

THIS HOSPITAL GROUND LEASE made as of this 23rd day of February, 2018.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as Represented by the
Minister of Public Works and Government Services

(the "Landlord")

OF THE FIRST PART

-and-

THE OTTAWA HOSPITAL/ L'HÔPITAL D'OTTAWA

(the "Tenant")

OF THE SECOND PART

WHEREAS:

- A. the Landlord is the owner in fee simple of the lands described in Schedule A (the "Lands");
- B. the Tenant is a corporation amalgamated by Letters Patent under the *Corporations Act* (Ontario) named the Ottawa Hospital/L'Hôpital d'Ottawa with its head office in the City of Ottawa;
- C. the Tenant has requested the Landlord to lease the Lands to the Tenant in order that the Tenant may construct, operate and maintain thereon an institution, buildings, improvements and other premises that is established for the purposes of the treatment of patients and approved as a public hospital; and
- D. the Landlord has agreed to demise and let the Lands to the Tenant, and the Tenant has agreed to lease the Lands from the Landlord, on the terms and conditions as set forth in this Lease.

NOW THEREFORE in consideration of the covenants and agreements contained in this Lease and other good and valuable consideration given by each Party to the other, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereto covenant and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

The terms defined in this Section 1.1, for all purposes of this Lease and all indentures, agreements or other instruments supplemental hereto or confirmatory, amendatory or in modification hereof now or hereafter entered into in accordance with the provisions hereof, shall have the following meanings unless the context expressly or by necessary implication otherwise requires:

"AAFC" means the Department of Agriculture and Agri-Food Canada;

"AAFC Lands" means the lands shown outlined in blue on Schedule F;

"Abandons" means, following the commencement of the operation of the Hospital, the ceasing of the operation of a Hospital upon the Leased Premises for a consecutive period of ninety (90) days, in the absence of an event of Force Majeure, and except in circumstances contemplated in Article 17;

"Aboriginal" means aboriginal peoples of Canada, as defined in the *Constitution Act 1982* (Canada);

"Aboriginal Claim" means any assertion or Claim by Aboriginal to:

- (a) Aboriginal title in the Lands; or
- (b) Aboriginal rights to the Lands;

"Absolute Deadline Date" means the date that is eighteen (18) years following the Commencement Date, provided that if the Demolition Approval Date is after eighteen (18) months following the Commencement Date, the **"Absolute Deadline Date"** shall mean eighteen (18) years following the Commencement Date plus the period of time between:

- (a) the date which is three (3) years following the Commencement Date; and
- (b) eighteen (18) months following Demolition Approval Date;

"Absolute Reimbursement Maximum" means the greater of:

- (a) eleven million eight hundred thousand dollars (\$11,800,000) exclusive of Sales Tax; and
- (b) eleven million eight hundred thousand dollars (\$11,800,000) exclusive of Sales Tax, as adjusted by CPI up to and including the year when a reimbursement is being sought pursuant to Section 9.2 of this Lease;

"Access Protocol" means the protocol for access to the Leased Premises by the Landlord set out in Schedule E, attached hereto;

"Additional Rent" has the meaning ascribed thereto in Section 3.3;

"Annex Building" means the existing building and improvements on the Lands constituting the Sir John Carling Annex, all as shown outlined in red on Schedule G;

"Archaeological/Historical Finds" means property of archaeological or historical significance or heritage resources (but not including the Annex Building) found in, under or on the Lands, and includes human remains, which includes without limitation an object showing evidence of manufacture, alteration or use by humans that is found in or on the Leased Premises and is of value for the information that it may give on prehistoric or historic human activity and includes, without limitation, human remains;

"Architect" means a person who is qualified, licensed and actively practising architecture in the province of Ontario, but not an employee of either Party;

"Article", "Section", "Subsection" and **"Schedule"** mean and refer to the specified article, section, subsection or schedule of this Lease;

"Base Rent" has the meaning ascribed thereto in Section 3.2;

"Buildings" means all buildings:

- (a) over, on and under the Lands as of the Commencement Date; and
- (b) to be constructed or existing over, on and under the Lands;

together with any improvements, facilities and structures appurtenant thereto or not, also over, on and under the Lands together with all underground levels and including, without limitation, all parking structures, underground tunnel works, and all fixtures and systems appurtenant to the buildings belonging to the Tenant, including, without limitation, the heating, ventilation and air conditioning system, fire protection system, security systems and alarms servicing the buildings, lighting fixtures, plumbing and electrical systems, elevators, sprinklers, boilers, compressors, transformers, drainage and other mechanical and all other building systems and equipment comprising part thereof and all other improvements in or upon the buildings or on or under the Lands and Leased Premises of any nature or kind whatsoever, it being understood and agreed by the Parties:

- (c) that if the Landlord completes the Landlord's Work, the definition of Buildings shall be deemed not to include the Annex Building retroactive to the Commencement Date; and

- (d) that before the date that when the definition of Buildings is so deemed not to include the Annex Building, the definition of Buildings shall include the Annex Building and the Tenant shall, subject to the mutual intention that the Landlord is responsible for the Landlord's Work, have all obligations hereunder;

"**Business Day**" or "**Business Days**" means any day other than a Saturday, a Sunday, a statutory holiday in the province of Ontario or a federal statutory holiday;

"**Change in Control**" means, with respect to a Person:

- (e) any Change in Ownership, where the effect of such change is to result in control of the decisions made by or on behalf of such Person subsequently being within the control of a different entity or entities than prior to such change;
- (f) any other change in respect of the power or authority to elect a majority of the directors of the Person or otherwise control the decisions made on behalf of such Person; or
- (g) any other change of direct or indirect power or authority to direct or cause the direction of the management, actions or policies of such Person;

provided there shall be deemed no Change in Control for so long as the Tenant is a Hospital and a not-for-profit corporation, without share capital;

"**Change of Ownership**" means, with respect to a Person, any change in ownership, whether beneficial or otherwise, of any of the shares or units of ownership of such Person, or in the direct or indirect power to vote or transfer any of the shares or units of ownership of such Person, provided there shall be deemed no Change of Ownership for so long as the Tenant is a Hospital and a not-for-profit corporation, without share capital.

"**Claims**" means all claims, lawsuits, proceedings, actions, causes of action, demands, judgements, executions, and other relief available or sought at Law;

"**Commencement Date**" means the first day of the Term of this Lease which shall commence upon the date as indicated in the first page hereof;

"**Commencement of Construction**" means the day when the Tenant:

- (a) has obtained all required Development Approvals required to commence construction of the Project (which includes building a Hospital); and
- (b) materially commences, or causes to be commenced, the construction of the Project;

it being agreed by the Parties that construction shall only be considered to be materially commenced if:

- (c) the Tenant has *bona fide* entered into an agreement with a proponent for, among other things, the construction of the Project;
- (d) the hard costs of the construction of the Hospital building pursuant to the agreement as referred to in Subsection (c) is then in excess of two million dollars (\$2,000,000); for clarity, this amount shall not include the costs of:
- (i) the installation of services;
- (ii) any movement of Permitted Title Encumbrances pursuant to the Infrastructure Relocation Protocol;
- (iii) any environmental remediation; or
- (iv) the removal of the Annex Building; and
- (e) the Tenant provides the Landlord with reasonable evidence of the foregoing;

"**Commercial Access**" means a door (excluding emergency egress doors, garage doors, loading doors and doors giving access to garbage storage areas) that is clearly intended to be the principal entrance or one of the principal entrances for use on a permanent basis

by customers, employees and other users to enter and exit primarily for a Commercial Entity, Commercial Entities or retail store(s);

"**Commercial Entity**" means a Person which operates with a view to a profit;

"**Commercial Signage**" means signage when viewed, in whole or in part, would be objectively perceived as being for a Commercial Entity or a retail store (even if such retail store is not being operated by a Commercial Entity);

"**Commercial Tenancies Act**" has the meaning ascribed thereto in Subsection 13.6(a);

"**CPI**" means the All Items Consumer Price Index for the City of Ottawa-Gatineau (Ont. part) published by Statistics Canada, or such other similar price index established by or on behalf the Government of Canada;

"**Crown**" means Her Majesty the Queen in Right of Canada and her heirs and successors;

"**Damages**" means all losses, injuries, deaths, liabilities, costs, expenses and damages (whether direct, indirect, incidental, special, exemplary, punitive, consequential or otherwise);

"**Damage Termination Notice**" has the meaning ascribed thereto in Subsection 17.2(e)(l);

"**Damage Termination Option**" has the meaning ascribed thereto in Subsection 17.2;

"**Damage Termination Program**" has the meaning ascribed thereto in Subsection 17.2(c);

"**Demolition Approval**" has the meaning ascribed thereto in Subsection 8.3(b);

"**Demolition Approval Date**" has the meaning ascribed thereto in Subsection 8.3(f);

"**Development Approvals**" means all permits, certificates, approvals (which includes, without limitation, FLUDAs), consents, authorizations, registrations, and licences to be issued, granted, conferred or otherwise required at Law or hereunder for the Project from Governmental Authorities (which includes, without limitation, Environmental Permits);

"**Environmental Laws**" means:

- (a) all federal, provincial, or municipal statutes, regulations, by-laws, Environmental Permits, orders, decisions, rules, and all legally enforceable policies or guidelines of any Governmental Authority; and
- (b) all requirements or obligations arising under the common law;

in each case:

- (c) relating specifically to the environment, the release or threatened release of Hazardous Substances or the manufacture, processing, distribution, use, treatment, storage, transport, disposal or handling of Hazardous Substances; and
- (d) which is in effect at any time before, during and after the Term;

which includes, without limitation:

- (e) the *Canadian Environmental Assessment Act* (Canada);
- (f) the *Canadian Environmental Protection Act, 1999* (Canada);
- (g) the *Dangerous Goods Transportation Act* (Ontario);
- (h) the *Environmental Bill of Rights* (Ontario);
- (i) the *Environmental Protection Act* (Ontario);
- (j) the *Fisheries Act* (Canada);
- (k) the *Ontario Water Resources Act*;

(l) the *Pest Control Products Act* (Canada);

(m) the *Pesticides Act* (Ontario); and

(n) the *Transportation of Dangerous Goods Act, 1992* (Canada);

"**Environmental Permits**" means all permits, certificates, approvals, consents, authorizations, registrations and licenses issued, granted, conferred or required by:

- (a) any Governmental Authority pursuant to any Environmental Laws; or
- (b) otherwise required under this Lease for any environmental matter;

for either or both the Leased Premises and the Project;

"**Event of Damage**" has the meaning ascribed thereto in Section 17.2;

"**Event of Default**" has the meaning ascribed thereto in Section 18.1;

"**Event of Insolvency**" means the occurrence of any one of the following events:

- (a) the Tenant is wound up, dissolved, liquidated or has its existence terminated or has any resolution passed therefor, or makes a general assignment for the benefit of its creditors or a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any bankruptcy law or any other similar present or future law relating to bankruptcy or other similar relief for debtors (including, without limitation, the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36), or consents to the appointment of a receiver, liquidator, trustee or assignee in bankruptcy or insolvency; or makes an assignment for the benefit of creditors; or admits in writing its inability to pay its debts generally as they become due; or
- (b) a court of competent jurisdiction enters an order, judgment or decree approving a petition filed against the Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, winding up, termination of existence, declaration of bankruptcy or insolvency or similar relief under the present or future law relating to bankruptcy or insolvency or other similar relief for or against debtors, and the Tenant acquiesces in the entry of such order, judgment or decree or such order, judgment or decree remains unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive) from the date of entry thereof; or if any trustee in bankruptcy, receiver, receiver/manager, liquidator or any other officer with similar powers is appointed for the Tenant or of all or any substantial part of its property or undertaking with the consent or acquiescence of the Tenant and such appointment remains unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive); or
- (c) the Minister exercises its authority to revoke the Tenant's authority to operate as a Hospital and is not subsequently reapproved as a Hospital pursuant to the *Public Hospitals Act* within ninety (90) days;

"**Existing Environmental Condition**" means the environmental condition of the Lands as of the Commencement Date, including, without limitation, any Impacted fill, material, soil, ground water or demolition waste;

"**Existing Environmental Reports**" means the reports and documentation attached hereto as Schedule D;

"**Existing Infrastructure**" has the meaning ascribed thereto in Schedule C;

"**Failure to Proceed Default**" has the meaning ascribed thereto in Subsection 8.4(e)(ii);

"**FLUDA**" means the NCC federal land use and design approval for any works on federal lands (which may include, without limitation, below grade interventions, utilities, easements, land use, public realm spaces, structures/buildings and signage) pursuant to Section 12 of the *National Capital Act* R.S.C., 1985, c. N-4;

"Force Majeure Event" means an event causing a *bona fide* delay in the performance of any obligations under this Lease (other than the payment of Rent) that is beyond the reasonable control of the Landlord or Tenant, as the case may be, arising from:

- (a) an act of God or a public enemy;
- (b) restrictive governmental laws or regulations;
- (c) freight or other embargoes, inability to obtain fuel, power, raw materials, equipment or transportation;
- (d) casualty, fire, floods, tidal waves, earthquake, storm, hurricane, tornado, winds in excess of operating limits, slides;
- (e) epidemics, quarantine restrictions;
- (f) war, declared or undeclared, acts of terrorism, revolution, riots, insurrections, hostilities, civil disturbances, blockades, explosions;
- (g) strikes, walk-outs, work stoppages, lockouts, railroad obstructions, stoppages of labour, deliberate work slowdowns, other labour difficulties other than the unavailability of labour; or
- (h) any similar cause or circumstance beyond the reasonable control of the Landlord or Tenant, as the case may be, when claiming suspension which makes impracticable the fulfillment of its obligations hereunder and which by exercise of due diligence such party is unable to prevent or overcome;

but not including any event arising from lack of funds;

"Governmental Authority" means any federal, provincial, municipal or local government, parliament or legislature, or any regulatory authority, agency, corporation, tribunal, commission, board or department of any such government, parliament or legislature, or any court or other Law, regulation or rule-making entity, or any arbitrator, each having jurisdiction in the relevant circumstances, including, for greater certainty, any Person acting under the authority of any Governmental Authority;

"Hazardous Substances" means any element, substance, product or material, the presence, nature, existence, use, disposal or transportation of which (whether alone or in combination with other elements, substances, products or materials) are, or may be reasonably expected to be, either:

- (a) damaging or potentially injurious to the public health or safety; or
- (b) regulated by any Governmental Authority as a pollutant or contaminant;

which includes, without limitation:

- (c) any petrochemical or petroleum products, oil or coal ash, radioactive materials, explosives radon gas, asbestos in any form that is friable, urea formaldehyde foam insulation and transformers or other equipment that contains dielectric fluid which may contain levels of polychlorinated biphenyls;
- (d) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "deleterious substances," "contaminants," "pollutants," "toxic pollutants," or words of similar meaning and regulatory effect under any applicable Law;
- (e) Impacted material, soil and ground water; and
- (f) any other material or substance, exposure to which is classified prohibited, limited or regulated by any applicable Law relating to environmental matters;

"Hospital" means any institution, building or other premises or place that is established for the purposes of the treatment of patients and that is approved under the *Public Hospitals Act* R.S.O. 1990, c. P-40 as a public hospital;

"Impacted" means, with respect to all environmental matters, exceeding applicable maximum standards, limits, criteria and levels set by Environmental Laws;

"Incident" means circumstances which could give rise to a Claim.

"Incidental Sublease" has the meaning ascribed thereto in Section 13.3;

"Infrastructure Relocation Protocol" means the infrastructure relocation protocol for the Project as set out in Schedule C.

"Landlord" means HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as Represented by the Minister of Public Works and Government Services;

"Landlord's Work" has the meaning ascribed thereto in Subsection 9.1(a);

"Lands" means the lands legally described in Schedule A;

"Law" or **"Laws"** means federal, provincial, municipal, regional municipal or local laws, statutes, codes, ordinances, decrees, rules, regulations, by-laws, legally enforceable policies or guidelines, judicial, arbitral, administrative, ministerial, departmental, or regulatory judgements, orders, decisions, directives, rulings or awards, general principles of common law, and conditions or any grant of approval, permission, consent, authority or licence by any court, statutory body, self-regulatory authority, stock exchange or other Governmental Authority, applicable to the Lands, the Leased Premises and the Project, including, without limitation, all Environmental Laws, in effect before, during and after the Term;

"Lease" means this lease, together with all Schedules attached hereto;

"Leased Premises" means the Lands and Buildings;

"Leasehold Easement" means the transfer of a portion of the Tenant's Leasehold Interest by way of a leasehold easement or leasehold right-of-way to a public utility or Governmental Authority;

"Leasehold Improvements" has the meaning ascribed thereto in Subsection 8.1;

"Leasehold Interest" means the leasehold interest at Law that the Tenant enjoys as the tenant of the Leased Premises pursuant to the Lease;

"Listed Pre-existing Conditions" means the following conditions which existed on the Lands on or before the Commencement Date:

- (a) Impacted fill, material (which may include, without limitation, demolition waste), soil and ground water, as determined pursuant to Environmental Laws as of the Commencement Date; and
- (b) non-impacted concrete demolition waste located within the footprint of the former Sir John Carling Building, to the extent that the same cannot be used for the construction of the Project;

"Mediation Period" has the meaning ascribed thereto in Subsection 21.3(d);

"Medical Equipment" means chattels (whether or not such has been affixed to the Leased Premises) used for the diagnosis, monitoring and/or the treatment of patients;

"Minister" means the Minister of Health and Long-Term Care as defined in the *Public Hospitals Act* R.S.O. 1990, c. P-40;

"Municipal Carling Carve-out" means the area:

- (a) with a width (that is, the distance perpendicular to Carling Avenue) being no larger than the greater of:
 - (i) three (3) metres;
 - (ii) the standard width of a multi-use pathway; and
 - (iii) the width shown on the draft plans attached hereto as Schedule K; and

(b) which may extend along the entire frontage of Carling Avenue;

"National Interest Land Mass" or **"NILM"** means lands that are identified by the NCC and approved by Treasury Board as being lands that are deemed to be of national interest because they are seen as essential over the long term, contribute to the unique character of Canada's Capital and express the federal government's interest in the development of the Capital;

"NCC" means the corporation, which is the commission continued pursuant to the *National Capital Act* R.S.C., 1985, c. N-4 (that is, the National Capital Commission);

"NCC Trillium Pathway" means the pathway shown highlighted in blue on the sketch attached as Schedule L and, if completed, the improvement attached hereto as Schedule M;

"NCC Sublease" means the sublease entered into between the Tenant and the NCC for the premises leased under the Parking Operator Lease, which, for clarity, may extend beyond the term of the Parking Operator Lease and may be used as a parking lot;

"Offer" has the meaning ascribed thereto in Subsection 14.2(a);

"Option Period" has the meaning ascribed thereto in Subsection 17.2(e);

"Parking Operator Lease" means the lease between the NCC and Dow's Lake Pavilion Group Inc. made on February 28, 1983;

"Parking System" means a parking system which ensures that the users of a parking lot or space are visitors to a capital realm feature;

"Parties" means the Tenant and the Landlord and **"Party"** means either of the Tenant or the Landlord;

"Permitted Ancillary Uses" means the ancillary uses, purposes and services which are supportive of the operation of a Hospital, which, for clarity, may include, but are not limited to:

- (a) services for the care of dependents;
- (b) dental, pharmacy and educational services;
- (c) use as accommodation, clinics, food and beverage facilities and retail;
- (d) uses practised in community health hubs as may be directed by the Minister from time to time, including community centres, athletic facilities, rehabilitation facilities, and other non-governmental organizations providing public services;
- (e) diagnostic laboratories;
- (f) educational and research institutions;
- (g) parking (which includes, without limitation, the performance of the NCC Sublease) and transit services;
- (h) such other services or use required by the Minister or Province for the treatment of patients to be provided by a Hospital;
- (i) multi-use pathways connected to the community; and
- (j) the performance of the Permitted Title Encumbrances;

"Permitted Leasehold Easement" has the meaning ascribed thereto in Subsection 13.5;

"Permitted Title Encumbrances" means the encumbrances listed on Schedule B attached hereto, binding the Lands and Leased Premises as of the Commencement Date;

"Permitted Use" has the meaning ascribed thereto in Subsection 6.1;

"Person" means, as the context allows, any individual, person, partnership, limited partnership, joint venture, syndicate, co-ownership, sole proprietorship, company or

corporation with or without share capital, unincorporated association, trade union or trustee thereof, labour union or trustee thereof, trust, trustee, executor, administrator or other legal personal representative, regulatory body or agency, government or Governmental Authority, or the Crown or entity however designated or constituted, and includes, without limitation, a minister of Her Majesty the Queen in right of Ontario;

"Policy" has the meaning ascribed thereto in Section 24.20;

"Preliminary Uses" means:

- (a) the conduct of work pursuant to the Infrastructure Relocation Protocol;
- (b) the conduct of environmental remediation or management;
- (c) the construction of the Project;
- (d) community events;
- (e) vacant land and associated operation or maintenance;
- (f) fundraising events for the Tenant or the Project;
- (g) the posting and placement of signage or other promotional features supporting the Tenant or the Project;
- (h) multi-use pathways connected to the community;
- (i) the performance of the NCC Sublease;
- (j) the performance of the Permitted Title Encumbrances;
- (k) parking of up to one hundred and twenty-nine (129) vehicles on the area shown outlined in red and crosshatched on the Schedule O; and
- (l) site preparatory work and other due diligence investigations in pursuit of the Project;

"Prime Rate" means, at any time, the rate of interest as determined by the Bank of Canada or its successor, as the minimum rate at which the Bank of Canada makes short-term advances to the banks listed in Schedule I to the *Bank Act* (Canada). If at any time there is no Prime Rate established by such bank, then some other equivalent or appropriate rate at the time shall be used as agreed to by the Parties or, failing agreement, as determined pursuant to Article 21;

"Project" means all work required to develop a Hospital on the Leased Premises, which includes without limitation:

- (a) all Buildings, whether temporary or permanent erected or located in, on, under or upon the Leased Premises from time to time, together with all systems, structures, facilities and equipment comprising the foregoing or relating thereto;
- (b) all other facilities, fixtures, appurtenances and tangible and intangible personal property, including inventories of any nature whatsoever contained on or attaching to the Leased Premises from time to time or used in connection with the Leased Premises;
- (c) all mechanical, electrical and other systems installed or used in connection with any of the foregoing;
- (d) all activities undertaken by the Tenant or others on the Tenant's behalf to plan, establish, seek approval for, develop, construct, operate and maintain itself as a Hospital on the Leased Premises and all Buildings related, ancillary, complementary and appurtenant thereto; and
- (e) all Developmental Approvals required by the Tenant to operate as a Hospital on the Leased Premises;

it being agreed by the Parties that the Project shall be in accordance with Development Approvals;

"Province" means the Province of Ontario;

