[REDACTED]	[REDACTED]	[REDACTED]

SCHEDULE 20

FORM OF ASSIGNABLE SUBCONTRACT AGREEMENT

The following is the form of the Assignable Subcontract Agreement referred to in Section 11.8(d) of the Project Agreement:

THIS AGREEMENT made as of the [•] day of [•], 20[•]

BETWEEN:

PCL OTTAWA HEART INSTITUTE 2014 LTD.

(hereinafter called “**Project Co**”)

OF THE FIRST PART,

- AND -

PCL CONSTRUCTORS CANADA INC.

(hereinafter called “**Contractor**”)

OF THE SECOND PART,

- AND -

[•]

(hereinafter called “**Subcontractor**”)

OF THE THIRD PART,

- AND -

UNIVERSITY OF OTTAWA HEART INSTITUTE, a non-share capital corporation
incorporated under the laws of Ontario

(hereinafter called “**UOHI**”)

OF THE FOURTH PART.

WHEREAS pursuant to a project agreement dated as of the [•] day of [•],[•] between Project Co and UOHI (such agreement, together with all amendments thereto which may hereafter be made in accordance with the terms thereof, being hereinafter called the “**Project Agreement**”), Project

Co has agreed to construct or cause to be constructed the Projects as defined in the Project Agreement;

AND WHEREAS Project Co and Contractor entered into a construction contract dated the [•] day of [•],[•] (such construction contract, together with all amendments thereto which may hereafter be made in accordance with the terms thereof, being hereinafter called the “**Construction Contract**”);

AND WHEREAS with respect to a portion of the Construction Work under the Construction Contract, Contractor and Subcontractor entered into a subcontract dated the ____ day of _____ (such subcontract together with all amendments thereto which hereafter may be made in accordance with the terms hereof, being hereinafter called the “**Subcontract**”);

AND WHEREAS Contractor has agreed to assign to UOHI all of its right, title and interest in and to the Subcontract as collateral security for the guarantee dated _____ given by Contractor in favour of UOHI (the “**Guarantee**”);

AND WHEREAS under the Project Agreement, Project Co has agreed to cause Contractor to cause the Subcontractor to enter into this Agreement;

NOW THEREFORE, in consideration of the premises and the covenants herein contained, and the sum of \$[REDACTED], the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties agree as follows:

1. As additional security for the observance and performance of the obligations of Contractor under the Guarantee (the “**Obligations**”), Contractor hereby irrevocably assigns, transfers and sets over (the “**Assignment**”) to and in favour of UOHI as and by way of a specific assignment and transfer all of the right, title and interest of Contractor in, and with respect to, the Subcontract and all benefit, power and advantage to be derived therefrom and otherwise to enforce the rights of Contractor thereunder (collectively, the “**Assigned Rights**”), provided that the Assignment of the Assigned Rights provided for in this Agreement shall only be effective (i) upon the termination of the Project Agreement as a result of a default or event of default by Project Co thereunder, or (ii) assignment of the Project Agreement to a Replacement Project Co (as defined in the Lender’s Direct Agreement dated the [•] day of [•],[•] between UOHI, The Toronto-Dominion Bank in its capacity as administrative agent, for and on behalf of the lenders to Project Co (the “**Agent**”) and Project Co), and in either case such Assignment of the Assigned Rights may be exercised by UOHI at its option and in its sole and unfettered discretion at any time or times thereafter, subject to and in accordance with the provisions of this Agreement.
2. Unless and until notification is given to the Subcontractor in accordance with any of the notices referred to in subsections 3(c), 3(d) or 3(e) below, Contractor shall be entitled to enforce all of the benefits and powers under the Subcontract and to deal with, and be obligated to, the Subcontractor in respect of the Subcontract and matters arising

therefrom in the same manner and to the same extent as if Contractor had not made the Assignment in Section 1 hereof.

3. Subcontractor hereby:
- (a) acknowledges and consents to any Assignment that may occur pursuant to this Agreement and confirms that any such Assignment that may occur pursuant to this Agreement is permitted pursuant to the provisions of the Subcontract;
 - (b) agrees to give UOHI and Agent prompt written notice of any default by the Contractor under the Subcontract (“**Notice of Default**”), which Notice of Default shall attach an executed copy of the Subcontract as well as a copy of the default notice issued by the Subcontractor to Contractor. Subcontractor agrees that, upon issuance of a Notice of Default, it shall not be entitled to exercise any right it has to terminate the Subcontract for a period of 5 Business Days from the later of (i) the receipt of the Notice of Default by UOHI and Agent, and (ii) the date that the Contractor has failed to comply with any applicable cure period in the Subcontract, or, absent a cure period, the expiry of a reasonable period of time to cure such default. If either UOHI or Agent (without any obligation to do so) notify the Subcontractor within such 5 Business Day time period that it requires more time to determine whether it can remedy such default by the Contractor, or, in the case of UOHI, exercise the Assignment, Subcontractor shall not be entitled to exercise any right to terminate the Subcontract for a further period of 25 days from the date of receipt of such notice or such longer period as may be reasonably necessary to cure the default, provided that UOHI or Agent (as the case may be) are proceeding diligently to cure such default; however, if UOHI exercises the Assignment within such further 25 day period, the Subcontractor shall not be entitled to exercise any right to terminate the Subcontract provided that the Assignee (and if applicable, the GC Assignee) agrees to assume the obligations of the Contractor under the Subcontract and, in that regard, executes and delivers the form of assumption notice attached hereto as Appendix A (the “**Assumption Agreement**”). In the event that UOHI or Agent initiates the further 25 day period, referred to above, the Assignee (and if applicable, the GC Assignee) shall compensate the Subcontractor for costs and expenses reasonably incurred for Work performed by the Subcontractor during such further 25 day period including, but not limited to, mobilization and demobilization costs, provided mobilization and demobilization costs are warranted in the context;
 - (c) agrees that, immediately upon receipt by Subcontractor of written notice (the “**Assignment Notice**”) from UOHI that the Subcontract is being assigned to UOHI, Agent or Agent’s or UOHI’s nominee (in any event, such party identified in such written notice being the “**Assignee**”), and that the Assignment is pursuant to Section 1, and provided that the Assignee, except as limited herein, agrees to perform its obligations under this Agreement and agrees to assume all of the

obligations of the Contractor under the Subcontract and, in that regard, executes and delivers an Assumption Agreement, the Assignee shall have all of the right, title, benefit and interest of Contractor pursuant to the Subcontract, without Subcontractor's consent and, subject to Section 4(b), without the payment of any penalty, and the Subcontractor shall deal with the Assignee as if it had been originally named in place of Contractor in the Subcontract;

- (d) agrees that the Assignee may, at any time after the giving of the Assignment Notice in subsection 3(c) above, give written notice (the “**Successive Assignment Notice**”) to Subcontractor of a further assignment of the Subcontract to a new general contractor of the Project (the “**GC Assignee**”), and that immediately upon receipt of the Successive Assignment Notice, and provided that the GC Assignee, except as limited herein, agrees to assume all of the obligations of the Contractor under the Subcontract and, in that regard, executes and delivers an Assumption Agreement, the GC Assignee shall have all of the right, title, benefit and interest of Contractor pursuant to the Subcontract without Subcontractor's consent and, subject to Section 4(b), without the payment of any penalty and Subcontractor shall deal with the GC Assignee as if it had been originally named in place of Contractor in the Subcontract;
- (e) agrees that, notwithstanding subsections 3(c) and 3(d) herein contained, UOHI may give written notice (the “**Direct Assignment Notice**”) to Subcontractor of the assignment of the Subcontract directly to the GC Assignee, and that immediately upon receipt of the Direct Assignment Notice, and provided that the GC Assignee, except as limited herein, agrees to assume all of the obligations of the Contractor under the Subcontract and, in that regard, executes and delivers an Assumption Agreement, the GC Assignee shall have all of the right, title, benefit and interest of Contractor pursuant to the Subcontract without Subcontractor's consent and, subject to Section 4(b), without the payment of any penalty and Subcontractor shall deal with the GC Assignee as if it had been originally named in place of Contractor in the Subcontract; and
- (f) agrees, upon the reasonable request of UOHI from time to time, to provide a certificate to UOHI as to the status of the Subcontract, including a description of any events which, with the passage of time or the giving of notice or both, would constitute a default thereunder.
4. (a) Nothing herein contained shall render UOHI or Agent liable to any person for the fulfilment or non-fulfilment of the obligations, covenants and agreements, including, but not limited to the payment of any money thereunder or in respect thereto, of Contractor under the Subcontract, unless and until UOHI has given the Assignment Notice to Subcontractor, the giving of which Assignment Notice Subcontractor acknowledges is in the sole and unfettered discretion of UOHI, in which event, the Assignee (and if applicable, any GC Assignee) shall, subject to

the provisions of subsections 4(b), (c), (d), (e) and (f) hereof, then become liable for all the obligations, covenants and agreements of Contractor under the Subcontract, provided that from and after the date of the Successive Assignment Notice to Subcontractor, the Assignee shall have no liability whatsoever to Subcontractor for any default or for any damages arising in respect of a matter or matters occurring under such Subcontract from and after the date of the Successive Assignment Notice, and provided further, that if UOHI gives the Direct Assignment Notice, UOHI or Agent shall have no liability whatsoever to Subcontractor for any default or for any damages arising in respect of a matter or matters occurring under the Subcontract at any time, provided in the event of a Successive Assignment Notice or Direct Assignment Notice, the Assignee thereunder shall, except as limited herein, become liable for all of the obligations, covenants, and agreements of the Contractor under the Subcontract;

- (b) Notwithstanding the provisions of Section 4(a), with respect to the period preceding the effective date of the Assignment (the “**Pre-Assignment Period**”), the only obligations, covenants and agreements of Contractor that Assignee (and if applicable, the GC Assignee) shall be liable for are those payment obligations of Contractor under the Subcontract relating to progress payments outstanding as of the date of the Assignment, claims for payment for change orders, and any other payment obligations relating to claims for delay and acceleration in respect of the performance of the Subcontract and any alleged changes to the schedule which may remain unpaid or outstanding on the date of the Assignment;
- (c) Notwithstanding Section 4(b), the Subcontractor acknowledges and agrees that if during the Pre-Assignment Period, UOHI or Agent has made a proper payment to Project Co or the Contractor on account of Construction Work performed by the Subcontractor and the Contractor has failed to make payment to the Subcontractor, the Assignee (and if applicable, the GC Assignee) shall not be responsible for payment of such amount to the Subcontractor;
- (d) Subject to Section 4(c), if, at the date of the Assignment, there are amounts in dispute between the Contractor and Subcontractor relating to the Subcontract as provided for in Section 4(b) hereof, the Assignee shall only be liable for such amounts once the Subcontractor has established entitlement to the amounts claimed under the Subcontract. The Subcontractor acknowledges and agrees that in its assessment of the outstanding claims relating to the Pre-Assignment Period, Assignee (and if applicable, the GC Assignee) shall require a reasonable period of time to review and assess the validity and reasonableness of the claims. Subcontractor shall provide such further information as is reasonably necessary to allow Assignee (and if applicable, the GC Assignee) to make its determination. If the parties cannot agree on the reasonableness of the amounts claimed, then the parties shall seek to establish a mutually agreed dispute resolution process. If such dispute resolution process is not agreed to within 15 days of notice from the

Assignee (and if applicable, the GC Assignee), then either party may resort to litigation to resolve the dispute;

