

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE RECEIVERSHIP OF
2423402 ONTARIO INC.**

BETWEEN:

BANK OF MONTREAL

Applicant

- and -

2423402 ONTARIO INC.

Respondent

**MOTION RECORD
(Bond Compliance and Determination of Issues)**

VOLUME II OF II

May 6, 2019

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Montreal, in its capacity as Administrative
Agent under the Credit Agreement

TO: THE SERVICE LIST

**ONTARIO
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- B. Exhibit "B" – Appointment Order, December 6, 2018
- C. Exhibit "C" – Performance Bond No. 6342957
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| X. | Exhibit “X” – E-mail from Heather L. Meredith to Mario Forte et al., dated March 20, 2019 |
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| Z. | Exhibit “Z” – Letter from Heather L. Meredith to Brendan Bissell, dated April 4, 2019 |
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| CC. | Exhibit “CC” – Letter from Brendan Bissell to Heather L. Meredith et al., dated April 26, 2019 |
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| EE. | Exhibit “EE” – Letter from Aryo Shalviri to Construction Contractor, dated May 1, 2019 |
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Tab F

This is **Exhibit "F"** referred to in the
affidavit of **EDEN ORBACH**
sworn before me this
6th day of May, 2019

A handwritten signature in blue ink, consisting of several fluid, overlapping strokes, positioned above a horizontal line.

A Commissioner for taking affidavits

CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT is made as of the 28th day of August, 2014

BETWEEN:

2423402 ONTARIO INC., a corporation incorporated under the laws of the Province of Ontario

("Project Co")

- and -

BONDFIELD CONSTRUCTION COMPANY LIMITED

("Contractor")

WHEREAS:

A. Pursuant to a Project Agreement dated as of the 28th day of August, 2014 between Project Co and CMH (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 perform the Construction Work.

B. Project Co and Contractor have entered into a contractor support agreement dated as of the date hereof (the "Contractor Support Agreement")

C. Pursuant to the Project Agreement, Project Co has agreed to enter into this Construction Contract with Contractor, pursuant to which Contractor has agreed to perform the Construction Work.

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) Unless otherwise defined herein, all capitalized terms in this Construction Contract shall have the meanings ascribed to them in Schedule 1 – Definitions and Interpretation, of this Construction Contract.
- (b) This Construction Contract is comprised of this executed agreement and the following documents, all of which are hereby incorporated by reference into and form part of this Construction Contract:

<u>Schedule No.</u>	<u>Description</u>
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<u>Schedule No.</u>	<u>Description</u>
Appendix A	General Conditions of the Construction Contract
Schedule 1	Definitions and Interpretation
Schedule 2	List of Consultants, Drawings and Specifications
Schedule 3	[INTENTIONALLY DELETED]
Schedule 4	[INTENTIONALLY DELETED]
Schedule 5	[INTENTIONALLY DELETED]
Schedule 6	[INTENTIONALLY DELETED]
Schedule 7	Key Personnel
Schedule 8	[INTENTIONALLY DELETED]
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	[INTENTIONALLY DELETED]
Schedule 18	[INTENTIONALLY DELETED]
Schedule 19	List of Contractor Parties
Schedule 20	Form of Assignable Subcontract Agreement
Schedule 21	Communications Protocol
Schedule 22	[INTENTIONALLY DELETED]
Schedule 23	[INTENTIONALLY DELETED]
Schedule 24	[INTENTIONALLY DELETED]
Schedule 25	Legal Description of the Lands

2. CONSTRUCTION WORK AND OTHER OBLIGATIONS

2.1 Construction Work

- (a) Subject to Article 1 and the provisions of this Construction Contract, Contractor shall perform all of the Construction Work in compliance with this Construction Contract and in such a manner so as not to cause Project Co to be in breach of its obligations to CMH pursuant to the Project Agreement in respect of the Construction Work.
- (b) For greater certainty, Contractor shall not be obligated by this Construction Contract for any covenant, agreement, undertaking or obligation of Project Co related to the Financing or the Cost of the Financing, including any obligations of Project Co under Section 6.4(a) of the Project Agreement, each of which are hereby expressly excluded from the scope of this Construction Contract, provided that Contractor's obligations in respect of Liquidated Damages as set forth in the Contractor Support Agreement shall not be construed as any such covenant,

agreement, undertaking or obligation of Project Co related to the Financing or the Cost of the Financing.

- (c) At the request of Project Co, the Contractor, within such time as required by Project Co, shall provide Project Co with copies of any reports, plans, notices, or other documents or communications which the Contractor is required by the Construction Contract to provide to CMH, CMH's Project Manager, Consultant, Lender's Consultant or any other third party.

2.2 Other Obligations

Subject to Article 1 and the provisions of this Construction Contract (including, without limitation, Section 2.1(b) above), Contractor shall perform all of the obligations of the Contractor set out in this Construction Contract in compliance with this Construction Contract.

3. GUARANTEED PRICE AND ADJUSTMENTS

3.1 Guaranteed Price and Adjustments

- (a) The Guaranteed Price hereunder, excluding HST, shall be the Guaranteed Price under the Project Agreement less the Cost of the Financing as set out in Schedule 8 – Financial Model and Financial Information to the Project Agreement.
- (b) The Guaranteed Price hereunder will not be subject to adjustment despite changes in the Construction Work, unless such changes in the Construction Work constitute a Change in the Scope of the Construction Work. The parties further agree that the Guaranteed Price hereunder will only be adjusted where this Construction Contract specifically and expressly refers to an adjustment to the Guaranteed Price hereunder, and no claim for an adjustment to the Guaranteed Price hereunder on any legal or equitable basis outside of this specific and express right to an adjustment of the Guaranteed Price hereunder set out in this Construction Contract will be allowed. In order to be effective, any permitted adjustment to the Guaranteed Price hereunder must be provided for in a Change Order under Schedule 11 – Change Procedure of the Construction Contract.

3.2 Cash Allowance

- (a) The Guaranteed Price includes cash allowances as set out in the Specifications which shall be expended as Project Co directs through the Consultant by a Cash Allowance Disbursement Authorization.
- (b) Unless otherwise indicated, cash allowances cover the net cost to Contractor of services, Products, construction machinery and equipment, freight, unloading, handling, storage, installation, and other authorized expenses incurred in performing the Construction Work stipulated under the cash allowances but do not include any HST payable by Project Co to Contractor.

- (c) Purchases from cash allowances must be authorized by written instructions issued by the Consultant as directed by Project Co and the form and methods of accounting for costs shall be agreed to by Project Co, the Consultant and Contractor 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) Contractor Fee and not the cash allowances include Contractor'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, Contractor 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 Construction 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 Contractor 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 Construction Work are not delayed;
 - (v) any surpluses in a cash allowance may, at the election of Project Co, be used to fund other cash allowances or to fund Changes in the Scope of the Construction Work elsewhere in this Construction Contract, 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 Project Co.
- (e) Notwithstanding any other provision in the Construction Contract, Contractor shall not be entitled to an increase in the Guaranteed Price for an event that is set out in the description of a cash allowance in the Specifications unless and until the amount specified for the aggregate cash allowances (as such amount is set out in the Specifications) is exhausted.

4. PAYMENTS AND HOLDBACKS

4.1 Payments to the Contractor

All payments required to be made by Project Co to Contractor hereunder, including Base Progress Payments, Additional CMH Payments, the Certified Cost to Complete, the CMH Holdback and any Legislative Holdbacks with respect thereto shall be paid by Project Co to Contractor, together with applicable HST in accordance with this Article 4 and Article 4 of Appendix A – General Conditions of the Construction Contract.

4.2 HST

All payments to be made by Project Co to Contractor shall also include applicable HST.

4.3 No Other Entitlement

Contractor shall not be entitled to any payments or compensation under or in connection with this Construction Contract, except for payments made under Section 4.1 of this Construction Contract.

4.4 Applications for Payment

- (a) Applications for payment on account may be made monthly as the Construction Work progresses.
- (b) Project Co and Contractor agree that for the purpose of calculating payment hereunder and for the amount of any Legislative Holdback under the Construction Contract such determination shall be based only upon the Cost of the Construction Work.
- (c) Application for payment by Contractor shall be dated the last day of the agreed monthly payment period and the amount claimed shall be based on the value, proportionate to the Cost of the Construction Work, of the Construction Work performed forming part of the Cost of the Construction Work including Products delivered to the Site at that date. The application for payment shall also include and separately state the value of the Construction Work performed with respect to Change Orders or Change Directives the payment of which Project Co is responsible for and which are included within Additional CMH Payments. Applications for payment shall be made to the Consultant and to the Lender's Consultant at the same time. The Lender's Consultant shall be responsible for verifying the application for payment to the Lender.
- (d) Contractor shall submit to the Consultant and the Lender's Consultant, at least fourteen (14) days before the first application for payment, a schedule of values for the parts of the Construction Work so as to facilitate a valuation of applications for payment. The schedule of values shall be made out in such form, broken down in such detail and supported by such evidence as Project Co and the Consultant and the Lender's Consultant may reasonably direct and when accepted by the Consultant and the Lender's Consultant and Project Co, shall be used as the basis for applications for payment, unless it is found to be in error.

- (e) Claims for Products delivered to the Site but not yet incorporated into the Construction Work shall be supported by such evidence as the Consultant may reasonably require to establish the value and delivery of the Products.
- (f) Contractor shall submit to Project Co, the Consultant and the Lender's Consultant a statement based on the schedule of values, a Workplace Safety & Insurance Board Certificate of Clearance, the update of the Construction Schedule prepared in accordance with Section 12.1 of Appendix A - General Conditions of the Construction Contract and an updated cash flow with each application for payment.
- (g) With the second and all subsequent applications for payment, except the final payment and release of holdback applications, Contractor shall submit a Statutory Declaration on CCDC Form 9A.

4.5 Progress Payments

- (a) The Consultant will issue to Project Co, no later than ten (10) Business Days after the receipt of an application for payment from Contractor submitted in accordance with Section 4.4 of this Construction Contract, a certificate addressed to CMH of the progress of the Construction Work in relation to the schedule of values, a copy of which shall be provided to Project Co, Contractor and the Lender's Consultant. Contemporaneously, the Consultant will issue a certificate for payment to Project Co of Additional CMH Payments payable by Project Co with respect to the application for payment from Contractor 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 Contractor in writing giving reasons for the amendment. The Lender's Consultant will be responsible, no later than five (5) Business Days from receipt of the certificate of the progress of the Construction Work in relation to the schedule of values from the Consultant, for issuing certificates for payment to Lender and Contractor respecting Base Progress Payments. Project Co and the Consultant shall not be responsible for any delay in issuing a certificate for payment in respect of or for payment of Base Progress Payments on account of the activities of the Lender's Consultant and/or the Lender.
- (b) Payment to Contractor on account of Base Progress Payments and monthly progress payments with respect to Additional CMH Payments shall be made no later than ten (10) Business Days after the date of a certificate for payment issued by the Lender's Consultant or the Consultant, as the case may be.
- (c) Applications for progress payments will continue to be provided to the Lender's Consultant so long as any amount that has been held back by Project Co pursuant to the Construction Contract for the Construction Work completed prior to the Substantial Completion Date remains unpaid. Notwithstanding anything herein contained, during the pendency of a construction lien registered against the Site,

Project Co shall not be required to make any payment to Contractor in excess of the applicable amount released to Project Co under the Lending Agreements.

- (d) Notwithstanding the time periods provided regarding the approval and certification of payment by the Consultant or the Lender's Consultant in Section 4.5(a) of this Construction Contract and for payment in Section 4.5(b) of this Construction Contract, respectively, the total period of time between receipt of the application for payment by Contractor and payment by Project Co shall be no more than twenty-five (25) Business Days, except with respect to any amount held back from such payment by Project Co in accordance with the Construction Contract.

4.6 Construction Liens

- (a) Notwithstanding anything else in this Article 4, in the event a claim for a construction lien is registered against the Site arising from the performance of the Construction Work, and unless Contractor makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to Project Co, acting reasonably, or Project Co receives any written notice of lien arising from the performance of the Construction Work, Project Co shall be entitled to withhold such portion of any payment otherwise due to Contractor in an amount Project Co reasonably determines would be required to satisfy the applicable lien claimant and any costs and expenses incurred by Project Co in connection therewith, including such amount on account of costs of the lien claimant such that Project Co 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.
- (b) In the event that a written notice of a construction lien arising from the performance of the Construction Work is received by Project Co, and unless Contractor makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to CMH acting reasonably, Contractor shall, within ten (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).
- (c) If a construction lien arising from the performance of the Construction Work is registered against the Site, and unless Contractor makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to Project Co, acting reasonably, Contractor shall, within ten (10) Business Days, at its sole expense, vacate or discharge the lien from title to the Site. If the lien is merely vacated, Contractor shall, if requested, undertake Project Co's defence of any subsequent action commenced in respect of the lien at Contractor's expense.

- (d) If Contractor fails or refuses to vacate or discharge a construction lien or written notice of lien arising from the performance of the Construction Work within the time prescribed above, and unless Contractor makes alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith satisfactory to Project Co, acting reasonably, Project Co shall, at its option, be entitled to take all steps necessary to vacate and/or discharge the lien, and all costs incurred by Project Co 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 Contractor, and Project Co may deduct such amounts from the amounts otherwise due or owing to Contractor.
- (e) Without limiting any of the foregoing, Contractor shall satisfy all judgments and pay all costs resulting from any construction liens arising from the performance of the Construction Work or any actions brought in connection with any such liens, or in connection with any other claim or lawsuit brought against Project Co by any person that provided services or materials to the Site which constituted part of the Construction Work.
- (f) The provisions of Sections 4.6(a) through 4.6(e) inclusive, of this Construction Contract, do not apply to construction liens (i) filed by Contractor which are claimed as a result of any default of Project Co to make payments to Contractor in accordance with the terms of the Construction Contract or (ii) filed by any CMH Party, including for greater certainty CMH's own forces or CMH's other contractors, which are claimed as a result of work in relation to the Projects.

4.7 Payment of Holdback Upon Substantial Completion

- (a) After the issuance by the Consultant of the certificate of substantial performance of the Work under Section 16.2(c) of Appendix A - General Conditions of the Construction Contract and the certificate of Substantial Completion of the Work under Section 16.2(d) of Appendix A - General Conditions of the Construction Contract, Contractor shall:
 - (i) submit an application for payment of the holdback amount;
 - (ii) submit a written request for release of holdback including a declaration that no written notices of lien arising from the performance of the Construction Work have been received by it;
 - (iii) submit a Statutory Declaration CCDC 9A; and
 - (iv) submit an original Workplace Safety & Insurance Board Certificate of Clearance.
- (b) After the later of (i) the receipt of the documents set out in Section 4.7(a) of this Construction Contract, and (ii) the expiration of a period of forty-five (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 holdback amount.

- (c) Prior to the date of the release of the holdback, Contractor 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.
- (d) Subject to the provisions of Section 4.6 of this Construction Contract and the removal of claims for lien preserved or perfected pursuant to the *Construction Lien Act* (Ontario) arising from the performance of the Construction Work, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable on the second Business Day following the receipt of the certificate for payment of the holdback amount pursuant to Section 4.7(b) of this Construction Contract.

4.8 Completion

- (a) Contractor shall provide As-Built Drawings and Specifications, Record Documents, spare parts and shop drawings in accordance with Appendix A – General Conditions of the Construction Contract and in any event within thirty (30) days of the Substantial Completion Date.
- (b) Save and except with Project Co's prior written approval, Contractor shall complete all deficient Interim Work and assign and provide all of the Interim Deliverables that remain outstanding no later than one hundred and twenty (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 one hundred and twenty (120) days from the date when Substantial Completion of the Work is certified, unless the reasons for any delay are acceptable to Project Co or the delay is caused by Project Co.

4.9 Final Payment

- (a) When Contractor considers that the Construction Work is completed, Contractor shall submit an application for final payment. Contractor's application for final payment and release of finishing construction lien holdback, shall include the following documentation:
 - (i) Contractor's written request for release of holdback, including a declaration that no written notices of lien arising from the performance of the Construction Work have been received by it;
 - (ii) Contractor's Statutory Declaration CCDC 9A;
 - (iii) Contractor's Workplace Safety and Insurance Board Certificate of Clearance; and

- (iv) a written statement that the Construction Work has been performed to the requirements of the Contract Documents, itemizing approved changes in the Construction Work, the Consultant's written instructions, and modifications required by Governmental Authorities.
- (b) The Consultant will, no later than ten (10) days after the receipt of an application from Contractor for final payment, complete its review of the Construction Work to verify the validity of the application, and no later than the third Business Day after completing the review, will notify Contractor whether the application is valid or give reasons why it is not valid.
- (c) When the Consultant finds Contractor's application for final payment valid, the Consultant will issue a final certificate for payment.
- (d) Subject to the other requirements of this Construction Contract, the unpaid balance of the Guaranteed Price hereunder shall become payable to Contractor on the later of:
 - (i) the second Business Day following the expiration of all liens pursuant to the *Construction Lien Act* (Ontario); and
 - (ii) the second Business Day following the issuance of the Consultant's final certificate for payment,

subject to Project Co's right under the Construction Contract to withhold payment from the unpaid balance of the Guaranteed Price hereunder including for any amounts required pursuant to Section 4.10 of this Construction Contract, and any sums required to satisfy any lien or trust claims arising from the Construction Work.

4.10 Withholding of Payment

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

4.11 Non-Conforming Works

- (a) No payment by Project Co under the Construction Contract nor partial or entire use or occupancy of the Construction Work by Project Co shall constitute an acceptance of any portion of the Construction Work or Products which are not in accordance with the requirements of the Construction Contract, including the Drawings and Specifications.

5. CHANGES

The Construction Work, Guaranteed Price hereunder, the Scheduled Interim Completion Date and the Scheduled Substantial Completion Date, as such terms are applied and interpreted for the purposes of this Construction Contract, are subject to change, adjustment or variation only in accordance with the provisions of the Project Agreement and the Construction Contract, as applicable. For greater certainty, Contractor shall not be entitled to any adjustment or variation to the Construction Work, the Guaranteed Price hereunder, the Scheduled Interim Completion Date or the Scheduled Substantial Completion Date except if and to the extent allowed to Project Co pursuant to the provisions of the Project Agreement and of the Construction Contract, as applicable.

6. CONSULTANT

The Contractor acknowledges the appointment and role of the Consultant pursuant to the Project Agreement and agrees to be bound by the decisions, directions and instructions of the Consultant pursuant to those provisions of the Project Agreement and the Construction Contract incorporated herein, as such decisions, directions and instructions apply to the performance of the Construction Work by Contractor.

7. CROSS DEFAULT

A Project Co Construction Event of Default shall constitute a default by Contractor under the Construction Contract, provided that, for greater certainty, if the Contractor has received a copy of the notice of default provided to Project Co in accordance with Article 10 of this Construction Contract, Contractor shall not be entitled to any notice of or time period to remedy such Project Co Construction Event of Default.

8. LIMITS ON LIABILITY

8.1 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 Construction Contract shall not apply and there shall be no right to claim damages for breach of this Construction Contract, 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, CMH'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 Construction Contract,

(collectively, "**Indirect Losses**").

8.2 Maximum Liability

(a) Subject to and save and except in respect of:

(i) any claims of Project Co against Contractor:

- (1) for the cost to perform and complete the Construction Work in accordance with the Contract Documents, including the reasonable and proper costs of Project Co incurred in carrying out any re-tendering of the Construction Work or any applicable portion thereof;
- (2) for the costs that may arise under Sections 8.2 and 8.3 to correct defects, deficiencies or non-compliant items in the Construction Work;
- (3) for the costs that may arise in the circumstances of Section 26.1(a)(i) of Appendix A – General Conditions of the Construction Contract; or
- (4) to recover from Contractor payment of any amount that would have been payable to Project Co under policies of insurance described under Schedule 13 but for the breach by Contractor under any such policies, which breach relieved the insurer of its obligation to pay CMH or Project Co under such policies;

(ii) any claims of Contractor against Project Co for the payment of the Guaranteed Price (including Additional Project Co Payments), or any Compensation Payment;

(iii) any claims by either Party against the other for:

- (1) damages for fraud, material misrepresentation, wilful misconduct or deliberate acts of wrongdoing;
- (2) costs arising from each Party's obligations under Article 14 and corresponding indemnities in Sections 33.1(a)(viii) of Appendix A – General Conditions of the Construction Contract and 33.2(a)(iv) of Appendix A – General Conditions of the Construction Contract, respectively; or

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

but notwithstanding any other provision of this Construction Contract, 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 Construction Contract (including, for clarity, in respect of a Contractor Delay or any indemnity provided by either Party under this Construction Contract), shall not be greater than a total cumulative liability of \$10,000,000. 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 Contractor in accordance with Schedule 13 – Insurance and Performance Security. For greater certainty, nothing herein is intended to limit the rights of Project Co in respect of any Security required to be provided by Contractor under Schedule 13 – Insurance and Performance Security and nothing herein shall limit either Project Co's or Contractor'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 8.2(b) below.

- (b) Contractor acknowledges that the aggregate liability of the Consultant in all claims arising under or in respect of this Construction Contract and the Project Agreement shall be limited to the amount of the errors and omissions insurance coverage available to the Consultant in respect of such claim. Project Co covenants with Contractor to require CMH to cause errors and omissions insurance to be in place covering the Consultant with indemnity limits of not less than \$10,000,000. For greater certainty, Contractor 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 8.2(b) and that the Consultant shall be entitled to plead this Section 8.2(b) in its defence to any action brought by Contractor and Contractor waives any defence to such pleading by the Consultant. Contractor further acknowledges that Project Co is contracting in this respect as agent for the Consultant.

9. BONDS

- (a) Contractor shall obtain and deliver to Project Co the Bonds on or before the Financial Close Target Date and shall provide satisfactory evidence with respect thereto to Project Co on or before the Financial Close Target Date. Each Bond shall be properly executed by a Surety or by an agent or an attorney in fact for the Surety, in which latter case, Contractor is required to submit with such Bond a power of attorney to the signatory agent or the attorney in fact executed by the

Surety in a form satisfactory to Project Co to evidence the authority of the agent or attorney in fact.

- (b) 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 fulfilment of the Project Agreement.
- (c) 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 Article 9 of the Appendix A – General Conditions of the Construction Contract and that the Surety may rely upon and enforce the provisions of this Article 9 of the Appendix A – General Conditions of the Construction Contract.

10. GENERAL

10.1 Notices to Parties

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

If to Contractor:

407 Basaltic Road
Concord, Ontario L4K 4W8

Fax No.: 416-667-8462
Attn.: John Aquino

If to Project Co:

407 Basaltic Road
Concord, Ontario L4K 4W8

Fax No.: 416-667-8462
Attn.: John Aquino

10.2 Notice to Consultant

In addition to the notice requirements set out in Section 10.1, 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:

Stantec Architecture Ltd., Architects
401 Wellington Street West, Suite 100

Toronto, ON M5V 1E7

Attention: Diego Morettin
Facsimile No.: 416-596-7892

10.3 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 10.3.

10.4 Change of Address

Either Party to this Construction Contract may, from time to time, change any of its contact information set forth in Section 10.1 or 10.2 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.

10.5 Deemed Receipt of Notices

- (a) Subject to Sections 10.5(b), 10.5(c) and 10.5(d):
 - (i) a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing;
 - (ii) a Notice given by hand delivery shall be deemed to have been received on the day it is delivered; and
 - (iii) a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.
- (b) If the Party giving the Notice knows or ought reasonably to know of difficulties with the postal system which might affect negatively the delivery of mail, any such Notice shall not be mailed but shall be made or given by personal delivery or by facsimile transmission in accordance with this Section 10.
- (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 4:00:00 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.

10.6 Amendments

- (a) This Construction Contract 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 Construction Contract.

10.7 Waiver

- (a) No waiver made or given by a Party under or in connection with this Construction Contract shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Parties. No waiver made with respect to any 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.

10.8 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 Construction Contract is not intended to and does not create or establish between the Parties, or between any of Project, any Contractor Party, CMH and the Province, including Infrastructure Ontario, any relationship as partners, joint venturers, employer and employee, master and servant, or (except as provided in this Construction Contract), of principal and agent, and does not create or establish any relationship whatsoever between Project Co, CMH, the Province, including Infrastructure Ontario, and any representative or employee of Contractor or the Contractor Parties.
- (b) The Parties further agree that:
 - (i) except as expressly provided in this Construction Contract, 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 Construction Contract, 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 Construction Contract; and
- (iv) any person which a Party may engage as an agent, employee, subcontractor or otherwise, to perform such Party's obligations under this Construction Contract, 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.

10.9 General Duty to Mitigate

- (a) Project Co and Contractor 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 Construction Contract.

10.10 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 Contractor shall, for all purposes of this Construction Contract, 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.

10.11 Entire Agreement

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

10.12 No Reliance

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

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

- (ii) this Section 10.12 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Construction Contract which was induced by fraud, for which the remedies available shall be all those available under Applicable Law.

10.13 Severability

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

10.14 Enurement

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

10.15 Governing Law and Jurisdiction

- (a) This Construction Contract, and each of the documents contemplated by or delivered under or in connection with this Construction Contract, 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.

10.16 Cumulative Remedies

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

10.17 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 Construction Contract.

10.18 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 Construction Contract.

10.19 Language of Agreement

- (a) Each of the Parties acknowledges having requested and being satisfied that this Construction Contract 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 Construction Contract shall be in English.

10.20 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 Construction Contract or any of the Implementing Agreements on its behalf, has the requisite authority to execute this Construction Contract or such Implementing Agreements on its behalf.

10.21 Counterparts

- (a) This Construction Contract may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties shall constitute a full, original and binding agreement for all purposes. Counterparts may be executed either in original 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 Construction Contract which was so faxed.

10.22 Time is of the Essence

- (a) Time is of the essence in this Construction Contract.

11. CONTRACT CANCELLATION FEE

Contractor acknowledges and agrees that there will be no cost associated with the cancellation of this Construction Contract for the purposes of the calculation of the Default Termination Payment and the Non-Default Termination Sum under the provisions of Schedule 12 – Compensation on Termination, of the Construction Contract, other than cancellation charges and other costs associated with the termination of any commitments relating to the Construction Work under this Construction Contract that Contractor makes, enters into or incurs in respect of any such work and that are otherwise payable pursuant to the provisions of Schedule 12 – Compensation on Termination, of the Construction Contract.