"PSPC Pathway" means the pathway shown highlighted in blue on the sketch attached as Schedule N;

"Pursuit of the Project" has the meaning ascribed thereto in Section 8.4;

"Removal Notice" has the meaning ascribed thereto in Subsection 19.3(c);

"Road Allowance" has the meaning ascribed thereto in Subsection 8.7(a);

"Rent" means collectively the Base Rent, Additional Rent and all other payments which must be made by the Tenant to ensure full compliance with Subsection 3.3;

"Sales Tax" means all business transfer, multi-stage sales, sales, use, consumption, value-added, goods and services, harmonized sales or other similar taxes, rates, duties, charges, fees, levies, assessments, fines, penalties, interests and costs levied, charged, imposed or assessed (including, without limitation, any grant and payments in lieu thereof, which may be discretionary by the Landlord) by any Governmental Authority or any other Person otherwise authorized to so levy, charge, impose or assess the same at Law (or from time to time levied, charged, imposed or assessed in the future in lieu thereof or in addition thereto); it being acknowledged and agreed by the Parties that:

- (a) the foregoing definition is intended to be interpreted as broadly and inclusively as possible; and
- (b) as the Term of this lease is up to ninety-nine (99) years, the Parties specifically chose the foregoing general wording to ensure that all taxes, rates, duties, charges, fees, levies, assessments, fines, penalties, interests and costs were addressed throughout the Term and that the same should not be interpreted by any arbitrator or Court as being non-enforceable for not being sufficiently specific or otherwise against the Landlord;

"Salvageable Building" has the meaning ascribed thereto in Subsection 17.2(a)(ii);

"Second Level Negotiation Period" has the meaning ascribed thereto in Subsection 21.2(b);

"Surrounding Space" means the lands abutting or being and lying beside and around the Lands (which includes, without limitation, HMCS Carleton, Carling Ave, Preston Street, Prince of Wales Drive and the AAFC Lands);

"Taxes" means:

- (a) all taxes, rates, duties, charges, fees, levies and assessments whatsoever (including, without limitation, any grants and payments in lieu thereof, which may be discretionary by the Landlord):
 - (i) levied, charged, imposed or assessed (or otherwise determined by the Landlord as being payable, acting reasonably), whether by a Governmental Authority or any other Person otherwise authorized to so levy, charge, impose or assess the same at Law:
 1. against, arising from or in respect of the Leased Premises or any part thereof (which includes, without limitation, the Buildings and Leasehold Improvements);
 2. against, arising from or in respect of chattels (which includes, without limitation, all equipment) located thereon or therein;
 3. upon the Landlord, the Tenant or those for whom they are responsible for at Law, arising from or in respect of the Leased Premises (which includes, without limitation those arising from or related to the Landlord's ownership of the Lands or any interest therein);
 4. arising from or in respect of any business conducted on, or any use or occupancy of the Leased Premises; and

5. arising from or in respect of any related matters thereto; and
- (ii) from time to time levied, charged, imposed or assessed in the future in lieu thereof or in addition thereto; and
- (b) all fines, penalties, interest and costs relating thereto;

which includes, without limitation, those levied, charged, imposed or assessed for education, capital of the Landlord, school and local improvements, business improvement area charges, real property taxes, development fees, rates and charges and all business taxes, if any, from time to time payable by the Landlord or levied against the Landlord on account of the Landlord's interest in the Leased Premises; it being acknowledged and agreed by the Parties that:

- (c) the foregoing definition is intended to be interpreted as broadly and inclusively as possible; and
- (d) as the Term of this lease is up to ninety-nine (99) years, the Parties specifically chose the foregoing general wording to ensure that all taxes, rates, duties, charges, fees, levies, assessments, fines, penalties, interest, costs and amount in lieu thereof were addressed throughout the Term and that the same should not be interpreted by any arbitrator or Court as being non-enforceable for not being sufficiently specific or otherwise against the Landlord.

"Tenant" means The Ottawa Hospital/L'Hopital d'Ottawa;

"Term" means the term of this Lease which shall be for the period commencing on the Commencement Date and ending ninety-nine (99) years from the Commencement Date, or such earlier date that this Lease is terminated in accordance with the terms hereof;

"Transfer" means:

- (a) an assignment or transfer of this Lease, in whole or in part, or any sublease, licence or otherwise sharing of the Leased Premises, in whole or in part;
- (b) any transaction whereby the rights or any right of the Tenant under this Lease or to the Leased Premises are transferred to any Person, whether immediately, contingently or conditionally;
- (c) any transaction by which any right of use or occupancy or possession to all or any part of the Leased Premises is conferred upon any Person, whether immediately, contingently or conditionally;
- (d) a Change in Control or Change of Ownership of the Tenant; or
- (e) includes any transaction or occurrence whatsoever (including, but not limited to, receivership proceedings, seizures by legal process directly or indirectly and transfer by operation of Law), which changes or might change the identity of the Tenant or Persons having lawful control or property interest in this Lease or Leased Premises granted pursuant to this Lease;

provided a Permitted Leasehold Easement shall be deemed to not be a Transfer; and

"Transferee" has the meaning ascribed thereto in Subsection 13.1(a).

1.2 Number and Gender

In this Lease words, if permitted in context, in the singular include the plural and vice-versa and words in one gender include all genders.

1.3 Headings, Captions and Contents

- (a) The table of contents, article numbers, article headings, section numbers and section headings are inserted for convenience of reference only and shall not affect the scope, intent or interpretation of any provision of this Lease. The expressions "Table of Contents", "Article", "Section" and "Subsection" shall mean the applicable Table of Contents, Article, Section and Subsection of this Lease as the context requires.

- (b) Unless otherwise stated, a reference herein or in a Schedule by numerical or alphabetical designation to an Article, Section, Subsection or Schedule shall refer to the Article, Section, Subsection or Schedule bearing that designation in this Lease or in a Schedule.
- (c) The division of this Lease into Articles, Sections and Subsections and the insertion of headings and captions for the same are for convenience of reference only and shall not affect the construction or interpretation of this Lease.

1.4 Extended Meanings

- (a) The words "hereof", "herein", "hereto", "hereunder", "therein" and "thereto" and similar expressions used in this Lease mean and refer to the whole of this Lease and not to any particular Article, Section, Subsection or Schedule, unless the context indicates otherwise.
- (b) "without any set-off" means "without any set-off, deduction, alteration, diminution or abatement whatsoever"; "construct" means "construct or erect"; "construction" means "construction or erection"; "alterations" means "alterations, adjustments, changes, repairs, renewals, restorations, additions, reconstructions, replacements, modifications, improvements, betterments and installations"; "Tenant shall not permit" means "Tenant shall not cause, suffer or permit"; "Tenant agrees" or "Tenant acknowledges" means "Tenant expressly acknowledges and agrees"; and, "Landlord agrees" or "Landlord acknowledges" means "Landlord expressly acknowledges and agrees".

1.5 Statutes, Regulations and Rules

Unless specified otherwise, a reference in this Lease to a statute, regulation or rule refers to that statute, regulation or rule as in force at the date hereof and as the same may be amended, re-enacted, consolidated and/or replaced from time to time, and any successor, substituted or amended statute, regulation or rule, during or after the Term.

1.6 Generally Accepted Accounting Principles

All accounting and financial terms used herein, unless specifically provided to the contrary, shall be interpreted and applied in accordance with Canadian generally accepted accounting principles, consistently applied.

1.7 Calculation of Time

For purposes of this Lease, a period of days shall be deemed to begin on the first day after the event which began the period and to end at 5:00 p.m. (Eastern Standard Time or Eastern Daylight Time, as the case may be) on the last day of the period. If, however, the last day of the period does not fall on a Business Day, the period shall be deemed to end at 5:00 p.m. (Eastern Standard Time or Eastern Daylight Time, as the case may be) on the next Business Day.

1.8 Contract Always Speaking

Where a matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to this Lease according to its true spirit, intent and meaning.

1.9 Construed Covenants

All of the provisions and each obligation or agreement of this Lease, even though not expressed as a covenant, are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate Section hereof.

1.10 Extension of Tenant Indemnification

In any Section of this Lease which contains a release, hold harmless, indemnity, limitation of liability or other exculpatory language in favour of the Landlord, the term "Landlord" also means the Crown, any department of the Government of Canada, any minister of the Crown, any current or former officers, servants, employees, agents, consultants, contractors or volunteers of the Landlord and any other Person for whom the Landlord may be responsible in Law and any Person who has a right of contribution as against the

Landlord (insofar as said Persons may have been acting in connection with Her Majesty the Queen in Right of Canada's capacity as Landlord, and, for clarity and by way of example, any exculpatory language in favour of the Landlord alone arising out of this Lease shall not extend to any such Persons in their capacity as the owner or occupants of lands abutting to the Lands), and "Landlord", solely for the purpose of any such Section, is the agent or trustee, and acting for the benefit of, each of them.

1.11 *Contra Proferentem*

The doctrine of *contra proferentem* shall not apply in the interpretation of this Lease.

1.12 Schedules as Part of the Lease

All schedules are hereinafter set out below are incorporated as an integral part of this Lease and are binding upon the Parties hereto:

- SCHEDULE A - Legal Description of Lands
- SCHEDULE B - Permitted Title Encumbrances
- SCHEDULE C - Infrastructure Relocation Protocol
- SCHEDULE D - Existing Environmental Reports
- SCHEDULE E - Access Protocol
- SCHEDULE F - AAFC Lands
- SCHEDULE G - Annex Building
- SCHEDULE H - Annex Building Heritage Character Statement
- SCHEDULE I - Notice of Satisfaction
- SCHEDULE J - Central Experimental Farm
- SCHEDULE K - Municipal Carling Carve-Out Draft Plans
- SCHEDULE L - NCC Trillium Pathway
- SCHEDULE M - NCC Trillium Pathway Proposed Improvement
- SCHEDULE N - PSPC Pathway
- SCHEDULE O - TOH Parking Lot
- SCHEDULE P - Class "D" Estimation
- SCHEDULE Q - Ineligibility and Suspension Policy

All capitalized words and phrases used in any of the Schedules annexed hereto will have the same meanings as defined in this Lease.

Notwithstanding anything else herein, in the event of an inconsistency or conflict between any provision contained in any Schedule and any provision of this Lease, the provision of the Schedule shall prevail.

ARTICLE 2 GRANT OF LEASE

2.1 Grant and Leased Premises

In consideration of the Rent, covenants and agreements hereinafter reserved and contained on the part of the Tenant, to be paid, observed and performed, the Landlord hereby, subject to Section 2.4, demises and lets to the Tenant the Leased Premises (without a reservation for mines and minerals), and the Tenant leases the Leased

Premises from the Landlord, for and during the Term, unless earlier terminated pursuant to the provisions hereof or at Law.

2.2 Quiet Enjoyment

The Landlord covenants with the Tenant for quiet enjoyment, subject to the terms of and the Tenant's full compliance with the terms of this Lease.

2.3 Tenant Reporting Obligations and Landlord's Access Right

- (a) This Section was drafted to address the Tenant's obligations to report and the Landlord's access rights, as the current preference of the Parties is that the Tenant provide evidence of compliance through the exercise of reporting obligations with the intent that the Landlord will not be required to exercise its access rights.
- (b) The Tenant:
 - (i) upon the written request of the Landlord, shall provide, within a reasonable period, any and all reports, investigations or other documents that the Tenant then customarily produces that evidences compliance with this Lease; it being understood and agreed by the Parties that due to confidentiality and to comply with Laws such reports may need to be redacted or withheld; and
 - (ii) upon the written request of the Landlord, together with specific details of a potential non-compliance hereunder, the Tenant shall provide, within a reasonable period, such other reasonably required reports, investigations or documents that confirm that there is no such non-compliance.
- (c) The Landlord and Parties authorized by the Landlord (which may include, without limitation, the Landlord's agents, employees, Architects, engineers, consultants and invitees) shall have the right to enter, examine, inspect and test (including without limitation soil, water, environmental or other tests, measurements or surveys) the Leased Premises at any time and from time to time for the purpose of:
 - (i) ensuring that the Tenant is in compliance with this Lease (which includes, without limitation, the Tenant's obligations with respect to the Laws, Environmental Laws and the repair and maintenance of the Leased Premises);
 - (ii) any matter directly or indirectly related to the Permitted Title Encumbrances;
 - (iii) to inspect the Leased Premises and its condition (including, without limitation, the Leasehold Improvements and Hazardous Substances);
 - (iv) exercising any rights of the Landlord contained under this Lease; and
 - (v) any other *bona fide* purpose;

all in accordance with the Access Protocol.

2.4 Title

The Tenant acknowledges and agrees that:

- (a) it has searched the title to the Leased Premises prior to the execution of this Lease; and
- (b) is satisfied in all respects with:
 - (i) the existing title; and
 - (ii) the possession that it is hereby receiving of the Leased Premises;

in each case, that it will hereby enjoy upon execution of the Lease.

Without limiting the generality of the foregoing, the Tenant further acknowledges and agrees that the Leased Premises are subject to, among other things:

- (c) the Permitted Title Encumbrances;
- (d) the reservations in Section 44 of the *Land Titles Act*, R.S.O. 1990, c. L-5;
- (e) the subsisting conditions, and any provisions, restrictions, exceptions and reservations, including royalties, contained in the original Letters Patent;
- (f) any Aboriginal Claim; and
- (g) potential errors and omission on surveying plans.

In addition, the Tenant covenants:

- (h) to comply with the Permitted Title Encumbrances and the aforementioned reservations during the Term; and
- (i) at the expiry or earlier termination of the Term, that the title to the Leased Premises shall be surrendered by the Tenant as contemplated in Section 19.2 of this Lease.

2.5 Municipal Carling Carve-out

- (a) The Parties acknowledge that the City of Ottawa and the Landlord have commenced negotiations for the establishment of a proposed Municipal Carling Carve-out which if successfully concluded will require:
 - (i) the Landlord to transfer fee simple ownership of the Municipal Carling Carve-out to the City of Ottawa; and
 - (ii) the Tenant to surrender such portion of the Leased Premises that includes the Municipal Carling Carve-out.
- (b) The Parties agree to cooperate and act reasonably to conduct a process for the partial surrender of the Municipal Carling Carve-out by way of removing the area of the Municipal Carling Carve-out from the Leased Premises provided the Leased Premises shall always have legal access to Carling Avenue. Moreover, the Tenant shall not be entitled to any compensation whatsoever (including, without limitation, costs and expenses) for such partial surrender, nor shall the Landlord be entitled to claim reimbursement for any costs or expenses that the Landlord incurs with respect to the Municipal Carling Carve-out.
- (c) The Parties acknowledge and agree that the Municipal Carling Carve-Out shall not be transferred to the City of Ottawa or excluded from the Lands leased hereunder without obtaining, if applicable, a partial surrender of the Parking Operator Lease and the NCC Sublease.

2.6 Acceptance of the Leased Premises

The Tenant shall accept the Leased Premises on an "as is and where is" basis in their state and condition existing at the Commencement Date, subject only to the Landlord completing the Landlord Work, as specifically provided for herein.

ARTICLE 3 RENT

3.1 Covenant to Pay Rent

The Tenant hereby covenants with the Landlord that the Tenant shall, during the Term, pay to the Landlord all Rent, without notice or demand and without any counterclaim, deduction, set-off, abatement, suspension, deferral, diminution or reduction whatsoever, all as herein provided.

In addition, the Tenant hereby waives any rights that it may have now, or at any time or from time to time in the future, pursuant to the Law to set-off, deduct, abate, counterclaim or otherwise seek compensation against the Rent.

3.2 Base Rent

During each year throughout the Term, the Tenant shall pay annual base rent (the "Base Rent") in the sum of One Dollar (\$1.00). The Base Rent for the entire term shall be paid to the Landlord in advance on or before the Commencement Date.

3.3 Additional Rent

In addition to Base Rent, the Tenant shall pay as additional rent (the "Additional Rent") any and all moneys, sums, costs, expenses or other amounts from time to time as and when the same shall be due and payable pursuant to the provisions of this Lease (save and except for Sales Tax), whether to the Landlord or to a third party or otherwise, all of which shall be deemed to accrue on an incurred basis. For clarity, Additional Rent includes, without limitation, Taxes and payments pursuant to Section 3.4.

The Tenant shall promptly pay to the Landlord as required under this Lease (or if not specified, on demand) any amount of Additional Rent, plus applicable Sales Tax, payable to the Landlord, and shall deliver to the Landlord upon request evidence of due payment of all payments of Additional Rent required to be paid by the Tenant hereunder other than to the Landlord. The obligation of the Tenant to pay any of such amounts owing, accrued or unpaid at the end of the Term shall survive the expiration or early termination of this Lease.

3.4 Absolutely Net Lease – Independent Tenant Covenant To Pay Additional Amounts

The Tenant:

- (a) acknowledges:
 - (i) that the Landlord leased the Leased Premises to the Tenant for nominal consideration for the Term, as the Leased Premises will be used as a Hospital (it being acknowledged that the Tenant is also permitted to use the Leased Premises for the other uses permitted in Article 6); and
 - (ii) that this Lease is a completely carefree and absolutely net lease to the Landlord; and
- (b) covenants and agrees that:
 - (i) the Landlord shall not be responsible during the Term for any costs, charges, expenses and outlays of any nature or kind (subject only to the Landlord completing the obligations as provided in Article 9) whatsoever arising out of, based upon, related to, located on, occasioned by or attributable to the Leased Premises or the Project, which includes, without limitation, those Damages and Claims arising out of, based upon, related to, located on, occasioned by or attributable to:
 1. the Leased Premises;
 2. the use or occupancy of the Leased Premises (including, without limitation, any business carried out therein, thereon or thereunder);
 3. ownership of the Leased Premises;
 4. the contents of the Leased Premises;
 5. Leasehold Improvements;
 6. the Landlord's insurance;
 7. compliance with Law;
 8. environmental matters;
 9. fines, penalties, interest, taxes, licences, rates, duties, fees, levies and assessments; and
 10. the management, operation, or maintenance of the Leased Premises and Project; and

- (ii) the Tenant shall pay on demand to the Landlord all costs, charges, expenses and outlays of every nature whatsoever (whether extraordinary, ordinary, foreseen, unforeseen or otherwise) arising out of, based upon, related to, located on, occasioned by or attributable to the Leased Premises or the Project (which includes, without limitation, those listed in Subsections 3.4(b)(i) 1 to 3.4(b)(i)10, inclusive) for which the Landlord is responsible for at Law, in equity or for which the Landlord otherwise determines, acting reasonably, is payable;

it being agreed by the Parties that:

- (c) the Landlord not being responsible as set out in Subsection 3.4(b)(i) and the obligations for the Tenant to pay pursuant to Subsection 3.4(b)(ii) shall be interpreted broadly and inclusively so as to ensure that this Lease is completely carefree and absolutely net to the Landlord; and
- (d) as the Term of this lease is up to ninety-nine (99) years, the Parties specifically chose the foregoing general wording in Subsection 3.4(b)(i) and (ii) to ensure that all costs, charges, expenses and outlays were addressed throughout the Term and that the same should not be interpreted by any arbitrator or Court as being non-enforceable for not being sufficiently specific or otherwise against the Landlord.

The Tenant further covenants to indemnify save and hold harmless the Landlord against all such costs, charges, expenses, payments and outlays described in this Section 3.4.

ARTICLE 4 TAXES

4.1 Taxes

- (a) The Tenant shall (on its own account or on account of the Landlord, as the case may be) pay or cause to be paid during the Term all Taxes. Unless the Landlord otherwise directs the Tenant in writing, the Taxes shall be paid by the Tenant, on or before they are due, directly to the relevant Governmental Authority or other Person. All amounts payable by the Tenant on account of Taxes shall be adjusted on a *per diem* basis in respect of any period not falling within the Term.
- (b) The Tenant or the Landlord, as the case may be, shall provide to the other upon written request, a copy of any tax bills and assessment notices for the Leased Premises, or any part thereof and such other information in connection with Taxes as the Tenant or the Landlord, as the case may be, reasonably requires and is in that Party's possession or control.
- (c) Upon request by the Landlord, the Tenant shall deliver to the Landlord receipted tax bills or other written evidence of the payment by the due date of Taxes, including, if applicable, interest and penalties for any late payment or non-payment.
- (d) For greater certainty, but without limiting the generality of this Section 4.1 and the definition of Taxes, the Parties acknowledge and agree that before the Commencement Date, the Landlord made payments in lieu of taxes with respect to the Leased Premises pursuant to the *Payments in Lieu of Taxes Act* (Canada).

4.2 Landlord's Right to Pay Taxes

In the event that the Tenant fails to pay Taxes when due, the Landlord shall have the right, but not the obligation, to pay such unpaid Taxes, at the sole cost and expense of the Tenant. The Tenant further covenants to pay to the Landlord on demand an amount equal to any amounts so paid by the Landlord, plus fifteen (15) percent, representing the Landlord's overhead and administrative costs, plus Sales Tax.

4.3 Tenant's Right to Appeal Taxes

The Tenant shall have the right, at its sole cost and expense, upon advanced notification to the Landlord and if acting in good faith, of contesting or appealing any assessment or of applying for a reduction of the amount of any Taxes (which includes, without limitation, grants in lieu of taxes). If permitted by the Law, pending the final determination of the Taxes payable, the Tenant shall have the privilege of abstaining from payment of the Taxes in respect of which such appeal or application is made, provided the Tenant shall first furnish to the Landlord satisfactory financial security for their payment and such

amount may, in the Landlord's sole and unfettered discretion and without liability whatsoever, be paid to the relevant Governmental Authority or other Person; it being acknowledged and agreed by the Parties that the Landlord may cash in or call upon such financial security in order to make such payment. The Tenant may take such action in the Tenant's name only, or, if required by Law, in the name of the Landlord, in which case, the Tenant shall indemnify and save and hold harmless the Landlord in respect of such action and all costs and expenses relating thereto.

4.4 Sales Tax

The Tenant shall pay to the Landlord when due any and all Sales Taxes imposed on the Landlord or the Tenant:

- (a) with respect to Rent payable by the Tenant hereunder;
- (b) in respect of the rental of premises under this Lease or with respect to any deemed resupply for the purposes of same;
- (c) in respect to the goods and services provided hereunder; and
- (d) otherwise with respect to or arising under this Lease.

Notwithstanding anything else herein, the amounts payable by Tenant under this Section 4.4 shall be deemed not to be Rent, but Landlord shall have all of the same remedies and rights of recovery of such amounts as it has for the recovery of Rent under this Lease.

ARTICLE 5 UTILITIES AND COSTS OF OWNERSHIP

5.1 Responsibility Regarding Utilities

As of the Commencement Date, the Tenant assumes all responsibility with respect to the availability, continuity, supply, existence or non-existence of any utility, service or system serving the Leased Premises and any part thereof and the Tenant hereby agrees to discharge, as its own obligation, any such responsibility relating to any utility, service or system serving the Leased Premises. The Tenant hereby covenants with the Landlord to observe and perform during the entire Term any obligation of the Tenant relating to any utility, service or system serving any part of the Leased Premises and to indemnify and save and hold harmless the Landlord with respect thereto.