- (e) Except for liability in respect of claims set out in Section 4(b) hereof, neither the Agent nor UOHI shall be liable for any other claim for injuries, losses, damages, interest, costs, indemnity, fines, penalties, legal and professional fees and assessments or amounts of any kind whatsoever (including any loss or damage not yet ascertained as at the date of the Assignment) that Subcontractor has as of the date of the Assignment or otherwise shall or hereafter may have for or by reason of or in any way arising out of any cause, matter or thing whatsoever, existing to the effective date of the Assignment; and
 - (f) Subcontractor shall reimburse the Assignee (and if applicable any GC Assignee) for any amounts paid or pre-paid to the Subcontractor by the Assignee (and if applicable any GC Assignee) under Section 4(c) in respect of which the Subcontractor at any time during or after the Pre-Assignment Period has been paid, pre-paid, reimbursed or refunded, directly or through set-off, by UOHI, Project Co, any Project Co Party or any other person on account of work performed or services rendered by Subcontractor during the Pre-Assignment Period.
5. Subcontractor acknowledges and agrees that all of the right, title and interest of Contractor in the Subcontract have been, or may be, without the consent of the Subcontractor or the payment of any penalty or, subject to Section 4(b), other amount, assigned to Agent as security for the obligations of Project Co and/or Contractor to Agent and that Agent may, upon written notification being given to the Subcontractor by Agent, that Agent is entitled to do so, exercise all of the rights of Contractor under the Subcontract to the same extent as if Agent had been originally named in the place of Contractor in the Subcontract, provided the Agent, except as limited herein, agrees to assume all of the obligations of the Contractor under the Subcontract and, in that regard, executes and delivers an Assumption Agreement.
6. Project Co agrees that all costs and expenses incurred by UOHI or Agent in curing or attempting to cure any default by Contractor under the Subcontract, together with interest thereon at the rate described in the definition of Payment Compensation Amount in Schedule 1 – Definitions and Interpretation to the Project Agreement shall be payable by Project Co to UOHI or Agent, as the case may be, on demand. Without limiting the foregoing, if Project Co fails to make any such payment to UOHI as required hereunder, the amount of such payment shall be deemed to be an amount which is due to UOHI by Project Co pursuant to the terms of the Project Agreement.
7. Any notice, request or demand required or permitted to be given hereunder shall be in writing and shall be served personally, sent by prepaid registered mail or by confirmed facsimile transmission addressed as follows:

in the case of Project Co and Contractor:

Project Co: [REDACTED]

Attn.: [REDACTED]
Fax No.: [REDACTED]

Contractor: [REDACTED]

Attn.: [REDACTED]
Fax No.: [REDACTED]
E-mail: [REDACTED]

with a copy to:

Attn.: [•]
Fax No.: [•]

in the case of the Subcontractor:

[•]

Attn.: [•]
Fax No.: [•]

If to UOHI: [REDACTED]

Attn.: [REDACTED]
Fax No.: [REDACTED]

with a copy to:

Ontario Infrastructure and Lands Corporation
777 Bay Street, 6th Floor
Toronto, Ontario M5G 2C8

Attn.: [REDACTED]
Fax No.: [REDACTED]

with a copy to Agent:

[REDACTED]

Attn.: [REDACTED]
Fax No.: [REDACTED]

Any party may from time to time change its address and recipient for service by notice to the other party or parties given in the manner aforesaid.

Notices which are served in the manner aforesaid shall be deemed sufficiently served for all purposes of this Agreement, in the case of those personally served or transmitted by facsimile transmission, on the date of such service or transmission, provided same is a Business Day, and if not on the next following Business Day, and in the case of those given by registered mail, on 5 Business Days following the mailing thereof. Provided that in the event normal mail service is interrupted by strikes, slow-down or other cause, then the party sending the notice shall utilise any similar service which has not been so interrupted in order to ensure the prompt receipt of the notice, request or demand by the other party or parties, and for the purpose of this Section such service shall be deemed to be personal service or facsimile transmission. Business Day shall mean a day which is not: (i) a Saturday or Sunday; or (ii) a day observed as a holiday under the laws of the Province of Ontario or the federal laws of Canada applicable in the Province of Ontario.

8. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
9. This Agreement shall be conclusively deemed to be a contract made under and shall for all purposes be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
10. Subcontractor shall from time to time and at all times hereafter, upon the reasonable written request of UOHI so to do, make, do, execute and deliver or cause to be made, done, executed and delivered all such further acts, deeds, assurances and things as may be desirable in the opinion of UOHI, acting reasonably, for more effectually implementing and carrying out the true intent and meaning of this Agreement.
11. In this Agreement, all capitalized terms not otherwise defined in this Agreement shall have the meaning ascribed to them in the Project Agreement and unless the context requires otherwise.
12. This Agreement may be executed by the parties in counterparts and may be executed and delivered by facsimile and all such counterparts and facsimiles shall together constitute one and the same agreement.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the parties have executed this Assignable Subcontract Agreement by affixing their corporate seals under the hands of their proper signing officers duly authorized in that behalf.

**PCL OTTAWA HEART INSTITUTE 2014
LTD.**

Per: _____

Name: **[REDACTED]**

Title: **[REDACTED]**

I have authority to bind the corporation

PCL CONSTRUCTORS CANADA INC.

Per: _____

Name: [REDACTED]

Title: [REDACTED]

Per: _____

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation

[SUBCONTRACTOR]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation

**UNIVERSITY OF OTTAWA HEART
INSTITUTE**

Per: _____

Name: [REDACTED]

Title: [REDACTED]

Per: _____

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation

APPENDIX A

FORM OF ASSUMPTION AGREEMENT

_____, 20__

[Subcontractor]

Re. Assignable Subcontract Agreement dated _____, 20__ between PCL Ottawa Heart Institute 2014 Ltd., [Name of Subcontractor] and University of Ottawa Heart Institute (the “ASA”).

With reference to the [Assignment Notice / Successive Assignment Notice/Direct Assignment Notice] dated _____, 20__, [Name of Assignee or GC Assignee] hereby agrees to assume all of the obligations of the Contractor to the Subcontractor under the Subcontract dated _____, 20__, and perform the obligations under the ASA, all in accordance with the provisions of the ASA.

Capitalized terms that are not otherwise defined in this notice shall have those meanings set out in the ASA.

Yours truly,

[Name of Assignee or GC Assignee]

SCHEDULE 21

COMMUNICATIONS PROTOCOL

1. GENERAL

1.1 Communications Principles

The Project represents an important infrastructure commitment by the Province. Accordingly, a comprehensive communications and stakeholder relations plan is required to ensure the public is informed and engaged where necessary. This plan will support effective communications between Project Co and UOHI, and with UOHI stakeholders and the Ottawa community.

2. UOHI RESPONSIBILITIES

2.1 Lead Communications Role

UOHI will assume the lead communications role. UOHI will take primary responsibility for all communications matters and will be responsible for:

- (a) providing identified, dedicated lead communications contacts with applicable skills and experience with 24/7 availability on applicable aspects of communications and issues management;
- (b) providing an identified, dedicated media-trained lead media spokesperson, with back-up media-trained personnel, as required with 24/7 availability on applicable aspects of communications;
- (c) acting as primary media contact for the Project;
- (d) providing final review and approval of all public communications materials;
- (e) communicating promptly with all relevant parties on crisis issues and communicating within 24 hours on general issues;
- (f) maintaining and updating the Project website, as required; and
- (g) providing coordinated updates to internal/ external stakeholders, as required.

2.2 UOHI Communications Responsibilities

In the period up to the Substantial Completion Date, UOHI will be responsible for the following matters:

- (a) Communications: To develop a comprehensive communications strategy and program that includes community relations, media relations, marketing, special events, employee communications and government relations regarding issues related to the Project.
- (b) Crisis Communications: To undertake, in cooperation with Project Co, required planning for potential crisis issues related to the Project. A plan will be developed within 30 days of the date of this Project Agreement outlining the roles and responsibilities of both UOHI and Project Co during a crisis situation.
- (c) Patient-Related Communication: To provide all patient-related communications.
- (d) Performance Review: To review, on a periodic basis, Project Co's performance in providing communications support as outlined in Section 3.1 of this Schedule 21.

3. PROJECT CO RESPONSIBILITIES

3.1 Support Communications Role

Project Co will assume a supporting role with respect to communications related to the Project. Project Co will be responsible for:

- (a) providing identified, dedicated media-trained lead media spokesperson (with back-up media-trained personnel, as required) with 24/7 availability on applicable aspects of communications;
- (b) responding to communications issues in accordance with agreed timeframes;
- (c) reviewing and/ or providing communications and/ or technical materials reasonably requested by UOHI for website content;
- (d) updating, in collaboration with UOHI, internal/ external stakeholders, as required, including involvement and participation in community events;
- (e) providing the public/ media reasonable access to the Site for milestone events;
- (f) directing all media enquiries and interview requests to UOHI's lead communications contact;
- (g) maintaining a written record of all material public enquiries, complaints and communications and providing copies to UOHI's lead communications contact on a weekly basis (or immediately if urgent);
- (h) reporting to UOHI on communications matters on an agreed upon basis;

- (i) participating in UOHI communications meetings, as required; and
- (j) during a crisis situation, ensuring and making available sufficient resources to work effectively with UOHI and proactively manage and perform its communications responsibilities.

3.2 Project Co Communications Responsibilities

In the period up to the Substantial Completion Date, Project Co will:

- (a) within 30 days of the date of this Project Agreement and in collaboration with UOHI, develop, maintain and implement a construction liaison and communications plan that includes:
 - (i) a description of Project Co's approach to all communications aspects of the Project;
 - (ii) a description of Project Co's communications team, including the roles and responsibilities for each team member and any Subcontractors who will provide any aspect of the communications program; and
 - (iii) the identification of proposed communication tools to be used to keep the community and other stakeholders informed with respect to the progress of the Project;
- (b) update the construction liaison and communications plan on an annual basis or as reasonably requested by UOHI;
- (c) coordinate with UOHI in the implementation of the construction liaison and communications plan;
- (d) attend regular meetings with UOHI to discuss communication issues and developments;
- (e) produce monthly progress reports, which will include information on activities, public and media enquiries, any emerging issues, and actions taken in response to issues;
- (f) through UOHI, provide regular updates to the immediately affected property owners and neighbourhoods on Works related issues with particular attention to communicating the scope, schedule and status of the Works. This will include processes to proactively address any Works related enquiries and issues (e.g., public enquiries and complaints re noise, hours of work, dust, etc.);

- (g) provide regular updates to UOHI related to the management of local traffic during the Work;
- (h) develop, in collaboration with UOHI, a crisis communication plan outlining roles and responsibilities for a list of potential crisis issues that could develop during the Work; and
- (i) follow any guidelines provided by UOHI related to signage or advertising at the Site.

4. MEDIA RELEASES

4.1 Media Releases/Publicity

- (a) Subject to Section 38.1(a) of this Project Agreement, Project Co shall not, and shall ensure that no Project Co Party shall, issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, this Project Agreement or any matters related thereto, without the prior written consent of UOHI, in its sole discretion.
- (b) Unless otherwise required by Applicable Law (but only to that extent), neither Party shall use the other Party's name or refer to the other Party, directly or indirectly, in any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, this Project Agreement or any matter related thereto, without the prior written consent of the other Party.
- (c) Project Co shall, and shall ensure that all Project Co Parties and its and their subcontractors, agents, employees, officers and directors, in each case, comply, at all times, with UOHI's media release and publicity protocols or guidelines, as such protocols and/or guidelines are updated by UOHI from time to time.

