

thereto, and includes all HST except where stated to the contrary, provided however that “Taxes” shall not include the Project Co Taxes.

- 1.206 “Termination Date”** means the earlier of the Final Completion Date and such earlier date, if any, on which termination of the Construction Contract takes effect in accordance with its terms.
- 1.207 “Type A Equipment”** means each item of equipment marked “A” in the “Planning Code” column of the Equipment List;
- 1.208 “Type B Equipment”** means each item of equipment marked “B” in the “Planning Code” column of the Equipment List;
- 1.209 “Type C Equipment”** means each item of equipment marked “C” in the “Planning Code” column of the Equipment List;
- 1.210 “Type D Equipment”** means each item of equipment marked “D” in the “Planning Code” column of the Equipment List;
- 1.211 “Type E Equipment”** means each item of equipment marked “E” in the “Planning Code” column of the Equipment List;
- 1.212 “Undisclosed Hazardous Substances”** has the meaning given in Section 14.1(e) of Appendix A – General Conditions of the Construction Contract.
- 1.213 “Utilities”** means energy/power supplies and waste recovery, including electricity, natural gas/fuel oil, water, sanitary waste, storm water, and bulk medical gas compounds.
- 1.214 “Utility Company”** means any company or companies designated by Contractor to provide Utilities.
- 1.215 “Work”** means the construction, installation, testing, Commissioning and completion of the Facility, including rectification of any Minor Deficiencies, and any other activities required pursuant to the provisions of the Project Agreement. For greater certainty, Work does not include the Financing.
- 1.216 “WSIB”** means the Ontario Workplace Safety and Insurance Board that is responsible for administering the *Workplace Safety and Insurance Act, 1997* (Ontario).
- 2. Interpretation.** Unless otherwise expressly provided in the Contract Documents, the Contract Documents shall be interpreted according to the following provisions, unless the context requires a different meaning:
- 2.1** The tables of contents, headings, marginal notes and references to them in the Contract Documents are for convenience of reference only, shall not constitute a part of the Contract Documents, and shall not be taken into consideration in the interpretation of, or affect the meaning of, the Contract Documents.

- 2.2 Except where the context requires otherwise (irrespective of whether some, but not all, references in a Schedule or Appendix specifically refer to that Schedule or Appendix or to other portions of the Construction Contract) references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, and other divisions of the Construction Contract are references to such Sections, Clauses, Paragraphs, or Subparagraphs of, Schedules to, or divisions of Appendix A – General Conditions of the Construction Contract and the terms “Section” and “Clause” are used interchangeably and are synonymous.
- 2.3 Except where the context requires otherwise, references to specific Sections, Clauses, Paragraphs, Subparagraphs, Schedules, Appendix, and other divisions of the Construction Contract followed by a number are references to the whole of the Section, Clause, Paragraph, Subparagraphs, Schedule, or Appendix or other division of the Construction Contract as applicable, bearing that number, including all subsidiary provisions containing that same number as a prefix.
- 2.4 The Schedules and Appendix to the Construction Contract are an integral part of the Construction Contract and a reference to the Construction Contract includes a reference to the Schedules and Appendix.
- 2.5 All references in the Construction Contract to a Schedule and Appendix shall be to a Schedule and Appendix of the Construction Contract.
- 2.6 All capitalized terms used in a Schedule shall have the meanings given to such terms in Schedule 1, unless stated otherwise in a particular Schedule or Appendix in which case such definition shall have the meaning given to it in that Schedule or Appendix solely for the purposes of that Schedule or Appendix.
- 2.7 Words importing persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a person in such capacity.
- 2.8 Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- 2.9 Unless otherwise provided in the Construction Contract, all accounting and financial terms used in the Construction Contract shall be interpreted and applied in accordance with Canadian GAAP.
- 2.10 References to any standard, principle, agreement (including the Construction Contract) or document include (subject to all relevant approvals and any other provisions of the Construction Contract concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.

- 2.11 References to any Applicable Law, including any statutes or other Applicable Law specifically referred to herein, whether or not amendments or successors to such Applicable Law are referred to herein, are to be construed as references to that Applicable Law as from time to time amended or to any Applicable Law covering the same or similar subject matter from time to time replacing, extending, consolidating or amending the same.
- 2.12 References to a statute shall include all regulations, by-laws, ordinances and orders made under or pursuant to the statute.
- 2.13 References to persons shall include their successors and assigns. References to a public organization shall include its successors and assigns, and if a public organization ceases to exist or ceases to perform its functions without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization.
- 2.14 A reference in the Construction Contract or in any Project Document to any right, power, obligation or responsibility of any Governmental Authority shall be deemed to be a reference to the Governmental Authority that, pursuant to Applicable Laws, has such right, power, obligation or responsibility at the relevant time.
- 2.15 The words in the Construction Contract and in any Implementing Agreements shall bear their natural meaning. Words and abbreviations which have well known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
- 2.16 Each Party's respective obligations shall be construed as separate obligations owed to the other Party or Parties, as the case may be.
- 2.17 References containing terms such as:
- (a) **“hereof”, “herein”, “hereto”, “hereinafter”**, and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to the Construction Contract taken as a whole;
 - (b) **“includes”** and **“including”**, whether or not used with the words **“without limitation”** or **“but not limited to”**, shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean **“includes without limitation”** and **“including without limitation”**; and
 - (c) **“accepted”, “reviewed”, “designated”, “directed”, “inspected”, “instructed”, “permitted”, “required”** and **“selected”** when used in a Contract Document are deemed to be followed by the words **“by the Consultant”** unless the context provides otherwise; the words **“acceptable”, “submit”** and **“satisfactory”** when

used in a Contract Document are deemed to be followed by the words “**to the Consultant**” unless the context provides otherwise.

- 2.18** In construing the Construction Contract, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach apply to the construction of the Construction Contract and, accordingly, general words introduced or followed by the word “other” or “including” or “in particular” shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- 2.19** Where the Construction Contract or any Implementing Agreement states that an obligation shall be performed “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.20** Where the Construction Contract or any Implementing Agreement states that an obligation shall be performed “no later than” or “by” a prescribed number of days before a stipulated date or event or “by” a date which is a prescribed number of days before a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.21** Where the Construction Contract states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- 2.22** Any reference to time of day or date means the local time or date in Cambridge, Ontario. Any reference to a stipulated “day” which is not specifically referred to as a “Business Day” shall be deemed to be a calendar day.
- 2.23** Unless otherwise indicated, time periods will be strictly construed and time is of the essence of the Construction Contract.
- 2.24** Whenever the terms “**will**” or “**shall**” are used in the Construction Contract in relation to Contractor or Project Co, they shall be construed and interpreted as synonymous and to read “**Contractor shall**” or “**Project Co shall**” as the case may be.
- 2.25** Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.
- 2.26** Unless otherwise identified in the Construction Contract, all units of measurement in any documents submitted by Contractor to Project Co shall be in accordance with the SI system of units.

2.27 Terms not defined herein and used in the Construction Contract or any Implementing Agreements which have a technical meaning commonly understood by the health care sector or construction industry in Ontario will be construed as having that meaning unless the context otherwise requires.

2.28 Not Used.

2.29 Wherever in the Construction Contract Contractor covenants, agrees or undertakes:

- (a) to do any act, matter or thing, that shall be deemed to mean that Contractor will do or cause to be done such act, matter or thing itself or by a Contractor Party; and
- (b) not to do any act, matter or thing, that shall be deemed to mean that Contractor will not, and will cause each Contractor Party not to do such act, matter or thing.

**SCHEDULE 12
COMPENSATION ON TERMINATION**

1. DEFINITIONS

1.1 Definitions

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

- (a) **“Default Termination Payment”** has the meaning given in Section 2.1(c) of this Schedule 12.
- (b) **“Demobilization Costs”** means all reasonable costs of Contractor associated with the demobilization of the Construction Work as a result of the termination of the Construction Contract.
- (c) **“Invoice Date”** means the date that is the later of:
 - (i) the date on which CMH receives an invoice from Contractor for the Non-Default Termination Sum; and
 - (ii) the date on which CMH receives the supporting evidence required pursuant to Section 4.1(a) of this Schedule 12.
- (d) **“Non-Default Termination Sum”** has the meaning given in Section 3.1(b) of this Schedule 12.
- (e) **“Contractor Amount”** means any amount payable to Contractor as a return and/or profit to Contractor shown in the Financial Model, including for greater certainty any loans made or capital contributed to Contractor by any Affiliate of Contractor or of a Contractor Party, pro-rated by a fraction, the numerator of which is the period between the date of commencement of the Construction Work and the Termination Date, and the denominator of which is the period between the date of commencement of the Construction Work and the Scheduled Substantial Completion Date.
- (f) **“Termination Date”** has the meaning given in Schedule 1 of the Construction Contract.
- (g) **“Construction Work”** has the meaning given in Schedule 1 of the Construction Contract.

2. COMPENSATION ON TERMINATION FOR PROJECT CO DEFAULT

2.1 Compensation

- (a) Notwithstanding anything herein contained, Project Co shall not be entitled to receive any Compensation Payment under this Schedule 12 of this Construction Contract until satisfaction in full by Project Co of the Debt Service Amount (as defined in the Project Agreement) and subject to Section 14 of the body of the Construction Contract.
- (b) If Project Co terminates the Construction Contract pursuant to Section 26.3(a)(i) of Appendix A – General Conditions of the Construction Contract, Project Co shall pay the Default Termination Payment to Contractor.
- (c) The “**Default Termination Payment**” shall be an amount equal to the Guaranteed Price, as adjusted in accordance with the terms of the Construction Contract as of the Termination Date, less the aggregate, without duplication, of each of the following:
 - (i) any amount of the Interim Completion Payment, the Substantial Completion Payment and any other amounts paid by Project Co on or before the Termination Date;
 - (ii) all Additional Project Co Payments paid by Project Co on or before the Termination Date;
 - (iii) Project Co’s estimate of the cost to complete the Construction Work, including the cost to remedy any defective or deficient Construction Work determined on a reasonable basis in consultation with the Consultant and other consultants and including all reasonable and proper costs incurred by Project Co in re-tendering the Construction Work or any portion thereof;
 - (iv) Project Co’s estimate of the aggregate of all Direct Losses suffered, sustained or incurred by Project Co as a result of, in respect of, or arising out of the event or events which resulted in the termination of the Construction Contract and out of the termination together with all costs of entering into a new construction contract to complete the Construction Work, including any warranty obligations for the Construction Work in place and to be performed, on substantially the same terms and conditions as the Construction Contract;
 - (v) the Project Co Holdback as at the time the Default Termination Payment is required to be made; and
 - (vi) the Legislative Holdback required to be maintained by Project Co as at the time the Default Termination Payment is required to be made, which amount will be paid by Project Co in accordance with the *Construction Lien Act* (Ontario).

- (d) To the extent that any amounts that Project Co has estimated or determined pursuant to Sections 2.1(c)(iii), 2.1(c)(iv) or 2.1(c)(v) above, are in excess of what is required by Project Co to complete the Construction Work or compensate for Direct Losses, the Project Co Holdback or the Legislative Holdback, as applicable, Project Co shall promptly return such excess amounts to Contractor.
- (e) Project Co shall pay the Default Termination Payment in accordance with Article 4 of this Schedule 12.

3. COMPENSATION ON NON-DEFAULT TERMINATION

3.1 Compensation

- (a) If Contractor terminates the Construction Contract pursuant to Sections 27.2(a)(ii), 28.2(a) or 28.3(b) of Appendix A – General Conditions of the Construction Contract or if Project Co terminates the Construction Contract pursuant to Sections 28.2(a), 28.3(a) or 28.4(a) of Appendix A – General Conditions of the Construction Contract, Project Co shall, in each case, pay to Contractor the Non-Default Termination Sum.
- (b) The “**Non-Default Termination Sum**” shall be an amount equal to the aggregate, without duplication, of:
 - (i) all Additional Project Co Payments properly due and payable under the Construction Contract and the Construction Contract to and including the Termination Date;
 - (ii) all Demobilization Costs;
 - (iii) the Contractor Amount calculated as at the date of payment of the Non-Default Termination Sum to Contractor plus the Interim Completion Payment paid by CMH on or before the Termination Date, provided the Interim Completion Payment has been applied to reduce the Debt Amount as of the Termination Date in accordance with the Lending Agreements;
 - (iv) all other Direct Losses suffered, sustained or incurred by Contractor and the Contractor as a result of, or arising out of, the event or events which have resulted in the termination of the Construction Contract and out of the terminationless the aggregate of (A), (B) and (C) of this Section 3.1(b):
 - (A) the Project Co Holdback as at the time the Non-Default Termination Sum is required to be made;

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

4. GENERAL

4.1 Payment

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

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

4.2 Costs

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

4.3 Undisputed Amounts

Either Project Co or Contractor may dispute the calculation of any Compensation Payment and in the event of a dispute, any undisputed amount shall be paid in accordance with this Schedule 12 and the disputed amount shall be dealt with in accordance with Appendix A to this Schedule 12 – Dispute Resolution Procedure. Notwithstanding the foregoing, in the event any disputed amount exceeds \$10,000,000, either party may proceed to court for the resolution of such dispute.

4.4 Not Used.

4.5 Set-off

Project Co shall be entitled to set off against the Non-Default Termination Sum or the Default Termination Payment, such amounts not already taken into account in calculating the relevant Compensation Payment that Project Co is entitled to set off or withhold pursuant to the Construction Contract.

4.6 Full and Final Settlement

- (a) Except as otherwise provided in Section 4.6(b) of this Schedule 12, any compensation paid pursuant to Section 2.1 or Section 3.1 of this Schedule 12 in the total amount owing thereunder shall be in full and final settlement of any

claims, demands and proceedings of Contractor and Project Co and each shall be released from all liability to the other in relation to any breaches or other events leading to the termination of the Construction Contract and the circumstances leading to such breach or termination, and Contractor and Project Co shall be excluded from all other rights and remedies in respect of any such breach or termination, whether in contract, tort, restitution, statute, at common-law or otherwise.

- (b) Section 4.6(a) of this Schedule 12 shall be without prejudice to any liability, whether arising before, on or after the Termination Date, of either Party to the other, including under the indemnities contained in the Construction Contract that arose with respect to acts or omissions on or prior to the Termination Date (but not from termination itself or the events leading to such termination), to the extent such liability has not already been taken into account in calculating the relevant Compensation Payment in Section 4.5 of this Schedule 12.
- (c) Contractor acknowledges that under the provisions of Section 4.11 of the Project Agreement, CMH shall pay the Compensation Payment (under the Project Agreement) to Project Co and Project Co has irrevocably directed CMH to make such Compensation Payment to Agent or as Agent may direct, as security for the Financing. Contractor acknowledges and agrees that payment by CMH of the Compensation Payment (under the Project Agreement) in accordance with any such direction constitutes a credit against payment by Project Co to Contractor in satisfaction of Contractor's obligation to make:
 - (i) the Compensation Payment under the Construction Agreement; and
 - (ii) any payment to Contractor under the Construction Contract, to the extent made in relation to the Guaranteed Price;

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

APPENDIX A TO SCHEDULE 12
DISPUTE RESOLUTION PROCEDURE

1 GENERAL

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

2 REFERRAL OF DISPUTES TO ARBITRATION

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

3 RESOLUTION BY ARBITRATION

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

and experience, the court shall be entitled, at its sole and absolute discretion, to appoint anyone who meets the requirements set out in this Appendix A for the qualifications and experience of the arbitrator.

3.4 If the arbitration tribunal is comprised of 3 arbitrators:

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

3.5 All arbitrators must have qualifications and experience relevant to the issues in the Dispute and also have qualifications and experience as arbitrators.

3.6 No one shall be nominated or appointed to act as an arbitrator who is or was in any way financially interested in the Project or in the business affairs of CMH, Project Co, Contractor, Lender, Agent or any consultant, subconsultant or subcontractor of any of them.

3.7 The arbitrator(s) shall have the jurisdiction and power to:

- (a) amend or vary any and all rules under the *Arbitration Act*, 1991 (Ontario), including rules relating to time limits, either by express agreement of the Parties or, failing such agreement, as the arbitrator(s) consider appropriate and necessary in the circumstances to resolve the Dispute and render an award;
 - (b) require some or all of the evidence to be provided by affidavit;
 - (c) hold a hearing at which evidence and submissions are presented by the Parties;
 - (d) direct either or both Parties to prepare and provide the arbitrator(s) with such documents or other things as the arbitrator(s) may require to assist them in the resolution of the Dispute and rendering of an award; and
 - (e) require either Party to supply or prepare for examination by the arbitrator(s) and the other Party, any document or information the arbitrator(s) considers necessary.
- 3.8** The place of arbitration shall, at the option of Project Co, be the municipality in which CMH is located or Toronto, Ontario. The language of the arbitration shall be English.
- 3.9** The costs of an arbitration are in the discretion of the arbitrator(s) who, in addition to any jurisdiction and authority under applicable law to award costs, has the jurisdiction and authority to make an order for costs on such basis as the arbitrator(s) considers appropriate in the circumstances, including to award actual legal fees and disbursements and expert witness fees, and to specify or order any or all of the following:
- (a) the Party entitled to costs;
 - (b) the Party who must pay the costs;
 - (c) the amount of the costs or how that amount is to be determined; and
 - (d) how all or part of the costs must be paid.
- 3.10** In exercising discretion to award costs, however, the arbitrator(s) will take into account the desire of the Parties that costs should generally be awarded to each Party in proportion to the relative success that each Party has in the arbitration.
- 3.11** The award of the arbitrator(s) shall be final and binding upon both Parties, and both Parties expressly waive all rights of appeal in connection with the award of the arbitrator(s). Judgment may be entered upon the award in accordance with Applicable Law in any court having jurisdiction.
- 3.12** The Parties agree to and shall co operate fully with the arbitrator(s) and proceed with the arbitration expeditiously, including in respect of any hearing, in order that an award may be rendered as soon as practicable by the arbitrator(s), given the nature of the Dispute.

The arbitrator(s) shall render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than 45 days after the date of the hearing, or such longer period of time as agreed to in writing by the Parties. If the arbitration tribunal is comprised of 3 arbitrators, the decision of a majority of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal, and where there is no majority decision, the decision of the chair of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal.

- 3.13** This Appendix A constitutes an agreement to arbitrate that shall be specifically enforceable.
- 3.14** The dispute resolution procedure in this Appendix A to Schedule 12 shall be suspended pending a final determination of the Dispute under the Project Agreement. The Contractor acknowledges and agrees that the Contractor is bound by the outcome of any dispute resolution proceedings between CMH and Project Co, in respect of the Project Agreement, which relates to the Dispute, to the extent and in the manner that Project Co is bound.

**SCHEDULE 13
INSURANCE AND PERFORMANCE SECURITY**

1. WORKS PHASE INSURANCE COVERAGE

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

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

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

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

2. NO LIMIT ON RECOVERY

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

3. ADDITIONAL COVER

- 3.1** Without prejudice to the other provisions of this Schedule 13, Project Co and Contractor shall, at all relevant times and at their own expense, obtain and maintain those insurances which they are required to obtain and maintain by Applicable Law, or that they consider necessary.
- 3.2** Project Co reserves the right to require Contractor to purchase such additional insurance coverage as Project Co may reasonably require. Project Co also reserves the right to request such higher or lower limits of insurance or otherwise alter the types of coverage requirements, their minimum amounts and deductibles (taking into consideration such matters as the nature of the Works, contract value, industry standards and availability of insurance) as Project Co may reasonably require from time to time. Any additional costs of such additional and/or amended insurance shall be borne by Project Co and any cost savings resulting from the implementation of such additional and/or amended insurance shall be for the account of Project Co.

4. RESPONSIBILITY FOR DEDUCTIBLES

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

5. COOPERATION WITH INSURER'S CONSULTANT

- 5.1** If an insurer or an insurer's appointed consultant, for underwriting purposes or as a term of an insurance policy, needs to review any part of the performance of the Construction Contract, then Project Co and Contractor shall, and shall require the Project Co Parties and the Contractor Parties, respectively, to:
- (a) cooperate with the insurer and its consultant, including providing them with such information and documentation as they may reasonably require; and

- (b) allow the insurer and its consultant to attend meetings between Contractor and Project Co (or, as applicable, and if reasonably required by the insurer, between Contractor and those engaged by or through Contractor).

6. UNINSURABLE RISKS

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

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

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

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

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

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

- (a) elect to assume responsibility for the Uninsurable Risk and, in respect of the year in which the relevant risk becomes an Uninsurable Risk and every year thereafter, withhold, in equal installments over the course of such year, from the payment or payments otherwise due to Project Co, with a corresponding withholding by Project Co from Contractor, of an amount equal to the annual premium (index linked) relating to the Uninsurable Risk as was current on the date immediately prior to the date on which the relevant risk became an Uninsurable Risk, in which case the Construction Contract shall continue in full force and effect; or

- (b) terminate the Project Agreement, with a corresponding termination of the Construction Contract in accordance with Section 4.9 of Appendix A – General Conditions of the Construction Contract as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 25.5 of Appendix A – General Conditions of the Construction Contract following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 12 – Compensation on Termination, Project Co shall, subject to Section 14 of the body of the Construction Contract, pay to Contractor an amount equal to the Non-Default Termination Sum.
- 6.5** On the occurrence of an Uninsurable Risk, CMH may, in its absolute discretion, either:
- (a) pay to Project Co, with a corresponding payment to, Contractor of an amount equal to the insurance proceeds that would have been payable to Project Co in connection with such Uninsurable Risk had the relevant insurance continued to be available, in which case the Project Agreement and the Construction Contract shall continue in full force and effect; or
- (b) terminate the Project Agreement, with a corresponding termination of the Construction Contract in accordance with Section 4.9 of Appendix A – General Conditions of the Construction Contract as if such termination had occurred as a result of the Parties having failed to reach agreement in accordance with Section 25.5 of Appendix A – General Conditions of the Construction Contract following the occurrence of an event of Force Majeure, and, in accordance with the provisions of Schedule 12 – Compensation on Termination, and Project Co shall pay to Contractor an amount equal to the Non-Default Termination Sum.
- 6.6** With respect to any Uninsurable Risk:
- (a) Contractor shall continue to approach the insurance market on a regular basis and, in any event, at intervals of not less than 180 days and use reasonable efforts to obtain insurance to cover as much or all of the Uninsurable Risk as can be insured in the available insurance market from time to time; and
- (b) Subject to Section 6.6(a), Contractor shall be relieved of its obligation to maintain insurance in respect of the Uninsurable Risk.
- 6.7** Where a risk which was previously an Uninsurable Risk ceases to be so, Contractor shall, at its own expense, obtain and maintain insurance in accordance with the requirements of this Schedule 13 in respect of the risk and the provisions of this Section 6 shall no longer apply to such risk.
- 6.8** From and after the Substantial Completion Date, the Parties and CMH shall meet on an annual basis to review the scope of insurance coverage and deductibles provided in this Schedule 13, and may make mutually agreed changes thereto.