5.2 Tenant Covenant to Pay Utilities

The Tenant shall be solely responsible for, and shall promptly pay, or cause to be paid, to the appropriate utility supplier, all charges (including, without limitation, any fines, penalties, interest and costs relating thereto) in relation to any utility consumed or used during the Term on any part and all of the Leased Premises. The Tenant shall indemnify and save and hold harmless the Landlord from all Claims and Damage of any nature whatsoever arising out of, based upon, related to, occasioned by or attributable to any use or consumption of any utility and any utility charges relating to the Leased Premises.

5.3 Evidence of Payment of Utilities

The Tenant shall, from time to time, at the request of the Landlord, deliver or cause to be delivered to the Landlord receipts or other reasonable evidence of payment of amounts required to be paid pursuant to Section 5.2.

5.4 Landlord not Responsible

- (a) The Tenant shall be solely responsible for any construction, relocation, replacement, removal, alteration, repair and maintenance of and any adjustment to any service, system and utility line and any related works and for any extensions of such services, systems and utilities servicing the Leasehold Improvements during the Term.
- (b) The Tenant acknowledges and agrees that the Landlord shall not be liable or responsible in any way to the Tenant for any or all Claims or Damage of any nature whatsoever resulting from any interruption or any cessation or unavailability of, or a failure in, the supply of any utility, service or system serving the Leased Premises.

5.5 Cost of Ownership

Except as may be otherwise herein set out, as of the Commencement Date, the Tenant assumes all liability for and agrees to pay, fulfill or satisfy:

- (a) subject to any obligation under Sections 9.1, 9.2 and 16.3, all obligations of the Landlord as owner of the fee simple title of the Lands which arises or accrues on or after the Commencement Date including, without limitation, any obligation arising out of, resulting from or pursuant to any Laws or pursuant to the common law and the Tenant covenants with the Landlord to observe and perform any such obligation of the Landlord during the entire Term and to indemnify and save and hold harmless the Landlord with respect thereto;
- (b) subject to any obligation under Section 9.1, all obligations of the Landlord as landlord of the Leased Premises which arises or accrues on or after the Commencement Date and which relates to the Leased Premises or any part thereof and which is not otherwise expressly dealt with or referred to in this Lease or any other agreements; and
- (c) all obligations at Law, and in accordance with all Laws, including, without limitation, Environmental Laws in accordance with Section 12.4; and

all such amounts due, payable and paid by the Tenant to the Landlord or to a Governmental Authority or other Person with regard to the Landlord's liabilities for the Lands are to be paid by the Tenant as Additional Rent.

ARTICLE 6 USE OF PREMISES

6.1 Permitted Use

The Leased Premises shall not be used for any purpose other than:

- (a) from the Commencement Date to the Commencement of Construction, for the Preliminary Uses; and
- (b) from the Commencement of Construction to the expiration or early termination of the Term:
 - (i) the construction and operation of a Hospital; and
 - (ii) for the Permitted Ancillary Uses

(collectively, the "Permitted Use"). For clarity, the Permitted Use:

- (c) shall not include any use which works, profits from, wins, carries away or otherwise enjoys mines and minerals; it being agreed by the Parties that the mines and minerals were not reserved hereunder solely to prohibit third parties from working, profiting, winning, carrying away or otherwise enjoying the same (as compared to conferring a benefit on the Tenant with respect to the mines and minerals); and
- (d) shall be subject to Development Approvals.

6.2 Interpretation of Permitted Ancillary Uses

The Parties acknowledge and agree that the definition of Permitted Ancillary Uses shall be interpreted liberally. When determining whether an ancillary use, purpose or service is supportive of the operation of a Hospital, the following factors shall be considered:

- (a) the global standards and practices for hospitals; and
- (b) whether the primary consumers of the use, purpose or service have a connection to the Hospital.

6.3 Compliance with Law

Without limiting anything contained herein (which includes, without limitation, Sections 8.1(d), Article 10 and 24.18), the Tenant's use and occupation of the Leased Premises shall be in compliance with:

- (a) Law (which includes, without limitation, compliance with the *National Capital Act*); and
- (b) provisions of Laws applicable to the Landlord, as owner and/or as the Crown, and all actions required thereunder; it being acknowledged that:
 - (i) notwithstanding that the Leased Premises are leased to the Tenant, the Landlord has and may have obligations under Law with respect to the Tenant's use and occupation of the Leased Premises; and
 - (ii) the foregoing is only applicable to the extent that there is an obligation on the Landlord at Law.

The Landlord shall consult with the Tenant in making a determination in this regard. The Tenant shall take all steps reasonably required for the Landlord to be in compliance with such Laws. For clarity, as of the Commencement Date, the Landlord has an obligation pursuant to Section 67 of the *Canadian Environmental Assessment Act, 2012* with respect to the Project.

ARTICLE 7 MANAGEMENT, REPAIRS AND MAINTENANCE

7.1 Management

The Tenant acknowledges and agrees that it shall be solely responsible for all property management of and for the Leased Premises (which the Tenant may cause a manager or managers to perform). The Tenant hereby further assumes the full and sole responsibility for the management of the Leased Premises during the Term and indemnifies and saves and holds harmless the Landlord from the same.

7.2 Maintenance and Repair

The Tenant shall, at all times during the Term:

- (a) keep or cause to be kept and maintained the Leased Premises and every part thereof; and
- (b) promptly make all needed repairs, replacements, alternations, additions, changes, substitutions and improvements, ordinary or extraordinary, foreseen or unforeseen, structural or non-structural;

each:

- (c) from when the Tenant commences operation of the Hospital to and including the seventy-fifth (75th) anniversary of the Commencement Date, to at least the higher of the following two standards:
 - (i) not less than the standard of any other Hospital in a major urban centre in the Province; and
 - (ii) the standard required at Law; and
- (d) from the day following the seventy-fifth (75th) anniversary of the Commencement Date to the end of the Term, the standard required at Law.

The Tenant hereby further assumes the full and sole responsibility for the condition, operation, repair, replacement and maintenance of the Leased Premises during the Term and indemnifies and saves and holds harmless the Landlord from the same.

For clarity, the Parties acknowledge and agree that:

- (a) the Landlord shall not be obliged to keep, maintain, repair, replace, alter or make additions, changes, substitutions or improvements to the Leased Premises or any part thereof, nor shall the Landlord have any liability with respect thereto; and
- (b) in the event of a dispute arising under this Section, the Parties shall complete the dispute resolution procedures provided for in Article 21.

7.3 Emergency Access

The Parties confirm that the Landlord's access in the event of emergencies is governed by the Access Protocol attached hereto at Schedule E.

ARTICLE 8 LEASEHOLD IMPROVEMENTS

8.1 Leasehold Improvements

There shall be no alterations, constructions, repairs, replacements or improvements to, in, on, under or over the Lands, the Buildings or any part of the Leased Premises by the Tenant or another on the Tenant's behalf (any of which or collectively referred to herein as the "Leasehold Improvements"), save and except to the extent that the Leasehold Improvements are carried out in accordance with following provisions:

- (a) all Leasehold Improvements shall be performed and completed at the Tenant's sole cost and expense in accordance with the standards provided for in Subsections 7.2(c) and (d);
- (b) the Tenant shall, during the period it is completing any Leasehold Improvements, effect and shall keep in force the insurance as required herein;
- (c) the Tenant shall be responsible for and indemnify and save and hold harmless the Landlord against any and all costs, liabilities and expenses arising out of, based upon, related to, located on, occasioned by or attributable to or imposed upon the Landlord as a result of the Leasehold Improvements;
- (d) without limiting anything contained herein (which includes, without limitation, Sections 6.3, Article 10 and 24.18), the Tenant shall ensure that all Leasehold Improvements comply with Laws, and, without limiting the generality of the foregoing and in addition, to the extent not required by Law:
 - (i) all Laws that would be applicable if the Lands were not owned by the Crown;
 - (ii) all Environmental Laws as required in Section 12.4; and
 - (iii) all Laws that are applicable based on the Leased Premises being public lands, as defined under the *National Capital Act*,

for clarity, but without limiting the foregoing, the Tenant shall obtain all Development Approvals (including, without limitation, those required, under this Lease or at Law, from the NCC, the City of Ottawa and the Province);

- (e) without limiting the generality of anything contained herein:
 - (i) notwithstanding that the Leased Premises are leased to the Tenant, the Parties acknowledge that the Landlord has obligations under Environmental Laws with respect to the Project;
 - (ii) all Leasehold Improvements shall be subject to such provisions of the Environmental Laws and any required mitigation measures to be compliant thereunder;
 - (iii) the Landlord shall consult with the Tenant in making such determination; and
 - (iv) the Tenant shall take all steps required for the Landlord to be in compliance with such Environmental Laws.

For clarity, as of the Commencement Date, the Landlord has an obligation pursuant to Section 67 of the *Canadian Environmental Assessment Act, 2012* with respect to the Project;

- (f)
 - (i) with respect to:

1. the initial construction of the Project; and
2. any construction exterior to the initial construction of the Project having a value in excess of one million dollars (\$1,000,000);

the Tenant shall deliver to the Landlord at least two (2) sets of "As Built" drawings for each Leasehold Improvement, save and except for Medical Equipment located inside the Building; it being agreed by the Parties that such "As Builts" shall be delivered by the Tenant to the Landlord promptly after completion of the relevant Leasehold Improvement;

- (ii) the Tenant shall deliver, upon reasonable request of the Landlord, to the Landlord at least two (2) sets of "As Built" drawings for each Leasehold Improvement, save and except for:
 1. Medical Equipment located inside a Building; and
 2. Leasehold Improvements that do not have "As Builts";

it being agreed by the Parties that such "As Builts" shall be in a format and meeting the requirements reasonably requested by the Landlord from time to time;

- (g) no Leasehold Improvement shall include, either or both:
 - (i) Commercial Signage or Commercial Access on the exterior of any or all Buildings; and
 - (ii) Commercial Signage that is reasonably intended to be visible from the exterior of any or all Buildings; it being agreed by the Parties that some signage may be incidentally visible, but such signage shall not be specifically directed to the exterior of the Building;

save and except with the Landlord's prior written consent, which may, subject to the following, be unreasonably withheld. The Landlord shall not unreasonably withhold its consent to signage for a Commercial Entity which is operating a parking lot. Notwithstanding the foregoing, such signage shall remain subject to Subsections 10.2(q), 10.2(r), and 10.2(s);

- (h) no Leasehold Improvements shall:
 - (i) have the effect of establishing, developing or redeveloping; or
 - (ii) be used as;

a standalone Building (which includes, without limitation, a Building with a link to another Building(s)), which is primarily used by a Commercial Entity, Commercial Entities or as a retail store(s); and
- (i) if the Landlord determines that any Leasehold Improvement is in breach of this Lease or fails to comply with the requirements of this Lease in any respect, the Landlord may give written notice to the Tenant and the Tenant shall forthwith remedy such breach or failure to comply. The Tenant shall also, at its sole cost and expense, make good any deficiency in such Leasehold Improvements and remedy any failure to comply with the requirements of this Lease.

Nothing in this Lease should be interpreted to require the Landlord's written consent or approval, as landlord, for commencing Leasehold Improvements.

8.2 Items of Archaeological or Historical Interest or Value

- (a) As between the Parties, all Archaeological/Historical Finds are or shall be the sole and absolute property of Landlord.
- (b) Upon discovery of Archaeological/Historical Finds the Tenant shall immediately:
 - (i) cease any activities which may disturb the same;
 - (ii) notify the Landlord of the items discovered, the circumstances relating to the discovery and location of any such items; and

- (iii) retain a professional archaeologist to provide a plan to appropriately preserve the discovery.
- (c) The Tenant shall not perform any activity which may disturb the Archaeological/Historical Finds or the thirty (30) metre radius surrounding the Archaeological/Historical Finds (or such greater area reasonable in the circumstances) unless:
- (i) the Landlord has:
 - 1. reviewed and approved, acting reasonably, the Subsection 8.2(b)(iii) plan; and
 - 2. provided:
 - A. additional protocol reasonably required by the Landlord (which may include, without limitation, agreed protocols between the Crown and Aboriginals, Aboriginal participation or other Crown policies and procedures); or
 - B. confirmation that no additional protocol is required;

it being agreed by the Parties that if no additional protocol is provided by the Landlord within thirty (30) days of the Tenant delivering the Subsection 8.2(b)(iii) plan to the Landlord, the Landlord shall be deemed to have provided confirmation that no additional protocol is required; and
 - (ii) the Tenant is in strict compliance with:
 - 1. the Subsection 8.2(b)(iii) plan;
 - 2. any Subsection 8.2(c)(i)2.A protocol; and
 - 3. all other obligations under this Lease (which includes, without limitation, those contained in Section 10.2) and at Law regarding the Archaeological/Historical Finds.
- (d) For clarity, the Tenant shall (save and except in connection with the Landlord's Work) be solely responsible for all Claims and Damages of any nature whatsoever caused by or arising from Archaeological/Historical Finds (which may include, without limitation, construction delays) and shall indemnify and save and hold harmless the Landlord for the same.

8.3 Heritage Requirements

- (a) The Tenant acknowledges that:
 - (i) the Central Experimental Farm ("CEF"), is a National Historic Site ("NHS"), as shown outlined in red on the Schedule J, as designated by the Crown minister responsible for the Parks Canada Agency, pursuant to the *Historic Sites and Monuments Act*;
 - (ii) the FLUDA process will include a review of the Project to, among other things, ensure that it does not unduly compromise the heritage value or cultural landscape of the NHS;
 - (iii) the FLUDA may have specific conditions regarding protection of the heritage integrity of the overall CEF; and
 - (iv) the Leased Premises forms part of the National Interest Land Mass;
- (b) The Parties acknowledge and agree that:
 - (i) the Annex Building is a Recognized Heritage Building (as determined by the Federal Heritage Buildings Review Office);

- (ii) the Landlord's obligation in Subsection 9.1(a) requires the Landlord to obtain approvals, including without limitation, a FLUDA, before the demolition of the Annex Building ("Demolition Approval"); and
 - (iii) without derogating the Landlord's obligations pursuant to subsection 8.3(c), the Landlord has made no representation, warranty or covenant with respect to the time it will take to obtain the Demolition Approval or whether the same is obtainable.
- (c) To facilitate the Demolition Approval the Parties shall each use reasonable efforts to pursue the Demolition Approvals, including without limitation:
- (i) attending meetings between representatives of the Landlord and Tenant at the appropriate levels of seniority and not less frequently than every two (2) months;
 - (ii) representatives of the Tenant and Landlord shall escalate issues as appropriate;
 - (iii) the Landlord and Tenant jointly (or separately, if appropriate in the circumstance and in a coordinated manner) advocating for the Demolition Approval to the relevant Governmental Authorities and to any Person, as necessary;
 - (iv) the Landlord submitting all applications in connection with the Demolition Approval within reasonable timelines, including without limitation, those required by any Governmental Authority; and
 - (v) the Tenant seeking evidence and opinions required for obtaining the Demolition Approval (which includes without limitation an opinion letter from the Tenant's Architect that the Annex Building cannot be physically incorporated into the Project).
- (d) In the event that the Demolition Approval is not obtained within twelve (12) months of the Commencement Date, the Parties shall have a senior executive (being, the Chief Operational Officer of the Tenant and the Associate Assistant Deputy Minister of the Landlord) or higher, meet to:
- (i) consider the reason(s) why the Demolition Approval was not obtained;
 - (ii) develop a strategy for resolving such issues and obtaining the Demolition Approval; and
 - (iii) establish a schedule for the pursuit of the Demolition Approvals; and
- thereafter meet every six (6) months, at the senior executive level or higher, until the Demolition Approval is obtained.
- (e) The Tenant shall comply with any FLUDA conditions regarding the demolition of the Annex Building.
- (f) Within a reasonable period following the Demolition Approval, the Landlord shall sign the Notice of Satisfaction regarding the Demolition Approval attached as Schedule I hereto and forthwith deliver the Notice of Satisfaction to the Tenant (the date that such notice is delivered shall be the "Demolition Approval Date"). Notwithstanding the Demolition Approval, the Tenant shall consider incorporating heritage character defining elements from the Annex Building (all as contained in the Heritage Character Statement attached hereto as Schedule H) into the design of the Project.
- (g) The Tenant shall not demolish the Annex Building.

8.4 Project Progression

- (a) The Tenant agrees that from the Commencement Date until the Commencement of Construction, it shall *bona fide* diligently and actively pursue:
 - (i) the planning and development of the Project (which includes, without limitation, seeking all required funding/guarantees (which includes, without

limitation, those from the Minister and the Province), seeking all approvals required at Law and establishing all required contracts); and

- (ii) the construction of the Project;
- (the "Pursuit of the Project").
- (b) For clarity:
 - (i) the obligation in subsection 8.4(a) is not intended to derogate from the Tenant's broad, discretion in determining the method of advancing the Pursuit of the Project; and
 - (ii) the Tenant may pursue activities in any sequence.
 - (c) The Landlord further acknowledges that the Pursuit of the Project is an extended and complex process and may be influenced by a number of external factors, including, without limitation, changing practices in the delivery of public health care, shifting priorities of the Province or other Governmental Authorities, market conditions and the achievement of fundraising requirements.
 - (d) The Tenant, upon the written request of the Landlord, shall provide, within a reasonable period, evidence of compliance with this Section 8.4; it being understood and agreed by the Parties that due to confidentiality and to comply with Laws such evidence may need to be redacted or withheld.
 - (e) In the event of an alleged default of the foregoing obligation, the matter shall be referred to dispute resolution in accordance with Article 21, provided if:
 - (i) the matter is referred to arbitration; and
 - (ii) there is found to be a default of the foregoing obligation (the "Failure to Proceed Default");

the arbitrator or panel of arbitrators:

 - (iii) shall, for the first Failure to Proceed Default, only have the ability to award injunctive relief; and
 - (iv) may, for any subsequent Failure to Proceed Default (which includes, without limitation, a continuation of the first Failure to Proceed Default), have, among other things, the ability to terminate this Lease.

For clarity, the foregoing shall not derogate or otherwise limit the Landlord's right to terminate this Lease pursuant to Section 20.1.

8.5 Prosecution of Construction

Once there is Commencement of Construction, the Tenant shall complete the Project, as soon as is reasonably practicable; it being acknowledged and agreed by the Parties that the Project may be completed in phases over an extended period provided that the first phase shall include a Hospital.

8.6 National Capital Commission

Without limiting the generality of Subsections 8.1(e) and (f), the Tenant acknowledges and agrees that:

- (a) the Leased Premises are (or shall be deemed to be) public lands as defined in the *National Capital Act*, R.S.C. 1985, c. N-4 and subject to the *National Capital Act*;
- (b) prior to Commencement of Construction, and thereafter from time to time depending on the Leasehold Improvements and the requirements herein, the Tenant shall obtain, in advance, all Development Approvals from the NCC on the basis that the Leased Premises are public lands (as defined under the *National Capital Act*, R.S.C. 1985, c. N-4); for clarity, there is no requirement for such advanced Development Approval from the NCC for Medical Equipment contained inside a Building; it being acknowledged by the Tenant that the Project will be subject to several FLUDAs;

- (c) neither:
- (i) the federal land use transaction approval from the NCC that permitted the Landlord to enter into this Lease; nor
 - (ii) the execution of this Lease by the Landlord;
- restricts or diminishes in any capacity the control and jurisdiction of the NCC over the Leased Premises as public lands.

8.7 Municipal Road Conveyances

If:

- (a) the City of Ottawa *bona fide* requires a portion of the Lands (the "**Road Allowance**") to establish a public street, alley, sidewalk, planting strip, traffic circle or median for the Project;
- (b) the Road Allowance is non-material to the Lands as a whole, is less than five (5) square metres and does not bifurcate the Lands;
- (c) the Tenant gives written notice to the Landlord:
 - (i) requesting the Landlord to convey to the City of Ottawa, in fee simple, the Road Allowance and amending this Lease to exclude the Road Allowance from the Lands; and
 - (ii) providing the Landlord with sufficient evidence that the City of Ottawa so *bona fide* requires the Road Allowance and that the Road Allowance is non-material, less than five (5) square metres and does not bifurcate the Lands; and
- (d) the Landlord and Tenant amend this Lease to exclude the Road Allowance from the Lands;
- (e) the City of Ottawa agrees to accept the transfer of the Road Allowance from the Landlord, on such standard terms and conditions that the Landlord uses for transfers to the City of Ottawa;
- (f) the Landlord can satisfy herself that the Landlord will incur no liability on account of such transfer (which includes, without limitation, those related to Aboriginal Claims);
- (g) the Landlord has the legal capacity and right to transfer the Road Allowance to the City of Ottawa;
- (h) the Landlord is reasonably able to obtain all approvals, permissions and authority, internally and at Law, to so transfer the Road Allowance to the City of Ottawa; and
- (i) the City of Ottawa or the Tenant pays to the Landlord on or before the closing of the transfer all of the Landlord's costs and expenses related to the transfer and the fair market value for the Road Allowance, as determined by the Landlord, acting reasonably;

the Landlord shall provide the City of Ottawa with a transfer in fee simple of the Road Allowance. For clarity, the Parties acknowledge and agree that the Road Allowance shall not be transferred to the City of Ottawa or excluded from the Lands leased hereunder without obtaining, if applicable, a partial surrender of the Parking Operator Lease and the NCC Sublease.

8.8 Location and Relocation of Infrastructure

Any or all Existing Infrastructure shall not be moved, disturbed or otherwise affected, save and except in compliance with the Infrastructure Relocation Protocol.

8.9 Ownership of Buildings

The Landlord and the Tenant agree that all Leasehold Improvements (which includes, without limitation, all Buildings, but specifically excludes the Medical Equipment), which

the Tenant may construct or cause to or permit to be constructed upon the Leased Premises from time to time, are and shall be fixtures to the Leased Premises and, subject to the restoration obligations contained herein, are intended to be and become the absolute property of the Landlord upon the expiration or termination of this Lease, but as between the Landlord and the Tenant during the Term shall be the separate property of the Tenant and not of the Landlord but subject to and governed by all the provisions of this Lease applicable thereto; provided always:

- (a) that the Landlord's absolute right of property in the Leasehold Improvements (save and except for the Medical Equipment), which will arise upon the expiration or earlier termination of this Lease, shall take priority over any other interest in the Leasehold Improvements which may now or hereafter be created by the Tenant;
- (b) that all dealings by the Tenant with the Leasehold Improvements (save and except for the Medical Equipment), which in any way affect title thereto, shall be subject to this right of the Landlord; and
- (c) that the Tenant shall not assign, encumber or otherwise deal with its interest in the Leasehold Improvements (save and except for the Medical Equipment) separately from any permitted dealing with the entire interest of the Tenant under this Lease, to the intent that no person shall hold or enjoy any interest in this Lease acquired from the Tenant which does not at the same time hold a like interest in the Leasehold Improvements (save and except for the Medical Equipment).