5. CONSTRUCTION SIGNAGE

5.1 Construction Signage Guidelines

With respect to any signage that may be erected and maintained at or on the Site or Project, Project Co, Project Co Parties and/or the Lender, as applicable, shall:

- (a) include UOHI's logo and the IO logo on the sign:
- (b) ensure that the signage is no larger than the larger of: (i) an existing government project sign on the Site, or (ii) 16 feet by 8 feet;

- (c) notwithstanding Section 5.1(b) of Schedule 21, adhere to local by-laws including by-laws regarding placement and size;
- (d) consider signage material suitable for long-term outdoor exposure;
- (e) provide a mock-up of the signage to UOHI with a copy to IO for approval prior to printing; and
- (f) be responsible for installation, maintenance and removal of the signage.

SCHEDULE 22

FORM OF PERFORMANCE GUARANTEE OF CONSTRUCTION GUARANTOR

THIS GUARANTEE is made as of the [●] day of [●], 2014.

BETWEEN:

UNIVERSITY OF OTTAWA HEART INSTITUTE., a non-share capital corporation incorporated under the laws of Ontario

(“**UOHI**”)

and

PCL CONSTRUCTORS CANADA INC.

(“**Construction Guarantor**”)

WHEREAS:

- A. UOHI and PCL Ottawa Heart Institute 2014 Ltd. (“**Project Co**”) have entered into a project agreement dated as of the [●] day of [●], 2014 (which agreement, including the schedules thereto, as the same may be amended, modified, restated, supplemented or replaced, from time to time, is hereinafter called the “**Project Agreement**”).
- B. As an inducement to UOHI to enter the Project Agreement with Project Co, Construction Guarantor has agreed to absolutely, unconditionally and irrevocably guarantee to UOHI, as a direct obligation, the full and prompt performance and observance by Project Co of each and every covenant, agreement, undertaking and obligation of Project Co contained in the Project Agreement with respect to the Construction Work, and in furtherance thereof has agreed to enter into this Guarantee.

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

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions from Project Agreement

- (a) Unless otherwise defined herein, all capitalized terms will have the meanings ascribed to them in the Project Agreement.

- (b) Unless otherwise expressly provided herein, this Guarantee shall be interpreted in accordance with Schedule 1 – Definitions and Interpretation of the Project Agreement.
- (c) For the purpose of this Performance Guarantee of Construction Guarantor only, the term “**Construction Work**” shall include the Project Co Representations and Warranties set out in Section 7.1(a) of the Project Agreement, except sub-section 7.1(a)(xxi) of the Project Agreement, which sub-section shall remain excluded from the definition of “Construction Work”, and shall include Section 26.1(a)(iii) of the Project Agreement, and provided that, for the purposes only of this Performance Guarantee of Construction Guarantor:
 - (i) in sub-section 7.1(a)(viii) of the Project Agreement the term “Project Co Event of Default” shall be read as “Project Co Construction Event of Default” as that term is defined in Schedule 1 to the Project Agreement.

1.2 Survival

This Guarantee shall survive the termination or other expiry of the Project Agreement.

2. GUARANTEE

2.1 Guarantee

- (a) Construction Guarantor does hereby absolutely, unconditionally and irrevocably guarantee to UOHI, as a direct obligation, the full and prompt performance and observance by Project Co of each and every covenant, agreement, undertaking and obligation of Project Co contained in the Project Agreement with respect to the Construction Work (the “**Guaranteed Obligations**”), and for greater certainty the Guaranteed Obligations do not include any covenants, agreements, undertakings and obligations of Project Co under the Project Agreement under Section 6.4(a) or with respect to Financing or any provision other than the Construction Work.
- (b) Notwithstanding any other provision of this Guarantee, the Construction Guarantor’s undertakings and obligations are derivative of and not in excess of Project Co’s obligations under the Project Agreement and the Construction Guarantor retains all rights, claims, defences and limitations of liability possessed by Project Co under the terms of the Project Agreement or arising from the parties’ performance or failure to perform thereunder and shall be entitled to assert any contractual defences that would have been available to Project Co, including, for greater certainty, that the alleged non-performance or non observance by Project Co of the Guaranteed Obligations arise out of or are a

result of a UOHI Event of Default as set out in section 27.1(a) of the Project Agreement.

2.2 General Provisions Relating to the Guarantee

- (a) Each and every default in performance or observance of any of the Guaranteed Obligations by Project Co shall give rise to a separate claim and cause of action hereunder, and separate claims or suits may be made and brought, as the case may be, hereunder as each such default occurs.
- (b) The Guarantee herein provided for shall be a continuing, absolute and unconditional guarantee of performance and observance of the Guaranteed Obligations and shall remain in full force and effect until each and all of the Guaranteed Obligations shall have been fully and satisfactorily discharged in accordance with the terms and provisions of the Project Agreement and Construction Guarantor shall have fully and satisfactorily discharged all of its obligations under this Guarantee.
- (c) The liability of Construction Guarantor hereunder shall remain in full force and effect irrespective of and shall in no way be affected or impaired by (and no notice to Construction Guarantor shall be required in respect of):
 - (i) any compromise, waiver, renewal, extension, indulgence, amendment, addition, deletion, change in, modification of, or release of any security (including any other guarantee, letter of credit or bond) for or in respect of any of the Guaranteed Obligations;
 - (ii) any amalgamation, merger or consolidation of Project Co or Construction Guarantor or any sale, lease or transfer of any of the assets of Project Co or Construction Guarantor;
 - (iii) any Change in Ownership of Project Co or Construction Guarantor;
 - (iv) any Delay Event (it being acknowledged, however, that the performance of the Guaranteed Obligations shall be extended accordingly);
 - (v) any change in the financial condition of Project Co or Construction Guarantor;
 - (vi) any Project Co Event of Default described in Section 26.1(a)(i) of the Project Agreement, or any resulting release, stay or discharge of any Guaranteed Obligation;

- (vii) any lack or limitation of power, incapacity or disability on the part of Project Co or any other irregularity, defect or informality on the part of Project Co with respect to the Guaranteed Obligations;
 - (viii) any provision of any laws, statutes, rules or regulations of general application in relation to suretyship or any other circumstance that might constitute, under law generally applicable to suretyship, a defence available to, or a discharge of, Construction Guarantor in respect of the Guaranteed Obligations or this Guarantee;
 - (ix) the exercise of any rights under the Lending Agreements, including the right of Lender to cure any Project Co Event of Default by or on behalf of Project Co hereunder and/or to assume the obligations of Project Co and complete the Work in the manner provided in the Project Agreement;
 - (x) the assignment by UOHI in accordance with the provisions of Section 39.2 of the Project Agreement; or
 - (xi) any other occurrence or circumstance whatsoever, whether similar or dissimilar to the foregoing that, under law generally applicable to suretyship, might otherwise constitute a legal or equitable defence or discharge of the liabilities of a guarantor or surety that might otherwise limit recourse against Construction Guarantor.
- (d) The obligations and liabilities of Construction Guarantor hereunder shall not be impaired, diminished, abated or otherwise affected by the commencement by or against Project Co or Construction Guarantor of any proceedings under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extension or other similar laws.
- (e) UOHI shall not be bound to exhaust its recourse against Project Co or others or any securities (including the Security described in Schedule 13 of the Project Agreement) or other guarantees it may at any time hold before being entitled to performance of the Guaranteed Obligations by the Construction Guarantor and Construction Guarantor renounces all benefits of discussion and division.
- (f) It is the intent and purpose hereof that Construction Guarantor shall not be entitled to and does hereby waive any and all defences which are, under law generally applicable to suretyship, available to a guarantor, sureties and other secondary parties at law or in equity. Without limiting the generality of the foregoing, Construction Guarantor hereby waives notice of acceptance of this Guarantee and of the non-performance by Project Co, diligence, presentment, protest, dishonour, demand for performance from UOHI and notice of non-

performance or failure to perform on the part of Project Co and all other notices whatsoever. The Guarantee hereunder is a guarantee of performance and compliance. In order to hold Construction Guarantor liable hereunder, there shall be no obligation on the part of UOHI at any time to demand or resort for performance to Project Co, its properties or assets or to any security, property or other rights or remedies whatsoever, nor shall there be any requirement that Project Co be joined as a party to any proceeding for the enforcement of any provision of this Guarantee and UOHI shall have the right to enforce the provisions of this Guarantee irrespective of whether or not legal proceedings or other enforcement efforts against Project Co are pending, seeking resort to or realization upon or from any of the foregoing. Without limiting the foregoing, it is understood that repeated and successive demands may be made and recoveries may be had hereunder as and when from time to time, Project Co shall default under or with respect to any of the Guaranteed Obligations, and that, notwithstanding recovery hereunder for or in respect of any such default, the Guarantee herein shall remain in full force and effect unamended and shall apply to each and every subsequent default.

- (g) Without prejudice to and without releasing, discharging, limiting or otherwise affecting in whole or in part the obligations and liabilities of Construction Guarantor under this Guarantee and without in any way requiring the consent of or giving notice to Construction Guarantor, UOHI may grant time, renewals, extensions, indulgences, releases and discharges to and accept compositions from or otherwise deal with Project Co and/or Construction Guarantor or others, including any other guarantor, as UOHI may see fit and UOHI may take, abstain from taking or perfecting, vary, exchange, renew, discharge, give up, realize on or otherwise deal with security and guarantees in such manner as UOHI may see fit.
- (h) Neither an action or proceeding brought under this Guarantee regarding the Guaranteed Obligations nor any judgment or recovery in consequence of that action or proceeding operates as a bar or defence action or defence to any further action that may be brought under this Guarantee. Construction Guarantor acknowledges that, if judgment is granted on an action or proceeding commenced under this Guarantee, the obligations of Construction Guarantor to UOHI do not merge with or end Construction Guarantor's obligations hereunder.
- (i) The liability of Construction Guarantor under this Guarantee shall arise forthwith after demand has been made in writing on Construction Guarantor.
- (j) Construction Guarantor agrees to pay to UOHI any and all reasonable and direct out-of-pocket costs and expenses, including reasonable legal fees (on a substantial indemnity basis) incurred by it in connection with enforcing any of its rights hereunder.

3. REPRESENTATIONS AND WARRANTIES

3.1 Construction Guarantor Representations and Warranties

- (a) Construction Guarantor represents and warrants to UOHI that as of the date of this Guarantee:
- (i) Construction Guarantor is a corporation incorporated and validly existing under the laws of the jurisdiction of its organization, is in good standing with the Ontario Ministry of Government Services with respect to the filing of annual returns, and has all the requisite corporate power and authority to own, lease and operate its properties and assets, to carry on its business as it is currently being conducted, to enter into this Guarantee and the Implementing Agreements to which it is a party and to perform its obligations hereunder and thereunder;
 - (ii) Construction Guarantor has the requisite power, authority and capacity to execute and deliver and perform this Guarantee and the 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 Guarantee and the Implementing Agreements to which it is a party to be done, executed, delivered or performed;
 - (iii) no steps or proceedings have been taken or are pending to supersede, repeal or amend its constating documents, articles or by-laws or any shareholders agreement in a manner that would materially impair or limit its ability to perform its obligations under this Guarantee or any of the Implementing Agreements to which it is party and such documents and agreements are in full force and effect as of the date hereof;
 - (iv) this Guarantee and the Implementing Agreements (when executed and delivered) to which Construction Guarantor is a party, have been duly authorized, executed, and delivered by Construction Guarantor and constitute legal, valid, and binding obligations of Construction Guarantor, enforceable against Construction Guarantor in accordance with their respective terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and

- (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (v) the authorization, execution, delivery and performance by Construction Guarantor of this Guarantee and the Implementing Agreements to which it is a party do not violate or conflict with, or constitute a default under:
 - (A) its constating or organizational documents or any unanimous shareholders agreement or similar rights agreement binding on Construction Guarantor;
 - (B) any Applicable Law; or
 - (C) any covenant, contract, instrument, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vi) the Construction Guarantor owns all of the issued and outstanding shares of PCL Ottawa Heart Institute Ltd., which owns all of the issued and outstanding shares of Project Co;
- (vii) there are, to the knowledge of its senior management, no actions, suits, proceedings, or investigations pending or threatened against Construction Guarantor, at law or in equity, before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of Construction Guarantor or in any impairment of its ability to perform its obligations under this Guarantee or any Implementing Agreements to which it is a party, and Construction Guarantor has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any Governmental Authority or arbitral body that would result in any such material adverse effect or impairment; and
- (viii) Construction Guarantor is able to meet its obligations as they generally become due.