7. TOTAL OR SUBSTANTIAL DESTRUCTION

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

8. SUBCONTRACTORS

8.1 Contractor shall require that all Subcontractors are covered by, or obtain, the insurance described in this Schedule 13, provided that Contractor shall determine the applicable limits to be obtained for such insurance. Contractor shall be solely responsible and liable for any damages which CMH and Project Co may suffer as a direct result of Contractor's failure to comply with the foregoing.

8.2 If Contractor receives notice that any Subcontractor employed by or through Contractor is not covered by any insurance required by this Schedule 13 to be obtained by Contractor, Contractor shall:

- (a) ensure that such insurance coverage is put in place;
- (b) remove the Subcontractor from the Site and ensure that such Subcontractor does not perform any further part of the Construction Work until after such insurance coverage is put in place; or
- (c) if the Subcontractor cannot be covered by a particular policy as required by this Schedule 13, replace the Subcontractor with a new Subcontractor who can obtain the required insurance coverage; it being acknowledged by Contractor that the requirements and restrictions set forth in the Construction Contract regarding new and replaced Subcontractors shall be complied with.

9. RENEWAL

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

10. NAMED AND ADDITIONAL INSUREDS AND WAIVER OF SUBROGATION

10.1 All insurance provided by Contractor, shall:

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

11. CERTIFICATES OF INSURANCE AND CERTIFIED COPIES OF POLICIES

- 11.1** Prior to the commencement of any part of the Works, Contractor will provide CMH with certified copies of policies, confirming that the insurances specified in Section 1.1 have been obtained and are in full force and effect.
- 11.2** Prior to the commencement of any part of the Works, Contractor will provide CMH with certificates of insurance or certified copies of policies, confirming that the insurances specified in Section 1.2 have been obtained and are in full force and effect. If certificates of insurance are provided, certified copies of the entire contents of all relevant insurance policies will be subsequently provided to CMH no later than 90 days after execution of the Project Agreement.

12. FAILURE TO MEET INSURANCE REQUIREMENTS

- 12.1** If Contractor fails to obtain or maintain the insurance required by this Schedule 13, fails to furnish to CMH a certified copy of each policy required to be obtained by this Schedule 13 or if, after furnishing such certified copy, the policy lapses, is cancelled, or is materially altered, then CMH or Project Co shall have the right, without obligation to do so, to obtain and maintain such insurance itself in the name of Contractor, and the cost thereof shall either, at Project Co's option, be payable by Contractor to Project Co or CMH, as applicable on demand or be deducted by Project Co from the next payment or payments otherwise due to Contractor.

12.2 If coverage under any insurance policy required to be obtained by Contractor should lapse, be terminated or be cancelled, then, if directed by Project Co or CMH, all work by Contractor shall immediately cease until satisfactory evidence of renewal is produced.

13. MODIFICATION OR CANCELLATION OF POLICIES

13.1 Except as noted in Appendix A to this Schedule 13, all insurance provided by Contractor shall contain endorsements confirming that the policy will not be cancelled, adversely reduced, adversely materially altered or adversely materially amended without the insurer(s) giving at least ninety (90) days prior written notice by registered mail, at the address specified, to CMH, Project Co, the Agent and IO. For greater certainty, the terms “adversely reduced”, “adversely materially altered” and “adversely materially amended” as used in this provision shall mean any decrease or reduction in policy limits, aggregate limits or sub-limits (other than as a result of claims under the policy), any increase in any policy deductible or self-insured retention, any reduction in the policy coverage period, cancellation or suspension of coverage with respect to any insured parties from the time the policy was issued for that policy period, addition of any exclusions or restrictions from the time the policy was issued for that policy period and any reduction or restriction in the scope of coverage provided under the policy, in all cases when such adverse reduction, adverse material alteration or adverse material amendment is initiated by the insurer.

13.2 All insurance provided by Contractor shall contain endorsements confirming that, in the event of cancellation for non-payment of premium, the insurer(s) will give at least fifteen (15) days prior written notice by registered mail, at the address specified, to CMH, Project Co, the Agent and IO.

13.3 With respect to insurances described in Section 1.1(a), 1.1(b) and 1.1(c) and Section 1.2(d), breach of any of the terms or conditions of the policies required to be provided by Contractor, or any negligence or wilful act or omission or false representation by an Insured under these policies, shall not invalidate the insurance with respect to CMH, Project Co, IO, the Lenders or any other Insured, but only to the extent that such breach is not known to these parties.

14. INSURERS

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

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

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

15. POLICY TERMS AND CONDITIONS

- 15.1** All policies of insurance to be obtained by Contractor in accordance with this Schedule 13 shall be in form and substance satisfactory to CMH, its insurance advisors and the Lenders, acting reasonably.
- 15.2** To achieve the minimum limits for any type of insurance required under Appendix A, it is permissible to arrange the insurance under a single policy, or by a combination of primary, umbrella and/or excess policies.

16. FAILURE TO COMPLY

- 16.1** Neither failure to comply nor full compliance by Contractor with the insurance provisions of this Schedule 13 shall relieve Contractor of its liabilities and obligations under the Construction Contract.

17. PERFORMANCE SECURITY REQUIREMENTS

- 17.1** Contractor shall obtain and deliver to CMH and Project Co, original executed and sealed Bonds in the forms attached as Appendices B and C respectively, to this Schedule 13 on the Financial Close Target Date (as defined in the Project Agreement), each in an amount equal to 50% of the Cost of the Works (as defined in the Project Agreement). Each of the Bonds shall be properly executed by a Surety or by an agent or attorney in fact for the Surety, in which latter case, Contractor is required to submit with such Bonds a power of attorney to the signatory agent or the attorney in fact executed by the Surety in a form satisfactory to CMH to evidence the authority of the agent or the attorney in fact.

- 17.2** Such Bonds shall be issued by a duly licensed surety company authorized to transact a business of suretyship in the Province of Ontario and shall be maintained in good standing until the fulfilment of the Construction Contract.
- 17.3** For greater certainty, the obligations of the Surety under the Bonds shall not extend to or include any obligations relating to the Financing or Cost of the Financing, and it is agreed that the Parties intend to benefit the Surety by this Section 17.3 and that the Surety may rely upon and enforce the provisions of this Section 17.3.

18. INSURANCE AND BONDING TRUST AGREEMENT

Contractor acknowledges the provisions of Section 18 of Schedule 13 to the Project Agreement pursuant to which all losses under the “All Risks” Course of Construction Property Insurance policy, including Boiler & Machinery Insurance carried by Project Co or Contractor, as applicable, prior to Substantial Completion which, in each case, relate to Equipment purchased by CMH shall be payable solely to CMH and shall not be payable to the Account Trustee (as defined in the Project Agreement) or distributed pursuant to the Insurance and Bonding Trust Agreement (as defined in the Project Agreement).

APPENDIX A TO SCHEDULE 13

Works Phase Insurance – Cambridge Memorial Hospital Capital Redevelopment Project

From First Access to the Site until Substantial Completion Date (Insurance for Works Phase)

Insurances to be provided, by Contractor and arranged through the IOCIP program

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
"All Risks" Course of Construction Property Including Boiler and Machinery	Value declared to be equal to the estimated completed project value of the Facility, including Property of Every Description and all other property supplied by CMH or CMH Parties for incorporation into the Facility. All existing equipment from the start of decommissioning or removal from its original location, by or on behalf of Contractor, until such existing equipment has been relocated to the Facility and has become CMH's responsibility. Soft Costs \$50,000 per month (representing 100% of Recurring / Continuing Soft Costs) Extra and Expediting Expense (minimum \$10 million sub-limit)	3% of loss value / \$100,000 minimum Earthquake \$25,000 Flood \$25,000 Testing and Commissioning \$25,000 All other losses 30 days waiting period applicable to time element coverages 48 hour waiting period applicable to Off Premises Services Service Interruption	"All Risks" Course of Construction Property Insurance covering the full insurable replacement cost of the Works including cold and hot testing / commissioning, of Boiler & Machinery equipment, including HVAC, Delay in Start-Up, Soft Costs, with no early occupancy restriction. This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by CMH, Project Co, IO or the Lenders.	TBD
Principal Extensions:				
<ul style="list-style-type: none"> Replacement Cost Valuation (Property) Most Recent Technology Replacement Cost Valuation 				

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	million sub-limit)			
	<ul style="list-style-type: none"> • Accounts Receivable (minimum \$5 million sub-limit) • Green Building and LEED Upgrades (subject to a \$5 million sub-limit) • Defence Costs (subject to a \$5 million sub-limit) • Radioactive contamination caused by sudden and accidental release of radioactive isotopes (resulting from an accident to measuring, testing or medical equipment and subject to a \$5 million sub-limit) • Contamination Clean-up or Removal (minimum \$1 million sub-limit) • Ammonia Contamination (minimum \$1 million sub-limit) • LEED Certification, Building Commissioning and Air Testing and Outdoor Ventilation of the Reconstructed Air Spaces Expenses (\$500,000 sublimit) • Civil Authority Access Interruption (8 weeks) • Prevention of Ingress/Egress (8 weeks) 			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
	<ul style="list-style-type: none"> • Permission for Partial Occupancy prior to Substantial Completion • Cost of Carrying Project Financing (56 Months), included in Soft Costs coverage • Margin of Profit Extension for Contractors • Testing and Commissioning – 120 days 			
	<p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Cyber risk • Mould, fungi and fungal derivatives • Faulty workmanship, materials construction, or design but resultant damage to be insured to a minimum DE4 standard • War risk • Terrorism • Nuclear or radioactive contamination, except re radioactive isotopes intended for scientific, medical, industrial or commercial use 			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
		<ul style="list-style-type: none"> Contractors' equipment 		
<i>Comments</i>				
Underwriters		Principal underwriters in compliance with Clause 14 of this Schedule 13.		

Works Phase Insurance – Cambridge Memorial Hospital Capital Redevelopment Project
From First Access to the Site until Substantial Completion Date (Insurance for Works Phase)
Insurances to be provided, by Contractor and arranged through the IOCIP program

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
“Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability	\$100 million each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations Sub-limits: <ul style="list-style-type: none"> • \$100 million Non-Owned Automobile Liability • \$50 million Sudden and Accidental Pollution and Hostile Fire Pollution Liability • \$5 million “All Risks” Tenants’ Legal Liability • \$5 million Prairie or Forest Fire Fighting Expenses • \$5 million Employee Benefits Administrative Errors and Omissions • \$500,000 Contractors Rework • \$100,000 Legal Liability for Damages To Non-owned Automobiles (SEF 94) 	\$25,000 per occurrence \$100,000 per claim with respect to Contractors Rework \$ 1,000 per claim with respect to each SEF 94, Tenants’ Legal Liability, Employee Benefits Administrative Errors and Omissions and Prairie or Forest Fire Fighting Expenses	“Wrap-Up” Commercial General Liability and Non-Owned Automobile Liability insurance covering all construction operations on an occurrence basis against claims for Bodily Injury (including Death), Personal Injury, Property Damage (including Loss of Use), and including Products and Completed Operations Liability extension for a period of not less than 24 months, effective from the Substantial Completion Date. Coverage shall be maintained continuously from the date of the first activities at the Site, until the Substantial Completion Date, at which time the Products and Completed Operations extension will take effect. Sudden and Accidental Pollution and Hostile Fire Pollution coverage to be not less than IBC 2313 form (240 hours detection/240 hours’ notice coverage structure). This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by CMH, Project Co, MOHLTC, IO or the Lenders.	

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
			<ul style="list-style-type: none"> • \$10,000/\$50,000 Medical Payments <p>Principal Extensions:</p> <ul style="list-style-type: none"> • Project Co's and Contractor's Protective • Blanket Contractual (written and oral) • Direct and Contingent Employers Liability • Employee Benefits Administrative Errors and Omissions • Personal Injury (nil participation) • Cross Liability and Severability of Interest with respect to each insured party • Blasting/demolition/excavating/underpinning/pile driving/shoring/caisson work/work below ground surface/tunnelling/grading, and similar operations associated with the Construction Works, as applicable • Elevator and Hoist Collision Liability • Liberalized Notice of Claim Requirement, i.e., requirement to report will commence when knowledge is held by a designated project person(s) – to be identified by Contractor • Non-Owned Automobile Liability • Tenants' Legal Liability (All Risks) – subject to sub-limit 	

Type	Amount	Maximum Deductible(s)	Principal Cover	Estimated Premium
			<ul style="list-style-type: none"> • Medical Expenses – subject to sub-limit • Prairie or Forest Fire Fighting Expenses – subject to sub-limit • Sudden and Accidental Pollution and Hostile Fire Pollution – subject to sub-limit • Permission for Unlicensed Vehicles (partial road use) • Unlicensed Equipment • Loss of Use Without Property Damage • Loading and Unloading of Automobiles • Broad Form Property Damage • Broad Form Completed Operations • Intentional Injury, committed to Protect Persons or Property • Accident Benefits • Worldwide Territory, subject to suits being brought in Canada or the US 	
			<p>Permitted Exclusions:</p> <ul style="list-style-type: none"> • Injury to employees, where WSIB provides valid coverage • Property in the care, custody or control of the insured, except as provided under Broad Form 	

permitted

- Professional service activities integral to the project, but not covering engineers, architects or other professional consultants, i.e., incidental professional liability risk of a Named Insured and their employed professionals is to be covered, but not the professional liability of independent fee-for-service professional consultants, architects or engineers
- Waiver of subrogation of insurers' rights of recovery, against all Named and/or Additional Insureds, including Contractor, Project Co, CMH, IO, MOHLTC, subcontractors, sub-subcontractors, professional consultants, engineers, architects (other than for their professional liability), the Lenders and the Agent, as well as officers, directors, employees, servants and agents of the foregoing

Underwriters Principal underwriters in compliance with Clause 14 of this Schedule 13.

Works Phase Insurance – Cambridge Memorial Hospital Capital Redevelopment Project

From First Access to the Site until Substantial Completion Date (Insurance for Works Phase)

Insurances to be provided, by Contractor and arranged through the IOCIP program

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
Project Specific Pollution Liability (combined Contractors' Pollution Liability and Pollution Legal Liability):	\$10 million per claim and in the aggregate for all claims, inclusive of defense and all costs and expenses	\$100,000 per claim inclusive of defense and all costs and expenses	Pollution Liability insurance covering third party bodily injury, property damage consequential loss or damage, including clean-up and restoration costs, both at the Site and off-Site, as required.	
Combined Limit subject to	Principal Extensions: • Hazardous Substances occurring at or emanating from the Facility or the Site during the		Extended Reporting Period: Minimum of 36 months after Substantial Completion. This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by Project Co, CMH, IO, MOHLTC, or the	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
Contractors' Pollution Legal Liability with a minimum \$2 million sub-limit	Policy Period		Lenders.	
	<ul style="list-style-type: none"> Microbial Matter (including Fungus/Mould) 			
	<ul style="list-style-type: none"> Underground / above ground storage tanks 			
	<ul style="list-style-type: none"> First Party Restoration and Clean-up Costs 			
	<ul style="list-style-type: none"> Disposal Site Extension, including Transportation (reporting required) 			
	<ul style="list-style-type: none"> Duty to Defend 			
	<ul style="list-style-type: none"> Canada and US Territory 			
	<ul style="list-style-type: none"> Contractual Liability 			
	<ul style="list-style-type: none"> Emergency Response Costs 			
	Permitted Exclusions:			
	<ul style="list-style-type: none"> Terrorism 			
	<ul style="list-style-type: none"> War 			
	<ul style="list-style-type: none"> Intentional Non-compliance 			
	<ul style="list-style-type: none"> Prior Knowledge 			
	<ul style="list-style-type: none"> WSIB 			

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
			<ul style="list-style-type: none"> • Employers' Liability • Professional Liability • Nuclear Liability • Property Damage to Motor Vehicles during Transportation 	
<i>Comments</i>			<ul style="list-style-type: none"> • Named Insured will include Project Co, its Affiliates, Contractor, its Affiliates, Contractor parties and Project Co parties and all other parties engaged in the Works, including the subcontractors, sub-subcontractors, consultants and sub-consultants • CMH, Project Co, IO, MOHLTC and the Lenders will be identified as Additional Insureds or insured clients of, Project Co, Contractor and their Affiliates • The directors, officers, shareholders, and employees of the foregoing shall be Additional Insureds 	
Underwriters			Principal underwriters in compliance with Clause 14 of this Schedule 13.	

Works Phase Insurance – Cambridge Memorial Hospital Capital Redevelopment Project

From First Access to the Site until Substantial Completion Date (Insurance for Works Phase)

Insurances to be provided by Contractor

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
Automobile Liability	<p>\$5 million (Minimum) for Project Co and Contractor vehicles</p> <p>\$2 million (Minimum) for vehicles of any other subcontractors, sub-subcontractors, consultants, and sub-consultants, and workmen, tradesmen or other persons working on or at the Site</p>		<p>Standard Ontario Owners Form for all vehicles operated by Project Co, the Contractor, all subcontractors, sub-subcontractors, consultants and sub-consultants in connection with the Project.</p> <p>Business Automobile Liability insurance covering third party property damage and bodily injury liability (including accident benefits) arising out of any licensed vehicle.</p> <p>Policies shall be endorsed to preclude cancellation, except upon 60 days prior written notice provided to CMH, IO and the Lenders.</p>	
Commercial General Liability and Non-Owned Automobile Liability	<p>\$25 million each occurrence, and in the annual aggregate with respect to Broad Form Products and Completed Operations for Project Co and Contractor</p> <p>\$5 million each occurrence and in the annual aggregate with respect to Broad Form Completed Operations for any other contractor, subcontractors, sub-subcontractors, consultants and sub-consultants, workmen, tradesmen, or other persons involved in the Works</p> <p>In both instances, limits of liability may be structured as any combination of primary plus supplementary layers and Umbrella and/or Excess, or primary plus Umbrella and/or Excess</p> <p>Sub-limits (Project Co and Project</p>		<p>Commercial General Liability insurance covering all operations on an occurrence basis against claims for Bodily Injury (including Death), Broad Form Property Damage (including Loss of Use), and including Broad Form Products and Completed Operations Liability.</p> <p>This Commercial General Liability insurance will cover off-site activities connected to the Project and Products and Completed Operations Liability beyond the "Wrap-Up" Commercial General Liability Insurance policy's Products and Completed Operations extension period.</p> <p>This insurance shall be maintained in effect during the Works phase until twelve (12) months following the earlier of the termination of the insured's person's involvement in the Works and Substantial Completion Date.</p> <p>Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to CMH, MOHLTC, IO and the Lenders.</p>	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
Protective extensions Co's Contractor):				
			<ul style="list-style-type: none"> • Full policy limits with respect to Non-Owned Automobile Liability • \$1 million Prairie or Forest Fire Fighting Expenses 	
			<p>Principal Extensions (required to be provided by the Contractor, and its Contractor; shall be endeavoured to be provided by any other contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, workmen, tradesmen or other persons involved in the Works):</p> <ul style="list-style-type: none"> • CMH's and Contractor's Protective • Blanket Contractual (written) • Direct and Contingent Employers Liability • Personal Injury (nil participation) • Cross Liability and Severability of Interest with respect to each insured party • Blasting/demolition/excavating/underpinning/pile driving/shoring/caisson work/work below ground surface/tunnelling/grading, and similar operations associated 	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
			<ul style="list-style-type: none"> • Injury to employees, where WSIB provides valid coverage • Property in the care, custody or control of the insured, except as provided under Broad Form Products and Completed Operations • Operation of licensed motor vehicles, other than attached machinery while used for its purpose, or at the Project Site • Cyber risk • Mould, fungi and fungal derivatives • Professional liability of engineers, architects, and other professional consultants • Nuclear or radioactive contamination, except release of radioactive isotopes intended for scientific, medical, industrial or commercial use 	
<i>Comments</i>			<ul style="list-style-type: none"> • CMH, IO and the Lenders will be identified as Additional Insureds or insured clients of Project Co, Contractor and their Affiliates 	

**Cambridge Memorial Hospital
Capital Redevelopment Project**

Construction Contract – Schedule 13

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
Aircraft and Watercraft Liability (If any exposure)	Minimum \$ 50 million inclusive, including \$10 million passenger hazard – Owned Aircraft Minimum \$10 million inclusive – Non-Owned Aircraft Minimum \$10 million inclusive Owned or Non-Owned Watercraft	To be determined	Policies shall be endorsed to preclude cancellation, except upon 90 days prior written notice provided to CMH, MOHLTC, IO and the Lenders.	
<i>Comments</i>	<ul style="list-style-type: none"> • CMH, IO, MOHLTC and the Lenders will be identified as Additional Insureds or insured clients of Project Co, Contractor and their Affiliates 			
“All Risks” Ocean Marine Cargo (If any exposure)	100% Replacement Cost Valuation basis	\$25,000	Property of Every description destined for incorporation into the Facility, during marine transit, on a full replacement value basis, with no co-insurance provision. This coverage shall be primary with respect to the Facility without right of contribution of any insurance carried by Project Co, IO or the Lenders.	
<i>Comments</i>	<ul style="list-style-type: none"> • Named Insured includes Project Co, Contractor, the Lenders, the Agent, the Contractor, subcontractors, sub-subcontractors, consultants and sub-consultants, IO and CMH, as their respective interests may appear • The Agent will be identified as Loss Payee 			
“All Risks” Contractors’ Equipment To cover Project Co, the Contractor, subcontractors, sub-subcontractors	If Site equipment is three years old or less the sum insured shall be equal to 100% of the replacement value of all contractors equipment used at the project. If Site equipment is more than three years old, actual cash value basis of loss settlement is		“All Risks” coverage on all owned, rented, leased or borrowed contractors’ equipment used at the Project Site.	

Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
consultants and sub-consultants	acceptable.			

