



FOR RECOMMENDATION

PUBLIC

OPEN SESSION

TO: Academic Board

SPONSOR: Scott Mabury, Vice President, University Operations
CONTACT INFO: 416-978-7116, scott.mabury@utoronto.ca

PRESENTER: As above
CONTACT INFO:

DATE: November 12, 2015 for November 19, 2015

AGENDA ITEM: 2

ITEM IDENTIFICATION:

Revised Affiliation Agreement and ancillary agreements between the Governing Council of the University of Toronto and the University of Toronto Schools (UTS)

JURISDICTIONAL INFORMATION:

Section 5.3.2 of the Terms of Reference for the Academic Board lists items coming from the Board's Committees and includes agreements with external bodies that do not conform to a template... Matters having significant impact on the University as a whole will normally require the approval of the Governing Council.

GOVERNANCE PATH:

1. Planning and Budget Committee [for recommendation] (October 28, 2015)
2. Business Board [for recommendation] (November 2, 2015)
3. **Academic Board [for recommendation] (November 19, 2015)**
4. Executive Committee [for endorsement and forwarding] (December 7, 2015)
5. Governing Council [for approval] (December 15, 2015)

PREVIOUS ACTION TAKEN:

In 2006, the *Affiliation Agreement between the Governing Council of the University of Toronto and the University of Toronto of Schools, July 1, 2006 to June 30, 2021*, was recommended by the Planning and Budget Committee on March 7, 2006 and by the Academic Board on March 30, 2006 to the Governing Council. With respect to the financial, property and human resource arrangements, the Business Board concurred with the prospective Academic Board recommendation at its meeting on February 27, 2006 and authorized the Vice-President, Human

Resources to execute the *Agreement*. The recommendations were approved by the Governing Council on May 1, 2006.

HIGHLIGHTS:

University of Toronto Schools (UTS) is one of Canada's leading pre-eminent preparatory schools, recognized both nationally and internationally. The School has been a part of the broader University of Toronto community for 105 years. In that period it has established a strong reputation as a middle and secondary school for academically able students. In addition, UTS has continued to fulfill its original mandate as a model school supporting research, innovation and teacher training. The University provided considerable assistance to UTS over many years, including financial, administrative and facilities support arising from its original association with the University's Faculty of Education. As a result of the 2006 *Affiliation Agreement* UTS has become financially independent and capable of sustaining itself separately from the University, however a continuing affiliation will have benefits for both parties.

The Insurance component of the *Affiliation Agreement* for occupancy and construction is currently being developed and there is a "Note to Draft" in the *Agreement* that all aspects of insurance will be settled prior to agenda planning for Governing Council.

Background

University of Toronto and UTS have a current *Affiliation Agreement* which affirmed their long standing association which was executed in June 2006 for a 15 year term. This current *Affiliation Agreement* expires in June 2021.

The UTS premises are located on land owned by the University at 371 Bloor Street West. The UTS premises require renewal, and such re-development must reflect the quality standards associated with the School as a pre-eminent learning institution supporting best practices in teaching. In order to accomplish this, UTS wishes to make a significant investment in the re-development of their existing facilities. The existing *Affiliation Agreement* established the process for redevelopment of the site and UTS's right to propose renewal of their facilities to the University. Since the existing *Affiliation Agreement* expires in five years and UTS wishes to make significant capital improvements, UTS has approached the University to renew the *Agreement* now for a longer term in advance of completing fundraising and commencing design for their new facilities.

UTS proposes the renovation and/or construction of about 147,000 gross square feet of space on the northeast portion of 371 Bloor St. A new 700 seat auditorium will be provided for partial shared use by the University on a mutually agreed basis. A renewed and enhanced UTS facility will benefit the school, the University and the local community surrounding the site.

Over the last several years, the University and UTS have worked together on a preliminary plan for the re-development of UTS taking into consideration the University's interests in the development of the remainder of the 371 Bloor St West site, by the University. The proposed revised *Agreement* reflects those preliminary UTS plans but also maintains all of the University's

rights and interests in their development of the remainder of the site. Additionally, UTS is obligated to provide certain site improvements for the benefit of the University as part of the commercial terms of the renewal of the *Agreement*.

Executive Summary of the revised *Affiliation Agreement*

The existing *Affiliation Agreement* has now been revised to reflect changes to a number of principal terms and in particular to describe the obligations and rights of both parties in the respect of the re-development of the site. The revised *Affiliation Agreement* contains three ancillary agreements which are attached as exhibits: a Real Property License Agreement, a Trademarks License and Consent Agreement, and a Project Agreement. The principal terms of these agreements are summarized below:

Affiliation Agreement

- Term: The term shall commence on the date of execution of the agreement after approval by Governing Council and end 50 years from the date of occupancy of the new UTS school for both the UTS Site and Roberts St Field.
- Renewal: Notice by either party, by mutual agreement, on such terms and duration as by mutual agreement.
- Academic Affiliation: The continuing relationship between UTS and OISE/UT is fundamental to the affiliation. Current joint activities include the OISE Master of Teaching program, research activities, and access to UTS for joint activities. It is recognized that UTS and OISE will cooperate in planning for future activities as the educational needs of both parties evolve over time.
- UTS Access to University Facilities: UTS shall continue to have access to University libraries and IT services subject to University rates, rules and policies and be eligible for the Joint Membership Plan on the same basis as University staff. UTS will have access to the use of the Robert St fields, subject to availability.

Exhibit 1: Real Property License Agreement

- University Use of UTS facilities: The University shall have access to the UTS 700 seat Auditorium and related pre-function space up to 20% of the time. A separate public entrance shall be provided. Additionally, if the University has a need for use of the UTS gymnasium space it is also available as coordinated with the UTS schedule. The University will pay UTS for operating expenses related to the University use.
- Operations and maintenance: UTS will be responsible for all maintenance, repair, replacement and renewal of the facility. UTS may request that the University provide cleaning and maintenance services to UTS and pay the University for such services.
- University construction labour agreements: UTS will comply with all University construction labour agreements.
- Insurance: UTS shall maintain insurance and name the University as an insured at UTS cost. The specifics of the insurance shall be resolved prior to the agenda planning meeting for Governing Council.

- **Surrender on Termination:** At the end of the lease UTS will hand back the facility in a state of repair and condition equal to the condition of the facility at commencement, subject to reasonable wear and tear.

Exhibit 2: Trademarks License and Consent Agreement

- **Marks:** The University owns all rights in the corporate names, trade names, marks and trade-marks in Schedule A, including those previously used by UTS under license.
- **License and Consent:** The University grants UTS the license and consent to UTS to use the marks in Schedule A for the purpose of the operation of UTS. The exclusive use granted with respect to the Marks does not extend to the Marks in Schedule B.
- **Audit:** The University has the right to audit the use of the Marks by UTS, to ensure compliance with this Agreement.

Exhibit 3: Project Agreement

- **Major Decisions:** UTS will obtain consent of the University on all major decisions. Project design work will be to University approval.
- **UTS Obligations:**
 - UTS shall procure their design team to University approval.
 - UTS will complete their design in compliance with all University policies, including the University Design Standards and the requirement to present their project to the University Design Review Committee.
 - UTS will hold design, project management and construction meetings that the University will attend.
 - UTS will pay project management fees to the University for the University to manage the University's responsibilities in the project.
- **University Obligations:**
 - Review UTS design, construction and permitting submissions in a timely manner.
 - Assign a University project manager to manage University obligations.
- **Fees:** The University shall obtain a minimum of \$10,000,000 in equivalent value for the rights granted, consisting of the following:
 - UTS will restore the 1910, 1924 and 1931 wings of the building on Bloor St and Huron St.
 - UTS will provide funding of \$1,500,000 for the redevelopment of the Roberts St playing field by the University.
 - UTS will design and construct a caisson wall separating their facility from the remaining 371 Bloor St site to enable the University re-development.
 - UTS will provide funding of \$2,500,000 for demolition of the existing mechanical and auditorium spaces by the University, to enable the University re-development.
 - UTS will design and build a parking ramp and new basement corridor for the University re-development.
 - The value of the UTS Auditorium project cost based on it being available to the University 20% of the time.

- UTS Financial capability: Prior to commencement of construction UTS will demonstrate financial capability to complete the project.
- Security:
 - The University shall have first priority security interest in the UTS Project Account.
 - No funds shall be released from the UTS Project Account without University consent.
 - UTS will retain an independent cost estimator to certify on a quarterly basis that there are sufficient funds in the Project Account to complete the project.
 - If UTS breaches the Agreement, the University may draw on the Project Account as outlined in the Agreement.
- Permits, Approvals, Licenses: UTS will obtain all permits, approvals and licenses.
- Construction:
 - UTS will procure the Constructor and the complete construction of their project at their cost. UTS will solely be responsible for any cost overruns associated with their project.
 - UTS' building will be a maximum site area of 4508 square metres and maximum gross floor area of 150,000 square feet.
 - UTS will provide to the University:
 - Monthly updates to the construction schedule.
 - Monthly construction reports.
- Schedule A: Survey: Attached diagram showing the extent of the UTS Site footprint at the 371 Bloor St West site.
- Schedule B: Heritage obligations to be performed by UTS are described.
- Schedule C: Auditorium room data sheet obligations to be performed by UTS are described.
- Schedule D: Gymnasium room data sheet obligations to be performed by UTS are described.

FINANCIAL IMPLICATIONS:

The proposed benefit to the University is \$10 million in Fees payments and benefits from UTS. The *Project Agreement*, Article 4 describes the Fees in detail.

RECOMMENDATION:

Be It Recommended to the Governing Council

- i. THAT the *revised Affiliation Agreement between the Governing Council of the University of Toronto and the University of Toronto Schools (UTS)* dated December 16, 2015 be approved; and
- ii. THAT the Vice-President, University Operation be given authority to execute the *Revised Affiliation Agreement between the Governing Council of the University of Toronto and the University of Toronto Schools (UTS)* dated December 16, 2015.

DOCUMENTATION PROVIDED:

Affiliation Agreement dated December 16, 2015

Real Property License Agreement dated December 16, 2015

Trademarks License and Consent Agreement dated December 16, 2015

Project Agreement dated December 16, 2015

Project Agreement Schedule C

Project Agreement Schedule D

AFFILIATION AGREEMENT

THIS AGREEMENT is made as of this ____ day of _____, 2015 (the “**Effective Date**”),

BETWEEN:

THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO

(the “**University**”)

- and -

UNIVERSITY OF TORONTO SCHOOLS

(“**UTS**”)

RECITALS:

WHEREAS a school for children known as “University of Toronto Schools” (the “**School**”) was created by the province of Ontario as a model school at the University in 1910;

AND WHEREAS from 1910 until 2006, the School was operated by the Province of Ontario and/or the University.

AND WHEREAS since 2006, UTS, a non-profit corporation, has operated the School independently of the University pursuant to the 2006 Affiliation Agreement (as defined below), pursuant to which the School has remained located within the St. George campus on lands owned by the University;

AND WHEREAS UTS is today the only merit-based university preparatory school in Canada affiliated with a university and located on a university campus;

AND WHEREAS the University and UTS have agreed that their affiliation continues to be mutually beneficial for both parties, and wish to continue their affiliation;

AND WHEREAS accordingly, they have agreed to replace the 2006 Affiliation Agreement with this Agreement;

AND WHEREAS, concurrently with the entering into of this Agreement, the University and UTS have agreed to enter into the Ancillary Agreements (as defined below) in respect of other matters arising in connection with their ongoing affiliation, including, *inter alia*, in respect of the construction and redevelopment of the building in which the School is located;

NOW THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Article 1
INTERPRETATION

1.01 Definitions

Whenever used in this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following words and terms shall have the respective meanings as assigned to them in this Section 1.01:

“2006 Affiliation Agreement” means the affiliation agreement made June 30, 2006 between the University and UTS, as amended and/or extended from time to time;

“2006 Real Property Licence Agreement” means the real property licence agreement between UTS and the University dated as of June 30, 2006;

“2006 Trade-marks Licence Agreement” means the trade marks licence agreement between UTS and the University dated as of June 30, 2006;

“2015 Real Property Licence Agreement” shall have the meaning assigned to such term in Section 6.01 hereof;

“2015 Trade-marks Licence Agreement” shall have the meaning assigned to such term in Section 6.02 hereof;

“Affiliation Committee” shall have the meaning assigned to such term in Section 4.03;

“Agreement” means this affiliation agreement, including Schedule A, Schedule B and Schedule C and any other Schedules or other addenda that the parties may expressly incorporate in writing; provided that, for certainty, the Exhibits to this Agreement, which comprise the Ancillary Agreements, shall not form part of this Agreement but shall be entered into by the parties and binding on the parties in accordance with their terms;

“Ancillary Agreements” means, collectively, the 2015 Trade-Marks Licence Agreement, the 2015 Real Property Licence Agreement, and the Project Agreement;

“Business Day” means any day, other than a Saturday, Sunday or statutory or civic holiday in the Toronto, Ontario;

“Confidential Information” shall have the meaning assigned to such term in section 11.01;

“Effective Date” shall have the meaning assigned to such term on the first page hereof;

“Force Majeure Event” means any act, occurrence, condition, or event beyond the control of a party that materially affects the performance of that party’s obligations under this Agreement that could not reasonably have been foreseen or provided against (including strikes, riots, wars, acts of terrorism, military or national emergencies, acts of governmental authority, natural disasters, power outages and interruptions, brownouts, and fire), but does not include general economic or other conditions affecting financial markets generally;

“Joint Membership Plan” means the combined and discounted membership plan for the Faculty Club, Athletics Centre and Hart House facilities which is subsidized by the University, and for the purposes of this Agreement, shall include any similar or successor plan or plans in place in respect of one or more of such facilities from time to time during the Term;

“Liquid Transferred Assets” shall have the meaning assigned to such term in the 2006 Affiliation Agreement;

“Losses” means any and all losses, liabilities, claims, obligations, costs, expenses suffered or incurred by a Person in respect of a particular matter or circumstance, including without limitation reasonable legal fees and disbursements;

“Marks” has the meaning ascribed hereto in Section 6.02;

“Occupancy Date” has the meaning ascribed thereto in the Project Agreement;

“OISE/UT” means the Ontario Institute for Studies in Education/University of Toronto, and its successors;

“Pension Participants” shall have the meaning assigned to such term in Section 8.01;

“Pension Plan” means the University’s pension plan for its employees, as may be amended from time to time;

“Person” means a natural person, partnership, limited partnership limited liability partnership, syndicate, sole proprietorship, corporation or company (with or without share capital), limited liability company, trust, unincorporated association, joint venture or other entity or any government entity;

“Personal Information” shall have the meaning assigned to such term in the *Freedom of Information and Protection of Privacy Act* (Ontario), as amended from time to time;

“Project Agreement” shall have the meaning assigned to such term in Section 6.03;

“Representatives” means, in respect of any Person, as applicable, all subsidiaries, affiliates, governors, directors, officers, employees, students, agents and other representatives of such Person;

“Returned Assets” shall have the meaning assigned to such term in Section 5.01;

“Returned Records” shall have the meaning assigned to such term in Section 5.02;

“Robert Street Playing Field” means the lands on Robert Street/Sussex Avenue (Aura Lee Playing Field) collectively known as the “Robert Street Playing Field”;

“Term” shall have the meaning assigned to such term in Section 3.01;

“University” shall have the meaning assigned to such term in the recitals to this Agreement, and for the purposes hereof, shall include its successors;

“UTS” shall have the meaning assigned to such term in the recitals to this Agreement, and for the purposes hereof, shall include its successors;

“UTS Site” has the meaning ascribed thereto in the Project Agreement; and

“**UTS Foundation**” means the UTS Foundation, a corporation formed, *inter alia*, to support the educational programmes of UTS, and for the purposes hereof, shall include its successors.

1.02 Sections, Headings and Schedules

The division of this Agreement into Articles, Sections and paragraphs and the insertion of headings are for convenience of reference only and shall not affect the interpretation or construction of this Agreement. Unless otherwise indicated, any reference in this Agreement to an Article, Section, paragraph or Schedule refers to the specified Article, Section, paragraph or Schedule to this Agreement.

1.03 Currency Used

All references herein to dollars or the use of the symbol “\$” shall be deemed to refer to Canadian dollars.

1.04 Gender

In this Agreement, words importing the use of either gender shall include both genders.