For clarity, nothing herein contained shall prevent the Tenant or any sublessee from removing any fixtures which are in the nature of ornamental, trade fixtures or Leasehold Improvements provided the Tenant or sublessee shall make good any damage caused by such removal.

8.10 Construction Liens

- (a) The Tenant covenants that it shall not, during the Term, permit any construction liens to be, or to remain, registered against the title to the Lands or the Leased Premises by any contractors or subcontractors by reason of work, labour, services or material supplied or claimed to have been supplied to Leased Premises or any part hereof, and that it will take all steps necessary to cause such liens to be discharged or vacated, as the case may be, within forty (40) days of registration of such liens. Nothing herein shall prevent the Tenant from contesting any liability to a third party for any claim for lien.
- (b) The Tenant acknowledges that the Landlord is not, nor should be held to be, accountable as owner (as that term is defined in the *Construction Lien Act, 1990*, as amended) with respect to any construction on the Lands and work or services supplied to the Leased Premises. Without limiting the generality of the foregoing, the Parties acknowledge and agree that Leasehold Improvements made to the Lands or to the Leased Premises have not and will not be made at the request of the Landlord, but rather at the request of the Tenant.
- (c) The Tenant agrees to indemnify and save and hold harmless the Landlord of and from all Claims and Damages of any nature whatsoever incurred by the Landlord as a result of any construction lien being filed against the title to the Lands or the Leased Premises by or on behalf of any contractor or subcontractor.
- (d) In the event that the Tenant does not vacate the lien within forty (40) days of registration of such lien, or in the event, in the Landlord's opinion, the Leased Premises or any part thereof or the Tenant's interest therein may become liable to any forfeiture or sale or is otherwise in jeopardy, the Landlord may, but shall not be obliged to, secure the removal of any lien filed or registered at any such time by payment of the disputed amount into a Court and any amount paid by the Landlord in doing so, together with all costs and expenses of the Landlord, shall be reimbursed to the Landlord by the Tenant on demand.
- (e) The Tenant will pay, as Additional Rent, all moneys, fees and disbursements, expended on behalf of or spent by the Landlord to defend any lawsuit for a lien or trust claim in which the Landlord or the Attorney General of Canada is named as a defendant.

- (f) Nothing herein contained shall authorize the Tenant, or imply any consent or agreement or request on the part of the Landlord, to subject the Lands or the Leased Premises to any construction lien or other lien of any nature or kind whatsoever. Notice is hereby given that the Landlord expressly refuses and denies any consent or agreement or request to permit the Lands and the Landlord's estate or interest in the Leased Premises to be subject to any construction lien or other builder's type lien of any nature or kind.

8.11 Approval

The Parties acknowledge and agree that, notwithstanding that the Landlord is Her Majesty the Queen in the Right of Canada, as represented by the Minister of Public Works and Government Services, any approvals, consents or other determinations pursuant to the Development Approvals or otherwise at Law (to the extent that they are given or made by the Crown or the Crown's agents), are deemed not to be the decision of the Landlord, as lessor. By way of example, but without limiting the generality of the foregoing:

- (a) the approvals of the NCC pursuant to Section 12 of the *National Capital Act* (Canada); and
- (b) the granting of an Environmental Permit;

shall each be deemed not to be a decision by the Landlord, as lessor, under this Lease.

ARTICLE 9 LANDLORD'S OBLIGATIONS REGARDING ANNEX AND REIMBURSEMENT FOR INCREMENTAL COSTS

9.1 Demolition of Annex

- (a) Prior to the later of:
- (i) three (3) years following the Commencement Date; and
- (ii) eighteen (18) months following the Demolition Approval Date;

the Landlord shall, at its sole cost and expense:

1. decommission;
2. demolish; and
3. remove all demolition waste and debris in respect of;

the Annex Building, all as more particularly provided for in the Class "D" Estimation attached at Schedule P (the "Landlord's Work"). Notwithstanding anything else herein, the Landlord may retain any or all salvage from the Annex Building (which includes, without limitation, the boilers contained therein) and the Tenant shall not be entitled to a payment for the same.

For clarity, the foregoing obligation of the Landlord is conditional upon obtaining the Demolition Approval (which includes, without limitation, the FLUDA), all as provided in Subsection 8.3(b).

- (b) The Landlord's obligations under Subsection 9.1(a) shall be completed in a proper manner consistent with construction industry standards and in compliance with Law.
- (c) Prior to the Landlord tendering the decommissioning, demolition or removal work required under Subsection 9.1(a), the Landlord shall provide to the Tenant the Landlord's scope of work. Upon receipt of scope of work, the Tenant may review it so as to ensure that it is consistent with the Class "D" Estimation attached at Schedule P.
- (d) Until the later of:
- (i) three (3) years following the Commencement Date; and
- (ii) eighteen (18) months following the Demolition Approval Date;

the Landlord shall pay for the cost and expense of supplying utilities to the Annex Building (it being agreed by the Parties that the Landlord shall determine which, if any, utilities are required) and shall have a right of access to the Annex Building twenty-four (24) hours a day, seven (7) days a week for operating and maintaining the Annex Building (it being agreed by the Parties that neither of the Parties shall be under any obligation to operate or maintain the Annex Building), without following the Access Protocol.

9.2 Incremental Costs

(a) The Landlord and the Tenant acknowledge and agree that, as of the Commencement Date, there are the Listed Pre-existing Conditions on the Lands. Moreover, the Landlord agrees to reimburse the Tenant for a certain amount of certain incremental costs to the Project, which directly results from such Listed Pre-existing Conditions, all as more particularly described in this Subsection 9.2(b).

(b) Provided:

- (i) the Tenant, or another on the Tenant's behalf, completes environmental remediation or management of the Lands that is required pursuant to the then Law and that the Tenant reasonably believes may be required for the Project; and
- (ii) the Tenant delivers to the Landlord evidence, within twenty-four (24) months following the Commencement of Construction, that such work was completed (together with a reasonably detailed scope of work that demonstrates compliance with this Section 9.2);

the Landlord shall, subject to Subsection 9.2(c), reimburse to the Tenant, within ninety (90) days of request by the Tenant, together with an invoice from the Tenant for the same, the cost equitably attributed to any or all of such remediation or management work:

(iii) that is required as a result of Listed Pre-existing Conditions; and

(iv)

1. that was required pursuant to Environmental Laws as of the Commencement Date (which includes the standards, limits, criteria and levels required therein); it being acknowledged and agreed that the Landlord is not responsible for standards, limits, criteria and levels of remediation or management required by Law becoming more onerous after the Commencement Date; or
2. that involves the management, or removal and disposal of the non-impacted concrete demolition waste as described in the definition of Listed Pre-existing Conditions;

minus all costs that would have been required for the Project in the absence of the Listed Pre-existing Conditions.

(c) The Landlord shall not reimburse the Tenant for any amount in excess of the Absolute Reimbursement Maximum. In addition, no payment shall be made after the date that is twenty-four (24) months following the Commencement of Construction. For clarity, the Parties acknowledge and agree that:

- (i) at the expiration of such twenty-four (24) month period, no further payments shall be made; and
- (ii) the Tenant shall not be entitled to a credit or other payment if less than the Absolute Reimbursement Maximum is then paid.

**ARTICLE 10
NCC/LANDLORD REQUIREMENTS**

10.1 Public Lands

Without limiting anything contained herein (which includes, without limitation, those contained in Sections 6.3, 8.1(d), Article 10 and Section 24.18), the Tenant shall use and occupy the Leased Premises in compliance with all Laws that are applicable based on the Leased Premises being public lands, as defined under the *National Capital Act*, including, without limitation, all obligations to obtain all approvals, permits and licences required thereunder.

10.2 Compliance with Federal Land Use, Design and Transaction Requirements

The Tenant shall be bound by and comply with all of the terms, conditions and obligations under the Federal Land Use and Transaction Approval (the "FLUTA"), approved June 1, 2017 and executed by Daniel Champagne, Executive Director of Planning (File CP2299-18853, Integrated Asset Management Information System 18853) and all terms, conditions and obligations contained therein shall be incorporated into this Lease by reference, *mutatis mutandis*, as covenants from the Tenant to the Landlord; it being agreed by the Parties that: (i) any ambiguities in the FLUTA and what is to be included as such terms, conditions and obligations shall be determined by the Landlord, in the Landlord's sole and unfettered discretion; and (ii) in the event of a conflict between the terms and conditions of this Lease and the provisions of the FLUTA as incorporated *mutatis mutandis* as part of this Lease, the provisions of the FLUTA as so incorporated shall prevail.

For clarity, but without limiting the generality of the foregoing, the Tenant covenants to the Landlord that:

- (a) the Project shall be subject to subsequent phased federal approvals, with a focus on design quality and identified capital realm principles;
- (b) the Tenant shall ensure that any consultation requirements are addressed;
- (c) the capital design principles described in the FLUTA shall be used to guide the design and review of the Lands in subsequent federal approvals during the design development of the Project;
- (d) all Leasehold Improvements, to the extent applicable, are subject to the *National Capital Act* and federal approvals process (including heritage, landscape and design); it being agreed that such approvals may be granted in phases;
- (e) the Project procurement method shall reflect requirements to submit and obtain federal approvals;
- (f) the Tenant will comply with all conditions identified in the FLUTA related to the use and design of the Hospital and parking requirements;
- (g) the Tenant will construct a new world-class hospital and teaching facility;
- (h) the Tenant will satisfy the requirements of all regulatory authorities associated with the Project;
- (i) the Project shall be subject to the *National Capital Act* and the Tenant shall submit for design approval thereunder (including, landscape, heritage and compatibility with the capital planning framework);
- (j) the Project procurement process shall reflect compliance with the *National Capital Act*;
- (k) the Tenant:
 - (i) shall:
 - 1. ensure that the public multi-use pathway connection between Carling Avenue Trillium Line/O-Train and the Dow's Lake Pavilion (that is, the NCC Trillium Pathway) be maintained and/or improved; and

2. permit those authorized by the Landlord to improve the NCC Trillium Pathway as illustrated in Schedule M;
- (ii) covenants that the PSPC Pathway is to be retained, incorporated, or re-established on the Lands; it being agreed by the Parties that the Tenant shall have complete discretion to relocate the PSPC Pathway to any location on the Leased Premises provided:
 1. the access points to the Lands (that is, two (2) from the Prince of Wales Drive and two (2) from Carling Avenue, all as shown on Schedule N) are retained or are in a proximate location; and
 2. the paths remain connected; and
 - (iii) covenants that the NCC Trillium Pathway, which provides a key north-south multi-use recreational link within the City of Ottawa, is to be retained; it being understood by the Parties that this Subsection 10.2(k)(iii) contains some duplication of the obligations contained in Subsection 10.2(k)(i);
- in each case it being agreed that:
- (iv) during construction, the foregoing pathways and access points may be temporarily relocated; and
 - (v) public access to these pathways will continue to be made available on an on-going basis, at all times;
- (l) part of the Lands are encumbered by the Parking Operator Lease. Until the expiry of the Parking Operator Lease, the premises leased hereunder shall not be used for any purpose other than as permitted under the Parking Operator Lease; for clarity, during the term of the NCC Sublease (which, for clarity, may extend beyond the term of the Parking Operator Lease), the Tenant shall be deemed to be in compliance with this Subsection 10.2(l) provided the Tenant does not disturb the quiet possession of the NCC under the NCC Sublease;
 - (m) the Tenant shall ensure, from the expiration of the Parking Operator Lease to the expiration or early termination of the Term, that sufficient parking remains available for the use of visitors (which includes, without limitation, clients, guests, customers and patrons of the restaurants and services located at the Dow's Lake Pavilion and for those wishing to visit the nearby sites such as Commissioners Park) to the capital realm features (such as, the Dow's Lake Pavilion and Commissioners Park); it being agreed by the Parties that:
 - (i) following the term of the NCC Sublease:
 1. to meet this obligation the Tenant will, upon the written request of the NCC or the Landlord, erect signage that:
 - A. provides that such parking areas are to be used exclusively by such visitors;
 - B. specifically identifies the required designated parking spaces; and
 - C. directs Dow's Lake patrons arriving from the exterior of the Leased Premises to the parking lot where such parking spaces are designated;
 2. if the Landlord requests in writing that a commercially reasonable Parking System for such visitors of the capital realm features be established, the Tenant shall ensure that such system is implemented; for clarity, all revenue, costs and expenses related to the foregoing shall remain with the Tenant;
 3. if the Landlord requests in writing that a non-commercially reasonable Parking System for such visitors of the capital realm features be established:

- A. the Tenant shall ensure that such system is implemented; and
- B. the Landlord shall pay for the incremental costs of a non-commercially reasonable Parking System;

for clarity a Parking System shall be non-commercially reasonable in a particular calendar year if the incremental costs of such Parking System (which includes, without limitation, the amortized capital cost and operational cost) in such calendar year exceeds the amount by which revenues would have exceeded expenses of the parking as referred to in Subsection 10.2(m)(i)5, but for the Parking System;

- 4. the Tenant shall be under no obligation to monitor (in addition to implementing such system) the use of such area or otherwise ensure that only such visitors use such parking area;
- 5. a minimum of two hundred (200) spaces for vehicles and seven (7) spaces for tour/coach buses is identified for this purpose; it being agreed that such two hundred seven (207) spaces is sufficient parking for the purposes of this Subsection 10.2(m);
- 6. there shall be no amendments to such number of parking spaces, save and except:
 - A. by an written amendment to this Lease (for greater certainty no party is under an obligation to do so); and
 - B. with such being approved in advance by the Executive Director, Capital Planning Branch, NCC;
- 7. such parking may be above grade, below grade or surface parking;
- 8. such parking will be available at all times;
- 9. the parking shall remain in the location it is situated as of the Commencement Date, provided such parking may be relocated:
 - A. to a temporary location, provided:
 - 1. such parking area is required to be relocated for the initial construction phase;
 - 2. the parking shall not be in the temporary location longer than required; and
 - 3. such temporary parking area is as reasonably proximate as possible to Dow's Lake Pavilion; or
 - B. to the final location provided in the final land use and design approval of the NCC for the Project; it being understood that such approval shall include a land use requirement to provide 200 vehicle and 7 bus parking spaces, located as proximately as possible (within parameters established by the Capital Realm Design Principles), for use by visitors to capital realm features such as the Dow's Lake Pavilion and Commissioners Park; and
- (ii) during the term of the NCC Sublease that extends beyond the expiration of the Parking Operator Lease the Tenant shall be deemed to be in compliance with this Subsection 10.2(m) provided the Tenant does not disturb the quiet possession of the NCC under the NCC Sublease;
- (iii) following the term of the NCC Sublease, the Tenant agrees to create a program for the customers of the businesses operating at Dow's Lake Pavilion to address the NCC's concern about decreases in public visitors to the Dow's Lake Pavilion following the term of the NCC Sublease as a result of the changes in parking on the Leased Premises occurring on or

about that time. This program will be mutually agreed upon by the Tenant and the NCC. This program shall take into account any impacts upon the NCC's leasing program at Dow's Lake Pavilion as well as the direct and indirect financial interests of the Tenant;

- (n) the design of the Hospital must incorporate the Capital Realm Design Principles, attached to the FLUTA as Appendix 2;
- (o) the site specific design guidelines shall be developed by the Tenant based on the principles contained in Appendix 2 of the FLUTA;
- (p) the importance and character of the Queen Elizabeth/ Prince of Wales/ Preston street intersection shall be maintained as the entrance to the NCC's historic Queen Elizabeth Parkway;
- (q) all signage, including wayfinding, to be located on the Lands, outside of the Hospital buildings, are subject to federal approvals;
- (r) Hospital operational signage shall comply with applicable provincial standards and shall be designed with consideration for compatibility with the capital landscape;
- (s) all third party signage is prohibited;
- (t) if any archaeological resources or human remains are discovered during the course of pre engineering or construction work, to halt all work at the location concerned immediately and to notify the NCC Project Manager forthwith. The Tenant shall immediately call on site a professional archaeologist to assess the discovery and to recommend measures for the protection of those resources or remains. A copy of the recommendations shall be forwarded immediately to the NCC Heritage Program Archaeology-archeologie@ncc-ccn.ca. Work shall not be resumed at the location concerned until the Tenant has received written confirmation that the recommended measures have been put in place;
- (u) the Tenant shall conduct an archaeological background study of the site and potential staging areas, in order to ensure the protection and management of archaeological resources in compliance with federal policy and, if the area is located in part on municipal lands, the *Ontario Heritage Act*;
- (v) the Tenant shall follow the appropriate process related to Heritage designated sites and buildings; and
- (w) if Lands are not required by the Tenant for the proposed use (which must include a main Hospital use), the Landlord has the contractual right to remove such portion of the Lands from the definition of Leased Premises. The Parties acknowledge that it will take the Tenant a considerable period of time to plan and cause the Commencement of Construction of a new Hospital;

it being agreed by the Parties that any ambiguities in either or both the foregoing and the FLUTA shall be interpreted by the Landlord, in the Landlord's sole and unfettered discretion.

For clarity the FLUTA contains various terms, conditions and obligations which, by their nature, must be undertaken by a representative of the Crown. For example the Tenant cannot directly participate in the procedures of the Treasury Board Secretariat and certain other federal regulatory authorities such as those related to Heritage designated sites and buildings. In respect of such terms, conditions and obligations, the Tenant shall not be exposed to liability or any remedy hereunder except insofar as the Landlord has incorporated specific provisions in the other Articles of this Lease to permit the Crown to undertake such terms, conditions and obligations contained in the FLUTA.

10.3 NCC Sublease

- (a) The Parties acknowledge the FLUTA requirement to preserve the Parking Operator Lease for the duration of its term.
- (b) To give effect to the foregoing, the Tenant is entering into the NCC Sublease, such that the NCC shall be the under-lessor of the premises leased under the Parking Operator Lease during the term of the Parking Operator Lease; it being agreed by the Parties that the Landlord consents to the Tenant subleasing to the NCC and

that the NCC Sublease may extend beyond the term of the Parking Operator Lease or be for a period longer than the Parking Operator Lease, all without any further consent of the Landlord.

ARTICLE 11 AGRICULTURE AND AGRI-FOOD CANADA REQUIREMENTS

11.1 Use of Roadways

The Tenant acknowledges and agrees that this Lease does not grant or otherwise provide permission to the Tenant to use any roadways, paths or other passageways on other Crown land (which includes, without limitation, the AAFC Lands).

11.2 Good Neighbour Obligations

- (a) The Tenant shall use reasonable efforts to ensure that the portions of the Lands proximate to the AAFC Lands are free from garbage, debris or other refuse.
- (b) The Tenant shall not design Leasehold Improvements in a manner that promotes smoking on the AAFC Lands.
- (c) In the process of developing site design plans for the Project, the Tenant shall provide AAFC with brief summaries of such plans at material points during the development. Such summaries shall be delivered by the Tenant to AAFC at the location indicated by the Landlord in writing.

Upon the written request of AAFC or the Landlord, and following delivery of a summary, the Tenant shall meet once with AAFC to review and receive comments from AAFC on such summary. For clarity, the Tenant shall have no obligation to incorporate such comments into the site design plans or otherwise make any changes to the Project.

11.3 Unused Farm Property

For clarity purposes only, and without altering or otherwise affecting any provisions of this Lease, the Parties acknowledge that:

- (a) Subsection 10.2(w) provides that if the Lands are not required by the Tenant for the proposed use, the Landlord has the contractual right to remove such portion of the Lands from the definition of Leased Premises;
- (b) Subsection 17.4(b) of this Lease considers a situation in which the Landlord expropriates only a part of the Leased Premises when there is no material adverse effect to the Permitted Use of the Leased Premises;
- (c) Section 18.1 of this Lease provides, among other things, that:
 - (i) it is an Event of Default if the Tenant Abandons the Leased Premises; and
 - (ii) whenever there is an Event of Default the Landlord may terminate this Lease in whole or in part; and
- (d) Section 20.1 allows the Landlord to terminate this Lease if there has been no Commencement of Construction prior to the Absolute Deadline Date;

in each case solely as respectively provided for in Subsection 10.2(w), Subsection 17.4(b), Section 18.1, and Section 20.1. This acknowledgment was inserted by the Parties solely to consolidate provisions in this Lease that address a concern raised by AAFC regarding unused portions of the Lands. For clarity, the applicability of the foregoing is not limited to any portion of the Lands.

ARTICLE 12 ENVIRONMENTAL

12.1 Termination Prior to Commencement of Construction

Upon any early termination of this Lease prior to the Commencement of Construction, the provisions of this Article 12 of this Lease providing for:

- (a) any obligations with respect to;
- (b) assumption of liability for; or
- (c) release or indemnification in respect of;

the Existing Environmental Condition and any provisions for the survival of any of the foregoing, shall be void (save and except to the extent that the Tenant aggravates an Existing Environmental Condition during the Term). For clarity, this Section 12.1 applies to subsection 12.5(a)(v).

12.2 Tenant Accepts Existing Environmental Condition of the Lands

The Tenant acknowledges and agrees that it is leasing the Lands in their existing condition, including, without limitation, the Existing Environmental Condition, as of the Commencement Date, and agrees to oblige itself and accept and take possession of the Leased Premises in its condition including, without limitation, the Existing Environmental Condition with the consequential obligations under the Laws.

For clarity, the foregoing shall not derogate from the Landlord's obligations provided for in Article 9.

12.3 Existing Environmental Reports and Inspection

The Tenant acknowledges having received and reviewed the Existing Environmental Reports. In addition, the Tenant confirms that it conducted its own due diligence with regard to the Existing Environmental Condition of the Leased Premises. The Tenant covenants that it shall be responsible for, among other things, any remediation, removal or disposal required for the Project in accordance with Laws.

For clarity, the foregoing shall not derogate from the Landlord's obligations provided for in Article 9.

12.4 Crown Standard

The Tenant, without limiting any obligation of the Tenant contained herein, shall:

- (a) use, occupy, operate and maintain the Leased Premises;
- (b) not permit the presence of, and shall not allow others to bring, any Hazardous Substances on to the Leased Premises, save and except if such is required for the Tenant's Permitted Use; and
- (c) ensure that all Hazardous Substances are handled, used and disposed of;

and in each case, all in compliance with at least the standards, limits, criteria and levels for environmental matters contained in Environmental Laws that are applicable to the Lands, but for this Lease (that is, the Laws that are applicable to Lands owned and occupied by the Crown).