4. NOTICES

4.1 Notices to Parties

All notices, requests, demands, instructions, certificates, consents and other communications (each being a “**Notice**”) required or permitted under this Guarantee shall

be in writing (whether or not “written notice” or “notice in writing” is specifically required by the applicable provision of this Guarantee) and served by sending the same by registered mail, facsimile or by hand, as follows:

If to Construction Guarantor:

[REDACTED]

Fax No.: [REDACTED]

Attn.: [REDACTED]

If to UOHI:

[REDACTED]

Fax No.: [REDACTED]

Attention: [REDACTED]

With a copy to:

Ontario Infrastructure and Lands Corporation
777 Bay Street, 6th Floor
Toronto, Ontario M5G 2C8

Fax No.: [REDACTED]

Attention: [REDACTED]

4.2 Facsimile

Where any Notice is provided or submitted to a party via facsimile, an original of the Notice sent via facsimile shall promptly be sent by regular mail or registered mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a party’s failure to comply with this Section 4.2.

4.3 Change of Address

Either party to this Guarantee may, from time to time, change any of its contact information set forth in Section 4.1 by prior Notice to the other party, and such change shall be effective on the Business Day that next follows the recipient party’s receipt of such Notice unless a later effective date is given in such Notice.

4.4 Deemed Receipt of Notices

- (a) Subject to Sections 4.4(b), (c) and (d):
 - (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (b) If the party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Article 4.
- (c) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (d) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

4.5 Service on UOHI

Where any Notice is required to be served on UOHI, the obligation to serve such Notice shall be fulfilled by serving it on UOHI in accordance with the provisions of this Article 4.

5. GENERAL

5.1 Amendments

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

5.2 Waiver

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

5.3 Entire Agreement

Except where provided otherwise in this Guarantee, this Guarantee, together with the Project Agreement, the Contract Documents and the other Implementing Agreements, constitute the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Guarantee, including the Request for Proposals.

5.4 Severability

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

5.5 Enurement

This Guarantee shall enure to the benefit of, and be binding on, UOHI and Construction Guarantor and their respective permitted successors and assigns. This Guarantee may not be assigned by the Construction Guarantor.

5.6 Governing Law and Jurisdiction

- (a) This Guarantee shall be governed by and construed in accordance with the laws of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) Both parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

5.7 Cumulative Remedies

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

5.8 Further Assurance

Each party shall do all reasonable things, from time to time, and execute all reasonable further documents necessary to give full effect to this Guarantee.

5.9 Costs

Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution and delivery of this Guarantee.

5.10 Language of Agreement

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

5.11 Proof of Authority

UOHI and Construction Guarantor each reserve the right to require any person executing this Guarantee on behalf of the other party to provide proof, in a form acceptable to

UOHI or Construction Guarantor, as applicable, that they have the requisite authority to execute this Guarantee on behalf of and to bind UOHI or Construction Guarantor, as applicable.

5.12 Counterparts

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

5.13 Joint and Several

If Construction Guarantor is comprised of more than one person, then each such person shall be jointly and severally liable for the obligations and liabilities of Construction Guarantor hereunder.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the parties have executed this Guarantee as of the date first above written.

**UNIVERSITY OF OTTAWA HEART
INSTITUTE**

Per: _____

Name: [REDACTED]

Title: [REDACTED]

Per: _____

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation

PLC CONSTRUCTORS CANADA INC.

Per: _____

Name: [REDACTED]

Title: [REDACTED]

Per: _____

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation

SCHEDULE 23

**FORM OF ASSIGNABLE SUBCONTRACT AGREEMENT
FOR CONSTRUCTION CONTRACT**

THIS AGREEMENT made as of the [●] day of [●], [●]

BETWEEN:

PCL OTTAWA HEART INSTITUTE 2014 LTD.

(hereinafter called “**Project Co**”)

OF THE FIRST PART,

- **AND** -

PCL CONSTRUCTORS CANADA INC.

(hereinafter called “**Contractor**”)

OF THE SECOND PART,

- **AND** -

UNIVERSITY OF OTTAWA HEART INSTITUTE, a non-share capital corporation
incorporated under the laws of Ontario

(hereinafter called “**UOHI**”)

OF THE THIRD PART.

WHEREAS pursuant to a project agreement dated as of the [●] day of [●], 2014 between Project Co and UOHI (such agreement, together with all amendments, supplements and modifications thereto and restatements or replacements thereof, being hereinafter called the “**Project Agreement**”), Project Co has agreed to construct or cause to be constructed the Project;

AND WHEREAS Project Co and the Contractor entered into a construction contract made as of even date herewith (such construction contract, together with all amendments, supplements and modifications thereto and restatements or replacements thereof, which may hereafter be made in accordance with the terms thereof and this Agreement, being hereinafter called the “**Construction Contract**”);

AND WHEREAS under the Project Agreement, Project Co has agreed to assign to UOHI all right, title and interest of Project Co in and to the Construction Contract as collateral security for the observance and performance of the obligations of Project Co under the Project Agreement;

AND WHEREAS under the Project Agreement, Project Co has agreed to cause the Contractor to enter in to this Agreement;

NOW THEREFORE, in consideration of the premises and the covenants herein contained, and the sum of \$[REDACTED], the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties agree as follows:

1. As additional security for the observance and performance of the obligations of Project Co under the Project Agreement (the “**Obligations**”), Project Co hereby irrevocably, assigns, transfers and sets over (the “**Assignment**”) to and in favour of UOHI as and by way of a specific assignment and transfer all of the right, title and interest of Project Co in, and with respect to, the Construction Contract and all benefit, power and advantage of Project Co to be derived therefrom and otherwise to enforce the rights of Project Co thereunder (collectively, the “**Assigned Rights**”), provided that the Assignment of the Assigned Rights provided for in this Agreement shall only be effective upon the termination of the Project Agreement as a result of a default or event of default by Project Co thereunder and may be exercised by UOHI at its option in its Sole Discretion at any time or times thereafter subject to and in accordance with the provisions of this Agreement.
2. Unless and until notification is given to Contractor in accordance with any of the notices referred to in Subsections 3(e), 3(f) and 3(g) below, Project Co shall be entitled to enforce all of the benefits and powers under the Construction Contract and to deal with, and be obligated to, Contractor in respect of the Construction Contract and matters arising therefrom in the same manner and to the same extent as if Project Co had not made the Assignment in Section 1 hereof.
3. Contractor hereby:
 - (a) acknowledges and consents to any Assignment that may occur pursuant to this Agreement and confirms that any such Assignment that may occur pursuant to this Agreement is permitted pursuant to the provisions of the Construction Contract;
 - (b) agrees not to:
 - (i) terminate or agree to the termination of all or any part of the Construction Contract;

- (ii) make or agree to any amendment, restatement, supplement or other modification of, or waive or exercise any of its rights under, the Construction Contract that materially adversely affect Project Co's ability to perform its obligations under the Project Agreement or that has the effect of increasing any liability of UOHI, whether actual or potential;
- (iii) enter into, or permit the entry into by any other person of, any agreement replacing all or part of the Construction Contract;
- (iv) sell, assign, transfer, charge, subcontract, sub participate or otherwise dispose of any interest in the Construction Contract except as may be permitted under Section 39.1 of the Project Agreement, applied *mutatis mutandis*,

without the prior written consent of UOHI, not to be unreasonably withheld or delayed, provided that such consent shall not be withheld and shall be provided in reasonable time, where the relevant matter will not materially adversely affect Project Co's ability to perform its obligations under the Project Agreement or have the effect of increasing any liability of UOHI, whether actual or potential;

- (c) agrees to give UOHI prompt written notice of any default by Project Co under the Construction Contract, provided, however, in the event that UOHI exercises the option in accordance with this Agreement and effects the Assignment within 5 Business Days of receipt by UOHI of the notice, the Contractor shall not be entitled to exercise any right to terminate the Construction Contract that Contractor may have under the Construction Contract arising from or in relation to any event taking place prior to such Assignment;
- (d) represents and warrants to UOHI that as of the date hereof, the Construction Contract is valid, binding upon the parties thereto and in full force and effect, unamended and constitutes the entire agreement between Project Co and Contractor with respect to the subject matter thereof and that Contractor is in compliance with and has performed its obligations contained in the Construction Contract which are required to be complied with and/or performed to date and that, as far as Contractor is aware, Project Co is in compliance with and has performed its obligations contained in the Construction Contract which are required to be complied with and/or performed to date;
- (e) agrees that, immediately upon receipt by Contractor of written notice (the "**Assignment Notice**") from UOHI that the Construction Contract is being assigned to UOHI, Lender, or Lender's or UOHI's nominee (in any event, such party identified in such written notice being the "**Assignee**"), the Assignee shall have all of the right, title, benefit and interest of Project Co pursuant to the Construction Contract, without Contractor's consent and without the payment of

any penalty or other amount, and Contractor shall deal with the Assignee as if it had been originally named in place of Project Co in the Construction Contract;

- (f) agrees that the Assignee may, at any time after the giving of the Assignment Notice in subsection 3(e) above, give written notice (the “**Successive Assignment Notice**”) to Contractor of a further assignment of the Construction Contract to a new project company (the “**Project Co Assignee**”), and that immediately upon receipt of any Successive Assignment Notice, the Project Co Assignee shall have all of the right, title, benefit and interest of Project Co pursuant to the Construction Contract without Contractor’s consent and without the payment of any penalty or other amount and Contractor shall deal with the Project Co Assignee as if it had been originally named in place of Project Co in the Construction Contract;
 - (g) agrees that, notwithstanding subsections 3(e) and (f) herein contained, UOHI may give written notice (the “**Direct Assignment Notice**”) to Contractor of the assignment of the Construction Contract directly to the Project Co Assignee, and that immediately upon receipt of the Direct Assignment Notice, the Project Co Assignee shall have all of the right, title, benefit and interest of Project Co pursuant to the Construction Contract without Contractor’s consent and without the payment of any penalty or other amount and the Contractor shall deal with the Project Co Assignee as if it had been originally named in place of Project Co in the Construction Contract; and
 - (h) agrees, upon the reasonable request of UOHI, from time to time, to provide a certificate to UOHI as to the status of the Subcontract including a description of any events, which, with the passage of time or the giving of notice or both, would constitute a default thereunder.
4. Nothing herein contained shall render UOHI or Lender liable to any person for the fulfilment or non-fulfilment of the obligations, covenants and agreements, including, but not limited to the payment of any money thereunder or in respect thereto, of Project Co under the Construction Contract, unless and until UOHI has given the Assignment Notice to Contractor, the giving of which Assignment Notice the Contractor acknowledges is in the Sole Discretion of UOHI, in which event, the Assignee (and if applicable, any Project Co Assignee) shall then become liable for the obligations, covenants and agreements of Project Co under the Construction Contract, provided that from and after the date of the Successive Assignment Notice to Contractor, the Assignee shall have no liability whatsoever to the Contractor for any default or for any damages arising in respect of a matter or matters occurring under the Construction Contract from and after that date, and provided further, that if UOHI gives the Direct Assignment Notice, UOHI or Lender shall have no liability whatsoever to the Contractor for any default or for any damages arising in respect of a matter or matters occurring under the Construction Contract at any time.