12. NOT USED

13. LIQUIDATED DAMAGES

The Parties acknowledge that Liquidated Damages (as defined in the Contractor Support Agreement) may be due under the contractor support agreement dated as of the date hereof (the “**Contractor Support Agreement**”) between the Contractor and Project Co. If such Liquidated Damages are not timely paid by Contractor in accordance with the requirements of the Contractor Support Agreement, such failure to pay shall be an event of default under this Construction Contract.

14. PROJECT AGREEMENT

- (a) Where Project Co has the right to exercise any discretion, grant or refuse to grant an approval, accept or refuse to accept a request or submission, make any determination or confirm its satisfaction under this Construction Contract in respect of any matter in respect of which CMH has a corresponding right to exercise any discretion, grant or refuse to grant an approval, accept or refuse to accept a request or submission, make any determination or confirm its satisfaction pursuant to the terms of the Project Agreement in respect of the same or substantially the same or similar matter, and CMH has exercised its rights in a particular manner. If Project Co exercises its discretion, grants or refuses to grant an approval, accepts or refuses to accept a request or submission or makes the relevant determination in a manner that is consistent with the discretion exercised, approval granted or refused, request or submission accepted or refused or determination made or level of satisfaction confirmed by CMH under the Project Agreement, the Contractor will be bound by, conform with and observe such exercise of discretion, grant or refusal of approval, acceptance or refusal of a request or submission, or determination.
- (b) Notwithstanding any other provision in the Contract Documents, the Contractor acknowledges and agrees as follows:

- (i) the Contractor is bound by the rulings and decisions of the Consultant and the outcome of any dispute resolution proceedings between Project Co and CMH, in respect of the Project Agreement, to the extent and in the manner that Project Co is bound; and
- (ii) the Contractor is not entitled to greater rights, entitlements or relief (including any indemnification, compensation, damages or other payment of any kind or any extension of time) against Project Co under the Construction Contract than Project Co actually obtains from CMH in respect of the Project Agreement. Without limiting the generality of the foregoing:
 - a) the liability of Project Co under Section 33.2(a)(iii) and Section 33.2(a)(iv) of Appendix A – General Conditions of the Construction Contract is not greater than the liability of CMH to Project Co under Section 33.2(a)(iii) and Section 33.2(a)(iv) of the Project Agreement, as the case may be;
 - b) the Contractor shall not be entitled to an extension in the Contract Time, except if, when and to the extent allowed to Project Co pursuant to the Project Agreement;
 - c) the Contractor shall not be entitled to an increase in the Guaranteed Price or additional compensation except if and to the extent allowed to Project Co pursuant to the provisions of the Project Agreement; and
 - d) the Contractor shall not be entitled to an increase in the Guaranteed Price or additional compensation except if, when and to the extent allowed to Project Co pursuant to the provisions of the Project Agreement; and
 - e) the Contractor shall not be entitled to any compensation payable to Project Co under the Project Agreement, specifically in respect of (i) the Debt Service Amount (as defined in the Project Agreement) or any other obligation of Project Co under the Lending Agreements, and (ii) any specific loss, cost or expense incurred by Project Co to which the relevant compensation expressly relates and which is not included any amount claimed by the Contractor.

- (iii) All rights and claims of the Contractor are limited to the rights and claims Project Co can enforce against CMH in respect of the Project Agreement. Every other claim against Project Co to the extent it exceeds the recovery from CMH is hereby waived and released.

15. ENFORCEMENT OF PARALLEL ISSUES

- (a) Project Co will use commercially reasonable efforts to preserve, protect and pursue under the Project Agreement such rights, remedies and relief as may relate to the Construction Work or Contractor's rights or obligations hereunder, including any claim for relief pursuant to Section 14 hereof (a "**Parallel Issue**") in order to secure a favourable resolution of the Parallel Issue, provided that:
 - (i) Project Co has received written notice from Contractor of the Parallel Issue;
 - (ii) Contractor shall not be entitled to recover from Project Co any Direct Losses or claims arising out of or in connection with Project Co pursuing resolution of a Parallel Issue on Contractor's behalf, except to the extent that Project recovers from such Direct Losses or claims from CMH under the Project Agreement;
 - (iii) Contractor shall indemnify Project Co in respect of any Direct Losses arising out of or in connection with Project Co pursuing resolution of a Parallel Issue on Contractor's behalf, including reimbursing Project Co for any deduction from, reduction of or exercise of set-off, compensation or similar right against any amount payable by CMH associated therewith;
- (b) Project Co shall, at the reasonable request of Contractor, pursue the rights, remedies and relief under the Project Agreement described in Section 15(a) of this Construction Contract on behalf of Contractor in accordance with the reasonable direction of Contractor at Contractor's cost and expense, or, alternatively, Project Co may consent to Contractor pursuing such rights, remedies and relief in the name of Project Co at Contractor's cost and expense, in either case to the extent that the relevant rights, remedies or relief relate to the Construction Work, the or Contractor's rights and obligations hereunder. For greater certainty, Project Co shall not be obligated to act in accordance with Contractor's instructions or allow Contractor to pursue claims in Project Co's name to the extent that the relevant rights, relief and remedies relate to rights or obligations of Project Co or any Project Co Party (other than Contractor and any Contractor Parties) in respect of Project related matters other than the Construction Work, the Construction or Contractor's rights hereunder.
- (c) Project Co shall not enter into any compromise or settlement of a Parallel Issue with CMH which affects in any material respect the Construction Work, the Contractor's rights, obligations, remedies or relief hereunder without first

obtaining the prior written consent of Contractor, such consent not to be unreasonably withheld or delayed.

- (d) Where Project Co pursues a Parallel Issue in accordance with this Section 15 Contractor shall be kept informed of Project Co's progress under this Section 15 and shall be given the opportunity to comment on all submissions (written or oral) which are to be put forward by Project Co in accordance with this Section 15.
- (e) If Project Co does not, after having been given written notice in accordance with Section 15(a), take steps to pursue such Parallel Issue within fourteen (14) Business Days or prior to that date being five (5) Business Days prior to the expiry or other extinguishment of Project Co's right to pursue such Parallel Issue, Contractor may, in the name of and on behalf of Project Co, pursue such Parallel Issue itself subject to this Section 15, at its sole cost and expense, and Project Co will (at the sole cost and expense of Contractor) use reasonable efforts to provide assistance, including providing documents, data and information, as Contractor may reasonably request in connection with the pursuit of such Parallel Issue by Contractor.
- (f) Contractor shall at its own cost and within the time frame contemplated by any relevant dispute resolution procedure or reasonably set by Project Co use commercially reasonable efforts to provide assistance, including providing documents, data and information, as Project Co may reasonably request in connection with any dispute or negotiations arising under this Construction Contract.
- (g) Any claims in respect of a Parallel Issue and any recoveries obtained by Project Co or Contractor in respect of any Parallel Issue under the Project Agreement shall be subject to the provisions of this Section 15 in respect of relief under Section 14 hereof.
- (h) If CMH asserts a claim against Project Co which relates to the obligations of the Contractor hereunder, Project Co will, at Contractor's cost, defend the claim in accordance with the reasonable instructions of Contractor and Contractor will provide assistance to Project Co in defending that claim. Project Co may, on terms of mutually agreed between the Parties permit Contractor to challenge or defend a CMH claim directly. As required by Project Co, Contractor will work cooperatively with Project Co in a defense of a CMH claim.

[SIGNATURE PAGES IMMEDIATELY TO FOLLOW]

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

2423402 ONTARIO INC.

Per: _____

Name: John Aquino
Title: President

Per: _____

Name:
Title:

I/We have authority to bind the corporation

**BONDFIELD CONSTRUCTION COMPANY
LIMITED**

Per: _____

Name: John Aquino
Title: Vice-President

Per: _____

Name:
Title:

I/We have authority to bind the corporation

APPENDIX A

**GENERAL CONDITIONS OF THE
CONSTRUCTION CONTRACT**

**THE CAMBRIDGE MEMORIAL HOSPITAL
REDEVELOPMENT PROJECT**

PROPRIETARY AND CONFIDENTIAL

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APPENDIX "A"

GENERAL CONDITIONS TO THE CONSTRUCTION CONTRACT

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions and Interpretation

- (a) The Construction Contract shall be interpreted in accordance with Schedule 1 – Definitions and Interpretation.
- (b) The intent of the Contract Documents is to include the labour, Products and services necessary for the performance of the Construction Work by Contractor in accordance with these documents.
- (c) 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.
- (d) Unless it is specifically provided that a consent, approval or satisfaction is in the Sole Discretion of Project Co, no consent, approval or satisfaction of Project Co or the 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 Project Co, it may be given or withheld in the sole, absolute and unfettered discretion of Project Co, which may be arbitrarily exercised without any requirement to provide reasons or explanations, whatsoever (“**Sole Discretion**”).
- (e) Unless it is specifically provided that a consent, approval or satisfaction is in the Sole Discretion of Contractor, no consent, approval or satisfaction of Contractor shall be unreasonably withheld or delayed.
- (f) Neither the organization of the Specifications into divisions, sections and parts, nor the arrangement of Drawings shall control Contractor in dividing the Construction Work among the Contractor Parties or in establishing the extent of the Construction 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 the Construction Contract 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 the Construction Contract signed by the Parties and Change Orders shall govern and take precedence only over those specific provisions of the Construction Contract 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 the Construction Contract;
 - (iv) Appendix A – General Conditions of the Construction Contract;
 - (v) the Schedules to this Construction Contract;
 - (vi) the Addenda;
 - (vii) Division 1 of the Specifications;
 - (viii) Divisions 2 through 33 of the Specifications;
 - (ix) material and finishing schedules;
 - (x) Drawings;
 - (xi) drawings of larger scale shall govern over those of smaller scale of the same date;
 - (xii) dimensions shown on drawings shall govern over dimensions scaled from drawings;
 - (xiii) later dated documents shall govern over earlier documents of the same type;
 - (xiv) if an item is shown on one document, it shall be deemed to be part of the Construction Work; and
 - (xv) 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 Construction Work, the provision that applies to the specific part of the Construction Work shall govern for that specific part of the Construction Work.
- (c) If any ambiguity, conflict or inconsistency is not readily resolved by the foregoing provisions of this Section 1.2, then Contractor or Project Co, 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) Project Co and Contractor shall comply with the determination of the Consultant pursuant to this Section 1.2 unless Project Co and Contractor 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 Not Used.

1.4 Legal Requirements

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

2. NOT USED

3. NOT USED

4. PAYMENT

4.1 General

- (a) Subject to the provisions of the Contract Documents, Section 3.1(b) of the body of the Construction Contract and in accordance with and subject to Applicable Law respecting holdbacks, Project Co shall make the payments set out in this Article 4 and as also provided for in Article 4 of the body of the Construction Contract.
- (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 Not Used.

4.3 Not Used.

4.4 Not Used.

4.5 Payment of Legislative Holdback and Balance of the Guaranteed Price

- (a) Subject to Section 4.9 and Article 4 of the body of the Construction Contract, Project Co covenants and agrees with Contractor to pay to Contractor the Legislative Holdback on the date provided for in Section 4.7(d) of the body of the Construction Contract and to pay to Contractor the unpaid balance of the Guaranteed Price on the date provided for in Section 4.9(d) of the body of the Construction Contract, or as otherwise directed by Contractor and shall not accept

any redirection without the consent of the person to whom payment is directed. Project Co agrees to pay the Legislative Holdback and the balance of the Guaranteed Price as Contractor may direct in accordance with any such direction. Contractor acknowledges and agrees that payment by Project Co of the Legislative Holdback and the balance of the Guaranteed Price in accordance with this Section 4.5(a) as Contractor may direct, constitutes payment by Project Co to Contractor in satisfaction of Project Co's obligation to pay the Legislative Holdback and the balance of the Guaranteed Price to Contractor under the Construction Contract and in satisfaction of any trust obligation of Project Co 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 Project Co Holdback

- (a) The Project Co Holdback may be reduced from time to time as a result of such actions by Contractor, as confirmed by the Consultant, in accordance with the terms and conditions of the Construction Contract. To the extent the Project Co Holdback is reduced from time to time, Contractor hereby irrevocably directs Project to pay the amount of any Project Co Holdback reduction to the Agent or as the Agent may direct. Project Co agrees to pay the Project Co Holdback reductions as directed by Contractor and shall not accept any redirection without the consent of the Agent. Contractor acknowledges and agrees that payment by Project Co of the Project Co Holdback reductions in accordance with this Section 4.6(a) as Contractor may direct constitutes payment by Project Co to Contractor in satisfaction of Project Co's obligation to pay the Project Co Holdback reductions to Contractor under the Construction Contract and in satisfaction of any trust obligation of Project Co 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 Project Co Payments

- (a) Unless otherwise provided in the relevant Change Order or Change Directive or in the Construction Contract, Project Co will pay all Additional Project Co Payments to Contractor on a progress payment basis in the manner and at the times as provided for in the Construction Contract, or as otherwise directed by Contractor and shall not accept any redirection without the consent of the person to whom payment is directed. Project Co agrees to pay the Additional Project Co Payments as Contractor may direct in accordance with any such direction. Contractor acknowledges and agrees that payment by Project Co of the Additional Project Co Payments in accordance with this Section 4.7(a) as Contractor may direct, constitutes payment by Project Co to Contractor in satisfaction of Project Co's obligation to pay the Additional Project Co Payments to Contractor under the Construction Contract and in satisfaction of any trust obligation of Project Co 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 Project Co has paid the Substantial Completion Payment, it shall thereafter continue to be responsible for payment to Contractor 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 the Construction Contract. Contractor hereby irrevocably directs Project Co to make any payment of the Certified Cost to Complete to Agent or as Agent may direct. Project Co shall pay the Certified Cost to Complete as directed by Agent and shall not accept any redirection without the consent of Agent. Project Co agrees to pay the Certified Cost to Complete as directed by Contractor. Contractor acknowledges and agrees that payment by Project Co of the Certified Cost to Complete in accordance with this Section 4.8(a) as Contractor may direct constitutes payment by Project Co to Contractor in satisfaction of Project Co's obligation to pay the Certified Cost to Complete under the Construction Contract and in satisfaction of any trust obligation of Project Co 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 the Construction Contract is terminated pursuant to Sections 26.3(a)(i), 27.2(a)(ii), 28.3(a) or 28.4(a) of this Appendix A – General Conditions of the Construction Contract, then:
 - (i) Project Co shall pay the Compensation Payment to Contractor, calculated and payable in accordance with Schedule 12 – Compensation on Termination; and
 - (ii) the provisions of Sections 4.5 through 4.7, above, and Article 4 of the body of the Construction Contract, shall no longer apply.
- (b) Project Co shall pay the Compensation Payment as directed by Agent and shall not accept any redirection without the consent of Agent. Project Co will pay the Compensation Payment in accordance with the provisions of Schedule 12 – Compensation on Termination. Contractor acknowledges and agrees that payment by Project Co of the Compensation Payment to Agent in accordance with this Section 4.9 constitutes payment by Project Co to Contractor in satisfaction of Project Co's obligation to pay the Compensation Payment to Contractor under the Construction Contract and in satisfaction of any trust obligation of Project Co 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) Contractor acknowledges that 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 Not Used.**4.12 Not Used.****4.13 Set-Off**

- (a) The Parties agree that their rights of set-off at law or in equity are limited as follows:
 - (i) Project Co may set off against any amounts otherwise due to Contractor pursuant to the terms of the Construction Contract, any amounts which are due to Project Co by Contractor pursuant to the terms of the Construction Contract; and
 - (ii) Contractor may not set off against any amounts otherwise due to Project Co pursuant to the terms of this Construction Contract, and the other Implementing Agreements and may not set off any amounts payable by Contractor to Project Co in respect of Liquidated Damages pursuant to the terms of the Contractor Support Agreement.

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 Contractor of any of its obligations under the Construction Contract, nor shall it operate to relieve Contractor from the performance of any of its obligations under the Construction Contract which have not been performed.

4.15 No Other Entitlement

- (a) Contractor shall not be entitled to any payments, compensation, rights, remedies, benefits or entitlements under or in connection with the Construction Contract, except as specifically and expressly set out in the Construction Contract.

4.16 Taxes

- (a) All amounts specified in the Construction Contract, including, for clarity, any compensation payable on termination, are expressed exclusive of any Taxes payable pursuant to Applicable Law by Project Co. For clarity, Project Co shall not be required to pay any interest and/or penalties that are imposed on or

assessed against Contractor or any Contractor Party for non-compliance with Applicable Law. If Contractor is required by Applicable Law to collect any such Taxes from Project Co, Project Co shall pay such Tax to Contractor simultaneously with the amount to which such applicable Tax relates or applies.

- (b) Project Co shall pay, or cause to be paid, 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) Project Co shall pay all applicable HST properly payable in accordance with the *Excise Tax Act* (Canada) by Project Co upon and in connection with payments by Project Co to Contractor under the Construction Contract.

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 Contractor in connection with the performance of the Construction Work, Project Co and Contractor agree to co-operate to determine how such change affects their respective obligations under the Construction Contract.

4.18 Information and Assistance Provided by Project Co

- (a) Contractor shall, at Project Co's request and cost, assist Project Co and CMH in applying for and obtaining all remissions and credits of HST to which Project Co or CMH, as applicable, is entitled, provided that to the extent that Contractor is assisting Project Co or CMH as a result of a request or requirement on the part of CMH under the Project Agreement, Contractor shall, in accordance with Section 14 of the body of the Construction Contract, be compensated for its costs only to the extent that CMH compensates Project Co.
- (b) Contractor acknowledges that pursuant to Section 4.18(b) of the Project Agreement, CMH 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 the Project Agreement. Contractor shall, at Project Co's cost (subject to Section 14 of the body of the Construction Contract), assist CMH in making any applications for such global or general exemption, waiver, remission or refund and shall provide CMH with such documentation as CMH may reasonably require to support such application and, in any event, shall provide such consent as CMH may require. Any exemption, waiver, remission, refund or other recovery of Taxes obtained by CMH through such application shall accrue to the sole benefit of CMH.
- (c) Contractor will provide Project Co or, at Project Co's request, CMH, with any information reasonably requested by Project Co or CMH from time to time in relation to the HST chargeable in accordance with the Construction Contract or

the Project Agreement and payable by Project Co to Contractor or CMH to Project Co from time to time.

4.19 Residency – *Income Tax Act* (Canada)

- (a) Contractor shall not undertake any action or transaction that, if undertaken, would cause or result in Contractor becoming a Non-Resident without CMH's prior written consent, which consent may be withheld in CMH's Sole Discretion.

4.20 Taxes – General

- (a) Contractor shall not, without the prior written consent of Project Co (which consent may be withheld in its Sole Discretion), undertake any action or transaction that, if undertaken, would cause Project Co or CMH to have (or result in Project Co or CMH 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 Contractor or any Contractor Party under the Construction Contract or under any Implementing Agreement.

4.21 Taxes – Indemnity

- (a) If:
 - (i) Contractor becomes a Non-Resident, or
 - (ii) Project Co or CMH is or becomes required by Applicable Law to deduct and withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Contractor or a Contractor Party by Project Co or CMH under the Construction Contract, the Project Agreement or under any of the Project Documents, then Project Co 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 Contractor or a Contractor Party on or after the date on which:
 - (A) Contractor or the Contractor Party becomes a Non-Resident and at all times while it remains a Non-Resident; or
 - (B) Project Co or CMH 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 Project Co under this Construction Contract or under any Implementing Agreement to Contractor or a Contractor Party shall be paid or credited net of such deductions or withholdings.

- (b) If:

- (i) Contractor becomes a Non-Resident, or
- (ii) Project Co or CMH is or becomes required by Applicable Law to deduct and withhold any amount in respect of Taxes on or in respect of any amounts paid or credited to Contractor or a Contractor Party by Project Co or CMH under the Construction Contract, the Project Agreement or under any of the Project Documents, Contractor shall, in each case, indemnify and hold harmless Project Co for:
 - (A) the full amount of all Taxes (“**Indemnifiable Taxes**”) that arise, are imposed on or are required to be paid by Project Co or CMH in respect of any amounts paid or credited by Project Co or CMH to Contractor or any Contractor Party under this Construction Contract, the Project Agreement or under any Implementing Agreement as a result of either of the foregoing items less any amount withheld or deducted by Project Co or CMH, as applicable, 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 Project Co makes written demand for it. A certificate containing reasonable detail as to the amount of Indemnifiable Taxes and Associated Liabilities submitted to Contractor by Project Co shall be conclusive evidence, absent manifest error, of the amount due from Contractor to Project Co. Project Co shall be entitled to exercise its rights of set off under Section 4.13 against any amounts owing under this indemnification.

5. SITE INVESTIGATION AND DOCUMENT REVIEW

5.1 Concealed or Unknown Conditions

- (a) Contractor acknowledges that it has been provided with the Site Information and has reviewed and is familiar with the Site Information. If Contractor 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 Contractor or any Contractor Party during the Request for Proposals process prior to the Submission Date, Contractor will promptly notify the Consultant who will promptly investigate such conditions and who will then report to CMH 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 Contractor's inspections of the Site carried out by Contractor or any Contractor 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 Contractor's inspections of the Site carried out by Contractor or any Contractor Party during the Request for Proposals process prior to the Submission Date, then Contractor 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 Contractor's inspections of the Site carried out by Contractor or any Contractor 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 Construction Work as provided in Schedule 11 - Change Procedure, which increase in the Guaranteed Price or extension of the Contract Time shall be subject to Section 14 of the body of the Construction Contract.

5.2 Document Review

- (a) Contractor acknowledges having conducted a thorough review of the Contract Documents and has reported to the Consultant, Project Co and CMH any Design Issue found by Contractor in the Contract Documents during its review. If Contractor does discover any Design Issue in the Contract Documents, Contractor shall not proceed with the Construction Work affected until Contractor has first complied with the provisions of Section 11.18. Contractor acknowledges that it is responsible for the risks assumed by Project Co under Sections 11.17 and 11.18 of the Project Agreement and by Contractor in Sections 11.17 and 11.18 and that any additional costs resulting from such risks will form part of the Contractor Design Contingency. It is intended that the review of the Contract Documents conducted by Contractor pursuant to this Section 5.2(a) be carried out by Contractor and the Contractor 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 Contractor set out in Section 7.1.
- (b) Except as may constitute a Design Issue properly characterized as a Contractor Design Issue under Section 11.17, and except in respect of those Contract Documents which, under the terms of the Construction Contract, Contractor is

required to prepare or produce, Contractor 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, Contractor 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 and Schedule 11 – Change Procedure.
- (d) If Contractor fails to notify the Consultant in writing, fails to obtain direction as required in Section 5.2(c), and performs Construction Work knowing it to be contrary to any Applicable Law, Contractor 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) Contractor 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 Contractor Party shall perform its obligations under, and observe all of the provisions of, each of the Project Documents to which such Contractor 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) Contractor 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 Contractor Event of Default (provided that commercially reasonable alternative measures would not prevent or cure such Contractor 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 (i) Contractor's ability to perform its obligations under the Construction Contract, or (ii) Project Co's ability to perform its obligations under the Project Agreement or that has the effect of increasing any liability of Project Co or CMH, 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 (i) Contractor's ability to perform its obligations under the Construction Contract, or (ii) Project Co's ability to perform its obligations under the Project Agreement or that have the effect of increasing any liability of Project Co or CMH, 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 Project Co (or CMH, as applicable), 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 (i) Contractor's ability to perform its obligations under the Construction Contract, or (ii) Project Co's ability to perform its obligations under the Project Agreement or have the effect of increasing any liability of Project Co or CMH, 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) above, Contractor 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 Project Co or the Consultant, Contractor will deliver or cause to be delivered to Project Co or the Consultant a copy of any notices delivered or received by Contractor under any of the Implementing Agreements.

6.3 Not Used.

6.4 Not Used.

7. REPRESENTATIONS AND WARRANTIES

7.1 Contractor Representations and Warranties

- (a) Contractor represents and warrants to Project Co that as of the date of the Construction Contract.
 - (i) Contractor and certain of the Contractor 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 Contractor by Project Co or CMH (which include, to the extent made available to Contractor by Project Co or CMH, 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 CMH) so as to ascertain the nature or location of the Construction 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 Construction Work and to identify any Design Issues. Contractor has delivered to Project Co 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 Contractor 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 Contractor Design Issue.

8. CONSULTANT AND KEY PERSONNEL

8.1 Authority of the Consultant

- (a) The Consultant will have authority to act on behalf of CMH only to the extent provided in the Contract Documents under the Project Agreement, 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 under the Project Agreement shall be modified or extended only with the written consent of CMH, Project Co and the Consultant.
- (c) If the Consultant's employment is terminated, CMH shall immediately appoint or reappoint a Consultant whose status shall, upon notification to Contractor of such appointment or reappointment, be that of the former Consultant.

8.2 Role of the Consultant

- (a) The Consultant will fulfill the role as described in the Contract Documents during construction until issuance of the final certificate for payment, and subject to Section 8.1 and with CMH's and Project Co'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 Construction Work and to determine if the Construction Work is proceeding in general conformity with the Contract Documents.

- (c) If CMH 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 Contractor or Project Co, as applicable.
- (d) The Consultant will provide to Contractor or Project Co, as applicable, a complete set of the issued for construction Drawings and Specifications under the Contract Documents incorporating all Addenda issued by the Consultant from November 14, 2013 to the date of execution of the Project Agreement as soon as reasonably practical following such date of execution. The Consultant shall review the progress of the Construction Work and the general conformance of the Construction Work to the requirements of the Contract Documents. The Consultant shall review the submission of Contractor on behalf of Project Co with respect to Construction Work completed for the purposes of a progress payment application by Contractor under the Construction Contract.
- (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 Construction Work in accordance with Applicable Law or general construction practice. The Consultant will not be responsible for Contractor's failure to carry out the Construction 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 Contractor or any Contractor Party or any other persons performing portions of the Construction Work.
- (f) The Consultant will be, in the first instance, the interpreter of the requirements of the Contract Documents under the Project Agreement and shall make findings as to the performance thereunder by both parties to the Project Agreement. When making any interpretations or findings or performing any other functions or exercising any right or performing any obligation under such 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 CMH or Project Co. Any dispute between CMH or 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 such Contract Documents shall be resolved under the Project Agreement 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 Construction Work or, to the extent applicable, the interpretation of the Contract Documents, shall be referred initially to the Consultant by notice in writing given to the Consultant and to CMH or Project Co, as applicable, for the Consultant's interpretation and finding which will be given by notice in writing to the applicable parties within a reasonable time.