<i>Comments</i>	<ul style="list-style-type: none"> Waiver of subrogation rights against Project Co, CMH, IO, the Contractor, subcontractors, sub-subcontractors, consultants, sub-consultants, the Lenders and the Agent as well as officers, directors, shareholders and employees of the foregoing 			
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Comprehensive Crime	\$1 million per loss with respect to Employee Dishonesty		<p>Employee Dishonesty insurance against the fraudulent/dishonest acts of employees of Project Co and Contractor and Contractor Parties and Project Co Parties including additional coverage for Broad Form Money and Securities, Money Orders and Counterfeit Paper, Depositors' Forgery, Computer Fraud and Funds Transfer Fraud, Audit Expenses and Credit Card Forgery.</p> <p>Custodial endorsement extending protection to third parties.</p> <p>Insurance is primary without right of contribution of any other insurance carried by CMH, IO or the Lenders.</p>	
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Underwriters (All non-IOCIP Works Phase insurances that are to be provided by Contractor)	Principal underwriters in compliance with Clause 14 of this Schedule 13.			
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Type	Amount	Maximum Deductible	Principal Cover	Estimated Premium
WSIB	In accordance with Ontario Act's established benefits and schedules	Not Applicable	<p>(i) Contractor and its Affiliates shall obtain and maintain at Contractor's expense, WSIB Insurance, in accordance with the Province of Ontario requirements.</p> <p>(ii) Contractor shall ensure that satisfactory evidence of WSIB Insurance is provided by all Contractor Parties, including all other consultants, sub consultants, contractors, subcontractors, suppliers and tradesmen working at the Site.</p> <p>Prior to commencement of the work, each of the foregoing shall provide satisfactory written confirmation of compliance, from the appropriate authority, including confirmation that all required assessments have been paid to date.</p> <p>Upon Substantial Completion of the Facility, Contractor shall be provided with satisfactory written confirmation that all required assessments have been paid to date.</p> <p>On request, within 30 days of such request, Contractor shall deliver to Project Co evidence of the WSIB coverage maintained by any person involved in the Works, or confirmation of that person's exemption from WSIB coverage.</p>	

APPENDIX B TO SCHEDULE 13
PERFORMANCE BONDTHIS BOND IS SUBJECT TO THE TERMS AND CONDITIONS OF
THE MULTIPLE OBLIGEE RIDER ATTACHED HERETO

No. _____

Bond Amount [Insert Amount]

[Insert Contractor], as Principal, hereinafter called the Principal, and [Insert Surety], as Surety, duly authorized to transact the business of suretyship in Canada, hereinafter called the Surety, are held and firmly bound unto [Insert Project Co] as Obligee, hereinafter called the Obligee, in the amount of [Insert Amount], of lawful money of Canada, for the payment of which sum the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS, the Principal has entered into a written contract entitled Construction Contract with [Insert Project Co] dated [Insert Date] for the Cambridge Memorial Hospital Capital Redevelopment Project (such contract as so amended, and as the same may hereinafter be further amended, whether by way of change, alteration, addition or other modification, and including all of its terms and provisions without limitation, is hereinafter called the Construction Contract and by reference made part hereof). Capitalized terms used in this Bond without definition shall have their respective meanings attributed thereto in the Construction Contract.

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

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

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

the Balance of the Construction Contract Price and to pay all expenses incurred by the Obligee as a result of the Principal's default relating directly to the performance of the Construction Work under the Construction Contract, but not exceeding the Bond Amount. The Balance of the Construction Contract Price is the total amount of the Guaranteed Price payable to the Principal under the Construction Contract, less the amount properly paid by the Obligee to the Principal under the Construction Contract; or

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

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

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

It is a condition of this Bond that any suit or action must be commenced before the expiration of two (2) years from the earlier of (1) the Substantial Completion Date, or (2) the date on which the Principal is declared in default by the Obligee and such notice of default is provided to CMH and [Insert Lender].

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

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

IN WITNESS WHEREOF, the Principal and the Surety have signed and sealed this Bond dated the _____ day of _____, 201__.

SIGNED, SEALED AND DELIVERED

in the presence of:

[Insert Principal]

By _____
Signature

Name of person signing

[Insert Surety]

By: _____
Signature

Name of person signing

EXHIBIT 1 TO APPENDIX B

FORM OF MULTIPLE OBLIGEE RIDER TO PERFORMANCE BOND

No. _____

TO BE ATTACHED TO AND FORM PART OF THE PERFORMANCE BOND NO. [Insert Bond No.] dated [Insert Date] (the “Bond”) concurrently with the execution of this Multiple Obligee Rider, issued by [Insert Surety], as Surety (hereinafter called the “Surety”), on behalf of [Insert Contractor], as Principal (hereinafter called the “Principal”), and in favour of [Insert Project Co], as Obligee (hereinafter called the “Obligee”).

NOW THEREFORE, in consideration of Ten (\$10.00) Dollars and other good and valuable consideration, receipt of which is hereby acknowledged by each of the parties hereto, the undersigned hereby agree as follows:

1. The Bond shall be and is hereby amended to add Cambridge Memorial Hospital (“CMH”) and [Insert Lender], in their respective capacities as assignees of the Construction Contract, as Additional Named Obligees, which Additional Named Obligees (which hereinafter may from time to time be referred to simply as “Obligee(s)”) shall, subject to the terms of the Bond and this Multiple Obligee Rider, be entitled to enforce the obligations of the Principal and the Surety under the Bond and this Multiple Obligee Rider.

1. Capitalized terms used in this Multiple Obligee Rider without definition shall have the respective meanings attributed to them in the Bond and the Construction Contract.

2. If there is an event of default by Contractor under the Construction Contract (a “Construction Event of Default”) and the [Insert Lender] or CMH makes a claim under the Bond, the [Insert Lender] or CMH, as the case may be, shall make available to the Surety in accordance with the terms of the Construction Contract the Balance of the Construction Contract Price.

3. All of the terms, conditions and provisions of the Bond are hereby incorporated herein by reference as if fully set forth herein.

4. No alteration or material change in the Construction Contract or any conduct of the Principal, Obligee or [Insert Lender], prior to the Principal being declared in default, shall prejudice the rights or interest of CMH under the Bond or this Multiple Obligee Rider provided that CMH has not caused such alteration or material change without the prior written consent of the Surety.

5. The Obligee, Principal, Surety and [Insert Lender] acknowledge and agree that they will not remedy any default, settle, waive, reduce or otherwise compromise any claims under the Bond without the prior written approval of CMH, acting reasonably, and the Surety shall provide reasonable notice to CMH prior to remedying any default, settling, waiving, reducing

or otherwise compromising any claim or making any payment under the Bond, provided that the Surety shall not be precluded from tendering upon the Oblige(e)s performance pursuant to one of the four numbered options in the Bond.

6. The Surety acknowledges the process in the Lender's Direct Agreement for making a claim against the Bond, including, but not limited to, the Lender's Step In Period (as defined in the Lender's Direct Agreement) rights; provided that such acknowledgement shall in no way limit or otherwise abrogate from the Surety's rights under the Bond or this Multiple Oblige(e) Rider.
7. In the event of any ambiguity, conflict or inconsistency, the Bond and this Multiple Oblige(e) Rider shall prevail over the Project Agreement and the other Project Documents.
8. Nothing herein shall alter or affect the aggregate liability of the Surety as described in the Bond.

IN WITNESS WHEREOF, the Principal, Surety, Oblige(e), CMH and Lender have signed and sealed this Multiple Oblige(e) Rider dated the ____ day of _____, 20__.

SIGNED, SEALED and DELIVERED

in the presence of:

[Insert Principal]

By _____
Signature

Name of person signing

[Insert Surety]

By: _____
Signature

Name of person signing

[Insert Project Co.]

By _____
Signature

Name of person signing

[Insert Lender]

By: _____
Signature

Name of person signing

CAMBRIDGE MEMORIAL HOSPITAL

By _____
Signature

Patrick Gaskin, President and CEO

Name of person signing

APPENDIX C TO SCHEDULE 13

FORM OF LABOUR AND MATERIAL PAYMENT BOND

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

Bond No. _____ **Bond Amount:** _____

[Insert Contractor] as Principal (hereinafter called the “Principal”), and [Insert Surety] a corporation created and existing under the laws of Canada and duly authorized to transact the business of Suretyship in Canada as Surety, (hereinafter called the “Surety”) are subject to the conditions hereinafter contained, held and firmly bound unto [Insert Project Co], as Trustee (hereinafter called the “Obligee”), for the use and benefit of the Claimants, their and each of their heirs, executors, administrators, successors and assigns, in the amount of [•] DOLLARS (\$[•]) of lawful money of Canada for the payment of which sum well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a written contract entitled Construction Contract with [Insert Project Co] dated [Insert Date] for the Cambridge Memorial Hospital Capital Redevelopment Project (such contract as so amended, and as the same may hereinafter be further amended, whether by way of change, alteration, addition or other modification, and including all of its terms and provisions without limitation, is hereinafter called the Construction Contract and by reference made part hereof). Capitalized terms used in this Bond without definition shall have their respective meanings attributed thereto in the Construction Contract.

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

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

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

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

IN WITNESS WHEREOF, the Principal and the Surety have signed and sealed this Bond this _____ day of _____, 20__.

SIGNED, SEALED AND DELIVERED in the presence of:

[Insert Principal]

Signature
Name of person signing

Witness

[Insert Surety]

Signature
Name of person signing

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

No. _____

TO BE ATTACHED TO AND FORM PART OF THE LABOUR AND MATERIAL PAYMENT BOND NO. [Insert Bond No.] dated [Insert Date] (the “L&M Bond”) concurrently with the execution of this Labour and Material Payment Bond Multiple Obligee Rider (“L&M Multiple Obligee Rider”) issued by [Insert Surety], as Surety (hereinafter called the “Surety”), on behalf of [Insert Contractor], as Principal (hereinafter called the “Principal”), and in favour of [Insert Project Co], as Obligee (hereinafter called the “Obligee”).

NOW THEREFORE, in consideration of Ten (\$10.00) Dollars and other good and valuable consideration, receipt of which is hereby acknowledged by each of the parties hereto, the undersigned hereby agree as follows:

- 1. The L&M Bond shall and is hereby amended to add Cambridge Memorial Hospital (hereinafter called the “CMH”) and [Insert Lender] (hereinafter called the “Lender”) as additional named Obligees, in their respective capacities as assignees of the Construction Contract.*
2. Capitalized terms used in this L&M Multiple Obligee Rider without definition shall have the respective meanings attributed to them in the L&M Bond and the Construction Contract.
3. All of the terms, conditions and provisions of the L&M Bond are hereby incorporated herein by reference as if fully set forth herein.
4. No alteration or material change in the Construction Contract or any conduct of the Principal, Obligee or Lender, shall prejudice the rights or interest of CMH or Claimant under the L&M Bond or this L&M Multiple Obligee Rider provided that CMH or Claimant have not caused such alteration or material change without the prior written consent of the Surety.
5. In the event of any ambiguity, conflict or inconsistency, the L&M Bond and the L&M Multiple Obligee Rider shall prevail over the Project Agreement and the other Project Documents.
6. Nothing herein shall alter or affect the aggregate liability of the Surety as described in the L&M Bond.

IN WITNESS WHEREOF, the Principal, Surety, Obligee, CMH and Lender have signed and sealed this L&M Multiple Obligee Rider dated the ____ day of _____, 20__.

SIGNED, SEALED and DELIVERED **[Insert Principal]**
in the presence of :

By:

Signature

Name of person signing

[Insert Surety]

By:

Signature

Name of person signing

[Insert Project Co.]

By:

Signature

Name of person signing

[Insert Lender]

By:

Signature

Name of person signing

CAMBRIDGE MEMORIAL HOSPITAL

By:

Signature

Name of person signing

**SCHEDULE 14
DISPUTE RESOLUTION PROCEDURE****1. DISPUTE RESOLUTION**

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

2. NEGOTIATION, ADJUDICATION AND ARBITRATION

- 2.1** A Party shall give written notice of a dispute to the other Party, no later than 5 Business Days after the receipt of the Consultant’s decision, finding or determination in the case of a dispute as to a decision, finding or determination made by the Consultant, given under Section 8.2 of the Project Agreement. Such notice shall set forth particulars of the matters in dispute, the probable extent and value of the damage and the relevant provisions of the Contract Documents. Such notice shall be copied to IO at the address set out in Section 42.1 of the Project Agreement, for information purposes only. The other Party shall reply to such notice no later than 5 Business Days after it receives or is considered to have received it, setting out in such reply its grounds and other relevant provisions of the Contract Documents.
- 2.2** The Parties shall first make good faith efforts to promptly resolve their disputes by amicable negotiations conducted by the senior representatives of Project Co and Contractor at the Site. If, following good faith negotiations between them, resolution of a dispute has not been reached within 10 Business Days of the request for negotiations,

then upon the written request of either Party, senior executive officers of each Party shall attempt to resolve the dispute. If the dispute is resolved, such resolution shall be evidenced by an instrument in writing.

2.3 If a dispute has not been resolved within 10 Business Days of a Party's written request for senior executive officer negotiation, then upon the written request of either Party, the dispute shall be submitted to adjudication in accordance with Section 2.4 of this Schedule 14. If the Parties do not agree to submit the dispute to adjudication within such 10 Business Day period, either Party may then refer the dispute to arbitration pursuant to Section 2.5 of this Schedule 14.

2.4 Adjudication shall be conducted in accordance with the following:

- (a) If the Parties are unable to agree upon an adjudicator within the prescribed time, then either Party may request that a judge of the Superior Court for the Province of Ontario appoint the adjudicator.
- (b) The Parties may refer a dispute to the adjudicator by providing written notice of the intention to the adjudicator at least 3 Business Days prior to making the referral.
- (c) Once a dispute has been referred to the adjudicator, the adjudicator is required to make a decision within 28 days of the referral, or such longer period as agreed to by the Parties after the dispute has been referred, and such decision shall be in writing.
- (d) The adjudicator is required to act impartially in fulfilling his/her duties and the adjudicator may take whatever initiative he/she deems necessary in order to resolve the dispute, including requiring the Parties to submit whatever documents, statements of position or other information the adjudicator requires.
- (e) The adjudicator may decide that any of the Parties to the dispute is liable to make a payment under the Construction Contract and when that payment is due.
- (f) In the absence of any directions by the adjudicator relating to the time for performance of his/her decision, and notwithstanding any instruction received from the Consultant in accordance with Section 1 hereof, the Parties shall be required to comply with any decision of the adjudicator immediately on delivery of the decision to the Parties in accordance with this Section 2.4.
- (g) If requested by one or both of the Parties to the dispute, the adjudicator shall provide reasons for his/her decision.
- (h) The adjudicator shall be entitled to the payment of such reasonable amount as he/she may determine by way of fees and expenses reasonably incurred by him/her which the adjudicator may apportion between the Parties as he/she considers appropriate. Notwithstanding the foregoing, the Parties shall be jointly

and severally liable for any sum which remains outstanding following the making of any determination on how payment shall be apportioned, such that if the adjudicator is unable to recover his/her fees and expenses from one Party, he/she may recover from the other.

- (i) The adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his/her functions as adjudicator unless the act or omission is in bad faith.

2.5 By giving notice in writing to the other Party, at any time after receipt of the decision of the adjudicator, and subject to the Parties' obligation to comply with the adjudicator's decision in accordance with Section 1.2 of this Schedule 14, or if the parties do not agree to submit the dispute to adjudication within the timeframe set out in Section 2.3 hereof, either Party may (i) elect by written notice to the other Party, to refer the dispute to be finally resolved by arbitration under the latest edition of the Rules for Arbitration of Construction Disputes as provided in CCDC 40, or (ii) elect by written notice to the other Party (and regardless of whether the other Party has given a notice under clause (i) above electing to refer the dispute to be finally resolved by arbitration) to require that the dispute be referred to and resolved solely by litigation in the Ontario Superior Court of Justice, and both Parties agree to attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of the dispute, provided if the actual or potential total value or amount at issue in the dispute (as determined by adding all claims and counterclaims) is less than \$10,000,000, taking into account recurrence over time if the dispute involves a recurring matter, the Party which has not referred the dispute to be resolved by litigation may elect, by written notice given to the other Party within 10 Business Days after receipt of the notice requiring that the dispute be resolved by litigation, to refer the dispute to be finally resolved by arbitration. Such notice of arbitration shall be copied to IO at the addresses set out in Section 42.1 of the Project Agreement, for information purposes only. Notwithstanding that a notice of arbitration has been delivered, if the actual or potential total value or amount at issue (as determined by adding all claims and counterclaims) is \$10,000,000 or more, taking into account recurrence over time if the dispute involves a recurring matter, then either Party may elect, by written notice to the other Party, to require that the dispute be referred to and resolved solely by litigation in the Ontario Superior Court of Justice, and both Parties agree to attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of the dispute.

2.6 Except as otherwise provided in the Contract Documents, no arbitration arising out of or relating to the Contract Documents shall include by consolidation, joinder or in any other manner any other individual or entity who is not a Party to the Construction Contract unless:

- (a) the inclusion of such other individual or entity is necessary if complete relief is to be afforded among those who are already Parties to the arbitration;

- (b) such other individual or entity is substantially involved in a question of law or fact which is common to those who are already Parties to the arbitration and which will arise in such proceedings; and
- (c) the written consent of the other individual or entity sought to be included and of Project Co and Contractor has been obtained for such inclusion, which consent shall make specific reference to this paragraph; but no such consent shall constitute consent to arbitration of any dispute not specifically described in such consent or to arbitration with any Party not specifically identified in such consent.

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

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

3. RETENTION OF RIGHTS

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

a waiver of any right that Party may have under paragraph 2.5 to proceed by way of arbitration to adjudicate the merits of the claim upon which such a lien is based.

4. Indemnity Re Amounts Due

4.1 The parties shall indemnify each other in respect of any damages suffered or incurred on amounts agreed to be paid pursuant to resolution of a dispute pursuant to Section **Error! Reference source not found.** or Sections 2.1 or 2.2 of this Schedule 14 and on the amount of any award or judgment as follows:

- (a) for amounts payable by Contractor to Project Co, Contractor shall indemnify Project Co as provided for in Section 33.1(d) of Appendix A – General Conditions of the Construction Contract from and against any damages suffered or incurred resulting from any overpayments to Contractor or, as applicable, any underpayment or non-payment by Contractor from the date of any overpayment to Contractor or, as applicable, from the date on which payment was due under the Construction Contract to Project Co until the date of payment; or
- (b) for amounts payable by Project Co to Contractor, Project Co shall, subject to Section 14 of the body of the Construction Contract, indemnify Contractor as provided for at Section 33.2(d) of Appendix A – General Conditions of the Construction Contract from and against any damages suffered or incurred resulting from any overpayment to Project Co or, as applicable, any underpayment or non-payment by Project Co from the date of any overpayment to Project Co or, as applicable, from the date on which payment was due under the Construction Contract to Contractor until the date of payment.

5. NOTICES

5.1 As requested by Project Co, the Contractor shall copy the Consultant on all notices given hereunder.

6. PROJECT AGREEMENT

6.1 At the request of Project Co, the Contractor shall provide Project Co with assistance, cooperation and support in respect of any disputes under the Project Agreement.

6.2 The Contractor consents to being joined in an arbitration between CMH and Project Co involving the Construction Work, in accordance with the Project Agreement. Nothing in this paragraph 6.2 shall create any claim, right or cause of action in favour of the Contractor against CMH.

6.3 The dispute resolution procedure in this Appendix A to Schedule 12 in respect of adjudication and arbitration shall be suspended pending a final determination of the Dispute under the Project Agreement. The Contractor acknowledges and agrees that the Contractor is bound by the outcome of any dispute resolution proceedings between CMH

and Project Co, in respect of the Project Agreement, which relates to a dispute, to the extent and in the manner that Project Co is bound.

**SCHEDULE 25
LEGAL DESCRIPTION OF THE LANDS**

Part of Subdivision Lots 2 & 3, Concession 12, East of the Grand River, Geographic Township of North Dumfries as in ND16368 save and except Parts 13, 14, 20, 21, 22, 23, 23 and 25 on 58R-12156; City of Cambridge, Regional Municipality of Waterloo (PIN No. 03774-0569(LT)).

Tab G

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



A Commissioner for taking affidavits

CONTRACTOR DIRECT AGREEMENT

THIS CONTRACTOR DIRECT AGREEMENT is made as of August 28, 2014.

BETWEEN:

BONDFIELD CONSTRUCTION COMPANY LIMITED, a corporation incorporated under the laws of the Province of Ontario

(the "**Contractor**")

AND:

BANK OF MONTREAL, as administrative agent for and on behalf of itself and the Lenders

(the "**Administrative Agent**")

AND:

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

(the "**Project Co**")

WHEREAS:

- A. Project Co and Cambridge Memorial Hospital ("**CMH**"), a non-share capital corporation incorporated under the laws of Ontario entered into a Project Agreement dated as of August 28, 2014 (the "**Project Agreement**").
- B. Project Co and the Contractor have entered into a guaranteed price contract dated as of the date hereof (the "**Construction Contract**") with respect to the Project.
- C. Pursuant to that certain credit agreement dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**") between Project Co, each of the financial institutions and other entities from time to time parties thereto in their capacity as Lead Arrangers, providers of the Commitments under the Credit Facility or as providers of the Interest Rate Swaps (the "**Lenders**") and Bank of Montreal, as administrative agent (the "**Administrative Agent**"), the Lenders have made certain credit facilities available to Project Co on the terms and conditions set forth in the Credit Agreement.
- D. It is a condition precedent to the effectiveness of the Credit Agreement that the Contractor enter into this Agreement.

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

SECTION 1 – INTERPRETATION

1.1 Credit Agreement Definitions

Unless otherwise indicated, capitalized terms used in this Agreement have the meanings given to them in the Credit Agreement. The rules of construction and interpretation set out in Section 1 of the Credit Agreement shall apply to this Agreement.

1.2 Other Defined Terms

In this Agreement:

- (1) **Agreement** means this Contractor Direct Agreement, as amended, restated, supplemented or otherwise modified from time to time.
- (2) **Contractor Obligations** means:
 - (a) the performance of the Work; and
 - (b) the performance of all other obligations of Contractor under the Construction Contract.
- (3) **Lender Cure Period** has the meaning given to it in Section 7.3.
- (4) **Loan Amount** means all loans and other amounts outstanding under the Credit Facility, including principal, interest and fees, pursuant to the terms of the Credit Agreement.
- (5) **Non-Default Termination Sum** has the meaning given to it in the Project Agreement.
- (6) **Relevant Project Documents** means the Construction Contract, the Contractor Support Agreement, and such other agreements as may be entered into between the Contractor and, *inter alia*, Project Co which are designated as such by the Administrative Agent.
- (7) **Site** has the meaning given to it in the Project Agreement.
- (8) **Work** has the meaning given to it in the Construction Contract.

1.3 Order of Precedence

In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of the Construction Contract, the provisions of this Agreement shall govern.

SECTION 2 – REPRESENTATIONS AND WARRANTIES

The Contractor represents and warrants to and in favour of the Administrative Agent and Lenders, as of the date hereof and on each Funding Date with the same effect as if such representations and warranties had been made and given on and as of each such date, that:

(1) ***Creation and Existence.*** The Contractor (a) is a corporation duly incorporated, organized and validly existing under the laws of the Province of Ontario, (b) is up to date in all filings required under those laws, (c) has the requisite corporate power to own, operate and lease its properties and assets and to conduct the businesses in which it is presently engaged, and (d) is duly qualified under the laws of each jurisdiction where its ownership, lease or operation of properties or assets or the conduct of its business requires qualification.

(2) ***Power and Authority.*** The execution, delivery and performance by the Contractor of this Agreement, the Contractor Support Agreement and the Material Project Documents to which it is a party (a) are within the corporate powers of the Contractor, (b) have been duly authorized by all necessary corporate or shareholder action with respect to the Contractor and (c) do not conflict with, result in a breach or violation of, or constitute a default under (i) the constating documents or any unanimous shareholders' agreement of the Contractor, (ii) any Applicable Law or (iii) any other document to which it is a party or by which it is bound.