1.05 Time of the Essence

Time shall be of the essence of this Agreement and of every part hereof and no extension or variation to this Agreement shall operate as a waiver of this provision.

1.06 Governing Law

This Agreement shall be construed, interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without reference to any principles of conflicts of laws. Subject to the terms of Article 14, each party irrevocably and unconditionally attorns to the exclusive jurisdiction of the courts of the Province of Ontario with respect to any matter arising hereunder and relating hereto.

1.07 Invalidity

Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid pursuant to applicable law, and if any provision of this Agreement shall be prohibited by or held invalid, illegal or unenforceable pursuant to applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, illegality or unenforceability without invalidating the remainder of such provision and the remaining provisions of this Agreement.

1.08 Calculation of Time

In this Agreement, 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. (Toronto time) on the last day of the period. If any period of time is to expire hereunder on any day that is not a Business Day, the period shall be deemed to expire at 5:00 p.m. (Toronto time) on the next succeeding Business Day.

1.09 Performance on Holidays

If any act (including the giving of notice) is otherwise required by the terms hereof to be performed on a day which is not a Business Day, such act shall be valid if performed on the next succeeding Business Day.

1.10 Consents and Approvals

Unless otherwise specified, where the consent or approval of a party is contemplated or required by the terms of this Agreement, that party shall not unreasonably delay or withhold the giving of such consent or approval after a request therefor has been made by the other party.

1.11 Additional Rules of Interpretation

- (a) In this Agreement, unless the context requires otherwise, words in the singular include the plural and vice versa.
- (b) Unless otherwise indicated, all references in this Agreement to any statute include the regulations thereunder and all applicable guidelines, bulletins or policies made in connection therewith and which are legally binding, in each case as amended, re-enacted, consolidated or replaced from time to time and in the case of any such amendment, re-enactment, consolidation or replacement, reference herein to a particular provision shall be read as referring to such amended, re-enacted, consolidated or replaced provision.
- (c) Wherever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation” and the words following “include”, “includes” or “including” shall not be considered to set forth an exhaustive list.
- (d) All references herein to any agreement (including this Agreement), document or instrument mean such agreement, document or instrument as amended, supplemented, modified, varied, restated or replaced from time to time in accordance with the terms thereof and, unless otherwise specified therein, includes all schedules and exhibits attached thereto.

1.12 Schedules

The following are the Schedules attached to and incorporated in this Agreement by reference and deemed to be a part hereof:

- Schedule A - UTS and OISE/UT Affiliation Activities
- Schedule B - Information Technology Services
- Schedule C - Pension Participants

1.13 Exhibits (Ancillary Agreements)

The following are the Exhibits attached to this Agreement which comprise the Ancillary Agreements to be entered into and binding on the parties in accordance with their terms:

- Exhibit 1 - 2015 Real Property Licence Agreement

- Exhibit 2 - 2015 Trade-marks Licence Agreement
- Exhibit 3 - Project Agreement

Article 2
PURPOSE

2.01 Purpose

This Agreement governs all matters between the University and UTS concerning their affiliation during the Term and constitutes the entire agreement regarding same and supersedes all prior and other agreements, understandings, negotiations and discussions, whether written or oral, between the parties, including the 2006 Affiliation Agreement. The parties acknowledge and agree that the Ancillary Agreements will govern the specific matters dealt with therein.

Article 3
TERM

3.01 Term

The term of this Agreement shall commence on the Effective Date and end on the date that is one day prior to the 50th anniversary of the Occupancy Date; provided that, if the Occupancy Date has not occurred by the termination of the Project Agreement, the term of this Agreement shall end one day prior to the 14th anniversary of the Effective Date (as applicable, the “**Term**”), unless terminated earlier in accordance with the provisions of Article 14.

3.02 Renewal

This Agreement may be renewed at the end of the Term by the parties’ mutual agreement in writing, and on such terms and for such duration as they may agree. To facilitate the opportunity for renewal negotiations, if either party intends to seek a renewal of this Agreement, written notice of such intention shall be given to the other party not later than the date that is 7 years prior to the expiration of the Term, and it shall be considered in good faith by the other party.

3.03 2006 Affiliation Agreement

Notwithstanding the terms of the 2006 Affiliation Agreement, the parties agree that from and after the Effective Date, the 2006 Affiliation Agreement and all covenants, agreements, representations and warranties of the parties therein shall terminate and be of no force and effect.

3.04 2006 Real Property Licence Agreement

Notwithstanding Section 3.03 above, the parties each acknowledge and agree that the 2006 Real Property Licence Agreement shall not terminate as of the Effective Date, but shall remain in full force and effect, provided that the parties expressly acknowledge and agree that, subject to the terms of the Project Agreement, the term thereof is hereby amended to expire on June 30, 2021.

Article 4
ACADEMIC AFFILIATION ACTIVITIES

4.01 UTS Objects

During the Term, UTS shall, as part of the University community, endeavour to achieve the objects in UTS's letters patent of incorporation, as amended from time to time, which include:

- (a) to provide highest quality and accessible education to students selected on the basis of merit;
- (b) to serve as a resource and facility for the initial and continuing education of teachers; and
- (c) to develop, support and advance school and university curriculum, instruction and assessment methods through research and innovation in both the Canadian and international contexts.

4.02 University's Mission

The University acknowledges that UTS has, in the past, contributed to the University's mission and that, through the achievement of the objects described in Section 4.01, UTS agrees that it shall seek ways to continue its contribution to the University's mission to the extent such contribution is accepted by the University.

4.03 Affiliation Committee

To facilitate the objects described in Section 4.01, the parties each agree to form and participate in good faith in a new affiliation committee (the "**Affiliation Committee**"), which shall be comprised of:

- (a) three (3) representatives of the University, including one (1) member of the Office of the Provost of the University; and
- (b) three (3) representatives of UTS.

The Affiliation Committee shall meet at least two (2) times annually to discuss matters of mutual interest, including identifying opportunities for academic contributions by UTS and for collaboration between UTS and the University. The Affiliation Committee shall report annually in writing to the Office of the Provost of the University and to the Chair of UTS's board of directors.

4.04 Applicable Laws; University Policies

UTS shall at all times comply with (a) all applicable laws reasonably relating to the affiliation or the activities conducted hereunder, and (b) University policies of general application, published by its Governing Council from time to time, which apply to Persons occupying or using University premises, or relating directly to affiliation activities specified herein, as they may be modified or amended during the Term. Without limiting the generality of the foregoing, these include (mutatis mutandis) policies dealing with prohibited discrimination and harassment, health and safety, environmental protection and the policy for safety in athletic facilities. If any of the University's policies are modified or amended during the Term, the University shall endeavour to notify UTS of such modification or amendment on a timely basis.

4.05 Relationship with OISE/UT

The parties acknowledge and agree that the academic affiliation activities between OISE/UT and UTS have been and will continue to be a fundamental part of the affiliation between UTS and the University. In accordance with the foregoing, the parties acknowledge the current academic affiliation activities as described in Schedule A hereto and agree to cooperate in respect of these and other similar activities during the Term.

Article 5

UTS FUNDAMENTAL CHANGES

5.01 Return of Historical Endowments

In the event that UTS ceases its operations, announces its intention to cease operations, or fundamentally changes the objects in UTS's letters patent of incorporation, as amended from time to time, then the University reserves the right to require any endowments established prior to January 1, 2004 which formed part of the Liquid Transferred Assets and which remain in existence at such time (including any income earned and/or net of any losses suffered thereon, as applicable, the "**Returned Assets**"), to be returned to the University in accordance with any applicable order of a court of competent jurisdiction.

5.02 Return of Records of Historical Endowments

Subject to applicable law, UTS shall transfer to the University any and all records and files that relate to the Returned Assets (collectively, the "**Returned Records**") in accordance with any applicable order of a court of competent jurisdiction. UTS shall be permitted to make and retain copies of any Returned Records that may be required for its own historical purposes and systems, provided that it does not give, sell, transfer or otherwise dispose of any such Returned Records or disclose any information contained in any such Returned Records to any Person or use such Returned Records or the information contained therein for any other purpose. If UTS cannot transfer the Returned Records to the University without violating any applicable law, UTS agrees to maintain and warehouse, and provide access to the University to, the Returned Records.

Article 6

ANCILLARY AGREEMENTS

6.01 371 Bloor Street West

On the Occupancy Date, the University and UTS shall enter into the real property licence agreement attached hereto as Exhibit 1 (the "**2015 Real Property Licence Agreement**").

6.02 UTS Name and Trade-marks

Subject to the prior written approval of the Minister of Training, Colleges, and Universities, on the Effective Date, the University and UTS shall enter into the trade-marks licence and consent agreement attached hereto as Exhibit 2 (the "**2015 Trade-marks Licence Agreement**"). Pursuant to the Trade-marks Licence Agreement, the University shall grant to UTS a non-transferable, royalty-free licence and consent to use the corporate names, the business and trade names, official marks and trade-marks set out in Schedule A thereto (collectively, the "**Marks**") for the duration of the Term.

6.03 Site Redevelopment

On the Effective Date, the University and UTS shall enter into the project agreement attached hereto as Exhibit 3 (the “**Project Agreement**”), which sets out all construction and redevelopment terms and conditions relating to construction and redevelopment of the UTS Site.

Article 7 **ACCESS TO UNIVERSITY FACILITIES AND SERVICES**

7.01 Libraries

Subject to the rules, rates and other policies that apply to students and staff of the University, students and employees of UTS shall be entitled to access and use all University libraries, including access to and use of the University’s library system and its databases, media and print collections, cataloguing system (SIRSI - Workflows), and training and staff support services.

7.02 Athletic Facilities

- (a) During the Term, and subject to availability and to the rules and other policies that apply to students of the University, students of UTS shall be entitled to use the athletic facilities at the University’s St. George campus, including the Robert Street Playing Field, if:
 - (i) such facilities are booked by UTS on behalf of the UTS students for a class or athletic event; and
 - (ii) the UTS students are supervised by a UTS teacher, staff member or coach.
- (b) During the Term, and subject to availability and to the rules and other policies that apply to staff of the University, each employee of UTS shall be entitled to use the athletic facilities at the University’s St. George campus, provided that she or he is a member of the Joint Membership Plan.

7.03 Information Technology Services

Subject to the rules, rates and other policies that apply to students and staff of the University, during the Term, UTS shall be permitted to continue to access the information technology services and systems of the University as detailed in Schedule B and subject to the University’s policies governing such services and systems.

7.04 Joint Membership Plan

During the Term, employees of UTS shall continue to be eligible for the Joint Membership Plan on the same basis as such membership is available to staff of the University.

Article 8
**PENSION AND LABOUR
MATTERS**

8.01 Pension Participation

The employees of UTS listed on the attached Schedule C (the “**Pension Participants**”), who are administrative staff hired by the University prior to January 1, 2004 and who transferred to UTS at or prior to that date, continue to be eligible to participate in the Pension Plan in accordance with its terms. It is understood that, upon retirement from UTS, or the cessation of their employment at UTS for any reason, the Pension Participants’ pension rights shall be as set out in the Pension Plan.

8.02 Labour Relations

UTS acknowledges and agrees that the University will not be involved in any way with UTS’s labour relations.

Article 9
UTS ADVANCEMENT

9.01 Fundraising and Advancement Activities

Subject to Section 11.05, UTS shall be free to conduct its own fundraising and advancement activities without restriction, provided that UTS shall not make any representations in its fundraising and advancement activities that are inconsistent with the arrangements between the University and UTS under this Agreement or any Ancillary Agreement.

9.02 Remittance of Gifts

During the Term, the University shall forthwith remit to UTS or the UTS Foundation, as applicable, any gifts and related documentation it receives designated for the use or benefit of UTS or the UTS Foundation (but only to the extent any such gifts or related documentation are designated for the use or benefit of UTS or the UTS Foundation).

Article 10
**REPRESENTATIONS AND
WARRANTIES**

10.01 UTS Representations and Warranties

UTS represents and warrants to the University as set out in this Section 10.01 and acknowledges that the University is relying on such representations and warranties in connection with the arrangements contemplated in this Agreement.

- (a) UTS is a not-for-profit corporation incorporated and validly existing under the laws of the Province of Ontario, is in good standing, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Agreement and perform its obligations hereunder.
- (b) UTS has the requisite power, authority and capacity to execute and deliver this Agreement, and to do all acts and things, and enter into, execute, deliver and perform its obligations under all other agreements, instruments, undertakings and

documents as are required by this Agreement to be entered into, executed, delivered and performed.

- (c) No steps or proceedings have been taken or are pending to supersede or amend the governing documents of UTS in a manner that would impair or limit its ability to perform the obligations of UTS under this Agreement.
- (d) This Agreement has been duly authorized, executed, and delivered by UTS and constitutes a legal, valid, and binding obligation of UTS, enforceable against UTS in accordance with its terms.
- (e) The execution, delivery, and performance by UTS of this Agreement does not and will not violate or conflict with, or constitute a default under:
 - (i) its governing, formation or organizational documents, including any by-laws;
 - (ii) any applicable law; or
 - (iii) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected.
- (f) There are no actions, suits, proceedings, or investigations pending or threatened against UTS at law or in equity before any governmental authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of UTS or in any impairment of its ability to perform its obligations under this Agreement, and UTS has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any governmental authority or arbitral body that could result in any such material adverse effect or impairment.
- (g) As of the Effective Date, and except as amended pursuant to this Agreement, the 2006 Real Property Licence Agreement remains in full force and effect, unamended, and as of Effective Date, UTS has no knowledge, following due inquiry, of any claims either party may have against the other party thereunder.

10.02 University Representations and Warranties

The University represents and warrants to UTS as set out in this Section 10.02 and acknowledges that UTS is relying on such representations and warranties in connection with the arrangements contemplated in this Agreement.

- (a) The University is a university validly existing under the laws of the Province of Ontario, is in good standing, and has all the requisite power and authority to own its properties and assets, to carry on its authority as it is currently being conducted, and to enter into this Agreement and perform its obligations hereunder.
- (b) The University has the requisite power, authority and capacity to execute and deliver this Agreement, and to do all acts and things, and enter into, execute, deliver and perform its obligations under all other agreements, instruments,

undertakings and documents as are required by this Agreement to be entered into, executed, delivered and performed.

- (c) No steps or proceedings have been taken or are pending to supersede or amend the governing documents of the University in a manner that would impair or limit its ability to perform the obligations of the University under this Agreement.
- (d) This Agreement has been duly authorized, executed, and delivered by the University and constitutes a legal, valid, and binding obligation of the University, enforceable against the University in accordance with its terms.
- (e) The execution, delivery, and performance by the University of this Agreement does not and will not violate or conflict with, or constitute a default under:
 - (i) its governing, formation or organizational documents, including any by-laws;
 - (ii) any applicable law; or
 - (iii) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected.
- (f) There are no actions, suits, proceedings, or investigations pending or threatened against the University at law or in equity before any governmental authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of the University or in any impairment of its ability to perform its obligations under this Agreement, and the University has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any governmental authority or arbitral body that could result in any such material adverse effect or impairment.
- (g) As of the Effective Date, and except as amended pursuant to this Agreement, the 2006 Real Property Licence Agreement remains in full force and effect, unamended, and as of Effective Date, the University has no knowledge, following due inquiry, of any claims either party may have against the other party thereunder.
- (h) As of the Effective Date, the University has remitted to UTS or the UTS Foundation all gifts and related documentations it has received designated for the use or benefit of UTS or the UTS Foundation (but only to the extent such gifts and related documentation are designated for the use or benefit of UTS or the UTS Foundation).

Article 11 **CONFIDENTIALITY**

11.01 Confidential Information

- (a) Each of UTS and the University acknowledges that, in the course of performing its duties under this Agreement, it may receive non-public information relating to

the obligations and/or rights of the parties under this Agreement and from the other party which is clearly marked "Confidential" (all such information, collectively the "**Confidential Information**"). Confidential Information shall include all Personal Information delivered from one party to the other party in connection with this Agreement, provided Confidential Information shall not include information that (a) was in the public domain at the time it was communicated to the receiving party, (b) entered the public domain subsequent to the time it was communicated to the receiving party through no fault of the receiving party, (c) was in the receiving party's possession free of any obligation of confidence at the time it was communicated to the receiving party, (d) was rightfully communicated to the receiving party free of any obligation of confidence subsequent to the time it was communicated, (e) was developed by representatives of the receiving party independently of and without reference to any information communicated to the receiving party by the disclosing party, (f) was communicated to the receiving party by an unaffiliated third party free of any obligation of confidence, (g) subject to Section 11.02, required to be disclosed by the receiving party by law, court order or governmental order, or (h) was delivered pursuant to the terms of any Ancillary Agreement (in which case the terms of such applicable agreement shall govern the treatment of such information).