- (h) The Consultant will have authority to reject Construction 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 Construction Work in accordance with Section 17.2, whether or not such Construction 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, Contractor, any Contractor Party, or other persons performing any part of the Construction Work.
- (i) When a request for information is submitted by Contractor 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 (in consultation with Contractor). 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 Contractor, on behalf of Project Co (in consultation with Contractor), shall establish a mutually agreed response time that is consistent with the Construction Schedule.
- (j) The Consultant will review and take appropriate action upon Contractor'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 Construction Work to determine the Interim Completion Date and the Substantial Completion Date, as provided in Sections 16.1 and 16.2, respectively, 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 Construction Work is correct or complete.
- (n) The Consultant will receive and review written warranties and related documents required by the Project Agreement, the Construction Contract and provided by Contractor and will forward such warranties and documents to CMH for CMH'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) Project Co has retained Project Co's Project Manager to assist Project Co in the overall implementation of the Project. Project Co's Project Manager shall provide services and interface with Contractor and the Consultant in relation to coordination of the Construction Work for existing operations, schedule overview, and communicating decisions and directions of Project Co. Project Co may, upon notification to Contractor, appoint a new Project Co Project Manager whose status shall be that of the former Project Co Project Manager.
- (q) When Contractor provides any written notice under the Construction Contract, the Contractor shall also provide a copy of the notice to CMH, the Consultant, CMH's Project Manager, Project Co's Project Manager, Agent and Lender's Consultant.
- (r) Notwithstanding the foregoing or anything to the contrary in the Construction Contract or the Contract Documents, the Consultant will not be responsible for the administration or interpretation of those aspects of the Construction Contract that are not related or do not pertain to the construction, installation, testing, Commissioning and completion of the Facility.

8.3 Supervisors

- (a) Contractor 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. Contractor acknowledges that the supervisors are Key Personnel in accordance with Section 8.4. Contractor'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. Contractor 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 Construction Work; (ii) checking for any conflicts or interferences of the Construction 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 Contractor and identified in Schedule 7 – Key Personnel, shall represent Contractor at the Site and shall have full authority to act on written instructions given by the Consultant, CMH, Project Co, CMH's Project Manager and/or Project Co's Project Manager. Instructions given to the supervisor or the project manager shall be deemed to have been given to Contractor and both the supervisor and any project manager shall have full authority to act on behalf of Contractor and bind Contractor in matters related to the Construction Contract.

8.4 Key Personnel

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

9. LICENCE AND TITLE

9.1 Licence to Site

- (a) Contractor acknowledges the provisions of Section 9.1 of the Project Agreement. Effective from Financial Close and subject to the Construction Contract and Project Agreement, Project Co, at the express behest of CMH, hereby grants to Contractor and all Contractor Parties, in each case as, when and to the extent granted to Project Co pursuant to Section 9.1 of the Project Agreement, such non-

exclusive licence rights of use and access to, on and over the Site and the Facility as are required by Contractor to allow Contractor to perform the Construction Work.

- (b) None of the rights granted pursuant to this Section 9.1 shall extend beyond the boundaries of the Site, or to any lands other than the Site, other than easements and similar interests of CMH which benefit the Site, obtained after the date of the Construction Contract or Project Agreement, to the extent the same are necessary for the Construction Work.
- (c) The licence provided in this Section 9.1 with respect to the Site shall automatically terminate on the Final Completion Date or upon the earlier termination of the Construction Contract in accordance with its terms.
- (d) Contractor 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 Contractor is performing the Construction 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) Contractor acknowledges and agrees that the rights granted to Contractor and the Contractor Parties hereunder shall be non-exclusive and that CMH, Project Co and any person authorized by CMH or Project Co may occupy and possess the Site and the Facility. In exercising such rights Contractor shall not, and shall require that the Contractor Parties shall not, compromise patient care and safety and, except as permitted under the Construction Contract, disrupt the ongoing operation of the Facility.
- (b) Without limiting Section 9.2(a), Contractor acknowledges that CMH 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 Construction Work. To the extent that such use or development materially adversely interferes with Contractor's licence rights hereunder or materially adversely interferes with Contractor's ability to perform the Construction Work, Project Co shall, upon Contractor's request and subject to Section 14 of the body of the Construction Contract, pursue its rights under Section 9.2(b) of the Project Agreement to have such use or development treated as a Change Order under the Project Agreement, subject to and in accordance with Schedule 11 – Change Procedure.

9.3 Naming and Signage

- (a) Contractor acknowledges that CMH 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 CMH and Project Co, 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, Contractor, the Contractor 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 CMH.

9.4 No Interest in Site or Facility

- (a) Contractor 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, Contractor 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 the Construction Contract, the Implementing Agreements or otherwise. Notwithstanding any provision herein or in any of the Implementing Agreements to the contrary, CMH shall at all times retain the fee simple interest in and freehold title to the Site and the Project, unencumbered by any interest of Contractor. Contractor, Project Co and Agent shall have access to the Site and the Facility under and subject to the licenses granted under this Article 9, Article 9 of the Project Agreement and the Lender's Direct Agreement.

9.5 Non-Disturbance Agreement

- (a) Contractor acknowledges the provisions of Section 9.5 of the Project Agreement and that if CMH mortgages, charges or otherwise encumbers the Site, CMH 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 access and use the Site under the licence granted pursuant to Section 9.1(a) under the Project Agreement and Lender's Direct Agreement, 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 Construction Work pertain to such portion of the Site.

10. PROJECT CO RESPONSIBILITIES

10.1 General

- (a) Project Co shall, at its own cost and risk:
 - (i) perform all of its obligations under, and observe all provisions of, the Construction Contract in compliance with Applicable Law;
 - (ii) Not Used;
 - (iii) comply with all Permits, Licences and Approvals in accordance with their terms; and
 - (iv) cooperate with Contractor in the fulfillment of the purposes and intent of the Construction Contract, provided, however, that Project Co shall not be under any obligation to perform any of Contractor's obligations under the Construction Contract.
- (b) Project Co shall, and shall cause all Project Co Parties to, take reasonable steps to minimize undue interference with the provision of the Construction Work by Contractor or any Contractor Party.
- (c) Nothing in the Construction Contract or any of the Implementing Agreements (including the Construction Contract) shall in any way fetter the right, authority and discretion of CMH as a public hospital under the *Public Hospitals Act* (Ontario) in fulfilling its statutory or other functions under Applicable Law, and Contractor acknowledges and agrees that nothing in the Construction Contract or any of the Implementing Agreements (including the Construction Contract) shall preclude CMH's board of directors from performing, discharging or exercising its duties, responsibilities and powers under Applicable Law. Contractor further agrees that it shall comply, and shall cause all relevant Contractor Parties to comply, with all written directions issued by or on behalf of CMH'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 CMH under the 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, subject to Section 14 of the body of the Construction Contract, by way of a Change Order or Change Directive, as applicable, as provided in Schedule 11 - Change Procedure.

11. CONTRACTOR RESPONSIBILITIES AND CONSTRUCTION OBLIGATIONS

11.1 General Responsibilities, Standards and Contract Time

- (a) Contractor shall perform and complete the Construction 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 Construction Work no later than the day following Financial Close and, subject to adjustment as provided for in the Construction Contract,
 - (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 the Construction Contract, in a manner that will not impair the ability of and that will enable Project Co and CMH and the Project Co Parties and CMH 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 the Construction Contract 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 the Construction Contract and the other Contract Documents.

- (b) Contractor shall furnish necessary certificates as evidence that the Construction Work installed conforms with Applicable Law, including all certificates necessary for the Consultant to certify as required to obtain a permit for CMH's occupancy or partial occupancy. These certificates are to be final certificates giving complete clearance for the portions of the Construction Work for which they are obtained.

11.2 General Construction Obligations

- (a) Without limiting Section 11.1, Contractor shall:
 - (i) have complete control of the Construction Work and shall effectively direct and supervise the Construction Work so as to ensure conformance with the Contract Documents, including the phasing or sequencing requirements for the Construction Work set out in the Contract Documents. During the progress of the Construction Work, subject to Section 8.2(i), Contractor 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. Contractor shall develop and implement protocols in accordance with the Specifications for the phasing or sequencing of the Construction Work as set out in the Contract Documents, including the coordination of the work of CMH's own forces or other contractors with the Construction Work. Without limiting the generality of the foregoing, Contractor is responsible for the intermeshing of the various parts and systems comprising any portions of the Construction Work so that no part shall be left in an unfinished or incomplete condition owing to any disagreement between the Contractor Parties or between any of them and Contractor as to where the Construction Work of one begins and ends in relation to the Construction Work of the other;
 - (ii) be solely responsible for all construction means, methods, techniques, sequences and procedures used to undertake the Construction Work and for coordinating the various parts of the Construction Work under the Construction Contract and shall coordinate the Construction 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, Contractor shall

immediately notify the Consultant and Project Co in writing and obtain written instructions from the Consultant before proceeding with any part of the Construction Work affected thereby;

- (iv) ensure that no work other than the Construction Work under the Construction Contract is constructed on the Site by Contractor, any Contractor Party or any person for whom Contractor is responsible at law;
- (v) protect the Construction 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 Construction 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 Project Co'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 Construction 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 Contractor to be carried out, performed, observed and fulfilled;
- (viii) exercise the standard of care, skill and diligence that would normally be provided by an experienced and prudent contractor supplying similar services for similar hospital projects, in a timely, good and workmanlike manner, it being acknowledged by Contractor that throughout the Construction Contract, Contractor's obligations, duties and responsibilities shall be interpreted in accordance with this standard and any default or alleged default by Contractor 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 CMH or Project Co;

- (x) comply with all requirements of Project Co and CMH 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 CMH regarding the continued operations of the Existing Facility so as not to disrupt the operations of CMH, and except for any requirements of CMH 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 CMH shall, subject to Section 14 of the body of the Construction Contract, 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 Project Co at its Sole Discretion from time to time. Contractor shall be responsible for its costs and expenses with respect to the implementation and use of such system(s).

11.3 Liability Unaffected

- (a) Contractor shall not be relieved of any liability or obligation under the Construction Contract by the retainer or appointment of any Contractor Party, and Contractor shall cause each Contractor Party, to the extent such Contractor Party performs, or is specified hereunder to perform, the Construction Work, to comply with the obligations of Contractor to Project Co in the same manner and to the same extent as Contractor.
- (b) No inspection, review, comment, approval, verification, confirmation, certification, acknowledgment or audit pursuant to the provisions of the Construction Contract or any other Contract Document, or otherwise, by Project Co, Project Co's Project Manager, the Consultant, CMH, CMH's Project Manager or Lender's Consultant or anyone on their behalf, nor any failure of any of them to do so, shall relieve Contractor from performing or fulfilling any of its obligations under the Construction Contract or be construed as an acceptance of the Construction Work or any part thereof.

11.4 Contractor Delay

- (a) It is agreed that one of the reasons Contractor was selected to perform the Construction Work is Contractor'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 the Construction Contract, and Contractor acknowledges that it is critical to CMH and Project Co

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) Contractor shall:
 - (i) obtain, maintain, pay for (including all fees and deposits) and, as applicable, renew all Contractor Permits, Licences and Approvals which may be required for the performance of the Construction 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 Contractor Permits, Licences and Approvals have requirements that may impose any conditions, liabilities or obligations on CMH, Project Co or any CMH Party or Project Co Party, Contractor shall not obtain such Contractor Permits, Licences and Approvals without the prior written consent of CMH or Project Co, as applicable, not to be unreasonably withheld or delayed and Contractor acknowledges and agrees that neither CMH nor Project Co shall be responsible for obtaining or for the failure of Contractor to obtain any Contractor Permit, Licence or Approval. Pursuant to the Project Agreement, CMH shall comply, or shall require compliance, with any conditions, liabilities or obligations that are imposed on CMH or any CMH Party by the requirements of any Contractor Permit, Licence or Approval obtained with CMH's consent.
- (c) CMH is required by the Project Agreement to provide Project Co with such information and administrative assistance as Contractor may reasonably require in relation to the Project Co Permits, Licences and Approvals (as defined in the Project Agreement).

11.6 Safety

- (a) From Financial Close until the Substantial Completion Date, Contractor shall:
 - (i) keep the Site, the Construction 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 Contractor Party to perform, all of the obligations of the “constructor”, and indemnify each of CMH, Project Co 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, Contractor 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 Contractor, or any Contractor Party is determined by CMH or Project Co 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, Project Co (or CMH under Article 19 of the Project Agreement) may require that Contractor replace such employee or restrict access to the Site to that employee and Contractor shall find or cause the Contractor Parties to find substitute employees to proceed with the Construction Work so as not to jeopardize security or safety or cause delay to the progress of the Construction Work contrary to the Construction Schedule.
- (c) Contractor 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. Project Co shall use reasonable efforts to require CMH to contractually require other contractors retained by CMH and CMH’s own forces to comply with Contractor’s safety program and safety instructions, and Contractor, as constructor, will have the right (in consultation with Project Co) to remove the other contractors retained by CMH and CMH’s own forces from the Site should they not comply with Contractor’s safety programs and safety instructions. Project Co, in conjunction with CMH, shall have the right to assign to Contractor the work of other contractors retained by CMH or the work of CMH’s own forces, to the extent such work is assigned by CMH to Project Co, solely for the purpose of coordination of such work and safety training and safety compliance for all persons engaged in such work and if such coordination, safety training and safety compliance results in a material increase in Contractor’s cost, subject to Section 14 of the body of the Construction Contract, Contractor shall be compensated for such coordination, safety training and safety compliance in accordance with the provisions of Schedule 11 – Change Procedure. Without limiting Contractor’s obligation pursuant to this paragraph, Contractor shall ensure that the Construction Work of all Contractor Parties is in accordance with OHSA and that the work of all other contractors retained by CMH and the work of CMH’s own forces is in accordance with OHSA where such work has been assigned to Contractor in accordance with the foregoing.

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

11.7 Minimize Disturbance and Construction Work in Existing Facility

- (a) Contractor recognizes and understands that CMH is a public hospital under the *Public Hospitals Act* (Ontario) and is therefore subject to a highly regulated legal and operational environment. Contractor 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 Construction 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 Construction Work which are to be carried out within the Existing Facility and in respect of those portions of the Construction Work where connections are being made to the Existing Facility. In addition, Contractor acknowledges that it has familiarized itself with the facility and/or building operations of the Existing Facility and will perform the Construction Work taking into account the requirements of CMH to maintain normal facility and/or building operations of the Existing Facility. Contractor further acknowledges that the Cost of the Construction Work includes all premium time and overtime that may be required to perform the Construction 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. Contractor shall develop and implement protocols in furtherance of the foregoing in accordance with the Specifications.

- (b) Contractor recognizes that part of the Construction 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 CMH and acknowledges that it has reviewed the Contract Documents, including those referred to in Section 11.7(c). Contractor 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 Construction Work. Contractor shall fully cooperate with CMH and Project Co in complying with said instructions during the performance of the Construction Work. Any costs incurred by Contractor in complying with said instructions shall be part of the Guaranteed Price.
- (c) Contractor acknowledges that the Contract Documents, including the Phasing Requirements and Specifications, have been posted to e-Builder and included instructions respecting CMH's use of the Existing Facility and infection control procedures. Contractor acknowledges having read and understood the said instructions and agrees to comply with the procedures set out therein. Contractor shall be responsible for any costs and expenses resulting from its failure to comply with these procedures.

11.8 Subcontractors and Suppliers

- (a) Contractor shall preserve and protect the rights of the parties under the Construction Contract with respect to Construction Work to be performed under Subcontract, and shall:
 - (i) enter into Subcontracts or written agreements with Contractor Parties to require them to perform their Construction Work as provided in the Contract Documents and without limiting the generality of the foregoing, shall advise the Contractor Parties of the transfer to Contractor 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 Contractor Parties, including those specified in Article 36; and
 - (iii) be as fully responsible to Project Co for acts and omissions of the Contractor Parties as for acts and omissions of persons directly employed by Contractor.
- (b) Attached as Schedule 19 – List of Contractor Parties is a list of all Contractor Parties which Contractor has engaged or caused to be engaged for the performance of the Construction Work as of the date of execution of the Construction Contract. Contractor agrees to update such list from time to time as additional Contractor Parties are engaged. Any of these named Contractor Parties listed by Contractor may be changed by Contractor upon prior notice to (but without the approval of) the Consultant and Project Co, provided however, that if the Consultant or Project Co reasonably objects to any change to a mechanical or electrical Subcontractor that is a Contractor Party, then Contractor shall select an alternative replacement mechanical or electrical Subcontractor to which the Consultant does not reasonably object.
- (c) Contractor shall not be required to employ as a Contractor Party, a person to whom Contractor may reasonably object, provided that CMH or Project Co may require Contractor to use particular persons as specified in the Contract Documents for specific building systems of CMH to ensure CMH does not lose the benefit of any warranty in respect of such building systems, including building automation, fire alarm and nurse call. CMH shall have the right to assign to Contractor the work of CMH's other contractors or the work of CMH's own forces related to the Project and, if such assignment results in an increase in Contractor's cost or a delay in the Construction Schedule, subject to Section 14 of the body of the Construction Contract, the same shall be addressed or compensated for in accordance with the provisions of Schedule 11 – Change Procedure. Notwithstanding the foregoing provisions of this Section 11.8(c), Contractor shall use the Contractor Parties that have been identified in the Contract Documents for specific portions of the Construction Work and with respect to such Contractor Parties there shall be no increase in Contractor's cost or allowance for any delay in the Construction Schedule.
- (d) Contractor hereby agrees to enter into the Assignable Subcontract Agreement for Construction Contract and, subject to Section 11.8(e), to cause each of the other Contractor Parties, including Suppliers leasing any construction machinery and equipment, to enter into the Assignable Subcontract Agreement, to evidence that (i) Agent or CMH 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 Contractor Party and without the payment of any penalty or other amount, at CMH's or Agent's option, to CMH or to Agent or to such other contractor as CMH or Agent may designate, which rights of assignment

shall only be exercised by CMH, such Agent or such other contractor in the event that the 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 Contractor Parties, the Contractor is not obliged to enter into an Assignable Subcontract Agreement in respect of a Subcontract having a total estimated cost of \$1,000,000 or less, provided that Contractor shall ensure that each Subcontract entered into with a Contractor Party is assignable without such Contractor Party's further consent and without the payment of any penalty or other amount at CMH's option, to CMH or Agent or to such other contractor as CMH or Agent may designate, which rights shall only be exercised by CMH, Agent or such other contractor in the event that the Project Agreement is terminated as a result of Project Co's default.
- (f) Subject to Section 11.8(e), Contractor agrees to deliver to CMH the Assignable Subcontract Agreements by the applicable due dates set out in Part 2 of Schedule 19 – List of Contractor Parties. If, following 90 days after Financial Close, the Contractor is required to enter into any additional Assignable Subcontract Agreement pursuant to this Section 11.8, Contractor shall deliver such Assignable Subcontract Agreement to CMH within 30 days of execution.
- (g) Notwithstanding Section 1.2(c), in the case of any item of the Construction Work being specified under the heading of more than one trade section, Contractor shall decide which of these trades is to perform the Construction Work.

11.9 Labour and Products

- (a) Unless otherwise stipulated elsewhere in the Contract Documents or in other documents made available to Contractor by Project Co or CMH, Contractor shall, as appropriate, provide separate metering for all services and facilities necessary for the performance of the Construction Work. Contractor 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) Contractor shall (i) maintain good order and discipline among all personnel engaged in respect of the Construction Work and shall promote and maintain a good relationship with all such personnel; (ii) not employ any persons to perform the Construction Work who is/are incompatible with other labour employed by Contractor in connection with the Construction Work; and (iii) act promptly on all problems of labour relations including grievances and jurisdictional disputes. Contractor shall not employ on the Construction 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 CMH's or Project Co's instruction, Contractor 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 CMH or Project Co under the *Human Rights Code* (Ontario).
- (e) Contractor is responsible for the safe on-site storage of Products and their protection (including Products supplied by CMH 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 CMH.
- (f) Title to the Products shall pass to CMH 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 CMH when paid for.
- (g) Contractor shall promptly execute and deliver to CMH from time to time, as CMH may require, any further documentation required to identify, evidence, perfect or protect CMH'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, Contractor shall continue to bear the risk of loss or damage with respect to each applicable Phase of the Construction Work until the relevant applicable Phased Occupancy Date, with respect to the Construction 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) Contractor 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 CMH, Lender's Consultant, Project Co and the Consultant. Contractor shall keep a daily log available to CMH, Lender's Consultant, Project Co and the Consultant at all times.
- (b) Contractor 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 Construction Work.

11.11 Shop Drawings

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

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

- (c) At the commencement of the Construction Work, Contractor shall prepare, for the review and acceptance of the Consultant (with a copy to Project Co), 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 or Contractor 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 CMH’s own forces or CMH’s other contractors, as set out in the Contract Documents or as Project Co has otherwise advised Contractor. 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 Construction Work or the work of CMH’s other contractors or CMH’s own forces which has been incorporated in the Construction Schedule. Contractor shall submit shop drawings to the Consultant (with a copy to Project Co) and the Consultant shall review and return shop drawings in accordance with the Shop Drawing Schedule. If, at any time, Contractor 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 or Contractor, as applicable, with an estimate of the time necessary for processing such shop drawings. Contractor 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 (with a copy to Project Co) for its approval in accordance with the approval process set out in this Section 11.11(c) prior to submission by Contractor to such authority. Should the Consultant’s review of

such shop drawings require significant changes to such shop drawings, Contractor 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) Contractor 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 Contractor 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, Contractor shall revise and resubmit shop drawings which the Consultant rejects as inconsistent with the Contract Documents unless otherwise directed by the Consultant. Contractor 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) Contractor shall prepare and maintain record drawings which shall consist of the shop drawings and Specifications revised by Contractor during the Construction Work, showing changes to the shop drawings and Specifications, which record drawings shall be kept current by Contractor and made available to the Consultant, Project Co, and Lender's Consultant for review with each application for a progress payment.
- (i) All required actions by Contractor 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 Construction Work

- (a) Contractor 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 Construction Work with Products.
- (b) Contractor shall not load or permit to be loaded any part of the Construction Work with a weight or force that will endanger the safety of the Construction Work.

- (c) CMH shall have the right to occupy Phases as set out in the Contract Documents and to enter and occupy the Construction Work in whole or in part for the purpose of placing fittings, furniture and equipment or for other uses, including the intended use of CMH before Substantial Completion, as provided for in the Construction Schedule. Contractor shall cooperate with CMH, CMH's Project Manager, Project Co, Project Co's Project Manager and the Consultant, so as to permit CMH 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 Construction Work or in any way relieve Contractor from responsibility to complete the Construction Contract. Subject to Section 11.19(d), Contractor is responsible to ensure the completion of the Phases in accordance with the applicable Phased Occupancy Dates, the Scheduled Interim Completion Date and the Scheduled Substantial Completion Date and that the Phases are ready for occupancy by CMH in accordance with the Contract Documents including the requirements of 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. Contractor acknowledges that Substantial Completion is only achieved in respect of the Construction Work as a whole and not in respect of any Phase.

11.13 Cutting and Remedial Work

- (a) Contractor shall do the cutting and remedial work required to integrate the several parts of the Construction Work in a cohesive manner.
- (b) Contractor shall coordinate the Construction 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 Construction Work.

11.14 Cleanup

- (a) Contractor shall maintain the Construction Work in a tidy condition and free from the accumulation of waste products and debris, other than that caused by CMH, CMH's other contractors or their employees.
- (b) Contractor shall remove waste products and debris, other than that resulting from the work of CMH, CMH's other contractors or their employees, and shall leave the Interim Construction Work clean and suitable for occupancy by CMH on the Interim Completion Date and, in the case of the balance of the Construction Work, on the Substantial Completion Date. Contractor 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, Contractor shall remove products, tools, construction machinery and equipment, and waste products and debris, other than that resulting from the work of CMH, CMH'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, Project Co or CMH shall provide a written notice to Contractor to remove the said waste and debris and allow a reasonable period of time for Contractor to remove the said materials. If Contractor fails to remove the materials within the time specified, Project Co or CMH may remove the waste products and debris and Project may withhold an amount equal to such cost, in an amount that the Consultant shall determine to be reasonable.

11.15 Contractor Attending Meetings

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

11.16 Defective Work

- (a) Contractor shall promptly remove from the Site and replace or re-execute defective Construction Work that fails to conform to the Contract Documents whether or not the defective Work has been incorporated in the Construction 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 Contractor. The correction of defective Construction Work shall be at Contractor's expense. Contractor shall rectify, in a manner acceptable to the Consultant and Project Co, all defective Work and deficiencies throughout the Construction Work, whether or not they are specifically identified by the Consultant, and Contractor shall prioritize the correction of any defective Construction Work so as not to interfere with or derogate from the Construction Schedule, provided that Contractor shall prioritize the correction of any defective Construction Work that in the Sole Discretion of CMH is determined to adversely affect the day to day operation of CMH.
- (b) Contractor shall Make Good promptly other contractors' work destroyed or damaged by such rectifications at Contractor's expense.
- (c) If in the opinion of the Consultant it is not expedient to correct defective Construction Work or Construction Work not performed as provided in the Contract Documents, Project Co 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 Project Co and Contractor do not agree on the

difference in value, they shall refer the matter for a determination and the determination will be issued as a Change Order.