5. Contractor acknowledges and agrees that all of the right, title and interest of Project Co in the Construction Contract has been, or may be, assigned by Project Co to The Toronto-Dominion Bank in its capacity as administrative agent, for and on behalf of the lenders to Project Co and such additional lender(s) as may participate from time to time (collectively, the “**Agent**”) as security for the obligations of Project Co to Agent (the “**Lender Assignment**”). The rights of UOHI hereunder to take or direct an assignment of the Construction Contract are expressly subject to the rights of the Agent under the Lender’s Direct Agreement to exercise its rights under the Lender Assignment prior to the exercise by UOHI of its rights under this Agreement to take or direct an assignment of the Construction Contract, and if there is any conflict or inconsistency between the provisions of this Agreement and the provisions of the Lender’s Direct Agreement with respect to the exercise of rights under the Assignment herein, or the exercise of rights under the Lender Assignment, the provisions of the Lender’s Direct Agreement shall govern and prevail to the extent of such conflict or inconsistency.
6. Project Co agrees that all costs and expenses incurred by UOHI or Agent in curing or attempting to cure any default by Project Co under the Construction Contract, together with interest thereon at the rate described in the definition of Payment Compensation Amount in Schedule 1 – Definitions and Interpretation to the Project Agreement shall be payable by Project Co to UOHI or Agent, as the case may be, on demand. Without limiting the foregoing, if Project Co fails to make any such payment to UOHI as required hereunder, the amount of such a payment shall be deemed to be an amount which is due to UOHI by Project Co pursuant to the terms of the Project Agreement.
7. Contractor acknowledges receipt of the Lender’s Direct Agreement, a copy of which is attached as Appendix A hereto and hereby consents to and agrees to be bound by the provisions thereof.
8. Any notice, request or demand required or permitted to be given hereunder shall be in writing and shall be served personally, sent by prepaid registered mail or by confirmed facsimile transmission addressed as follows:
 - (a) in the case of Project Co:

[REDACTED]

Attention: **[REDACTED]**
Facsimile No.: **[REDACTED]**
 - (b) in the case of UOHI:

[REDACTED]

Attention: [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]

with a copy to Agent:

[REDACTED]

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

(c) in the case of the Contractor:

[REDACTED]

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

Any party may from time to time change its address and recipient for service by notice to the other party or parties given in the manner aforesaid.

Notices which are served in the manner aforesaid shall be deemed sufficiently served for all purposes of this Agreement, in the case of those personally served or transmitted by facsimile transmission, on the date of such service or transmission, provided same is a Business Day, and if not on the next following Business Day, and in the case of those given by registered mail, on 5 Business Days following the mailing thereof. Provided that in the event normal mail service is interrupted by strikes, slow-down or other cause, then the party sending the notice shall utilise any similar service which has not been so interrupted in order to ensure the prompt receipt of the notice, request or demand by the other party or parties, and for the purpose of this Section such service shall be deemed to be personal service or facsimile transmission. Business Day shall mean a day which is not: (i) a Saturday or Sunday; or (ii) a day observed as a holiday under the laws of the Province of Ontario or the federal laws of Canada applicable in the Province of Ontario.

9. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

10. This Agreement shall be conclusively deemed to be a contract made under and shall for all purposes be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
11. Contractor shall from time to time and at all times hereafter, upon the reasonable written request of UOHI so to do, make, do, execute and deliver or cause to be made, done, executed and delivered all such further acts, deeds, assurances and things as may be desirable in the opinion of UOHI, acting reasonably, for more effectually implementing and carrying out the true intent and meaning of this Agreement.
12. In this Agreement, all capitalized terms not otherwise defined in this Agreement shall have the meaning ascribed to them in the Project Agreement and unless the context requires otherwise.
13. This Agreement may be executed by the parties in counterparts and may be executed and delivered by facsimile and all such counterparts and facsimiles shall together constitute one and the same agreement.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the parties have executed this Assignable Subcontract Agreement for Construction Contract as of the date first above written.

PCL OTTAWA HEART INSTITUTE 2014 LTD.

Per: _____

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation

PCL CONSTRUCTORS CANADA INC.

Per: _____

Name: [REDACTED]

Title: [REDACTED]

Per: _____

Name: [REDACTED]

Title: [REDACTED]

I/We have authority to bind the corporation

**UNIVERSITY OF OTTAWA HEART
INSTITUTE**

Per: _____

Name: [REDACTED]

Title: [REDACTED]

Per: _____

Name: [REDACTED]

Title: [REDACTED]

I have authority to bind the corporation

APPENDIX A

Please see the Lender’s Direct Agreement attached.

SCHEDULE 24
FORM OF TRUST ACCOUNT ACKNOWLEDGEMENT AGREEMENT

THIS TRUST ACCOUNT ACKNOWLEDGEMENT AGREEMENT is made as of the [•]
day of [•], 2014.

BETWEEN:

UNIVERSITY OF OTTAWA HEART INSTITUTE, a non-share capital corporation
incorporated under the laws of Ontario

(“**UOHI**”)

AND:

PCL OTTAWA HEART INSTITUTE 2014 LTD.

(“**Project Co**”)

AND:

BNY TRUST COMPANY OF CANADA

(“**Trustee**”).

WHEREAS:

- A. Project Co and UOHI entered into a project agreement dated as of [•], 2014 (the “**Project Agreement**”).
- B. Project Co has entered into the Construction Contract with the Contractor for the construction of the Project.
- C. The Parties wish to establish a trust account for certain monies in connection with the Project.
- D. UOHI is, under the Project Agreement, obligated to pay certain amounts to Project Co, including the Interim Completion Payment, the Substantial Completion Payment and the Compensation Payment, and pursuant to Sections 4.4(a), 4.6(a), 4.9 and Schedule 12 of the Project Agreement, Project Co has directed that the Interim Completion Payment, the Substantial Completion Payment and the Compensation Payment be paid to Agent. Further, UOHI has agreed that such payment amounts shall be deposited directly into the Trust Account.

- E. Project Co has granted to Agent the benefit of a security interest in all of its property, including an assignment of its rights under this Agreement and its interest in the Trust Funds.

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

ARTICLE 1 - DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

- (a) “**Agent**” has the meaning given to it in the Project Agreement.
- (b) “**Agreement**” means this trust account acknowledgement agreement.
- (c) “**Beneficiaries**” has the meaning given to it in Section 2.1 of this Agreement.
- (d) “**Business Day**” has the meaning given to it in the Project Agreement.
- (e) “**Certified Cost to Complete**” has the meaning given to it in the Project Assignment.
- (f) “**Compensation Payment**” has the meaning given to it in the Project Agreement.
- (g) “**Construction Contract**” has the meaning given to it in the Project Agreement.
- (h) “**Contractor**” means PCL Constructors Canada Inc..
- (i) “**Funding Letter**” has the meaning given to it in the Project Agreement.
- (j) “**Implementing Agreements**” has the meaning given to it in the Project Agreement.
- (k) “**Infrastructure Ontario**” or “**IO**” has the meaning given to it in the Project Agreement.
- (l) “**Interim Completion Payment**” has the meaning given to it in the Project Agreement.
- (m) “**Legislative Holdback**” has the meaning given to it in the Project Agreement.

- (n) “**Lender’s Direct Agreement**” has the meaning given to it in the Project Agreement.
- (o) “**Major Bond Rating Agency**” means any one of Dominion Bond Rating Service Limited, Standard & Poor’s Rating Group, Moody’s Canada Inc. or any of their successors.
- (p) “**MOHLTC**” means Her Majesty the Queen in right of Ontario as represented by the Minister of Health and Long-Term Care, and includes any agent thereof or any successor thereto or person exercising delegated power under the Minister’s authority.
- (q) “**MOI**” has the meaning given to it in the Project Agreement.
- (r) “**Notice**” has the meaning given to it in Section 9.1 of this Agreement.
- (s) “**Party**” means any of UOHI, Project Co or Trustee, and “**Parties**” means all of them but, for greater certainty, such definitions do not include Infrastructure Ontario, MOHLTC or MOI.
- (t) “**Payment Instruction**” means a written instruction to the Trustee from (i) UOHI in accordance with Section 3.2(b) of this Agreement or (ii) UOHI and Project Co in accordance with Section 3.2(a) of this Agreement, in each case directing the disposition of Trust Funds, the form of which is attached hereto as Appendix 1.
- (u) “**Permitted Investments**” means demand deposits, term deposits, bankers’ acceptances or certificates of deposit of or guaranteed by any bank or other financial institution which is rated by a Major Bond Rating Agency at least AA (low) or AA-, any bonds, debentures, notes, bills of exchange, securities or other evidences of indebtedness (including specific interest and principal payments thereof) issued or guaranteed by (i) the Government of Canada, or (ii) any Province of Canada, provided that such instruments are rated by a Major Bond Rating Agency at least AA (low) or AA- (as such ratings are determined as of the date hereof by Dominion Bond Rating Service Limited and Standard & Poor’s Rating Group, respectively).
- (v) “**Project**” has the meaning given to it in the Project Agreement.
- (w) “**Substantial Completion Payment**” has the meaning given to it in the Project Agreement.
- (x) “**Trust Account**” means [REDACTED].
- (y) “**Trust Funds**” means, as of any particular time, all monies which have been transferred, conveyed or paid to, or acquired by the Trustee pursuant to this

Agreement, including all income, earnings, profits and gains therefrom, and which at such time are held by the Trustee.

- (z) “**UOHI Holdback**” has the meaning given to it in the Project Agreement.
- (aa) “**UOHI Project Cost Contribution**” means any monies contributed by MOHLTC under the Funding Letter which are specifically designated in writing by MOHLTC at the time it makes the contribution as being in respect of project costs incurred by UOHI other than amounts payable by UOHI under the Project Agreement and the Implementing Agreements.

1.2 Appendix

This Agreement comprises this agreement and the following Appendix which is hereby incorporated by reference and forms an integral part of this Agreement:

- (a) Appendix 1 – Form of Payment Instruction

1.3 Interpretation

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

- (a) The headings, marginal notes and references to them in this Agreement are for convenience of reference only, shall not constitute a part of this Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Agreement.
- (b) All capitalized terms used in this Agreement shall have the meanings given to such terms the Project Agreement or, if not defined therein, in this Agreement.
- (c) Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, governmental authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- (d) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (e) References to any standard, principle, agreement or document include (subject to all relevant approvals and any other provisions of this Agreement concerning

- amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (f) References to a statute shall include all regulations, by-laws, decrees, ordinances and orders made under or pursuant to the statute.
 - (g) References to persons shall include their successors and assigns. References to a public organization shall include their successors and assigns, and if a public organization ceases to exist or ceases to perform its functions without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization.
 - (h) The words in this Agreement shall bear their natural meaning.
 - (i) Each Party's respective obligations shall be construed as separate obligations owed to the other Party or Parties, as the case may be.
 - (j) References containing terms such as:
 - (i) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Agreement taken as a whole; and
 - (ii) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".
 - (k) In construing this Agreement, the rule known as the ejusdem generis rule shall not apply nor shall any similar rule or approach apply to the construction of this Agreement.
 - (l) Where this Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of days after a stipulated date or event the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
 - (m) Where this Agreement states that an obligation shall be performed "no later than" or "by" a prescribed number of days before a stipulated date or event or "by" a date which is a prescribed number of days before a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of

the obligation concerned, or if that day is not a Business Day, 5:00 p.m. on the next Business Day.