12.5 Environmental Contamination Notice

- (a) The Tenant shall forthwith notify the Landlord (and any Governmental Authority to which the Tenant is required to notify at Law) in the event the Tenant knows, or has reasonable grounds to believe, that:
 - (i) any violation of any Environmental Law has occurred, or is occurring or may imminently occur, with respect to the Leased Premises;
 - (ii) any order of an administrative tribunal or any other authority is made or is proposed to be made against the Tenant, the Landlord or any other Person in respect of any Hazardous Substance in or on any part of the Leased Premises;
 - (iii) any anticipated or actual adverse environmental impacts attributable to its use of the Leased Premises, save and except as addressed in any environmental assessment;

(iv) there has been a release, discharge, deposit, emission, spill or discovery of any Hazardous Substance in, on or from any part of the Leased Premises that is not in compliance with Environmental Laws; or

(v)

1. any Hazardous Substance in, on or from any part of the Leased Premises; or
2. the Existing Environmental Condition;

has (or reasonably may within the Term or five (5) years following the expiration or early termination of the Term) migrated or otherwise affects the Surrounding Space.

Moreover, if remedial or mitigating action is prudent in the circumstance, the Tenant shall, within a reasonable period of time:

(vi) remedy or mitigate such impact using the appropriate technology, design or repair; and

(vii) pay the costs and expense of such actions;

each to the then standard pursuant to Environmental Laws as required in Section 12.4 and Environmental Laws.

- (b) The Tenant covenants and agrees that should the Tenant fail to take all such mitigating measures and remedial actions, the Landlord may, upon sixty (60) days advance written notice to the Tenant, carry out the specifications, complete the required mitigating measures or remedial action and charge the costs and expenses thereof, plus fifteen percent (15%) of such cost representing the Landlord's overhead and administrative costs, plus Sales Tax to the Tenant, payable upon demand.

12.6 Environmental Submittal Notice

The Tenant shall:

- (a) provide to the Landlord a copy of all Environmental Permits for the Project, the Permitted Use and Tenant's property on, at or affixed to the Leased Premises (which includes, without limitation, Medical Equipment), as soon as reasonably practicable; and
- (b) give the Landlord notice when the Tenant files or submits Environmental Permits and/or applications pursuant to Laws for the Project, the Permitted Use and the Tenant's property on, at or affixed to the Leased Premises (which includes, without limitation, Medical Equipment), together with a copy thereof;

in each case, the Tenant shall not give the Landlord notice if such Environmental Permit is solely for the purpose of operating Medical Equipment in its customary manner.

12.7 Remedial Work

If the Tenant receives an order, demand or requirement to perform remedial work pursuant to Environmental Laws it shall, subject to the Tenant's right to object, appeal, or defend against such order, demand or requirement, forthwith provide a copy of such demand to the Landlord, proceed to perform the remediation, removal or disposal as may be required by Law and provide evidence of any remediation as completed to the Landlord.

12.8 Hazardous Substances

The Tenant:

- (a) shall not permit the presence of, and shall not allow others to bring, any Hazardous Substances in or on any part of the Leased Premises, except if such:
 - (i) is required for the Tenant's Permitted Use; and

- (ii) is in strict compliance with all Environmental Laws;
- (b) covenants to the Landlord that Hazardous Substances shall be handled, used and disposed of in accordance with Environmental Laws and carefully stored; and
- (c) shall use, occupy, operate and maintain the Leased Premises with no adverse environmental impact to the Leased Premises or the Surrounding Space and any structures thereon, save as addressed in any environmental assessment.

12.9 No Action Which Puts Insurance at Risk

The Tenant agrees that it shall not do and shall not cause, or permit to be done or omitted to be done anywhere on the Leased Premises, and shall not bring thereon, anything which would cause the termination of or be prohibited by an environmental impairment liability policy that typically would be held by a ground lease tenant, a commercial landlord or an owner of the Lands.

12.10 End of the Term

- (a) Within six (6) months before the expiration (or as reasonably required to comply with the provisions of the Lease regarding early termination), the Tenant shall complete and provide the Landlord with then current similar environmental report to the Existing Environmental Reports for the Leased Premises.
- (b) As part of the Damage Termination Program, the work being completed pursuant to subsection 19.3(c), the work being completed pursuant to subsection 20.1(c) or the work being completed pursuant to subsection 20.2(e), as the case may be, the Tenant shall (without limiting the generality of the Tenant's other restoration obligations hereunder) completely remediate:
 - (i) all environmental matters identified in such similar report (save and except to the extent that the same appeared in the Existing Environmental Reports and solely to the extent that the issue existed as of the Commencement Date); and
 - (ii) to the extent not covered by such report and as otherwise determined by the Tenant using the then reasonable efforts, such remediation that is required to return the Lands to the Landlord in an environmental condition no worse than the Existing Environmental Condition;

using the appropriate technology, design or repair and pay the costs and expense of such actions to the then standard pursuant to Environmental Laws as required in Section 12.4 and Environmental Laws.

For clarity, the Tenant shall be required to remediate any aggravation of Existing Environmental Conditions during the Term.

12.11 Environmental Release and Indemnity

The Tenant hereby releases and forever discharges and agrees to indemnify and save and hold harmless the Landlord from and against all Claims and Damages of any nature whatsoever and howsoever caused, and by whomever made, brought or prosecuted (including, without limitation, those brought by or on behalf of the Tenant, the Tenant's agents, servants, employees, contractors, invitees, successors, assigns, Transferees, officers, directors and shareholders and all others for whom the Tenant is responsible for at Law) in any manner arising out of, based upon, related to, occasioned by or attributable to any or all environmental matters arising or otherwise relating to an occurrence or condition before or during the Term (and for clarity, including without limitation, any breach of Subsection 12.5(a)(v)), which includes, without limitation:

- (a) the Existing Environmental Condition (which includes, without limitation, the description thereof contained in the Existing Environmental Report);
- (b) any release, migration, discharge, deposit, emission or spill into the environment on or directly from the Leased Premises of any Hazardous Substance;
- (c) any breach of any Environmental Law relating to any environmental matter (including, without limitation, any matter relating to a release, discharge, deposit,

emission or spill, whether actual or potential, of any Hazardous Substance into the natural environment, including the air, water, ground water or soil);

- (d) the presence (which includes, without limitation, the handling, treatment, storage, transportation, removal and disposal) of any Hazardous Substance on, in or under the Leased Premises (whether or not such element, substance, product or material was known at the Commencement Date to be an Hazardous Substance); and
- (e) the remediation of any Hazardous Substance.

This environmental release and indemnity set out in this Subsection 12.11 shall survive the termination or surrender of the Leased Premises, subject to Subsection 12.1, to the extent that an Existing Environmental Condition was aggravated or a future environmental condition was created during the Term.

12.12 Authorization to Contact Governmental Authority

The Tenant hereby irrevocably:

- (a) authorizes the Landlord (and Persons directed on the Landlord's behalf) to make inquiries on the Tenant's behalf to any or all Governmental Authority regarding the Tenant's compliance with Environmental Law; and
- (b) authorizes and directs the Government Authority to provide the Landlord with any or all information that the Landlord requests from the Governmental Authority with respect to the same.

ARTICLE 13 TENANT TRANSFER

13.1 Transfer

- (a) Consent – Neither the Tenant nor anyone else shall effect a Transfer, except with the express written consent of the Landlord, which consent may be unreasonably and arbitrarily withheld in the Landlord's sole and unfettered discretion, and shall be subject to the terms and conditions contained in this Article 13. No Transfer, whether or not the Landlord's consent is required or provided, will relieve the Tenant from its obligations for the observance and performance of the covenants, terms and conditions of this Lease.

At all times during the Term, the whole of the Tenant's Leasehold interest shall be beneficially owned by the Tenant and/or a transferee pursuant to a Transfer ("Transferee") of the Leasehold Interest, or a part thereof, in accordance with this Lease. Upon request of the Landlord, the Tenant shall provide sufficient evidence (which may include, without limitation, a statutory declaration) as to the beneficial ownership of the Leasehold Interest.

- (b) Deemed No Consent - If:
 - (i) the Tenant is in default in payment of Rent;
 - (ii) the Tenant is in default under any of the material terms, covenants and conditions herein on the Tenant's part to be observed and performed; or
 - (iii) within a period of sixty (60) days of receipt of the application for consent, the Landlord has not advised the Tenant in writing that it gives or refuses the Landlord's consent;

any consent sought by the Tenant shall be deemed to have been refused by the Landlord.

- (c) Application - The Tenant's application for consent to Transfer shall be made by the Tenant to the Landlord in writing, shall set out the proposed effective date of the Transfer and shall contain detailed information on the proposed Transferee. The Landlord may request such additional information that the Landlord requires regarding the Leased Premises, a potential Transferee, the Tenant and the Tenant's compliance with this lease and the Tenant shall provide such information requested within fifteen (15) Business Days of delivery of the request.

- (d) Consent Agreement - If requested by the Landlord, in the Landlord's sole and unfettered discretion, the Tenant and the proposed Transferee, jointly and severally, shall execute, in advance of the Transfer, a consent to transfer agreement, in a form and content determined by the Landlord, acting reasonably. Such agreement shall provide, among other things, that:
- (i) the Transferee will be bound by this Lease as if the Transferee had originally executed this Lease as the tenant (which includes, without limitation, the liability for any then existing defaults);
 - (ii) the Tenant will not be released nor relieved from its obligations under this Lease including, without limitation, the obligation to pay Rent; and
 - (iii) the Tenant and/or the Transferee shall comply with whatever other terms and conditions which are reasonable and appropriate for permitting the Transfer of this Lease to the such Transferee.
- (e) Transferee Bankruptcy - in the event that this Lease is disaffirmed, disclaimed or terminated by any trustee in bankruptcy of a Transferee, the original Tenant named in this Lease shall be deemed, upon notice by the Landlord given within ninety (90) days of such disaffirmation, disclaimer or termination to have entered into a new lease with the Landlord containing the same terms and conditions as in this Lease, with the exception of the Term of such Lease, which shall expire on the date on which this Lease would have ended save for such disaffirmation, disclaimer or termination.
- (f) No Waiver - Any consent given by the Landlord for a Transfer shall not constitute permission or approval for that Transferee or the Tenant to further Transfer the Lease, nor shall such consent constitute a waiver of the requirements under this Article 13 (including, without limitation, the requirement for the Landlord's written consent to a Transfer).

In addition, no acceptance by the Landlord of Rent or other payments by a Transferee or proposed Transferee is: (i) a waiver of the requirement for the Landlord to consent to the Transfer; (ii) the acceptance of the Transferee as tenant; or (iii) a release of the Tenant from its obligations under this Lease. The Landlord may apply amounts collected from the Transferee or proposed Transferee to any unpaid Rent.

- (g) Costs - Any documents relating to the Landlord's consent to a Transfer will be prepared by the Landlord or the Landlord's solicitors and the Tenant shall pay to the Landlord, on demand, the reasonable cost and expense of preparing and reviewing the same.

13.2 Consent to An Authorized Hospital

Notwithstanding Subsection 13.1(a), the Landlord shall not unreasonably withhold or delay the Landlord's written consent to a Transfer, provided:

- (a) the Tenant is not in default in payment of Rent, nor in default under any of the material terms, covenants and conditions herein on the Tenant's part to be observed and performed;
- (b) the Tenant submits an application for consent and provides any requested information pursuant to Subsection 13.1(c); and
- (c) the Tenant provides the Landlord with sufficient evidence that the proposed Transferee will be, as of the date of the Transfer, approved by the Minister and the Province to operate a public hospital (as defined in the *Public Hospitals Act* R.S.O. 1990);

For clarity, notwithstanding that consent cannot be unreasonably withheld, the Tenant and the Transferee shall comply with all other terms and conditions of this Article 13 (which includes, without limitation, the obligation to complete a consent agreement pursuant to Subsection 13.1(d)).

13.3 Permitted Incidental Sublease

Notwithstanding Subsection 13.1(a), the Tenant may sublet, licence, part with or share possession of a portion of the Leased Premises (an "Incidental Sublease") to a Transferee provided:

- (a) the Tenant is not in default in payment of Rent, nor in default under any of the material terms, covenants and conditions herein on the Tenant's part to be observed and performed;
- (b) such a Transfer is not an assignment or transfer of the Tenant's Leasehold Interest;
- (c) the Transferee shall throughout the period of the Incidental Sublease use the space for a Permitted Ancillary Use;
- (d) the Transfer is for the majority of the Leased Premises (and the aggregate of all Incidental Subleases is not then for the majority of the Leased Premises); and
- (e) the Incidental Sublease creating or constituting the Transfer is granted in writing and provides:
 - (i) the Landlord is not bound by the terms and conditions contained in such Incidental Sublease;
 - (ii) the term of Incidental Sublease shall expire and be terminated before the expiration or early termination of this Lease;
 - (iii) that the Incidental Sublease is subject to this Lease;
 - (iv) such other reasonable terms and conditions that the Landlord advises of in advance in writing; and
 - (v) that the Transferee shall comply with all Development Approvals;

it being agreed by the Parties that, notwithstanding subsection 13.3(e), the Tenant, at the Tenant's sole risk of being otherwise in default hereunder, may not include any or all provisions stipulated in subsection 13.3(e) in the NCC Sublease; and
- (f) the Tenant provides the Landlord with advance written notice if the Incidental Sublease is for premises exterior to the Hospital buildings.

For clarity, notwithstanding the foregoing, subleasing by the Tenant shall in no way limit or minimize the Tenant's obligations under this Lease.

13.4 Project Construction and Maintenance Access

The Parties acknowledge and agree that the Tenant may enter into an agreement to, amongst other things, design, construct or maintain the Project, which includes an express or implied licence to access and use any or all of the Leased Premises solely for the purpose of designing, constructing or maintaining the Project. Notwithstanding anything else herein, the Tenant shall not be required to give notice to or seek consent from the Landlord for such a Transfer.

13.5 Leasehold Easements

Notwithstanding Subsection 13.1(a), the Tenant may, with advance written notice to the Landlord, grant a Leasehold Easement to a Transferee provided:

- (a) the Tenant is not in default in payment of Rent, nor in default under any of the material terms, covenants and conditions herein on the Tenant's part to be observed and performed;
- (b) the Tenant provides the Landlord with sufficient evidence that the Leasehold Easement will be a *bona fide* leasehold easement or leasehold right of way to a public utility or Government Authority and is *bona fide* required for the Project; and
- (c) the Leasehold Easement provides:

- (i) the Landlord is not bound by the terms and conditions contained in Leasehold Easement;
- (ii) the term of Leasehold Easement shall expire and be terminated before the expiration or early termination of this Lease;
- (iii) that the Leasehold Easement is subject to this Lease; and
- (iv) such other terms and conditions that the Landlord advises the Tenant of in writing

(each of such Leasehold Easement given in accordance with the foregoing requirements is a "Permitted Leasehold Easement").

For clarity, the Parties acknowledge and agree that the Leasehold Easement is a transfer of a portion of the Tenant's Leasehold Interest and may only be registered against the Leasehold Interest.

13.6 Commercial Tenancies Act

Notwithstanding anything provided herein, the Tenant shall ensure that any Transferee under this Lease, except for the Transferee under the NCC Sublease, shall waive any rights it may have:

- (a) as under-lessee under Section 21 of the *Commercial Tenancies Act*, R.S.O. 1990 c. L.7, as amended or replaced from time to time (the "**Commercial Tenancies Act**"), and any like rights under common law. For the purpose of clarity, the Transferee shall agree that notwithstanding that the Landlord has permitted the Incidental Sublease pursuant to this Lease, the Transferee shall not claim or apply for an order vesting the term of the Incidental Sublease, the Leased Premises, or any part thereof, in the Transferee, upon the Landlord re-entering the Leased Premises or the termination, expiration, surrender or forfeiture of this Lease;
- (b) as under-tenant under subsection 32(2) of the *Commercial Tenancies Act* and any like rights under common law. For the purpose of clarity, the Transferee shall agree that notwithstanding that the Landlord has permitted the Incidental Sublease pursuant to this Lease, if the Landlord distrains or threatens to distrain any goods or chattels situate on the Incidental Sublease premises, the Transferee shall not seek to protect such chattels from the Landlord's distress as contemplated by subsection 32(2) of the *Commercial Tenancies Act* and any like rights under common law, save and except to the extent that such chattels are specifically excluded from the Landlord's right to distrain under this Lease; and
- (c) under Subsection 39(2) of the *Commercial Tenancies Act*, and any like rights under common law. For the purpose of clarity, the Transferee agrees that notwithstanding the Landlord has permitted the Incidental Sublease pursuant to this Lease, if a receiving order in bankruptcy, or a winding-up order has been made against the Tenant, the Transferee hereby agrees not to exercise its election as under-lessee to stand in the same position with the Landlord as though the Transferee were a direct lessee of the Landlord.

It being acknowledged and agreed by the Parties that the foregoing is not applicable to an assignment pursuant to Section 13.2

ARTICLE 14 LANDLORD TRANSFER

14.1 Confirmation of Right to Sell

Subject to Section 14.2 and any requirement under the *National Capital Act*, the Landlord shall at all times have the absolute right to sell, convey or otherwise dispose of the Lands or the Landlord's interest in the Lands and the Leased Premises.

The Landlord, however, shall not sell or convey the Lands or otherwise dispose of the Landlord's interest in the Lands unless the assignee or purchaser assumes the obligations of the Landlord under this Lease, in which event the Landlord shall no longer have any obligations hereunder after the date of such sale or conveyance.

14.2 Right of First Offer

(a) The Landlord shall not transfer the fee simple interest in the Lands to any Person (other than to any federal department, agency, crown corporation, Governmental Authority, person to whom the Crown is required to transfer the Lands to by Law, agent of the Landlord, the Minister, the Province or to the City of Ottawa) without first offering in writing (which offer will include:

- (i) a condition precedent that the Landlord obtain necessary approvals (including, without limitation, any requirement under the *National Capital Act*); and
- (ii) such other terms and conditions (which includes, without limitation, the purchase price) as the Landlord considers advisable; and

in each case, as determined in the Landlord's sole and unfettered discretion, and

- (iii) a condition precedent that the Tenant obtain necessary funding and approvals, as determined in the Tenant's sole and unfettered discretion)

to transfer the same to the Tenant (the offer, with the condition precedents and such other terms and conditions, is hereinafter called the "Offer"); it being acknowledged by the Parties that, as of the Commencement Date, the Landlord's approvals includes, without limitation, the approval of the Treasury Board of Canada and any requirement under the *National Capital Act*.

(b) If within:

- (i) sixty (60) days of the Landlord giving the Tenant the Offer, the Tenant does not elect in writing to the Landlord to accept the Offer, which, for clarity, includes the aforementioned condition precedents; or
- (ii) fourteen (14) months of the Landlord giving the Tenant the Offer.
 1. the Tenant has not provided the Landlord with notice that the Tenant has obtained necessary funding and approvals; or
 2. the Landlord has not provided the Tenant with notice that the Landlord obtained the necessary approvals;

the Landlord shall, for a period of fifty (50) months following the day that the Landlord gave the Tenant the Offer, be entitled to transfer the Lands to any Person, on any terms and conditions determined by the Landlord, in the Landlord's sole and absolute discretion. This right of first offer shall not, however, apply to sales to federal departments, agencies, Crown corporations, Governmental Authorities, persons to whom the Crown is required to transfer the Lands to by Law, agents of the Landlord, the Minister, the Province or to the City of Ottawa, provided that any such transfer or assignment shall be subject to, and such permitted transferee or assignee, as the case may be, shall be subject to and bound by, the rights of the Tenant in Section 14.2 of this Lease.

ARTICLE 15 INSURANCE

15.1 Insurance during the Term before Hospital Operation

The Tenant covenants and agrees with the Landlord that during the Term prior to construction of the Hospital having been completed, the following insurance policies will be in place, which in all cases shall specify that the Landlord is an additional named insured:

(a) Liability Insurance:

The Tenant shall, at its sole cost and expense, purchase, provide and maintain general liability insurance in the sum of not less than Thirty Five Million Dollars (\$35,000,000.00). This policy shall be issued on an occurrence basis and add the Landlord as an additional named insured as well as provide the Landlord with primary liability insurance for liability arising out of the Leased Premises. The coverage provided shall include, as a minimum, the following coverages:

- (i) premises and operations;
- (ii) broad form products and completed operations;
- (iii) bodily injury;
- (iv) broad form property damage;
- (v) personal injury;
- (vi) broad form blanket contractual;
- (vii) waiver of subrogation in favour of the Landlord;
- (viii) non-owned automobile, including contractual;
- (ix) contingent employers' liability;
- (x) employees as additional insured;
- (xi) cross liability;
- (xii) severability of interest; and
- (xiii) garage automobile, in the sum of not less than Ten Million Dollars (\$10,000,000.00).

(b) **Property Insurance:**

The Tenant shall, at its sole cost and expense, purchase, provide and maintain All Risks Property insurance for any property on the Leased Premises. Such property shall be insured to full appraised values and not contain any co-insurance clauses. This policy shall include terrorism coverage;

(c) **Pollution Legal Liability:**

The Tenant shall, at its sole cost and expense, purchase, provide and maintain pollution legal liability insurance in an amount not less than Twenty Five Million Dollars (\$25,000,000.00);

(d) **Other Insurance**

The Tenant shall, at its sole cost and expense, purchase, provide and maintain in the joint names of the Landlord and the Tenant (if required) such insurance as may from time to time, be reasonably requested by the Landlord to protect the Landlord's exposure to Claims and Damages of any nature whatsoever by virtue of the Landlord's fee simple ownership (which includes, without limitation, the Landlord's reversionary interest) of the Lands or as landlord under this Lease.

15.2 Insurance During Construction Work for Leasehold Improvements over \$25,000,000

In addition to the insurance which the Tenant must maintain throughout the Term as specified in Sections 15.1 or 15.6 (as applicable), during the construction of Leasehold Improvements which as a single project, or if a number of projects are carried on contemporaneously or in a coordinated sequence, in the aggregate, have a value which exceeds Twenty-Five Million Dollars (\$25,000,000), the Tenant shall, at its sole cost and expense, purchase, provide and maintain, or cause to be purchased, provided and maintained in full force during construction work the following insurance with regard to the Lands, Leased Premises, Buildings and the Project:

(a) **Liability Insurance:**

The Tenant shall purchase, provide and maintain, at its sole cost and expense, liability insurance written on a wrap-up basis covering the Landlord as well as the Tenant for Damages because of property damage and/or bodily injury (including, without limitation, death) arising out of the existence of the Leased Premises as well as all construction operations pertaining to the Leased Premises or arising out of the control or use of the Leased Premises by the Tenant. The coverage provided shall be no more restrictive than

the IBC 2100 liability policy wording. The policy may exclude damage to the project during the construction period but coverage will be reinstated for completed operations. The policy limit shall be no less than One Hundred Million Dollars (\$100,000,000.00) and will include permission for one reinstatement of limits. The policy shall provide no less than three (3) years completed operations coverage, and non-owned automobile liability insurance shall be included;

(b) Project Errors and Omissions Insurance:

When applicable, the Tenant shall purchase or cause to be purchased Project specific errors and omissions insurance covering all consultants with a limit of at least Ten Million Dollars (\$10,000,000). Coverage shall be maintained for at least three (3) years following construction. The Tenant shall provide the Landlord with evidence of such insurance at any time upon the Landlord's request;

(c) Builders Risk Insurance:

The Tenant shall purchase or cause to be purchased builders risk insurance for one hundred and ten percent (110%) of the contract price plus the value of any property provided by the Tenant. The form of coverage shall be LEG3. The coverage shall include, at a minimum, machinery breakdown coverage, testing and commissioning, soft costs, extra expense and expediting expense coverage. The policy will include flood and earthquake coverage as well as coverage for terrorism; and

(d) Contractor Pollution and Pollution Legal Liability

Contractors pollution and pollution legal liability combined for a limit not less than Twenty Five Million Dollars (\$25,000,000.00).