- (b) Except as the disclosing party may expressly agree to in writing or as contemplated under the terms of Section 11.02, the receiving party: (i) shall at all times keep and hold Confidential Information of the disclosing party in the strictest confidence; (ii) shall not disclose any of the Confidential Information of the disclosing party to any person or entity, other than to those of its Representatives who have agreed in writing to be bound by the terms of this Section 11.01; (iii) shall not use such Confidential Information for any purpose other than for purposes for which the disclosing party is authorized to use such information or a consistent purpose; and (iv) use the same standard of care that it uses with its own confidential information when dealing with Confidential Information of the disclosing party.
- (c) Notwithstanding anything in this Section 11.01, any party shall be entitled to use Confidential Information in connection with making any claim under this Agreement (including, without limitation, in connection with any mediation pursuant to Article 14) against the other party, provided that reasonable steps are taken to preserve the confidentiality of such information where it is reasonably possible to do so.

11.02 Disclosures Required by Law

Where disclosure of any Confidential Information is required by law, court order or governmental order, the receiving party will immediately notify the disclosing party thereof (including the manner of disclosure) so that the disclosing party may take such action as it deems necessary to intervene, limit the scope of disclosure or otherwise seek assurances of confidentiality. Further, the receiving party agrees to cooperate fully with the disclosing party in taking action to protect the disclosing party's Confidential Information or otherwise limit the scope of required disclosure.

11.03 FIPPA

- (a) UTS acknowledges that the University is governed by the Freedom of Information and Protection of Privacy Act ("FIPPA") and that records submitted to and in the possession of the University, including this Agreement, are governed by such legislation and may be subject to disclosure in accordance with its requirements.
- (b) Unless provided by UTS to the University and held by the University, the University does not have custody or control of any UTS records, such being generated by, used by, and held by UTS as an independent entity.
- (c) If, for any purpose under this Agreement, either party provides to the other personal information that would be subject to FIPPA if in the custody or control of the University, the other party agrees that it shall keep such information confidentially, treating it in accordance with FIPPA or in a manner consistent with the protection of privacy enshrined in FIPPA, as the case may be.
- (d) Notwithstanding any other term of this Agreement, prior to disclosing or publishing this Agreement or any of its terms, including any contractual submissions or other records kept in accordance with the Agreement, or any information derived from this Agreement, or any information related to the performance thereof by the University or UTS, the disclosing party shall give notice to the other party, including notice regarding any redactions that it proposes to make pursuant to FIPPA or otherwise if it intends to make disclosure. If the records proposed to be released are within the University's custody or control and if UTS objects, UTS may utilize its rights, if any, under FIPPA to object to such release. If the records proposed to be released are within UTS' custody or control, and if the University objects, the University may refer its objection to resolution in accordance with Article 14, and in any mediation proceedings FIPPA principles shall be utilized to the extent reasonable under the circumstances.

11.04 Return of Confidential Information

- (a) UTS shall, upon request in writing by the University, following termination of this Agreement, return to the University or destroy, in the University's discretion as per the University's written requirements, all Confidential Information disclosed by the University pursuant to this Agreement and all copies, summaries, extracts and other materials associated with this Agreement within 10 Business Days of the University's request to UTS. Notwithstanding the foregoing, UTS shall not be required to delete information which may be stored in its electronic back-up and data archival systems, provided that such information is not used by UTS for any purpose. Furthermore, UTS shall not be required to return or destroy information which, in its reasonable opinion, it is required to maintain under applicable law, or that it is advisable to maintain in connection with a possible claim under or in connection with this Agreement.
- (b) The University shall, upon request in writing by UTS, following termination of this Agreement, return to UTS or destroy, in UTS's discretion as per UTS's written requirements, all Confidential Information disclosed by UTS pursuant to this Agreement and all copies, summaries, extracts and other materials associated

with this Agreement within 10 Business Days of UTS's request to the University. Notwithstanding the foregoing, the University shall not be required to delete information which may be stored in its electronic back-up and data archival systems, provided that such information is not used by the University for any purpose. Furthermore, the University shall not be required to return or destroy information which, in its reasonable opinion, it is required to maintain under applicable law, or that it is advisable to maintain in connection with a possible claim under or in connection with this Agreement.

11.05 Public Announcements

Without limiting the obligations of the parties under any Ancillary Agreement with respect to public announcements in respect of specific matters referred therein, the parties agree to cooperate and consult with each other in publishing and promoting the relationship between them.

Article 12 **INSURANCE**

12.01 UTS Insurance

- (a) During the Term, UTS shall be responsible for obtaining and maintaining appropriate insurance coverage for its operations, at its own expense, including comprehensive general liability and licensee's legal liability insurance for bodily injury, personal injury, death and damage to property of third parties, and blanket contractual liability, owners and contractors protective liability, non-owned automobile and employers liability insurance, in each case with the University as an additional insured. Such policy or policies shall be written with a limit of not less than \$20,000,000.00 per occurrence, shall be primary and non-contributing with and not in excess of any other insurance obtained by the University, and shall include severability of interests and cross-liability clauses. At the University's request, UTS shall provide the University with copies of the certificates of insurance.
- (b) The University, acting reasonably, shall have the right for a period of sixty (60) days following the end of each five-year period during the term of this Agreement following the Effective Date, to give Notice to UTS requiring the amount of the said liability insurance to be increased. The amount of such increase shall be an amount consistent with the then current standards of liability insurance coverage with respect to the operation of similar educational institutions. On the giving of such Notice, UTS shall increase the coverage under its liability insurance policy accordingly and shall deliver to the University, within sixty (60) Business Days of such Notice, a certificate of insurance reflecting the increased coverage under its liability insurance policy.
- (c) The insurance obtained by UTS hereunder shall be without duplication to any insurance required to be obtained pursuant to the 2006 Real Property Licence Agreement, the 2015 Real Property Licence Agreement and/or the Project Agreement.

Article 13
INDEMNITY

13.01 UTS Indemnity

For Losses suffered by the University and/or its Representatives arising on or after the Effective Date and not having their basis prior to the Effective Date (for which Losses the 2006 Affiliation Agreement and its indemnity provisions shall apply), UTS shall indemnify, defend and hold harmless the University and its Representatives, from and against any and all Losses which result from, arise in connection with or are related in any way to:

- (a) any breach by UTS or by any of its Representatives of any of its obligations, representations, warranties or agreements set forth herein;
- (b) any negligent act or omission or wilful misconduct by UTS or its Representatives;
or
- (c) any injury to persons (including death) or loss of or damage to property (including loss of use thereof) which may be caused by or suffered or alleged to be caused by or suffered in connection with UTS's performance hereunder; or
- (d) any non-compliance by UTS or its Representatives with applicable law.

13.02 University Indemnity

For Losses suffered by UTS and/or the Representatives arising on or after the Effective Date and not having their basis prior to the Effective Date (for such prior-based Losses the 2006 Affiliation Agreement and its indemnity provisions shall apply), the University shall indemnify defend and hold harmless UTS and its Representatives from and against any and all Losses which result from, arise in connection with or are related in any way to:

- (a) any breach by the University or by any of its Representatives of any of its obligations, representations, warranties or agreements set forth herein;
- (b) any negligent act or omission or wilful misconduct by the University or its Representatives;
- (c) any injury to persons (including death) or loss of or damage to property (including loss of use thereof) which may be caused by or suffered or alleged to be caused by or suffered in connection with the University's performance hereunder; or
- (d) any non-compliance by the University or its Representatives with applicable law.

13.03 Representatives' Trustee

Each of the University and UTS shall be entitled to recover from the other party an amount due to any of its Representatives under the indemnity in Section 13.01 or 13.02, respectively, on behalf of such Representatives and will hold any amount recovered, and the benefit of the indemnity in Section 13.01 or 13.02, respectively, to which the Representatives are entitled, as trustee for and on behalf of such Representatives.

13.04 Third Party Claims

In the case of any third party claim in respect of which either UTS or the University intends to make a claim under the provisions of this Article 13, the obligations of an indemnifying party under this Article 13 shall be contingent on the indemnified party (a) giving prompt written notice of any such claim, (b) allowing the indemnifying party to control the defense of such claim, and (c) providing reasonable cooperation to the indemnifying party in the defense of such claim and all related settlement negotiations.

Article 14 **DISPUTE RESOLUTION**

14.01 Notice of Dispute

Any disputes between the parties arising out of this Agreement, including any dispute between the parties under Article 13, which the parties are unable to resolve themselves shall be submitted to mediation as herein provided. In the case of any such dispute, either party may give to the other party notice of such dispute, including reasonable details thereof, and may request mediation. If either party provides such notice to the other, such dispute shall be submitted to mediation as herein described. For certainty, any dispute arising in connection with any Ancillary Agreement shall be governed by the terms of such applicable agreement.

14.02 Selection of Mediator

The mediator shall be chosen by agreement between the President of the University and the Chair of UTS's board of directors. If the parties cannot reach agreement on the mediator to be selected to mediate the dispute within 10 Business Days of the date notice of such dispute is given by one party to the other, then the parties shall apply to a judge of the Superior Court of Justice (Ontario) or successor court of competent jurisdiction to appoint such mediator from a list of four (4) candidates nominated by the parties, two (2) of whom shall be nominated by the University and two (2) of whom shall be nominated by UTS.

14.03 Mediation Terms

- (a) The parties agree to co-operate and participate in good faith in consultations with the mediator and to attempt to resolve the dispute on the basis of the advice given by the mediator. Notwithstanding the foregoing, the parties agree that they will attempt, and they intend that they and the mediator will use their commercially reasonable efforts in that attempt, to conclude the mediation and have a final decision by the parties within 10 Business Days from the date of selection of the mediator in accordance with Section 14.02 and no later than 20 Business Days from such date.
- (b) Without limiting the foregoing, the mediation shall be conducted in accordance with the following terms of reference for the mediator:
 - (i) the mediation proceedings and any statements or admissions made by any of the parties during the course thereof shall be entirely without prejudice to the rights and obligations of the parties;
 - (ii) the task of the mediator and the objective of the mediation shall be to seek agreement between the parties on an appropriate resolution of the dispute of which notice has been given;

- (iii) no report shall be made or record kept by the mediator and he or she shall have no decision-making power;
 - (iv) all statements or admissions made in the process of mediation shall be held by the parties and the mediator in confidence during such process unless both parties agree otherwise. In addition, during such process, neither party shall make any public statement or announcement of the fact that the parties are in mediation nor discuss the mediation with government officials or outside parties;
 - (v) the mediator shall determine his or her own procedures and shall proceed by way of separate, private meetings with each side, and it shall be at such mediator's discretion whether to call a meeting or meetings at which both sides shall be present with him or her;
 - (vi) the parties shall be entitled to legal counsel at the meetings; and
 - (vii) mediation shall commence at the earliest convenience and shall continue expeditiously until a resolution is reached, or the mediator declares that the mediation has been unsuccessful, or the expiration of 20 Business Days from the date of selection of the mediator, whichever is the earlier. If no resolution is reached, each of the parties shall be entitled to seek such remedies as it sees fit in its sole and absolute discretion, including, without limitation, commencing proceedings in a court of competent jurisdiction.
- (c) Each party shall bear its own costs of the mediation and one-half of the fees and expenses of the mediator.

Article 15 **TERMINATION**

15.01 Right to Terminate

- (a) Each party shall have the right to terminate this Agreement at any time upon the occurrence of any of the following events, such termination to be effective immediately upon receipt by the other party of written notice to that effect (other than in respect of the events listed in (iv) in which case such termination shall occur automatically without the requirement of the other party to provide any notice) or as otherwise specified herein:
- (i) if a party is in material default of, has failed to observe or perform or breached any of its obligations, representations, warranties or agreements set forth herein in any material respect and such default, failure or breach is not rectified within 90 days of receipt of written notice of such default, failure or breach;
 - (ii) if a party ceases operations in the ordinary course;
 - (iii) if a writ of execution is issued against any or all of the assets owned by such party that remains unsatisfied for 60 days;

- (iv) makes an assignment for the benefit of creditors, becomes bankrupt under applicable legislation, is the subject of the appointment of a receiver or manager in respect of any substantial part of its assets and undertaking that is not removed or for which no stay is entered within 60 days thereafter, or takes proceedings for winding up, liquidation, or dissolution of its assets.
- (b) Each party must provide the other party with written notice at least 15 days prior to making an assignment for the benefit of creditors or taking any action or commencing any proceedings for winding-up, liquidation or dissolution of its assets as specified in Section 15.01(ii).

15.02 Termination of Licences, Etc.

Notwithstanding any other term of this Agreement or any other agreement between the University and UTS, upon the termination of this Agreement at any time in accordance with this Article 15: the 2015 Trade-marks Licence Agreement shall immediately terminate, and UTS shall have 180 days to discontinue use of the Marks and to file an application for supplementary letters patent of incorporation to change UTS's corporate name and objects so as to eliminate therefrom any words indicating any association or connection with the University.

15.03 Surviving Terms

Neither termination nor expiration of this Agreement shall relieve either party of liabilities previously accrued hereunder, or any liability, obligation or agreement in the terms hereof which, to give practical effect thereto, must survive such termination, and such terms shall survive and be performed after such termination or expiration.

Article 16 **MISCELLANEOUS**

16.01 Notices

- (a) Any notice, request, demand, consent, advice, approval or other communication provided for or permitted under this Agreement shall be in writing and may be given by personal delivery or electronic mail, addressed to the party for which it is intended at its address as follows:

- (i) the University:

University of Toronto
Simcoe Hall 27 King's College Circle
Toronto, Ontario M5S 1A1

Attention: Vice President, University Operations
scott.mabury@utoronto.ca

- and to -

University of Toronto
Simcoe Hall 27 King's College Circle
Toronto, Ontario M5S 1A1

Attention: General Counsel
steve.moate@utoronto.ca

(ii) UTS:

University of Toronto Schools
371 Bloor Street West
Toronto, Ontario M5S 2R8

Attention: Chair, Board of Directors
jimfleck@me.com

- and to -

University of Toronto Schools
371 Bloor Street West
Toronto, Ontario M5S 2R8

Attention: Principal
revans@utschools.ca

provided, however, that any party may change its address for purposes of receipt of any such communication to another address in Canada by giving 10 days' prior written notice of such change to the other party in the manner above prescribed. Any notice delivered as aforesaid shall be deemed to have been received on the day of delivery if received on or before 5:00 p.m. on any Business Day, or if not, on the next Business Day following the day of delivery.

16.02 Force Majeure

Neither party is responsible for damages caused by the delay or failure to perform any of its obligations under this Agreement when the delay or failure is the result of a Force Majeure Event. If the invoking party contends that any of its obligations is suspended by reason of a Force Majeure Event, it shall immediately give notice to the other party, providing all necessary details. The obligations of the invoking party under this agreement will be extended for the duration of the Force Majeure Event. Upon cessation of a Force Majeure event, the invoking party shall (a) immediately give notice to the other party, advising of its cessation, and (b) commence performance of its obligations under this Agreement as promptly as reasonably practicable.

16.03 Amendments; No Waivers

- (a) Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by all parties, or in the case of a waiver, by the party against whom the waiver is to be effective.

- (b) No waiver by a party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent occurrence. No failure or delay by a party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

16.04 Expenses

Except as may be specifically provided herein, all costs and expenses incurred in connection with this Agreement and in carrying out the provisions herein shall be paid by the party incurring such costs or expenses.

16.05 Successors and Assigns

This Agreement shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns. Neither party shall assign any of its rights or obligations hereunder without the prior written consent of the other party.

16.06 Counterparts; Effectiveness

This Agreement may be signed in any number of counterparts and the signatures delivered electronically, each of which shall be deemed to be an original, with the same effect as if the signatures thereto were upon the same instrument and delivered in person. This Agreement shall become effective when each party hereto shall have received a counterpart thereof signed by the other party hereto. In the case of electronic delivery by any party, that party shall forthwith deliver a manually executed original to each of the other parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first mentioned above.