(3) ***Authorization, Execution, Delivery and Binding Effect.*** This Agreement, the Contractor Support Agreement and each Material Project Document to which the Contractor is a party has been duly authorized, executed and delivered by the Contractor and constitutes a legal, valid and binding obligation of the Contractor, enforceable against the Contractor in accordance with its terms, subject to (a) applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, (b) the fact that specific performance and injunctive relief may only be given at the discretion of the courts, and (c) the equitable or statutory powers of the courts to stay proceedings before them and to stay the execution of judgments.

(4) ***Representations and Warranties in the Credit Agreement.*** Each of the representations and warranties with respect to the Contractor set out in Section 2 of the Credit Agreement is true and correct, as at each time on which such representation and warranty is made under the Credit Agreement, provided that where any such representation or warranty is given in respect of a particular date or period and relates only to such date or period, then such representation and warranty shall continue to be given as at such date or for such period.

SECTION 3 – CONSENT TO SECURITY

3.1 Acknowledgement and Consent to Security

The Contractor hereby acknowledges that Project Co has granted a security interest in favour of the Administrative Agent for and on behalf of itself and the Lenders in all of Project Co's right, title and interest in, to and under the Material Project Documents to which Project Co is party pursuant to and in accordance with the terms of the Security Documents and consents to the granting of such security interest.

3.2 Acknowledgement re Enforcement

The Contractor hereby acknowledges that, subject to the terms of the Lenders' Direct Agreement and the other Implementing Agreements, no consent of the Contractor is required for the enforcement by the Administrative Agent of any rights or remedies under the Credit Agreement or any other Loan Document.

3.3 No Notice of Security Interest

The Contractor hereby confirms that it has not received notice of any other security interest granted over Project Co's rights under any Relevant Project Document, except to CMH pursuant to the Assignable Subcontract Agreement for Construction Contract.

3.4 No Assumed Liabilities or Obligations

The Contractor acknowledges that, save as provided therein, none of the Administrative Agent or the Lenders assumes any liability or obligation under any Relevant Project Document as a result of taking or enforcing any security referred to in Section 3.1 above.

3.5 Acknowledgement re Amendments to Construction Contract

The Contractor agrees that it will not, without the prior written consent of the Administrative Agent, agree to amend, modify or waive any material provision of any Relevant Project Document.

3.6 Receipt of Credit Agreement

The Contractor hereby acknowledges receipt of a fully executed copy of the Credit Agreement.

SECTION 4 – SECURITY OVER LEGISLATIVE HOLDBACK

4.1 Grant of Security Interest Over Legislative Holdback

The Contractor hereby assigns, transfers and sets over and grants a security interest in, to, and in favour of Administrative Agent, in trust for the rateable benefit of the Lenders, all of the Contractor's right, title and interest in and to the Legislative Holdback.

4.2 Direction re: Payment of Legislative Holdback

The Contractor hereby irrevocably directs Project Co to pay any amounts payable by Project Co to the Contractor in respect of the Legislative Holdback to the Funding Account or such other account as may be designated by the Administrative Agent and to use the Legislative Holdback to the extent of any holdback with respect to work performed by the Contractor's own forces, to repay the Lenders in accordance with Section 5.2 of the Credit Agreement.

SECTION 5- CONTRACTOR COVENANTS

5.1 Covenants of the Contractor

The Contractor covenants with the Administrative Agent and Lenders as follows:

(1) **Credit Agreement Covenants.** The Contractor shall comply with, and duly perform all obligations in respect of those covenants set out in Section 9 of the Credit Agreement in which Project Co has undertaken to cause the Contractor to comply and perform, in each case in accordance with their terms, and shall ensure that all amounts received or receivable by the Contractor from CMH are, where applicable, applied in accordance with the relevant provisions of the Credit Agreement, the Irrevocable Direction and the Material Project Documents.

(2) **Notice and Information.** The Contractor shall deliver to the Administrative Agent and the Lenders' Consultant (i) copies of all material notices delivered by the Contractor to CMH or any Major Project Party under the Construction Contract or any other Material Project Document concurrently with delivery thereof to CMH or such other Major Project Party, and (ii) immediately upon receipt of same, copies of all material notices received by the Contractor from CMH or any other Major Project Party under the Construction Contract or any other Material Project Document, including, without limitation, notices in respect of Change Orders, Change Directives, any default or event of default under any Material Project Document, any event or circumstance that could give rise to any relief or compensation from CMH under the Construction Contract or any other Material Project Document and any event or circumstance which has given rise to, or which could give rise to, any right of any party to a Material Project Document to require delivery of a remedial plan or to terminate any Material Project Document. To the extent that the Contractor has become aware of the occurrence of any of the foregoing events or circumstances but has not received notice of same from any other person, the Contractor shall promptly give notice to the Administrative Agent and the Lenders' Consultant of the occurrence of any such event or circumstance. Where the same notice or information is required to be delivered to the Administrative Agent and/or the Lenders' Consultant by both Project Co under the Credit Agreement and the Contractor under this Agreement, delivery of such notice or information shall be made to each of the Administrative Agent and the Lenders' Consultant by either Project Co or the Contractor.

(3) **Subcontract Assignment Provisions.** In respect of each Material Subcontract entered into by the Contractor in connection with the Work, the Contractor shall enter into an Assignable Subcontract Agreement with the Subcontractor, in favour of CMH and, at the request of the Administrative Agent, an assignment of such Material Subcontract in favour of the Administrative Agent.

(4) **Lenders' Consultant.** The Contractor shall ensure that the Lenders' Consultant and the Administrative Agent and/or any person(s) authorized by them, have (i) such access to the Site and place of the Work during normal working hours as is reasonably requested by the Administrative Agent from time to time, (ii) reasonable prior notice of all tests and all construction progress update meetings between the Contractor and CMH which the Administrative Agent and the Lenders' Consultant have the right to attend and (iii) all assistance reasonably necessary or desirable to allow the Lenders' Consultant to carry out its duties in connection with the Work.

(5) **Distributions.** The Contractor shall not receive any Distributions other than as permitted under the terms of the Credit Agreement, and to the extent it shall receive any such Distributions contrary to the terms of the Credit Agreement it shall hold the amount of such Distributions in trust for and for the benefit of the Administrative Agent.

(6) **Subordination and Postponement.**

- (i) Subject to Section 5.1(6)(ii), the Contractor hereby covenants and agrees that payment of all Subordinate Debt is hereby unconditionally and irrevocably subordinated, deferred and postponed in all respects to the prior indefeasible repayment in full by Project Co of all Senior Debt. For purposes of this Section, "**Subordinate Debt**" means all indebtedness, liabilities and obligations, of any nature or kind, present or future, direct or indirect, absolute or contingent owing by Project Co to the Contractor, including amounts due to the Contractor under the Construction Contract, but excluding any amounts that are legitimately owing to Subcontractors as trust funds under the *Construction Lien Act* (Ontario), and "**Senior Debt**" means all indebtedness, liabilities and obligations, of any nature or kind, present or future, direct or indirect, absolute or contingent, owing by Project Co to the Administrative Agent or the Lenders pursuant to the Loan Documents;
- (ii) Notwithstanding (i) above, so long as no Event of Default has occurred and is continuing, the Contractor may receive from Project Co payments on account of amounts owing under the Construction Contract and Transaction Expenses payable to the Contractor on the Financial Closing Date all in amounts consistent with the Financial Model, but may not receive from Project Co amounts due under Schedule 12 of the Construction Contract (other than amounts that are legitimately owing to Subcontractors as trust funds under the *Construction Lien Act* (Ontario)) until the Senior Debt has been repaid in full.

(7) **Cost Overrun.** In the event of a Cost to Complete Deficiency or the occurrence of the Event of Default set out in Section 10.1(29) of the Credit Agreement, in either case resulting from any Cost Overrun, the Contractor covenants and agrees that it shall, at its option, either:

- (i) contribute cash to the Funding Account or post other liquid security satisfactory to the Administrative Agent, in either case in an amount sufficient to remedy the Cost to Complete Deficiency; or
- (ii) deliver evidence satisfactory to the Administrative Agent, acting reasonably and on the advice of the Lenders' Consultant, that the Contractor (a) has entered into, or will enter into, arrangements with one or more of its subcontractors pursuant to which liability for the Cost Overrun giving rise to the Cost to Complete Deficiency has been transferred to such subcontractor or subcontractors or (b) has agreed to pay such incremental amounts to any applicable subcontractors or as may otherwise be required to complete the

Work in an amount equal to the relevant Cost to Complete Deficiency out of the Contractor's own funds or resources; or

- (iii) deliver evidence satisfactory to the Administrative Agent, acting reasonably and on the advice of the Lenders' Consultant, that the Contractor has self-performed, or will have self-performed, such portion of the Work as may be required to offset the relevant Cost to Complete Deficiency using the Contractor's own funds and resources.

(8) **Completion Undertaking.** The Contractor undertakes to complete the Work in accordance with the provisions of the Construction Contract and the other Material Project Documents to which it is a party, except where the Lenders fail to fund under the Credit Agreement in breach of their obligations thereunder, and, without limiting the generality of the foregoing, the Contractor will complete the Work:

- (i) in the event of any loss or damage to the Work of any kind for which Project Co or the Contractor were obligated to obtain insurance pursuant to the Material Project Documents, whether or not the Contractor receives insurance proceeds promptly or at all;
- (ii) in the event of any Delay Event, Compensation Event, Force Majeure, Change in Law (all as defined in the Project Agreement) or other event or thing which causes or could cause a delay of the Work, whether or not the Contractor receives any amounts payable to it with respect to such events promptly or at all, subject to the rights of Project Co and the Contractor arising from an CMH Event of Default, Delay Event, Compensation Event, Force Majeure or Change in Law (all as defined in the Project Agreement) pursuant to the Project Agreement;
- (iii) in the event CMH withholds, delays, reduces or sets-off any amount from Project Co and Project Co withholds, delays, reduces or sets-off a corresponding amount from the Contractor, whether or not the Contractor disputes such withholding, delay, reduction or set-off; and
- (iv) in the event Project Co is in default of the Project Agreement or any other Material Project Document with respect to the Work.

SECTION 6 – CONTRACTOR COVENANTS – INSOLVENCY EVENTS

6.1 If:

- (1) any resolution is passed or any order or appointment is made in respect of the winding up, liquidation, dissolution or administration of Project Co; or
- (2) Project Co becomes subject to any insolvency, bankruptcy, reorganisation, receivership (whether relating to all or any of its assets and whether or not resulting from the enforcement of any security granted pursuant to the terms of the Credit

Agreement), liquidation, dissolution or other similar proceeding whether voluntary or involuntary (and whether or not involving insolvency); or

- (3) Project Co becomes subject to any distribution of its assets as a result of insolvency, bankruptcy, reorganisation, liquidation, dissolution or administration; or
- (4) Project Co assigns its assets for the benefit of its creditors or enters into any composition or arrangement with its creditors generally or any arrangement is ordered or declared whereby its affairs or assets, or both, are submitted to the control of, or are protected from, its creditors; or
- (5) any event occurs or proceeding is taken with respect to Project Co in any jurisdiction to which it is subject which has an effect equivalent or similar to any of the events referred to above,

the following provisions of this Section 6 (as appropriate) shall apply.

6.2 If any of the circumstances mentioned in Section 6.1 occurs before the Loans and other amounts outstanding pursuant to the Credit Agreement (collectively, the “**Outstanding Obligations**”) are repaid pursuant to the terms of the Credit Agreement, the claims of the Contractor against Project Co shall be subordinate in right of payment to the claims of the Administrative Agent, for and on behalf of itself and the Lenders, in respect of the Outstanding Obligations, pursuant to the terms of the Credit Agreement.

6.3 If any of the circumstances referred to in Section 6.1 occurs before the Outstanding Obligations are repaid pursuant to the terms of the Credit Agreement:

- (1) each Party will direct the trustee in bankruptcy, liquidator, assignee or other person distributing the assets of Project Co or their proceeds to pay any amounts owed to it by Project Co directly to the Administrative Agent;
- (2) without prejudice to subsection (1) above, each Party will hold all distributions or payments in cash or in kind received or receivable by it, other than any amounts that are legitimately owing to Subcontractors as trust funds under the *Construction Lien Act* (Ontario) in trust for the Administrative Agent and as soon as reasonably practicable pay them to the Administrative Agent for application to the Outstanding Obligations; and
- (3) each Party will give all such notices and do all such things as the Administrative Agent may request to give effect to this Section 6.3.

SECTION 7 – RIGHTS AND REMEDIES OF ADMINISTRATIVE AGENT AND LENDERS

7.1 Right to Appoint Subcontractors

The Contractor agrees that at any time after the occurrence and during the continuance of an Event of Default and provided that Project Co would then be entitled to terminate the Construction Contract, the Administrative Agent shall have the right, subject to the terms of the Contractor P3 Performance Bond and to the extent permitted under the Lenders' Direct Agreement and subject to the terms and conditions thereof, to cause Project Co to transfer all or any of the Contractor's rights and obligations under the Construction Contract and the other Implementing Agreements to a replacement contractor appointed by the Administrative Agent and Lenders, acting on the advice of the Lenders' Consultant, and the Contractor agrees that it shall take all actions as may reasonably be required by the Administrative Agent to give effect to the Administrative Agent's rights under this Section 7.1. The Administrative Agent shall not exercise its rights under any assignment of a Material Subcontract prior to the termination of the Construction Contract in accordance with its terms and the provisions of the Lenders' Direct Agreement.

7.2 Termination of Construction Contract

Upon the occurrence of any event which would entitle Project Co to terminate the Project Agreement and give rise to CMH's obligation to pay to Project Co the Non-Default Termination Sum, the Contractor shall terminate the Construction Contract upon the request of the Administrative Agent.

7.3 Lender Cure Period

Upon the occurrence of any Project Co default or event of default under the Construction Contract in respect of any obligations retained by Project Co other than as a result of a default by the Administrative Agent in providing any Funding in accordance with its obligations under the Credit Agreement, the Contractor shall provide notice to the Administrative Agent of the occurrence of such default or event of default and, for a period of thirty (30) days following the delivery of such notice (the "**Lender Cure Period**"), (i) the Administrative Agent shall have the right (but not the obligation) to cure the relevant default or event of default and (ii) the Contractor shall not be entitled to exercise any right under the Construction Contract to terminate the Construction Contract or suspend performance of the Work solely as a result of such Project Co default or event of default during the Lender Cure Period.

7.4 Lender Step-In Obligations

(1) Subject to Section 7.4(2), upon and for so long as the Administrative Agent is exercising its step-in rights under Article 7 of the Lenders' Direct Agreement, the Administrative Agent shall perform all of the obligations of Project Co under and in respect of the Construction Contract all to the extent required and in accordance with the Lenders' Direct Agreement.

(2) The Contractor agrees and acknowledges that if the Administrative Agent exercises its step-in rights under Article 7 of the Lenders' Direct Agreement or if the Administrative Agent (or another Person on the Administrative Agent's or the Lenders' behalf) assumes the obligations of Project Co

under the Construction Contract as a result of exercising the Administrative Agent's rights under the Security Documents, the Contractor's sole remedy in respect of any liability incurred or arising prior to the effective date of such step-in or assumption by the Administrative Agent (or another Person on the Administrative Agent's or Lenders' behalf) of Project Co's obligations under the Construction Contract shall be solely against Project Co and not the Administrative Agent or the Lenders; provided that the foregoing shall not limit the right of the Contractor to receive payment under the Construction Contract for work properly performed by it prior to the date the Administrative Agent exercises its step in rights or assumes (or another Person on the Administrative Agent's behalf assumes) the obligations of Project Co under the Construction Contract. The Contractor shall be entitled to receive payment for all such work properly performed by it from advances made by the Lenders under the Credit Agreement except to the extent that the Lenders have previously advanced funds to Project Co prior to the date the Administrative Agent exercises its step in rights or assumes (or another Person on the Administrative Agent's behalf assumes) the obligations of Project Co under the Construction Contract and Project Co has failed for any reason whatsoever to pay such previously advanced amounts over to the Contractor.

SECTION 8 – PAYMENTS UNDER THE CONTRACTOR SUPPORT AGREEMENT

8.1 Acknowledgement

The Contractor hereby acknowledges that Project Co has granted a security interest in favour of, and assigned all of its right, title and interest in or to any amounts payable to Project Co by the Contractor under or in connection with the Contractor Support Agreement to the Administrative Agent for the benefit of itself and Lenders as security for the payment and performance of Project Co's obligations and liabilities under the Loan Documents and the Contractor hereby consents to such assignment and the granting of such security interest.

8.2 Irrevocable Payment Direction

Project Co irrevocably directs the Contractor to pay any amounts payable by the Contractor to Project Co under or in connection with the Contractor Support Agreement to the Funding Account for application in accordance with the Credit Agreement and this shall be the Contractor's sole and sufficient authority for so doing. The Contractor covenants in favour of the Administrative Agent that it shall comply with the irrevocable payment direction set out in this Section 8.2.

SECTION 9 – NOTICES

Any notice, consent, approval or other communication under any provision of this Agreement must be in writing to be effective, and is effective when delivered by any means, including e-mail or fax transmission, to the following respective addresses:

(1) if to the Contractor:

Bondfield Construction Company Limited
407 Basaltic Road
Concord, Ontario L4K 4W8

Fax No.: (416) 667-8462
 Attn.: John Aquino, Vice President

(2) if to Project Co:

2423402 Ontario Inc.
 407 Basaltic Road
 Concord, Ontario L4K 4W8

Fax No.: (416) 667-8462
 Attn.: John Aquino, President

(3) if to the Administrative Agent:

Bank of Montreal
 Corporate Finance Division
 100 King Street West
 1 First Canadian Place, 11th Floor
 Toronto, Ontario M5X 1A1

Fax No.: (416) 360-7168
 Attention: Director

Any party may change its address information by giving notice to the other parties in the above manner. In the absence of any further designation or limitation communicated with reference to this Section 9, each party may assume that any notice, approval, consent, waiver or other communication under this Agreement given by the above individual has been duly authorized and is binding upon the relevant party hereto.

SECTION 10 – MISCELLANEOUS

10.1 Governing Law and Jurisdiction

This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in the Province of Ontario. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Province of Ontario. Each party waives any right it has to object to an action being brought in those courts, including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

10.2 Assignment

(1) This Agreement shall enure to the benefit of and be binding on the parties hereto, their respective successors and any permitted assignees or transferees of some or all of the parties' rights or obligations hereunder.

(2) Neither the Contractor nor Project Co shall assign or transfer its rights and obligations under this Agreement without the prior written consent of the Administrative Agent.

(3) The Administrative Agent may assign or transfer its rights and obligations under this Agreement in connection with any permitted assignment or transfer under the Credit Agreement, but not otherwise without the prior written consent of Project Co and the Contractor. The Contractor and Project Co will, upon reasonable request by any such successor to the Administrative Agent, enter into a new direct agreement with that party on terms that are the same in all material respects as the terms of this Agreement.

10.3 Amendment and Waiver

No modification, variation or amendment of any provision of this Agreement shall be made except by a written agreement executed by the parties hereto, and no waiver of any provision hereof shall be effective unless in writing.

10.4 Further Assurances

The Contractor shall promptly execute and deliver to the Administrative Agent such further documents, instruments and assurances and take or cause to be taken such further action as the Administrative Agent from time to time may reasonably request in order to carry out the intent and purpose of this Agreement and to establish and protect the rights and remedies created or intended to be created in favour of the Administrative Agent.

10.5 Severability

If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

- (1) the legality, validity or enforceability of the remaining provisions of this Agreement; or
- (2) the legality, validity or enforceability of that provision in any other jurisdiction.

10.6 Counterparts

This Agreement and any amendment, variation, supplement, restatement, renewal, replacement or termination of any provision of this Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument.

10.7 Entire Agreement

Unless otherwise stated in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement. No party has relied on any representation except as expressly set out in this Agreement.

10.8 Delivery by Fax

Any party may deliver an executed copy of this Agreement by fax but that party shall immediately deliver to the other parties an originally executed copy of this Agreement.

10.9 Receipt of Agreement

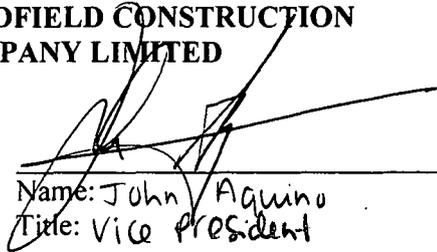
Contractor hereby acknowledges receipt of a copy of the Credit Agreement, this Agreement and the other Material Project Documents and all of the provisions therein contained and consents to and approves the same.

[SIGNATURE PAGE FOLLOWS]

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

**BONDFIELD CONSTRUCTION
COMPANY LIMITED**

By:

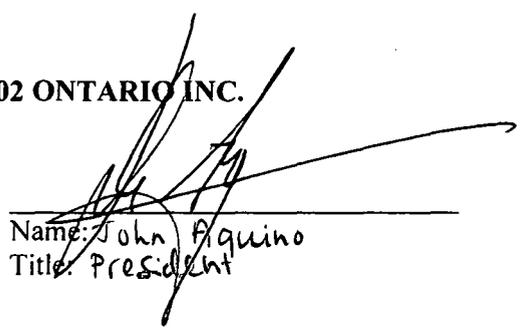

Name: John Aquino
Title: Vice President

By:

Name:
Title:

2423402 ONTARIO INC.

By:

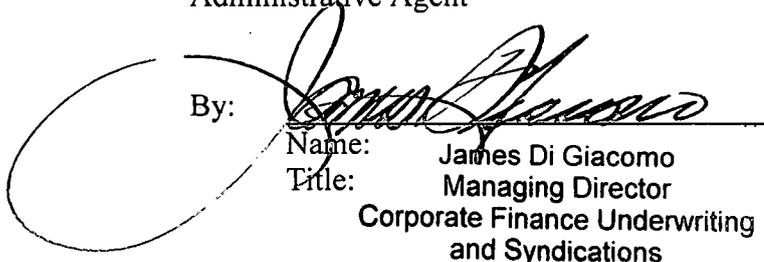

Name: John Aquino
Title: President

By:

Name:
Title:

BANK OF MONTREAL, in its capacity as
Administrative Agent

By:



Name: James Di Giacomo
Title: Managing Director
Corporate Finance Underwriting
and Syndications

By:

Name:

Title:

Tab H

This is **Exhibit "H"** 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 that form a stylized, somewhat abstract shape.