11.17 Contractor Design Contingency

- (a) The Cost of the Construction Work and the Guaranteed Price include the Contractor Design Contingency.
- (b) Subject to CMH's responsibilities under Section 11.17(c) of the Project Agreement, the Contractor 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 Construction Work or contrary to Good Industry Practice as it relates to the constructability of the Construction 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 "**Contractor Design Issues**"). The terms "properly inferable", "readily apparent" and "readily discoverable" as used in the Construction Contract, shall be interpreted by taking into consideration Contractor's experience and the investigations, inspections and examinations of the Site carried out by Contractor or by any Contractor Party during the Request for Proposals process prior to the Submission Date, as represented by Contractor to Project Co in Section 7.1 and 5.2(a) and having regard to the standard of care required under Section 11.2(a)(viii).
- (c) Contractor acknowledges that pursuant to Section 11.17(c) of the Project Agreement, CMH 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 Contractor 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 Contractor of the obligation to provide for all standard Building Code requirements applicable to the installation of the Construction Work, whether or not set out in the Specifications; and/or
- (iii) conform to the functional programming needs of CMH.

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

- (d) Subject to and without limiting CMH's responsibilities under Section 11.17(c) of the Project Agreement, and provided that CMH fulfills its responsibilities under Section 11.17(c) of the Project Agreement, Contractor 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. Contractor shall verify the dimensions shown in the drawings before the layout of the Construction Work.

11.18 Procedure for Addressing Design Issues

- (a) When Contractor identifies a Design Issue, Contractor shall promptly notify the Consultant and Project Co in writing, under a request for information, of such Design Issue and may propose a resolution to the Design Issue. Upon receipt of Contractor's notification and proposed resolution, if any, the Consultant shall:
 - (i) if a proposed resolution is provided by Contractor, 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 Contractor; or

- (C) reject the proposed resolution and provide instructions to Contractor setting out an acceptable resolution;
- (ii) if no resolution is proposed by Contractor, provide instructions to Contractor setting out an acceptable resolution.

As soon as the Consultant has confirmed to Contractor or Project Co an acceptable resolution to the Design Issue, Contractor shall proceed to implement such acceptable resolution. If the Consultant characterizes the Design Issue as a Contractor 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 Contractor Design Contingency. If the Consultant characterizes the Design Issue as a matter that is not a Contractor Design Issue, the Consultant shall request that a Contemplated Change Notice or a Change Directive, as applicable in the circumstances, be issued, 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 Project Co or Contractor is of the view that the Design Issue is not properly characterized by the Consultant, or if either Project Co or Contractor does not agree with the Consultant's decision regarding what constitutes an acceptable resolution to the Design Issue, then either Project Co or Contractor 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 an Project Co cost. In assessing whether a Design Issue is properly characterized as a Contractor Design Issue, Project Co and Contractor shall have regard to the Risk Assessment Guidelines. Contractor and Project Co acknowledge that the Risk Assessment Guidelines are provided for information purposes only and are not complete or exhaustive.

- (b) When the Consultant notifies Project Co or Contractor of a Design Issue, such notice shall be a Supplemental Instruction or a Contemplated Change Notice or a Change Directive, as applicable in the circumstances. If issued as a Supplemental Instruction, Contractor may review the Design Issue and propose an alternative resolution to Project Co and the Consultant. Upon receipt of Contractor'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 Contractor; or
- (iii) reject the proposed resolution and provide instructions to Contractor setting out an acceptable resolution.

As soon as the Consultant has confirmed to Project Co an acceptable resolution to the Design Issue, Contractor shall proceed to implement such acceptable resolution. If the Consultant characterizes the Design Issue as a Contractor Design Issue, a Supplemental Instruction shall be issued and the cost, if any, of implementing the acceptable resolution to the Design Issue shall form part of the Contractor Design Contingency. If the Consultant characterizes the Design Issue as a matter that is not a Contractor Design Issue, Project Co shall request that CMH issue a Contemplated Change Notice or a Change Directive, as applicable in the circumstances, and, subject to Section 14 of the body of the Construction Contract, 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 Project Co or Contractor is of the view that the Design Issue is not properly characterized by the Consultant or if either Project Co or Contractor does not agree with the Consultant's decision regarding what constitutes an acceptable resolution to the Design Issue, either Project Co or Contractor 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 Project Co cost. In assessing whether a Design Issue is properly characterized as a Contractor Design Issue, Project Co and Contractor shall have regard to the Risk Assessment Guidelines. Contractor and Project Co 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 CMH; 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, Contractor will, subject to Section 14 of the body of the Construction Contract, and subject to and in accordance with Schedule 11 – Change Procedure, be entitled to a Change in the Scope of the Construction Work.
- (d) If either Project Co or Contractor 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

Project Co or Contractor 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. Contractor acknowledges that notwithstanding any such dispute, a Supplemental Instruction may be issued to Contractor for a resolution to the Design Issue and Contractor shall proceed to implement such resolution to the Design Issue in accordance with the issued Supplemental Instruction, pending resolution of the dispute and subject to Section 1.3 of Schedule 14 – Dispute Resolution Procedure.

- (e) The Contractor Design Contingency is included in the Cost of the Construction Work and the Guaranteed Price and Contractor is solely responsible for all costs to remedy all Design Issues that are properly characterized as Contractor Design Issues, and Contractor 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 Contractor Design Issues, subject, in each case, to Section 11.18(c), and to the responsibility of CMH, at CMH's cost, for the provision of professional design services as specifically provided in Sections 11.18(a) and 11.18(b) of the Project Agreement. Subject to the preceding sentence, and notwithstanding anything to the contrary in the Construction Contract, Contractor acknowledges and agrees that it shall have no recourse against Project Co in respect of any Contractor Design Contingency or any costs directly or indirectly arising out of a Design Issue that is properly characterized as a Contractor Design Issue. Contractor is not accountable to Project Co for the expenditure of the amount Contractor has carried as the Contractor Design Contingency and Project Co has no entitlement to claim the unused portion, if any, of the Contractor Design Contingency. Payment of the Guaranteed Price to Contractor (which, for greater certainty, shall include any unused portion of the Contractor Design Contingency) shall fully satisfy Contractor in respect of its costs to carry the Contractor Design Contingency and all costs of Contractor to remedy all Design Issues that are properly characterized as Contractor Design Issues. Further to and without limiting the foregoing, but, subject to the limitations set out in Section 8.2(b) of the body of the Construction Contract, Contractor 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) Contractor shall provide the Consultant, CMH, CMH's Project Manager, Project Co and Project Co's Project Manager with a detailed weekly update report in form and substance satisfactory to the Consultant, CMH and Project Co, on the status of all outstanding Design Issues.

11.19 Construction by CMH or Other Contractors

- (a) CMH 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. Project Co may assign the coordination and

scheduling of the work and the safety training in respect of the work of CMH's other contractors or CMH's own forces to Contractor.

- (b) Contractor acknowledges that pursuant to Section 11.19(b) of the Project Agreement, when separate contracts are awarded for work related to the Project, or when such work is performed by CMH's own forces, CMH shall:
 - (i) cause CMH's other contractors or CMH's own forces to comply with: (A) the instructions of Contractor or Project Co, as applicable, relating to coordination and scheduling of the activities and work of such contractors or CMH's own forces with the Construction Work to be performed under the Construction Contract; and (B) all directions of Contractor 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 Construction Work and in any event, such insurance shall provide for liability insurance of not less than \$5,000,000; and
 - (iv) take all necessary steps to avoid labour disputes or other disputes on the Project arising from the work of CMH's other contractors or CMH's own forces.
- (c) When separate contracts are awarded for work related to the Project, or when work is performed by CMH's own forces, Contractor shall:
 - (i) provide for the coordination and scheduling of the activities and work of CMH's other contractors and CMH's own forces with the Construction Work to be performed under the Construction Contract;
 - (ii) afford CMH and CMH'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 CMH's other contractors and CMH in reviewing their construction schedules when directed to do so by CMH, CMH's Project Manager, Project Co, Project Co's Project Manager and/or the Consultant;
 - (iv) where part of the Construction Work is affected by or depends upon, for its proper execution, the work of CMH's other contractors or CMH's own forces, promptly report to the Consultant and Project Co in writing and prior to proceeding with that part of the Construction Work, any readily apparent deficiencies in such work. Failure by Contractor to so report

shall invalidate any claims against CMH and Project Co by reason of such readily apparent deficiencies;

- (v) subject to Section 11.6, for CMH's own forces and for CMH'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 CMH and CMH'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) Contractor shall not be responsible for any failure in the performance of the work of CMH's other contractors or CMH's own forces. If:
- (i) any of CMH's other contractors or CMH's own forces cause any damage to the Construction Work;
 - (ii) Contractor incurs any additional costs or there is any delay in the Construction Schedule as a result of any of CMH's other contractors or CMH's own forces not complying with the coordination, scheduling and safety instructions of Contractor; or
 - (iii) Contractor incurs any additional costs or there is any delay in the Construction Schedule as a result of any work done by CMH's other contractors or CMH's own forces (other than work that is described in the Contract Documents and performed by such other contractors or CMH's own forces in accordance with Good Industry Practice and in accordance with the terms of their respective contracts or engagements with CMH),

Contractor 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 Contractor and CMH's other contractors shall be dealt with in substantially the same manner as contemplated in Schedule 14 – Dispute Resolution Procedure, provided CMH's other contractors have reciprocal obligations and CMH has made commercially reasonable efforts to ensure that such provisions are included in the contracts with CMH's other contractors. Contractor shall be deemed to have consented to arbitration of any dispute with any other contractor whose contract with CMH contains a similar agreement to arbitrate.
- (f) Placing, installing, application and connection of the work performed by CMH's own forces or by CMH's other contractors, on and to the Construction Work performed by Contractor will not relieve Contractor from the responsibility to

provide and maintain the specified warranties with respect to the Construction Work, except to the extent that the placing, installing, application or connection of such work by CMH's own forces or by CMH's other contractors on and to the Construction Work performed by Contractor gives rise to a claim under warranties provided by Contractor, in which case such warranties shall not apply to such claim.

11.20 Temporary Supports, Structures and Facilities

- (a) Contractor 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 Contractor's temporary supports, structures, or facilities or any shop drawings related thereto by Project Co, CMH or Consultant does not relieve Contractor of its "sole responsibility" under this section.
- (b) Contractor 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 Construction Work and Contractor shall not be held responsible for that part of the design or the specified method of construction. Contractor 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 Construction Work.

11.21 Protection of Work and Property

- (a) Contractor shall protect the Construction Work and CMH'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 Contractor's operations under the Construction Contract, 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 Contractor Design Issues under Section 11.17); or
 - (ii) acts or omissions by CMH, the Consultant or any contractor retained by CMH directly and whose contract is not assigned to Contractor, their respective agents and employees.

- (b) Should Contractor, in the performance of the Construction Contract, damage the Construction Work, CMH's property at the Site, including the Existing Facility or property adjacent to the Site, Contractor shall be responsible to Make Good such damage at Contractor's expense.
- (c) Should damage occur to the Construction Work or CMH's property at the Site, including the Existing Facility for which Contractor is not responsible, as provided in Section 11.21(a), Contractor shall Make Good such damage to the Construction Work and, if CMH or Project Co so directs, to CMH's property and, subject to Section 14 of the body of the Construction Contract, 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) Contractor shall not undertake to repair and/or replace any damage whatsoever to adjoining property or acknowledge the same was caused or occasioned by Contractor, without first consulting Project Co and CMH 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 Construction Work, either Party may, but Contractor shall, take such emergency action as is necessary to remove the danger.
- (f) If any Contractor Party has caused damage to the work of another contractor related to the Project, Contractor 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 Contractor, Project Co or CMH 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) Contractor 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 Contractor or any Contractor Party.
- (b) Subject to Encumbrances that Contractor shall remove pursuant to Section 4 of the body of the Construction Contract, the performance of the Construction Work shall not give rise to a right for any person to obtain title to or any interest in the Site, the Facility or the Existing Facility or any part of it or them except in accordance with the terms of the Construction Contract.
- (c) In the event that the Site or any part thereof or any interest therein becomes subject to any Encumbrance arising in relation to the performance of the Work which has not been consented to in writing by CMH or Project Co, Contractor

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, CMH or Project Co 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 Contractor 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 4.6 of the body of the Construction Contract 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 CMH Assigned Contracts

On Financial Close, Contractor shall execute and deliver an Assignment and Assumption Agreement in respect of each of the CMH Assigned Contracts and shall assume all of the obligations of CMH thereunder, and thereafter shall execute and deliver such supporting documentation as may be reasonably required by the counterparty Supplier or by CMH from time to time with respect to the CMH Assigned Contracts. For greater certainty, Contractor acknowledges and agrees that any and all costs associated with the assumption and performance of CMH's obligations under the CMH Assigned Contracts, including the obligations with respect to payment thereunder, are included in and form part of the Guaranteed Price.

11.24 Apprenticeship Plan and Program

- (a) No later than six months after Financial Close, Contractor shall provide a plan setting out Contractor's Project-specific approach to maximizing apprenticeship opportunities on the Project (the "**Apprenticeship Plan**") for review and approval by CMH and Project Co. 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 Contractor'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) Contractor shall implement the approved Apprenticeship Plan.
- (c) Contractor shall provide an annual report to CMH and Project Co 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 Contractor's progress toward achieving the objectives set out in the Apprenticeship Plan, including an identification of any barriers that prevented Contractor from achieving its objectives.
- (d) CMH or Project Co may require Contractor to amend its Apprenticeship Plan if, in CMH's opinion, acting reasonably, Contractor is failing to maximize apprenticeship opportunities on the Project pursuant to the then current Apprenticeship Plan.
- (e) Contractor acknowledges and agrees that pursuant to Section 11.24(e) of the Project Agreement, CMH may, in its Sole Discretion, release Contractor's Apprenticeship Plan to the public. Contractor's Apprenticeship Plan shall not be Confidential Information.

11.25 Procurement Monitoring and Implementation Plan

- (a) Contractor shall implement the Procurement Monitoring and Implementation Plan.
- (b) A director of Contractor 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 Contractor has made the proper inquiries and has determined that the requirements of the Procurement Monitoring and Implementation Plan have been complied with by Contractor and its Subcontractors in the immediately previous year.

12. CONSTRUCTION SCHEDULE

12.1 The Construction Schedule

(a) Contractor shall:

- (i) review the proposed schedules and deadlines of Project Co or CMH, as applicable, for each Phase and where CMH has not specified particular dates for occupancy of Phases, Contractor 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 CMH or Project Co, as applicable, 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 Project Co or CMH. 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 Contractor shall conform to the phasing and sequencing requirements for the Construction Work as set out in the Contract Documents, including the work to be completed by CMH’s own forces or by other contractors, the applicable Phased Occupancy Dates, the Scheduled Interim Completion Date, the 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 Construction Work and for achieving the applicable Phased Occupancy Dates, the Scheduled Interim Completion Date, the Scheduled Substantial Completion Date and the Scheduled Final Completion Date. CMH and the Consultant will respond to Contractor, in writing, within 10 Business Days of receipt of the Construction Schedule, with either its detailed comments or acceptance of such Construction Schedule as complete;
- (iii) in the event that Project Co, CMH and the Consultant do not accept Contractor’s initial Construction Schedule submission as complete, Contractor shall re-submit such Construction Schedule as many times as necessary, revised in accordance with Project Co’s, CMH’s and the Consultant’s detailed comments and each re-submission shall be provided within 5 Business Days of receipt of the Consultant’s, CMH’s and Project Co’s detailed comments, who in turn shall also respond within 5 Business Days. When the Construction Schedule has been accepted as complete by Project Co, CMH and the Consultant, it shall be the baseline

Construction Schedule against which Contractor shall monitor progress of the Construction 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 Construction 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 Project Co and, as requested by Project Co, CMH 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 Construction 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 CMH 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 Contractor Party are not met;
- (x) obtain from Contractor 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 Construction 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 CMH's Project Manager, Project Co'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 CMH's equipment to ensure that the

ordering, delivery, receiving and supply of equipment does not impact on the Construction Schedule.

12.2 Changes to Critical Path

- (a) Any changes to the critical path of the Construction Schedule initiated by Contractor which affect the applicable Phased Occupancy Dates, the Scheduled Interim Completion Date, the Scheduled Substantial Completion Date or the Scheduled Final Completion Date must be approved in writing by CMH and Project Co. Subject to Section 14 of the body of the Construction Contract and to the terms of Schedule 11 – Change Procedure, any CMH and Project Co approval of such changes to the critical path does not entitle Contractor to a Change Order, an extension of the Contract Time or an addition to the Guaranteed Price.
- (b) At any time during the Project Term, Contractor shall, no later than 2 Business Days following the written request of CMH or Project Co, deliver to CMH and Project Co a copy of the most current version of the Construction Schedule and/or any past version of the Construction Schedule requested by CMH or Project Co in electronic (non-PDF) software format.

12.3 Failure to Maintain Schedule

- (a) If Contractor is not meeting the deadlines set out in the Construction Schedule consistent with its obligations under the Construction Contract, then at the written request of Project Co, CMH or the Consultant, Contractor, and the Contractor 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), subject to Section 14 of the body of the Construction Contract, all expenses and costs incurred as a result shall be borne by Contractor. Any dispute between the parties as to whether Contractor 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) Contractor shall notify Project Co's Project Manager and CMH Project Manager if, at any time, the actual progress of the Construction Work is significantly ahead of the Construction Schedule.

13. WORK COMMITTEE AND EQUIPMENT

13.1 Establishment of Works Committee

- (a) Pursuant to the Project Agreement CMH and Project Co 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 CMH;
 - (A) CMH's Project Manager; and
 - (B) any individual appointed by CMH;
- (iv) the following 2 representatives appointed by Project Co:
 - (A) Project Co's
 - (B) project manager identified in Schedule 7 – Key Personnel under the Project Agreement; and
 - (C) Project Co's site superintendent identified in Schedule 7 – Key Personnel under the Project Agreement.
- (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) CMH's Project Manager shall be the chairperson of the Work Committee.
- (d) At the request of Project Co, the Contractor shall provide support to the Work Committee and otherwise play an active role in respect of the Work Committee.

13.2 Function and Role

- (a) The Work Committee shall assist CMH and Project Co 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 under the Project Agreement.
- (b) The Work Committee shall be responsible for receiving and reviewing all matters related to the Work under the Project Agreement, including:
 - (i) any construction and Commissioning issues under the Project Agreement;

- (ii) the identification and resolution of Project Co Design Issues pursuant to Section 11.18 under the Project Agreement;
- (iii) the Construction Schedule under the Project Agreement;
- (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) under the Project Agreement;
- (v) any quality assurance and safety issues under the Project Agreement;
- (vi) the recommendations of the Equipment Subcommittee under the Project Agreement;
- (vii) any special matters referred to the Work Committee by CMH, any CMH Party, Project Co or any Project Co Party under the Project Agreement;
- (viii) any community and media relations issues in accordance with Schedule 21 – Communications Protocol under the Project Agreement; and
- (ix) any other issues pertaining to the Work under the Project Agreement.

13.3 Term of Work Committee

- (a) Unless otherwise agreed by CMH and Project Co, the Work Committee shall operate only until the Final Completion Date under the Project Agreement.

13.4 Replacement of Committee Members

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

13.5 Procedures and Practices

- (a) As provided for under the Project Agreement, 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 the Project Agreement until the Final Completion Date under the Project Agreement, unless otherwise agreed by the members of the Work Committee or CMH and Project Co.
- (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 Cambridge, 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, Contractor, Project Co, CMH 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) Pursuant to the Project Agreement, CMH and Project Co shall, within 30 days after the date of the Project Agreement, establish an equipment subcommittee of the Work Committee (the “**Equipment Subcommittee**”) consisting of 3 representatives of each of Project Co and CMH.

- (b) The Equipment Subcommittee shall assist Project Co and CMH 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 under the Project Agreement. Project Co and the Equipment Subcommittee shall work co-operatively with the Consultant, CMH and any equipment consultant retained by CMH.
- (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 under the Project Agreement, 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.
- (f) At the request of Project Co, the Contractor shall provide support to the Equipment Subcommittee and otherwise play an active role in the Equipment Subcommittee.

13.7 Contractor Equipment Responsibilities

- (a) For each item of Type A Equipment and Type C Equipment, that is also designated “1” or “2” in the “Architectural Impact” column in the Equipment Lists, Contractor shall:
 - (i) provide, in accordance with the Contract Documents, mechanical, electrical and information technology rough-ins, as applicable, for such Equipment;
 - (ii) with CMH and/or CMH’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 Construction Work, as may be required by CMH and/or CMH'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, Contractor is only responsible for coordinating and scheduling the decommissioning, uninstallation, transfer, delivery, reinstallation, installation, commissioning, and/or training in respect of such Equipment with CMH and/or CMH'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, Contractor 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 "Architectural Impact" 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, Contractor 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, Contractor shall:

- (i) provide, in accordance with the Contract Documents, mechanical, electrical and information technology rough-ins, as applicable, with respect to the Type D Equipment;
- (ii) be responsible for co-ordinating, scheduling and completing the procurement, delivery, installation, commissioning, and associated training with respect to all such Type D Equipment; and
- (iii) for Type D Equipment that is also designated either "1" or "2" or "3" in the "Architectural Impact" 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, Contractor 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 CMH) in respect of such Equipment; and
 - (iii) for Type E Equipment that is also designated either "1" or "2" or "3" in the "Architectural Impact" 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, Contractor 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) Contractor shall supervise delivery of all Equipment in accordance with this Section 13 and provide monthly reports thereon to the Equipment Subcommittee.
- (f) Contractor shall coordinate the installation of all Equipment in accordance with this Section 13 and provide periodic reports thereon to the Equipment Subcommittee and otherwise play an active role in respect of the Equipment Subcommittee.

13.8 CMH's Equipment Responsibility

- (a) For Type A Equipment and Type C Equipment, that is also designated either "1" or "2" in the "Architectural Impact" column in the Equipment Lists, Contractor

acknowledges that pursuant to Section 13.8 of the Project Agreement, CMH shall procure such Equipment and complete, or have completed by CMH'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 CMH cannot complete, or have completed by CMH's own forces, through no fault of Contractor, 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, Contractor shall coordinate with CMH 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 Contractor's ability to complete the Construction Work in accordance with the Construction Schedule. For greater certainty, in the event that CMH cannot complete, or have completed by CMH's own forces, through no fault of Contractor, 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, CMH's obligations with respect to the Type A Equipment and the Type C Equipment, that is also designated either "3" or "4" in the "Architectural Impact" column in the Equipment Lists, do not form part of the Construction Contract. For greater certainty, Contractor has no responsibility with respect to such Equipment.
- (c) Contractor acknowledges that pursuant to Section 13.8(c) of the Project Agreement, for each item of Type B Equipment, CMH shall procure and deliver to Contractor such Equipment, for installation by Contractor as contemplated hereunder, in accordance with the Construction Schedule and that CMH shall also be responsible for coordinating and scheduling the associated training in respect of such Equipment.
- (d) For greater certainty, Contractor acknowledges that CMH has no obligations in Section 13 with respect to the Type D Equipment.
- (e) Contractor acknowledges that pursuant to Section 13.8(e) of the Project Agreement, for each item of Type E Equipment, CMH shall provide access to such Equipment in the Existing Facility, to allow Contractor to perform its responsibilities in Section 13.7(d) in accordance with the Construction Schedule.

13.9 Substitutions of Equipment by Contractor

- (a) Contractor shall not make any substitutions of any Equipment without the prior written consent of each of CMH and Project Co, in its Sole Discretion. Contractor shall provide CMH and Project Co with sufficient information to allow CMH 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 for Type D Equipment

- (a) Contractor 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 Contractor in accordance with the Construction Schedule, as more particularly dealt with in Section 13.12.
- (b) Contractor shall, as soon as practicable after receiving a request from CMH's Project Manager or Project Co's Project Manager, supply to CMH's Project Manager and Project Co's Project Manager evidence to demonstrate its compliance with this Section 13.10.

13.11 Training on Type D Equipment

- (a) For and in respect of each item of Type D Equipment which requires CMH's own forces (including its staff) to be trained in its proper operation and/or maintenance, Contractor 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 CMH's own forces (including its staff).
- (b) CMH 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. Contractor shall be responsible to coordinate such training and for ensuring the schedule addresses the time periods required for such training, but Contractor shall not be responsible for any delay resulting from the failure of CMH to have CMH'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).

13.12 Scheduling of Equipment Installation and Commissioning

- (a) Contractor shall prepare a schedule in consultation with CMH and Project Co 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 Change Orders in the Event of Delay

- (a) In the event of any delay in the performance of any of its obligations by CMH under Section 13.7 to 13.12 of the Project Agreement or any delay in the performance of any of its obligations by an Equipment vendor or manufacturer of Type A Equipment, Type B Equipment or Type C Equipment, providing installation services under any purchase order or contract with CMH and to the extent any such delay did not result from the failure of Contractor to perform any of its obligations set out in this Section 13 including, without limitation, its obligations regarding the coordination and scheduling of the decommissioning, uninstallation, transfer, delivery, reinstallation, installation, commissioning and training, each as applicable, in respect of the Equipment then:
 - (i) Contractor will, subject to Section 14 of the body of the Construction Contract and subject to and in accordance with Schedule 11 – Change Procedure, be entitled to a Change Order for any costs which specifically relate to and are directly attributable to such delay and would not have otherwise been incurred (including amounts attributable to the Overhead and Profit Fee, if any, as determined in accordance with Schedule 11 – Change Procedure); and
 - (ii) Contractor acknowledges that CMH may elect to proceed in one of the following manners:
 - (A) CMH may request Project Co or Contractor, as applicable, to maintain the Scheduled Interim Completion Date and/or the Scheduled Substantial Completion Date and Contractor, subject to Section 14 of the body of the Construction Contract, will be compensated for the acceleration of the Construction Work to achieve Interim Completion and/or Substantial Completion on the Scheduled Interim Completion Date and/or Scheduled Substantial Completion Date, as applicable, and Contractor will, subject to Section 14 of the body of the Construction Contract and subject to and in accordance with Schedule 11 – Change Procedure, be entitled to a Change Order for any costs which specifically relate to and are directly attributable to such acceleration and would not have otherwise been incurred; or
 - (B) Contractor acknowledges that CMH may elect to except the decommissioning, uninstallation, transfer, delivery, reinstallation, installation, commissioning and training, each as applicable, in respect of a particular item of Equipment out of Interim Completion and/or Substantial Completion provided that to the extent any such delay in the decommissioning, uninstallation,

transfer, delivery, reinstallation, installation, commissioning and training in respect of such item of Equipment results in increased costs, Contractor will, subject to Section 14 of the body of the Construction Contract and subject to and in accordance with Schedule 11 – Change Procedure, be entitled to a Change Order for any costs which specifically relate to and are directly attributable to such delay and would not have otherwise been incurred.