- (n) Where this Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (o) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (p) Unless otherwise indicated, time periods will be strictly construed and time is of the essence of this Agreement.
- (q) Whenever the terms “will” or “shall” are used in this Agreement in relation to a Party they shall be construed and interpreted as synonymous and to read “UOHI shall”, “Project Co shall” or “Trustee shall”, as the case may be.
- (r) Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.

ARTICLE 2 - DECLARATION OF TRUST

2.1 Declaration of Trust

The Trustee hereby declares that it holds in trust as Trustee all Trust Funds deposited in the Trust Account for the benefit of Project Co and UOHI (collectively, the “**Beneficiaries**” and individually, a “**Beneficiary**”), in accordance with and subject to the provisions of this Agreement. The purpose of this Agreement is to establish the Trust Account for the benefit of the Beneficiaries and to provide for the delivery and distribution of the Trust Funds in accordance with this Agreement.

2.2 Acceptance of Trusts by Trustee

The Trustee hereby accepts the trusts and other obligations in this Agreement declared and provided and agrees to perform the same upon the terms and conditions herein set forth.

ARTICLE 3 - PURPOSE

3.1 Purpose of Trust Account

UOHI and Project Co acknowledge and agree that the Trust Account is established for the purpose of:

- (a) receiving monies from time to time contributed by MOHLTC pursuant to the Funding Letter for the purpose of funding, in part, any of the Interim Completion Payment, the Substantial Completion Payment, a Compensation Payment, the

Certified Cost to Complete, the Legislative Holdback, any UOHI Holdback, and any other amounts that may from time to time be payable by UOHI to Project Co under the Project Agreement and the Implementing Agreements; and

- (b) in accordance with the related Payment Instructions, paying to the applicable payee (or as it may direct) any payment that is outstanding under the Implementing Agreements.

3.2 Instruction and Re-Direction

Trustee shall not accept any Payment Instruction to distribute Trust Funds other than as follows:

- (a) in accordance with a Payment Instruction signed by both UOHI and Project Co;
or
- (b) in accordance with a Payment Instruction signed only by UOHI if Trustee has not received written notice from Project Co that UOHI is in default of any of its payment obligations under the Project Agreement and the Implementing Agreements and:
 - (i) the monies are to reimburse UOHI for any moneys expended by UOHI in respect of which UOHI at that time has a right of set-off or is entitled to reimbursement under the Project Agreement; or
 - (ii) the monies are to pay to UOHI interest earned in accordance with Section 7.2 of this Agreement; or
 - (iii) the monies are to pay to UOHI any monies which are the property of UOHI as described under Section 3.3 of this Agreement,

and UOHI certifies as to (i) and/or (ii) and/or (iii), as applicable. A Payment Instruction given by UOHI pursuant to this Section 3.2(b) shall be addressed to Project Co and the Agent as well as the Trustee.

Trustee shall deliver a copy of any Payment Instruction signed only by UOHI under Section 3.2(b) of this Agreement to each of Project Co and Agent forthwith upon receipt and in any event not less than five (5) Business Days before the Trustee distributes any Trust Funds pursuant to such Payment Instruction. If at any time prior to the distribution of Trust Funds by Trustee pursuant to the aforementioned Payment Instruction, Trustee receives an objection from Project Co to the distribution of such Trust Funds, Trustee shall not distribute such Trust Funds until it has received a replacement Payment Instruction signed by both UOHI and Project Co. Where Project Co objects to a Payment Instruction signed only by UOHI, or where UOHI objects to an assertion by Project Co that UOHI is in default of any of its payment obligations under the Project Agreement and the Implementing Agreements, such dispute shall be resolved in accordance with the dispute resolution procedures set forth in the Project Agreement and, to

the extent that such resolution confirms the entitlement of UOHI to a withdrawal of Trust Funds, Project Co agrees to jointly sign a Payment Instruction with UOHI to give effect to such withdrawal.

3.3 UOHI Project Cost Contributions

If any UOHI Project Cost Contributions are deposited by MOHLTC into the Trust Account, such monies are the property of UOHI and UOHI is entitled to be paid any such amounts out of the Trust Account subject to and in accordance with the provisions of Section 3.2 of this Agreement.

ARTICLE 4 - PAYMENT OF TRUST PROPERTY

4.1 Disposition Instruction

Subject to Section 3.2 of this Agreement, Trustee will comply with Payment Instructions from UOHI and Project Co under Section 3.2(a) of this Agreement and from UOHI under Section 3.2(b) of this Agreement from time to time given to Trustee. Project Co and UOHI agree that with the exception of a Payment Instruction issued pursuant to Section 7.2 all Payment Instructions shall be consistent with the Lender's Direct Agreement and the Project Agreement.

4.2 Expenses and Compensation of Trustee

- (a) The Trustee will have the power to incur and make payment of any charges or expenses which in the reasonable opinion of the Trustee are necessary or incidental to or proper for carrying out any of the purposes of this Agreement and the administration of the Trust Account.
- (b) The Trustee will be entitled to be paid by Project Co, in default of which the Trustee is entitled to be paid from the Trust Funds, without any requirement of a passing of accounts in respect thereof or approval of any Beneficiary, such fees as the Trustee, UOHI and Project Co may agree to from time to time for its services hereunder and all reasonable expenses, disbursements and advances incurred or made by the Trustee in the administration and execution of this Agreement until all the duties of the Trustee shall be finally and fully performed, except any such expense, disbursement or advance as may arise from or in connection with the dishonesty, bad faith, wilful misconduct, fraud, negligence or reckless disregard of any duty or the failure to comply with the standard of care referred to in Section 6.1 of this Agreement by the Trustee, its officers, employees or agents. All such amounts will be payable at such times as the Trustee, UOHI and Project Co may agree from time to time. Any amount not paid when due shall bear interest at a rate per annum equal to the rate designated by the Trustee as the then current rate charged by the Trustee or its successors from time to time to its corporate customers, payable on demand. After default, all amounts so payable and the interest thereon shall be payable out of any funds coming into the

possession of the Trustee or its successors in the trusts hereunder in priority to any payments to Beneficiaries.

4.3 No Duty to Inquire

Payment Instructions purporting to be given to Trustee under this Agreement will, subject to Section 3.2 of this Agreement, be conclusive authority for Trustee to act in accordance with that Payment Instruction. Trustee is not obliged or required to monitor any requirements or obligations of UOHI or any other person pursuant to this Agreement or any other agreement and has no duty to question any Payment Instruction provided to Trustee. Subject to Section 3.2 of this Agreement, each of Project Co and UOHI authorizes Trustee to act on any such Payment Instruction and waives any claim or action against Trustee in connection therewith.

ARTICLE 5 - REPLACEMENT OF TRUSTEE

5.1 Resignation of Trustee

If the Trustee desires to resign and be discharged from the trusts and powers reposed in or conferred on it by this Agreement, it shall provide not less than 60 days prior notice in writing thereof, or such lesser notice as UOHI and Project Co accept. UOHI and Project Co may, by instrument in writing, jointly appoint a successor trustee that is acceptable to replace the Trustee. If UOHI and Project Co fail to appoint a successor trustee within a reasonable period of time, then application will be made by the Trustee to a Justice of the Ontario Superior Court of Justice at Toronto for appointment of a successor trustee hereunder. The resignation of the Trustee shall not be effective until the appointment of its successor in accordance with the provisions of this Section 5.1. The expense of any act, document, deed or other instrument or thing required under this Section 5.1 will be satisfied from the Trust Funds.

5.2 Vacancy and Appointment of new Trustee

The term of office of the Trustee will automatically terminate and a vacancy will occur in the event of the bankruptcy or insolvency of the Trustee or inability of the Trustee to exercise its duties under this Agreement. No vacancy shall operate to annul this Agreement. If a vacancy occurs in the office of the Trustee for any reason, UOHI and Project Co may, by instrument in writing, jointly appoint a trustee to replace the Trustee. If UOHI and Project Co fail to make such appointment, then an application will be made to a Justice of the Ontario Superior Court of Justice at Toronto for appointment of a successor trustee hereunder. Such application will be made by the Trustee or, if the Trustee elects not to do so, by UOHI and Project Co. The expense of any act, document, deed or other instrument or thing required under this Section 5.2 will be satisfied from the Trust Funds.

ARTICLE 6 - STANDARD OF CARE, LIMITATION OF LIABILITY OF TRUSTEE AND OTHER MATTERS

6.1 Standard of Care

The Trustee will exercise its powers and carry out its obligations hereunder as trustee honestly, in good faith and in the best interests of the Beneficiaries and in connection therewith will exercise that degree of care, diligence, and skill that a reasonable and prudent professional trustee would exercise in comparable circumstances. Unless otherwise required by law, the Trustee will not be required to give a bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The duties, responsibilities and obligations of the Trustee shall be limited to those expressly set forth herein and no duties, responsibilities or obligations shall be inferred or implied. The Trustee shall not be subject to, nor required to comply with, any other agreement between or among any or all of the parties hereto, even though reference thereto may be made herein, or to comply with any direction or instruction other than those contained herein or delivered in accordance herewith. The Trustee shall not be required to, and shall not, expend or risk any of its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

6.2 Limitation of Liability of Trustee

The Trustee will not be subject to any liability whatsoever, in tort, contract or otherwise, in connection with the Trust Funds, to the Beneficiaries, or to any other person, for any action taken or permitted by it to be taken or for its failure to take any action including, without limitation, the failure to compel in any way any former or acting Trustee to redress any breach of trust in respect of the execution of the duties of its office or in respect of the Trust Funds, provided that the foregoing limitation will not apply in respect of any action or failure to act arising from or in connection with dishonesty, bad faith, wilful misconduct, fraud, negligence or reckless disregard of a duty by the Trustee. The Trustee, in doing anything or permitting anything to be done in respect of the execution of the duties of its office or in respect of the Trust Funds, is and will be conclusively deemed to be acting as trustee of the Trust and not in any other capacity. Except to the extent provided in this Section 6.2, the Trustee will not be subject to any liability for any debts, liabilities, obligations, claims, demands, judgments, costs, charges or expenses against or with respect to the Trust Account, arising out of anything done or permitted by it to be done or its failure to take any action in respect of the execution of the duties of its office or for or in respect of the Trust Funds or the Trust activities and resort will be had solely to the Trust Funds for the payment or performance thereof. No property or assets of the Trustee, owned in its personal capacity or otherwise, will be subject to levy, execution, or other enforcement procedure with regard to any obligation under this Agreement.

6.3 Indemnification of the Trustee

Subject as hereinafter specifically provided, the Trustee will at all times be indemnified and saved harmless out of the Trust Funds (or, if the Trust Funds are insufficient for that purpose, by Project Co and UOHI severally each as to [REDACTED]% of the shortfall) from and against all claims, demands, losses, actions, causes of action, costs, charges, expenses, damages and liabilities whatsoever, including without limitation, arising out of or related to actions taken or

omitted to be taken by any agent appointed hereunder, reasonable legal fees and disbursements on a substantial indemnity basis and costs and expenses incurred in connection with the enforcement of this indemnity, which the Trustee may suffer or incur, whether at law or in equity, in any way caused by or arising, directly or indirectly, in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of its duties as Trustee or which it sustains or incurs in or about or in relation to the Trust Funds. Further, the Trustee will not be liable to any Beneficiary or to any other person for any loss or damage relating to any matter regarding the Trust Account, including any loss or diminution in the value of the Trust Funds. The foregoing provisions of this Section 6.3 do not apply to the extent that in any circumstances there has been dishonesty, bad faith, wilful misconduct, fraud, negligence or reckless disregard of a duty by the Trustee or its employees or agents engaged by the Trustee in the performance of its duties or obligations hereunder. Notwithstanding any other provision hereof, this indemnity shall survive the removal or resignation of the Trustee and termination of any trust created hereby.