A Commissioner for taking affidavits

LENDER'S DIRECT AGREEMENT

THIS LENDER'S DIRECT AGREEMENT is made as of the 28th day of August, 2014

BETWEEN:

CAMBRIDGE MEMORIAL HOSPITAL, a non-share capital corporation incorporated under the laws of Ontario

("CMH")

AND:

BANK OF MONTREAL, acting as agent for and on behalf of Lender

("Agent")

AND:

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

("Project Co")

WHEREAS:

- A. CMH and Project Co have entered into the Project Agreement.
- B. The overriding priorities of CMH in entering into and implementing the Project Agreement are the health and safety of the patients of the Facility and Existing Facility, their healthcare needs and the provision of first-rate healthcare services.
- C. Under the Lending Agreements, the Financing is to be provided to Project Co by Lender to finance the payment of the Project under the Project Agreement, conditional, among other things, on Project Co executing and delivering the Lending Agreements.
- D. Agent has agreed to enter into this lender's direct agreement (the "**Lender's Direct Agreement**") with CMH and Project Co in relation to the Lending Agreements, the exercise of its rights under the Lending Agreements and the remedying of breaches by Project Co under the Project Agreement.
- E. Project Co and Agent recognize and understand that CMH is a public hospital under the *Public Hospitals Act* (Ontario) and is therefore subject to a highly regulated legal and operational environment.

- F. With a view to ensuring that both Parties are able to properly and effectively discharge their respective duties, functions and responsibilities under Applicable Law, it is the intent that CMH, Project Co, the Agent and the Lender work collaboratively, responsibly and cooperatively throughout the Project Term.
- G. The Parties hereto agree that in relation to any defaults under the Lending Agreements and/or the Project Agreement and any enforcement action which either wishes to take under any security document entered into in support of the obligations of Project Co thereunder, their joint efforts and cooperation will be needed, together with such statutory approvals and consents as may then be required, given the nature of CMH as a public hospital.

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

1. DEFINITIONS AND INTERPRETATION

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

- (a) **"Appointed Representative"** means any of the following to the extent so identified in an Appointed Representative Notice:
- (i) Agent, Lender or any Affiliate of either of them;
 - (ii) a receiver or receiver and manager or any permutation thereof of Project Co appointed under the Lending Agreements or appointed by a court of competent jurisdiction;
 - (iii) a person directly or indirectly owned or controlled by Agent or Lender; or
 - (iv) any other person approved by CMH (such approval not to be unreasonably withheld or delayed).
- (b) **"Appointed Representative Notice"** has the meaning given to it in Section 7.2.
- (c) **"Article"** and **"Section"** mean and refer to the specified article and section or subsection of this Lender's Direct Agreement.
- (d) **"Construction Contract Assignment"** has the meaning given to it in Section 7.3(c).

- (e) **“Enforcement Action”** means any acceleration of amounts due and owing under any of the Lending Agreements and/or any enforcement proceeding or enforcement action commenced or taken under any of the Lending Agreements.
- (f) **“Enforcement Event”** means an event of default under the Lending Agreements or any event which permits an Enforcement Action.
- (g) **“Enforcement Rights”** means the rights as against Project Co to enforce or terminate the Project Agreement under Article 26 therein.
- (h) **“Lender”** means Bank of Montreal, Caisse Centrale Desjardins and The Toronto-Dominion Bank and such other persons as may become party to the Lending Agreements in the capacity of lenders thereunder from time to time and all such parties' respective successors and assigns.
- (i) **[INTENTIONALLY DELETED]**.
- (j) **“Lender's Direct Agreement”** means this lender's direct agreement.
- (k) **“Lending Agreements”** means any or all of the agreements or instruments to be entered into by Project Co or any of its Affiliates relating to the financing of the Project by Lender and includes but is not limited to:
 - (i) a credit agreement;
 - (ii) a general security agreement;
 - (iii) a contractor support agreement;
 - (iv) a contractor direct agreement;
 - (v) a limited recourse pledge and guarantee;
 - (vi) a construction performance guarantee;
 - (vii) an irrevocable direction;
 - (viii) an assignment of accounts;
 - (ix) an assignable subcontract agreement in respect of each material subcontract;
 - (x) a blocked account agreement; and

- (xi) an ISDA Master Agreement (2002) (together with the schedule thereto) from each Lender.
- (l) **“Lien”** means the lien provided for under Section 14(1) of the *Construction Lien Act* (Ontario).
- (m) **“Notice Period”** means the period starting on the date of delivery of a Project Co Default Notice and ending 120 days later.
- (n) **“Party”** means any of CMH, Project Co or Agent, and **“Parties”** means all of CMH, Project Co and Agent, but, for greater certainty, such definitions do not include IO or Her Majesty the Queen in right of Ontario, as represented by either the MOHLTC or the MEDEI.
- (o) **“Pre-Qualified Proponent”** means an entity listed in Appendix A to this Lender's Direct Agreement.
- (p) **“Project Agreement Assignment”** means an assignment of the Project Agreement by an Appointed Representative to a Replacement Project Co as contemplated in Section 7.3(a).
- (q) **“Project Co Default Notice”** has the meaning given to it in Section 6.1.
- (r) **“Project Co Event of Default”** means the occurrence of an event under the Project Agreement that upon the expiry of any cure periods provided for therein would entitle CMH to terminate the Project Agreement.
- (s) **“Proposal Submission”** means the proposal submitted by Project Co in accordance with the Request for Proposals.
- (t) [INTENTIONALLY DELETED].
- (u) [INTENTIONALLY DELETED].
- (v) **“Rectification Obligations”** has the meaning given in Section 7.3.
- (w) **“Replacement Construction Contract”** has the meaning given to it in Section 7.3(c).
- (x) **“Replacement Contractor”** means a replacement contractor under a Construction Contract Assignment or a Replacement Construction Contract entered into pursuant to Section 7.3 who must either be a contractor that is a Pre-Qualified Proponent or that is acceptable to CMH, IO and MOHLTC, acting reasonably.

- (y) **“Replacement Project Agreement”** has the meaning given to it in Section 7.3(b).
- (z) **“Replacement Project Co”** means a replacement project company under a Project Agreement Assignment or a Replacement Project Agreement entered into pursuant to Section 7.3, that must either be (i) a project company that is a Pre-Qualified Proponent or a wholly-owned subsidiary of a Pre-Qualified Proponent (in which event the Pre-Qualified Proponent must be the Construction Guarantor under the Replacement Project Agreement) or (ii) a project company that is acceptable to CMH, IO and MOHLTC, acting reasonably.
- (aa) **“Response Period”** has the meaning given to it in Section 4.1(d).
- (bb) **“Step-In Date”** means the date on which CMH receives a Step-In Notice from Agent.
- (cc) **“Step-In Notice”** means the notice given by Agent to CMH pursuant to Section 7.1 stating that Agent is exercising its step-in rights under this Lender's Direct Agreement.
- (dd) **“Step-In Period”** means the period from the Step-In Date up to and including the Step-Out Date.
- (ee) **“Step-Out Amount”** has the meaning given to it in Section 8.3.
- (ff) **“Step-Out Dates”** means the earlier to occur of (i) the expiry of the periods provided for in Sections 6.3(a) and 6.3(b), as the case may be, and (ii) the date on which CMH receives a Step-Out Notice.
- (gg) **“Step-Out Notice”** has the meaning given to it in Section 8.1.

1.2 Interpretation

- (a) The provisions of Sections 2.1 - 2.29, inclusive, of Schedule 1 – Definitions and Interpretation of the Project Agreement are hereby incorporated in their entirety and all references in same to **“Project Agreement”** shall be read as **“Lender's Direct Agreement”**.
- (b) This Lender's Direct Agreement is comprised of this executed agreement and the following documents, all of which are hereby incorporated by reference into and form part of this Lender's Direct Agreement.

Appendix No.	Description
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Appendix A

Pre-qualified Proponents

2. CONFLICT IN DOCUMENTS

2.1 In the event of ambiguities, conflicts or inconsistencies between or among this Lender's Direct Agreement and the Project Agreement, this Lender's Direct Agreement shall prevail. Notwithstanding the foregoing, if there is any right or remedy in favour of CMH set out in this Lender's Direct Agreement or any part thereof which is not set out or provided for in the Project Agreement, such additional right or remedy shall not constitute an ambiguity, conflict or inconsistency. Notwithstanding any provision of any other Implementing Agreement, no review by CMH of the Lending Agreements shall constitute an acceptance of or acquiescence to any of the Lending Agreements or any term or condition thereof by CMH, and this Lender's Direct Agreement and the Project Agreement shall not be subject to any of the terms and conditions of the Lending Agreements.

3. TERM

3.1 This Lender's Direct Agreement shall terminate automatically on the date on which all obligations that may be or become owing by Project Co to Agent or Lender under the Lending Agreements have been satisfied in full.

3.2 Promptly, and in no event more than 30 days following its occurrence, Agent shall provide notice to CMH of the date referred to in Section 3.1.

3.3 CMH hereby provides to Lender, Agent and Project Co and agrees to provide to Replacement Project Co, a non-exclusive license to have access to and to use the Site on the same terms and conditions as set out in Section 9.1 of the Project Agreement.

4. AGREEMENTS AND SECURITY

4.1 (a) Project Co and Agent shall not amend or modify any Lending Agreements other than as expressly provided for under the terms of those agreements and so long as such amendment:

- (i) is consistent in all material respects with the Financial Model;
- (ii) does not increase the Cost of the Financing; and
- (iii) does not increase the amount of any Compensation Payment, if and when payable, or costs of prepayment that were contained in the financing term sheet in the Proposal Submission,

and shall provide prompt notice to CMH of any amendments or modifications accompanied by a copy thereof.

- (b) Project Co shall not, prior to the Substantial Completion Date, exercise any rights of voluntary prepayment, voluntary redemption, or other early repayment of loan, as applicable, under the Lending Agreements without the prior written consent of CMH, acting in its sole discretion. In exercising its sole discretion to grant consent, CMH shall be entitled to request and consider, and Project Co shall be required to provide within 10 Business Days of a request by CMH, amongst other things and not limited to, the following:
- (i) written certification by an officer of Project Co of the Estimated Cost to Complete (as such term is defined in the Lending Agreements) the Work at the date of such proposed prepayment and/or redemption;
 - (ii) written certification by an officer of Project Co that no Cost to Complete Deficiency (as such term is defined in the Lending Agreements) would reasonably be expected to arise as a consequence of such prepayment and/or redemption, including any related cancellation of unutilized commitments, if applicable, under the Lending Agreements;
 - (iii) written confirmation from the Lenders' technical advisor, addressed to CMH, that the Project Co's calculation in (i) above and Project Co's certification in (ii) above is, in the opinion of the Lenders' technical advisor, correct;
 - (iv) written confirmation from the Lenders' technical advisor, addressed to CMH, that no incremental delay in achieving the Substantial Completion Date (beyond the Scheduled Substantial Completion Date) would reasonably be expected as a consequence of such prepayment and/or redemption and related cancellation of unutilized commitments, if applicable, under the Lending Agreements; and
 - (v) written confirmation from the Lenders' technical advisor, addressed to CMH, that the Substantial Completion Date is likely to occur on or prior to the then Scheduled Substantial Completion Date.
- (c) Project Co and CMH shall not amend or modify the Project Agreement or any Implementing Agreements to which Project Co or CMH are parties, without the prior written consent of Agent, not to be unreasonably withheld or delayed, which consent (subject to Section 6.4 of this Lender's Direct Agreement) shall not be withheld if the relevant amendment or modification does not:
- (i) adversely affect the ability of Agent or Lender to exercise its rights under the Lending Agreements;
 - (ii) adversely affect the security of Lenders under the Lending Agreements; or

- (iii) increase the liability of Agent, Lender or Project Co under the relevant agreement.

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

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

provided the Parties further acknowledge and agree that where such Change Order or Change Directive (A) costs less than \$1,000,000, or (B) when aggregated with all such other Change Orders and Change Directives previously implemented, costs less than \$5,000,000, such Change Order or Change Directive shall be deemed not to materially alter the scope of the Work or impact the financing of the Project or otherwise materially and adversely alter the risk profile of the Project. When Agent's approval in respect of a Change Order or Change Directive is required in accordance with this Section 4.1, Agent will respond to a written request within 10 Business Days ("**Response Period**") of receiving such request for its approval. If Agent intends not to approve the Change Order or the Change Directive, Agent will notify CMH within the Response Period and will set out its concerns in such notification. If Agent's concerns can be addressed on a basis acceptable to CMH and Agent, then CMH may proceed with such Change Order or Change Directive and will concurrently implement or cause to be implemented such agreed-upon solution, including, as appropriate, by way of an amendment to the Change Order or Change Directive or by a related Change Order or Change Directive.

4.2 Project Co acknowledges and consents to the arrangements set out in this Lender's Direct Agreement, and agrees not to do or omit to do anything that may prevent any other Party from enforcing its rights under this Lender's Direct Agreement.

4.3 Agent acknowledges having received a copy of each of the Implementing Agreements.

- 4.4 CMH acknowledges having received a copy of each of the Lending Agreements and consents to the granting of security by Project Co over the Project Agreement and Implementing Agreements contained in the Lending Agreements.
- 4.5 Project Co and Agent acknowledge that, subject to the provisions of the *Construction Lien Act* (Ontario) none of Project Co, Agent or Lender shall, under the Project Agreement or any of the Implementing Agreements, acquire any interest in the Site or the Project (other than the licence to access the Site or the Facility provided in Section 3.3 of this Lender's Direct Agreement or in Section 9.1(a) of the Project Agreement) notwithstanding any provision therein to the contrary and that CMH shall at all times retain the fee simple interest in and freehold title to the Site and the Project to be constructed on the Site under the Project Agreement.
- 4.6 Without limitation of any of their respective rights and remedies under the Implementing Agreements, Project Co and the Agent acknowledge that CMH is a public hospital and nothing in this Lender's Direct Agreement or any of the Implementing Agreements, including the Construction Contract, shall limit or shall be construed as limiting any authority and responsibility of CMH under the *Public Hospitals Act* (Ontario) or, subject to Section 10.1(c) of the Project Agreement, any directions to CMH or to the board of directors of CMH made by a Governmental Authority under Applicable Law, or from being in compliance with all Applicable Law.
- 4.7 The Parties agree that they will enter into the Insurance and Bonding Trust Agreement contemporaneously with the execution of this Lender's Direct Agreement.

5. ENFORCEMENT OF SECURITY BY AGENT

- 5.1 Agent shall concurrently with notice to Project Co notify CMH and the Surety of any Enforcement Event, any notice of default delivered pursuant to the Lending Agreements, any Enforcement Action, any notice from Agent to Project Co to accelerate the maturity of any amounts owing by Project Co to Agent or Lender under the Lending Agreements or any notice from Agent to Project Co to demand repayment thereof.
- 5.2 Agent shall appoint Lender's Consultant who shall be responsible to advise Agent and Lender with respect to the amount of any Legislative Holdback to be maintained in accordance with the Project Agreement. Project Co agrees that it shall, in respect of all payments under the Project Agreement, comply with Part IV of the *Construction Lien Act* (Ontario). Agent shall cause the Lender's Consultant to provide CMH and IO with a copy of any written assessment or report prepared by the Lender's Consultant in relation to the status or progress of the Work under the Construction Contract, including but not limited to, any certificate of payment, concurrently with its delivery to the Agent. The Agent acknowledges and agrees that this Section 5.2 shall constitute sufficient authority for the Lender's Consultant to provide, without delay, a copy of any and all of its written assessments and reports to CMH and to IO.

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

6. PROJECT CO EVENT OF DEFAULT

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

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

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

- (a) if, in the case of a Project Co Event of Default which is capable of being cured, the Project Co Event of Default has been cured by or on behalf of Appointed Representative within 30 days of the time periods set forth in the Project Agreement, or Appointed Representative (either itself or by others on its behalf) is diligently proceeding to cure the breach in accordance with Section 26.3(a)(iii) of the Project Agreement within the time periods set forth in the Project Agreement, including for greater certainty, prior to the Longstop Date;
- (b) if, in the case of a Project Co Event of Default which is either:
 - (i) not capable of being cured (which, by way of example, would include an event described in Section 26.1(a)(i) of the Project Agreement), or
 - (ii) capable of being cured in the determination of Agent (acting reasonably) only by assigning the Project Agreement to a Replacement Project Co or entering into a Replacement Project Agreement as provided under Section 7.3, a Project Agreement Assignment with a Replacement Project Co or a Replacement Project Agreement with a Replacement Project Co has been entered into in accordance with Section 7.3,

within 120 days of the delivery of the Project Co Default Notice. CMH and Appointed Representative may agree to extend such time period where Appointed Representative is proceeding diligently. In the case of either a Project Agreement Assignment or a Replacement Project Agreement having been entered into, the

Work thereunder is to be completed on or before the date falling 180 days after the Longstop Date.

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

7. LENDER'S STEP-IN RIGHTS

- 7.1 Subject to Sections 6.2(b) and 7.2 and without prejudice to Agent's rights to enforce the Lending Agreements against Project Co, Agent may give CMH a Step-In Notice at any time:

- (a) during which a Project Co Event of Default is subsisting (whether or not a Project Co Default Notice has been served);
- (b) during the Notice Period; or
- (c) during which an Enforcement Event is subsisting.

- 7.2 At the time Agent delivers a Step-In Notice, Agent shall deliver written notice (an "**Appointed Representative Notice**") to CMH of the identity of its proposed Appointed Representative.

- 7.3 Subject to Section 6.3(a), upon issuance of a Step-In Notice, Appointed Representative shall cause Project Co to remedy the Project Co Event of Default and shall have the right for such purpose to enforce any of the Enforcement Rights including the right, subject to the prior approval of CMH, acting reasonably, and subject to the terms and conditions of the Bonds to:

- (a) assign Project Co's interest in the Project Agreement and the other Implementing Agreements (excluding the Bonds) to a Replacement Project Co (the "**Project Agreement Assignment**"), subject to the agreement by the Replacement Project Co to assume the terms and conditions of the Project Agreement and the other Implementing Agreements; or

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

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

- 7.4 At the time of a Project Agreement Assignment or the entering into of a Replacement Project Agreement under Section 7.3, the Agent shall be required to cause the Replacement Project Co to enter into a construction contract, on terms substantially similar to the Construction Contract and an assignable subcontract agreement, on terms substantially similar to the form of the Assignable Subcontract Agreement for Construction Contract, and to make such other arrangements satisfactory to CMH under which the Replacement Project Co stands in the place of Project Co under the Lending Agreements, the Project Agreement and the Implementing Agreements.

- 7.5 During the Step-In Period, CMH shall deal with Appointed Representative instead of Project Co in connection with all matters related to the Project Agreement. Project Co agrees to be bound by all such dealings between CMH and Appointed Representative to the same extent as if they had been between CMH and Project Co.
- 7.6 For greater certainty, Agent acknowledges and agrees that its rights as Obligee under the Performance Bond shall be limited to the enforcement of the obligations of the Surety, as more particularly described in the Performance Bond, and shall be subject to Agent's obligation as an Obligee to pay the Balance of the Contract Price. If Agent receives any benefit from the Surety under the Performance Bond and fails to complete or cause to have completed the obligations of the Contractor under the Construction Contract, Agent shall pay to CMH an amount equal to the amount of the proceeds received by Agent from the Surety and not applied toward obtaining the completion of the unperformed obligations of the Contractor under the Construction Contract. For the purposes of this Section 7.6, the terms "Obligee", "Surety", and "Balance of the Contract Price" have the meanings given to them under the Performance Bonds.

8. STEP-OUT RIGHTS

- 8.1 Appointed Representative may, at any time during the Step-In Period, deliver written notice (a "Step-Out Notice") to CMH to terminate the Step-In Period on the Step-Out Date.
- 8.2 On termination of the Step-In Period, where the Project Agreement has been assigned to the Replacement Project Co or a Replacement Project Agreement has been entered into as contemplated in Section 7.3, CMH and Appointed Representative shall be released from any obligations to the other arising during the Step-In Period, except as may arise under Sections 6.4, 7.6 or Section 8.6(iii).
- 8.3 On termination of the Step-In Period, if (i) the Project Co Event of Default has not been cured, or (ii) the Project Agreement has not been assigned to a Replacement Project Co or a Replacement Project Agreement has not been entered into and any outstanding Project Co Event of Default has not been cured, then CMH shall confirm that, as consideration for the rights and benefits assigned to CMH pursuant to Section 8.3(c) below, it shall pay to Project Co or as Project Co may direct, an amount equal to the amount that would have been paid by CMH upon termination of the Project Agreement pursuant to the provisions of Section 2.1 of Schedule 12 to the Project Agreement – Compensation on Termination (and calculated and payable in accordance therewith) as if the date of such confirmation were the Termination Date (the "Step-Out Amount") and upon such confirmation:
- (a) any rights and obligations between Appointed Representative on the one hand and CMH on the other hand, arising during the Step-In Period, shall be mutually released, except as may arise under Section 6.4, Section 7.6 or Section 8.6(iii);

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

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

- 8.4** There will not be more than one Step-In Period following the issuance by CMH of any one Project Co Default Notice.
- 8.5** CMH acknowledges and agrees that if CMH proceeds to exercise its rights as Obligee under the Performance Bond, unless CMH has arranged for a replacement Financing through Project Co, a Replacement Project Co or a substitute Project Co, then CMH shall be obligated to make the Base Progress Payments and to pay the applicable HST subject to and in accordance with the requirements of the Construction Contract.
- 8.6** CMH hereby undertakes that it will not exercise any rights it may have under or arising out of any of the Assignable Subcontract Agreements except following a termination of the Project Agreement in accordance with its terms. For greater certainty, and subject to

(i) the consent of CMH, acting reasonably, (ii) the terms and conditions of or the ensured continuation of the Bonds and (iii) the undertaking of Agent and/or the Appointed Representative that, upon the exercise of any Step-Out Rights pursuant to Article 8, Agent and/or the Appointed Representative shall cause to be assigned to CMH, or as CMH may direct, all subcontracts which are assigned to or at the direction of Agent and/or the Appointed Representative as hereinafter provided, to the extent required in connection with the exercise by the Appointed Representative of the rights and remedies set forth in Section 7.3, CMH covenants and agrees with Agent that it shall, upon written request of Agent and as Agent and/or the Appointed Representative may direct, in respect of each subcontract which is the subject of any Assignable Subcontractor Agreement (an "ASA"), issue (i) an Assignment Notice (in accordance with and as defined in Section 3(c) of the ASA), to the subcontractor party thereto indicating therein as Assignee (as defined in the Section 3(c)), Agent, the Appointed Representative or as Agent or the Appointed Representative may otherwise direct, or (ii) a Direct Assignment Notice (in accordance with and as defined in Section 3(e) of the ASA) to the subcontractor party thereto indicating therein as GC Assignee (as defined in Section 3(d) of the ASA) any Replacement Contractor.