14. CONTAMINATION

14.1 Contamination

- (a) Contractor acknowledges Section 14.1(a) of the Project Agreement pursuant to which for the purposes of applicable environmental legislation, CMH shall be deemed to have control and management of the Site with respect to Pre-Existing Environmental Site Conditions.
- (b) Contractor acknowledges Section 14.1(b) of the Project Agreement and agrees that prior to Contractor commencing the Construction Work, CMH has:
 - (i) taken all reasonable steps to determine whether any Hazardous Substances are present at the Site; and
 - (ii) provided the Consultant and Project Co with a report on any such Hazardous Substances, which report Contractor acknowledges it has been provided with and it included in the Site Information.
- (c) Contractor 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 Contractor commencing the Construction 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 Contractor or by any Contractor 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 Construction 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 Construction Work by Contractor.

- (d) Contractor 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 Contractor or any Contractor Party (**“Contractor Hazardous Substances”**);
 - (ii) Contractor and each Contractor Party is responsible to comply with all Applicable Law relating to Contractor Hazardous Substances; and
 - (iii) there is no Release or threatened Release of any Contractor 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 Contractor:
 - (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 CMH, as required under Section 14.1(b) of the Project Agreement 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 Contractor or by any Contractor Party during the Request for Proposals process prior to the Submission Date (the **“Undisclosed Hazardous Substances”**), Contractor shall:

- (iii) take all reasonable steps, including stopping the Construction 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, Project Co and CMH in writing.
- (f) If Contractor is delayed in performing the Construction 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 Contractor 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 subject to Section 14 of the body of the

Construction Contract, (i) the Contract Time shall be extended for such reasonable time as the Consultant may recommend in consultation with CMH and Project Co, and (ii) the Guaranteed Price shall be adjusted by a reasonable amount for costs incurred by Contractor 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 CMH and Project Co and shall be paid by CMH and Contractor.
- (h) In the event of any Release or threatened Release of any Hazardous Substances at or from the Site, Contractor shall immediately, upon becoming aware of same, notify the Consultant, Project Co and CMH 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 Contractor causes or permits:
 - (i) any Contractor Hazardous Substances to be dealt with by Contractor or any Contractor 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 CMH 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 Contractor or any Contractor 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 CMH or others,

Contractor, upon becoming aware of same shall:

- (iii) take all reasonable steps, including stopping the Construction 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, Project Co and CMH 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), Contractor shall perform its obligations thereunder, at Contractor's sole cost and

expense (except in the circumstances contemplated by Section 14.1(e), which shall be at CMH's sole cost and expense in accordance with the provisions of Section 14.1(f)). Contractor 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 March 9, 2004, and ensure compliance with any applicable Permits, Licences and Approvals; and
- (ii) rectify all material damage to the property of CMH and/or others.

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

15.1 Objects Property of CMH

- (a) As between the Parties and CMH, 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 CMH.

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 Construction Work, Contractor shall:
 - (i) immediately inform the Consultant and Project Co 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 Contractor Parties, with Applicable Law and all requirements of Governmental Authorities with respect to such discovery, including the requirements under the *Funeral, Burial and Cremation Services Act, 2002* (Ontario).
- (b) In the event that CMH or Project Co wishes Contractor to perform actions which are in addition to any required pursuant to Section 15.2(a), then Project Co shall issue an instruction to Contractor specifying what action Project Co requires

Contractor to take and Contractor shall promptly and diligently comply with all such instructions.

15.3 Compensation Event

- (a) If Sections 15.2(a) and 15.2(b) require Contractor to perform any alteration, addition, demolition, extension or variation in the Construction Work or to suspend or delay performance of the Construction Work as a result of such discovery and which would not otherwise be required under the Construction Contract, then any such alteration, addition, demolition, extension or variation in the Construction Work, or suspension or delay in the performance of the Construction Work, shall, subject to Section 14 of the body of the Construction Contract (i) subject to and in accordance with Article 22, be treated as a Delay Event and, (ii) 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 Contractor or by any Contractor Party during the Request for Proposals process prior to the Submission Date.

16. COMMISSIONING AND COMPLETION

16.1 Interim Completion

- (a) Contractor, on behalf of Project Co, shall deliver a notice of the date anticipated to be the Interim Completion Date to CMH and the Consultant (with a copy to Project Co) at least 90 days prior to the date anticipated by Contractor to be the Interim Completion Date. Contractor acknowledges that CMH needs a minimum of 90 days notice prior to the anticipated Interim Completion Date to prepare for Commissioning. Contractor shall advise CMH, Project Co and the Consultant of any change in the anticipated date. Contractor shall, by the date which is 20 days prior to the anticipated Interim Completion Date as set out in Contractor'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) Contractor, on behalf of Project Co, shall reconfirm the anticipated Interim Completion Date in a notice given to CMH and to the Consultant (with a copy to Project Co) 20 days prior to the anticipated Interim Completion Date which notice shall include a copy of the Interim Preliminary Minor Deficiencies List. Contractor 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. Contractor shall reconfirm the anticipated Interim Completion Date and when Contractor is satisfied that it has completed all the requirements for Interim Completion, Contractor shall, on behalf of Project Co apply to CMH and the Consultant for

certification of Interim Completion in a notice to CMH and the Consultant (with a copy to Project Co) 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 CMH 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 and Project Co will provide such report to Contractor. Failure to include an item on the Interim Minor Deficiencies List does not alter the responsibility of Contractor 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) Project Co or CMH may withhold from the payment otherwise due on the Interim Completion Payment Date a holdback amount that is 200% of the amount estimated by the Consultant for CMH 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 CMH describing the Interim Minor Deficiencies which have been completed to the satisfaction of the Consultant, and Project Co or CMH 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 to the Project Agreement, any of the Interim Minor Deficiencies are not completed in 10 Business Days following Project Co’s or Contractor’s receipt of a written notice from CMH to correct the deficient work, or Contractor is not diligently working towards completion of the deficient work to the satisfaction of the Consultant, and unless CMH otherwise agrees, or the reasons for any delay are acceptable to CMH, or the delay is caused by CMH or a CMH Party, CMH or Project Co may engage others to perform the work necessary to complete and rectify the Interim Minor Deficiencies at the risk and cost of Contractor and Project Co may deduct such cost from the holdback amount or any other amount remaining owing by Project Co to Contractor. If the cost of completion and rectification of any Interim Minor Deficiencies exceeds the amount held back by Project Co, then Contractor shall reimburse Project Co for all such excess costs.

- (g) Contractor shall assign to CMH and submit with the application for Interim Completion, all guarantees, warranties (whether from manufacturers, or Contractor 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 the Construction Contract 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 Contractor requests, Contractor and the Consultant shall, within 60 days following the request of Contractor, settle and agree upon a list specifying in reasonable detail the items to be assigned and submitted under the foregoing sentence. If Contractor is unable to provide any of the Interim Deliverables for any reason, Contractor 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 \$250,000. The assignment by Contractor to CMH of all guarantees and warranties shall expressly reserve the right of Contractor and Project Co to make any claims under such guarantees and warranties for the repair or replacement of any Construction Work and such assignment shall in no way prejudice any rights of or benefits accruing to Contractor pursuant to such guarantees and warranties. For greater certainty, nothing herein is intended to constitute a release or waiver of the obligation of Contractor to submit and assign (as applicable) to CMH all of the Interim Deliverables.

16.2 Substantial Completion

- (a) Contractor, on behalf of Project Co, shall deliver a notice of the date anticipated to be the Substantial Completion Date to CMH and the Consultant (with a copy to Project Co) at least 90 days prior to the date anticipated by Contractor to be the Substantial Completion Date. Contractor acknowledges that CMH needs a minimum of 90 days notice prior to the anticipated Substantial Completion Date to prepare for Commissioning. Contractor shall advise CMH, Project Co and the Consultant of any change in the anticipated date. Contractor shall, by the date which is 20 days prior to the anticipated Substantial Completion Date as set out in Contractor’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) Contractor, on behalf of Project Co shall reconfirm the anticipated Substantial Completion Date in a notice given to CMH and to the Consultant (with a copy to Project Co) 20 days prior to the anticipated Substantial Completion Date which notice shall include a copy of Project Co’s Preliminary Minor Deficiencies List. Contractor 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. Contractor shall reconfirm the anticipated Substantial Completion Date and when Contractor is satisfied that it has completed all of the requirements for Substantial Completion, Contractor, on behalf of Project Co shall apply to CMH and the Consultant (with a copy to Project Co) for certification of Substantial Completion in a notice to CMH 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 Construction 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 under the Project Agreement in accordance with the *Construction Lien Act* (Ontario) has been achieved, the Consultant shall provide CMH and Project Co 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 CMH and to Project Co a report confirming the Minor Deficiencies List and the date on which the Consultant determines that Substantial Completion was achieved and Project Co will provide such report to Contractor. Failure to include an item on the Minor Deficiencies List does not alter the responsibility of Contractor to complete the Construction 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) Contractor shall publish in a construction trade newspaper in the area of the location of the Construction Work, a copy of the certificate of substantial performance in accordance with the *Construction Lien Act* (Ontario) and Contractor shall provide suitable evidence of the publication to the Consultant, Project Co and CMH.
- (h) Project Co may withhold from the payment otherwise due on the Substantial Completion Payment Date a holdback amount that is 200% of the amount estimated by the Consultant for CMH 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 CMH describing the Minor Deficiencies which have been completed to the satisfaction of the Consultant, and Project Co 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 to the Project Agreement any of the Minor Deficiencies are not completed in 10 Business Days following Project Co's or Contractor's receipt of a written notice from CMH to correct the deficient work, or Contractor is not diligently working towards completion of the deficient work to the satisfaction of the Consultant, and unless CMH otherwise agrees, or the reasons for any delay are acceptable to CMH, or the delay is caused by CMH or an CMH Party, CMH or Project Co may engage others to perform the Construction Work necessary to complete and rectify the Minor Deficiencies at the risk and cost of Contractor and Project Co may deduct such cost from the holdback amount or any other amount remaining owing by Project Co to Contractor. If the cost of completion and rectification of any Minor Deficiencies exceeds the amount held back by Project Co, then Contractor shall reimburse CMH for all such excess costs.
- (i) Contractor shall assign to CMH and submit with the application for Substantial Completion, all guarantees, warranties (whether from manufacturers, or Contractor 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 the Construction Contract and otherwise required for the proper use and operation of the Construction Work for the Project (collectively, the "**Project Deliverables**"). If Contractor requests, Contractor and the Consultant shall, within 60 days following the request of Contractor, settle and agree upon a list specifying in reasonable detail the items to be assigned and submitted under the foregoing sentence. If Contractor is unable to provide any of the Project Deliverables for any reason, Contractor 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 Construction 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 Contractor'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 \$250,000, 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 \$250,000 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 Contractor to CMH of all guarantees and warranties shall expressly reserve the right of Contractor and Project Co to make any claims under such guarantees and warranties for the repair or replacement of any Construction Work and such assignment shall in no way prejudice any rights of or benefits accruing to Contractor pursuant to such guarantees and warranties. For greater certainty, nothing herein is intended to constitute a release or waiver of the obligation of Contractor to submit and assign (as applicable) to CMH all of the Project Deliverables.

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

16.3 Final Completion Countdown Notice

- (a) Contractor, on behalf of Project Co, shall deliver a notice (the "**Final Completion Countdown Notice**") to CMH and the Consultant (with a copy to Project Co) specifying the date (which, for greater certainty, will be on or before the Scheduled Final Completion Date) on which Contractor 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 Contractor 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) Contractor, on behalf of Project Co, shall give the Consultant and CMH's Project Manager at least 10 Business Days' notice prior to the date upon which Contractor anticipates all requirements for Final Completion shall be satisfied.
- (b) Contractor, on behalf of Project Co, shall then give the Consultant, Project Co and CMH'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 Contractor'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 as required by Section 16.4 of the Project Agreement:
 - (i) Project Co's request for release of holdback, including a declaration that no written notices of lien arising from the performance of the Construction 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 Construction Work, the Consultant's written instructions, and modifications required by Governmental Authorities.
- (c) Contractor acknowledges that pursuant to Section 16.4(c) of the Project Agreement, CMH shall, within 5 Business Days after receipt of the Final Completion Notice, provide the Consultant and Project Co with CMH'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 CMH's opinion pursuant to Section 16.4(c), CMH, Project Co and Contractor 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 Contractor and CMH, and to issue to CMH, Project Co and Contractor either:
 - (i) the Final Completion Certificate, setting out in such certificate 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 Contractor has not referred a dispute in relation thereto for resolution in accordance with Schedule 14 – Dispute Resolution Procedure, Contractor, on behalf of Project Co, shall, within 5 Business Days after receipt of such report, provide the Consultant, CMH's Project Manager and Project Co'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 Contractor Commissioning that needs to be undertaken as a result of the rectification actions,

and Contractor shall perform all such additional rectification actions and Contractor Commissioning in a timely manner. Upon completion thereof, Contractor 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).

17. CMH ACCESS, INSPECTION AND MONITORING

17.1 CMH Access

- (a) Subject to Section 17.1(b) but without limiting any of CMH's rights in respect of the Site, Contractor acknowledges and agrees that CMH, CMH Parties, Project Co and the Project Co 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. Contractor shall provide sufficient, safe and proper facilities at all times for the review of the Construction Work by the Consultant and the inspection of the Construction Work by authorized agencies. If parts of the Construction Work are in preparation at locations other than the Site, CMH, CMH's Project Manager and the Consultant, Project Co, Project Co'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), Project Co and the Project Co 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 Contractor 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, Contractor shall give the Consultant reasonable notice of when the Construction Work will be ready for review and inspection. Contractor shall arrange for and shall give the Consultant reasonable notice of the date and time of inspections by other authorities.
- (d) Contractor shall furnish promptly to the Consultant 2 copies of certificates and inspection reports relating to the Construction Work.

17.2 Right to Open Up

- (a) Project Co, CMH and the Consultant shall have the right, at any time prior to the Final Completion Date, to request Contractor to open up and inspect (or allow Project Co, CMH or the Consultant, as applicable, to inspect) any part or parts of the Construction Work, or to require testing of any part or parts of the Construction Work, where Project Co, CMH or the Consultant, as applicable, reasonably believes that such part or parts of the Construction Work is or are defective or that Contractor has failed to comply with the requirements of the Construction Contract (including the Contract Documents) relevant to such part or parts of the Construction Work, and Contractor shall comply with such request. When Project Co or CMH makes such a request, Project Co shall include reasonably detailed reasons with such request.
- (b) If the inspection shows that the relevant part or parts of the Construction Work is or are defective or that Contractor has failed to comply with the requirements of the Construction Contract (including the Contract Documents) relevant to such part or parts of the Construction Work, Contractor shall rectify all such defects and non-compliance diligently (including any re-testing) at no cost to Project Co and Contractor shall not be entitled to any additional compensation (and for clarity, such Work shall not form part of the Cost of the Construction Work) or extension of the Contract Time in relation thereto.
- (c) If the inspection shows that the relevant part or parts of the Construction Work is or are not defective and that Contractor has complied with the requirements of the Construction Contract (including the Contract Documents and the requirements of Sections 17.1(a) and 17.1(c)) relevant to such part or parts of the Construction Work, the exercise by Project Co, CMH or the Consultant, as applicable, of its rights pursuant to this Section 17.2 shall, subject to Section 14 of the body of the Construction Contract, (i) subject to and in accordance with Article 22, be treated as a Delay Event and, (ii) subject to and in accordance with Article 23, be treated as a Compensation Event. For greater certainty, if Contractor 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 Construction 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 Project Co, or named by Project Co and paid through a Cash Allowance Disbursement Authorization by Contractor and others (unless otherwise indicated) or named and paid by Contractor. Such inspection shall be identified in the Construction Schedule and Contractor 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 Project Co, CMH or the Consultant of the rights under this Article 17 shall in no way affect the obligations of Contractor under the Construction Contract except as set out in this Article 17.

17.4 Admittance of Personnel

- (a) Project Co and CMH 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) Contractor or any Contractor Party, whose presence, in the reasonable opinion of Project Co and CMH, is likely to have an adverse effect on the performance of the Construction Work or who, in the reasonable opinion of Project Co and CMH, 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 Project Co or CMH 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 Project Co to Contractor and, for greater certainty, shall not relieve Contractor of any of its obligations under the Construction Contract.

17.6 Notification of Personnel

- (a) If and when so requested by CMH or Project Co, Contractor 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 the Construction Contract, to any premises occupied by CMH or Project Co, specifying the capacities in which those persons are concerned with the Construction Contract and, subject to Applicable Law, giving such other particulars as Project Co or CMH may reasonably require.

17.7 Finality as to Admission

- (a) Any decision of CMH or Project Co made pursuant to Section 17.4 shall be final and conclusive.

18. RECORDS, AUDIT AND REPORTING

18.1 Accounting and Audit

- (a) Contractor 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 Construction Work for a period of 7 years from the Final Completion Date. Contractor shall maintain the original Project records in its office at 407 Basaltic Road, Concord, Ontario, L4K 4W8 until all claims have been settled as required by Applicable Law.
- (b) In addition to other rights of inspection contemplated in the Contract Documents, Contractor shall allow Project Co, CMH, Lender's Consultant, the Consultant or other persons authorized by Project Co or CMH access to the Project records as they pertain to Construction 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 Construction Work and for such period of time that Contractor is required to maintain the records set out in Section 18.1(a). Contractor shall be provided with 48 hours prior notice for such access. Contractor shall promptly provide, at the sole cost of Project Co, a certified copy of any part of the Project records required by Project Co and CMH when requested by Project Co.
- (c) Subject to Section 18.1(d), Contractor shall ensure that equivalent provisions to those provided in Section 18.1(a) and 18.1(b) are made in the Construction Contract (and Contractor shall incorporate the same into every level of contract thereunder with a Contractor Party) for any part of the Construction Work in order, among other things, to provide Project Co 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) Contractor shall submit 7 copies of a monthly construction status report to CMH and Project Co 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. Contractor shall use the project management software system directed by Project Co or CMH if Project Co or CMH 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 Construction 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) Contractor's narrative report addressing any significant problems,

decisions and pending claims; (iv) a detailed report showing the costs to complete the balance of the Construction 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 Project Co or CMH, as applicable. 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 Construction 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 Construction 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 Contractor 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) Contractor shall prepare and deliver a weekly report to CMH and Project Co by end of business on Friday of every week between the date of the Construction Contract and the Final Completion Date. The weekly report shall summarize the Construction Work completed by Contractor during the week to which it relates and set out the Construction 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.

19. PROJECT CO'S REMEDIAL RIGHTS

19.1 Exercise of Remedial Rights

- (a) Project Co may exercise all rights set out in this Article 19 at any time and from time to time if:
 - (i) Project Co, acting reasonably, considers that a breach by Contractor of any obligation under the Construction Contract, or any act or omission on the part of Contractor or any Contractor 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 Project Co or CMH 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 Contractor of any obligation under the Construction Contract or any act or omission on the part of Contractor or any Contractor Party which can reasonably be expected to cause any of the consequences set out in Section 19.1(a)(i)(A), Project Co shall not exercise its rights under this Article 19 unless Contractor has failed to cure the relevant breach, act or omission within 5 Business Days of notice from Project Co or, if such breach, act or omission cannot reasonably be cured within such 5 Business Day period, Contractor thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter, provided that Contractor 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), Project Co shall not exercise its rights under this Article 19 unless Contractor has failed to cure the relevant breach, act or omission within 5 Business Days of notice from Project Co or, if such breach, act or omission cannot reasonably be cured within such 5 Business Day period, Contractor thereafter fails to diligently and continuously pursue such cure and to cure such breach, act or omission within a reasonable period thereafter; or

- (ii) subject to Section 10.1(c), Contractor has failed to comply with any written direction issued by or on behalf of Project Co's or CMH's board of directors.

19.2 Emergency

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

19.3 Rectification

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

then Project Co may take such steps as it considers to be appropriate, acting reasonably, requiring the termination and replacement of Contractor 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 Project Co may, prior to Contractor'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 Project Co's obligations pursuant to Sections 19.5 and 19.6:
 - (i) Contractor shall bear all costs and expenses incurred by Contractor in relation to the exercise of Project Co's rights pursuant to this Article 19; and
 - (ii) Contractor shall reimburse Project Co for all reasonable costs and expenses incurred by Project Co in relation to the exercise of Project Co's rights pursuant to this Article 19, including in relation to Project Co taking such steps, either itself or by engaging others (including a third party) to take any such steps as Project Co 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 Contractor or any Contractor Party or a breach of any obligation under the Construction Contract, but only to the extent such act, omission or breach is caused by Project Co or an Project Co Party; or
 - (ii) an Emergency that is not caused or contributed to by an act or omission of Contractor or any Contractor Party or a breach by Contractor or any Contractor Party of any obligation under the Construction Contract.
- (b) If Project Co either takes steps itself or requires Contractor to take steps in accordance with this Article 19 as a result of a Reimbursement Event:
 - (i) Project Co shall, subject to Section 14 of the body of the Construction Contract, reimburse Contractor for the reasonable costs and expenses incurred by Contractor in relation to the exercise of Project Co's rights pursuant to this Article 19 that would not otherwise have been incurred by Contractor in the proper performance of its obligations under the Construction Contract; and
 - (ii) Project Co shall bear all costs and expenses incurred by Project Co in relation to the exercise of Project Co's rights pursuant to this Article 19.

19.6 Reimbursement if Improper Exercise of Rights

- (a) If Project Co exercises its rights pursuant to this Article 19, but Project Co was not entitled to do so, Project Co shall reimburse Contractor for the reasonable costs and expenses directly incurred by Contractor over and above those that would otherwise have been incurred by Contractor in the proper performance of its obligations under the Construction Contract and that are directly and

reasonably incurred by Contractor in complying with those written requirements of Project Co issued as a result of Project Co having exercised such rights.

- (b) Contractor acknowledges and agrees that Contractor has no right to require a determination of whether or not Project Co is entitled to exercise its rights pursuant to this Article 19 before taking any such action that Project Co may require and Contractor shall comply with all of Project Co's requirements. Only concurrently with or after complying with Project Co's requirements shall Contractor 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 the Construction Contract, Schedule 11 – Change Procedure shall apply with respect to Changes in the Scope of the Construction Work.

21. CHANGES IN LAW

21.1 Performance after Change in Law

- (a) Following any and all Changes in Law, Contractor shall perform the Construction Work in accordance with the terms of the Construction Contract, including in compliance with Applicable Law.

21.2 Relevant Change in Law

- (a) Contractor acknowledges the provisions of Section 21.2 of the Project Agreement. On the occurrence of a Relevant Change in Law, Contractor shall, subject to Section 14 of the body of the Construction Contract, be entitled to seek compensation for any increase or decrease (as the case may be) in the net cost to Contractor of performing the Construction Work so as to put Contractor 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) Contractor acknowledges the provisions of Section 21.2(b) of the Project Agreement. 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, provided that the Parties acknowledge and agree that there shall be no Change Order hereunder if CMH has not determined pursuant to Section 22.1 of the Project Agreement that a Change Order is required thereunder; and

(iii) within 10 Business Days of agreement or determination that a Change Order is required, a Change Order shall be issued 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 the Construction Contract:

(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 Contractor recovers under any insurance policy (or would recover if it complied with its obligations to insure under the Construction Contract or the terms of any policy of insurance required under the Construction Contract) 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) Contractor shall not be entitled to any payment or compensation or, except as provided in Article 22 or otherwise in the Construction Contract, 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 the Construction Contract, “**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) if Contractor is delayed in the performance of the Construction Work by,
 - (A) acts or omissions of CMH or any CMH Party contrary to the provisions of the Project Agreement, except to the extent that any act or omission is caused or contributed to by Contractor or a Contractor Party; or
 - (B) a direction from CMH to Contractor or Project Co to suspend the performance of the Construction Work or a portion thereof as a result of a public health issue arising in connection with or affecting the Project, provided that such health issue is not otherwise dealt with in Article 19;
 - (ii) if Contractor is delayed in the performance of the Construction Work by a lack of access to the Site as a result of an order or direction issued by CMH or by a Governmental Authority to CMH, but not issued as a result of Contractor not performing its obligations under the Construction Contract, including where such non-performance is caused by a Contractor Party or by an event of Force Majeure, Contractor acknowledges that in performing the Construction Work paramountcy of access must be given at all times to emergency vehicles and no claim may be made by Contractor for any delay in the performance of the Construction Work as a result of any temporary lack of access to the Site resulting from this paramountcy of access by emergency vehicles, provided that CMH will use reasonable efforts to avoid and to limit the duration of any temporary lack of access for this reason;
 - (iii) an opening up of the Construction Work pursuant to Section 17.2 where such Construction Work is not subsequently found to be defective or not in compliance with the requirements of the Construction Contract (including the Contract Documents), unless such opening up of the Construction Work was reasonable in light of other defects or non-compliance previously discovered by CMH, Project Co or the Consultant, as applicable, in respect of the same or a similar component of the Construction Work or subset of the Construction Work;

- (iv) a requirement pursuant to Section 14.1(e) for Contractor to take any steps upon the discovery of Contamination, which steps would not otherwise be required under the Construction Contract;
- (v) a requirement pursuant to Sections 15.2(a) or 15.2(b) for Contractor to perform any alteration, addition, demolition, extension or variation in the Construction Work, or to suspend or delay performance of the Construction 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 Construction Work, or suspension or delay in the performance of the Construction Work, would not otherwise be required under the Construction Contract, 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 Contractor or by any Contractor 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 the Construction Contract by CMH, Project Co, any Project Co Party or any other person permitted to execute such works by CMH, Project Co or any Project Co Party;
- (vii) a requirement pursuant to Schedule 14 – Dispute Resolution Procedure, for Contractor to proceed in accordance with the direction of Project Co during the pendency of a dispute, which dispute is subsequently determined in Contractor's favour, for such period of time, if any, as has been determined as an appropriate time period for delay in the final determination of the dispute;
- (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, subject to Section 14 of the body of the Constructin Contract, the Contract Time will be extended for such reasonable time as the Consultant recommends in consultation with CMH, in accordance with the procedure set out in Schedule 11 – Change Procedure.