The Landlord shall be added as an additional insured to (a), (c) and (d).

15.3 Insurance During Construction Work for Leasehold Improvements between \$10,000,000 and \$25,000,000

In addition to the insurance which the Tenant must maintain throughout the Term as specified in Sections 15.1 or 15.6 (as applicable), during the construction of Leasehold Improvements which as a single project, or if a number of projects are carried on contemporaneously or in a coordinated sequence, in the aggregate, have a value which is less than Twenty-Five Million Dollars (\$25,000,000) but exceeds Ten Million Dollars (\$10,000,000), the Tenant shall, at its sole cost and expense, purchase, provide and maintain, or cause to be purchased, provided and maintained in full force during construction work the following insurance with regard to the Lands, Leased Premises, Buildings and the Project:

(a) Liability Insurance:

The Tenant shall purchase, provide and maintain, at its sole cost and expense, liability insurance written on a wrap-up basis covering the Landlord as well as the Tenant for Damages because of property damage and/or bodily injury (including, without limitation, death) arising out of the existence of the Leased Premises as well as all construction operations pertaining to the Leased Premises or arising out of the control or use of the Leased Premises by the Tenant. The coverage provided shall be no more restrictive than the IBC 2100 liability policy wording. The policy may exclude damage to the project during the construction period but coverage will be reinstated for completed operations. The policy limit shall be no less than Twenty Five Million Dollars (\$25,000,000.00) and will include permission for one reinstatement of limits. The policy shall provide no less than three (3) years completed operations coverage, and non-owned automobile liability insurance shall be included;

(b) Project Errors and Omissions Insurance:

When applicable, the Tenant shall purchase or cause to be purchased Project specific errors and Omissions insurance covering all consultants with a limit of at least Five Million Dollars (\$5,000,000). Coverage shall be maintained for at least three (3) years following construction. The Tenant shall provide the Landlord with evidence of such insurance at any time upon the Landlord's request;

(c) Builders Risk Insurance:

The Tenant shall purchase or cause to be purchased builders risk insurance for one hundred and ten percent (110%) of the contract price plus the value of any property provided by the Tenant. The form of coverage shall be LEG3. The coverage shall include, at a minimum, machinery breakdown coverage, testing and commissioning, soft costs, extra expense and expediting expense coverage. The policy will include flood and earthquake coverage as well as coverage for terrorism; and

(d) Contractor Pollution and Pollution Legal Liability

Contractors pollution and pollution legal liability combined for a limit not less than Ten Million Dollars (\$10,000,000.00).

The Landlord shall be added as an additional insured to (a), (c) and (d).

15.4 Insurance During Construction Work for Leasehold Improvements less than \$10,000,000

In addition to the insurance which the Tenant must maintain throughout the Term as specified in Sections 15.1 or 15.6 (as applicable), during the construction of Leasehold Improvements which as a single project, or if a number of projects are carried on contemporaneously or in a coordinated sequence, in the aggregate, have a value which is less than Ten Million Dollars (\$10,000,000), the Tenant shall, at its sole cost and expense, purchase, provide and maintain, or cause to be purchased, provided and maintained in full force during construction work the following insurance with regard to the Lands, Leased Premises, Buildings and the Project:

(a) Liability Insurance:

The Tenant shall purchase, provide and maintain, at its sole cost and expense, liability insurance written on a wrap-up basis covering the Landlord as well as the Tenant for Damages because of property damage and/or bodily injury (including, without limitation, death) arising out of the existence of the Leased Premises as well as all construction operations pertaining to the Leased Premises or arising out of the control or use of the Leased Premises by the Tenant. The coverage provided shall be no more restrictive than the IBC 2100 liability policy wording. The policy may exclude damage to the project during the construction period but coverage will be reinstated for completed operations. The policy limit shall be in an amount sufficient to cover the liability exposures of both the Landlord and Tenant and will include permission for one reinstatement of limits. The policy shall provide no less than three (3) years completed operations coverage, and non-owned automobile liability insurance shall be included;

(b) Project Errors and Omissions Insurance:

When applicable, the Tenant shall purchase or cause to be purchased Project specific errors and omissions insurance covering all consultants with a limit sufficient to cover the liability exposures of both the Landlord and Tenant. Coverage shall be maintained for at least three (3) years following construction. The Tenant shall provide the Landlord with evidence of such insurance at any time upon the Landlord's request;

(c) Builders Risk Insurance:

The Tenant shall ensure that it has sufficiently covered its risks and exposures with respect to builders risk insurance. If the Tenant opts to purchase a builders risk insurance policy for any project under \$10,000,000, the policy will be purchased with a limit representing one hundred and ten percent (110%) of the contract price plus the value of any property provided by the Tenant. The form of coverage shall be LEG3. The coverage shall include, at a minimum, machinery breakdown coverage, testing and commissioning, soft costs, extra expense and expediting expense coverage. The policy will include flood and earthquake coverage as well as coverage for terrorism; and

(d) Contractor Pollution and Pollution Legal Liability

When applicable, contractors pollution and pollution legal liability combined for a limit not less than Five Million Dollars (\$5,000,000.00).

The Landlord shall be added as an additional insured to (a) and (d).

15.5 Contractors' Certificate of Insurance During Construction

The Tenant shall ensure that during the construction of Leasehold Improvements all contractor(s) and subcontractor(s) purchase, provide and maintain the following insurance coverages:

- (a) automobile liability Insurance in an amount not less than Five Million Dollars (\$5,000,000.00);
- (b) contractors equipment insurance in an amount sufficient to cover the contractors exposures. This policy will include a waiver of subrogation in favour of the Landlord and the Tenant; and
- (c) commercial general liability in an amount not less than Ten Million Dollars (\$10,000,000.00) covering liability from offsite work not otherwise covered by the wrap-up liability policy.

The Tenant shall provide the Landlord with certificates evidencing that such insurance is in full force and effect at the Landlord's request during the course of construction.

15.6 Insurance During the Term (Hospital Operation)

The Tenant covenants and agrees with the Landlord that during the Term, following the construction of the Hospital having been completed, the following insurance policies will be in place, which in all cases shall specify that the Landlord is an additional named insured:

(a) Liability Insurance:

The Tenant shall, at its sole cost and expense, purchase, provide and maintain general liability Insurance in the sum of not less than Fifty Million Dollars (\$50,000,000.00). This policy shall be issued on an occurrence basis and add the Landlord as an additional named insured as well as provide the Landlord with primary liability insurance for liability arising out of the Leased Premises. The coverage provided shall include, as a minimum, the following coverages:

- (i) premises and operations;
- (ii) broad form products and completed operations;
- (iii) bodily injury;
- (iv) broad form property damage;
- (v) personal injury;
- (vi) broad form blanket contractual;
- (vii) waiver of subrogation in favour of the Landlord;
- (viii) non-owned automobile, including contractual;
- (ix) contingent employers liability;
- (x) employees as additional insured;
- (xi) cross liability;
- (xii) severability of interest; and
- (xiii) garage automobile in the sum of not less than Ten Million Dollars (\$10,000,000.00);

(b) Property Insurance:

The Tenant shall, at its sole cost and expense, purchase, provide and maintain all risks property insurance for any property on the Leased Premises. Such property shall be insured to full appraised values and not contain any co-insurance clauses. This policy shall include terrorism coverage;

(c) Boiler and Machinery Insurance:

The Tenant shall, at its sole cost and expense, purchase, provide and maintain boiler and machinery insurance with insurance limits not less than Two Hundred Million Dollars (\$200,000,000.00);

(d) Pollution Legal Liability:

The Tenant shall, at its sole cost and expense, purchase, provide and maintain pollution legal liability insurance in an amount not less than Twenty Five Million Dollars (\$25,000,000.00);

(e) Nuclear Legal Liability:

The Tenant shall, at its sole cost and expense, purchase, provide and maintain nuclear legal liability in an amount suitable to insure Tenant's nuclear risks and hazards; and

(f) Other Insurance:

The Tenant shall, at its sole cost and expense, purchase, provide and maintain in the joint names of the Landlord and the Tenant (if required) such insurance as may, from time to time, be reasonably requested by the Landlord to either or both:

- (i) protect the Landlord's exposure to Claims and Damages of any nature whatsoever by virtue of the Landlord's fee simple ownership (which includes, without limitation, the Landlord's reversionary interest) of the Lands or as landlord under this Lease; and
- (ii) provide property or such other applicable insurance coverage for at least the cost and expense of demolition of Buildings (for clarity not including Medical Equipment) on and restoration of the Leased Premises as required pursuant to terms of this Lease relating to expiration of the Term of, or the earlier termination of this Lease.

15.7 Premiums

The Tenant shall duly and punctually pay all premiums and other sums of money payable for maintaining any such insurance as aforesaid.

15.8 Non-Cancellation

- (a) Each of the policies for such insurance required by this Lease shall contain an agreement by the insurer to the effect that it will not cancel or materially alter such policy or permit it to lapse except after ninety (90) days prior written notice to the Landlord.
- (b) The Tenant covenants not to do anything, omit to do anything, or permit anything to be done, or omitted to be done, which will invalidate, adversely affect or limit any insurance policy referred to herein.

15.9 Evidence of Insurance

The Tenant shall deliver to the Landlord at the Landlord's option either certified copies of the policies of all insurance required or certificates thereof which certificates shall be accompanied by a statement from the Tenant confirming that insurance requirements under this Lease have been effected and complied with by the Tenant. The Tenant shall provide evidence that all such policies are in full force and effect:

- (a) annually; or
- (b) if there are mid-term amendments to coverage which could adversely impact the Landlord, at the mid-term;

during the entire Term and shall provide evidence of renewal of such insurance to the Landlord, at the Landlord's request delivery to and examination by the Landlord of any policy of insurance or certificate thereof or other evidence of insurance in no way shall relieve the Tenant of any of its obligations to insure in strict compliance with the provisions

of this Article 15, and in no way shall operate as a waiver by the Landlord of any of its rights.

15.10 Proceeds of Insurance

The proceeds of any builders risk or property insurance policy shall be paid to an insurance trustee and the funds shall not be used for any purpose until all works required under the Lease are completed (which includes, without limitation, all required repairs or rebuilds).

The Landlord shall be added as a loss payee as the Landlord's interest may appear on the property policy coverages, and as an additional named insured as the Landlord's interest may appear on the liability policy coverages. The Tenant will ensure that endorsements are added to the applicable insurance policies to reflect the requirements contained within this clause.

15.11 Release by Tenant of Claims and Indemnity

The Tenant hereby releases the Landlord, the Landlord's successors and assigns, in the Landlord's capacity as landlord or owner of the Lands and Buildings existing on the Commencement Date, except in relation to Landlord's Work, from all liability for Damages caused at any time during the Term by any of the perils against which the Tenant shall have insured or is under an obligation hereunder to insure, whether or not the Damages arises out of the negligence of the Landlord, and the Tenant hereby covenants to indemnify and save and hold harmless the Landlord, the Landlord's successors and assigns from and against all such Claims and Damages of any nature whatsoever. The Tenant hereby constitutes these presents as a full release, waiver and estoppel of any such Claims.

15.12 Approvals

- (a) All such insurance shall be in amounts from time to time approved for whatever risks and for whatever coverage limits the Landlord determines are reasonably required to either or both:
 - (i) protect the Landlord's exposure to Claims and Damages of any nature whatsoever by virtue of the Landlord's fee simple ownership (which includes, without limitation, the Landlord's reversionary interest) of the Lands or as landlord under this Lease; and
 - (ii) provide property or such other applicable insurance coverage for at least the cost and expense of demolition of Buildings (for clarity not including Medical Equipment) on and restoration of the Leased Premises as required pursuant to terms of this Lease relating to expiration of the Term of, or the earlier termination of this Lease.
- (b) The Landlord shall give notice of any objections to the said amounts and coverages within sixty (60) days of receipt or notice of the same and failing such notice of objection, the amounts in question shall be deemed to be approved by the Landlord. Nothing herein shall be construed so as to prevent the Tenant, at its sole cost and expense, from carrying insurance for greater amounts or against perils additional to those for which coverage may be required under this Lease.

15.13 Minimum Coverage

Where a specific term or expression relating to insurance coverage is utilized, the Tenant shall be obligated to obtain insurance having as minimum coverage that coverage presently provided by the specific insurance coverage referred to.

15.14 Coverage Not Available

Notwithstanding anything contained in this Article 15, in the event that any specific obligation contained in Article 15 shall become obsolete or that insurance to meet such obligation is not available, then the Tenant shall obtain insurance providing for similar coverage which shall be satisfactory to the Landlord. In the event the Tenant is unable or unwilling to provide such other similar coverage, then the Landlord may obtain such other coverage and recover the cost and expense thereof from the Tenant as Additional Rent with interest at Prime Rate if not paid when due. If no such similar coverage is available, then a mutually agreeable replacement for such coverage shall be effected by the Tenant. If the Parties are unable to agree on such replacement coverage, then the matter shall be

determined in accordance with Article 21. Until the replacement policy is put into effect, the Landlord, may, at the Landlord's sole cost and expense, place such coverage as it deems advisable and in the event, failing agreement, a court later determines that such coverage is reasonable, the Tenant shall reimburse the Landlord the cost and expense of such coverage, together with interest at Prime Rate.

15.15 Liabilities of the Tenant to indemnify

The Tenant's liabilities and obligations shall not be restricted to any sums mentioned as minimums in any of the insurance clauses contained herein or by any approval of the Landlord and, furthermore, the unavailability of any insurance required herein or any approval of the Landlord with respect to any matter concerning the insurance or the Tenant's unwillingness to insure where it has discretion, shall not reduce or waive any of the Tenant's obligations to indemnify the Landlord as required by this Lease or to maintain or repair the Leased Premises as required by this Lease.

15.16 Limits of Insurance

- (a) Throughout the Term the coverage and required limits of insurance shall be reviewed at the request of the Landlord to determine sufficiency and such coverage shall be improved or such limits shall be increased at the Landlord's reasonable request, to either or both:
 - (i) protect the Landlord's exposure to Claims and Damages of any nature whatsoever by virtue of the Landlord's fee simple ownership (which includes, without limitation, the Landlord's reversionary interest) of the Lands or as landlord under this Lease; and
 - (ii) provide property or such other applicable insurance coverage for at least the cost and expense of demolition of Buildings (for clarity not including Medical Equipment) on and restoration of the Leased Premises as required pursuant to terms of this Lease relating to expiration of the Term of, or the earlier termination of this Lease.
- (b) Improvements in coverage and increases in insurance limits shall reflect current experience and appropriate indexing as deemed reasonable having regard for the Landlord's interest in being insured. At a minimum, any property insurance policy will provide sufficient limits of coverage for the costs and expenses of the demolition and restoration as required pursuant to terms of this Lease relating to expiration of the Term of, or the earlier termination of this Lease. Limits with respect to any liability insurance policy will be reviewed by a competent insurance professional every five (5) years. Any dispute concerning coverage or limits shall be settled in accordance with Article 21.

15.17 Landlord May Insure

In the event the Tenant fails to purchase, provide or maintain any insurance required by this Article 15 or fails to promptly furnish to the Landlord satisfactory evidence of such insurance or of renewal thereof prior to the expiration of any policy, the Landlord may, but shall not be obliged to, effect such coverage and any premium paid by the Landlord shall be recoverable as Additional Rent with interest at Prime Rate and all the Landlord's administrative costs.

15.18 Landlord's Prerogative Insurance Requirements

The Tenant covenants and agrees that due to the length of time of the Term, the Law of insurance and risk may vary or change substantially from that applicable at the Commencement Date and, in consequence, the Tenant shall, at its sole cost and expense, arrange for and place insurance as to whatever risks and for whatever coverage limit the Landlord determines are reasonably required to either or both:

- (a) protect the Landlord's exposure to Claims and Damages of any nature whatsoever by virtue of the Landlord's fee simple ownership (which includes, without limitation, the Landlord's reversionary interest) of the Lands or as landlord under this Lease; and
- (b) provide property or such other applicable insurance coverage for at least the cost and expense of demolition of Buildings (for clarity not including Medical

Equipment) on and restoration of the Leased Premises as required pursuant to terms of this Lease relating to expiration of the Term of, or the earlier termination of this Lease.

15.19 Landlord's Right to Purchase Insurance

The Landlord reserves the right to buy additional insurance as it deems fit at the Tenant's sole cost and expense, including, but not limited to, a commercial general liability policy. Any insurance purchased by the Landlord will be considered in excess or difference in condition to any coverage purchased or maintained by the Tenant; it being acknowledged by the Parties that the Tenant intends to obtain such insurance on or before the Commencement Date.

15.20 Notice of Incidents or Claims

The Tenant shall provide the Landlord with notice of all Incidents and Claims that the Tenant reasonably knows of, or ought to know of, that exposes the Landlord to risk, on a quarterly basis by means of a report, save and except for Incidents or Claims that the Tenant reasonably knows of, or ought to know of that:

- (a) exposes the Landlord to risk; and
- (b) may result in serious or catastrophic injury or death;

which will be reported to the Landlord within forty-eight (48) hours of such Incident or Claim.

15.21 Insurance Under Permitted Incidental Subleases

The Tenant shall determine the insurance requirements of Transferees under Permitted Incidental Subleases; it being acknowledged and agreed that this does not amend the Tenant's insurance requirements.

ARTICLE 16 TENANT LIABILITY

16.1 Release by Tenant

The Tenant does hereby release the Landlord and waives all the liability and responsibility in any way for any and all Damages (which includes, without limitation, Damages to any Person or property owned by or being the responsibility of the Tenant) arising out of, based upon, related to, located on, occasioned by or attributable to:

- (a) the use or occupation of the Leased Premises (which includes, without limitation, the Permitted Uses);
- (b) the Leased Premises (which includes, without limitation, the Lands, the Buildings and any existence of defects or dangerous conditions);
- (c) any and all acts performed or omitted to be performed by or on behalf of the Tenant, the Tenant's agents, servants, employees, volunteers, contractors, invitees, successors, assigns, officers, directors and shareholders and all others for whom the Tenant is responsible for at Law;
- (d) any and all breaches, violations or non-performance of obligations, covenants, conditions or agreements of this Lease set forth and contained on the part of the Tenant to be fulfilled, kept, observed or performed (whether such breach, violation, or non-performance results from an act or omission of the Tenant, the Tenant's agents, servants, employees, licensees, contractors, invitees, successors, assigns, officers, directors and shareholders and all others for whom the Tenant is responsible for at Law);
- (e) the Landlord having reviewed or being alleged to have approved any document, drawings or plans pursuant to this Lease or at Law;
- (f) without limitation or duplication of Article 12, any environmental matter or issue arising during the Term; either on the Leased Premises, or beyond, relating to the Leased Premises or abutting or contiguous lands or lands detrimentally affected by the environmental condition of the Leased Premises (including, without

limitation, that arising out of, based upon, related to, located on, occasioned by or attributable to Hazardous Substance and any pollution or contamination which originates and flows from the Leased Premises);

- (g) Permitted Title Encumbrances (which includes, without limitation, the Tenant's disturbance or interference with the rights of the owner or holder of a Permitted Title Encumbrance) during the Term; or
- (h) any combination of the foregoing;

in each case, no matter how the same shall be caused and whether or not such Damages are caused or contributed to by the negligence, gross negligence or wrongful act or failure to act of the Landlord.

16.2 Indemnification by Tenant

The Tenant covenants with the Landlord that the Tenant shall indemnify and save and hold harmless the Landlord from and against all Claims and Damages of any nature whatsoever (including, without limitation, those which arise after the Term) and howsoever caused, and by whomever made, brought or prosecuted (including, without limitation, those brought by or on behalf of the Tenant, the Tenant's agents, servants, employees, volunteers, contractors, invitees, successors, assigns, officers, directors and shareholders and all others for whom the Tenant is responsible for at Law) in any manner arising out of, based upon, related to, located on, occasioned by or attributable to:

- (a) the use or occupation of the Leased Premises (which includes, without limitation, the Permitted Uses);
- (b) the Leased Premises (which includes, without limitation, the Lands, the Buildings and any existence of defects or dangerous conditions)
- (c) any and all acts performed or omitted to be performed by or on behalf of the Tenant, the Tenant's agents, servants, employees, volunteers, contractors, invitees, successors, assigns, officers, directors and shareholders and all others for whom the Tenant is responsible for at Law;
- (d) any and all breaches, violations or non-performance of obligations, covenants, conditions or agreements of this Lease set forth and contained on the part of the Tenant to be fulfilled, kept, observed or performed (whether such breach, violation, or non-performance results from an act or omission of the Tenant, the Tenant's agents, servants, employees, volunteers, contractors, invitees, successors, assigns, officers, directors and shareholders and all others for whom the Tenant is responsible for at Law);
- (e) the Landlord having reviewed or being alleged to have approved any document, drawings or plans pursuant to this Lease or at Law;
- (f) without limitation or duplication of Article 12, any environmental matter or issue arising during the Term; either on the Leased Premises, or beyond, relating to the Leased Premises or abutting or contiguous lands or lands detrimentally affected by the environmental condition of the Leased Premises (including, without limitation, that arising out of, based upon, related to, located on, occasioned by or attributable to Hazardous Substance and any pollution or contamination which originates and flows from the Leased Premises);
- (g) Permitted Title Encumbrances (which includes, without limitation, the Tenant's disturbance or interference with the rights of the owner or holder of a Permitted Title Encumbrance) during the Term; or
- (h) any combination of the foregoing.

16.3 Indemnification by Landlord for Aboriginal Claims

The Landlord shall indemnify and save and hold harmless the Tenant for and against all Aboriginal Claims.

16.4 Obligations Survive Termination of the Lease

Subject to Section 12.1, the obligations of the Tenant to indemnify and save and hold harmless the Landlord under the provisions of this Lease (which includes, without limitation, under this Article 16) shall continue in full force and effect until fulfilled notwithstanding any expiration or termination of this Lease, in whole or in part.