9. PAYMENT DIRECTION OF THE INTERIM COMPLETION PAYMENT, THE SUBSTANTIAL COMPLETION PAYMENT, THE CMH HOLDBACK, COMPENSATION PAYMENT, CERTIFIED COST TO COMPLETE AND STEP-OUT AMOUNT

9.1 CMH acknowledges the assignment by Project Co of the Interim Completion Payment, the Substantial Completion Payment, the CMH Holdback, any Compensation Payment, the Certified Cost to Complete and any Step-Out Amount to Agent under the security granted to Agent by Project Co under the Lending Agreements. Project Co hereby irrevocably directs CMH to pay the Interim Completion Payment, the Substantial Completion Payment, the CMH Holdback, any Compensation Payment, the Certified Cost to Complete and any Step-Out Amount which becomes payable to Project Co in accordance with the Project Agreement, to Agent or as Agent may direct. CMH acknowledges such direction and agrees to pay the Interim Completion Payment, the Substantial Completion Payment, the CMH Holdback, any Compensation Payment, the Certified Cost to Complete and any Step-Out Amount to Agent in accordance with such direction. Project Co acknowledges and agrees that payment by CMH of the Interim Completion Payment, the Substantial Completion Payment, the CMH Holdback, any Compensation Payment, the Certified Cost to Complete and any Step-Out Amount in accordance with this Section 9.1 to Agent or as Agent may direct, constitutes payment by CMH to Project Co in satisfaction of CMH's obligation to pay the Interim Completion Payment, the Substantial Completion Payment, the CMH Holdback, any Compensation Payment, the Certified Cost to Complete and any Step-Out Amount, as the case may be. For greater certainty, no Compensation Payment shall be payable on a termination of the

Project Agreement by Appointed Representative as a result of Appointed Representative exercising its rights under Section 7.3(b) of this Lender's Direct Agreement.

10. ASSIGNMENT

10.1 CMH may assign or otherwise dispose of the benefit of the whole (but not part) of its interest in this Lender's Direct Agreement to any person to whom CMH assigns or otherwise disposes of its interest in the Project Agreement and the other Implementing Agreements pursuant to Section 39.2 of the Project Agreement, and shall provide written notice to Project Co and Agent of such assignment or disposition. Such assignee shall assume the obligations and acquire the rights of CMH under this Lender's Direct Agreement. Upon any such assignment or disposition, CMH shall be released from all of its obligations hereunder to the extent such obligations are assumed by the assignee. Project Co and Agent shall, at CMH's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

10.2 Agent may only assign or otherwise dispose of any interest in this Lender's Direct Agreement as permitted by the Lending Agreements, and with the prior written consent of CMH, such consent not to be unreasonably withheld or delayed. Agent shall cause the assignee to enter into an assumption agreement of this Lender's Direct Agreement in form and substance reasonably satisfactory to CMH with Project Co and CMH. Project Co and CMH shall, at Agent's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

10.3 Project Co may not assign or otherwise dispose of any interest in this Lender's Direct Agreement.

11. NOTICES

11.1 Notices to Parties

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

If to CMH: Cambridge Memorial Hospital
700 Coronation Blvd,
Cambridge, ON N1R 3G2

Attention: Angelo Presta
Fax No: 519-740-4953

With a copy to:

Attention: Mike Prociw
Fax No.: 519-740-4953

If to Agent:

Bank of Montreal
Corporate Finance Division
100 King Street West
1 First Canadian Place, 11th Floor
Toronto, ON M5X 1A1

Attention: Director
Fax No.: 416-360-7168

If to Project Co:

2423402 Ontario Inc.
407 Basaltic Road
Concord, Ontario
L4K 4W8

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

11.2 Facsimile

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

11.3 Change of Address

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

11.4 Deemed Receipt of Notices

- (a) Subject to Section 11.4(b), a Notice given by registered mail shall be deemed to have been received on the third Business Day after mailing. Subject to Section 11.4(c), a Notice given by hand delivery shall be deemed to have been received on the day it is delivered. Subject to Sections 11.4(c) and 11.4(d), a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.

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

12. GENERAL

12.1 Amendments

This Lender's Direct Agreement may not be amended, restated, supplemented or otherwise modified except by an agreement in writing signed by duly authorized representatives of the Parties and stating on its face that it is intended to be an amendment, restatement, supplement or other modification, as the case may be, to this Lender's Direct Agreement.

12.2 Waiver

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

12.3 Relationship Between the Parties

Each of the Parties acknowledges that it is contracting on its own behalf and not as agent for any other person. This Lender's Direct Agreement is not intended to and does not

create or establish between the Parties or between any of the Parties and the Province, including IO, any relationship as partners, joint venturers, employer and employee, master and servant, or of principal and agent, and does not create or establish any relationship whatsoever between CMH, the Province, including IO, and any Affiliate, representative or employee of Project Co or Agent.

12.4 Entire Agreement

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

12.5 No Reliance

(a) Each of the Parties acknowledges that:

- (i) it has not entered into this Lender's Direct Agreement on the basis of and does not rely, and has not relied, upon any statement or representation, whether negligent or innocent, or warranty or other provision, whether oral, written, express or implied, made or agreed to by any person, whether a Party to this Lender's Direct Agreement or not, except those expressly made, given or repeated in this Lender's Direct Agreement, and the only remedy or remedies available in respect of any misrepresentation or untrue statement or warranty made to it shall be those expressly provided for in this Lender's Direct Agreement; and
- (ii) this Section 12.5 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Lender's Direct Agreement which was induced by fraud, for which the remedies available shall be all those available under Applicable Law.

12.6 Severability

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

12.7 Enurement

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

12.8 Governing Law and Jurisdiction

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

12.9 Cumulative Remedies

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

12.10 Further Assurance

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

12.11 Costs

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

12.12 Counterparts

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

12.13 Language of Agreement

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

12.14 Confidentiality

Agent shall comply with the obligations on the part of Project Co contained in Article 38 of the Project Agreement and this obligation shall survive the termination of this Lender's Direct Agreement.

12.15 Tombstone Marketing

For the purpose of "tombstone marketing", and in the case of CMH, other promotional purposes, each of CMH, Agent, Lender and Project Co (collectively, the "Grantors" and individually, a "Grantor") authorizes and consents to the reproduction, disclosure and use by any of them (collectively, the "Grantees" and individually, a "Grantee") of the names and identifying logos of any of the Grantors and the transactions herein contemplated, to enable each Grantee to publish promotional "tombstones". Each Grantor acknowledges and agrees that each Grantee shall be entitled to determine, in its discretion, whether to use such information and that no compensation will be payable by any Grantee resulting therefrom. No Grantee shall have any liability whatsoever to any Grantor or any of its employees, officers, directors, affiliates or shareholders, in obtaining and using such information in accordance with this Section 12.15. Notwithstanding the foregoing, each Grantee agrees to provide the applicable Grantor with a mock up of any such information prior to any publication and to obtain the applicable Grantor's consent to the use thereof, which consent shall not be unreasonably withheld.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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

CAMBRIDGE MEMORIAL HOSPITAL

Per: 
Name: Patrick Gaskin
Title: President and Chief Executive Officer

Per: 
Name: Rita Westbrook
Title: Chair, Board of Directors

I/We have authority to bind the corporation

[SIGNATURE PAGE FOR LENDER'S DIRECT AGREEMENT]

**Cambridge Memorial Hospital
Capital Redevelopment Project**

**Lender's Direct Agreement
Execution Version**

2423402 ONTARIO INC.

Per: _____

Name: John Aquino

Title: President

Per: _____

Name:

Title:

I/We have authority to bind the corporation

BANK OF MONTREAL

Per: _____

Name:

Title:

Per: _____

Name:

Title:

I/We have authority to bind the bank

[SIGNATURE PAGE FOR LENDER'S DIRECT AGREEMENT]

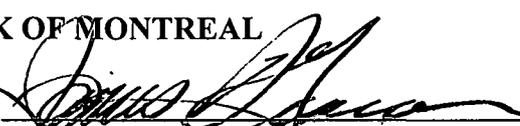
2423402 ONTARIO INC.

Per: _____
Name: John Aquino
Title: President

Per: _____
Name: Steven Aquino
Title: Vice-President

I/We have authority to bind the corporation

BANK OF MONTREAL

Per: 
Name: James Di Giacomo
Title: Managing Director
Corporate Finance Underwriting
and Syndications

Per: _____
Name:
Title:

I/We have authority to bind the bank

[SIGNATURE PAGE FOR LENDER'S DIRECT AGREEMENT]

APPENDIX A

PRE-QUALIFIED PROPONENTS

- Bondfield Construction Company Limited
- EllisDon Capital Inc.
- Graham Construction and Engineering LP & Harbridge + Cross Limited, JV
- PCL Constructors Canada Inc.
- Walsh Canada

Tab I

This is **Exhibit "I"** 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 loops and a long horizontal stroke, positioned above a horizontal line.

A Commissioner for taking affidavits

GENERAL SECURITY AGREEMENT

Made as of August 28, 2014

Between

2423402 ONTARIO INC.

(the “Grantor”)

and

BANK OF MONTREAL

not in its individual capacity, but solely as administrative
agent for and on behalf of itself and the Secured Parties
(the “Agent”)

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SCHEDULE 4.1(j) - LOCATIONS

GENERAL SECURITY AGREEMENT

This general security agreement is made as of August 28, 2014, between:

2423402 ONTARIO INC., a corporation formed under the laws of Ontario (the “Grantor”)

and

BANK OF MONTREAL, not in its individual capacity but solely as the Administrative Agent (together with its successors and assigns, the “Agent”) for and on behalf of itself and the Lenders

RECITALS

A. Pursuant to that certain credit agreement dated as of the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), between the Grantor, the Lenders from time to time party thereto and the Agent, the Lenders have agreed to make available loans and other financial accommodations to the Grantor.

B. It is a condition precedent to the effectiveness of the Credit Agreement and the other Loan Documents that the Grantor shall have executed and delivered this Agreement as security for its liabilities and obligations to the Agent and Lenders under the Credit Agreement and the other Loan Documents.

FOR VALUE RECEIVED, the parties agree as follows:

ARTICLE 1 – INTERPRETATION

Section 1.1 Terms Defined in PPSA

Whenever the terms “**Accession**”, “**Account**”, “**Chattel Paper**”, “**Documents of Title**”, “**Equipment**”, “**financing change statement**”, “**financing statement**”, “**Goods**”, “**Instrument**”, “**Intangible**”, “**Inventory**”, “**Investment Property**”, “**Money**” and “**Proceeds**” are used herein, they shall be interpreted in accordance with their respective meanings in the *Personal Property Security Act* (Ontario), as amended from time to time, which act, including amendments thereto and any act substituted therefor and amendments thereto, is herein referred to as the “**PPSA**” unless expressly stated or provided otherwise herein. Any reference herein to “**Collateral**” shall, unless the context otherwise requires, be deemed a reference to “**Collateral or any part thereof**”.

Section 1.2 Terms Defined in STA

Whenever the terms “**Certificated Security**”, “**Control**”, “**Entitlement Holder**”, “**Entitlement Order**”, “**Financial Asset**”, “**Security**”, “**Security Certificate**”, “**Securities Account**”, “**Security Entitlement**”, “**Securities Intermediary**” and “**Uncertificated Security**” are used herein, they shall be interpreted in accordance with their respective meanings in the *Securities Transfer Act, 2006* (Ontario), as amended from time to time, which act, including amendments thereto and any act substituted therefor and amendments thereto, is herein referred

to as the “STA” unless expressly stated or provided otherwise herein; provided that, when used herein, the terms “**Certificated Security**” and “**Uncertificated Security**” shall be understood to mean a Certificated Security or Uncertificated Security, as the case may be, that is held directly by and registered in the name of or endorsed to the Grantor or the Agent or their respective nominees, as applicable, and not a Certificated Security or Uncertificated Security to which the Grantor or the Agent, as applicable, has a Security Entitlement.

Section 1.3 Other Defined Terms

Unless otherwise defined or stated, capitalized terms used herein have the following meanings:

- (1) “**Account Debtor**” means any customer of the Grantor or any of its subsidiaries who is obligated on or under an Account.
- (2) “**Agreement**” means this general security agreement together with all schedules hereto, as the same may be amended, restated, supplemented or otherwise modified from time to time.
- (3) “**Collateral**” has the meaning given to it in Section 2.1.
- (4) “**Contracts**” means all contracts, undertakings, or agreements (other than rights evidenced by chattel paper, securities or Instruments) in or under which the Grantor may now or hereafter have any right, title or interest, including any agreement relating to the terms of payment or the terms of performance of any Account.
- (5) “**Contractual Rights**” has the meaning given to it in Section 2.3.
- (6) “**Control Agreement**” means:
 - (a) with respect to any Uncertificated Securities included in the Collateral, an agreement between the issuer of such Uncertificated Securities and another person whereby such issuer agrees to comply with instructions that are originated by such person in respect of such Uncertificated Securities, without the further consent of the Grantor; and
 - (b) with respect to any Securities Accounts or Security Entitlements included in the Collateral, an agreement between the Securities Intermediary in respect of such Securities Accounts or Security Entitlements and another person to comply with any Entitlement Orders with respect to such Securities Accounts or Security Entitlements that are originated by such person, without the further consent of the Grantor.
- (7) “**Credit Agreement**” has the meaning given to it in Recital A.
- (8) “**Equipment**” means all “**equipment**”, as such term is defined in the PPSA, now owned or hereafter acquired by the Grantor, wherever located, together with all additions and Accessions thereto, replacements therefor, all parts therefor and all manuals, drawings, instructions, warranties and rights with respect thereto, and all products and Proceeds thereof and any condemnation awards and insurance proceeds with respect thereto.

- (9) **“Intellectual Property”** means patent rights (including patent applications, disclosures, and registrations), registered or unregistered trade marks, trade names, utility models, copyrights (including applicable applications and registrations), *sui generis* rights of extraction relating to databases, designs (including applicable applications and registrations), trade secrets, moral rights, know-how and any other similar rights or intangible assets recognized under any law(s) or international convention(s) in any country or jurisdiction in the world where such rights accrue and/or may be secured.
- (10) **“Pledged Securities”** has the meaning given to it in Section 4.1(b).
- (11) **“Receiver”** has the meaning given to it in Section 6.1.
- (12) **“Secured Obligations”** means all of the Obligations of the Grantor including, without limitation, any and all indebtedness, liabilities and obligations, now or hereafter existing, direct or indirect, absolute or contingent, as principal or surety, of the Grantor to the Agent and the other Secured Parties or any of them arising under, by virtue of or otherwise in connection with the Credit Agreement and the other Loan Documents.
- (13) **“Secured Parties”** means the Agent and the Lenders, together with their respective successors and assigns, and **“Secured Party”** means any of them.
- (14) **“Security Interest”** has the meaning given to it in Section 2.1.
- (15) **“Termination Date”** has the meaning given to it in Section 7.12.

Section 1.4 Terms Defined in Credit Agreement

Capitalized terms used and not otherwise defined herein have the meanings given to them in the Credit Agreement.

Section 1.5 Headings

The headings used in this Agreement are for convenience only and are not to be considered a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement.

Section 1.6 Number and Gender

When the context so requires, the singular number shall be read as if the plural were expressed and the provisions hereof shall be read with all grammatical changes necessary dependent upon the person referred to being a male, female, firm or corporation.

Section 1.7 References

Unless otherwise specified, references in this Agreement to Sections and Schedules are to sections of, and schedules to, this Agreement. All uses of the words **“hereto”**, **“herein”**, **“hereof”**, **“hereby”** and **“hereunder”** and similar expressions refer to this Agreement and not to any particular section or portion of it. Where the expression **“including”** or **“includes”** is used, it shall be construed as **“including, without limitation”** or **“includes, without limitation”**.

ARTICLE 2 - GRANT OF SECURITY

Section 2.1 Grant of Security

As continuing collateral security for the due payment and performance by the Grantor of all of the Secured Obligations, the Grantor hereby irrevocably mortgages, charges, assigns, transfers, delivers, hypothecates and pledges to the Agent, for the benefit of each Secured Party, and hereby irrevocably grants to the Agent, for the benefit of each Secured Party, a security interest (such mortgage, charge, assignment, transfer, delivery, pledge and security interest, collectively, the "**Security Interest**") in, all of its right, title and interest in, to and under all of the Grantor's present and after-acquired personal and real, movable and immovable, property and other assets, including, without limitation, all of the following now owned or hereafter owned or acquired by or on behalf of the Grantor:

- (a) all present and future Contracts (including, without limitation, the Contractor Support Agreement and all other Material Project Documents to which the Grantor is party), contract rights and insurance claims;
- (b) all Accounts, claims, choses in action and demands of every nature and kind howsoever arising or secured, including letters of credit and advices of credit, which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by the Grantor;
- (c) all Chattel Paper and Documents of Title (whether negotiable or not);
- (d) all Goods (including all parts, accessories, attachments, special tools, additions and accessions thereto);
- (e) all Inventory, including all returned, reclaimed or repossessed Inventory;
- (f) all Equipment (other than Inventory) of whatever kind and wherever situate, including, without limitation, all machinery, tools, apparatus, plant, furniture, fixtures, motor vehicles and other vehicles of whatsoever nature or kind;
- (g) all Instruments;
- (h) all Money, Investment Property, Securities, Instruments, Financial Assets, and Securities Accounts;
- (i) all deposit, disbursement, operating and other bank accounts, including the Project Accounts, and all deposits therein, including without limitation, any account subject to a blocked account agreement;
- (j) all Intellectual Property;
- (k) all Intangibles;

- (l) all deeds, documents, writings, papers, books of account and other books relating to or being records of any of the foregoing or by which such are or may hereafter be secured, evidenced, acknowledged or made payable; and
- (m) all Proceeds and renewals of any of the foregoing, accretions thereto and substitutions therefor.

The foregoing property is collectively referred to as the “**Collateral**”.

Section 2.2 Exception Respecting Trade-marks

Notwithstanding Section 2.1, the Grantor’s grant of security in trade marks (as defined in the *Trade-marks Act* (Canada)) under this Agreement shall be limited to a grant by the Grantor of a security interest in all of the Grantor’s right, title and interest in such trade marks.

Section 2.3 Exception to Last Day

The Security Interest granted hereby shall not extend or apply to, and Collateral shall not include, the last day of the term of any lease of real property or agreement therefor, but upon the enforcement of the Security Interest, the Grantor shall stand possessed of such last day in trust to assign the same to any person acquiring such term. The Security Interest granted hereby does not and will not extend to, and Collateral will not include any agreement, right, franchise, licence or permit (the “**Contractual Rights**”) to which the Grantor is a party or of which the Grantor has the benefit, to the extent that the creation of the Security Interest herein would constitute a breach of the terms of or permit any person to terminate the Contractual Rights, but the Grantor must hold its interest therein in trust for the Secured Parties and will assign such Contractual Rights to the Secured Parties forthwith upon obtaining the consent of the applicable counterparties thereto. The Grantor agrees that it will, upon the request of the Secured Parties, use all commercially reasonable efforts to obtain any consent required to permit any Contractual Rights to be subjected to the Security Interest.

Section 2.4 Liability for Deficiency

If the Collateral is realized upon and the Security Interest in the Collateral is not sufficient to satisfy all Secured Obligations, the Grantor acknowledges and agrees that it shall continue to be liable for any Secured Obligations remaining outstanding and the Agent shall be entitled to pursue full payment thereof.

Section 2.5 Attachment

The Grantor and the Agent hereby acknowledge that (1) value has been given, (2) the Grantor has rights in the Collateral or the power to transfer rights in the Collateral and, to the extent that the Grantor does not acquire rights or interests in any of the Collateral until after the execution and delivery of this Agreement, the Security Interest created hereby shall attach to such Collateral at the time the Grantor acquires rights or interests therein, (3) the Grantor has not agreed to postpone the time of attachment of the Security Interest, and (4) this Agreement constitutes a security agreement as that term is defined in the PPSA.

Section 2.6 Grant of License to Use Intellectual Property

For purposes of enabling the Agent to exercise its rights and remedies pursuant to Article 6, at such time as the Agent shall be lawfully entitled to exercise its rights and remedies and for no other purpose, the Grantor grants to the Agent an irrevocable, non-exclusive licence (exercisable without payment of royalty or other compensation to the Grantor) to use, assign or sublicense any of the Intellectual Property wherever the same may be located, including in such licence access to (i) all media in which any of the licensed items may be recorded or stored, and (ii) all computer programs used for compilation or print-out.

ARTICLE 3 - AGENT'S AND SECURED PARTIES' RIGHTS: LIMITATIONS ON AGENT'S AND SECURED PARTIES' OBLIGATIONS

Section 3.1 The Grantor Remains Liable

(1) It is expressly agreed by the Grantor that, anything herein to the contrary notwithstanding, the Grantor shall remain liable under each of the Material Project Documents and any other Contracts to which it is party to observe and perform all the conditions and obligations to be observed and performed by it thereunder. Neither the Agent nor any other Secured Party shall have any obligation or liability in respect of the Grantor's obligations under any Material Project Document or other Contract by reason of or arising out of this Agreement or the granting herein of a Security Interest therein. Neither the Agent nor any other Secured Party shall be required or obligated in any manner to perform or fulfill any of the obligations of the Grantor under or pursuant to any Material Project Document or other Contract, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party under any Material Project Document or Contract, or to present or file any claims, or to take any action to collect or enforce any performance or the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

(2) The Grantor hereby indemnifies and agrees to save and hold harmless the Agent and each of the other Secured Parties from and against any and all claims, demands, actions, causes of action, losses, suits, damages and costs whatsoever of any Person arising directly or indirectly from or out of any Material Project Document or in connection with any breach by the Grantor of any of its obligations under any Material Project Document which exist, arise or occur prior to the effective assumption by the Agent (or another Person on the Agent's or the other Secured Parties' behalf) of such Material Project Document except to the extent of any gross negligence or wilful misconduct of the Agent or any Secured Party following the effective assumption by the Agent (or another Person on the Agent's or the other Secured Parties' behalf) of the Material Project Document.

Section 3.2 Notice to Account Debtors

After the occurrence and during the continuance of an Event of Default, the Agent may give notice of this Agreement and the Security Interest and assignment granted hereby to any Account Debtors of the Grantor or to any other person liable to the Grantor, and any payment or other Proceeds of Collateral received by the Grantor from Account Debtors or from any other person liable to the Grantor whether before or after any notice is given by the Agent must be held

by the Grantor in trust for the Agent and paid over to the Agent on request for application in accordance with Section 6.6 of the Credit Agreement.

Section 3.3 Verification of Accounts

The Agent may at any time after the occurrence and during the continuance of an Event of Default, in the Agent's own name, the name of a nominee of the Agent or in the name of the Grantor, communicate (by mail, telephone, facsimile or otherwise) with Account Debtors, parties to Contracts, obligors in respect of Instruments and obligors in respect of Chattel Paper to verify with such persons, to the Agent's satisfaction, the existence, amount, terms of and any other matter relating to any such Accounts, Contracts, Instruments or Chattel Paper.

Section 3.4 Registration or Transfer of Securities

(1) The Agent shall have the right to have any Uncertificated Securities or Certificated Securities included in the Collateral registered in its name or in the name of its nominee; and for such purpose the Grantor shall comply with Section 5.1(7)(a)(i), Section 5.1(7)(a)(ii) or Section 5.1(7)(a)(iii), as applicable, upon the request of the Agent.

(2) The Agent shall have the right to become or have its nominee become the Entitlement Holder with respect to any Security Entitlements or Investment Property included in the Collateral; and for such purpose the Grantor shall comply with Section 5.1(7)(a)(iv) upon the request of the Agent.