6.4 Reliance upon Advice

The Trustee may rely and act upon any statement, report or opinion prepared by or any advice received from UOHI and Project Co, and shall not be responsible or held liable for any loss resulting from so relying or acting if the Trustee acted reasonably in relying thereon.

6.5 Limitation of Liability of Beneficiary

Subject to Section 6.3 of this Agreement, the Beneficiaries will not be held to have any personal liability as such, and no resort will be had to their private property for satisfaction of any obligation or claim arising out of or in connection with any contract or obligation in respect of which the Beneficiaries would otherwise have to indemnify the Trustee for any liability incurred by the Trustee as such, but rather the Trust Funds only will be subject to levy or execution for such satisfaction.

6.6 Provisions Regarding Liability

Any written instrument creating an obligation of the Trustee will be conclusively deemed to have been executed by the Trustee only in its capacity as Trustee. Any written instrument creating an obligation of the Trustee will contain a provision to the effect that the obligations thereunder are not binding upon the Trustee except in its capacity as Trustee, nor will resort be had to the property of the Trustee except in its capacity as Trustee, but that the Trust Funds or a specific portion thereof only will be bound, and may contain any further provisions which the Trustee may deem appropriate, but the omission of any such provision will not operate to impose liability on the Trustee except as aforesaid.

6.7 Trustee Compliance with Orders, etc.

If at any time the Trustee is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Trust Funds (including but not limited to orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of Trust Funds), the Trustee is authorized to comply therewith in any manner as it or its legal counsel of its own choosing deems appropriate. The Trustee shall in no way be bound to call for further evidence (whether as to due execution, validity or effectiveness, or the jurisdiction of any court, or as to the truth of any fact), and shall not be responsible for any loss that may be occasioned by its failing to do so. If the Trustee complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, the Trustee shall not be liable to any of the parties hereto or to any other person or entity even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

6.8 Force Majeure

The Trustee shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Trustee (including but not limited to any act or provision of any present or future law or regulation or governmental authority, any act of God or war, or the unavailability of any wire or communication facility).

6.9 Incumbency Certificate

Each of UOHI and Project Co shall provide to the Trustee an incumbency certificate setting out the names and sample signatures of persons authorized to give instructions to the Trustee hereunder. The Trustee shall be entitled to rely on such certificate until a revised certificate is provided to it hereunder. The Trustee shall be entitled to refuse to act upon any instructions given by a Party which are signed by any person other than a person described in the incumbency certificate provided to it pursuant to this section.

6.10 Prompt Notice to UOHI, Infrastructure Ontario and MOHLTC

The Trustee agrees to provide prompt written notice of all Payment Instructions, payments to or withdrawals from the Trust Funds and any amendments to this Agreement to each of the Parties hereto and Infrastructure Ontario and MOHLTC.

ARTICLE 7 - RECORDS AND OTHER MATTERS

7.1 Records to be Kept

The Trustee will keep or cause to be kept at Toronto, Ontario or at such other place in Canada designated by it proper records and books of account as are by law or good business practice necessary. Such books and records will be available for inspection by either Beneficiary upon reasonable notice during the normal business hours of the Trustee.

7.2 Investment of Trust Funds

Any monies held by the Trustee may be invested and reinvested in the name or under the control of the Trustee in Permitted Investments, on the joint written direction of UOHI and Project Co. Any such direction shall be provided to the Trustee no later than 10:00 a.m. (Toronto Time) on the day the investment is to be made. Any such direction received by the Trustee after 10:00 a.m. (Toronto time) or received on a day that is not a Business Day, shall be deemed to have been given prior to 10:00 a.m. (Toronto time) on the next Business Day. Pending such investment, such monies may be placed by the Trustee on deposit in any chartered bank or any affiliate of a chartered bank in Canada against demand deposit certificates or with its own deposit department. No Party shall be responsible for ensuring the rate of return, if any, on the Permitted Investments. UOHI is entitled to issue a Payment Instruction in accordance with Section 3.2(b), providing for payment to it (or such person as it may direct) of any interest or other income earned thereupon out of the Trust Fund.

ARTICLE 8 - TERMINATION OF THIS AGREEMENT

8.1 Termination

This Agreement will continue in full force and effect for a period of sixty-nine (69) months from the date hereof and thereafter for so long as any Trust Funds remain with the Trustee unless earlier terminated by joint written direction of the Beneficiaries.

ARTICLE 9 - NOTICES

9.1 Notices to Parties

All notices, requests, demands, instructions, certificates, consents and other communications (each being a “**Notice**”) required or permitted under this Agreement shall be served by sending the same by facsimile or by hand (and not by e-mail), as follows:

If to UOHI: [REDACTED]

Attention: [REDACTED]

Fax No: [REDACTED]

With a copy to Ontario Infrastructure and Lands Corporation
777 Bay Street, 6th Floor
Toronto, Ontario M5G 2C8

Attn.: [REDACTED]

Fax No.: [REDACTED]

and MOHLTC Ministry of Health and Long-Term Care
Health Capital Investment Branch

1075 Bay Street, 2nd Floor
Toronto, Ontario M5S 2B1

Fax No.: [REDACTED]
Attn: [REDACTED]

If to Project Co: [REDACTED]

Fax No.: [REDACTED]
Attn.: [REDACTED]

If to Trustee: [REDACTED]

Fax No.: [REDACTED]
Attn.: [REDACTED]

9.2 Facsimile

Where any Notice is provided or submitted to a Party via facsimile, an original of the Notice sent via facsimile shall promptly be sent by regular mail. For greater certainty, a notice given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 9.2.

9.3 Change of Address

Any Party to this Agreement may, from time to time, change any of its contact information set forth in Section 9.1 of this Agreement 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.

9.4 Deemed Receipt of Notices

- (a) Subject to Sections 9.4(b), 9.4(c) and 9.4(d):
 - (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (b) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any

such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 9.4.

- (c) If any Notice delivered by hand or transmitted by facsimile is so delivered or transmitted, as the case may be, either on a day that is not a Business Day or on a Business Day after 4:00 p.m. (recipient's local time), then such Notice shall be deemed to have been received by such recipient on the next Business Day.
- (d) A Notice given by facsimile shall be deemed to have been received by the recipient on the day it is transmitted only if a facsimile transmission report (maintained by the sender) indicates that the transmission of such Notice was successful.

ARTICLE 10 - GENERAL

10.1 Assignment

Trustee may assign its rights and obligations under this Agreement to any entity which acquires all or substantially all of the assets of Trustee or to any subsidiary or affiliate or successor in a merger, amalgamation or acquisition of Trustee, provided that prior to such assignment the assignee enters into an agreement with the Beneficiaries agreeing to assume and be bound by the terms of this Agreement.

10.2 Amendments

This 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 Agreement.

10.3 Waiver

- (a) No waiver made or given by any Party under or in connection with this 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 such right, power or remedy in one instance will be deemed to be a waiver with respect to any other instance involving the exercise of the right, power, or remedy or with respect to any other such right, power or remedy.
- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

10.4 Relationship Between the Parties

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

10.5 Entire Agreement

Except where provided otherwise in this Agreement, this 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 Agreement.

10.6 Severability

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

10.7 Enurement

This Agreement shall enure to the benefit of, and be binding on the Parties and each of their respective permitted successors and permitted transferees and assigns.

10.8 Governing Law and Jurisdiction

- (a) This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract, without regard to conflict of laws principles.
- (b) The Parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

10.9 Cumulative Remedies

Except as otherwise set forth in this Agreement, the rights, powers and remedies of each Party set forth in this 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 Agreement or at law or in equity.

10.10 Further Assurance

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

10.11 Costs

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

10.12 Proof of Authority

Each Party shall provide proof to each other Party, in a form acceptable to such other Party, that any person executing this Agreement on its behalf has the requisite authority to execute this Agreement on its behalf.

10.13 Counterparts

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

10.14 Language of Agreement

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

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF the Parties hereto have executed this Trust Account Acknowledgement Agreement as of the date first above written.

**UNIVERSITY OF OTTAWA HEART
INSTITUTE**

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

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

I/We have authority to bind the corporation

**PCL OTTAWA HEART INSTITUTE 2014
LTD.**

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

I/We have authority to bind the corporation

BNY TRUST COMPANY OF CANADA

By: _____
Name:
Title:

I have authority to bind the corporation

**APPENDIX 1
FORM OF PAYMENT INSTRUCTION**

[Letterhead of UOHI]

BNY Trust Company of Canada
320 Bay Street, 11th Floor
Toronto, Ontario M5H 4A6

Dear Sir or Madam,

Re: Instruction for Payment

We refer to the Trust Account Acknowledgement Agreement dated [•] (the “**Agreement**”), between University of Ottawa Heart Institute, PCL Ottawa Heart Institute 2014 Ltd. and BNY Trust Company of Canada.

In accordance with Section 3.2 of this Agreement, this letter constitutes a Payment Instruction with respect to the payment of Trust Funds by the Trustee.

Please transfer the sum of \$[•] to [•] for credit in accordance with the following account information:

Beneficiary Name:	[•]
Beneficiary Address:	[•]
Bank Name:	[•]
Bank Address:	[•]
Institution Number:	[•]
Transit Number:	[•]
SWIFT Code/ABA Routing No.:	[•]
Account Name:	[•]
Account Number	[•]
REF:	[•]

[Where the Payment Instruction is signed only by UOHI as permitted in Section 3.2(b) of this Agreement, UOHI must also certify that the monies are being drawn as permitted by

Section 3.2(b) of this Agreement and the Payment Instruction must also be addressed to each of Project Co and Agent.]

Yours truly,

**UNIVERSITY OF OTTAWA HEART
INSTITUTE**

Per: _____
Name: [•]
Title: [•]

Per: _____
Name: [•]
Title: [•]

I/We have authority to bind the corporation

PCL OTTAWA HEART INSTITUTE 2014 LTD.

Per: _____
Name: [•]
Title: [•]

Per: _____
Name: [•]
Title: [•]

I/We have authority to bind the corporation

**SCHEDULE 25
LEGAL DESCRIPTION OF THE LANDS**

Part of Blocks 26, 27 & 28
And Part of Blocks C & D
Registered Plan 135079
City of Ottawa
Being Part of PIN 04089-0089 (LT)

**SCHEDULE 26
[INTENTIONALLY DELETED]**

SCHEDULE 27

STANDBY LETTER OF CREDIT

[NTD: The Standby Letter of Credit must be issued by a bank acceptable to UOHI, acting reasonably, and must be callable at the bank’s counters in Toronto, Ontario.]

Letter of Credit: #[·]

Date: [·]

University of Ottawa Heart Institute
[REDACTED]

Attn: ·

Dear Sir/Madam:

RE: University of Ottawa Heart Institute Cardiac Life Support Services Redevelopment Project

At the request of our client, PCL Ottawa Heart Institute 2014 Ltd. (“**Project Co**”), we, [insert name and address of issuing bank], hereby issue in your favour an irrevocable standby letter of credit (the “**Letter of Credit**”) in the amount of [REDACTED] (\$[REDACTED]).