**THE GOVERNING COUNCIL OF THE
UNIVERSITY OF TORONTO**

By: _____
Name:
Title:

By: _____
Name:
Title:
I/We have the authority to bind the University

UNIVERSITY OF TORONTO SCHOOLS

By: _____
Name:
Title:

By: _____
Name:
Title:
I/We have the authority to bind the Corporation

[Affiliation Agreement]

SCHEDULE A

UTS AND OISE/UT AFFILIATION ACTIVITIES

University of Toronto Schools was created in 1910 to be a model school as part of the original Faculty of Education of the University of Toronto. Currently UTS is an active and collaborative participant with OISE and its faculty members in activities including the following:

- As a partner school for teacher training, both pre-service and in-service, including with respect to teacher training for the renewed MT program;
- Collaboration regarding innovation in teaching and learning;
- Research activities involving OISE faculty, postdoctoral fellows, doctoral and other students;
- Assistance to OISE, on such terms as agreed, with respect to in-service and professional learning opportunities for teachers, including workshops and conferences.
- Access to space for joint activities, on such terms as agreed to be appropriate for such activities.
- Access to space for OISE-specific activities on such terms as may be agreed.

UTS and OISE agree to cooperate on these and similar activities in various ways over the course of the affiliation set out in the Agreement, recognizing that the nature of the activities will vary over time as the educational needs of both parties evolve. These activities do not preclude opportunities for other activities, at OISE or beyond, identified via the Affiliation Committee pursuant to Section 4.03 of this Agreement, or proposed by UTS pursuant to Section 4.02 of this Agreement.

In addition to providing access to its space for such joint activities as may be agreed, the parties acknowledge that dedicated OISE space shall be provided as specified in the Project Agreement.

SCHEDULE B

INFORMATION TECHNOLOGY SERVICES

UTS shall be permitted to continue to access the following information technology services and systems of the University, subject to the University's policies governing such services and systems:

(a) internet access:

- access to the University Network through the existing cables and electronics, as such may be upgraded in accordance with the University's policies and practices;
- monitoring and management of traffic on the University Network and intrusion detection; and
- consulting services for network issues and the design of network additions and upgrades and assistance with respect to network emergencies;

(b) additional network services:

- access to UTS to the volume discount purchasing power of the University with respect to information technology hardware and software; and

continued access to Info-Tech, Community Meetings and resources.

SCHEDULE C

PENSION PARTICIPANTS

1. Dick Combeer; and
2. Lily McGregor.

EXHIBIT 1

2015 REAL PROPERTY LICENCE AGREEMENT

Please see attached.

EXHIBIT 2

2015 TRADE-MARKS LICENCE AGREEMENT

Please see attached.

EXHIBIT 3
PROJECT AGREEMENT

Please see attached.

REAL PROPERTY LICENCE

THIS LICENCE made as of the _____ day of _____, 2015

B E T W E E N:

THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO

(hereinafter referred to as the “**University**”)

OF THE FIRST PART

- and -

UNIVERSITY OF TORONTO SCHOOLS

(hereinafter referred to as “**UTS**”)

OF THE SECOND PART

WHEREAS:

- A. A school for children known as “University of Toronto Schools” (the “**School**”) was created by the Province of Ontario as a model school at the University in 1910.
- B. From 1910 until 2006, the School was operated by the Province of Ontario and/or the University.
- C. In 2006, UTS, a non-profit corporation, assumed operation of the School and entered into, *inter alia*, an affiliation agreement with the University, which affiliation agreement is scheduled to expire in accordance with its terms in 2021.
- D. The University and UTS (together, the “**Parties**”), wish to continue their affiliation beyond 2021, and for that purpose have entered into a new affiliation agreement dated as of the date hereof (the “**Affiliation Agreement**”).
- E. The School has been located at 371 Bloor Street West in Toronto since 1910 in various portions of the Existing Building, which premises are owned by the University and licensed to UTS pursuant to the original affiliation agreement.
- F. In connection with the entering into of such Affiliation Agreement, UTS and the University have entered into a project agreement dated as of the date hereof (the “**Project Agreement**”), pursuant to which, and subject to UTS contributing

\$10 million in value to the University as described in the Project Agreement, UTS shall be entitled to complete a construction and renovation project in and at the eastern portion of the Existing Building, and subject to the completion of such project, enter into this new Licence for the operation of the School and related uses, on and subject to the terms hereof.

NOW THEREFORE THIS INDENTURE WITNESSETH that for good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the parties hereto, the parties agree as follows:

ARTICLE 1 – DEFINITIONS

1.01 Whenever used in this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following words and expressions shall have the following meanings:

"Affiliation Agreement" is defined in Recital D.

"Affiliation Committee" has the meaning given to it in the Affiliation Agreement.

"Alterations" is defined in Section 10.04.

"Appraised Value" is defined in Section 17.04.

"Appraiser" means a qualified, licensed appraiser and valuator of commercial real estate, with substantial experience in valuing commercial buildings in the province of Ontario, and who is at arm's length from each of the University and UTS;

"Auditorium" means the approximately 700 seat auditorium to be constructed as part of the New Building pursuant to the Project Agreement.

"Bloor Street Entrance and Lobby" means, collectively, (a) the entrance to the New Building from Bloor Street West to be constructed pursuant to the Project Agreement, and (b) the lobby immediately adjacent to such entrance, which lobby will connect to both the UTS Premises and the adjacent lands and buildings owned and operated by the University.

"Building Systems" is defined in Section 10.02.

"Early Termination Fee" means an amount in dollars calculated as follows:

(a) the Appraised Value;

(b) multiplied by the number of months remaining in the Term at the date of the termination of the Licence;

(c) divided by 600;

(d) multiplied by 0.80.

“Existing Building” means the building existing on the Lands as of the date hereof.

“Gross Floor Area” means the sum of the total area of the Licensed Premises above and below the ground, measured from the exterior of the main wall of each floor level.

“Lands” means the lands known municipally as 371 Bloor Street West, Toronto, Ontario and legally described as all of PIN 21211-0047(LT): Lots 10-12, 14-17, 24-28 Plan 449, Toronto; Block A, Plan 449 Toronto; Reserve Plan 449, Toronto; Lots 9-10 Plan 461 City East; Lots 1-4 Plan 641 City East; Part Lot 13 Plan 449 Toronto as in EP61615 & EP154180; Lots 1-9 Plan 449 Toronto Except OP89545; S/T & T/W EP154180; S/T & T/W EP61615; S/T & T/W EP60400; T/W OP26508; City of Toronto.

“Licence” means the licence granted to UTS in respect of the Licensed Premises pursuant to Section 3.01 hereof.

“Licensed Premises” means, collectively, the UTS Premises and the Shared Premises.

“Licensed Premises Plan” is defined in Section 3.02.

“Occupancy Date” has the meaning given to it in the Project Agreement.

“OISE/UT” means the Ontario Institute for Studies in Education/University of Toronto, and its successors from time to time.

“OISE/UT Workroom” means OISE/UT workroom located within the UTS Premises and shown on the Licensed Premises Plan.

“Minor Alterations” means, from time to time, Alterations performed by UTS hereunder which are non-structural in nature and which have a cost of less than the Minor Alterations Limit.

“Minor Alterations Limit” means, as of the date hereof, \$50,000, and after the date hereof, such amount as adjusted annually on the anniversary of the commencement of the Term in accordance with the most current Non-Residential Building Construction Price Index, as published quarterly by Statistics Canada, or such replacement or similar price index which shows changes in the costs of non-residential construction works from time to time.

“New Building” means the building constructed and/or renovated pursuant to the Project Agreement.

“Project Agreement” is defined in Recital F.

“Shared Premises” means the premises marked as ‘Shared Premises’ on the Licensed Premises Plan, as determined in accordance with Section 3.02.

“Trade-Marks Licence Agreement” means the trade-mark licence agreement between UTS and the University dated as of the date hereof, as amended from time to time.

“University President Approval” means, in connection with a naming request made pursuant to Section 6.01(b) hereof, the approval of the president of the University for such name, which approval:

- (a) shall only be given following request in writing by the president of the board of UTS to the president of the University, which request shall include reasonable details in respect of such naming request;
- (b) shall only be given if such proposed name conforms to and is approved in accordance with University policy on naming as published by the Governing Council in effect at the time such request is made; and
- (c) shall not otherwise be unreasonably withheld or delayed.

“University’s Termination Claim” means, if applicable, the amount of the University’s alleged damages and/or losses suffered in connection with the breach of this Licence by UTS which gave rise to a termination of this Licence by the University in accordance with Section 17.01(a) hereof, expressed in dollars.

“UTS Construction Document Completion” has the meaning given to it in the Project Agreement.

“UTS Premises” means the premises marked as ‘UTS Premises’ on the Licensed Premises Plan, as determined in accordance with Section 3.02, which premises shall exclude, for certainty, the Shared Premises and the OISE/UT Workroom.

“UTS Site” means that portion of the Lands upon which the New Building shall be constructed pursuant to the Project Agreement to be operated and maintained by UTS as generally shown on Schedule “B” attached hereto.

ARTICLE 2 – TERM

- 2.01 The term of this Licence (the **“Term”**) will be fifty (50) years commencing on the Occupancy Date unless terminated earlier in accordance with the provisions of Article 15.

ARTICLE 3 – GRANT OF LICENCE

- 3.01 The University hereby grants to UTS, for the Term, a fifty (50) year irrevocable non-transferable licence for the Licensed Premises, which may not be assigned or sub-licensed except as expressly set forth in this Licence, as follows:
- (a) subject to the express terms and conditions of this Licence, for the exclusive use of the UTS Premises; and
 - (b) subject to the express terms and conditions of this Licence, for the non-exclusive use of the Shared Premises.
- 3.02 Within 30 days following UTS Construction Document Completion, the University and UTS shall jointly approve a plan of the Licensed Premises (the “**Licensed Premises Plan**”). The University and UTS acknowledge and agree that the draft Licensed Premises Plan shall be prepared by the architect appointed by UTS pursuant to the Project Agreement for University review and approval, and that the Licensed Premises Plan shall consist of a plan showing the following:
- (a) the UTS Premises, consisting of approximately 150,000 square feet of Gross Floor Area and comprising, without limitation, the classrooms, hallways, meeting rooms, offices, gymnasias, the Auditorium, and Building Systems, all of which are to be constructed and/or renovated pursuant to the Project Agreement;
 - (b) the Shared Premises, consisting of the Bloor Street Entrance and Lobby, and the lobby/pre-function area adjacent to the Auditorium; and
 - (c) the OISE/UT Workroom, consisting of a workroom of approximately 500 square feet of gross floor area located within (but for certainty, not forming part of) the UTS Premises.

Once jointly approved by the University and UTS, the Licensed Premises Plan shall be attached to this Licence as Exhibit 1 and form part of this Licence, and may only thereafter be amended by written agreement of UTS and the University. If the parties have not jointly approved a Licensed Premises Plan within 30 days after UTS Construction Document Completion, the matter shall be settled in accordance with Article 7 of this Licence.

ARTICLE 4 – RESERVATIONS TO GRANT OF LICENCE

- 4.01 Notwithstanding the grant of licence set forth in Section 3.01 above, the University expressly reserves the following rights to the Licensed Premises:

- (a) the University shall be entitled, on reasonable notice in writing to UTS, to reasonable access to the Licensed Premises for construction access and staging for the University as may be reasonably required by the University in connection with the redevelopment of the portion of the Lands not comprising the Licensed Premises, provided that such access that be at the sole cost of the University and shall not unnecessarily or materially disrupt the normal course operations of UTS in the Licensed Premises;
- (b) the University shall be entitled to access through and over that portion of the UTS Premises as is reasonably required to access the OISE/UT Workroom, provided such access shall be subject to the reasonable rules and requirements as established by UTS from time to time, including in respect of premises security;
- (c) the University reserves for itself and its employees, agents, contractors and service providers (collectively, “**Licensor Agents**”), upon reasonable prior written notice to UTS (except in the case of emergencies where no notice is required), a right of passage through, above and below the Licensed Premises for people, equipment, machinery and apparatus for the purpose of:
 - (i) confirming compliance by UTS of its obligations under this Licence from time to time;
 - (ii) facilitating the University’s access pursuant to its rights under Section 10.08 hereunder; and
 - (iii) facilitating the University’s or Licensor Agents’ repair and maintenance of buildings and lands outside of the Licensed Premises;

provided that, in exercising this access to the Licensed Premises, the University shall, and shall cause all Licensor Agents to (i) provide prior written notice and schedule the activity in consultation with UTS, (ii) observe UTS’s security and administration procedures and requests, and (iii) conduct the required activities within the Licensed Premises at times and in a manner so as to minimize to the greatest extent possible the disruption of UTS’s operations within and use and enjoyment of the Licensed Premises.

4.02 In respect of the OISE/UT Workroom, the University and UTS acknowledge and agree:

- (a) that the University shall be exclusively entitled to the use of the OISE/UT Workroom;

- (b) that the University shall be exclusively responsible for operating costs incurred in connection with the use and operation of the OISE/UT Workroom, which costs UTS will calculate and collect from the University in accordance with Section 11.04;
- (c) that the OISE/UT Workroom shall be used exclusively by the University, OISE/UT and their respective employees and students, and shall be primarily dedicated to activities supporting the affiliation between UTS and the University pursuant to the Affiliation Agreement; and
- (d) the use of the OISE/UT Workroom shall be subject to reasonable rules and requirements established by UTS from time to time.

ARTICLE 5 – SHARED PREMISES AND UNIVERSITY USE OF AUDITORIUM AND OTHER UTS PREMISES

5.01 The University and UTS acknowledge and agree to use the Shared Premises during the Term in a manner which reasonably respects the other's reasonable requirements therefor from time to time. Without limiting the generality of the foregoing, the University and UTS further acknowledge and agree:

- (a) that the primary purpose of the Shared Premises shall be for pedestrian access and ingress to the New Building and the University's premises to the lands adjacent to the New Building, and as a lobby/function area servicing and/or relating to events held in the Auditorium from time to time;
- (b) that the use of the Shared Premises (excepting the Bloor Street Entrance and Lobby) shall generally be administered by UTS, including reasonable rules and requirements related to premises security established by UTS from time to time;
- (c) that the use of the Bloor Street Entrance and Lobby shall generally be administered by the University, including reasonable rules and requirements related to premises security established by the University from time to time; and
- (d) that the operating costs (including, without limitation, maintenance, repairs and replacements required from time to time) incurred in connection with the operation and use of Shared Premises shall be shared by the University and UTS in proportions which reflect a reasonable estimate of the proportionate use of the Shared Premises by UTS and its invitees compared to the use of the Shared Premises by the University and its invitees. Such operating costs (collectively, the **"Shared Premises Operating Costs"**) shall be calculated monthly or annually, as appropriate, by UTS (in the case of the Shared Premises excepting the Bloor Street Entrance and Lobby) and by the University (in the case of the Bloor Street Entrance and Lobby), and the University and

UTS, as applicable, shall pay, monthly annually in arrears, as applicable, within 30 days of written notice thereof, its proportionate share as aforesaid.

- 5.02 UTS hereby acknowledges and agrees that the University shall, on request, and pursuant to such procedures and policies which UTS may establish from time to time, be entitled to submit requests for the occasional use by the University of portions of the UTS Premises (including, by way of example only, the gymnasium or the Auditorium) by the University to UTS. Provided such requests do not conflict with UTS's planned use of the applicable portions of the UTS Premises, and provided the University agrees to conform to such policies and procedures, UTS shall approve such requests, provided further that, in each case, the University shall pay its reasonable share of the operating costs of such portion of the UTS Premises as are so approved, as calculated by UTS, acting reasonably.

For certainty, to the extent that the University does not request or use any portions of the UTS Premises as aforesaid, the University shall not be obliged to contribute any share of operating costs in respect of the UTS Premises.

- 5.03 Without limiting the generality of Section 5.02, UTS acknowledges that it is the intention of the parties that the University will be entitled (although, for certainty, not required) to use the Auditorium for up to approximately 20% of the time which it is used during the Term. Accordingly, UTS agrees that, provided the University makes requests for the use of the Auditorium in accordance with Section 5.02 above, that it will approve such use of Auditorium for up to approximately 20% of the time for which the Auditorium is used on an annual basis during the Term.