(3) As the registered holder of any Uncertificated Securities or Certificated Securities or the Entitlement Holder with respect to any Investment Property included in the Collateral, the Agent shall be entitled but not bound or required to exercise any of the rights that any holder of such Securities or such Entitlement Holder may at any time have; provided that at all times other than during the continuance of an Event of Default, the Grantor will be entitled to exercise, in a manner not prejudicial to the interests of the Agent or which would violate or be inconsistent with this Agreement, all voting power from time to time exercisable in respect of the Securities or the Security Entitlements thereto and to receive and deal with any interest and regular cash dividends at any time payable on or with respect to the Pledged Securities. The Agent will not be responsible for any loss occasioned by its exercise of any of such rights or by failure to exercise the same within the time limited for the exercise thereof.

ARTICLE 4 - REPRESENTATIONS AND WARRANTIES OF THE GRANTOR

Section 4.1 Representations and Warranties

The Grantor hereby represents and warrants that:

- (a) the Grantor's correct name is set forth on the signature page hereto;
- (b) the Grantor is the registered, legal and beneficial owner of the Collateral consisting of Investment Property and Financial Assets (collectively, the "Pledged Securities") and is the legal and beneficial owner of all other Collateral;

- (c) the Collateral is free and clear of all Liens other than Permitted Liens, and none of the Collateral is held by the Grantor in a trust capacity other than as specified in Section 2.3;
- (d) the Security Interest in the Collateral owned by the Grantor, with respect to which a security interest may be perfected by filing pursuant to the PPSA, has been perfected as a security interest for the benefit of the Secured Parties and all action by the Grantor necessary to protect and perfect such Security Interest on each item of the Collateral has been duly taken;
- (e) the Grantor has not granted nor has it agreed to grant a Lien in or any right to acquire an interest in any of the Instruments or Chattel Paper;
- (f) the Grantor has not given its consent to any agreement whereby any third party agrees to comply with instructions that are originated by any Person other than the Grantor in respect of any Investment Property without the further consent of the Grantor, other than any such consents given by the Grantor relating to agreements for instructions to be originated by the Agent;
- (g) upon receipt by the Agent of the Pledged Securities, the Agent has obtained Control of the Pledged Securities and the Agent is a protected purchaser with respect to the Pledged Securities within the meaning of the STA;
- (h) no Person other than the Agent has Control or has the right to obtain Control of the Pledged Securities;
- (i) no authorizations, consents or approvals from, or notices to, any Governmental Authority or other Person is or was necessary in connection with the execution and delivery of this security agreement or the performance or enforcement of the Grantor's obligations hereunder, except as have been obtained, given or are in full force and effect unamended, at the date hereof; and
- (j) the Grantor's jurisdiction of incorporation, chief executive office, principal place of business, registered office according to its constating documents, corporate offices and the locations of all of its books and records concerning the Collateral and all Account Debtors are set forth on Schedule 4.1(j) hereto.

ARTICLE 5 - COVENANTS OF THE GRANTOR

Section 5.1 Covenants of the Grantor

The Grantor covenants and agrees with the Agent, for the benefit of the Secured Parties, that from and after the date of this Agreement and until the Termination Date (as hereinafter defined):

- (1) ***Limitation on Liens on Collateral.*** The Grantor will not create, permit or suffer to exist, and the Grantor will defend the Collateral against, and take such other action as is necessary to remove, any Lien on the Collateral except Permitted Liens, and will defend the

right, title and interest of the Agent and the other Secured Parties in and to all of the Grantor's rights in the Collateral against the claims and demands of all persons whomsoever.

(2) **Limitations on Disposition.** The Grantor will not sell, lease, transfer or otherwise dispose of any of the Collateral, or attempt or contract to do so except as permitted by the Credit Agreement.

(3) **Maintenance of Records.** The Grantor shall keep and maintain, at its own cost and expense, satisfactory and complete records of the Collateral, including a record of any and all payments received and any and all credits granted with respect to the Collateral and all other dealings with the Collateral.

(4) **No Accessions.** Except for Collateral that is disposed of in accordance with the Loan Documents, the Grantor shall prevent Collateral from being or becoming an Accession not covered by this Agreement.

(5) **Further Assurances.** The Grantor shall, at its own expense, from time to time do, execute and deliver, or cause to be done, executed and delivered, all such financing statements, further assignments, documents, acts, matters and things as may be reasonably requested by the Agent for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the representations, warranties and covenants contained herein and in the other Loan Documents.

(6) **Amendments Not Authorized.** The Grantor acknowledges that it is not authorized to file any financing change statement with respect to any financing statement that has been filed in respect of any Loan Document without the prior written consent of the Agent.

(7) **Perfection by Control of Security Interests in Investment Property.**

(a) Promptly upon request from time to time by the Agent, acting reasonably, the Grantor shall:

- (i) deliver (or cause to be delivered) to the Agent, endorsed to the Agent or such nominee as it may direct and/or accompanied by such instruments of assignment and transfer in such form and substance as the Agent may reasonably request, any and all Instruments, Pledged Securities, Documents of Title and Chattel Paper included in or relating to the Collateral as the Agent may specify in its request, to be held by the Agent subject to the terms of this Agreement;
- (ii) direct the issuer of any and all Certificated Securities included in or relating to the Collateral as the Agent may specify in its request to register the applicable Security Certificates in the name of the Agent or such nominee as it may direct;
- (iii) direct the issuer of any and all Uncertificated Securities included in or relating to the Collateral as the Agent may specify in its request to register the Agent or such nominee as it may direct as the registered owner of such Uncertificated Securities;

- (iv) direct the Securities Intermediary for any Security Entitlements, or Securities Accounts included in or relating to the Collateral as the Agent may specify in its request to transfer any or all of the Financial Assets to which such Security Entitlements or Securities Accounts relate to such Securities Account or Securities Accounts as the Agent may specify such that the Agent shall become the Entitlement Holder with respect to such Financial Assets or the person entitled to exercise all rights with respect to such Securities Account; and
 - (v) cause the Agent to obtain Control over any Collateral described in Section 5.1(7)(a)(i) (as determined pursuant to the PPSA) and the Grantor shall not cause nor shall it permit any Person other than the Agent to have such Control of any Pledged Securities or Financial Asset.
- (b) Promptly upon request from time to time by the Agent, acting reasonably, the Grantor shall hold its Security Entitlements in a Securities Account that (i) is maintained in the name of the Grantor at an office of a Securities Intermediary located in Ontario, and (ii) together with all Financial Assets credited thereto and all related Security Entitlements, is subject to a Control Agreement. The Grantor shall, at the request of the Agent (in the Agent's sole discretion), (i) enter into and cause any Securities Intermediary holding a Securities Account in respect of Pledged Securities to enter into a Control Agreement, in the form and substance satisfactory to the Agent acting reasonably, in respect of all Pledged Securities constituting Security Entitlements of the Grantor, and (ii) deliver each such Control Agreement to the Agent. The Grantor shall cause all Pledged Securities underlying any Security Entitlements acquired by the Grantor after the date hereof to be credited to a Securities Account that is subject to a Control Agreement described herein.
- (c) The Grantor shall promptly inform the Agent in writing of the acquisition by the Grantor of any personal property which is not adequately described in this security agreement, and the Grantor will execute and deliver, at its own expense, from time to time amendments to this security agreement or additional security agreements or schedules as may be required by the Agent in order that the Security Interest shall attach to such personal property.

ARTICLE 6 - REMEDIES

Section 6.1 Appointment of Receiver

Upon the occurrence of and during the continuance of any Event of Default, the Agent may appoint or reappoint by instrument in writing, any person or persons, whether an officer or officers or an employee or employees of the Agent or not, to be an interim receiver, receiver or receivers (hereinafter called a "Receiver", which term when used herein shall include a receiver and manager) of Collateral (including any interest, income or profits therefrom) and may remove any Receiver so appointed and appoint another in his/her/its stead. Any such Receiver shall, so far as concerns responsibility for his/her/its acts, be deemed the agent of the Grantor and not of the Agent or any other Secured Party, and neither the Agent nor any other Secured Party shall be in any way responsible for any misconduct, negligence or non-feasance on the part of any such

Receiver or his/her/its servants, agents or employees. Subject to the provisions of the instrument appointing him/her/it, any such Receiver shall have power to take possession of Collateral, to preserve Collateral or its value, to carry on or concur in carrying on all or any part of the business of the Grantor and to sell, lease, license or otherwise dispose of or concur in selling, leasing, licensing or otherwise disposing of Collateral. To facilitate the foregoing powers, any such Receiver may, to the exclusion of all others, including the Grantor, enter upon, use and occupy all premises owned or occupied by the Grantor wherein Collateral may be situated, maintain Collateral upon such premises, borrow money on a secured or unsecured basis and use Collateral directly in carrying on the Grantor's business or as security for loans or advances to enable the Receiver to carry on the Grantor's business or otherwise, as such Receiver shall, in its discretion, determine. Except as may be otherwise directed by the Agent, all Money received from time to time by such Receiver in carrying out his/her/its appointment shall be received in trust for and be paid over to the Agent. Every such Receiver may, in the discretion of the Agent, be vested with all or any of the rights and powers of the Agent. The identity of the Receiver, its replacement and its remuneration shall be within the sole and unfettered discretion of the Agent.

Section 6.2 Exercise of Rights by the Agent

Upon the occurrence of and during the continuance of any Event of Default, the Agent may, either directly or through its agents or nominees, exercise any or all of the powers and rights given to a Receiver by virtue of Section 6.1.

Section 6.3 Taking Possession of Collateral

Upon the occurrence and during the continuance of an Event of Default, the Agent may take possession of, collect, demand, sue on, enforce, recover and receive Collateral and give valid and binding receipts and discharges therefor and in respect thereof and the Agent may also sell, license, lease or otherwise dispose of Collateral in such manner, at such time or times and place or places, for such consideration and upon such terms and conditions as to the Agent may seem reasonable and in compliance with Applicable Law.

Section 6.4 Rights and Remedies under PPSA

In addition to those rights granted herein and in any other agreement now or hereafter in effect between the Grantor and any Secured Party, and in addition to any other rights any Secured Party may have at law or in equity, the Agent shall have all rights and remedies of a secured party under the PPSA. However, the Agent shall not be liable or accountable for any failure to exercise its remedies, take possession of, collect, enforce, realize, sell, lease, license or otherwise dispose of Collateral or to institute any proceedings for such purposes. Furthermore, neither the Agent nor any other Secured Party shall have any obligation to take any steps to preserve rights against prior parties to any Instrument or Chattel Paper, whether Collateral or proceeds and whether or not in the Agent's or any other Secured Party's possession, and shall not be liable or accountable for failure to do so. The taking of any action or proceeding or refraining from doing so, or any other dealings with any other security for the Secured Obligations secured by this agreement shall not release or affect the Collateral or the Security Interest.

Section 6.5 Co-operation of the Grantor with respect to Taking Possession

The Grantor acknowledges that, upon the occurrence and during the continuance of an Event of Default, the Agent or any Receiver appointed by it may take possession of Collateral wherever it may be located and by any method permitted by law and the Grantor agrees upon request from the Agent or any such Receiver to assemble and deliver possession of Collateral, at the Grantor's expense, at such place or places as directed.

Section 6.6 Costs

The Grantor agrees to be liable for and to pay all costs, charges and expenses reasonably incurred by the Agent, any other Secured Party or any Receiver appointed by the Agent, whether directly or for services rendered (including reasonable legal and auditors' costs and expenses and Receiver remuneration), in operating the Grantor's accounts, in preparing or enforcing this Agreement, taking and maintaining custody of, preserving, repairing, processing, preparing for disposition and disposing of Collateral and in enforcing or collecting indebtedness and all such costs, charges and expenses, together with any amounts owing as a result of any borrowing by the Agent, any other Secured Party or any Receiver appointed by the Agent, as permitted hereby, shall be a first priority Security Interest on the proceeds of realization, collection or disposition of Collateral and shall be secured hereby.

Section 6.7 Notice of Sale

The Agent will give the Grantor such notice, if any, of the date, time and place of any public sale or of the date after which any private disposition of Collateral is to be made as may be required by the PPSA.

Section 6.8 Limitation on Secured Parties' Duty in Respect of Collateral

(1) The Agent shall not be obliged to exhaust their recourse against the Grantor or any other Person or against any other security they may hold in respect of the Secured Obligations before realizing upon or otherwise dealing with the Collateral in such manner as the Agent may consider desirable.

(2) The Agent and each other Secured Party shall use reasonable care with respect to the Collateral in its possession or under its control. Beyond the safe custody thereof, neither the Agent nor any other Secured Party shall have any other duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of the Agent or such other Secured Party, or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto.

(3) The Agent shall not be (i) liable or accountable for any failure to collect, realize or obtain payment in respect of the Collateral, (ii) bound to institute proceedings for the purpose of collecting, enforcing, realizing or obtaining payment of the Collateral or for the purpose of preserving any rights of any Persons in respect of the Collateral, (iii) responsible for any loss occasioned by any sale or other dealing with the Collateral or by the retention of or failure to sell or otherwise deal with the Collateral, or (iv) bound to protect the Collateral from depreciating in value or becoming worthless.

(4) For greater certainty, except to the extent permitted under this Agreement, the Credit Agreement, the Lenders' Direct Agreement or the Blocked Account Agreement and notwithstanding Section 17 of the PPSA, the Agent and each other Secured Party may not sell, transfer, or use any Investment Property included in the Collateral of which the Agent or such Secured Party has "control" within the meaning of subsection 1(2) of the PPSA.

Section 6.9 Waiver by the Grantor

To the maximum extent permitted by Applicable Law, the Grantor waives all claims, damages and demands against the Agent or any other Secured Party or any Receiver appointed by the Agent arising out of the repossession, retention or sale of the Collateral except such as arise solely out of the gross negligence or wilful misconduct of the Agent or any other Secured Party or any Receiver appointed by the Agent as finally determined by a court of competent jurisdiction.

ARTICLE 7 - MISCELLANEOUS

Section 7.1 Extensions, etc.

The Agent may grant extensions of time and other indulgences, take and give up security, accept compositions, compound, compromise, settle, grant releases and discharges and otherwise deal with the Grantor, debtors of the Grantor, sureties and others and with Collateral and other security as the Agent may see fit without prejudice to the liability of the Grantor or the Agent's right to hold and realize the Security Interest. Furthermore, without limiting any other provision hereof, after the occurrence and during the continuance of an Event of Default, the Agent may demand, collect and sue on Collateral in either the Grantor's name or the Agent's name, at the Agent's option, and may endorse the Grantor's name on any and all cheques, commercial paper, and any other Instruments pertaining to or constituting Collateral. Nothing herein contained shall in any way obligate the Agent to grant, continue, renew, extend time for payment of or accept anything which constitutes or would constitute Secured Obligations.

Section 7.2 No Waiver

No delay or omission by the Agent in exercising any right or remedy hereunder or with respect to any of the Secured Obligations shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy. Furthermore, the Agent may remedy any Event of Default by the Grantor hereunder or with respect to any Secured Obligations in any reasonable manner without waiving the Event of Default remedied and without waiving any other prior or subsequent Event of Default by the Grantor.

Section 7.3 Application of Proceeds.

Any and all moneys realized by the Agent, whether hereunder or otherwise may be applied by the Agent to such parts of the Secured Obligations as the Agent shall in its sole discretion determine. The Agent shall at all times and from time to time have the right to change any application so made.

Section 7.4 Waiver of Protest

The Grantor waives protest of any Instrument constituting Collateral at any time held by the Agent on which the Grantor is in any way liable and, subject to Section 6.7, notice of any other action taken by the Agent, each to the extent permitted by Applicable Law.

Section 7.5 Assignment and Enurement

This Agreement will enure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto. The Grantor shall not assign, delegate or transfer all or any part of its rights or obligations hereunder without the prior written consent of the Agent. The Agent shall be permitted to assign its rights and obligations hereunder to any successor agent appointed in accordance with the relevant provisions of the Credit Agreement.

Section 7.6 Amendment

Save for any schedules which may be added hereto pursuant to the provisions hereof, no modification, variation or amendment of any provision of this Agreement shall be made except by a written agreement, executed by the parties hereto and no waiver of any provision hereof shall be effective unless in writing.

Section 7.7 Notices

Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon one party by another party, or whenever one party desires to give or serve upon another party any communication with respect to this Agreement, each such notice, demand, request, consent, approval, declaration or other communication shall be validly served, given or delivered if served, given or delivered as provided for in Section 14.5 of the Credit Agreement.

Section 7.8 Remedies Cumulative

This Agreement and the security afforded hereby is in addition to and not in substitution for any other security now or hereafter held by the Agent and is intended to be a continuing security agreement and shall remain in full force and effect until all Secured Obligations and any extensions or renewals thereof together with interest accruing thereon shall be paid in full. All rights and remedies of the Agent granted or recognized in this Agreement are cumulative and may be exercised at any time and from time to time independently or in combination.

Section 7.9 Reinstatement

This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against the Grantor for liquidation or reorganization, should the Grantor become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee or similar person be appointed for all or any significant part of the Grantor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured Obligations, or any part thereof, is, pursuant to Applicable Law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference", "fraudulent

conveyance”, or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 7.10 Severability

If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction; the illegality, invalidity or unenforceability of that provision will not affect:

- (a) the legality, validity or enforceability of the remaining provisions of this Agreement; or
- (b) the legality, validity or enforceability of that provision in any other jurisdiction.

Section 7.11 Power of Attorney

The Grantor hereby irrevocably constitutes and appoints any officer of the Agent the true and lawful attorney of the Grantor, effective upon the occurrence and during the continuance of an Event of Default, with full power of substitution, to do, make and execute all such statements, assignments, documents, acts, matters or things with the right to use the name of the Grantor whenever and wherever such officer may deem necessary or expedient and from time to time to exercise all rights and powers and to perform all acts of ownership in respect to the Collateral in accordance with this Agreement. The powers of attorney herein granted are coupled with an interest and are in addition to, and not in substitution for any transfer power of attorney delivered by the Grantor and such power of attorney may be relied upon by the Agent severally or in combination. All acts of the attorney are ratified and approved, and the attorney shall not be liable for any act, failure to act or any other matter or thing, except for its own gross negligence or wilful misconduct.

Section 7.12 Termination of This Agreement

Subject to Section 7.9 hereof, this Agreement shall terminate upon full and irrevocable payment and satisfaction of the Secured Obligations (the “**Termination Date**”).

Section 7.13 Governing Law

This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable in the Province of Ontario.

Section 7.14 Counterparts

This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument.

Section 7.15 No Deemed Subordination

No reference to Permitted Liens in this Agreement or any other Loan Document or any statement or provision as to the acceptability of any Permitted Lien or any other Lien or the permitted priority thereof, shall in any way constitute or be construed so as to provide for a subordination of any rights of the Agent or the other Secured Parties hereunder or arising under any Loan Documents in favour of any holder of such Permitted Lien or any Lien ranking in priority to such Permitted Liens.

Section 7.16 Benefit of Secured Parties

All Liens granted or contemplated hereby shall be for the benefit of the Agent and the other Secured Parties, and all proceeds or payments realized from Collateral in accordance herewith shall be applied to the Secured Obligations in accordance with the terms of the Credit Agreement and the other Loan Documents.

ARTICLE 8 - COPY OF AGREEMENT**Section 8.1 Copy**

The Grantor hereby acknowledges receipt of a copy of this Agreement.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

2423402 ONTARIO INC.

By:

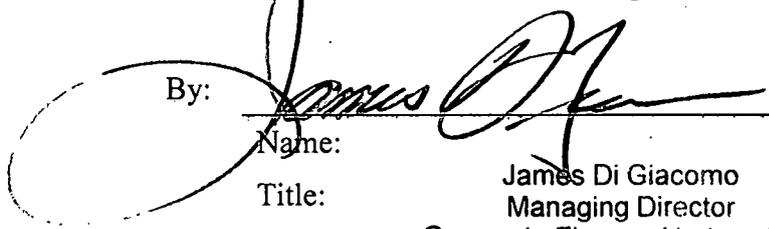


Name: John Aquino
Title: President

Name:

Title:

BANK OF MONTREAL, as the Agent

By: 
Name: _____
Title: **James Di Giacomo
Managing Director
Corporate Finance Underwriting
and Syndications**

By: _____
Name: _____
Title: _____

SCHEDULE 4.1(i)
Locations

Locations of the Grantor's chief executive office and principal place of business:

407 Basaltic Road
Concord, Ontario L4K 4W8

Locations of the Grantor's corporate offices including registered office (where different from that set out above):

407 Basaltic Road
Concord, Ontario L4K 4W8

All premises where Collateral is located:

407 Basaltic Road
Concord, Ontario L4K 4W8

Locations of books and records concerning Collateral and Account Debtors:

407 Basaltic Road
Concord, Ontario L4K 4W8

Tab J

This is **Exhibit "J"** 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 loops and a long horizontal stroke, positioned above a horizontal line.

A Commissioner for taking affidavits

PERFORMANCE GUARANTEE OF CONSTRUCTION GUARANTOR

THIS GUARANTEE is made as of the 28th day of August, 2014.

BETWEEN:

CAMBRIDGE MEMORIAL HOSPITAL, a non-share capital corporation
incorporated under the laws of the Province of Ontario

("CMH")

and

BONDFIELD CONSTRUCTION COMPANY LIMITED, a corporation
incorporated under the laws of the Province of Ontario

("Construction Guarantor")

WHEREAS:

- A. CMH and 2423402 Ontario Inc. ("**Project Co**") have entered into a project agreement dated as of the 28th day of August, 2014 (which agreement, including the schedules thereto, as the same may be amended, modified, restated, supplemented or replaced, from time to time, is hereinafter called the "**Project Agreement**").
- B. As an inducement to CMH to enter the Project Agreement with Project Co, Construction Guarantor has agreed to absolutely, unconditionally and irrevocably guarantee to CMH, as a direct obligation, the full and prompt performance and observance by Project Co of each and every covenant, agreement, undertaking and obligation of Project Co contained in the Project Agreement with respect to the Construction Work, and in furtherance thereof has agreed to enter into this Guarantee.

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

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions from Project Agreement

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

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

1.2 Survival

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

2. GUARANTEE

2.1 Guarantee

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

result of an CMH Event of Default as set out in Section 27.1(a) of the Project Agreement.

2.2 General Provisions Relating to the Guarantee

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

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

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

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

indemnity basis) incurred by it in connection with enforcing any of its rights hereunder.

3. REPRESENTATIONS AND WARRANTIES

3.1 Construction Guarantor Representations and Warranties

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

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

4. NOTICES**4.1 Notices to Parties**

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

If to Construction Guarantor:

Bondfield Construction Company Limited
407 Basaltic Road
Concord, Ontario
L4K 4W8

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

If to CMH:

Cambridge Memorial Hospital
700 Coronation Blvd,
Cambridge, ON N1R 3G2

Fax No.: 519-740-4953
Attention: Angelo Presta, Director Capital Redevelopment

With a copy to:

Fax No.: 519-740-4953
Attention: Mike Prociw, Vice President, Finance and Corporate Services

4.2 Facsimile

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

4.3 Change of Address

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

4.4 Deemed Receipt of Notices

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

4.5 Service on CMH

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

5. GENERAL**5.1 Amendments**

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

5.2 Waiver

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

5.3 Entire Agreement

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

5.4 Severability

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

unenforceability or illegality and to restore this Guarantee as near as possible to its original intent and effect.