16.5 Tenant to Defend all Claims

The Tenant shall, in any and every event in which the Landlord is made a party and or a defendant to any Claims in respect of a matter to which the Tenant's obligation to indemnify the Landlord under the provision of this Article 16 or under any other article herein extends, if so requested by the Landlord, defend such Claims in the name of the Landlord and shall pay all costs, expenses and legal fees of the Landlord in connection with the litigation, provided:

- (a) the Tenant may, in any such event, elect to compromise, pay or satisfy any such Claims; and
- (b) the Landlord may choose, at the Landlord's sole and unfettered discretion, to retain separate legal counsel and all costs, expenses, moneys and disbursements incurred thereby by the Landlord shall be paid by the Tenant as Additional Rent.

16.6 Judgement or Order Against the Landlord or the Crown

Any judgement or order (or other enforceable obligation at Law) obtained against the Landlord or the Crown arising out of, based upon, related to, located on, occasioned by or attributable to any matter for which the Tenant has indemnified or released the Landlord under this Lease (including, without limitation, this Article 16), which requires the payment of moneys, shall be satisfied by the Tenant, and paid in full by the Tenant as Additional Rent.

**ARTICLE 17
DAMAGE AND DESTRUCTION**

17.1 No Surrender or Abatement

Except as otherwise specifically provided in this Lease, in the event of damage to or total or partial destruction of the Leased Premises by fire or any other casualty, this Lease shall continue in full force and effect and the Tenant shall not be entitled to surrender this Lease or the Leased Premises or to demand any abatement or reduction of Rent payable under this Lease, any Law notwithstanding.

17.2 Tenant's Damage Termination Option

The Parties covenant and agree that in the event of damage to, or total or partial destruction of, any or all of the Buildings by fire or by any other casualty (an "Event of Damage"), the Tenant shall have the option to terminate this Lease (the "Damage Termination Option") on the following terms and conditions:

- (a) within ninety (90) days of the Event of Damage, the Tenant shall provide the Landlord with a certificate of the Tenant's Architect confirming:
 - (i) the extent of the damage comprising the Event of Damage; and
 - (ii) which damaged Buildings may be reasonably salvageable (a "Salvageable Building"); it being agreed by the Parties that a building shall be deemed not a Salvageable Building if the repair cost is more than one (1%) percent of the then replacement cost of the damaged building;
- (b) in order to ensure that the Tenant has the required information to determine whether to exercise the Damage Termination Option, within one hundred eighty (180) days of the Event of Damage, the Landlord shall provide to the Tenant with notice of, which:
 - (i) Buildings (which may include any or all of the Salvageable Buildings) and/or Leasehold Improvements will need to be removed; and
 - (ii) Salvageable Buildings will need to be repaired;

in the event that the Tenant exercises the Damage Termination Option;

(c) in the event that the Tenant exercises the Damage Termination Option, the Tenant shall, at its sole cost and expense:

(i)

1.

A. remove any and all Buildings and/or Leasehold Improvements; and

B. repair any Salvageable Buildings;

in each case, as indicated in the Landlord's notice pursuant to Subsection 17.2(b); and

2. in respect of any:

A. Buildings and/or Leasehold Improvements which are not required to be removed; or

B. Salvageable Buildings which are required to be repaired;

remove any and all chattels and trade fixtures (including, without limitation, Medical Equipment) contained therein and restore any damage caused by such removal;

(ii) restore the area of any removal, at least to the condition that the affected area were in as of the Commencement Date (including, without limitation, all sodding); for clarity, such restoration may include, without limitation, filling all excavations made by the Tenant's removal with appropriate soil and covering the same with sod;

(iii) leave any area so restored in a neat, tidy and good condition;

(iv) complete the remediation work pursuant to Subsection 12.10(b);

(v) complete the foregoing on the same terms and conditions as if they were Leasehold Improvements, *mutatis mutandis*; and

(vi) pay to the Landlord all Rent to the date of termination of this Lease;

(the "Damage Termination Program"); it being agreed that the Tenant's obligation is not limited to the availability of insurance proceeds and survives the termination of this Lease;

(d) during the Option Period:

(i) the Tenant shall take all measures that are required to ensure the safety of the Leased Premises and the health and safety of those that have access to the Leased Premises, and shall otherwise comply with Law;

(ii) the Tenant shall provide:

A. confirmation from the Tenant's insurer that the Landlord has been named as first loss payee in respect of the Event of Damage, solely to the extent as may be required to pay an amount sufficient (supported by a Class "D" Estimate for the work prepared by the Tenant's Architect and approved by the Landlord's Architect, each acting reasonably) to carry out the obligations contained in Subsection 17.2(c) or Subsection 17.3(a); and

B. a covenant from the Tenant that there shall be no payment made under any insurance policy contained herein to the Tenant with respect to an Event of Damage until such time as the Tenant fulfills the obligations contained in Subsection 17.2(c) or Subsection 17.3(a), as the case may be, provided

the insurer may make a payment to the Tenant (or such other Person that the Tenant directs) for work performed in accordance with Subsection 17.2(c), Subsection 17.2(d)(i), or Subsection 17.3(a) as certified in advance by the Tenant's Architect to the Landlord, together with copies of the relevant invoices.

Moreover, to the extent required to ensure that no payment is made otherwise than in compliance with the foregoing, the Tenant hereby provides the Landlord with an interest in the proceeds from insurance with respect to an Event of Default; it being agreed by the Parties that the Landlord shall have no further interest in such proceeds (nor shall the Landlord have any right to prohibit, direct or otherwise effect a payment by the insurer to the Tenant) once the work is performed in accordance with Subsection 17.2(c), as certified by the Tenant's Architect; and

- (e) if within fifteen (15) months of the Event of Damage (the "**Option Period**"), the Tenant provides:
- (i) notice in writing to the Landlord that the Tenant is exercising the Damage Termination Option (the "**Damage Termination Notice**"); and
 - (ii) the Landlord with either:
 - 1. a performance bond in an amount sufficient (supported by a Class "D" Estimate for the work prepared by the Tenant's Architect and approved by the Landlord's Architect, each acting reasonably) to carry out the obligations contained in Subsection 17.2(c); or
 - 2.
 - A. confirmation from the Tenant's insurer that the Landlord:
 - 1. has been named as first loss payee in respect of the Event of Damage, solely to the extent required to pay an amount sufficient (supported by a Class "D" Estimate for the work prepared by the Tenant's Architect and approved by the Landlord's Architect, each acting reasonably) to carry out the obligations contained in Subsection 17.2(c); and
 - 2. that there is sufficient coverage under the relevant insurance policy to pay such amount; and
 - B. a covenant from the Tenant that there shall be no payment made under any insurance policy contained herein to the Tenant with respect to an Event of Damage until such time as the Tenant fulfills the obligations contained in Subsection 17.2(c), provided the insurer may make a payment to the Tenant (or such other Person that the Tenant directs) for work performed in accordance with Subsection 17.2(c), as certified in advance by the Tenant's Architect to the Landlord, together with copies of the relevant invoices.

Moreover, to the extent required to ensure that no payment is made otherwise than in compliance with the foregoing, the Tenant hereby provides the Landlord with an interest in the proceeds from insurance with respect to an Event of Default; it being agreed by the Parties that the Landlord shall have no further interest in such proceeds (nor shall the Landlord have any right to prohibit, direct or otherwise effect a payment by the insurer to the Tenant) once the work is performed in accordance with Subsection 17.2(c), as certified by the Tenant's Architect;

this Lease shall be terminated one hundred and eighty (180) days from the date of the delivery of the Damage Termination Notice.

17.3 Tenant's Obligations to Repair or Restore

- (a) If the Tenant does not exercise the Damage Termination Option during the Option Period, the Tenant shall, at the Tenant's sole cost and expense, promptly, continuously and diligently proceed to:
- (i) remove, demolish, repair, replace, or restore, in the Tenant's sole discretion, any Building(s) so damaged or destroyed;
 - (ii) restore the area of any removal, at least to the condition that the affected area were in as of the Commencement Date (including, without limitation, all sodding); for clarity, such restoration may include, without limitation, filling all excavations made by the Tenant's removal with appropriate soil and covering the same with sod; and
 - (iii) leave any area so restored in a neat, tidy and good condition.
- (b) The Tenant further covenants and agrees that:
- (i)
 1. the Landlord will be named as first loss payee in respect of the Event of Damage, solely to the extent required to pay an amount sufficient to carry out the obligations contained in Subsection 17.3(c); and
 2. there is sufficient coverage under the relevant insurance policy to pay such amount; and
 - (ii) there shall be no payment made under any insurance policy contained herein to the Tenant with respect to an Event of Damage until such time as the Tenant fulfills the obligations contained in Subsection 17.3(a), provided the insurer may make a payment to the Tenant (or such other Person that the Tenant directs) for work performed in accordance with Subsection 17.3(a), as certified in advance by the Tenant's Architect to the Landlord, together with copies of the relevant invoices.

Moreover, to the extent required to ensure that no payment is made otherwise than in compliance with the foregoing, the Tenant hereby provides the Landlord with an interest in the proceeds from insurance with respect to an Event of Default; it being agreed by the Parties that the Landlord shall have no further interest in such proceeds (nor shall the Landlord have any right to prohibit, direct or otherwise effect a payment by the insurer to the Tenant) once the work is performed in accordance with Subsection 17.3(a), as certified by the Tenant's Architect.

- (c) For clarity the Parties acknowledge and agree that:
- (i) the foregoing shall be completed in accordance with Article 8;
 - (ii) any Building(s) that is so damaged or destroyed must be either removed, demolished, repaired, replaced, or restored; and
 - (iii) the Tenant's foregoing obligation is not limited to the availability of insurance proceeds.

17.4 Expropriation

- (a) Subject to Subsections 17.4(b), the Landlord and the Tenant shall co-operate in the event of any expropriation of the Leased Premises, or part thereof, so that each may receive the maximum compensation to which they are respectively entitled at Law from the expropriating authority.
- (b) If the Landlord is the expropriating authority, and expropriates only a part of the Leased Premises, so that there is no material adverse effect to the Permitted Use of the Leased Premises, the Tenant shall not be entitled to seek compensation from the Landlord as an expropriating authority or under this Lease.

**ARTICLE 18
DEFAULT**

18.1 Default

Each of the following constitutes an event of default ("**Event of Default**"):

- (a) the Tenant fails, for any reason, to make any payment of Rent as and when the same is due to be paid hereunder and such default continues for thirty (30) Business Days after written notice of such default is given by the Landlord to the Tenant;
- (b) the Tenant fails, for any reason, to keep, perform or observe any of the covenants and obligations of the Tenant contained in this Lease, other than the payment of Rent, and such failure shall continue for a period of sixty (60) Business Days after the giving of written notice by the Landlord to the Tenant as to such failure;
- (c) the Tenant makes or attempts to make a Transfer affecting the Leased Premises, or the Leased Premises are or will be used by any Person or for any purpose, other than in compliance with this Lease;
- (d) the Tenant Abandons the Leased Premises;
- (e) the Tenant makes any sale in bulk of Tenant's property on the Leased Premises (other than in conjunction with a Transfer approved in writing by the Landlord and made pursuant to all Laws), or if a distress judgement or execution or similar process be levied or enforced upon or against Tenant's interest in this Lease or the Leased Premises or any portion thereof;
- (f) the occurrence of an Event of Insolvency in respect of the Tenant; and
- (g) this Lease, the Leased Premises, or any substantial portion of the Leasehold Interest of the Tenant is at any time seized which remains unsatisfied for a period of thirty (30) days or more unless the Tenant has commenced and is diligently pursuing a course of action to reverse such seizure;

and whenever there is an Event of Default the Landlord may terminate this Lease in whole or in part by notice to the Tenant and the Term will be forfeited and void. For clarity, the foregoing does not extinguish or otherwise affect obligations contained herein to indemnify which extend beyond the termination or early termination of the Term, or the Tenant's liability for restoration at the end of the Term. The Landlord shall have the rights and remedies set out in this Article 18, which are cumulative and not alternative, and are in addition to and not in substitution for any rights or remedies that the Landlord may have at Law or in equity.

18.2 Right to Re-Enter

If there is an Event of Default, the Landlord, without notice or any form of legal process whatsoever, may immediately re-enter and repossess the Leased Premises, notwithstanding anything contained in any Law to the contrary.

18.3 Legal Expense

If a Claim is brought for recovery of possession of the Leased Premises, for recovery of Rent or any other amount due because of the breach of any covenant by the Tenant contained in this Lease and the breach is established, the Tenant will pay to the Landlord all reasonable costs and expenses incurred as a result, including, without limitation, legal fees and disbursements.

18.4 Landlord's Right to Cure Default

If:

- (a) there is an Event of Default; and
- (b) such Event of Default may materially impact or threaten:
 - (i) the Landlord's fee simple interest in the Lands; or

- (ii) the condition of the Lands (save and except for the Buildings) at the end of the Term;

the Landlord may from time to time at the Landlord's sole and unfettered discretion, perform or cause to be performed such covenants or obligations (that is, remedy or attempt to remedy such default), or any portion of the covenants or obligations and the Landlord shall have the right to enter onto the Leased Premises for the purpose of so curing such Event of Default, and the Tenant shall permit such entry. No such entry for such purpose shall be deemed to operate as a forfeiture or termination of this Lease. The Landlord shall be under no obligation to remedy any such default and shall not incur any liability for any action or omission in remedying or attempting to remedy any such default.

All costs and expenses incurred and expenditures made by or on behalf of the Landlord under this Section 18.4 will immediately be paid by the Tenant, together with an administration charge equal to fifteen percent (15%) of such costs and expenses, and expenditures on account of the Landlord's overhead and supervision. If the Tenant fails to do so, the Landlord may add the costs and expenses to the Rent and recover them by all remedies available to the Landlord for the recovery of Rent in arrears.

18.5 Landlord's Other Rights on Default

Without limiting anything contained herein, if there is an Event of Default, the Landlord, among other things, may from time to time, either or both:

- (a) recover from the Tenant, all Damages incurred by the Landlord as a result of any breach by the Tenant; and
- (b) obtain possession of all rent rolls and any agreements affecting the Leased Premises.

18.6 Interest

The Tenant will pay monthly interest to the Landlord at the Prime Rate on:

- (a) all Rent required to be paid under this Lease from the due date for payment until the Rent is fully paid and satisfied; and
- (b) all Taxes and other amounts paid by Landlord on account of Tenant's failure to do so on or prior to the last date on which the same are due without penalty.

All amounts calculated at the Prime Rate shall be calculated and compounded monthly. Interest shall not be payable unless and until the Landlord demands payment of it. The Tenant will indemnify and save and hold harmless the Landlord against all costs, expenses and charges, including, without limitation, legal fees, lawfully incurred in enforcing payment of Rent and in obtaining possession of the Leased Premises after an Event of Default, or upon expiration or earlier termination of the Term of this Lease or in enforcing any covenant, provision or agreement of the Tenant contained in this Lease.

18.7 Remedies to Continue

No waiver of any of the Tenant's obligations under this Lease or of any of the Landlord's rights in respect of any default by Tenant hereunder will be deemed to have occurred as a result of any condoning, overlooking or delay by the Landlord in respect of any default by the Tenant or by any other act or omission of the Landlord including, without limitation, the acceptance of any Rent less than the full amount thereof or the acceptance of any Rent after the occurrence of any default by the Tenant. The waiver by the Landlord of any default of the Tenant or of any rights of the Landlord, which will be effected only by an express written waiver executed by the Landlord, will not be deemed to be a waiver of any other term, covenant or condition in respect of which such default or right has not been expressly waived and will not be deemed to be a waiver of any subsequent default of the Tenant or right of the Landlord.

The Landlord, the Landlord's servants, agents and employees, without limiting any other remedy which it may have, shall have the right at all times, if the Tenant has not cured or commenced to cure (and is not diligently proceeding to cure) any default on notice to the Tenant to enter the Leased Premises, for the purpose of curing any default of the Tenant or making repairs, and no such entry for such purpose shall be deemed to work a forfeiture or termination of this Lease, and the Tenant shall permit such entry.

The Landlord shall give not less than thirty (30) Business Days' notice to the Tenant of the Landlord's intention to enter for such purpose but may enter upon a shorter period of notice or without notice where, in the Landlord's judgement, there is a real or apprehended emergency or danger to the Lands, or where any delay in remedying such default would or might materially prejudice the Landlord's interest in the Lands. The Tenant shall reimburse the Landlord upon demand for all cost and expenses incurred by the Landlord in remedying any default, together with interest at the Prime Rate. The Landlord shall be under no obligation to remedy any default of the Tenant and shall not incur any liability to the Tenant for any action or omission in the course of the Landlord's remedying or attempting to remedy any such default unless such act amounts to gross negligence of the Landlord, the Landlord's servants, agents and employees and those for whom the Landlord is responsible for at Law.

18.8 Extension of Period to Cure Default

Notwithstanding the provisions of Subsection 18.1(b) if the default, not being a default in payment of Rent or Additional Rent, reasonably requires more time to cure than such sixty (60) Business Day period, the Tenant shall not be deemed to be in default provided that the curing of the default is promptly commenced upon the giving of the said notice, and with due diligence is thereafter continuously worked on and completed.

18.9 Landlord's Right to Pay

The Tenant further covenants and agrees with the Landlord that, if the Tenant fails to pay when due any and all moneys which the Tenant has covenanted to pay under this Lease, as Rent or Additional Rent, such that the Landlord's reversionary interest in the Lands is threatened, the Landlord shall be at liberty, but shall not be bound, to pay the same on behalf of the Tenant, or any such Person or Governmental Authority and the Tenant shall reimburse the Landlord upon demand for any amount so paid together with interest at the Prime Rate thereon.

18.10 Remedies Not Exclusive

The remedies of the Landlord specified in this Lease are cumulative and are in addition to any remedies of the Landlord at Law or in equity. No remedy shall be deemed to be exclusive, and the Landlord may from time to time have recourse to one or more or all of the available remedies specified herein or at Law or in equity. In addition to any other remedies provided in this Lease, the Landlord shall be entitled to restrain by injunction any violation or attempted or threatened violation by the Tenant of any of the covenants hereof. The right of the Landlord to claim Damages against the Tenant shall survive any termination of this Lease.

18.11 Limited Waiver of Right of Distress

The Landlord shall not levy distress against any or all Medical Equipment.

ARTICLE 19 TERMINATION

19.1 Planning Communication

- (a) In recognition of the potential value of communication between the Parties in the final years of the Term, the Parties wish to memorialize a plan for communication beginning on the seventy-ninth (79th) anniversary of the Commencement Date. The following plan shall not impose any duty on the Parties or supplement the obligations in this Lease. In addition either Party may discontinue such communications at any time, without legal consequence.
- (b) The Parties may meet on or about the seventy-ninth (79th), eighty-fourth (84th) and eighty-ninth (89th) anniversary and shall meet on or about the ninety-fourth (94th) anniversaries of the Commencement Date to discuss the Parties' obligations under this Lease at the end of the Term.

19.2 Surrender

The Tenant covenants with the Landlord that it shall be deemed that the Tenant, at the expiration of the Term, or other termination of this Lease, including, without limitation, termination as set out in Article 16, Article 17 and Article 19, has surrendered and delivered

up to the Landlord the Leased Premises (which includes, without limitation, all Buildings, save and except for trade fixtures, including, without limitation, Medical Equipment).

19.3 Buildings Become Property of Landlord

- (a) All Buildings and other Leasehold Improvements (save and except for trade fixtures, including, without limitation, Medical Equipment) shall upon the expiration or early termination of the Lease, or other termination of this Lease, vest in the Landlord free and clear of any and all liens, charges or encumbrances of any nature or kind whatsoever (other than Permitted Title Encumbrances) and shall become the absolute property of the Landlord without any compensation whatsoever to the Tenant. On the expiration or early termination of this Lease, all rights of the Tenant, but not obligations, under this Lease shall terminate.
- (b) The Tenant shall, on the expiration or early termination this Lease, in whole or in part, deliver to the Landlord vacant possession of the Leased Premises together with all Buildings and Leasehold Improvements:
 - (i) free and clear of any claim, lien, security interest, mortgage, charge or other encumbrances of any, nature or kind whatsoever (other than the Permitted Title Encumbrances). All such claims, liens, security interests, mortgages, charges or other encumbrances shall be deemed to be completely paid and discharged on the expiration or early termination of this Lease; and
 - (ii) in the condition required by this Lease.
- (c) Notwithstanding anything herein, this Subsection 19.3(c) shall not apply to a termination pursuant to either Section 17.2 or Section 20.1, as those Sections fully address the obligations of the Parties upon such terminations.

Within one (1) year of the expiration or early termination of this Lease, the Landlord may, in the Landlord's sole and unfettered discretion, irrevocably notify the Tenant in writing (the "Removal Notice") that any or all Buildings and/or Leasehold Improvements be removed. For clarity, the Parties acknowledge that the Landlord shall have the one time right to provide the Removal Notice at any time during the aforementioned period. If the Landlord provides the Tenant with the Removal Notice, the Tenant shall, at its sole cost and expense:

- (i) within two (2) years of the later of the delivery of the Removal Notice and the expiration or early termination of the Term:
 1. remove any and all of such Buildings and/or Leasehold Improvements;
 2. in respect of any Buildings and/or Leasehold Improvements which are not required to be removed, remove any and all chattels and trade fixtures (including, without limitation, Medical Equipment) and restore any damage caused by such removal;
 3. restore the area of the removal:
 - A. to the extent required by and in accordance with Applicable Laws (which includes, without limitation, Environmental Law); and
 - B. at least to the condition that the affected area were in as of the Commencement Date (including, without limitation, all sodding);

for clarity, such restoration may include, without limitation, filling all excavations made by the Tenant's removal with appropriate soil and covering the same with sod;
 4. complete the remediation work pursuant to Subsection 12.10(b); and
 5. leave the area so restored in a neat, tidy and good condition.

All such removal and restoration shall be completed on the same terms and conditions as if they were Leasehold Improvements, *mutatis mutandis*. This covenant shall survive the expiration or early termination of this Lease; and

- (ii) within ninety (90) days of delivery of the Removal Notice, provide the Landlord with a performance bond in an amount sufficient (supported by a Class "D" Estimate for the work prepared by the Tenant's Architect and approved by the Landlord's Architect, each acting reasonably) to carry out the obligations contained in Subsection 19.3(c)(i).

Notwithstanding the foregoing, as an alternative, the Landlord may provide the Removal Notice at any time between the ninety-sixth (96th) anniversary of this Lease and the expiration of the Term, provided the Removal Notice shall be irrevocable and binding.