The amount available under this Letter of Credit is payable to the University of Ottawa Heart Institute (“**UOHI**”), at any time and from time to time, upon (a) receipt by us of a written demand for payment, accompanied by a certificate signed by two officers of UOHI certifying that UOHI is entitled to draw on this Letter of Credit pursuant to Section 2.3(c) of a project agreement dated [·] (as amended from time to time, the “**Project Agreement**”), and (b) presentation of the original of this Letter of Credit.

The above documents may be presented to [REDACTED].

This Letter of Credit will expire at 5:00 p.m. on [insert the date that is 180 days after the **Financial Close Target Date**] (the “**Expiry Date**”), and UOHI may call for payment of any amount outstanding under this Letter of Credit at any time up to 5:00 p.m. on that date should this Letter of Credit not be renewed.

It is a condition of this Letter of Credit that it shall be automatically extended, without amendment, for one year from the expiration date hereof, or any future expiration date, unless, at least 30 days prior to any expiration date, we notify you, in writing, that we elect not to consider this Letter of

Credit renewed for any such additional period. Upon receipt by you of such notice, you may draw the full amount hereunder by means of your demand.

Partial drawings are permitted.

We hereby agree that demands delivered under this Letter of Credit will be duly honoured upon presentation provided that all terms and conditions herein have been complied with.

Written demands drawn under this Letter of Credit shall state on their face that they are drawn under Letter of Credit #[·].

It is understood that **[insert name of issuing bank]** is obligated under this Letter of Credit for payments of monies only.

The Project Agreement is referred to herein for reference purposes only and does not form part of the terms of this Letter of Credit.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) of the International Chamber of Commerce (ICC Publication No. 600) (the “**UCP**”) with the exception of Articles 18-30 inclusive (other than Article 29a, which shall apply) and Articles 31b, 31c and 32 except to the extent, if any, inconsistent with the express terms of this Letter of Credit. Notwithstanding Article 36 of the UCP, if this Letter of Credit expires during an interruption of business as contemplated in such Article 36, we shall honour any demand made under this Letter of Credit prior to the Expiry Date, within 30 days after the date on which such interruption of business ends (and we shall notify you promptly when it does so end). For matters not covered by such publication, this Letter of Credit shall be governed by and construed in accordance with the laws of the Province of Ontario.

Yours very truly,

[Name of Issuing Bank]

By: _____

Name:

Title:

By: _____

Name:

SCHEDULE 28

REFINANCING

1. DEFINITIONS

1.1 The following terms shall have the following meanings:

- (a) **“Exempt Refinancing”** means:
- (i) a change in taxation or change in accounting treatment pursuant to a Change in Law or change in Canadian GAAP;
 - (ii) the exercise of any right, the grant of any amendment, waiver or consent or any similar action under the Lending Agreements by the Lenders that does not provide for a financial benefit to Project Co under those agreements;
 - (iii) any Qualifying Bank Transaction;
 - (iv) any Rescue Refinancing;
 - (v) any Refinancing that was approved by UOHI prior to the execution of this Project Agreement and occurs during the first six months following the date of this Project Agreement;
 - (vi) any amendment, variation or supplement of any agreement approved by UOHI as part of any Change Order or Change Directive under this Project Agreement; or
 - (vii) any Permitted Borrowing.
- (b) **“Junior Debt Amount”** means, at any time, the then outstanding principal amount of debt funded under the terms of the Lending Agreements by the Junior Lenders to Project Co, together with all interest accrued thereon at that time. For greater certainty, the Junior Debt Amount includes any amount funded under the terms of the Lending Agreements which has a fixed return without equity participation, step-up rights or rights to share in Project Co’s excess cash flow and a coupon equal to or less than [REDACTED]% of the coupon payable to the Senior Lenders and excludes the Junior Debt Makewhole.
- (c) **“Junior Debt Makewhole”** means, at any time, any amount (other than the Junior Debt Amount) then due and payable to the Junior Lenders under the Lending Agreements, including any “make whole” payments, breakage fees (less any breakage benefits) and all other fees, costs and expenses reasonably and properly

incurred which Project Co is obligated to pay to the Junior Lenders pursuant to the Lending Agreements.

- (d) **“Qualifying Bank”** means a lending institution that is:
- (i) a bank listed in Schedule I, II or III of the *Bank Act* (Canada); or
 - (ii) a bank, life insurance company, pension fund or fund managed by a professional fund manager that controls, either directly or through its affiliates, funds in excess of \$[REDACTED],
- provided such institution is not a Restricted Person or a person whose standing or activities are inconsistent with UOHI’s role as a health care facility or may compromise UOHI’s reputation or integrity or the nature of the Province’s health care system so as to affect public confidence in that system.
- (e) **“Qualifying Bank Transaction”** means:
- (i) the disposition by a Lender of any of its rights or interests in the Lending Agreements to a Qualifying Bank;
 - (ii) the grant by a Lender to a Qualifying Bank of any rights of participation in respect of the Lending Agreements; or
 - (iii) the disposition or grant by a Lender to a Qualifying Bank of any other form of benefit or interest in either the Lending Agreements or the revenues or assets of Project Co, whether by way of security or otherwise.
- (f) **“Qualifying Refinancing”** means any Refinancing that will give rise to a Refinancing Gain that is not an Exempt Refinancing.
- (g) **“Refinancing”** means:
- (i) any amendment, variation, novation, supplement or replacement of any Lending Agreement;
 - (ii) the exercise of any right, or the grant of any waiver or consent, under any Lending Agreement;
 - (iii) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Lending Agreements or the creation or granting of any other form of benefit or interest in either the Lending Agreements or the contracts, revenues or assets of Project Co whether by way of security or otherwise; or

- (iv) any other arrangement put in place by Project Co or another person which has an effect which is similar to any of the foregoing provisions of this definition above or which has the effect of limiting Project Co's ability to carry out any of the foregoing provisions of this definition.
- (h) **“Refinancing Financial Model”** means a comprehensive and detailed financial model satisfactory to UOHI, acting reasonably, prepared for the purpose of Section 2 of this Schedule 28, which financial model shall be similar in form and content to the Financial Model, suitable for the purposes for which it will be used in this Schedule 28, and shall take into account:
- (i) cash flows for the entire remaining Project Term;
 - (ii) any changes in structure and funding since the date of this Project Agreement;
 - (iii) the performance of the Works to the date of the Refinancing;
 - (iv) macroeconomic assumptions; and
 - (v) all other relevant factors.
- (i) **“Refinancing Gain”** means an amount equal to the greater of zero and $(A - B)$, where:
- A = the sum of the Senior Debt Amount and Junior Debt Amount as projected to be outstanding at Substantial Completion immediately prior to the Refinancing (using the Refinancing Financial Model but without taking into account the effect of the Refinancing).
- B = the sum of the Senior Debt Amount and Junior Debt Amount as projected to be outstanding at Substantial Completion immediately prior to the Refinancing (using the Refinancing Financial Model and taking into account the effect of the Refinancing).
- (j) **“Rescue Refinancing”** means any Refinancing which takes place due to the failure or prospective failure of Project Co to comply with any material financial obligation under the Lending Agreements, or any of them, which does not increase any liability of UOHI, whether actual or potential.
- (k) **“Senior Debt Amount”** means, at any time, the then outstanding principal amount of debt funded under the terms of the Lending Agreements by the Senior Lenders to Project Co, together with all interest accrued thereon at that time, provided that at any time where any portion of the interest payable to the Senior Lenders is subject to the Hedging Agreement(s), accrued interest in respect of

such portion of the interest payable to the Senior Lenders shall be calculated based on the fixed rate payable by Project Co under the Hedging Agreement(s) without regard to whether such fixed rate is payable directly to a Senior Lender or to the Hedge Provider(s) under the Hedging Agreement(s) and all references to interest payable to the Senior Lenders under this Project Agreement shall be construed accordingly. For greater certainty, the Senior Debt Amount excludes the Senior Debt Makewhole.

- (1) “**Senior Debt Makewhole**” means, (i) at any time, any amount (other than the Senior Debt Amount) then due and payable to the Senior Lenders under the Lending Agreements with respect to the Senior Debt Amount, including any “make whole” payments, breakage costs (less any breakage benefits) and all other fees, costs and expenses reasonably and properly incurred which Project Co is obligated to pay to the Senior Lenders pursuant to the Lending Agreements with respect to the Senior Debt Amount; and (ii) any swap breakage costs (less breakage benefits), if any, then due and payable to the Hedge Provider(s) under the Hedging Agreement(s) entered into with respect to the Senior Debt Amount.

2. REFINANCING

2.1 Project Co shall not carry out:

- (a) any Qualifying Refinancing unless Project Co has obtained the prior written consent of UOHI, which consent, subject to Section 2.2, shall not be unreasonably withheld or delayed; or
- (b) any Exempt Refinancing or any other Refinancing which does not result in a Refinancing Gain unless Project Co has delivered notice of such Refinancing to UOHI before 5 Business Days of such Refinancing, except that such notice shall not be required for a disposition by a Lender of its rights or participation in the Lending Agreements where such disposition is a trade of bonds issued as provided under a book-based system of a depository or pursuant to a trust indenture that comprises a portion of the Financing.

2.2 UOHI may withhold its consent to any Qualifying Refinancing, in its sole discretion:

- (a) where any person with whom Project Co proposes to carry out a Qualifying Refinancing is a Restricted Person;
- (b) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will materially adversely affect the ability of Project Co to perform its obligations under the Project Documents or this Project Agreement;
or

- (c) if, at the time the Qualifying Refinancing is contemplated and effected, the Qualifying Refinancing will have the effect of increasing any liability of UOHI, whether actual or contingent, present or future, known or unknown.

2.3 UOHI shall be entitled to receive:

- (a) a [REDACTED]% share of any Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of \$[REDACTED];
- (b) a [REDACTED]% share of any further Refinancing Gain arising from a Qualifying Refinancing, in respect of any Refinancing Gain in excess of \$[REDACTED] and up to (when considered in aggregate with all previous Qualifying Refinancings) a Refinancing Gain of \$[REDACTED]; and
- (c) a [REDACTED]% share of any further Refinancing Gain arising from a Qualifying Refinancing.

2.4 Project Co shall promptly provide UOHI with full details of any proposed Qualifying Refinancing, including a copy of the proposed Refinancing Financial Model and the basis for the assumptions used in the proposed Refinancing Financial Model. UOHI shall (before, during and at any time after any Refinancing) have unrestricted rights of audit over the Refinancing Financial Model and any documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with such Refinancing (whether or not such Refinancing is determined to be a Qualifying Refinancing). Project Co shall promptly, and, in any event, within 5 Business Days of receiving a written request from UOHI, provide any information in relation to a proposed Refinancing as UOHI may reasonably require. Project Co shall keep UOHI informed as to any changes to the terms of the Refinancing. Both UOHI and Project Co shall at all times act in good faith with respect to any Refinancing.

2.5 UOHI's share of the Refinancing Gain shall be received as a reduction in the amount of the Interim Completion Payment and the Substantial Completion Payment.

2.6 UOHI and Project Co will negotiate in good faith to agree upon the basis and method of calculation of the Refinancing Gain. If the Parties fail to agree upon the basis and method of calculation of the Refinancing Gain or the payment of UOHI's share, the dispute shall be determined in accordance with Schedule 14 - Dispute Resolution Procedure. Both UOHI and Project Co shall work collaboratively to establish the rate setting process required to complete the Qualifying Refinancing.

2.7 The Refinancing Gain shall be calculated after taking into account the reasonable out-of-pocket costs that each Party directly incurs in relation to the Qualifying Refinancing and

on the basis that, within 15 Business Days of any Qualifying Refinancing, Project Co will reimburse UOHI for all such reasonable out-of-pocket costs incurred by UOHI.