5.5 Enurement

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

5.6 Governing Law and Jurisdiction

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

5.7 Cumulative Remedies

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

5.8 Further Assurance

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

5.9 Costs

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

5.10 Language of Agreement

- (a) Each of the parties acknowledges having requested and being satisfied that this Guarantee and related documents be drawn in English. Chacune des parties reconnaît avoir demandé que ce document et ses annexes soient rédigés en anglais et s'en déclare satisfaite.

- (b) For greater certainty, all correspondence, notices, drawings, test reports, certificates, specifications, information, operating and maintenance instructions, name plates, identification labels, instructions and notices to the public and staff and all other written, printed or electronically readable matter required in accordance with, or for purposes envisaged by, this Guarantee shall be in English.

5.11 Proof of Authority

CMH and Construction Guarantor each reserve the right to require any person executing this Guarantee on behalf of the other party to provide proof, in a form acceptable to CMH or Construction Guarantor, as applicable, that they have the requisite authority to execute this Guarantee on behalf of and to bind CMH or Construction Guarantor, as applicable.

5.12 Counterparts

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

5.13 Joint and Several

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

TOR01: 5679990: v3

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

**Cambridge Memorial Hospital
Capital Redevelopment Project**

**Performance Guarantee of
Construction Guarantor
Execution Version**

**BONDFIELD CONSTRUCTION COMPANY
LIMITED**

Per: _____

Name: John Aquino
Title: Vice-President

Per: _____

Name:
Title:

I/We have authority to bind the corporation

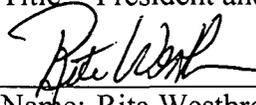
**[SIGNATURE PAGE FOR PERFORMANCE GUARANTEE
OF CONSTRUCTION GUARANTOR]**

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

CAMBRIDGE MEMORIAL HOSPITAL

Per: 
Name: Patrick Gaskin

Title: President and Chief Executive Officer

Per: 
Name: Rita Westbrook

Title: Chair, Board of Directors

I/We have authority to bind the corporation

**[SIGNATURE PAGE FOR PERFORMANCE GUARANTEE
OF CONSTRUCTION GUARANTOR]**

Tab K

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



A Commissioner for taking affidavits

McCarthy Tétrault LLP
 PO Box 48, Suite 5300
 Toronto-Dominion Bank Tower
 Toronto ON M5K 1E6
 Canada
 Tel: 416-362-1812
 Fax: 416-868-0673



Geoff R. Hall
 Partner
 Direct Line: (416) 601-7856
 Direct Fax: (416) 868-0673
 Email: ghall@mccarthy.ca

Assistant: Galluzzo, Michelle
Direct Line: 416-601-8200 (542605)
Email: mgalluzzo@mccarthy.ca

October 22, 2018

Via Email (JMacLellan@blg.com)

James W. MacLellan
 Partner
 Borden Ladner Gervais LLP
 Bay Adelaide Centre, East Tower
 22 Adelaide Street West
 Suite 3400
 Toronto ON M5H 4E3

Dear Mr. MacLellan:

Re: Performance Bond No. 6342957 dated August 14, 2014 (the “Performance Bond”) with Zurich Insurance Company (“Zurich”) as surety, relating to the redevelopment of Cambridge Memorial Hospital (“CMH”) under a Project Agreement dated August 28, 2014 (the “Project Agreement”) and a Construction Contract dated August 28, 2014 between 24223402 Ontario Inc. and Bondfield Construction Company Limited (the “Construction Contractor”), and relating to a Credit Agreement dated August 28, 2014 with Bank of Montreal as administrative agent

Thank you for the productive meeting on October 18, 2018. I write to follow up on that meeting.

As you know, it is clear that there will be a call on the Performance Bond as a result of various defaults of which you are aware. As you also know, the Agent is seeking clarity on certain issues before the technical step of calling on the Performance Bond is taken. Four key issues relating to positions taken by Zurich that must be resolved are as follows:

1. Coverage of Set-off/Indemnity and Flow-Through Amounts Under the Performance Bond
2. Coverage of Increased Interest Costs Under the Performance Bond
3. Commitment of Holdback Amount
4. Availability of Liquidity Throughout the Project

Coverage Under the Performance Bond (Issues #1 and 2)

The Agent believes that, properly interpreted, set-off/indemnity, flow-through and increased interest amounts will be covered by the Performance Bond. The Agent does not accept Zurich's position that the Performance Bond covers only “sticks and bricks” and only obligates Zurich to build the building following a call on the Performance Bond. Rather, the Performance Bond

applies to all of the Construction Contractor's obligations under the Construction Contract. In particular:

- Set-off/indemnity costs arise due to a failure by the Construction Contractor to perform work as required under the Construction Contract, leading to a failure under the Project Agreement and claims and deductions by CMH. Any such claim or deduction by CMH under the Project Agreement automatically gives rise to a right for Project Co to make an identical claim or deduction under the Construction Contract. In particular, pursuant to Section 33.1 of Appendix A to the Construction Contract, the Construction Contractor is required to indemnify Project Co for all amounts for which Project Co is required to indemnify CMH under the Project Agreement. Providing coverage for costs like these that result from the Construction Contractor's defaults is the very foundation of the Performance Bond.
- Similarly, flow-through costs - such as claims made by CMH for failure by Project Co to pay utilities - arise from a failure by the Construction Contractor and give rise to: (a) a right for Project Co to make a claim under the Construction Contract for such amounts; and (b) a default under the Construction Contract. Notably, the Construction Contractor's failure to pay such amounts has resulted in a Contractor Event of Default pursuant to Section 26.1(a)(ix) of Appendix A to the Construction Contract, and a demand could be made under the Performance Bond for this default alone, plainly undermining any suggestion that it is not covered by the Performance Bond or the argument that only "sticks and bricks" are covered.
- Where defaults are made by the Construction Contractor – particularly where the Construction Contractor defaults rise to the level of requiring a claim under the Performance Bond – it causes delay, which in turn increases interest costs, and results in the obligation of the Construction Contractor to pay Liquidated Damages. These Liquidated Damages are separate from basic financing costs as they are caused by the Construction Contractor's defaults, which again are precisely the costs that are properly covered by the Performance Bond. In addition, Section 2(a) of the Construction Contract clearly states that the Construction Contractor's obligations in respect of Liquidated Damages shall not be construed as any obligation related to the Financing or the Cost of the Financing.
- In *Whitby Landmark Development Inc. v. Mollenhauer Construction Limited* (2003), 67 O.R. (3d) 628 (C.A.), the Ontario Court of Appeal interpreted a performance bond with virtually identical language to the Performance Bond (with none of the differences in language being material to the present issue) and rejected the argument that the performance bond in that case (also issued by Zurich) was limited to the physical construction work under the construction contract. Instead, the Ontario Court of Appeal held that the performance bond applied to all of the contractor's obligations under the construction contract. While as you noted in our meeting the Saskatchewan Court of Appeal has disagreed with *Whitby Landmark*, the Performance Bond is expressly governed by Ontario law, so Saskatchewan law is frankly irrelevant. *Whitby Landmark* is binding in Ontario, it is directly on point, and it directly contradicts your "sticks and bricks" theory.

We request Zurich's acknowledgement that set-off/indemnity, flow-through and increased interest amounts will be covered by the Performance Bond.

Holdback Amount (Issue #3)

As you know, pursuant to the Performance Bond, once a demand is made and option #3 is selected, Zurich is obliged to, among other things, make available as work progresses "sufficient funds to pay to complete the Principal's obligations in accordance with the terms and conditions of the Construction Contract, less the Balance of the Construction Contract Price" as well as paying all expenses incurred by the Obligee as a result of the Construction Contractor's defaults relating to the performance of work under the Construction Contract, up to the Bond Amount.

The definition of "Balance of the Construction Contract Price" in the Performance Bond is: "...the total amount of the Guaranteed Price payable to the Principal under the Construction Contract, less the amount properly paid by the Obligee to the Principal under the Contract Contract."

Unlike the definition used in the Performance Bond, the definition of "Balance of the Construction Contract Price" used in the draft Mitigation Funding Agreement that you provided to us is: the Balance of Contract Funds (with reference to a calculation) "including Holdback". Zurich also goes further to seek an agreement that "[t]he Multiple Obligee shall pay to the Surety, or assign to the Surety any right or interest therein, any holdback amounts referred to in Schedule "B"." In other words, Zurich is using an amended definition of "Balance of the Construction Contract Price" and seeking an agreement that the Lenders agree now to pay to Zurich the Holdback amounts without any deduction.

The definition of the Balance of the Construction Contract in the Performance Bond refers to the amount "payable to the Principal under the Construction Contract". The amount that is payable to the Construction Contractor under the Construction Contract is subject to prior-ranking claims of the Lenders for certain deductions, which may be made from the Holdback amounts. Therefore, it does not necessarily include the entire Holdback amount that Zurich now seeks to include.

The purpose of the Bonds was to keep the Lenders whole. The position now advanced by Zurich is a change to the original bargain that could leave the Lenders with less than full recovery. Doing so would be contrary to the representations made by Zurich with respect to the nature of the Bonds that the Lenders relied upon and an inappropriate over-reach that attempts to secure greater funds for Zurich's benefit than was intended in the bargain reached among the parties.

Accordingly, we seek your confirmation that Zurich will not attempt to over-ride the original bargain by requiring a present confirmation that the entire Holdback be paid or assigned to it.

Liquidity Throughout the Project (Issue #4)

You have indicated that Zurich would make payments on a monthly basis for any deficiency between the payment that would have been made under the Construction Contract and the actual costs incurred. As you know, due to the structure of this project and its financing, at certain stages there may be insufficient availability under the credit facility to make the payment

that would have been made under the Construction Contract in a given month even though the balance of the Construction Contract price is assured upon completion.

We request your confirmation that, once the demand is made under the Performance Bond, Zurich agrees to advance funds each month to satisfy the actual costs incurred that exceed the availability under the credit facility provided that it is assured that upon completion of the Project and delivery of the holdback the balance of the Construction Contract will be paid.

Next steps

We are awaiting a resolution of the above issues to make a claim under the Performance Bond, and are considering options if a consensual resolution cannot be reached. One option we are considering is to bring an application to the Ontario Superior Court for an interpretation of the Performance Bond to answer the foregoing questions. However, we are mindful that this step would entail significant delay in circumstances in which time is of the essence. We are therefore hopeful that an application will not be necessary.

We look forward to discussing this matter with you further.

Yours truly,



Geoff R. Hall
GRH/mg

c: Stephen Furlan
Heather L. Meredith
Morgan Troke

Tab L

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



A Commissioner for taking affidavits

From: MacLellan, James W. <JMACLELLAN@blg.com>
Sent: Monday, October 29, 2018 9:28 AM
To: Hall, Geoff R.
Cc: Furlan, Stephen; Meredith, Heather L.; Troke, Morgan
Subject: Zurich - Bondfield - Cambridge
Attachments: LT McLellan - Oct. 22, 2018.pdf

Geoff

Further to my call with Heather on Friday, Zurich has considered your letter dated October 22 and as your client is aware, Zurich disagrees with your arguments. We will not be responding on a line-by-line basis but please do not take that as acceptance of any particular argument.

The Performance Bond provided by Zurich operates in accordance with its terms. Underpinning your letter is the concept that the “the purpose of the Bonds was to keep the Lenders whole”. This is concept fundamentally incorrect. The purpose of the Performance Bond is to have the Surety arrange for completion of the work in the event of a Construction Contractor default. So long as the Obligee (or in this case one of the Multiple Obligees) performs the duties of the Obligee in the Construction Contract then the Surety will perform. Importantly it is a condition of the Performance Bond that the Obligee (or in this case the Multiple Obligee) make available the Balance of the Construction Contract Price to pay for the unfinished Construction Work. The Balance of the Construction Contract Price is clearly defined in the Performance Bond as being: *“the total amount of the Guaranteed Price payable to the Principal under the Construction Contract, less the amount properly paid by the Obligee to the Principal under the Construction Contract”*. Also note that the statutory 10% holdback under the *Construction Act* is not a “security” for the Lenders and must be made available as part of the Balance of the Construction Contract Price.

It is our understanding that Bondfield has been noted in default and so Zurich has been assisting Bondfield to remedy the default with the full knowledge of the Multiple Obligees. But as you note in the letter, demand as not yet been made under the Performance Bond. Consistent with the ongoing discussion Zurich stands ready, willing and able to perform its obligations under the Performance Bond so long as one of the Multiple Obligee’s commits to pay the Balance of the Construction Contract Price to the Completion Contractor. While Zurich understands that there are issues amongst the Owner and Lenders related to the decision to allow the Project to be extended well beyond the original completion date, the Surety is not responsible for such decisions or the consequences.

To be clear Zurich is not proposing that any party waive any rights to advance the legal arguments raised in your letter. To the contrary, in paragraph 16 of the Mitigation Funding Agreement which we sent on October 12, there is an express reservation of rights paragraph.

In order to prevent any further deterioration in the Project, we would ask that one of the Multiple Obligees commit to perform the Obligee’s obligations so that the Surety can make arrangements to complete the Work in accordance with our October 12 email and the draft completion documents attached thereto.

Given the circumstances set out above and Zurich’s cooperation to date, we will assume the reference to “bad faith” raised in the call on Friday was done in error.

We will continue to wait to hear from you.

James

<image002.jpg>

James W. MacLellan

Lawyer

T 416.367.6592 | F 416.367.6749 | JMACLELLAN@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St W, Toronto, ON, Canada M5H 4E3

Borden Ladner Gervais LLP | It begins with service

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Tab M

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



A Commissioner for taking affidavits

November 16, 2018

CONFIDENTIAL

VIA COURIER

Zurich Insurance Company Ltd.

Surety Department
 First Canadian Place,
 100 King Street West Suite 5500, P.O. Box 290
 Toronto, ON M5X 1C9

Re: Demand Upon Performance Bond No. #6342957 dated August 28, 2014, together with the Multiple Obligee Rider thereto (collectively, the "Bond")

Bank of Montreal, in its capacity as administrative agent (the "**Agent**"), is an Obligee under the above-noted Bond. Capitalized terms not otherwise defined herein shall have the respective meanings assigned to them in the Bond.

Please find enclosed a copy of a letter dated November 14, 2018 from the Agent to the Principal, pursuant to which the Agent notified the Principal of the occurrence of numerous events of default under the Construction Contract including, without limitation, for failure to remove numerous encumbrances registered against title to the Site (as defined in the Construction Contract). The occurrence of each such event of default constitutes a Contractor Event of Default under the Bond.

The Principal is, and has been declared by the Obligee to be, in default in respect of its obligations under the Construction Contract, and the Obligee has duly performed all of its obligations thereunder. Pursuant to the terms of the Multiple Obligee Rider attached to the Bond, we are deemed to be an Obligee under the Bond and are therefore entitled to make such declaration of default and entitled to enforce the obligations of the Principal and the Surety under the Bond, and the Bond requires no further steps or actions, including the exercise of any step-in rights, to be taken by us in order to make demand on the Bond. Accordingly, we hereby demand that the Surety promptly remedy the above-referenced Contractor Event of Default and the other Contractor Events of Default set out in the attached letter, or promptly select and carry out one of the other specified options available to the Surety pursuant to the Bond.

Yours very truly,

BANK OF MONTREAL, as Agent

By: _____

Name:

Title:

Eden Orbach
Senior Manager

cc: Bondfield Construction Company Ltd.
 2423402 Ontario Inc.
 Cambridge Memorial Hospital

Tab N

This is **Exhibit "N"** 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 stylized, overlapping loops and lines, positioned above a horizontal line.

A Commissioner for taking affidavits

From: MacLellan, James W. [<mailto:JMACLELLAN@blg.com>]
Sent: Wednesday, November 21, 2018 11:49 AM
To: Meredith, Heather L.
Subject: Zurich - Cambridge - Performance Bond

Heather

Zurich has received your client's letter purporting to make a claim under the Performance Bond for Cambridge project. We are instructed not to debate the contents of the letter but to pursue a completion arrangement consistent with the terms of the performance bond.

As you know the performance bond guarantees performance of the construction contract and that the party making the claim under the performance bond (if it is not project co) has to insert itself into the construction contract in order to enforce the remedies in the construction contract including calling on the performance bond. Please confirm that this has taken place.

Assuming that your client is now the contracting party under the construction contract and the party in a position to make the claim under the performance bond, we refer to our email of October 12, 2018 wherein we provided the agreements to facilitate a completion arrangement. We would ask for your comments on the two agreements and confirmation that your client will make the Balance of Construction Contract Price available as calculated in the October 12, 2018 email. Zurich has for some time been ready to make arrangements for the completion of the construction contract and we await the finalization of the completion documents so that Ellis Don can begin the completion work.

Thanks

James

James W. MacLellan

Partner

T 416.367.6592 | F 416.367.6749 | JMACLELLAN@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St W, Toronto, ON, Canada M5H 4E3

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Tab O

This is **Exhibit "O"** 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 stylized, cursive letters that appear to be 'A' followed by several loops and a final flourish.

A Commissioner for taking affidavits

December 7, 2018

CONFIDENTIAL

Via Facsimile

Bondfield Construction Company Limited
407 Basaltic Road
Concord, ON L4K 4W8
Fax No.: 416-667-8462

Attention: Mr. John Aquino

Attention: Mr. Steven Aquino, Vice President

Re: Construction Contract dated as of August 28, 2014, between 2423402 Ontario Inc. (“Project Co”) and Bondfield Construction Company Limited (the “Construction Contractor”), as such Construction Contract is amended, amended and restated, renewed, extended, supplemented, replaced or otherwise modified from time to time (the “Construction Contract”)

Dear Mr. Aquino:

Reference is made to the Construction Contract. Capitalized terms not otherwise defined herein shall have the respective meanings assigned to them in the Construction Contract.

Appointment as Receiver

As you are aware, pursuant to an order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) dated December 6, 2018 (as may be amended, restated or modified from time to time, the “**Appointment Order**”), Alvarez & Marsal Canada Inc. was appointed receiver (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of Project Co acquired for, or used in relation to a business carried on by Project Co (the “**Property**”) for the sole purpose of carrying out the terms of the Appointment Order and without taking possession or control of the Property. A copy of the Appointment Order is enclosed with this letter.

Contractor Performance Bond

As you are further aware, Project Co is an Obligee under Performance Bond No. 6342957 dated August 28, 2014 between the Construction Contractor, as Principal, Zurich Insurance Company Ltd. (the “**Surety**”), as surety (the “**Contractor Performance Bond**”). The Contractor Performance Bond has been provided in support of the Construction Contractor’s obligations under the Construction Contract. Pursuant to the terms of the Contractor Performance Bond, whenever the Principal shall be, and declared by the Obligee to be in default in respect of its obligations under the Construction Contract, the Surety has agreed to promptly perform certain obligations set out in the Contractor Performance Bond.

Pursuant to paragraph 27 of the Appointment Order, the Receiver was ordered to make a demand under the Contractor Performance Bond for and on behalf of Project Co as soon as reasonably practicable and is empowered and authorized to execute, issue and endorse any agreements or documentation for and on behalf of Project Co as the Receiver considers necessary or advisable to facilitate making such demand.

As set out in letters to the Construction Contractor and to Project Co dated November 5, 2018 and November 16, 2018 from Bank of Montreal, in its capacity as administrative agent (the “**Agent**”) in relation to a Credit Agreement dated as of August 28, 2014 between Project Co, the Agent and certain lenders (the “**Lenders**”), and in the letter by Cambridge Memorial Hospital (“**CMH**”) to Project Co dated August 10, 2018, copies of which were in each case provided to you, numerous events have occurred and continue to occur which constitute Contractor Events of Default under the Construction Contract. These include that the Construction Contractor has:

- failed to pay Liquidated Damages when due under the Contractor Support Agreement, dated as of August 28, 2014, which constitutes an event of default pursuant to Section 12 of the Construction Contract and a Liquidated Damages Default under Demand Bond 6342958 dated August 28, 2014;
- failed to remove numerous encumbrances registered against title to the Site within the time periods required under the Project Agreement, which constitutes a Project Co Construction Event of Default pursuant to Section 26.1(a)(viii) of the Project Agreement and an event of default pursuant to Section 7 of the Construction Contract; and
- failed to maintain the Project schedule and achieve schedule milestones and is consequently unable to achieve Substantial Completion by the Longstop Date, which has had a material adverse effect on CMH and its ability to operate the Facility, which constitutes a Project Co Construction Event of Default pursuant to Section 26.1(a)(iv) of the Project Agreement and an event of default pursuant to Section 7 of the Construction Contract.

In addition, we also understand that there are now few workers on Site on a daily basis, and that construction activity on the Site has decreased such that the Construction Contractor has ceased performing the Work as required under the Construction Contract.

We hereby confirm and declare on behalf of Project Co that the Construction Contractor is in default of its obligations under the Construction Contract. As an Oblige under the Contractor Performance Bond, Project Co is entitled to make demand on the Surety under the Contractor Performance Bond and will be doing so concurrently with this letter.

Project Co expressly reserves all of its other rights, powers, privileges and remedies under the Construction Contract, applicable law or otherwise. The failure of Project Co to exercise any such rights, powers, privileges and remedies is not intended, and shall not be construed, to be a waiver of any such rights or remedies pursuant to the Construction Contract or otherwise and nothing in this letter or any delay by Project Co in exercising any rights, powers, privileges and remedies under the Construction Contract or applicable law shall be construed as a waiver or modification of such rights, powers, privileges and remedies. This letter is not, and shall not be deemed to be, a waiver of, or a consent to, any default noncompliance, or otherwise now existing or hereafter arising under the Construction Contract.

The holding of any discussions between or among any or all of the Agent, the Lenders, the Construction Contractor, Project Co, the Surety, CMH or Infrastructure Ontario regarding the Project or proposals regarding amendments to, or modifications or restructurings of the Construction Contract shall not constitute any waiver of any breach, default or Contractor Event of Default or the obligations of the Construction Contractor under the Construction Contract or applicable law, nor shall it be construed as an undertaking by Project Co to continue such discussions or to enter into any such amendments, modifications or restructurings.

Yours very truly,

ALVAREZ & MARSAL CANADA INC., solely in its capacity as receiver, without security, of all of the assets, undertakings and properties of 2423402 Ontario Inc., and not in its personal or corporate capacity

By: 

Name: Stephen Ferguson

Title: Senior Vice President

cc: Brendan Bissell (counsel to Zurich Insurance Company Ltd.)
Heather Meredith (counsel to Bank of Montreal, in its capacity as administrative agent)
Kyla Mahar (counsel to Cambridge Memorial Hospital)