- (b) Should Contractor contend that it is entitled to an extension of the Contract Time for completion of any portion of the Construction Work, Contractor 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 Project Co 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 Construction 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 Project Co 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)(i), 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 Contractor 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) Contractor acknowledges that the provisions of Section 22.2(b)(i) and Section 22.2(b)(ii) are required by Project Co to ensure Project Co and CMH are provided with timely and sufficient information respecting any alleged Delay Event and that Project Co and CMH are not prejudiced in dealing with the claim by Contractor for an extension of the Contract Time or increase to the Guaranteed Price as a consequence of the occurrence of the Delay Event. If Contractor 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 Project Co or CMH has been prejudiced by the failure. The onus shall be on Contractor to establish substantial compliance with the said requirements, and to establish that neither Project Co nor CMH has been prejudiced by the failure to provide the required information within the required time period.
- (d) If the Construction Work should be behind schedule for a reason other than a Delay Event, or if a Contractor Party delays the progress of any portion of the Construction Work necessary to complete the Construction Work on schedule, Contractor shall use all reasonable measures to bring the Construction Work back on schedule. Contractor shall exercise all means within its discretion, such as directing any Contractor Party creating delays to increase their labour forces and

equipment, to improve the organization and expediting of the Construction Work, or to work overtime as may be necessary. Contractor 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 Contractor and/or the Contractor 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 Contractor, shall be the responsibility of Contractor.
- (f) Where there are concurrent delays, some of which are caused by Project Co or CMH or others for whom Project Co or CMH is responsible (other than Contractor), and some of which are caused by Contractor or others for whom Contractor is responsible, Contractor 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) Contractor 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 Construction 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 Contractor Design Issue under Sections 11.17 and 11.18 of the Construction Contract.
- (h) Contractor acknowledges the provisions of Section 22.2(h) of the Project Agreement. Project Co shall provide Contractor with access to and use of the Site as required pursuant to Article 9 of the Construction Contract 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 Contractor agrees that the inability of CMH or Project Co to provide Contractor 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 the Scheduled Substantial Completion Date, no entitlement to a Compensation Event and no change to the Guaranteed Price).

- (i) Contractor acknowledges and agrees that the Contract Time includes a Schedule Cushion in the Construction Schedule at no additional cost to Project Co. Contractor shall separately identify the extent of the Schedule Cushion in the Construction Schedule.
- (j) Contractor acknowledges and agrees that in the event that an extension of the Contract Time is allowed under any provision of the Construction Contract, Project Co 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 Project Co 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 Contractor is (or claims to be) affected by a Delay Event, Contractor shall, and shall require all Contractor Parties to, take and continue to take commercially reasonable steps in accordance with Good Industry Practice to:
 - (i) eliminate, mitigate, overcome or minimize the consequences of such event;
 - (ii) continue to perform its obligations under the Construction Contract to the extent possible notwithstanding the Delay Event;
 - (iii) resume performance of its obligations under the Construction Contract affected by the Delay Event as soon as practicable; and
 - (iv) remedy any failure to perform.
- (b) To the extent that Contractor does not comply with its obligations under this Section 22.3, such failure shall be taken into account in determining Contractor'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 the Construction Contract, "**Compensation Event**" means any event referred to in Sections 22.1(a)(i), 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 Contractor has incurred loss or expense.

23.2 Consequences of a Compensation Event

- (a) If a Compensation Event occurs, Contractor'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 Contractor 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 and subject to Section 14 of the body of the Construction Contract, that there has been a Compensation Event, Contractor shall be entitled to such compensation as would place Contractor 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 Project Co to Contractor. Contractor shall promptly provide Project Co's Project Manager with any information Project Co's Project Manager may require in order to determine the amount of such compensation.
- (c) Notwithstanding any other provision in the Construction Contract, including Section 23.2(b), where Project Co elects to apply all or any portion of the number of days of Schedule Cushion, Contractor 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 Project Co is required, subject to Section 14 of the body of the Construction Contract, to compensate Contractor pursuant to this Section 23.2, then Project Co may either pay such compensation as a lump sum payment or payments at times and in a manner to be agreed with Contractor, acting reasonably.

23.3 Mitigation

- (a) If Contractor is (or claims to be) affected by a Compensation Event, Contractor shall, and shall require all Contractor 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 Contractor does not comply with its obligations under this Section 23.3, such failure shall be taken into account in determining Contractor's entitlement to relief pursuant to this Article 23.

23.4 Insured Exposure

- (a) The compensation payable to Contractor pursuant to this Article 23 shall be reduced by any amount which Contractor or a Contractor Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of the Construction Contract in respect of insurance or the terms of any policy of insurance required under the Construction Contract, 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 the Construction Contract, "**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 the Construction Contract or a party to the Project Agreement to perform any of its obligations under the 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 Construction Work and/or the Facility or any roads servicing the Site;
 - (iv) without prejudice to any obligation of Contractor to provide stand-by power facilities in accordance with the Construction Contract, failure or shortage of power, fuel or transport;
 - (v) blockade or embargo falling short of Force Majeure;
 - (vi) any official or unofficial strike, lockout, work to rule or other labour-related action generally affecting the hospital or construction industry (or a significant sector of that industry) in the Province of Ontario; or
 - (vii) any civil disobedience or protest action, including any action taken by any person or persons protesting or demonstrating against the carrying

out of any part of the Construction Work or the construction and/or operation of hospitals in general,

provided, in each case, that such event does not arise (directly or indirectly) as a result of any act or omission of the party claiming relief and/or (i) in the case of Contractor claiming relief, as a result of any act or omission of any Contractor Party and (ii) in the case of Project Co claiming relief, as a result of any act or omission of any Project Co 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 the Construction Contract pursuant to Section 28.2, shall arise under the Construction Contract by reason of any failure by a party to perform any of its obligations under the Construction Contract, 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 the Construction Contract 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) Contractor shall only be relieved of its obligations under the Construction Contract to the extent, if any, provided for in Section 22, subject to Section 14 of the body of the Construction Contract; and
- (c) If a Relief Event occurs, Contractor shall not be entitled to receive any compensation other than as expressly provided in Section 30.
- (d) Subject to Section 30, Contractor's sole right to payment or otherwise in relation to the occurrence of a Relief Event shall be as provided in this Article 24, subject to Section 14 of the body of the Construction Contract.

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 the Construction Contract, 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 Article 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 Contractor pursuant to this Article 24 shall be reduced by any amount which Contractor or a Contractor Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of the Construction Contract in respect of insurance or the terms of any policy of insurance required under the Construction Contract, 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 the Construction Contract, “**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 the Construction Contract:
 - (i) war, civil war, armed conflict, terrorism, acts of foreign enemies or hostilities;

- (ii) nuclear or radioactive contamination of the Construction Work, the Facility and/or the Site, unless Contractor or any Contractor Party is the source or cause of the contamination;
- (iii) chemical or biological contamination of the Construction 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 Construction Work to be abandoned.

25.2 Consequences of Force Majeure

- (a) Subject to Section 25.3 and subject to Section 14 of the body of the Construction Contract, the Party claiming relief shall be relieved from liability under the Construction Contract to the extent that, by reason of the Force Majeure, it is not able to perform its obligations under the Construction Contract.
- (b) In respect of an event of Force Majeure that is also a Delay Event pursuant to Section 22.1(a)(ix):
 - (i) Contractor shall only be relieved of its obligations under the Construction Contract to the extent, if any, provided for in Article 22 subject to Section 14 of the body of the Construction Contract; and
 - (ii) **(intentionally deleted)**
 - (iii) If an event of Force Majeure occurs prior to the Substantial Completion Date, Contractor shall not be entitled to receive any compensation other than as expressly provided in Section 30.
 - (iv) Subject to Section 30, Contractor's sole right to payment or otherwise in relation to the occurrence of an event of Force Majeure shall be as provided in this Article 25.

25.3 Mitigation and Process

- (a) Where a Party is (or claims to be) affected by an event of Force Majeure, such Party shall take commercially reasonable steps to mitigate the consequences of such event of Force Majeure upon the performance of its obligations under the Construction Contract, 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 Article 25.
- (c) The Party claiming relief shall give written notice to the other Party within 5 Business Days of such Party becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.
- (d) A subsequent written notice shall be given by the Party claiming relief to the other Party within a further 5 Business Days of the initial notice, which notice shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including, without limitation, the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with Section 25.3(a), the date of the occurrence of the event of Force Majeure, and an estimate of the period of time required to overcome the event of Force Majeure and its effects.
- (e) The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and of when performance of its affected obligations can be resumed.
- (f) If, following the issue of any notice referred to in Section 25.3(d), the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure and/or any failure to perform, such Party shall submit such further information to the other Party as soon as reasonably possible.

25.4 Insured Exposure

- (a) The compensation payable to Contractor pursuant to this Article 25 shall be reduced by any amount which Contractor or a Contractor Party recovers, or is entitled to recover, under any insurance policy, or would have recovered if it had complied with the requirements of the Construction Contract in respect of insurance or the terms of any policy of insurance required under the Construction Contract, 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 the Construction Contract 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 Project Co and Contractor to reach agreement pursuant to this Section 25.5.

26. CONTRACTOR DEFAULT

26.1 Contractor Events of Default

- (a) For the purposes of the Construction Contract, “**Contractor 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 Project Co of its payment obligations hereunder:
 - (A) Contractor 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 Contractor with respect to Contractor or any of the property, assets or undertaking of Contractor, or any creditor of Contractor takes control or takes steps to take control of Contractor or any of Contractor’s assets, or any proceedings are instituted against Contractor that result in Contractor being declared or ordered bankrupt, or any proceedings are instituted against Contractor 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 Contractor seeking any such result, or any such proceedings are instituted by a person other than Contractor, Project Co, an Project Co 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 Construction 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 Contractor are taken to authorize any of the actions set forth in this Section 26.1(a)(i)(A);
 - (B) Contractor 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 Contractor's ability to perform its obligations under the Construction Contract;

- (C) if any execution, sequestration, extent or other process of any court becomes enforceable against Contractor or if a distress or analogous process is levied against any property of Contractor that materially adversely affects Contractor's ability to perform its obligations hereunder; or
 - (D) Contractor 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 Contractor Event of Default;
- (ii) subject to the occurrence of a Delay Event, Contractor failing to achieve Substantial Completion within 180 days after the Scheduled Substantial Completion Date (the "**Longstop Date**");
 - (iii) Contractor 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 Construction Work or that may compromise the reputation or integrity of CMH 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 CMH.
 - (iv) Contractor committing a breach of its obligations under the Construction Contract which has or will have a material adverse effect on CMH or the ability of CMH to operate the Facility (other than a breach that is otherwise referred to in this Section 26.1 and other than as a consequence of a breach by Project Co of its obligations under the Construction Contract), and upon receiving notice of such breach from Project Co, Contractor failing to remedy such breach in accordance with all of the following:
 - (A) Contractor 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 or CMH, as applicable, 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) Contractor wholly abandoning the Construction Work for a period which exceeds 3 Business Days from receipt by Contractor of a written request to return to the Site, other than as a consequence of a Delay Event or a breach by Project Co of its obligations under the Construction Contract;
- (vi) Contractor 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 4.6 of the body of the Construction Contract, Contractor failing to remove an Encumbrance that arose due to an act or omission of Contractor or any Contractor Party (other than any Encumbrances derived through CMH) 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 Contractor or any Contractor Party knew, or ought to have known, about the existence of the Encumbrance.
- (ix) Contractor failing to pay any sum or sums due to Project Co under the Construction Contract, which sum or sums are not being disputed by Contractor in accordance with Schedule 14 – Dispute Resolution Procedure, and which sum or sums, either singly or in aggregate, exceed(s) \$250,000, and such failure continues for 30 days from receipt by Contractor of a notice of non-payment from Project Co;
- (x) Contractor failing to comply with Article 41;
- (xi) Contractor failing to obtain any bond, security or insurance required to be obtained by or on behalf of Contractor pursuant to the Construction Contract, 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 the Construction Contract, other than as a consequence of a breach by Project Co of its obligations under the Construction Contract, and:

- (A) in respect of insurance, such breach by Contractor 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 Contractor is not remedied within 5 Business Days of Contractor becoming aware of such breach;
- (xii) Contractor failing to comply with any determination, order or award made against Contractor in accordance with Schedule 14 – Dispute Resolution Procedure; and/or
- (xiii) a default by Contractor or any Contractor Party under the Construction Contract following the expiry of any applicable notice and cure periods thereunder.

26.2 Notification of Occurrence

- (a) Contractor shall, promptly upon Contractor becoming aware of the occurrence, notify Project Co of the occurrence and details of any Contractor 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 Contractor Event of Default.

26.3 Remedies

- (a) Upon the occurrence of a Contractor Event of Default under the Construction Contract, and provided Project Co has given notice to Contractor of the occurrence of a Contractor Event of Default, Project Co may do any or all of the following as it in its Sole Discretion shall determine:
 - (i) terminate the Construction Contract in its entirety by written notice having immediate effect, such notice to be given to Contractor;
 - (ii) if Contractor is in default under the Construction Contract by reason of its failure to pay any monies, Project Co may (without obligation to do so) make payment on behalf of Contractor of such monies and any amount so paid by Project Co plus the Payment Compensation Amount;
 - (iii) without termination of the Construction Contract, cure or attempt to cure the Contractor Event of Default (but this shall not obligate Project Co to cure or attempt to cure the Contractor Event of Default, or after having commenced to cure or attempt to cure such Contractor Event of Default, to continue to do so or to cure or attempt to cure any subsequent

Contractor Event of Default) and all costs and expenses incurred by Project Co in curing or attempting to cure the Contractor Event of Default, together with the Payment Compensation Amount, shall be payable by Contractor to Project Co on demand. No such action by Project Co shall be deemed to be a termination of the Construction Contract and Project Co shall not incur any liability to Contractor for any act or omission of Project Co in the course of curing or attempting to cure any such Contractor Event of Default. Without limiting the foregoing, Project Co may deduct the cost and expense of curing or attempting to cure the Contractor Event of Default, plus the Payment Compensation Amount thereon, from any payment then or thereafter due to Contractor.

- (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 Contractor 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 8.2 of the body of the Construction Contract;
- (vi) make demand on the Surety in accordance with the term of the Bonds;
- (vii) take possession of the Construction 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 Contractor), and finish the Construction Work by whatever method Project Co may consider expedient; and
- (viii) exercise any of its other rights and remedies provided for under the Construction Contract or otherwise available to it.

26.4 Project Co's Costs

- (a) Contractor 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 26, including any relevant increased administrative expenses. Project Co shall take commercially reasonable steps to mitigate such costs.

26.5 No Other Rights to Terminate

- (a) Project Co shall have no right or entitlement to terminate the Construction Contract, or to accept any repudiation of the Construction Contract, and shall not purport to exercise any such right or entitlement except as expressly set forth in the Construction Contract.

27. PROJECT CO DEFAULT

27.1 Project Co Events of Default

- (a) For the purposes of the Construction Contract, **“Project Co Event of Default”** means any one or more of the following events or circumstances:
 - (i) Project Co failing to pay any sum or sums due to Contractor under the Construction Contract, which sum or sums have been certified by Lender’s Contractor or Consultant, as case may be, or awarded by arbitration or court, where such failure by Project Co to make payment is not a direct result of any failure on the part of CMH to make payment to Project Co and such failure continues for a period of 20 Business Days from receipt by Project Co or a notice of non-payment from or on behalf of Contractor; and/or
 - (ii) Project Co committing a material breach of its obligations under the Construction Contract (other than a breach that is otherwise referred to in this Section 27.1 and other than as a consequence of a breach by Contractor of its obligations under the Construction Contract), and upon becoming aware of such breach, Project Co failing to remedy such breach in accordance with all of the following:
 - (A) Project Co shall:
 - (I) immediately commence and thereafter diligently continue to remedy the breach and to mitigate any adverse effects on Contractor;
 - (II) put forward, within 5 Business Days of receipt of notice of such breach from Contractor, 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 neither:

- (i) any withholding of holdback and final payments by Project Co or otherwise effecting any set off permitted or contemplated hereunder; nor
- (ii) any non-payment by Project Co in circumstances where either the Substantial Completion Date or Interim Completion Date are delayed relative to the originally contemplated dates therefore and there is neither (A) funding available under the Lending Agreements due to such delay nor (B) compensation available from CMH under the Project Agreement in respect of such delay, in either case at the time the relevant Project Co payment is due and payable

shall not constitute a Project Co Event of Default permitting Contractor to claim that Project Co is in default of Project Co's contractual obligations, provided that nothing in paragraph (ii) above shall prejudice the Contractor's right to claim payment of the applicable amount from Project Co if and to the extent that funding for same subsequently becomes available to Project Co.

27.2 Remedies

- (a) On the occurrence of a Project Co Event of Default and while the same is continuing, Contractor may give notice to Project Co of the occurrence of such Project Co Event of Default, which notice will specify the details thereof, and at Contractor's option and without prejudice to its other rights and remedies under the Construction Contract, Contractor may:
 - (i) suspend performance of its obligations under the Construction Contract until such time as Project Co has remedied such Project Co Event of Default;
 - (ii) terminate the Construction Contract 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 8.2 of the body of the Construction Contract.
- (b) Where Project Co has disputed the alleged Project Co Event of Default set out in the Notice under Section 27.2(a), the remedies available to Contractor as set out in Section 27.2(a) shall be suspended and not available to Contractor 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 Contractor and Project Co has not remedied the Project Co 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 Contractor's Costs

- (a) Project Co shall reimburse Contractor 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 Contractor in exercising its rights under this Article 27, including any relevant increased administrative expenses. Contractor shall take commercially reasonable steps to mitigate such costs.

27.4 No Other Rights to Terminate

- (a) Contractor shall have no right or entitlement to terminate the Construction Contract, nor to accept any repudiation of the Construction Contract, and shall not exercise, nor purport to exercise, any such right or entitlement except as expressly set forth in the Construction Contract.

28. NON-DEFAULT SUSPENSION AND TERMINATION

28.1 Suspension

- (a) Project Co may order Contractor in writing to suspend or interrupt all or any part of the Construction Work for such period of time as Project Co may determine to be appropriate for the convenience of Project Co. This right of Project Co to suspend or interrupt the Construction Work shall not give rise to any duty on the part of Project Co to exercise this right for the benefit of Contractor or any other person or entity. In the event of an Project Co-ordered suspension of Work not resulting from Contractor or a Contractor Party not performing its obligations under the Construction Contract, subject to Section 14 of the body of the Construction Contract, the Contract Time will be extended for such reasonable time as the Consultant shall recommend in consultation with Project Co and Contractor and, subject to Section 14 of the body of the Construction Contract, Contractor shall be reimbursed by Project Co for the Cost (as defined in Section 2.3.2 of Schedule 11 – Change Procedure) incurred by Contractor as a result of the suspension of the Construction 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 Construction Work. The Construction Work shall only be suspended by written notice from Project Co to Contractor.
- (b) If the Construction Work is stopped for any reason, Contractor shall provide protection for any part of the Construction Work likely to become damaged during the Construction Work stoppage. Project Co shall, subject to Section 14 of the body of the Construction Contract, 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) Project Co shall be entitled to terminate this Construction Contract concurrently with termination of the Project Agreement by Project Co pursuant to Section 28.2 of the Project Agreement. Contractor may request that Project Co terminate the Project Agreement and this Construction Contract due to the occurrence or continuance of a Relief Event for a continuous period of 180 days from the date on which the Party affected gives notice and acknowledges that Project Co may not agree to such termination unless the Lenders elect to terminate pursuant to the Lending Agreements or otherwise consent to such termination in accordance with the Lending Agreements.

28.3 Termination for Delay or Force Majeure

- (a) Contractor may request that Project Co terminate the Project Agreement and this Construction Contract due to the occurrence or continuance of an event of Force Majeure or a Delay Event for a continuous period of 180 days from the date on which the Party affected gives notice and acknowledges that Project Co may not agree to such termination unless the Lenders elect to terminate pursuant to the Lending Agreements or otherwise consent to such termination in accordance with the Lending Agreements.

28.4 Termination for Convenience

- (a) Project Co shall, in its Sole Discretion and for any reason whatsoever, be entitled to terminate the Construction Contract at any time on 180 days written notice to Contractor. Such notice shall, include confirmation that Project Co terminated the Project Agreement in accordance with Section 28.4 thereunder.
- (b) In the event of notice being given by Project Co in accordance with this Section 28.4, Project Co shall, at any time before the expiration of such notice, be entitled to direct Contractor to refrain from commencing, or allowing any third party to commence, the Construction Work, or any part or parts of the Construction Work, where such Work has not yet been commenced.

29. EFFECT OF TERMINATION

29.1 Termination

- (a) Notwithstanding any provision of the Construction Contract, 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 the Construction Contract by a Party, the other Party may elect to continue to treat the Construction Contract as being in full force and effect and to enforce its rights under the Construction Contract 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 the Construction Contract, including any right to terminate the Construction Contract 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 Project Co of its right to perform, or to seek, pursuant to the Construction Contract, a third party to perform, the obligations of Contractor, the Parties shall continue to perform their obligations under the Construction Contract (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 the Construction Contract 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 CMH as shall not already have been transferred to CMH pursuant to Section 11.9(f) of the Project Agreement, Contractor shall transfer to, and there shall vest in CMH, free from all Encumbrances other than any Encumbrances derived through CMH, such part of the Construction Work and the Facility as shall have been constructed and such items of the plant and equipment as shall have been procured by Contractor, and if Project Co 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 Project Co or CMH for the purposes of completing the Construction Work; and
 - (B) all construction plant and equipment shall remain available to Project Co or CMH for the purposes of completing the Construction Work, subject to payment by Project Co or CMH of Contractor's reasonable charges;
 - (ii) in the event of a termination as provided for pursuant to the Construction Contract, Contractor shall cooperate with Project Co and CMH and turn over to Project Co or CMH copies of Contractor's records, documentation and drawings necessary for Project Co or CMH to proceed with the Construction Work, including the legal assignment to Project Co or CMH of any of Contractor's rights in any agreement relating to the Construction Work as Project Co or CMH, as directed by Project Co, may require, and Contractor shall not do anything to impede

Project Co or CMH's ability to proceed with the Construction Work. Further, Contractor agrees to turn over to CMH, as directed by Project Co, on a timely basis, enabling Contractor to make and retain copies as it may reasonably deem necessary, all of Contractor's records, files, documents, materials, drawings, and any other items relating to the Project, whether located on the Site, at Contractor'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 Project Co or CMH to such records) and to vacate the Site in accordance with Project Co or CMH's reasonable instructions. Project Co and CMH 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) Contractor shall use commercially reasonable efforts to assign or otherwise transfer to CMH or Project Co, as directed by Project Co, free of Encumbrances (other than any Encumbrances derived through CMH), 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 Contractor under the Construction Contract and included in the Facility; and
- (iv) Contractor's obligation under the Construction Contract as to quality, correction and warranty of the Construction Work performed by Contractor 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 Contractor, 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 Construction Work accumulated over the course of the performance of the Construction Work shall be the property of CMH or the Consultant and Contractor shall have no right, title or interest therein whatsoever, and hereby waives any moral rights it may have under Applicable Law. Upon termination of the Construction Contract, all such information shall be provided by Contractor to CMH or Project Co, as directed by Project Co, in electronic format where it exists in electronic format, and in its original format, when not in electronic format.
- (b) Project Co shall provide Contractor, 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. Project Co shall also provide Contractor, 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 Contractor at its expense. Contractor shall ensure that all copies of the Contract Documents received from Project Co are kept in a secure location.

29.6 Provision in Subcontracts

- (a) Contractor shall make provision in all Subcontracts to which it is a party (including requiring the relevant Contractor Parties to make such provision) to ensure that Project Co shall be in a position to exercise its rights, and Contractor shall be in a position to perform its obligations, under this Article 29.

29.7 Survival

- (a) The provisions of the Construction Contract which by their nature are continuing shall survive termination of the Construction Contract.

30. COMPENSATION ON TERMINATION

30.1 Compensation on Termination

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

31. TAXES

31.1 Contractor to Pay Taxes

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

31.2 Changes in Rates

- (a) Any increase or decrease in costs to Contractor 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) Contractor 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 Construction Work. Contractor shall be entitled to claim for the increase in cost equal to the amount of such included Tax on the uncompleted Cost of the Construction Work. Project Co will be entitled to withhold payment to Contractor of a sum equal to the

amount of any reduction in such included Tax on the uncompleted portion of the Construction Work, only if Project Co 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 Construction Work is applicable to the Construction Contract, Contractor shall, at the request of Project Co, 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 Project Co. Contractor agrees to endorse over to Project Co any cheques received from the federal or provincial governments as may be required to implement the foregoing, failing which, Project Co is hereby authorized to deduct the amount from any payment that is then or may thereafter become due to Contractor hereunder.

31.5 Records

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

32. INSURANCE AND PERFORMANCE SECURITY

32.1 General Requirements

- (a) Contractor and Project Co 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 the Construction Contract shall relieve Contractor or Project Co of their respective liabilities and obligations under the Construction Contract.

33. INDEMNITIES

33.1 Contractor Indemnities

- (a) In addition to any other indemnification provided in the Construction Contract or in law or in equity, Contractor shall indemnify and save harmless Project Co, Project Co's Project Manager and each of their respective directors, officers, consultants, employees, agents, representatives, successors and assigns, and any person for whom they are in law responsible (collectively, the "**Project Co 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 Contractor or any Contractor Party under OHSA, or resulting from any failure by Contractor to fulfill its obligations under Section 11.6, including the failure to exercise any of the rights or powers given to Contractor under Section 11.6(b) at the Site in respect of any person for whom Contractor is responsible under OHSA in connection with the Project;
- (iv) any infringement or alleged infringement of a patent of invention by Contractor or any Contractor Party, other than infringements or alleged infringements described in Section 33.2(a)(iii);
- (v) any fines levied against Contractor or any Project Co Indemnified Party due to Contractor's (or any Contractor Party's) violations of any Applicable Law;
- (vi) without prejudice to Project Co's rights under Article 26 and any other rights under the Construction Contract, any obligations of Contractor assumed by Project Co under the Construction Contract and any reasonable costs and expenses incurred by Project Co in relation to the exercise by Project Co of its step-in rights under the Assignable Subcontract Agreement for Construction Contract;
- (vii) any obligations of Contractor to satisfy judgements and pay costs resulting from construction liens arising from the performance of the Construction Work or actions brought in connection with any such liens or in connection with any other claim or lawsuit brought against CMH or Project Co by any person that provided services or materials to the Site which constituted part of the Construction Works in accordance with Section 4.6(e) of the body of the Construction Contract; and
- (viii) (A) Contractor's obligations under Article 14; and
(B) Contractor Hazardous Substances,

(collectively, the "**Contractor Indemnified Hazardous Substances Claims**"), which indemnification shall apply and extend to:

- (I) Contractor Indemnified Hazardous Substances Claims made by federal, provincial or local government entities or agencies, and
- (II) all Contractor Indemnified Hazardous Substances Claims arising out of such actual Release of Hazardous Substances even if such Contractor Indemnified Hazardous Substances

Claims are not discovered or made until after the performance of the Construction Work or after conclusion of the Construction Contract, 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 the Construction Contract by Contractor or any act or omission of Contractor or any Contractor Party.