ARTICLE 6 – LICENSED PREMISES

- 6.01 The University and UTS acknowledge and agree that except as expressly set forth in this Licence, the Licensed Premises shall be under the care and control of UTS during the Term. Without limiting the generality of the foregoing, but at all times in conformity with the terms of this Licence, the Affiliation Agreement, the Project Agreement and the Trade-Marks Licence Agreement, UTS shall:
- (a) be exclusively responsible for maintenance, repairs, construction and Alterations in connection with the Licensed Premises, except as expressly set forth in this Licence;
 - (b) be entitled to name parts of the Licensed Premises (but not, for certainty, the entire New Building), by way of gift or other arrangement, on such terms as it may deem appropriate, provided such naming rights shall expire on the expiry of the Term, and provided further that such names shall have received University President Approval;

- (c) be entitled to install, at UTS's sole cost and expense, signage identifying the School on the New Building and/or the UTS Site, provided the location of and appearance of such signage is subject to the consent of the University in writing, which consent shall not be unreasonably withheld, delayed or conditioned; and
- (d) be entitled to licence parts of the Licensed Premises on a casual, short term basis to third party users on such terms as it may deem appropriate where such use does not otherwise conflict with the terms of this Licence, does not conflict with UTS's use or the use of the University pursuant to Section 5.02 above, and provided such terms shall be no more favourable to such user that the terms offered to the University from time to time pursuant to Section 5.02 above.

Except as otherwise set forth in this Licence, UTS shall be solely responsible for operating costs incurred in connection with the operation of the Licensed Premises.

ARTICLE 7 – DISPUTE RESOLUTION

- 7.01 Any disputes between the University and UTS arising out of this Licence which the parties are unable to resolve themselves shall be determined in accordance with Article 14 of the Affiliation Agreement.

ARTICLE 8 – LICENCE FEE

- 8.01 UTS hereby agrees to pay the University a licence fee for the use and occupation of the Licensed Premises during the Term of \$1.00 (the "**Licence Fee**"), which shall be due and payable as of the date hereof, and which Licence Fee the University hereby acknowledges receipt of in full.

ARTICLE 9– POLICE AND SECURITY SERVICES, UNIVERSITY POLICIES

- 9.01 UTS shall have the right to call, and ask for assistance from, the University's police and security personnel in emergency situations arising in or around the Licensed Premises. UTS acknowledges that the University's police and security personnel have the same authority at the Licensed Premises as they have on other University-owned premises for which they provide services. The costs of such emergency services, as and when requested by UTS, shall be paid by UTS within thirty (30) days of UTS receiving an invoice from the University for such costs. If UTS contracts with security personnel for non-emergency service, such contract must meet the University's standards typically applicable for other University-owned premises (as same may be amended from time to time). The University acknowledges and agrees that UTS must take all reasonable steps to ensure the safety and security of its students and staff, taking into consideration the age of the students, the location of the Licensed Premises and their shared usage and that this may require additional measures than may be the case for other University-owned premises.

- 9.02 So long as UTS occupies the Licensed Premises, UTS shall at all times comply with (a) all applicable laws reasonably viewed as relating to this Licence or the activities conducted thereunder, and (b) University policies of general application, published by its Governing Council from time to time, which apply to Persons occupying or using University premises, as they may be modified or amended during the Term. Without limiting the generality of the foregoing, these include (mutatis mutandis) policies dealing with prohibited discrimination and harassment, health and safety, environmental protection and the policy for safety in athletic facilities. If any of the University's policies are modified or amended during the Term, the University shall endeavour to notify UTS of such modification or amendment on a timely basis.

ARTICLE 10 – MATTERS RELATING TO FACILITIES AND IMPROVEMENTS

- 10.01 Any construction, alteration, maintenance, repair, replacement, installation, removal or decoration undertaken by or for UTS in connection with the Licensed Premises shall be subject to the terms of this Article 10 and shall be carried out by or on behalf of UTS in a good and workmanlike manner and in compliance with all laws applicable to such work.
- 10.02 Subject to the University's obligation to contribute to the costs of same as expressly set forth in this Licence, UTS is responsible for the maintenance, repair, operation, improvement and replacement of all buildings and all structural, mechanical, electrical, HVAC and life safety systems ("**Building Systems**") for the Licensed Premises. UTS covenants to undertake all maintenance, repairs, replacements and improvements to ensure the Licensed Premises are adequate for UTS's use of the Licensed Premises as set out herein and that the Licensed Premises are safe, secure and in good condition.
- 10.03 UTS, at its own expense (subject to the University's obligation to contribute to the costs of same as expressly set forth in this Licence), shall maintain and keep the Licensed Premises and all fixtures, systems (including Building Systems) and equipment therein, in good order, condition and repair and promptly make all needed repairs and replacements, using at all times new materials, including but not limited to, repairs and replacements to all electrical, plumbing, climate control systems, machinery and equipment, all entrances, glass, window mouldings, partitions, doors and any and all other fixtures, equipment and appurtenances, as are part of, within or otherwise serving or appurtenant to the Licensed Premises (reasonable wear and tear not inconsistent with the maintenance and repair of the Licensed Premises generally in good order and repair and condition, and damage by fire, lightning, and tempest only excepted). If any structural repairs (including roof repairs) to the building located on the Licensed Premises are required within the last ten (10) years of the Term and the Term is not being extended or renewed, the University shall contribute a reasonable share of the cost of such structural repairs undertaken by UTS, having regard to whether the useful life of the structural repairs extends beyond the end of the Term, provided however that

the University may waive the requirement for UTS to undertake any such structural repairs.

10.04 If UTS shall during the Term desire to make, affix, install or erect partitions, counters, fixtures or other repairs, alterations, replacements, decorations or improvements in any part of the Licensed Premises (referred to collectively herein as “**Alterations**”), it may do so at its own expense at any time and from time to time, provided that UTS’s rights to make any Alterations to the Licensed Premises shall be subject to the following conditions:

- (a) Prior to undertaking any Alterations, except for Minor Alterations, UTS shall submit to the University a plan showing the proposed Alterations and shall obtain the written approval and consent of the University to the same and such approval and consent shall not be unreasonably withheld or delayed, provided that such Alterations are consistent with the terms of this Licence and the Affiliation Agreement, and UTS shall provide evidence of all requested building permits and approvals, and satisfactory insurance naming the University as an additional insured;
- (b) all Alterations shall conform to and be carried out in accordance with as same may be amended and updated from time to time, all applicable building by-laws, if any, and other applicable laws then in force affecting the Licensed Premises and all Alterations shall be completed in a good and workmanlike manner using, at all times, new materials and, except for Minor Alterations, shall conform to the plans and specifications approved by the University;
- (c) Alterations will not be of such kind or extent as to in any manner reduce the value of the New Building in any material respect;
- (d) UTS acknowledges that the University is bound or is contractually required to apply various construction collective agreements. UTS shall not and UTS shall ensure that any contractors or subcontractors engaged by or under UTS do not, in any way whatsoever, contravene or cause the University to contravene any provision of any construction collective agreement to which the University is a party or which the University is contractually required to apply from time to time.

10.05 Except as set out below, all Alterations made by UTS, or made by the University on UTS’s behalf (to the extent expressly permitted hereunder) shall immediately become the property of the University free and clear of all liens, claims and encumbrances and without compensation therefor to UTS. Such Alterations shall not be removed from the Licensed Premises either during or at the expiration of the Term or sooner determination of this Licence except that:

- (a) UTS may at the end of the Term, if not in default, remove its trade fixtures at its own cost;

- (b) UTS shall, at the end of the Term, at its own cost remove such of its leasehold improvements and fixtures (including trade fixtures) as the University may require to be removed; and
- (c) UTS may remove its trade fixtures during the Term in the usual and normal course of its business or if UTS is substituting therefor new and similar trade fixtures, provided that UTS is not in default and provided that UTS first notifies the University thereof.

UTS shall, in the case of every such removal, either during or at the end of the Term, make good any damage caused to the Licensed Premises and the New Building by the installation and/or removal of any such trade fixture, alteration, decoration, addition or improvement. The provisions of this Section 10.05 shall survive the termination of the Licence.

- 10.06 UTS may (but for certainty, shall not be required to) elect to retain the University to perform regular maintenance and cleaning services on behalf of UTS at UTS's cost in accordance with Article 11.
- 10.07 Any dispute between the University and UTS as to whether UTS has complied with its obligations in this Article 10 shall be resolved by the Affiliation Committee. If the Affiliation Committee has not resolved any such dispute within 30 days of receiving notice of the dispute, then the dispute shall be resolved in accordance with Article 7 of this Licence.
- 10.08 If UTS fails to observe any of the requirements of this Article 10, the University may require that all Alterations stop immediately and that UTS promptly rectify the breach or default. In addition, the University may, but shall not be obligated to, after thirty (30) days' notice in writing to UTS specifying such default, or without notice if in the reasonable exercise of the University's judgment an emergency exists, perform same for the account and at the expense (including reasonable legal fees) of UTS and shall be reimbursed by UTS for any costs, expenses or outlays so incurred by the University. The amount of any payments made or expenses incurred by the University for such purpose shall become due and payable within thirty (30) days of receipt by UTS of invoices therefor, with interest thereon at the rate of the then current prime rate of interest published by The Bank of Nova Scotia plus five per cent per annum, but any such expenditure by the University shall not be deemed to waive or release UTS's default or the right of the University to take such action as may be permissible under the terms of this Licence or the Affiliation Agreement or the Project Agreement in the event of such default. When no emergency exists, the provisions of this Section shall be inapplicable if, within thirty (30) days after such notice by the University, UTS shall have cured such default or shall have commenced and is diligently proceeding to cure same and actually cures same within a reasonable period.

- 10.09 If all or any material part of the Licensed Premises is damaged or destroyed and greater than 25% of the UTS Premises are rendered unfit for occupation, subject to UTS having complied in all material respects with its obligations under this Licence (including to maintain the required insurance in accordance with Article 14), and if this Licence is not terminated as provided in Section 10.10 or Section 10.11, UTS will, at its sole cost and expense, with reasonable diligence and without unnecessary delay, restore and/or repair the damage or destruction so that the Licensed Premises are substantially restored to their former state and condition as existed immediately prior to such damage or destruction, and restore at its expense its leasehold improvements and trade fixtures in a good and workmanlike manner, and the University will make all proceeds of insurance maintained by UTS pursuant to the terms of this Licence available to UTS for such purpose on a similar basis, and pursuant to similar agreements with the University as were made pursuant to the original construction pursuant to the Project Agreement. The University hereby agrees to cooperate with such reconstruction, and enter into such agreements as are reasonably required.
- 10.10 Notwithstanding Section 10.09, if all or a material portion of the Licensed Premises are damaged and destroyed and greater than 25% of the UTS Premises are rendered unfit for occupation, UTS shall be entitled, within 90 days of such damage or destruction to provide notice in writing to the University that it is terminating this Licence, in which case:
- (a) the Licence shall terminate with effect on the date of such notice, and
 - (b) the University shall return to UTS all insurance proceeds received in connection with such damage and destruction, less an estimate of any out of pocket expenses reasonably required to demolish any remaining portion of the New Building and clean up the UTS Site (provided that University and UTS will adjust between themselves such estimated amount once such demolition and clean-up is actually completed).
- 10.11 Notwithstanding Section 10.09 or Section 10.10, if all or a material portion of the Licensed Premises are damaged and destroyed and greater than 25% of the UTS Premises are rendered unfit for occupation, and fewer than 5 years remain in the Term as of the date of such damage or destruction, then the Licence shall terminate automatically with effect on the date of such damage or destruction, and the University shall return to UTS all insurance proceeds received in connection with such damage and destruction, less an estimate of any out of pocket expenses reasonably required to demolish any remaining portion of the New Building and clean up the UTS Site (provided that University and UTS will adjust between themselves such estimated amount once such demolition and clean-up is actually completed).

ARTICLE 11 – OPERATING COSTS

- 11.01 In the event that UTS elects to retain the University to perform regular maintenance and cleaning services for the Licensed Premises on behalf of UTS at UTS's cost in accordance with Section 10.06, UTS will pay the University all operating costs and costs for cleaning services and maintenance services to the University monthly in advance, plus HST, at a rate to be negotiated at the time the request is made.
- 11.02 If UTS elects to retain the University to perform regular maintenance and cleaning services for the Licensed Premises on behalf of UTS at UTS's cost in accordance with Section 10.06, cleaning services and maintenance services for the Licensed Premises will be provided by the University in accordance with the University's standards (as may be amended from time to time). If UTS wishes to purchase from the University additional services beyond the services typically provided by the University, this can be done, subject to availability, at a rate to be negotiated at the time the request is made. For certainty, UTS shall not be required to retain the University in respect of any maintenance and cleaning services in respect of the Licensed Premises.
- 11.03 During the Term, UTS shall pay all public utility consumption charges, including, without limitation, all water, gas, heating and electricity rates and charges in connection with the Licensed Premises and all such utilities shall be separately metered at the cost of UTS.
- 11.04 The University and UTS acknowledge that UTS shall generally be responsible for administering the operating costs payable in connection with the Licensed Premises. To the extent any costs payable by UTS in respect of the Licensed Premises pursuant to this Licence are paid by the University hereunder, such costs will be payable within 30 days of receipt of invoice provided to UTS by the University. To the extent that any costs provided for herein are paid based on estimates, UTS or the University will, as applicable, provide the other with an annual reconciliation statement and any necessary re-adjustment payment will be made by the University or by UTS, as applicable, within 30 days after said reconciliation statement is provided.

ARTICLE 12 – SURRENDER ON TERMINATION

- 12.01 UTS will, at the expiration or sooner termination of the Term, peaceably surrender and yield up to the University the Licensed Premises in as good a state of repair and condition, as was the case as at the commencement of the Term, subject to the use and damage caused by other users of the Licensed Premises, reasonable wear and tear excepted.

ARTICLE 13 – PARKING

- 13.01 UTS, in common with all others entitled thereto, will have access to and use of up to 20 parking spaces at or in the vicinity of the Lands, if available, for the use

of its employees, students and visitors and shall pay to the University the same rates as are charged by the University to other users, as same are amended by the University from time to time. Notwithstanding the foregoing, UTS acknowledges that the University in its discretion may close the said parking areas or reduce the areas designated for parking at or in the vicinity of the Lands.

ARTICLE 14 – UTS INSURANCE

[NTD: Notwithstanding draft language below, all aspects of insurance to be settled between the parties prior to placement on Governing Council agenda.]

14.01 UTS shall take out and at all times during the Term of this Licence keep in force, in the name of the University (as additional insured and loss payee, as its interest may appear) at UTS expense, as would a prudent owner of the New Building and containing the usual and customary clauses in insurance policies of such type as shall be reasonably agreed upon between the University and UTS prior to the Occupancy Date (the “**Insurance Requirements**”).

Once jointly approved by the University and UTS, the Insurance Requirements shall be attached to this Licence as Exhibit 2 and form part of this Licence, and may only thereafter be amended by written agreement of UTS and the University. If the parties have not jointly approved the Insurance Requirements within 30 days after UTS Construction Document Completion, the matter shall be settled in accordance with Article 7 of this Licence.

ARTICLE 15- TAXES

15.01 UTS shall be liable for and shall pay all federal and provincial sales taxes and all other taxes, duties, registration charges and other like charges properly payable by UTS upon and in connection with the Licence contemplated hereunder.

15.02 The parties acknowledge that under the terms of *The University of Toronto Act*, S.O. 1971, chapter 56, the Licensed Premises are exempt from municipal taxation so long as the owner thereof is the University, although the University may from time to time have an agreement in place with the City of Toronto for payment of grants in lieu of municipal taxes. The parties agree that, if and only to the extent that UTS is not exempt from municipal taxation and (a) either the Licensed Premises are not exempt from municipal taxation or (b) the University pays grants in lieu of municipal taxes to the City of Toronto with respect to the Building as a result of the use and occupation of the Building by UTS, UTS will reimburse the University for the amount (the “**Tax Amount**”) of the municipal taxes paid to the City of Toronto in respect of the Licensed Premises or the grants paid to the City of Toronto in lieu of municipal taxes, as the case may be in respect of the Licensed Premises. The Tax Amount will be payable by UTS within 30 days of receipt of invoice provided to UTS by the University. The foregoing provisions of this Section 15.02 will not apply so long as UTS is itself

exempt from municipal taxation. The University agrees to pay the Tax Amount to the City of Toronto.