19.4 Adjustments on Termination

- (a) On the expiration or early termination of this Lease, the Parties shall pro-rate, adjust, apportion and allow between themselves all Rent and Additional Rent and other items of a similar nature to the intent and purpose that the Tenant shall bear the burden thereof until it shall deliver up possession of the Leased Premises and Buildings on such termination.
- (b) In addition, the Parties acknowledge and agree that:
 - (i) following the expiration or early termination of this Lease that the Landlord may incur certain costs and expenses (which includes, without limitation, incremental Taxes (which includes Payment In Lieu of Taxes), insurance, utilities, etc.) reasonably and equitably attributed to Buildings and/or Leasehold Improvements which the Tenant is required to remove pursuant to the terms of this Lease;
 - (ii) the Tenant shall reimburse the Landlord for such costs and expenses on demand provided:
 1. the Landlord gives the Tenant reasonable evidence to substantiate such costs and expenses and the attribution thereof;
 2. such evidence is provided within ninety (90) days following the end of the calendar year in which the Tenant removes all of such Buildings and/or Leasehold Improvements; and
 3. such costs and expenses relate to the period between the expiration or early termination of this Lease and when the Tenant so removes such Buildings and/or Leasehold Improvements.

19.5 Indemnification by Tenant for Failure to Vacate

In the event the Tenant fails to vacate the Leased Premises and Buildings as required by this Lease causing the Landlord to be liable to a third party, the Tenant shall, in addition to any other liability hereunder, indemnify and save and hold the harmless the Landlord for all Damages resulting from its failure to deliver vacant possession to the Landlord.

19.6 Deemed Abandonment of Personal Property

On the expiration or early termination of this Lease, any personal property or chattels left on the Leased Premises is deemed to have been abandoned, after the expiry of sixty (60) Business Days' written notice to the Tenant, and the Landlord shall have the right to dispose of such personal property or chattels without compensation to the Tenant and the Landlord shall be entitled to recover the Landlord's costs and expenses of disposing of such personal property or chattels as rent in arrears.

ARTICLE 20 OPTIONS FOR EARLY TERMINATION

20.1 Landlord's Option to Terminate

- (a) The Parties acknowledge that it is important for the Landlord that the Tenant causes the Commencement of Construction of a Hospital prior to the Absolute

Deadline Date. Moreover, the Parties also acknowledge that it will take the Tenant a considerable period of time to plan and cause the Commencement of Construction of a new Hospital. It is for this reason that an option to terminate in Subsection 20.1(b) was included into this Lease, which allows for the Landlord to terminate so long as there has been no Commencement of Construction.

- (b) The Landlord shall have the option to terminate this Lease commencing on the Absolute Deadline Date, on the following terms and conditions:
- (i) the Landlord may exercise such option to terminate by giving written notice to the Tenant;
 - (ii) the effective date of the termination shall be included in the Landlord's notice to the Tenant, which date shall not be more than ninety (90) days after the delivery of such notice of exercise; and
 - (iii) this option shall be null and void and of no further force and effect if the Commencement of Construction has *bona fide* occurred.

For clarity, this option does not limit or otherwise affect the Landlord's rights hereunder and at Law to terminate for an Event of Default.

- (c) In the event that the Landlord exercises its option to terminate pursuant to Subsection 20.1(b), the Tenant shall:
- (i) within one (1) year of the effective date of the termination of this Lease:
 1. remove any and all Leasehold Improvements (save and except for Permitted Title Encumbrances that were moved pursuant to the Infrastructure Relocation Protocol);
 2. remove any and all chattels and trade fixtures and restore any damage caused by such removal;
 3. restore the area of the removal:
 - A. to the extent required by and in accordance with Applicable Laws (which includes, without limitation, Environmental Law); and
 - B. at least to the condition that the affected area were in as of the Commencement Date (including, without limitation, all sodding);

for clarity, such restoration may include, without limitation, filling all excavations made by the Tenant's removal with appropriate soil and covering the same with sod;
 4. complete the remediation work pursuant to Subsection 12.10(b); and
 5. leave the area so restored in a neat, tidy and good condition.

All such removal and restoration shall be completed on the same terms and conditions as if they were Leasehold Improvements, *mutatis mutandis*. This covenant shall survive the expiration or early termination of this Lease; and
 - (ii) within ninety (90) days of the Landlord giving the Subsection 20.1(b)(i) written notice to terminate, provide the Landlord with a performance bond in an amount sufficient (supported by a Class "D" Estimate for the work prepared by the Tenant's Architect and approved by the Landlord's Architect, each acting reasonably) to carry out the obligations contained in Subsection 20.1(c)(i).

20.2 Tenant's Option to Terminate Early

The Tenant shall have the option to terminate this Lease at any time during the Term, on the following terms and conditions:

- (a) there is not then an Event of Default;
- (b) the Tenant may exercise such option to terminate by giving written notice to the Landlord;
- (c) an Event of Damage has not occurred (in which case the provisions of Article 17 shall govern);
- (d) the effective date of the termination shall be included in the Tenant's notice to the Landlord, which date shall be one hundred eighty-one (181) days after the delivery of such notice of exercise; and
- (e) the Parties confirm that any such termination shall be governed by the procedures in Section 19.3, save and except that the Landlord shall deliver the Removal Notice under Subsection 19.3(c) within ninety (90) days of the Tenant giving written notice under Subsection 20.2(b) and that the Tenant's exercise of the option to terminate shall be void and of no further force and effect if a performance bond is not delivered to the Landlord in accordance with Subsection 19.3(c)(ii);

it being agreed and understood by the Parties that notwithstanding that the exercise of this option to terminate may become void and of no further force and effect pursuant to Subsection 20.2(e), the Tenant shall not be prevented from subsequently exercising its option, subject to the terms and conditions of this Section 20.2.

20.3 Obligations of the Tenant on Early Termination

Upon termination of this Lease pursuant this Article 20 all of the obligations of the Tenant, under this Lease, including, without limitation, all of the obligations to comply with Environmental Laws (subject to Section 12.1, must be fulfilled for the Leased Premises as such obligations arise or occur from the Commencement Date to the date of termination hereunder.

ARTICLE 21 DISPUTE RESOLUTION

21.1 Requirement to Follow the Dispute Resolution Process

In the event of a dispute arising under this Lease, the Parties agree that the Parties shall complete the dispute resolution procedures provided for in this Article 21.

21.2 Negotiations

- (a) First Level Negotiations - In the event of a dispute arising under this Lease, the Parties agree to initially make a good faith attempt to settle the dispute through negotiations. These negotiations shall be addressed and a resolution sought at the level at which the dispute originates.
- (b) Second Level Negotiations - If:
 - (i) a dispute is not resolved at the aforementioned originating level; and
 - (ii) a Party gives the other Party written notice that it is requesting a second level negotiations;

then, as a second level, the dispute shall be negotiated by a representative of the Landlord (at the level not less than Assistant Deputy Minister) and a representative of the Tenant (at the level not less than Chief Operating Officer), in each case, or such other persons occupying such equivalent offices as such evolve during the Term. These two designated representatives shall have sixty (60) Business Days from the date of such notice to negotiate and attempt to resolve the dispute at said level (the "Second Level Negotiation Period").

- (c) No Negotiated Resolution - If the Parties do not resolve the dispute within the Second Level Negotiation Period, the Parties shall proceed with non-binding mediation of the dispute under Section 21.3.

21.3 Non-Binding Mediation

- (a) The Parties agree that non-binding mediation of disputes not resolved through Section 21.2 negotiations shall be held in the City of Ottawa within thirty (30) Business Days following the end of the Second Level Negotiation Period.
- (b) Within fifteen (15) Business Days following the end the Second Level Negotiation Period, the Parties shall jointly select and appoint a neutral commercial mediator, who is qualified by profession or occupation to decide the matter in dispute. In the event that the Parties cannot agree upon the choice of such a neutral mediator within such fifteen (15) Business Day period, then the neutral mediator shall be chosen by the Tenant from a list of not less than three (3) neutral mediators proposed by the Landlord. The fees, costs and expenses of the neutral mediator (including, without limitation, meeting rooms) shall be borne solely by the Tenant. For clarity, each party shall be responsible for the costs and expense of their own representatives and advisors and associated travel and living expenses for the mediation.
- (c) The mediation shall be conducted under such mediation rules as the mediator establishes, provided the mediation shall remain non-binding and the mediator shall convene a meeting of the Parties as soon as is practicable to assist them in resolving their dispute.
- (d) Any settlement of the dispute reached by mediation shall be resolved in writing, shall be signed by the Parties and shall be binding on them. If the dispute is not resolved to the mutual satisfaction of the Parties within sixty (60) Business Days following the end of the Second Level Negotiation Period (the "Mediation Period"), the Parties shall proceed with an arbitration of the dispute under Section 21.4.

21.4 Arbitration

- (a) Applicability of the Commercial Arbitration Act - If the Section 21.3 mediation does not result in the resolution of the dispute, the dispute shall be resolved through arbitration. Arbitral proceedings under this Section 21.4 shall be governed by and conducted in accordance with the *Commercial Arbitration Act*, R.S. 1985, c. 17 (2nd Supp.), as amended and supplemented by the provisions of this Section 21.4.
- (b) Statements of Issue - Within thirty (30) Business Days following the end of the Mediation Period each Party shall give notice to the other stating the nature of the dispute, the amount of moneys or Damages or sums involved, if any, and the remedy sought.
- (c) Arbitrator - The Parties agree that there shall be:
 - (i) one (1) arbitrator for all disputes relating to claims reasonably valued to be less than ten million dollars (\$10,000,000); and
 - (ii) a panel of three (3) arbitrators for all disputes relating to claims reasonably valued to be equal to or greater than ten million dollars (\$10,000,000).
- (d) Costs - Until such time as there is a decision of the arbitrator(s) (which may vary the following allocation of costs), the Parties agree that:
 - (i) they will each be responsible for the costs and expenses of their own representatives and advisors and associated travel and living expenses for the arbitration; and
 - (ii) the fees, costs and expenses of the arbitrator(s) (including, without limitation, meeting rooms) shall be borne equally by the Parties.

21.5 Continuing Performance

At all times, notwithstanding the existence of any dispute, the Landlord and the Tenant shall continue to perform their respective obligations in accordance with the provisions of this Lease, without prejudice to the right to contest, dispute and challenge the relevant matter in accordance with the provisions of this Lease. In the event that there is a dispute as to the Tenant's obligations under Section 8.2, until the dispute is resolved pursuant to this Article 21, the Landlord shall determine the Tenant's obligations.

21.6 Rights Pending the Final Resolution of Disputes

If a dispute is with respect to a notice of termination, and the arbitrator(s) decides that this Lease is to terminate, this Lease shall terminate thirty (30) days following a final decision of the arbitrator(s) regarding the termination, unless the arbitrator(s) orders otherwise.

21.7 Confidentiality

All information exchanged during the foregoing dispute resolution procedures, by whatever means, shall be without prejudice and shall be treated as confidential by the parties and their representatives, unless otherwise required by Law. However, evidence that is independently admissible or discoverable shall not be rendered inadmissible or non-discoverable by virtue of its use during an alternative dispute resolution process.

**ARTICLE 22
FORCE MAJEURE**

22.1 Force Majeure

Whenever and to the extent that either Party shall be unable to fulfil or shall be delayed or restricted in fulfilling the performance of any of its obligations under this Lease (other than the payment of Rent or the provision of insurance) by a Force Majeure Event, such Party shall be relieved from the fulfilment of the part of its obligations directly affected by the Force Majeure Event, during the period when it is impossible to perform the obligation, provided:

- (a) the Party so affected shall proceed to the extent possible with the performance of its obligations not thereby affected; and
- (b) the Tenant shall, in respect of any Force Majeure Event that will or may result in a delay in performance by the Tenant:
 - (i) advise the Landlord of the occurrence of any such Force Majeure Event, or of the likelihood of it occurring, with reasonable diligence, and in any event within ten (10) Business Days, after the Tenant becomes aware of it;
 - (ii) within twenty (20) Business Days of the beginning of any such Force Majeure Event, or the likelihood of it, coming to the attention of Lessee, advise the Landlord of the facts or matters giving rise to the Force Majeure Event of which Tenant has knowledge and periodically update the Landlord as additional facts or matters giving rise to the Force Majeure Event that become known to the Tenant;
 - (iii) within thirty (30) Business Days of the beginning of any such Force Majeure Event, or the likelihood of it, coming to the attention of the Tenant, provide the Landlord with the details of a clear "work-around" plan indicating the steps that the Tenant proposes to take in order to minimize the impact of the Force Majeure Event, which may include alternative sources of materials and labour, if the Force Majeure Event involves the supply of them and if alternative sources of supply are available on commercially reasonable terms and conditions; provided that if the nature of the Force Majeure Event is such that (1) more than thirty (30) Business Days is required to develop a work-around plan, then the Tenant shall provide the work-around plan as soon as is reasonably possible in the circumstances of the Force Majeure Event, or (2) there is no commercially reasonable work-around plan in the circumstances, the Tenant shall advise the Landlord within such thirty (30) Business Day period of the reasons why; and
 - (iv) carry out the work-around plan, if any.

**ARTICLE 23
REPRESENTATIONS AND WARRANTIES**

23.1 Tenant Representations and Warranties

The Tenant represents and warrants:

- (a) that it has full right, power and authority to enter into this Lease and to perform its obligations hereunder; and
- (b) that, as of the Commencement Date, there is:
 - (i) no suit, action, litigation, arbitration proceeding or any other Governmental Authority process or proceeding (including, without limitation, appeals and applications for review) in progress, pending or threatened against involving the Tenant; nor
 - (ii) any judgement, decree, injunction or order of any court or arbitrator;

which might materially adversely affect the right, power and authority of the Tenant, the assets of the Tenant or the Tenant's ability to operate a public hospital under the *Public Hospitals Act* (Ontario).

23.2 Landlord Representations and Warranties

The Landlord represents and warrants that it has full right, power and authority to enter into this Lease.

ARTICLE 24 GENERAL PROVISION

24.1 Overholding

If the Tenant remains in possession of the Leased Premises or any part thereof after the expiration of the Term or the otherwise termination of the Lease, without objection by the Landlord and without written agreement to the contrary, the Tenant shall be deemed to be a tenant from month to month at a rent equal to the fair market rent for the highest and best use of the Leased Premises, which shall be payable, monthly, in advance. Such monthly tenancy shall be subject to all the covenants and agreements hereof so far as they may apply to such monthly tenancy. Such monthly tenancy may be terminated by either party on one (1) calendar months' advanced notice.

24.2 Delivery of Notice

All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms of this Lease shall be in writing and shall be served between 9:00 a.m. and 5:00 p.m. on a day which is a Business Day and shall be delivered by hand, registered mail, or sent by electronic mail to the Landlord addressed to:

Public Services and Procurement Canada
Real Property Services (Real Estate Services)
Place des Explorateurs, 6th floor
191 Promenade du Portage
Gatineau, Quebec K1A 0S5

Attention: Senior Director, Complex Real Estate Transactions

with a copy to:

Department of Justice
Place du Portage Phase III, 1C2 11 Laurier Street
Gatineau, Quebec K1A 0S5
Room 1C1-109

Attention – Manager and Senior Counsel

or to such other Person that the Landlord may from time to time designate in writing or to such other address in Canada as the Landlord may from time to time designate in writing to the Tenant and, in the case of the Tenant may be delivered by hand, registered mail or sent by electronic mail to the Tenant addressed to:

Dr. Jack Kitts, President and CEO of The Ottawa Hospital/ L'Hopital d'Ottawa
Civic Campus

1053 Carling Avenue
Ottawa, Ontario
K1Y 4E9

with a copy to:

Cameron Love, COO of The Ottawa Hospital/L'Hopital d'Ottawa
Civic Campus
1053 Carling Avenue
Ottawa, Ontario
K1Y 4E9

or to the person or persons whom hold a position similar to that of Chief Operating Officer, or at such other address in Canada as the Tenant may from time to time designate in writing to the Landlord.

Service shall only be effective when the document being served is delivered to the recipient as set out above.

24.3 Not a Partnership or a Joint Venture

The Landlord and the Tenant expressly disclaim any intention to create a partnership or joint venture. The Project is the sole venture of the Tenant. It is understood and agreed that nothing contained in this Lease nor any acts of the Landlord or the Tenant hereto shall constitute or be deemed to constitute the Parties as partners or joint ventures or agents nor constitute either of them as agent or agents of the other for any purpose nor shall it create any relationship between the Parties hereto other than the relationship of landlord and tenant. No Party hereto shall have any authority to act for or to assume any obligations or responsibility on behalf of the other Party hereto except as expressly provided herein.

24.4 Time of the Essence

Time is of the essence of this Lease and all the provisions hereof, except as otherwise expressly provided herein.

24.5 Public Officials

No former public office holder who is not in compliance with the post-employment provisions of the Conflict of Interest and Post Employment Code for Public Office Holders shall derive a direct benefit from this Lease.

24.6 No Bribes

The Tenant represents and covenants that no bribe, gift, benefit, or other inducement has been or will be paid, given, promised or offered directly or indirectly to any official or employee of the Landlord or to a member of the family of such a Person, with a view to influencing the entry into this Lease or the administration of this Lease.

24.7 Successors and Assigns

The term "Landlord" shall include the heirs, successors and assigns of the Landlord and the term "Tenant" shall include the permitted assigns of the Tenant, and all of the terms and provisions of this Lease shall be binding upon and enure to the benefit of the Parties.

24.8 No Subordination

Neither the Landlord nor the Tenant's interest in this Lease shall, in any way, be subordinated to the interests of any third party.

24.9 Notice of Lease

With the advanced written consent of the Landlord, this Lease may be registered on title by the Tenant and the Tenant shall pay all costs and expenses of registration and any Land Transfer Tax.

24.10 Paramourcy of the Tenant and the Crown

Notwithstanding anything else herein relating to any provincial or municipal statute, by-law, regulation or other enactment, the Landlord hereby declares that no such reference

shall be interpreted or implied as a recognition by the Landlord that the Province, the City of Ottawa or any municipality, or any provincial or municipal statute, by-law, regulation or other enactment, has any jurisdiction over the Landlord, the Crown, or the Lands. Provided nothing herein shall release the Tenant from any provincial or municipal law as it applies to the Tenant and the Leased Premises, provided for under this Lease or at Law.

24.11 Further Assurances

The Parties shall execute such further assurances as may reasonably be required to give effect to any provision of this Lease

24.12 Currency

All statements of or references to dollar amounts or money in this Lease are to lawful currency of Canada.

24.13 Entire Agreement

This Lease constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the Parties hereto. There are no representations, warranties, conditions or other agreements, whether direct or collateral, or express or implied that form part of or affect this Lease, or which induced any Party hereto to enter into this Lease or on which reliance is placed by any Party hereto, except as specifically set forth in this Lease.

24.14 Amendment

This Lease may not be amended, changed or supplemented other than by a formal written agreement for consideration, properly executed by the Landlord and the Tenant.

24.15 Waiver of Rights

- (a) Any condoning, excusing or overlooking by a Party of any default, breach or non-observance by the other Party at any time or times in respect of any covenant, proviso or condition contained in this Lease shall not operate as a waiver of any rights hereunder in respect of any continuing or subsequent default, breach or non-observance.
- (b) The failure of a Party to insist upon the strict performance of any covenant of this Lease shall not waive such covenant, and the waiver by a Party of any breach of any covenant of this Lease shall not waive such covenant in respect of any future or other breach.
- (c) The receipt and acceptance by the Landlord of Rent or other money due hereunder with knowledge of any breach of any covenant by the Tenant shall not waive such breach. No waiver by a Party shall be effective unless made in writing, in accordance with the manner required under the Lease.

24.16 Invalidity

Each provision of this Lease shall be valid and enforceable to the fullest extent permitted by Law. If any provision of this Lease or the application thereof to either Party or circumstances contemplated hereunder is determined to be invalid or unenforceable at Law:

- (a)
 - (i) any illegal or unenforceable provision, solely to the extent and in the circumstances that it is illegal or unenforceable, shall be deemed severed from this Lease;
 - (ii) the Parties shall negotiate in good faith to amend this Lease to implement such unenforceable or illegal provisions in a manner permitted at Law; and
 - (iii) if the Parties cannot agree on an appropriate amendment, either Party may refer the matter for determination pursuant to the Dispute Resolution procedure in Article 21; and

- (b) the remainder of this Lease, or the application of such provision to either Party or circumstance when it is not illegal or unenforceable at Law, shall not be affected thereby.

24.17 Governing Law

- (a) This Lease shall be interpreted and applied in accordance with the Laws of Canada and, to the extent applicable thereto, Ontario. For clarity, nothing in this Lease shall be construed as limiting, waiving or derogating from the Crown prerogative or immunity or the law of paramountcy.
- (b) Nothing contained herein shall be construed as releasing the Tenant from any obligation which it has under the common law with regard to either the Landlord or any third party.

24.18 Tenant Does Not Enjoy the Landlord's Immunity

Without limiting anything contained herein (which includes, without limitation, those contained in Sections 6.3, 8.1(d) and Article 10), all Laws apply to the Tenant with regard to the Lands, Leased Premises and Project as if the Lands were not owned by Her Majesty the Queen in Right of Canada. To the extent required at Law, if any, it shall be a contractual obligation of the Tenant to comply with all such Laws.

For clarity, the Tenant shall use and occupy the Leased Premises in compliance with all Laws that would be applicable if the Lands were not owned by the Crown, including, without limitation, all obligations to obtain all approvals, permits and licences required thereunder.

24.19 Crown Prerogative and Statutory Authority

The Tenant acknowledges that although the Crown is a Party to this Lease, nevertheless, the Crown (including any department of the Government of Canada and any minister of the Crown) shall have and retain all statutory and prerogative powers and discretion provided under Law. Moreover, nothing in this Lease shall affect the Crown's ability to exercise any rights or powers entrusted to the Crown at Law.

24.20 Integrity Provision

The Ineligibility and Suspension Policy (the "Policy") in effect on the date this Lease comes into force, and all Directives in effect on that date, are incorporated by reference into, and form a binding part of, the Lease. The Ottawa Hospital must comply with the provisions of the Policy and Directives, which are available on Public Services and Procurement Canada's Web site at *Ineligibility and Suspension Policy* (<http://www.tpsgc-pwgsc.gc.ca/ci-if/politique-policy-eng.html>), as amended or replaced from time to time, as the case may be. A copy of the *Ineligibility and Suspension Policy* in effect as of the Commencement Date is attached hereto as Schedule Q.

24.21 Approval, Consent or Authorization of the Landlord

Except where specifically provided to the contrary in this Lease whenever this Lease requires:

- (a) an approval, consent or authorization by the Landlord or an agent of the Landlord; or
- (b) a determination, estimation or other action or exercise of discretion by the Landlord or an agent of the Landlord;

such approval, consent, authorization, determination, estimation or action of discretion, as the case may be, may be unreasonably withheld and the Tenant shall be deemed to have accepted such approval, consent, authorization, determination, estimation or action of discretion without recourse to challenge the same under this Lease or at Law.

24.22 Planning Act Compliance

This Lease is subject to compliance, if necessary, with the *Planning Act* (Ontario) at the sole expense of the Tenant.

(Signature Page Follows)