- (b) Contractor 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 any representation or warranty by Contractor herein;
 - (ii) any claims with respect to the Project, by any Contractor Party that Contractor has replaced pursuant to Section 11.8(b);
 - (iii) any breach of the Construction Contract or any Implementing Agreement by Contractor; or
 - (iv) any Direct Losses (as defined in the Project Agreement) which Project Co is required to provide indemnification pursuant to Section 33.1 of the Project Agreement.
- (c) Project Co hereby holds in trust for and on behalf of the Project Co Indemnified Parties other than Project Co the benefit of the indemnities provided by Contractor set out in this Section 33.1.
- (d) Contractor shall indemnify Project Co for damages suffered or incurred on account of (i) any payment not duly made by Contractor pursuant to the terms of the Construction Contract on the due date; (ii) any overpayment to or under payment by Contractor; or (iii) an amount determined as payable by Contractor 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 Contractor 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 Contractor under this Section 33.1 shall not be greater than the total cumulative liability of Contractor under Section 8.2 of the body of the Construction Contract; and
- (ii) the indemnities set out in this Section 33.1 shall not apply to the extent the breach of the Construction Contract or the act or omission of Contractor or any Contractor Party was caused or contributed to by:
 - (A) the breach of the Construction Contract by Project Co; or
 - (B) any act or omission by CMH, CMH's own forces, Project Co, or any Project Co Indemnified Party.

33.2 Project Co Indemnities to Contractor

- (a) Project Co shall, subject to Section 14 of the body of the Construction Contract, indemnify and save harmless Contractor and the Contractor Parties and each of their respective directors, officers, consultants, employees, agents, representatives, successors and assigns (the “**Contractor 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 the Construction Contract, the model, plan, Specification or design of which was supplied to Contractor as part of the Contract Documents;
 - (iv)
 - (A) exposure to, or the presence of, Hazardous Substances at the Site other than Contractor Hazardous Substances;
 - (B) the breach of any Applicable Law relating to such Hazardous Substances; and
 - (C) 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 Contractor Indemnified Hazardous Substances Claims as set out in Section 33.1(a)(viii) (collectively, the “**Project Co Indemnified Hazardous Substances Claims**”), and in this regard, it is expressly agreed and understood that such indemnification shall apply and extend to Project Co Indemnified Hazardous Substances Claims even if such Project

Co Indemnified Hazardous Substances Claims are not discovered or made until after the performance of the Construction Work or after conclusion of the Construction Contract, 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 the Construction Contract by Project Co or any act or omission of Project Co or any Project Co Party, provided that there shall be excluded from the indemnity given by Project Co any liability for the occurrence of risks against which Contractor is bound to insure under the Construction Contract to the extent of the proceeds available or that should have been available but for a failure by Contractor to properly insure in accordance with the terms hereof.

- (b) Project Co shall, subject to Section 14 of the body of the Construction Contract, indemnify and save harmless the Contractor 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 the Construction Contract by Project Co.
- (c) Contractor hereby holds in trust for and on behalf of Contractor Indemnified Parties other than Contractor the benefit of the indemnities provided by Project Co set out in this Section 33.2.
- (d) Project Co shall, subject to Section 14 of the body of the Construction Contract, indemnify Contractor for damages suffered or incurred on account of (i) any payment not duly made by Project Co pursuant to the terms of the Construction Contract on the due date (other than as a result of a failure by CMH to make such payment to Project Co under the Project Agreement); (ii) any overpayment to or under payment by Project Co (other than as a result of a failure by CMH to make such payment to Project Co under the Project Agreement); or (iii) an amount determined as payable by Project Co to Contractor 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 Contractor or from the date identified (if any) applicable to an amount determined as payable by Project Co to Contractor 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 33.2 shall not be greater than the total cumulative liability of Project Co under Section 8.2 of the body of the Construction Contract; and

- (ii) the indemnities set out in this Section 33.2 shall not apply to the extent the breach of the Construction Contract or the act or omission of Project Co or any Project Co Party was caused or contributed to by:
 - (A) the breach of the Construction Contract by Contractor; or
 - (B) any act or omission of Contractor or any Contractor 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 the Construction Contract. 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 the Construction Contract 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, Contractor acknowledges and agrees that where Project Co is the Beneficiary, Project Co or CMH, as applicable, 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 the Construction Contract.

33.4 Mitigation – Indemnity

- (a) For greater certainty, Section 10.9 of the body of the Construction Contract applies to any indemnity given under the Construction Contract 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 Contractor

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

35. NOT USED

36. WARRANTY

36.1 Contractor Warranty

- (a) Contractor warrants that the Construction 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 Phased Occupancy Date with respect to Phase 2 (as defined in the Specifications), but only with respect to those portions of the Work directly affected by the occupancy by CMH of Phase 2 except for the equipment listed in Section 15.1 of Specification 01 70 00 (in respect of which Section 36.1(a)(ii) shall apply); and
 - (ii) with respect to the balance of the Work, including the equipment listed in Section 15.1 of Specification 01 70 00, 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. Contractor shall ensure that all extended warranties specified in the Contract Documents are provided and shall assign to CMH all such extended warranties in accordance with the provisions of Section 16.2(i).

36.2 Corrections

- (a) Contractor agrees to correct promptly, at its own expense, in a manner approved by Project Co, defects, deficiencies or non-compliant items in the Construction Work which appear prior to and during the warranty periods set out in Section 36.1. Contractor acknowledges that the timely performance of warranty work is critical to the ability of CMH to maintain effective operations of the Facility. Contractor shall use commercially reasonable efforts to respond to the requirement of CMH to correct defective, deficient or non-compliant items in the Construction Work within the time periods required by CMH 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). Contractor further acknowledges that if Project Co or CMH is unable to contact Contractor and/or obtain the corrective work within such time period required by CMH that CMH's or Project Co's own forces may take such emergency steps as are reasonable and appropriate to correct such defects, deficiencies or non-compliant items in the Construction Work, at Contractor's

sole cost and expense, and except in the case of damage caused by CMH's or Project Co's own forces, such emergency steps taken by CMH's or Project Co's own forces shall not invalidate any warranties in respect of such portion of the Construction Work affected by such corrective actions of CMH's or Project Co's own forces.

36.3 Make Good Any Damage

- (a) Subject to Section 36.2, Contractor shall promptly, and in any event not more than 30 days after receipt of written notice thereof from the Consultant, CMH or Project Co, Make Good any defects, deficiencies or non-compliant items in the Construction 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 Contractor'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, Contractor shall be in compliance if Contractor:
 - (A) commences and is diligently proceeding with the correction of the Construction Work within the specified time;
 - (B) provides CMH with a schedule acceptable to Project Co and CMH for such correction; and
 - (C) corrects the Construction Work in accordance with such schedule.
- (b) If Contractor fails to correct the Construction Work in the time specified or subsequently agreed upon, without prejudice to any other right or remedy Project Co may have, Project Co may correct such Work and deduct the cost and expense thereof from any Project Co Holdback held by Project Co or from any payment then or thereafter due to Contractor.
- (c) After the Final Completion Date, CMH shall cause Contractor 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. Contractor acknowledges that such access to the Site may be subject to such limitations as may be imposed by CMH.

36.4 Performance of Replacement Work

- (a) The performance of replacement work and Making Good of defects, deficiencies or non-compliant items for which Contractor is responsible, shall be commenced and completed as expeditiously as possible, and shall be executed at times convenient to CMH and this may require work outside normal working hours at

Contractor's expense. Any extraordinary measures required to complete the Construction Work, as directed by CMH to accommodate the operation of the Facility or other aspects of the Project as constructed shall be at Contractor's expense.

36.5 Opening, Tests, Inspections

- (a) Contractor shall, at any time or times prior to the expiry of said warranty period and when required to do so by CMH, make such openings, tests, inspections, excavations, examinations, or other investigations in, through, of or in the vicinity of the Construction Work as directed and shall, if required, Make Good again, to the satisfaction of CMH, any openings, excavations or disturbances of any property, real or personal, resulting therefrom. If any defect, deficiency or non-compliant item for which Contractor is responsible is found in the Construction Work by such investigations, the cost of such investigations and such Making Good shall be borne by Contractor; but if no such defect, deficiency or non-compliant item for which Contractor is responsible is found by such investigations, the said cost shall, subject to Section 14 of the body of the Construction Contract, be borne by Project Co.

36.6 Remedies Not Exclusive

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

36.7 Occupation by CMH

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

36.8 No Limitation

- (a) Subject to Section 11.19(f), neither the performance of work by CMH's or Project Co's own forces nor the work of CMH's or Project Co's other contractors, shall, except with respect to any damage caused by CMH's or Project Co's own forces or CMH'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 the Construction Contract. All Specifications, Drawings and models furnished by the Consultant are to be used only with respect to the Construction 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 Contractor at Project Co's expense (subject to Section 14 of the body of the Construction Contract) are the property of Project Co.

37.2 Patent Fees

- (a) Contractor shall pay the royalties and patent licence fees required for the performance of the Construction Contract. 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) Contractor shall not, and shall ensure that the Contractor Parties and any person affiliated with Contractor 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, the Project Agreement, the Construction Contract or any matters related thereto, without the prior written consent of Project Co, CMH and Infrastructure Ontario, in their Sole Discretion, provided that if Contractor, a Contractor Party or any person affiliated with Contractor 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 Project Co, CMH and Infrastructure Ontario prior to such disclosure.
- (b) Contractor shall, and shall ensure that the Contractor Parties and any person affiliated with Contractor, in each case, comply, at all times, with CMH's, Project Co'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 Project Co, CMH 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 Project Co, CMH and Infrastructure Ontario prior to such disclosure.

- (c) CMH, 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 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, CMH 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 the Construction Contract to the contrary, Contractor acknowledges and agrees that, in accordance with the transparency and accountability principles of the IPFP Framework, CMH and Project Co has a right to disclose or publish (including on websites) the Project Agreement, the Construction Contract, any or all terms hereof, including any or all contractual submissions and other records kept in accordance with the Project Agreement, the Construction Contract, any information related to the performance of Contractor (or any Contractor Party) or any information derived from the Project Agreement, the Construction Contract or the information related to the performance of Contractor (or any Contractor Party) as CMH and Project Co, in its Sole Discretion, may consider appropriate. In exercising its discretion, CMH and Project Co will be guided by the principles set out in Sections 38.2(b), and 38.2(c).
- (b) CMH will not disclose portions of the Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with the Project Agreement, any information related to the performance of Contractor (or any Contractor Party) or any information derived from the Project Agreement or the information related to the performance of Contractor (or any Contractor 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 Contractor (or any Contractor Party), CMH may disclose such information.
- (d) Contractor acknowledges the provisions of Section 38 of the Project Agreement and accepts that any information, records, documents or other materials provided by Contractor under the Construction Contract may be subject to the provisions of Section 38 of the Project Agreement and agrees to do all things and take all such actions as may be necessary to ensure that Project Co is able to comply with

Section 38 of the Project Agreement in respect of such information, documents or materials.

38.3 Redaction

- (a) Prior to disclosing or publishing the Project Agreement, any terms hereof, including any contractual submissions or other records kept in accordance with the Project Agreement, any information related to the performance of Contractor (or any Contractor Party) or any information derived from the Project Agreement or the information related to the performance of Contractor (or any Contractor Party), CMH shall provide to Project Co a redacted version of the 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 Contractor, 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 Project Co shall refer such matter to CMH under the Project Agreement. Any such determination shall be made with reference to the text and principles of FIPPA.

38.4 Disclosure to Government

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

38.5 Freedom of Information

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

38.6 Use and Disclosure of Confidential Information

- (a) Except as authorized hereunder, each Party shall hold in confidence, not disclose and not permit any person any manner of access to, whether directly or indirectly, any Confidential Information of any other Party, provided that this Section 38.6 shall not restrict either Party from disclosing such Confidential Information to its professional advisors, to the extent necessary, to enable that Party to perform, to cause to be performed, or to enforce, its rights or obligations under the Construction Contract or any of the Implementing Agreements.
- (b) Contractor may:
 - (i) disclose in confidence to any Contractor Party and their professional advisors, such Confidential Information as is necessary for the performance by such Contractor Party of its obligations under the Construction Contract or any of the Implementing Agreements.
- (c) Contractor acknowledges that MEDEI, IO, MOHLTC and/or the Province may use Confidential Information of Contractor for purposes not specific to the Project, but for other general governmental purposes, such as development of the Province's alternate procurement and financing policies and framework. MEDEI, IO, MOHLTC and/or the Province will advise Project Co prior to using any Confidential Information of Contractor 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 the Construction Contract or any Implementing Agreements, as permitted by the Construction Contract 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 the Construction Contract, 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 the Construction Contract;
- (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 Project Co or its nominee or CMH upon a termination of the Construction Contract, pursuant to Article 29 or is otherwise reasonably required by Project Co or its nominee or CMH for the purposes of performing (or having performed) the Construction Work, including the construction of the Facility, subject to payment by Project Co or CMH of any royalties or patent license fees that were payable by Contractor in respect of such information (if any) and to any related confidentiality obligations disclosed to Project Co or CMH 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 Contractor has identified in writing to Project Co 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) Contractor acknowledges the importance of maintaining the confidentiality and privacy of Personal Information.
- (b) Contractor shall, and shall require each Contractor Party to, only collect, hold, process, use, store and disclose Personal Information with the prior consent of Project Co and only to the extent necessary to perform Contractor's obligations under the Construction Contract.
- (c) Contractor shall, and shall require each Contractor 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) Contractor shall take all necessary and appropriate action, and shall require each Contractor Party to take all necessary and appropriate action, against any person who fails to comply with this Section 38.
- (e) Contractor shall allow Project Co and CMH on reasonable notice to inspect the measures of Contractor and each Contractor Party to protect Personal Information.

38.10 Protection of Patient Information

- (a) Contractor shall take all necessary steps, including the appropriate technical and organizational and physical security measures, and shall require each Contractor Party to take all necessary steps and to include provisions in Subcontracts to require each Contractor Party and other Contractor Parties to take all necessary steps, such that Contractor, the Contractor Parties, and its and their staff shall protect, secure and keep confidential any Patient Information.
- (b) Contractor shall keep confidential, and shall require each Contractor Party to keep confidential and to include provisions in all Subcontracts to require all Contractor Parties to keep confidential, all Patient Information that any of them may encounter or obtain during the course of their duties.
- (c) CMH or Project Co may from time to time require that Contractor and any Contractor Party or members of its or their staff execute and deliver within 2 Business Days of such request an agreement satisfactory to CMH or Project Co, 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 the Construction Contract.

39. ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL

39.1 Contractor Assignment

- (a) Contractor 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 the Construction Contract or any Implementing Agreement without the prior written consent of Project Co, which consent may be withheld in the Sole Discretion of Project Co and subject to the consent of the Agent under the Lending Agreements and in accordance with the Contractor Direct Agreement.
- (b) Section 39.1(a) shall not apply to:
 - (i) Any Subcontract or sub-subcontract entered into by Contractor, the Contractor Parties or any Sub-Subcontractor in connection with the Project.

39.2 Project Co Assignment

- (a) Project Co 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 the Construction Contract or any Implementing Agreement.
- (b) Project Co may sell, assign, transfer, dispose of or otherwise alienate all (but not less than all) of its interest in the Construction Contract and the Implementing Agreements to the Agent and the lenders as security for Project Co's liabilities and obligations under the Lending Agreements and otherwise in accordance with the Contractor Direct Agreement.
- (c) Upon any sale, assignment, transfer, disposition or other alienation in accordance with Section 38.2(b), Project Co shall be released from all of its obligations under the Construction Contract to the extent assumed by the assignee or transferee.

39.3 Subcontractors

- (a) Contractor shall not 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 CMH's role as a hospital, (ii) may compromise the reputation of CMH; (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) Contractor shall not terminate, agree to the termination of or replace the Subcontractors unless Contractor has complied with Section 6.2(a) or received the prior written consent of Project Co, which may be withheld in the Sole Discretion of Project Co.

39.4 Changes in Ownership

- (a) No Change in Ownership of Contractor, or any company of which Contractor 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 CMH's role as a hospital; (ii) may compromise the reputation of CMH; 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 Construction Work.
- (b) No Change in Control of Contractor, or any company of which Contractor is a subsidiary, shall be permitted without the prior written consent of Project Co, which may be withheld in Project Co'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 Contractor is required to obtain Project Co's consent to a Change in Ownership or Change in Control pursuant to this Section 39.4, Contractor shall provide notice to Project Co of any Change in Ownership or Change in Control of Contractor, or any company of which Contractor 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 Contractor, or any company of which Contractor 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 Contractor Group in relation to the decisions, management, actions or policies of Contractor 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 CMH, Project Co 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 the Construction Contract or any other agreement with CMH, Project Co 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 the Construction Contract or any other agreement with Project Co or any public body in connection with the Project;

provided that this Section 41.1(a)(i) shall not apply to Contractor or any Contractor Party (or anyone employed by or acting on their behalf) providing consideration to CMH, Project Co or any public body in the ordinary course, or as reasonably necessary, to fulfill or comply with the obligations and liabilities of Contractor under the Construction Contract or any other agreement with CMH, Project Co or any public body in connection with the Project;

(ii) entering into the Construction Contract or any other agreement with CMH, Project Co 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 Contractor, or on its behalf or to its knowledge, CMH, Project Co 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 CMH or Project Co, provided that this Section 41.1(a)(ii) shall not apply to a fee or commission paid by Contractor or any Contractor Party (or anyone employed by or acting on their behalf) to CMH, Project Co 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 Contractor under the Construction Contract or any other agreement with CMH, Project Co 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 the Construction Contract or any other agreement with CMH, Project Co or any public body in connection with the Project; or

- (iv) defrauding or attempting to defraud or conspiring to defraud CMH, Project Co or any other public body.

41.2 Warranty

- (a) Contractor warrants that, in entering into the Construction Contract, it has not committed any Prohibited Act.

41.3 Remedies

- (a) If Contractor or any Contractor Party (or anyone employed by or acting on their behalf) commits any Prohibited Act, then Project Co shall be entitled to act in accordance with the following:
 - (i) if the Prohibited Act is committed by Contractor or by an employee acting under the direction of a director or officer of Contractor, Project Co may give written notice to Contractor and a Contractor Event of Default shall be deemed to have occurred;
 - (ii) if the Prohibited Act is committed by an employee of Contractor acting independently of a direction of a director or officer of Contractor, then Project Co may give written notice to Contractor and a Contractor Event of Default shall be deemed to have occurred, unless, within 30 days of receipt of such notice, Contractor terminates the employee's employment and ensures that the relevant part of the Construction Work shall be performed by another person;
 - (iii) if a Prohibited Act is committed by a Contractor Party or by an employee of that Contractor Party not acting independently of a direction of a director or officer of that Contractor Party, then Project Co may give written notice to Contractor and a Contractor Event of Default shall be deemed to have occurred, unless, within 30 days of receipt of such notice, Contractor terminates the relevant Subcontract and ensures that the relevant part of the Construction Work shall be performed by another person, where relevant, in accordance with Section 39.2(c);
 - (iv) if the Prohibited Act is committed by an employee of a Contractor Party acting independently of a direction of a director or officer of that Contractor Party, then Project Co may give written notice to Contractor and a Contractor Event of Default shall be deemed to have occurred, unless, within 30 days of receipt of such notice, Contractor causes the termination of the employee's employment and ensures that the relevant part of the Construction Work shall be performed by another person; and

- (v) if the Prohibited Act is committed on behalf of Contractor or a Contractor Party by a person not specified in Section 41.3(a)(i) to 41.3(a)(iv), then Project Co may give notice to Contractor and a Contractor Event of Default shall be deemed to have occurred, unless, within 30 days of receipt of such notice, Contractor causes the termination of such person's employment or the appointment of their employer and, if necessary, ensures that the relevant part of the Construction 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 Project Co believes has committed the Prohibited Act; and
 - (iii) the date of termination in accordance with the applicable provisions of the Construction Contract.
- (c) Without prejudice to its other rights or remedies under this Section 41.3, Project Co shall be entitled to recover from Contractor any Direct Loss sustained in consequence of any breach of this Article 41.
- (d) Contractor acknowledges that where CMH exercises any remedy pursuant to Section 41.3 of the Project Agreement in respect of a Prohibited Act committed by any of the persons identified in Section 41.3(a), Project Co shall be entitled to exercise its remedies hereunder as against Contractor in the same manner and to the same extent as exercised by CMH under the Project Agreement.

41.4 Permitted Payments

- (a) Nothing contained in this Article 41 shall prevent Contractor 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) Contractor shall notify Project Co of the occurrence and details of any Prohibited Act promptly on Contractor becoming aware of its occurrence.

41.6 Replacement of Contractor Party

- (a) Where Contractor is required to replace any Contractor Party pursuant to this Article 41, the party replacing such Contractor Party shall from the time of the replacement be deemed to be a Contractor Party and the provisions of the Construction Contract shall be construed accordingly.

42. NOT USED

43. NOT USED

**SCHEDULE 1
DEFINITIONS AND INTERPRETATION**

- 1. Definitions.** In the Construction Contract, unless the context otherwise requires:
- 1.1** “**Addenda**” means addenda No. 2, 5, 6, 9, 10, 13, 14, 15, 16 and 19 as issued by CMH to the extent applicable to the Construction Contract.
- 1.2** “**Additional Project Co Payments**” means amounts payable to Contractor pursuant to any Change Order or Change Directive under which Project Co is expressly responsible for an increase to the Guaranteed Price, which includes any cost arising out of a Change in the Scope of the Construction Work initiated by Project Co pursuant to Schedule 11 – Change Procedure, or any payments to be made by Project Co pursuant to Articles 4, 21, 22, 23, 25 or 26 of Appendix A – General Conditions of the Construction Contract, or any other payment to be made by Project Co, which, pursuant to the express provisions of the Construction Contract are to be paid as Additional Project Co 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 Contractor, shall include each of the Shareholders.
- 1.4** “**Agent**” means the Bank of Montreal, 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 Appendix A – General Conditions of the Construction Contract.
- 1.6** “**Appendix A – General Conditions of the Construction Contract**” means the general conditions, in the form of Appendix A, affixed to the Construction Contract.
- 1.7** “**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 Contractor, any Contractor Party, CMH, CMH Party, Project Co or any Project Co Party and, in particular, shall include the *Public Hospitals Act* (Ontario).
- 1.8** “**Apprenticeship Plan**” has the meaning given in Section 11.24(a) of Appendix A – General Conditions of the Construction Contract.

- 1.9** “**Approved Subcontractors**” means a subcontractor which is on the list of Subcontractors approved by CMH pursuant to the Request for Proposals process and included on the list of Contractor Parties set out in Schedule 19 of the Construction Contract.
- 1.10** “**As-Built Drawings**” or “**As-Built**” means a set of Contract Documents marked-up by Contractor or a Contractor Party during construction, to record changes in the Construction 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 Contractor’s annotations.
- 1.11** “**Assignable Subcontract Agreement**” means the form of agreement attached as Schedule 20 to the Construction Contract.
- 1.12** “**Assignment and Assumption Agreement**” means the agreements to be entered into between CMH, Contractor and the third party Supplier that is the counterparty to each of the CMH Assigned Contracts, in the form set out in Appendix E to Schedule 3 Completion Documents to the Project Agreement.
- 1.13** “**Associated Liabilities**” has the meaning given in Section 4.21(b)(ii)(B) of Appendix A – General Conditions of the Construction Contract.
- 1.14** “**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.
- 1.15** “**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 Project Co Payments.
- 1.16** “**Beneficiary**” has the meaning given in Section 33.3(a) of Appendix A – General Conditions of the Construction Contract.
- 1.17** “**Bonds**” has the meaning given to it in Schedule 1 – Definitions and Interpretation of the Project Agreement.
- 1.18** “**Building Code**” means the regulations made under Section 34 of the *Building Code Act, 1992* (Ontario), as amended or replaced from time to time.
- 1.19** “**Building Permits**” means City of Cambridge Building Permit # 13 007066 000 00.
- 1.20** “**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 Cambridge, Ontario.

- 1.21 “Cash Allowance Disbursement Authorization”** is an authorization to Contractor by Project Co to expend monies from cash allowances included in the Guaranteed Price as contemplated in the body of the Construction Contract.
- 1.22 “Certified Cost to Complete”** means the value of the Construction Work remaining to be performed under the Construction Contract following the last day of the agreed monthly payment period ending immediately prior to the Substantial Completion Payment Date, as certified to Project Co and CMH 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 16.2(f) and 16.2(h) of Appendix A – General Conditions of the Construction Contract) to the extent that such amount is included in the Project Co Holdback.
- 1.23 “Change Directive”** means a written instruction prepared by the Consultant and signed by Project Co directing a Change in the Scope of the Construction Work within the general scope of the Contract Documents.
- 1.24 “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.
- 1.25 “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 Construction Contract.
- 1.26 “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.
- 1.27 “Change in the Scope of the Construction Work”** shall mean any change in the scope of the Construction 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 Construction Work, or any specified method of installation of materials or

equipment into the Construction Work, including changes arising from Design Issues falling within categories “B” and “D” in the Risk Assessment Guidelines, but does not include a Contractor 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 Construction Work and will not result in any adjustment of the Guaranteed Price, but will, subject to Section 14 of the body of the Construction Contract, be treated as a Contractor Design Contingency expenditure in accordance with Section 11.17 of Appendix A – General Conditions of the Construction Contract. For greater certainty, it is understood and agreed that where Contractor 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 Construction Work and shall be processed as a Change Order pursuant to Schedule 11 – Change Procedure of the Construction Contract.