ARTICLE 16 - INDEMNITIES

16.01 For all claims arising on or after the date of this Licence, and not having their basis prior to the date of this Licence, UTS will indemnify and save harmless the University, its governors, officers, employees and agents, of and from any and all suits, and other claims, liabilities, losses, costs or expenses, including reasonable legal fees (including both those incurred in connection with the defence or prosecution of the indemnifiable claim and those incurred in connection with the enforcement of this provision) (collectively, “**Losses**”), that may arise by reason of:

- (a) any act or omission of UTS, or its directors, officers, employees, agents or other persons engaged or retained by them for whose acts or omissions they are in law responsible, resulting from or related to their performance under this Licence, including, without limitation, any breach or default of UTS’s obligations under this Licence, including disclosure to third parties of any confidential information of the University; and
- (b) the operations or activities of UTS or the University on behalf of UTS resulting from or related to its performance under this Licence;

save and except, in each case, for such Losses as are occasioned by the University’s negligence, fraud, wrongful act, or breach or default of the University’s obligations under this Licence.

16.02 For all claims arising on or after the date of this Licence, and not having their basis prior to the date of this Licence, the University will indemnify and save harmless UTS, its governors, officers, employees and agents, of and from any and all suits, and other claims, liabilities, losses, costs or expenses, including reasonable legal fees (including both those incurred in connection with the defence or prosecution of the indemnifiable claim and those incurred in connection with the enforcement of this provision) (collectively, “**Losses**”), that may arise by reason of:

- (a) any act or omission of the University, or its directors, officers, employees, agents or other persons engaged or retained by them for whose acts or omissions they are in law responsible, resulting from or related to their performance under this Licence, including, without limitation, any breach or default of the University’s obligations under this Licence, including disclosure to third parties of any confidential information of UTS; and
- (b) the operations or activities of the University or UTS on behalf of the University resulting from or related to its performance under this Licence;

save and except, in each case, for such Losses as are occasioned by UTS's negligence, fraud, wrongful act, or breach or default of the UTS's obligations under this Licence.

ARTICLE 17 – REVOCATION OF LICENCE

- 17.01 (a) Each party shall have the right to terminate this Licence at any time upon the occurrence of any of the following events, such termination to be effective on the date that is ten (10) months after the date of written notice to the other party to that effect (other than in respect of the events listed in (iv) in which case such termination shall occur automatically without the requirement of the other party to provide any notice) or as otherwise specified herein:
- (i) if a party is in material default of, has failed to observe or perform or breached any of its obligations, representations, warranties or agreements set forth herein in any material respect and such default, failure or breach is not rectified within 90 days of receipt of written notice of such default, failure or breach delivered by the other party, or such longer period as is reasonably required to rectify such default, failure or breach, provided that the defaulting party is diligently pursuing such rectification;
 - (ii) if a party ceases operations in the ordinary course;
 - (iii) if a writ of execution is issued against any or all of the assets owned by such party that remains unsatisfied for 60 days;
 - (iv) makes an assignment for the benefit of creditors, becomes bankrupt under applicable legislation, is the subject of the appointment of a receiver or manager in respect of any substantial part of its assets and undertaking that is not removed or for which no stay is entered within 60 days thereafter, or takes proceedings for winding up, liquidation, or dissolution of its assets; or
 - (v) the Affiliation Agreement expires or is terminated.
- (b) Each party must provide the other party with written notice at least 15 days prior to making an assignment for the benefit of creditors or taking any action or commencing any proceedings for winding-up, liquidation or dissolution of its assets as specified in Section 17.01(a)(iv).
- 17.02 Upon the termination of this Licence in accordance with Section 17.01, UTS shall vacate the Licenced Premises on or before the effective date of termination and Section 12.01 shall apply.
- 17.03 In the event of a termination by the University pursuant to Section 17.01, the University shall pay an early termination fee (the “**Early Termination Fee**”) to

UTS within 30 days after the Early Termination Fee has been determined in accordance with Section 17.04.

17.04 In order to calculate the Early Termination Fee, if applicable hereunder, the Appraised Value of the New Building shall be calculated as follows:

- (a) Within thirty (30) days after the effective date of termination by the University, each party shall select one Appraiser and notify the other party of the selected Appraiser. Each Appraiser shall be jointly directed by UTS and the University to undertake a valuation of the replacement cost of the New Building using a replacement cost method valuation (not including the value of the land) for the New Building as at the date of termination. Each Appraiser shall be directed to report to both UTS and the University within sixty (60) days after being directed to undertake the valuation and after each such Appraiser has submitted its valuation as aforesaid:
 - (i) if the two valuations are within 10% of one another, the “**Appraised Value**” shall be the average of them for the purposes hereof; and
 - (ii) if the two valuations are not within 10% of one another, the two appointed Appraisers will appoint a third Appraiser, which third Appraiser shall be jointly directed by UTS and the University to undertake a valuation of the New Building using a replacement cost method valuation (not including the value of the land) for the New Building as at the date of termination. Such third Appraiser shall be directed to report to both UTS and the University within sixty (60) days after being directed to undertake the valuation and after such third Appraiser has submitted its valuation as aforesaid, the “**Appraised Value**” shall be determined by taking the average of such third valuation and the valuation of the first two Appraisers which is closest to such third valuation.

17.05 Each party shall pay the cost of the Appraiser appointed by it, and the parties shall equally share the cost of the third Appraiser, if applicable. Immediately following the calculation of the Appraised Value, UTS shall provide UTS of notice in writing of the Early Termination Fee, and within 30 days of receipt of such notice, the University shall pay the Early Termination Fee without deduction or set-off to UTS. Upon payment of such Early Termination Fee, the University shall have no further liability to UTS in connection with the termination of the Licence by the University pursuant to Section 17.01. For additional certainty, the payment of the Early Termination Fee shall not relieve UTS from liability for acts or omissions under this Licence which gave rise to such termination by the University.

17.06 Neither termination nor expiration of this Licence shall relieve either party of liabilities previously accrued hereunder, or any liability, obligation or agreement

in the terms hereof which, to give practical effect thereto, must survive such termination, and such terms shall survive and be performed after such termination or expiration, including, without limiting the generality of the foregoing, the indemnities included in Article 16.

17.07 For greater certainty, in connection with any termination of this Licence by UTS pursuant to Section 17.01 above, UTS shall not be entitled to the Early Termination Fee, but such termination shall be without prejudice to the rights of UTS hereunder, including the indemnities included in Article 16.

17.08 Notwithstanding anything contained in this Article 17, in the event the University is required to pay the Early Termination Fee hereunder, the University shall be entitled to deduct an amount equal to the University's Termination Claim, if applicable, from such payment, provided that:

- (a) the amount of the University's Termination Claim shall have been included with the notice of termination delivered by the University in accordance with Section 17.01 above, and shall have included reasonable particulars thereof;
- (b) UTS shall not have, prior to date on which the Early Termination Fee is payable hereunder, paid to the University the University's Termination Claim, or otherwise settled such claim, on terms acceptable to the University and UTS;
- (c) if the University has not commenced formal proceedings in a court of competent jurisdiction in respect of the University's Termination Claim, by the date on which the Early Termination Fee is payable hereunder, it shall do so within 10 business days of such date, failing which the amount of the University's Termination Claim shall be paid forthwith by the University to UTS;
- (d) following the commencement of formal proceedings as referenced in paragraph (c) above, the University shall, on written request by UTS, pay forthwith an amount equal to the University's Termination Claim into a court of competent jurisdiction, pending the resolution or settlement of such claim; and
- (e) to the extent that the University's Termination Claim is settled for an amount less than the amount so claimed, or a final judgment is rendered in an amount less than the amount so claim, the difference shall be paid to UTS forthwith.

17.09 For certainty, nothing in Section 17.08 hereof shall be deemed to:

- (a) limit UTS's liability hereunder to the University's Termination Amount; or

- (b) limit the application of the dispute resolution procedure described in Article 7 hereof.

17.10 The University hereby agrees that it will, to the extent an amount equal to the University's Termination Claim has been deducted from the Early Termination Fee in accordance with this Agreement, diligently pursue such University's Termination Claim with a view to obtaining a final judgment of a court of competent jurisdiction in respect of such claim as soon as reasonably possible.

ARTICLE 18 – REPRESENTATIONS AND WARRANTIES

18.01 UTS represents and warrants to the University as set out in this Section 18.01 and acknowledges that the University is relying on such representations and warranties in connection with the arrangements contemplated in this Licence:

- (a) UTS is a not-for-profit corporation incorporated and validly existing under the laws of the Province of Ontario, is in good standing, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Licence and perform its obligations hereunder.
- (b) UTS has the requisite power, authority and capacity to execute and deliver this Agreement, and to do all acts and things, and enter into, execute, deliver and perform its obligations under all other agreements, instruments, undertakings and documents as are required by this Licence to be entered into, executed, delivered and performed.
- (c) No steps or proceedings have been taken or are pending to supersede or amend the governing documents of UTS in a manner that would impair or limit its ability to perform the obligations of UTS under this Licence.
- (d) This Licence has been duly authorized, executed, and delivered by UTS and constitutes a legal, valid, and binding obligation of UTS, enforceable against UTS in accordance with its terms.
- (e) The execution, delivery, and performance by UTS of this Licence does not and will not violate or conflict with, or constitute a default under:
 - (i) its governing, formation or organizational documents, including any by-laws;
 - (ii) any applicable law; or
 - (iii) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected.

- (f) There are no actions, suits, proceedings, or investigations pending or threatened against UTS at law or in equity before any governmental authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of UTS or in any impairment of its ability to perform its obligations under this Licence, and UTS has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any governmental authority or arbitral body that could result in any such material adverse effect or impairment.

18.02 The University represents and warrants to UTS as set out in this Section 18.02 and acknowledges that UTS is relying on such representations and warranties in connection with the arrangements contemplated in this Licence:

- (a) The University is a university validly existing under the laws of the Province of Ontario, is in good standing, and has all the requisite power and authority to own its properties and assets, to carry on its authority as it is currently being conducted, and to enter into this Licence and perform its obligations hereunder.
- (b) The University has the requisite power, authority and capacity to execute and deliver this Licence, and to do all acts and things, and enter into, execute, deliver and perform its obligations under all other agreements, instruments, undertakings and documents as are required by this Licence to be entered into, executed, delivered and performed.
- (c) No steps or proceedings have been taken or are pending to supersede or amend the governing documents of the University in a manner that would impair or limit its ability to perform the obligations of the University under this Licence.
- (d) This Licence has been duly authorized, executed, and delivered by the University and constitutes a legal, valid, and binding obligation of the University, enforceable against the University in accordance with its terms.
- (e) The execution, delivery, and performance by the University of this Licence does not and will not violate or conflict with, or constitute a default under:
 - (i) its governing, formation or organizational documents, including any by-laws;
 - (ii) any applicable law; or

- (iii) any covenant, contract, agreement, or understanding to which it is a party or by which it or any of its properties or assets is bound or affected.
- (f) There are no actions, suits, proceedings, or investigations pending or threatened against the University at law or in equity before any governmental authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of the University or in any impairment of its ability to perform its obligations under this Licence, and the University has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any governmental authority or arbitral body that could result in any such material adverse effect or impairment.

ARTICLE 19 – NOTICES

19.01 Any notice, request, demand, consent, advice, approval or other communication provided for or permitted under this Licence shall be in writing and may be and may be given by personal delivery or electronic mail, addressed to the party for which it is intended at its address as follows:

The University:

University of Toronto
Simcoe Hall
27 King's College Circle
Toronto, Ontario M5S 1A1

Attention: Vice President, University Operations
scott.mabury@utoronto.ca

- and to –

University of Toronto
Simcoe Hall
27 King's College Circle
Toronto, Ontario M5S 1A1

Attention: General Counsel
steve.moate@utoronto.ca

UTS:

University of Toronto Schools
371 Bloor Street West
Toronto, Ontario M5S 2R8

Attention: Principal
revans@utschools.ca

provided, however, that any party may change its address for purposes of receipt of any such communication to another address in Canada by giving ten days' prior written notice of such change to the other party in the manner above prescribed. Any notice delivered as aforesaid shall be deemed to have been received on the day of delivery if received on or before 5:00 p.m. on any Business Day, or if not, on the next Business Day following the day of delivery.

ARTICLE 20 - LIENS

20.01 UTS shall not register or permit the registration of any encumbrance or lien on the Lands and shall make all payments and take all steps as may be necessary to ensure that no lien is registered against the Lands as a result of any work, services, or materials supplied to UTS or to the Licensed Premises. If any such encumbrance or lien is registered, UTS shall cause any such registration to be discharged or vacated immediately after notice thereof from the University or within ten (10) days following such registration, whichever is earlier. UTS shall indemnify and save harmless the University from and against any liabilities, claims, liens, damages, costs and expenses, including legal fees, arising in connection with any such registration and in connection with any work, services or materials supplied to UTS or the Licensed Premises. If UTS fails to cause any such registration to be discharged or vacated as aforesaid, then, in addition to any other rights of the University, the University may, but shall not be obliged to, discharge the same by paying the amount claimed into court, and the amount so paid and all related costs incurred in respect thereof by the University, including legal fees and disbursements, shall be paid by UTS to the University forthwith upon demand.

ARTICLE 21- GENERAL

21.01 This Licence shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns. Neither party shall assign any of its rights or obligations hereunder without the prior written consent of the other party. Without limiting the foregoing, the University agrees that, prior to the transfer of the Lands to any person, including, without limitation, any corporation wholly or partly owned by the University, the University will obtain a covenant in writing from such transferee agreeing to be bound by the obligations and covenants of the University hereunder.

21.02 This Licence and all performance hereunder shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Wherever possible, each provision of this Licence shall be interpreted in such manner as to be effective and valid pursuant to applicable laws and if any provision of this Licence shall be prohibited by or held invalid pursuant to applicable law, such provision shall be ineffective only

to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Licence.

- 21.03 Nothing in this Licence is intended to bestow upon UTS any rights whatsoever as a tenant or subtenant of the Licensed Premises, and any rights and privileges which are available to a tenant or subtenant, whether expressly under the *Commercial Tenancies Act* (Ontario) or otherwise, are expressly waived by UTS. Nothing contained in this Licence or in any acts of the parties hereto shall be construed to create any relationship between the parties other than that of licensor and licensee, or to create a relationship of partnership or of joint venture between the parties hereto, or to constitute this Licence as a lease, or to create any right of ownership in UTS. The University shall exercise no supervision over UTS's mode and manner of performance and UTS's employees or agents shall not be deemed to be employees or agents of the University. UTS shall be solely responsible for the wages, benefits, taxes, and any other similar obligation, in connection with its employees, agents, or servants.
- 21.04 This Licence, including the Schedules and Exhibit thereto, contains the entire agreement of the parties with respect to the matters provided for herein, and there are no representations, inducements, promises, agreements, arrangements, or undertakings, oral or written, between the parties hereto with respect to the subject matter hereof other than those set forth herein and duly executed in writing. Except as otherwise expressly provided herein, no modification of this Licence or supplementary agreement of any kind shall be binding upon either party unless and until the same has been made in writing and duly executed by both parties.
- 21.05 No delay, omission, or forbearance on the part of a party herein to exercise any right, option, duty or power arising out of any breach or default by the other party of any of the terms, provisions, or covenants contained herein, shall constitute a waiver by the non-defaulting party to enforce any such right, option, duty or power as against the defaulting party or as to a subsequent breach or default of the defaulting party.
- 21.06 Neither party is responsible for damages caused by the delay or failure to perform any of its obligations under this Licence when the delay or failure is the result of a Force Majeure Event (as defined in the Project Agreement). If the invoking party contends that any of its obligations is suspended by reason of a Force Majeure Event, it shall immediately give notice to the other party, providing all necessary details. The obligations of the invoking party under this Licence will be extended for the duration of the Force Majeure Event. Upon cessation of a Force Majeure Event, the invoking party shall (a) immediately give notice to the other party, advising of its cessation, and (b) commence performance of its obligations under this Licence as promptly as reasonably practicable.

- 21.07 Any termination of this Licence shall not affect any obligation intended to survive termination.
- 21.08 This Licence may be signed in any number of counterparts and the signatures delivered electronically, each of which shall be deemed to be an original, with the same effect as if the signatures thereto were upon the same instrument and delivered in person. This Licence shall become effective when each party hereto shall have received a counterpart thereof signed by the other party hereto. In the case of electronic delivery by any party, that party shall forthwith deliver a manually executed original to each of the other parties.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO

Per: _____

Per: _____

I/We have the authority to bind the University.

UNIVERSITY OF TORONTO SCHOOLS

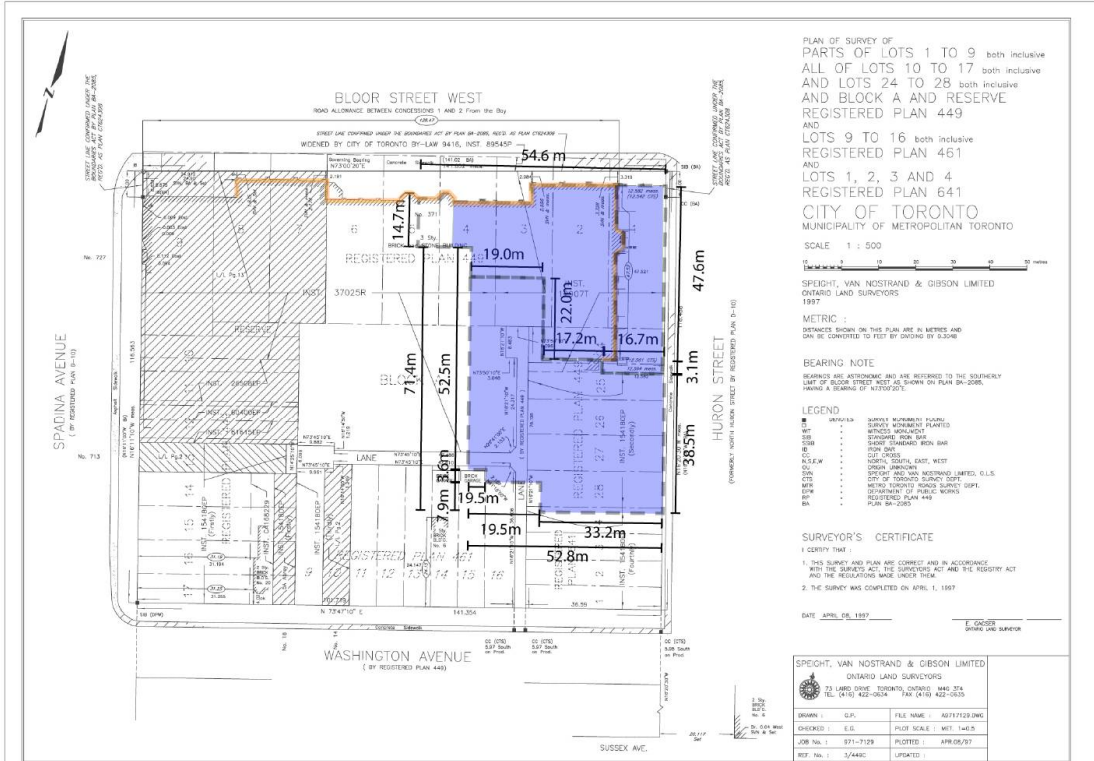
Per: _____

Per: _____

I/We have the authority to bind the corporation.

SCHEDULE "A"

UTS SITE



Diamond Schmitt Architects

CONTEXT SURVEY (ALL DIMENSIONS OF LOTS PREMISES ARE APPROXIMATE)

UNIVERSITY OF TORONTO SCHOOLS
371 BLOOR ST. WEST TORONTO, ON

1:500

SEPTEMBER 28, 2015

EXHIBIT 1

LICENSED PREMISES PLAN

(TO BE JOINTLY APPROVED IN ACCORDANCE WITH SECTION 3.02)

TRADEMARKS LICENCE AND CONSENT AGREEMENT

between

THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO

and

UNIVERSITY OF TORONTO SCHOOLS

_____, 2015



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TRADEMARKS LICENCE AND CONSENT AGREEMENT

THIS AGREEMENT is made this ____ day of _____, ____ (the “**Effective Date**”),

BETWEEN:

THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO

(the “**University**”)

- and -

UNIVERSITY OF TORONTO SCHOOLS

(“**UTS**”)

WHEREAS:

- A. A school for children known as “University of Toronto Schools” (the “**School**”) was created by the Province of Ontario as a model school at the University in 1910.
- B. From 1910 until 2006, the School was operated by the Province of Ontario and/or the University.
- C. In 2006, UTS assumed operation of the School and entered into, *inter alia*, an affiliation agreement with the University, which affiliation agreement is scheduled to expire in accordance with its terms in 2021.
- D. The University and UTS wish to continue their affiliation and for that purpose have entered into a new affiliation agreement dated as of the date hereof.
- E. In furtherance of the objectives of the original affiliation agreement, the University and UTS entered into the 2006 Trade-marks Licence Agreement (as defined below).
- F. In connection with the entering into of a new affiliation agreement, UTS and the University have agreed, on and subject to the terms of this Agreement, to enter into this Agreement.

NOW THEREFORE:

In consideration of the mutual representations, warranties, covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1 INTERPRETATION

1.01 Definitions

Whenever used in this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following words and terms shall have the respective meanings as assigned to them in this Section 1.01:

“2006 Affiliation Agreement” means the affiliation agreement dated June 30, 2006 between the University and UTS, as amended from time to time;

“2006 Trade-marks Licence Agreement” means the trademarks licence agreement dated June 30, 2006 between the University and UTS;

“2015 Affiliation Agreement” means the affiliation agreement dated as of the date hereof between the University and UTS;

“Additional Marks” shall have the meaning assigned to such term in Section 7.02;

“Agreement” means this trademarks licence and consent agreement, including Schedule A and any other schedules, exhibits or other addenda that the parties may incorporate in writing;

“Business Day” means any day, other than a Saturday, Sunday or statutory or civic holiday in the Province of Ontario;

“Effective Date” shall have the meaning assigned to such term on the first page hereof;

“Force Majeure Event” means any act, occurrence, condition, or event beyond the control of a party that materially affects the performance of that party’s obligations under this Agreement that could not reasonably have been foreseen or provided against (including strikes, riots, wars, acts of terrorism, military or national emergencies, acts of governmental authority, natural disasters, power outages and interruptions, brownouts, and fire), but does not include general economic or other conditions affecting financial markets generally;

“Marks” shall have the meaning assigned to such term in Section 2.01;

“Licences” shall have the meaning assigned to such term in Section 4.01;

“Surviving Terms” means the terms of Section 6.01, 6.02 and Sections 10.02 and 10.03;

“Term” shall have the meaning assigned to such term in Section 3.01;

“University” has the meaning assigned to such term on page one of this Agreement;

“UTS” has the meaning assigned to such term on page one of this Agreement; and

“UTS Foundation” means the UTS Foundation, a corporation formed, *inter alia*, to support the educational programmes of UTS, and for the purposes hereof, shall include its successors.

Any capitalized terms not defined above and not otherwise defined herein shall have the same meanings assigned to such terms in the 2015 Affiliation Agreement.

1.02 Sections and Headings

The division of this Agreement into Articles, Sections and paragraphs and the insertion of headings are for convenience of reference only and shall not affect the interpretation or construction of this Agreement. Unless otherwise indicated, any reference in this Agreement to an Article, Section, paragraph or Schedule refers to the specified Article, Section, paragraph or Schedule to this Agreement.

1.03 Gender

In this Agreement, words importing the use of either gender shall include both genders.

1.04 Time of the Essence

Time shall be of the essence of this Agreement and of every part hereof and no extension or variation to this Agreement shall operate as a waiver of this provision.

1.05 Governing Law

This Agreement shall be construed, interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without reference to any principles of conflicts of laws. Each party irrevocably and unconditionally attorns to the exclusive jurisdiction of the courts of the Province of Ontario with respect to any matter arising hereunder and relating hereto.

1.06 Further Assurances

Each party shall from time to time execute and deliver, or cause to be executed and delivered, all further documents and instruments and do, or cause to be done, all further acts and things as the other party may reasonably require as being necessary or desirable in order to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement or any provision hereof.

1.07 Invalidity

Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid pursuant to applicable law, and if any provision of this Agreement shall be prohibited by or held invalid, illegal or unenforceable pursuant to applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, illegality or unenforceability without invalidating the remainder of such provision and the remaining provisions of this Agreement.

1.08 Entire Agreement

This Agreement (including the Schedules incorporated by reference) constitutes the entire agreement of the parties with respect to its subject matter and supersedes all prior and other agreements, understandings, negotiations and discussions, whether written or oral, between the parties, including the 2006 Trade-marks Licence Agreement and the 2006 Affiliation Agreement.

1.09 Calculation of Time

In this Agreement, 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. (Toronto time) on the last day of the period. If any period of time is to expire hereunder on any day that is not a Business Day, the period shall be deemed to expire at 5:00 p.m. (Toronto time) on the next succeeding Business Day.

1.10 Performance on Holidays

If any act (including the giving of notice) is otherwise required by the terms hereof to be performed on a day which is not a Business Day, such act shall be valid if performed on the next succeeding Business Day.

1.11 Conflict

In the event of any conflict or inconsistency between the terms and conditions in the body of this Agreement and those in any Schedule (including any agreement entered into pursuant to this Agreement), the terms and conditions in the body of this Agreement shall govern and take precedence and the parties shall take such steps as may be required or desirable to conform the conflicting or inconsistent provisions thereof to this Agreement.

1.12 Consents and Approvals

Unless otherwise specified, where the consent or approval of a party is contemplated or required by the terms of this Agreement, that party shall not unreasonably delay or withhold the giving of such consent or approval after a request therefor has been made by the other party.

1.13 Additional Rules of Interpretation

- (a) In this Agreement, unless the context requires otherwise, words in the singular include the plural and vice versa.
- (b) Unless otherwise indicated, all references in this Agreement to any statute include the regulations thereunder and all applicable guidelines, bulletins or policies made in connection therewith and which are legally binding, in each case as amended, re-enacted, consolidated or replaced from time to time and in the case of any such amendment, re-enactment, consolidation or replacement, reference herein to a particular provision shall be read as referring to such amended, re-enacted, consolidated or replaced provision.
- (c) Wherever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation" and the words following "include", "includes" or "including" shall not be considered to set forth an exhaustive list.
- (d) All references herein to any agreement (including this Agreement), document or instrument mean such agreement, document or instrument as amended, supplemented, modified, varied, restated or replaced from time to time in accordance with the terms thereof and, unless otherwise specified therein, includes all schedules and exhibits attached thereto.

1.14 Schedules

The following are the Schedules attached to and incorporated in this Agreement by reference and deemed to be a part hereof:

Schedule A - Marks

ARTICLE 2 MARKS

2.01 Marks

The University owns all rights in the corporate names, the business and trade names, prohibited marks and trademarks set out in Schedule A, including such that have been heretofore used by UTS under licence from the University pursuant to the 2006 Trade-marks Licence Agreement, whether advertised, registered or unregistered (collectively, the “**Marks**”).

ARTICLE 3 TERM

3.01 Term

The term of this Agreement shall commence on the Effective Date and end on the date that the 2015 Affiliation Agreement expires or is terminated in accordance with its terms (the “**Term**”), unless terminated earlier in accordance with the provisions of Article 10.

3.02 2006 Trade-marks Licence Agreement

Notwithstanding the terms of the 2006 Trade-marks Licence Agreement, the parties agree that the 2006 Trade-marks Licence Agreement and all covenants, agreements, representations and warranties of the parties therein shall terminate effective as of the Effective Date and be of no force and effect.

ARTICLE 4 LICENCE AND CONSENT

4.01 Licence and Consent

Pursuant to the terms and conditions contained herein and subject to the University obtaining all necessary governmental and regulatory approvals and the parties complying with any terms that may be imposed upon them by governmental and regulatory bodies in accordance with the granting of such approvals, the University hereby grants an exclusive, revocable (as set out in Article 5), non-transferable, non-sublicensable (subject to Section 4.02), royalty-free licence and consent to UTS to use the Marks set out in Schedule A of this Agreement for the purpose of the operation of UTS in accordance with the objects set out in its letters patent of incorporation, as amended, and for no other purpose (collectively, the “**Licences**”). For greater certainty, the exclusive right granted under the Licences do not apply to or restrict the University from its free and unrestricted use of the marks identified in Schedule B to this Agreement and individual elements thereof.

4.02 Sublicence to UTS Foundation

UTS may sublicense its rights under each of the Licences to the UTS Foundation, subject to the prior written approval of the University as to the form and content of such sublicense.

ARTICLE 5 REVOCATION OF LICENCE

5.01 Revocation of Licence

The University reserves the right to revoke any one or more of the Licences if, in the University's opinion:

- (a) UTS is using any Marks for any purpose other than the stated purpose set forth in Section 4.01, and such use is not terminated within 30 days following UTS's receipt of written notice of such use; or
- (b) UTS is in default of, has failed to observe or perform or breached any of its obligations, representations, warranties or agreements set forth herein and such default, failure or breach is not rectified within 30 days of UTS's receipt of written notice of such default, failure or breach.

5.02 Deemed Revocation

The Licences are deemed to be revoked if the 2015 Affiliation Agreement expires or is terminated.

ARTICLE 6 OWNERSHIP OF MARKS AND NO CHALLENGE

6.01 Owner of Marks

UTS agrees that:

- (a) the University is the exclusive owner of the Marks and all goodwill associated therewith; and
- (b) all use of the Marks by UTS and the UTS Foundation enures to the benefit of the University.

6.02 No Challenge

UTS agrees that:

- (a) UTS will not, directly or indirectly, dispute or contest for any reason the validity, ownership or enforceability of the Marks, or attempt to dilute the value of the goodwill attached to the Marks, or counsel, procure or assist anyone to do any of the foregoing; and
- (b) unless the parties otherwise agree, after expiration or termination of this Agreement, UTS will not, directly or indirectly, dispute or contest for any reason the validity, ownership or enforceability of the Marks which incorporate the words "University of Toronto", or attempt to dilute the value of the goodwill attached to the Marks which incorporate the words "University of Toronto", or counsel, procure or assist anyone to do any of the foregoing.

ARTICLE 7 USE OF MARKS

7.01 Audit

The University shall have the right, upon reasonable prior written notice to UTS, to inspect and audit the use of the Marks by UTS from time to time to ensure UTS's compliance with the terms of this Agreement.

7.02 Additional Marks

UTS may not use any variation of the Marks and/or any trademarks that incorporate the Marks ("**Additional Marks**") without the University's prior written consent, which consent may be withheld in the University's discretion. Any Additional Marks approved by the University in writing shall thereafter be considered to be Marks, and the ownership and licensing of their use shall be governed by the terms and conditions of this Agreement. If an Additional Mark incorporates the words "University of Toronto" or any other corporate name, business name or trade name, official mark or other trademark of the University, such additional mark shall be automatically deemed added to Schedule A hereto on the terms and conditions hereunder.

7.03 Unauthorized Use

UTS shall promptly notify the University in writing of any unauthorized use or infringement or passing off by others of any of the Marks of which it becomes aware. The University and, at the request and expense of the University, UTS shall (subject to receiving an appropriate indemnity from the University) take any and all reasonable action that the University deems appropriate and necessary in its sole discretion against uses by others that may constitute infringement of any of the Marks.

7.04 Third Party Claims

UTS shall promptly notify the University in writing upon receipt by UTS of notice, or upon UTS becoming aware, of any claim against UTS or the University on account of any alleged infringement, unfair competition or similar matter relating to UTS's use of any of the Marks. The University and, at the direction and expense of the University, UTS shall take any and all action that the University deems appropriate and necessary in its sole discretion to defend UTS against any such claim and shall indemnify UTS as a consequence of any such claim only to the extent that the claim relates to authorized use of the applicable Marks.

7.05 Defense of Third Party Claims

The University shall have the right in its sole discretion to direct and control any administrative proceeding or litigation involving any of the Marks, including any settlement thereof, at its cost and using legal representatives of its own choosing, except any such proceeding, litigation or settlement involving a Mark containing "UTS" which shall be subject to the approval of UTS, not to be unreasonably withheld or unduly delayed. Any and all amounts recovered in respect of any such administrative proceeding or litigation, including any settlement thereof, shall be the sole property of the University. UTS shall cooperate fully with the University in such litigation, but at the expense of the University. If the University undertakes the defence or prosecution of any such action relating to UTS's use of any of the Marks, or any unauthorized uses by others of any of the Marks, UTS agrees to execute any and all documents and to do such acts and things as may be necessary, in the opinion of the University, to carry out such defence, prosecution, or settlement, including becoming a party (at the University's expense) to any such

action. In that last event, the University shall indemnify UTS against any and all costs, claims or demands that UTS may incur in consequence of becoming a party to such action.