1.28 “Change in the Scope of the Work” 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 of the Project Agreement.

1.29 “Change Order” means a written amendment to the Contract Documents prepared in accordance with Schedule 11 – Change Procedure, by the Consultant and signed by Project Co and Contractor stating their agreement upon:

- (a) a Change in the Scope of the Construction 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.
- 1.30** "CMH" means Cambridge Memorial Hospital, a non-share capital corporation incorporated under the laws of Ontario.
- 1.31** "CMH Assigned Contracts" means the four contracts entered into by CMH with Suppliers in connection with the procurement and supply of various equipment, materials and services, as further described in the Specifications, including paragraph 6 of Section 10 11 00 Summary of Work.
- 1.32** "CMH Party" means any of CMH's agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged in respect of the Construction Work, including CMH's Project Manager and the Consultant but excluding Project Co and any Project Co, and the term "CMH Parties" shall be construed accordingly.
- 1.33** "CMH's Project Manager" means the individual appointed by CMH to assist CMH in the implementation of the Project.
- 1.34** "Commercial Close" has the meaning given in Section 2.1(a) of the Project Agreement.
- 1.35** "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 CMH'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.
- 1.36** "Commissioning Agent" shall mean the person or entity chosen by CMH, if any, to assist with Commissioning.
- 1.37** "Compensation Event" has the meaning given in Section 23.1(a) of Appendix A – General Conditions of the Construction Contract.

- 1.38 **“Compensation Payment”** means the Default Termination Payment or the Non Default Termination Sum, as defined in Schedule 12 – Compensation on Termination of Appendix A – General Conditions of the Construction Contract.
- 1.39 **“Confidant”** has the meaning given in Section 38.7(a)(i) of Appendix A – General Conditions of the Construction Contract.
- 1.40 **“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 Construction Contract, 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.
- 1.41 **“Construction Contract”** means this construction contract, inclusive of the body of the Construction Contract, Appendix A – General Conditions, and all schedules hereto, as executed between the Contractor and Project Co, dated on or about the date of the Project Agreement, 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 the Construction Contract and the Addenda.
- 1.42 **“Construction Guarantor”** means Bondfield Construction Company Limited in its capacity as guarantor in connection with the Construction Contract.
- 1.43 **“Construction Schedule”** means each detailed computerized schedule prepared by Contractor in accordance with the terms and conditions of the Contract Documents, as updated from time to time in accordance with Section 12.1 of Appendix A – General Conditions of the Construction Contract.
- 1.44 **“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 Construction Contract.
- 1.45 **“Construction Work”** means the construction, installation, testing, Commissioning and completion of the Facility, including rectification of any Minor Deficiencies, all warranty work and any other activities required pursuant to the provisions of the Construction Contract. For greater certainty, Construction Work does not include the Financing.
- 1.46 **“Consultant”** means Stantec Architecture Ltd., Architects, 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 CMH in respect of the Project Agreement. 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 Construction Contract to be Contamination.
- 1.48 “Contemplated Change Notice”** means a notice from Project Co to Contractor describing a contemplated Change in the Scope of the Construction Work.
- 1.49 “Contract Documents”** means the Construction Contract, the Project Agreement, the Drawings and Specifications, the Addenda, the Site Information and Assignable Subcontract Agreements.
- 1.50 “Contract Time”** is the time stipulated in Section 11.1(a)(ii) of Appendix A – General Conditions of the Construction Contract from commencement of the Construction Work to the applicable Phased Occupancy Dates, to the Interim Completion Date, to the Substantial Completion Date and to the Final Completion Date.
- 1.51 “Contractor”** means Bondfield Construction Company Limited, engaged by Project Co to perform the Construction Work and any substitute building contractor engaged by Project Co as may be permitted by the Construction Contract.
- 1.52 “Contractor Delay”** means any delay in achieving the Phased Occupancy Dates, Interim Completion, Substantial Completion or Final Completion by the prescribed dates set out in Section 11.1(a)(ii) of Appendix A – General Conditions of the Construction Contract, other than as expressly permitted under Article 22 of Appendix A – General Conditions of the Construction Contract.
- 1.53 “Contractor Design Contingency” or “CDC”** is the portion of the Guaranteed Price which comprises all the costs (including the Contractor Fee) to implement an acceptable resolution to any and all Design Issues that are properly characterized as Contractor Design Issues.
- 1.54 “Contractor Design Issue”** has the meaning given in Section 11.17(b) of Appendix A – General Conditions of the Construction Contract.
- 1.55 “Contractor Direct Agreement”** means the direct agreement entered into between Contractor, Agent and Project Co on August 28, 2014.
- 1.56 “Contractor Event of Default”** has the meaning given in Section 26.1(a) of Appendix A – General Conditions of the Construction Contract.
- 1.57 “Contractor Fee”** means a fixed fee payable to Contractor included in the Cost of the Construction Work.

- 1.58** “**Contractor Group**” means Contractor together with any person or group of persons, who, either individually or collectively, have Direct or Indirect Power or Control of Contractor.
- 1.59** “**Contractor Hazardous Substances**” has the meaning given in Section 14.1(d)(i) of Appendix A – General Conditions of the Construction Contract.
- 1.60** “**Contractor Indemnified Hazardous Substances Claims**” has the meaning given in Section 33.1(a)(viii) of Appendix A – General Conditions of the Construction Contract.
- 1.61** “**Contractor Indemnified Parties**” has the meaning given in Section 33.2(a) of Appendix A – General Conditions of the Construction Contract.
- 1.62** “**Contractor Party**” means:
- (a) the Contractor;
 - (b) Construction Guarantor;
 - (c) any person engaged by the Contractor, from time to time, as may be permitted by the Construction Contract to procure or manage the provision of the Construction 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 “**Contractor Parties**” shall be construed accordingly.
- 1.63** “**Contractor Permits, Licences and Approvals**” means all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorizations to be obtained by Contractor in accordance with the Construction Contract and as required by Applicable Law, other than the Project Co Permits, Licenses and Approvals.
- 1.64** “**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 – Financial Model and Financial Information of the Project Agreement.
- 1.65** “**Cost of the Construction Work**” means the cost to Contractor of performing the Construction Work as set out in Schedule 8 – Financial Model and Financial Information of the Project Agreement and shall include all amounts to be included in the Cost of the Construction Work set out in the Contract Documents, including, for greater certainty, the Contractor Design Contingency and the Contractor Fee.
- 1.66** “**CPM**” has the meaning given in Section 12.1(a)(ii) of Appendix A – General Conditions of the Construction Contract.

- 1.67** “**Default Termination Payment**” has the meaning given in Schedule 12 - Compensation on Termination.
- 1.68** “**Delay Events**” has the meaning given in Section 22.1(a) of Appendix A – General Conditions of the Construction Contract.
- 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 Construction 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 Appendix A – General Conditions of the Construction Contract.
- 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) hospitals whose construction and financing are procured by a contract similar to the Project Agreement and/or Construction Contract in relation to other similar hospitals;
 - (b) the Facility in relation to other hospitals;
 - (c) Contractor 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 and/or Construction Contract 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 Contractor 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 Contractor 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 Construction 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 CMH) 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 Construction Work,

and which, in the opinion of CMH 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) “Cambridge Memorial Hospital, Final Phase One Environmental Site Assessment”, prepared by MTE, MTE File no 32713-200, dated February 22, 2013;
 - (b) “Cambridge Memorial Hospital, Final Phase Two Environmental Site Assessment”, prepared by MTE, MTE File no 32713-200, dated March 31, 2013; and
 - (c) “Cambridge Memorial Hospital, Final Supplemental Investigation” prepared by MTE, MTE File no 32713-200, dated October 4, 2013, 2013.
- 1.80 “Equipment”** means all equipment listed in Volume 7 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 Volume 7 of the Specifications.
- 1.82 “Equipment Subcommittee”** has the meaning given in Section 13.6(a) of Appendix A – General Conditions of the Construction Contract.
- 1.83 “Existing Facility”** means the existing hospital building of CMH within parts of which and adjoining which the Construction 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 Cambridge

Memorial Hospital Capital Redevelopment Project. This description does not in any manner limit the scope of the Construction Work as set out in the Contract Documents.

- 1.85 "Financial Close Target Date"** means August 28, 2014 as such date may be extended in accordance with the provisions of the Project Agreement.
- 1.86 "Final Completion"** shall occur when the Work, except those items arising from the provisions of Article 35 of the Project Agreement, 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.
- 1.87 "Final Completion Certificate"** means the certificate to be issued by the Consultant in accordance with Section 16.4 of the Project Agreement.
- 1.88 "Final Completion Countdown Notice"** has the meaning given in Section 16.3(a) of the Project Agreement.
- 1.89 "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.
- 1.90 "Final Completion Notice"** has the meaning given in Section 16.4(b) of the Project Agreement.
- 1.91 "Financial Close"** means the date of execution and delivery of the Implementing Agreements and the Lending Agreements.
- 1.92 "Financial Model"** means the Financial Model included in Schedule 8 – Financial Model and Financial Information.
- 1.93 "Financing"** means the financing with Lender that is consistent in all material respects with Schedule 8 - Financial Model and Financial Information of the Project Agreement, to finance the Base Progress Payments under the Project Agreement 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 Appendix A – General Conditions of the Construction Contract.
- 1.96 "Geotechnical Reports"** means:
- (a) "Cambridge Memorial Hospital, Geotechnical Investigation", prepared by exp Services Inc., dated June 2013; and
 - (b) "Cambridge Memorial Hospital, Geotechnical Comments for BH30", prepared by exp Services Inc., dated January 29, 2013.

- 1.97 “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 Appendix A – General Conditions of the Construction Contract.
- 1.98 “Government Entity”** means one or more of the Province, MEDEI, MOHLTC, CMH and the Government of Canada.
- 1.99 “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 Construction Contract 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.
- 1.100 “Guaranteed Price”** is the amount defined in Section 3.1(a) of the body of the Construction Contract.
- 1.101 “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.
- 1.102 “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.
- 1.103 “HST”** means the value-added tax payable and imposed pursuant to Part IX of the *Excise Tax Act* (Canada), and any successor legislation thereto.
- 1.104 “Implementing Agreements”** means the Construction Contract, the Contractor Support Agreement and the Contractor Direct Agreement, and all other documents and agreements delivered pursuant to Section 2.3 of the Project Agreement, excluding the Lending Agreements and Project Co’s public announcement release(s).
- 1.105 “Indemnifiable Taxes”** has the meaning given in Section 4.21(b)(ii)(A) of Appendix A – General Conditions of the Construction Contract.
- 1.106 “Indemnifier”** has the meaning given in Section 33.3(a) of Appendix A – General Conditions of the Construction Contract.
- 1.107 “Indirect Losses”** has the meaning given to it in Section 8.1(a) of the body of the Construction Contract.
- 1.108 “Infrastructure Ontario” or “IO”** means the Ontario Infrastructure and Lands Corporation.

1.109 “Insurance” means the insurance contemplated in Schedule 13 – Insurance and Performance Security.

1.110 “Interim Completion” means that:

- (a) Contractor has performed its obligations under Section 16.1 of the Project Agreement;
- (b) the Interim Work is available for occupancy by CMH 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 Cambridge;
- (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 CMH to carry out its Commissioning activities with respect to the Interim Work are available in accordance with the Specifications; and
- (d) all Interim Work Deliverables other than those included as Interim Minor Deficiencies in accordance with Section 16.1(g) of Appendix A – General Conditions of the Construction Contract have been assigned and provided to CMH.

1.111 “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.

1.112 “Interim Completion Payment” has the meaning given to it in Schedule 1 – Definitions and Interpretation of the Project Agreement.

1.113 “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 Appendix A – General Conditions of the Construction Contract confirming Interim Completion.

1.114 “Interim Construction Work” means all work required for completion and commissioning and the achievement of the Phased Occupancy Date in respect of “Phase 2” 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 Construction Work requiring completion in order to allow the occupancy by CMH of the Interim Construction Work, and other activities required pursuant to the provisions of the Project Agreement or the Construction Contract, as applicable, and, for greater certainty, does not include the Financing.

- 1.115 “**Interim Deliverables**” has the meaning given in Section 16.1(g) of Appendix A – General Conditions of the Construction Contract.
- 1.116 “**Interim Minor Deficiencies**” means any defects, deficiencies and items of outstanding Interim Construction Work (including in relation to seasonal work), which would not materially impair CMH’s use and enjoyment of the Interim Construction Work and includes any damage to the Interim Construction Work of CMH’s or Project Co’s own forces or the work of CMH’s or Project Co’s other contractors caused by Contractor.
- 1.117 “**Interim Minor Deficiencies List**” means the list of Minor Deficiencies prepared by the Consultant as referred to in Section 16.1(b) of Appendix A – General Conditions of the Construction Contract.
- 1.118 “**Interim Preliminary Minor Deficiencies List**” means the list of Minor Deficiencies identified by Contractor in accordance with Section 16.1(a) of Appendix A – General Conditions of the Construction Contract.
- 1.119 “**IFPF Framework**” has the meaning given to it in the Project Agreement.
- 1.120 “**Key Personnel**” has the meaning given in Section 8.4(a) of Appendix A – General Conditions of the Construction Contract.
- 1.121 “**Lands**” means those lands described in Schedule 25 – Legal Description of the Lands.
- 1.122 “**Legislative Holdback**” means the holdback to be maintained under Part IV of the *Construction Lien Act* (Ontario).
- 1.123 “**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.
- 1.124 “**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 CMH, Project Co, Contractor or Lender providing Financing for the Construction Work.
- 1.125 “**Lender’s Direct Agreement**” means the direct agreement to be entered into between CMH, Lender and Project Co in the form set out in Schedule 5 – Lender’s Direct Agreement of the Project Agreement.
- 1.126 “**Lending Agreements**” has the meaning given in Schedule 5 – Lender’s Direct Agreement of the Project Agreement.
- 1.127 “**Liquidated Damages**” has the meaning given to it in the Contractor Support Agreement.

- 1.128 “Local Health Integration Network”** means the Local Health Integration Network as defined pursuant to the *Local Health System Integration Act* (Ontario).
- 1.129 “Longstop Date”** has the meaning given in Section 26.1(a)(ii) of Appendix A – General Conditions of the Construction Contract.
- 1.130 “Make Good”, “Made Good”** and derivatives thereof, means repairing, restoring, refurbishing, rehabilitating or performing filling operation on the Construction Work as required under the Contract Documents or any existing components disturbed due to the Construction Work, to at least the condition existing at the commencement of the Construction 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.
- 1.131 “MEDEI”** means Her Majesty the Queen in right of Ontario as represented by the Minister of Economic Development, Employment and Infrastructure, and includes any successors thereto or persons exercising delegated power under the Minister’s authority.
- 1.132 “Minor Deficiencies”** means any defects, deficiencies and items of outstanding Construction Work (including in relation to seasonal work), which would not materially impair CMH’s use and enjoyment of the Construction Work and includes any damage to the Construction Work of CMH’s or Project Co’s own forces or the work of CMH’s or Project Co’s other contractors caused by Contractor.
- 1.133 “Minor Deficiencies List”** has the meaning given in Section 16.2(b) of Appendix A – General Conditions of the Construction Contract.
- 1.134 “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.
- 1.135 “No-Default Payment Compensation Amount”** means the rate of interest per annum quoted by Bank of Montreal 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.
- 1.136 “Non-Default Termination Sum”** has the meaning given in Schedule 12 – Compensation on Termination.
- 1.137 “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).
- 1.138 “Notice”** has the meaning given in Section 10.1 of the body of the Construction Contract.
- 1.139 “Notice of Project”** means a notice of project filed with the Ministry of Labour in compliance with O. Reg. 213/91 under the OHSA.

- 1.140** “OHSA” means the *Occupational Health and Safety Act* (Ontario).
- 1.141** “Overhead and Profit Fee” means the amount stipulated in Schedule 11 – Change Procedure, which excludes HST.
- 1.142** “Party” means either Project Co or Contractor, and “Parties” means both Project Co and Contractor, but, for greater certainty, such definitions do not include CMH, 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.
- 1.143** “Patient Information” means Personal Information of patients and clients of CMH and other users of the Facility.
- 1.144** “Payment Compensation Amount” means an amount equal to simple interest at an annual rate equal to 2% over the rate of interest per annum quoted by Bank of Montreal 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.
- 1.145** “Permits, Licences and Approvals” means the Project Co Permits, Licences and Approvals and the Contractor Permits, Licences and Approvals.
- 1.146** “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 Contractor or the Contractor Parties, other than personal information of employees of Contractor or the Contractor Parties that is wholly unrelated to the Construction Work and not derived directly or indirectly from CMH or any CMH Party or any Project Co Party in respect of the Project.
- 1.147** “Phased Occupancy Date” means the date when a Phase of the Construction Work intended to be occupied by CMH as set out in the Contract Documents prior to Substantial Completion or as established by Contractor and Project Co under Section 12.1(a)(i) of Appendix A – General Conditions of the Construction Contract, meets the requirements of Section 11.12(c) of Appendix A – General Conditions of the Construction Contract.
- 1.148** “Phases” means the phases of the Construction Work described in the Contract Documents, including Division 01 and “Phase” means any of the Phases.
- 1.149** “Phasing Requirements” means the distinct Phases of the Project as described in Section 01 31 40 – Contract Sequencing of the Specifications.
- 1.150** “Pre-Existing Environmental Site Conditions” means the environmental condition of the Site as set out in the Environmental Reports.

- 1.151 “Procurement Monitoring and Implementation Plan”** means the plan set out in Schedule 15 to the Construction Contract.
- 1.152 “Product” or “Products”** means material, machinery, equipment and fixtures forming the Construction Work but does not include machinery and equipment used to prepare, fabricate, convey or erect the Construction Work, which is referred to as construction machinery and equipment.
- 1.153 “Prohibited Act”** has the meaning given in Section 41.1(a) of Appendix A – General Conditions of the Construction Contract.
- 1.154 “Project”** means the construction and financing of the Facility.
- 1.155 “Project Agreement”** means that project agreement and all schedules thereto, executed between CMH and Project Co at or around August 28, 2014, as the may be amended, modified, restated, supplemented or replaced from time to time and for greater certainty, including the Addenda (as defined therein) 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 the Project Agreement and the Addenda (as defined therein).
- 1.156 “Project Co”** means 2423402 Ontario Inc.
- 1.157 “Project Co Event of Default”** has the meaning given in Section 27.1(a) of Appendix A – General Conditions of the Construction Contract.
- 1.158 “Project Co Holdback”** means any amount which Project Co may withhold from payment under Section 16.2(h) of Appendix A – General Conditions of the Construction Contract, provided for greater certainty, that where the Construction Contract provides for a deduction in respect of any Project Co Holdback, such deduction shall apply to any payments to be made by Project Co hereunder (whether to Contractor or the Agent), notwithstanding that the Construction Contract expressly provides for deductions from payments to be made to Contractor.
- 1.159 “Project Co Indemnified Hazardous Substances Claims”** has the meaning given in Section 33.2(a)(iv) of Appendix A – General Conditions of the Construction Contract.
- 1.160 “Project Co Indemnified Parties”** has the meaning given in Section 33.1(a) of Appendix A – General Conditions of the Construction Contract.
- 1.161 “Project Co’s Preliminary Minor Deficiencies List”** has the meaning given in Section 16.2(a) of Appendix A – General Conditions of the Construction Contract.
- 1.162 “Project Co Party”** means any of Project Co’s agents, contractors and subcontractors of any tier and its or their directors, officers and employees, and other persons engaged in respect of the Construction Work, including Project Co’s Project Manager and the

Consultant but excluding Contractor and any Contractor Party, and the term “Project Co Parties” shall be construed accordingly.

1.163 “Project Co Permits, Licences and Approvals” means:

- (a) the Building Permits;
- (b) any permanent easements; and
- (c) any rights of servitude, pertaining to the Project.

1.164 “Project Co’s Project Manager” means the individual appointed by Project Co to assist Project Co in the implementation of the Project.

1.165 “Project Co Taxes” means taxes or payments in lieu of taxes imposed on Project Co, based on or measured by income or profit of Project Co or capital taxes based on or measured by the capital of Project Co and HST and property taxes for which Project Co is responsible pursuant to the provisions of the Construction Contract.

1.166 “Project Deliverables” has the meaning given in Section 16.2(i) of Appendix A – General Conditions of the Construction Contract.

1.167 “Project Documents” means the Implementing Agreements and the Lending Agreements.

1.168 “Project Term” means the period commencing on the date of the Construction Contract and expiring at midnight on the Termination Date.

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

1.170 “Proprietor” has the meaning given in Section 38.7(a) of Appendix A – General Conditions of the Construction Contract.

1.171 “Provide” means to supply, install and put into service.

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

1.173 “Recovery Amount” has the meaning given in Section 33.3(g) of Appendix A – General Conditions of the Construction Contract.

1.174 “Reimbursement Event” has the meaning given in Section 19.5(a) of Appendix A – General Conditions of the Construction Contract.

1.175 “Release” has the meaning given in Section 14.1(c)(iii) of Appendix A – General Conditions of the Construction Contract.

1.176 “Relevant Change in Law” means any Change in Law that:

- (a) requires Contractor to perform any work of alteration, addition, demolition, extension or variation in the quality or function of the Facility which Contractor would not otherwise be required to perform in order to comply with its obligations under the Construction Contract; and
- (b) was not reasonably foreseeable at the date of the Construction Contract by an experienced contractor carrying out and performing activities similar to those to be carried out and/or performed by any Contractor Party in relation to the Project,

and includes a Discriminatory Change in Law and a Health Specific Change in Law.

1.177 “Relief Event” has the meaning given in Section 24.1(a) of Appendix A – General Conditions of the Construction Contract.

1.178 “Request for Proposals” or “RFP” means the request for proposals issued for the delivery by Infrastructure Ontario and CMH for the delivery of the Project dated November 14, 2013.

1.179 “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 CMH 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 CMH’s view, in either case, be reasonably likely

materially to affect the ability of Contractor to perform its obligations under the Construction Contract; or

(f) has a material interest in the production of tobacco products.

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

1.181 “Schedule” means a schedule to the Construction Contract.

1.182 “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. Project Co has ownership of the Schedule Cushion and can elect to use it at any time in respect of an Project Co initiated Change Order, or upon the occurrence of a Delay Event which would otherwise grant to Contractor an extension of the Contract Time, provided any portion of the Schedule Cushion which has not been used by Project Co prior to the Substantial Completion Date will be given to Contractor. Use of the Schedule Cushion by Project Co shall not result in any right of Contractor to a claim for an increase in the Cost of the Financing.

1.183 “Scheduled Final Completion Date” means May 15, 2019.

1.184 “Scheduled Interim Completion Date” means November 30, 2016, as such date may be extended pursuant to Article 22 of the Project Agreement.

1.185 “Scheduled Substantial Completion Date” means a date that is no later than March 31, 2019 as such date may be extended pursuant to Article 22 of the Project Agreement.

1.186 “Security” means the Bonds, the Insurance and any other security interests granted by Contractor to the Agent pursuant to the Security Documents.

1.187 “Shop Drawings” or “shop drawings” means drawings, diagrams, illustrations, schedules, performance charts, brochures, samples, Product data, and other data which Contractor provides to illustrate details of a portion of the Construction Work.

1.188 “Shop Drawing Schedule” means the schedule for the submission of shop drawings described in Section 11.11(c) of Appendix A – General Conditions of the Construction Contract.

1.189 “Site” means the land of CMH located in the City of Cambridge, Ontario as described in Schedule 25 - Legal Description of the Lands.

1.190 “Site Background Reports” means the Environmental Reports and the Geotechnical Reports.

1.191 “Site Information” means:

- (a) the Site Background Reports;
- (b) other information respecting the Site in the Contract Documents, including infrastructure drawings and other reports, information or plans; and
- (c) information that would have been properly inferable, readily apparent or readily discoverable to Contractor from its inspections of the Site carried out by Contractor or by any Contractor Party during the Request for Proposals process prior to the Submission Date.

1.192 “Sole Discretion” has the meaning given in Section 1.1(e) of Appendix A – General Conditions of the Construction Contract.

1.193 “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 Construction Work and includes those Specifications listed in Schedule 2 – List of Consultants, Drawings and Specifications.

1.194 “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 Construction Work, or supplies Products worked to a special design for the Construction Work or who supplies work, services, materials, equipment or labour in any respect of the Construction Work or who supplies Products not worked to a special design for the Construction Work.

1.195 “Subcontractor” means a person or entity having a direct contract with Contractor to perform all or a part or parts of the Construction Work, or to supply Products worked to a special design for the Construction Work or who supplies work, services or labour in any respect of the Construction Work.

1.196 “Subcontracts” means the contracts entered into by or between Contractor and any Contractor Party at any tier, including the Contractor and any other Subcontractor at any tier in relation to any aspect of the Construction Work.

1.197 “Submission Date” means April 23, 2014.

1.198 “Substantial Completion” means:

- (a) Contractor has performed its obligations under Article 16 of Appendix A – General Conditions of the Construction Contract;
- (b) the Work is available for occupancy by CMH 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 Cambridge;

- (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 CMH 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 16.2(h) of Appendix A – General Conditions of the Construction Contract, have been assigned and provided to CMH; and
- 1.199 “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.
- 1.200 “Substantial Completion Payment”** has the meaning given to it in Schedule 1 – Definitions and Interpretation of the Project Agreement.
- 1.201 “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 Construction Work in accordance with the *Construction Lien Act* (Ontario) pursuant to Section 16.2(c) of Appendix A – General Conditions of the Construction Contract; and
 - (b) the delivery by the Consultant of its report under Section 16.2(d) of Appendix A – General Conditions of the Construction Contract confirming that Substantial Completion has been achieved.
- 1.202 “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 Construction Work.
- 1.203 “Supplier”** means a person who supplies to Contractor, or to any Subcontractor, any equipment, materials, supplies or services as part of, or for, the Construction Work.
- 1.204 “Surety”** means the person issuing the Bonds.
- 1.205 “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