7.06 Display of Marks

UTS will use or display the unregistered Marks only in the manner and form as they have heretofore been used or displayed by UTS, and for those Marks that have been advertised or registered under the *Trademarks Act* (Canada), UTS will use or display such Marks in such manner and form as they have been advertised or registered, as applicable.

7.07 Notice of Licence

In using the Marks, UTS will provide reasonable notices that the Marks are used under licence from the University.

ARTICLE 8 INDEMNITY

8.01 UTS Indemnity

For Losses arising on or after the Effective Date and not having their basis prior to the Effective Date (for such prior-based Losses the 2006 Trade-marks Licence Agreement and its indemnity provisions shall apply), UTS shall indemnify, defend and hold harmless the University and its subsidiaries, affiliates, governors, directors, officers, employees, students, agents and other representatives, as applicable (collectively, "**Representatives**"), from and against any and all losses, liabilities, claims, obligations, costs, expenses (including without limitation reasonable legal fees and disbursements) (collectively, "**Losses**") which result from, arise in connection with or are related in any way to:

- (a) any breach by UTS or by any of its Representatives of any of its obligations, representations, warranties or agreements set forth herein;
- (b) any negligent act or omission or wilful misconduct by UTS or its Representatives in the performance of its obligations or exercise of its rights under this Agreement;
- (c) any claim by a third party relating to UTS's use of any of the Marks in a manner not permitted under this Agreement; or
- (d) any non-compliance by UTS or its Representatives with applicable law in the performance of its obligations or exercise of its rights under this Agreement.

8.02 University Indemnity

For Losses arising on or after the Effective Date and not having their basis prior to the Effective Date (for such prior-based Losses the 2006 Trade-marks Licence Agreement and its indemnity provisions shall apply), the University shall indemnify and save harmless UTS and its Representatives from and against any and all Losses which result from, arise in connection with or are related in any way to:

- (a) any claim by a third party that the use of any of the Marks as permitted under this Agreement infringes the intellectual property rights enforceable in Canada of such third party; or
- (b) any non-compliance by the University or its Representatives with applicable law in the performance of its obligations or exercise of its rights under this Agreement.

8.03 University's Representatives' Trustee

The University is entitled to recover from UTS an amount due to any of the University's Representatives under the indemnity in Section 8.01 on behalf of such Representatives and will hold any amount recovered, and the benefit of the indemnity in Section 8.01 to which the Representatives are entitled, as trustee for and on behalf of such Representatives.

8.04 UTS's Representatives' Trustee

UTS is entitled to recover from the University an amount due to any of UTS's Representatives under the indemnity in Section 8.02 on behalf of such Representatives and will hold any amount recovered, and the benefit of the indemnity in Section 8.02 to which the Representatives are entitled, as trustee for and on behalf of such Representatives.

ARTICLE 9 DISPUTE RESOLUTION

9.01 Notice of Dispute

Any disputes between the parties arising out of this Agreement which the parties are unable to resolve themselves shall be submitted to mediation pursuant to the terms of Article 16 of the 2015 Affiliation Agreement.

ARTICLE 10 TERMINATION

10.01 Termination

This Agreement shall terminate upon revocation of the Licences in accordance with Section 5.01 or Section 5.02.

10.02 No Further Use, Etc.

Upon termination or expiration of this Agreement, UTS shall, as soon as possible but in any event no later than 180 days following the effective date of termination or expiration:

- (a) cease all use of the Marks, whether direct or indirect, or in any other manner;
- (b) remove the Marks from, or deliver up to the University, any and all written materials, in any media, in UTS's possession or control that display the Marks; and
- (c) promptly execute such documents or take such actions as may be necessary to abandon UTS's use of any corporate, partnership, business or other name containing any of the Marks including, without limitation, an application for

supplementary letters patent of incorporation to change UTS's corporate name and objects so as to eliminate therefrom any words indicating an association or connection with the University.

10.03 Surviving Terms

Neither termination nor expiration of this Agreement shall relieve either party of rights and liabilities previously accrued hereunder through to the effective date of termination or expiry or any liability, obligation or agreement in the Surviving Terms, which shall survive and be performed after such termination or expiration. For greater certainty, other than as provided in the Surviving Terms, neither party shall not have any further liability or obligation to the other party upon termination of this Agreement.

ARTICLE 11 MISCELLANEOUS

11.01 Notices

- (a) Any notice, request, demand, consent, advice, approval or other communication provided for or permitted under this Agreement shall be in writing and may be given by personal delivery or electronic mail, addressed to the party for which it is intended at its address as follows:

- (i) the University:

University of Toronto
Simcoe Hall 27 King's College Circle
Toronto, Ontario M5S 1A1

Attention: Vice President, University Operations
scott.mabury@utoronto.ca

- and to -

University of Toronto
Simcoe Hall 27 King's College Circle
Toronto, Ontario M5S 1A1

Attention: General Counsel
steve.moate@utoronto.ca

- (ii) UTS:

University of Toronto Schools
371 Bloor Street West
Toronto, Ontario M5S 2R8

Attention: Chair, Board of Directors
jimfleck@me.com

- and to -

University of Toronto Schools
371 Bloor Street West
Toronto, Ontario M5S 2R8

Attention: Principal
revans@utschools.ca

provided, however, that any party may change its address for purposes of receipt of any such communication to another address in Canada by giving 10 days' prior written notice of such change to the other party in the manner above prescribed. Any notice delivered as aforesaid shall be deemed to have been received on the day of delivery if received on or before 5:00 p.m. on any Business Day, or if not, on the next Business Day following the day of delivery.

11.02 Force Majeure

Neither party is responsible for damages caused by the delay or failure to perform any of its obligations under this Agreement when the delay or failure is the result of a Force Majeure Event. If the invoking party contends that any of its obligations is suspended by reason of a Force Majeure Event, it shall immediately give notice to the other party, providing all necessary details. The obligations of the invoking party under this agreement will be extended for the duration of the Force Majeure Event. Upon cessation of a Force Majeure event, the invoking party shall (a) immediately give notice to the other party, advising of its cessation, and (b) commence performance of its obligations under this Agreement as promptly as reasonably practicable.

11.03 Amendments; No Waivers

- (a) Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by all parties, or in the case of a waiver, by the party against whom the waiver is to be effective.
- (b) No waiver by a party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent occurrence. No failure or delay by a party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

11.04 Cumulative Remedies

The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

11.05 Expenses

Except as may be specifically provided herein, all costs and expenses incurred in connection with this Agreement and in carrying out the provisions herein shall be paid by the party incurring such costs or expenses.

11.06 Successors and Assigns

This Agreement shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns. Neither party shall assign any of its rights or obligations hereunder without the prior written consent of the other party.

11.07 Counterparts; Effectiveness

This Agreement may be signed in any number of counterparts and the signatures delivered electronically, each of which shall be deemed to be an original, with the same effect as if the signatures thereto were upon the same instrument and delivered in person. This Agreement shall become effective when each party hereto shall have received a counterpart thereof signed by the other party hereto. In the case of electronic delivery by any party, that party shall forthwith deliver a manually executed original to each of the other parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first mentioned above.

**THE GOVERNING COUNCIL OF THE
UNIVERSITY OF TORONTO**

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have the authority to bind the University

UNIVERSITY OF TORONTO SCHOOLS

By: _____
Name:
Title:





By: _____
Name:
Title:

I/We have the authority to bind the corporation


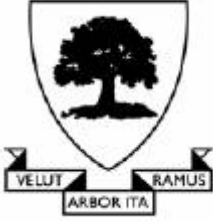


[Trademarks License and Consent Agreement]






SCHEDULE A






MARKS




Mark	Application No.
U.T.S.	0903492
UTS	0903495
	0911441
	
	
	




[Trademarks License and Consent Agreement]




Mark	Application No.
	
	
Building Opportunity	
Preserving Opportunity	
A tradition of excellence in education	
	903436
	903437





Mark	Application No.
	903438
	903439
	
	
	






Mark	Application No.
 <p>UTS UNIVERSITY OF TORONTO SCHOOLS</p>	
 <p>UTS UNIVERSITY OF TORONTO SCHOOLS</p>	
 <p>UTS UNIVERSITY OF TORONTO SCHOOLS</p>	
 <p>UTS UNIVERSITY OF TORONTO SCHOOLS</p>	
 <p>UTS UNIVERSITY OF TORONTO SCHOOLS <i>A Tradition of Excellence in Education</i></p>	





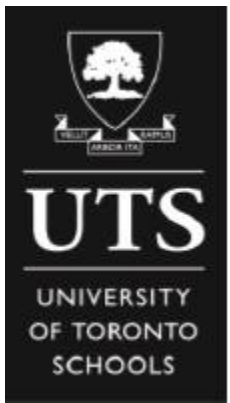
Mark	Application No.
 The logo for the University of Toronto Schools (UTS) is displayed on a gold background. On the left is the UTS crest, which features a tree inside a shield with the motto 'VELUT ARBOR ITA RAMUS' below it. To the right of the crest, the letters 'UTS' are written in a large, blue, serif font. Below 'UTS', the words 'UNIVERSITY OF TORONTO SCHOOLS' are written in a smaller, blue, sans-serif font.	
 The logo for the University of Toronto Schools (UTS) is displayed on a red background. On the left is the UTS crest, which features a tree inside a shield with the motto 'VELUT ARBOR ITA RAMUS' below it. To the right of the crest, the letters 'UTS' are written in a large, blue, serif font. Below 'UTS', the words 'UNIVERSITY OF TORONTO SCHOOLS' are written in a smaller, blue, sans-serif font.	
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Mark	Application No.
 The logo for the University of Toronto Schools (UTS) is displayed on a gold background. On the left is the crest featuring a tree within a shield, with a banner below it containing the Latin motto "VELUT ARBOR ITA RAMUS". To the right of the crest, the letters "UTS" are written in a large, blue, serif font. Below "UTS", the words "UNIVERSITY OF TORONTO SCHOOLS" are written in a smaller, blue, sans-serif font.	
 The logo for the University of Toronto Schools (UTS) is displayed on a blue background. On the left is the crest featuring a tree within a shield, with a banner below it containing the Latin motto "VELUT ARBOR ITA RAMUS". To the right of the crest, the letters "UTS" are written in a large, white, serif font. Below "UTS", the words "UNIVERSITY OF TORONTO SCHOOLS" are written in a smaller, white, sans-serif font.	
 The logo for the University of Toronto Schools (UTS) is displayed on a black background. On the left is the crest featuring a tree within a shield, with a banner below it containing the Latin motto "VELUT ARBOR ITA RAMUS". To the right of the crest, the letters "UTS" are written in a large, white, serif font. Below "UTS", the words "UNIVERSITY OF TORONTO SCHOOLS" are written in a smaller, white, sans-serif font.	

Mark	Application No.
	
	
	

Mark	Application No.
 The logo for the University of Toronto Schools (UTS) is displayed on a solid yellow background. On the left is the crest of the University of Toronto, featuring a tree and the motto 'VELUT ARBOR ITA RAMUS'. To the right, the letters 'UTS' are written in a large, white, serif font. Below 'UTS', the words 'UNIVERSITY OF TORONTO SCHOOLS' are written in a smaller, white, sans-serif font.	
 The logo for the University of Toronto Schools (UTS) is displayed on a white background. On the left is the crest of the University of Toronto, featuring a tree and the motto 'VELUT ARBOR ITA RAMUS'. To the right, the letters 'UTS' are written in a large, serif font, with each letter in a different color: 'U' is red, 'T' is blue, and 'S' is yellow. Below 'UTS', the words 'UNIVERSITY OF TORONTO SCHOOLS' are written in a smaller, blue, sans-serif font.	
 The logo for the University of Toronto Schools (UTS) is displayed on a white background. On the left is the crest of the University of Toronto, featuring a tree and the motto 'VELUT ARBOR ITA RAMUS'. To the right, the letters 'UTS' are written in a large, serif font, with each letter in a different color: 'U' is red, 'T' is blue, and 'S' is yellow. Below 'UTS', the words 'UNIVERSITY OF TORONTO SCHOOLS' are written in a smaller, blue, sans-serif font.	
 The logo for the University of Toronto Schools (UTS) is displayed on a white background. On the left is the crest of the University of Toronto, featuring a tree and the motto 'VELUT ARBOR ITA RAMUS'. To the right, the letters 'UTS' are written in a large, serif font, with each letter in a different shade of blue: 'U' is a medium blue, 'T' is a darker blue, and 'S' is a lighter blue. Below 'UTS', the words 'UNIVERSITY OF TORONTO SCHOOLS' are written in a smaller, blue, sans-serif font.	









Mark	Application No.
	
	
	
	
	






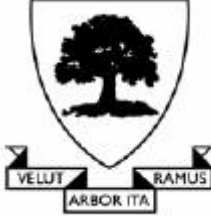





Mark	Application No.
	
	
	
	
	

Mark	Application No.
 The logo for the University of Toronto Schools (UTS) is displayed in a black rectangular box. It features the University of Toronto crest (a tree) and the text "UNIVERSITY OF TORONTO SCHOOLS" above the large, stylized letters "UTS".	
UNIVERSITY OF TORONTO SCHOOLS	

SCHEDULE B

EXCLUDED MARKS

Mark
U.T.
UT
BUILDING OPPORTUNITIES









Mark









UNIVERSITY OF TORONTO



Mark




















Mark



















Mark















Mark




<p data-bbox="628 814 967 842">UNIVERSITY OF TORONTO</p>




<p data-bbox="725 1600 863 1652">UNIVERSITY OF TORONTO</p>
<p data-bbox="725 1673 863 1726">UNIVERSITY OF TORONTO</p>

<p data-bbox="693 1820 896 1848">VELUT ARBOR</p>

THIS PROJECT AGREEMENT IS MADE AS OF _____, 2015

BETWEEN:

THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO (“University”)

and

UNIVERSITY OF TORONTO SCHOOLS (“UTS”)

WHEREAS:

- A. A school for children known as “University of Toronto Schools” (the “**School**”) was created by the Province of Ontario as a model school at the University in 1910.
- B. From 1910 until 2006, the School was operated by the Province of Ontario and/or the University.
- C. In 2006, UTS, a non-profit corporation, assumed operation of the School and entered into, *inter alia*, an affiliation agreement with the University, which affiliation agreement is scheduled to expire in accordance with its terms in 2021.
- D. The University and UTS (together, the “**Parties**”), wish to continue their affiliation beyond 2021, and for that purpose have entered into a new affiliation agreement dated as of the date hereof.
- E. The School has been located at 371 Bloor Street West in Toronto since 1910, which premises are owned by the University and licensed to UTS pursuant to the original affiliation agreement.
- F. In connection with the entering into of such new affiliation agreement, UTS and the University have agreed, on and subject to the terms of this Agreement, and subject to UTS contributing \$10 million in value to the University as described herein, that UTS shall be entitled to complete a construction and renovation project at the Building, and subject to the completion of such project, enter into a new long term licence in respect of such newly constructed and renovated premises.
- G. The University and UTS each wishes to enter into this Project Agreement which sets out the terms and conditions upon which UTS shall complete such renovation and construction.

NOW THEREFORE in consideration of \$2.00 paid by each Party to the other (the receipt and sufficiency of which is acknowledged) and the mutual covenants contained herein, the Parties agree as follows:

**ARTICLE 1
INTERPRETATION**

1.01 Definitions

In this Project Agreement, in addition to the terms defined above, the following definitions apply:

“2006 Affiliation Agreement” means the affiliation agreement between the Parties dated as of June 30, 2006, as amended from time to time.

“2006 Real Property Licence Agreement” means the real property licence agreement between the Parties dated as of June 30, 2006, as amended from time to time.

“2015 Affiliation Agreement” shall mean the affiliation agreement dated as of the date hereof between the Parties, as amended from time to time.

“2015 Real Property Licence Agreement” has the meaning ascribed thereto in the 2015 Affiliation Agreement.

“Actual Project Costs” means the actual costs to complete the Construction pursuant to the Constructor’s Contract.

“Applicable Law” shall mean any federal, provincial or municipal statute, law, ordinance, rule, regulation, by-law, judgment, or order of any kind whatsoever having application to the activity or matter in question, including but not limited to any order of any court, government department, commission, board, agency, regulatory authority or administrative body, and includes Environmental Law.

“Building” shall mean the existing building located on the Lands as of the date hereof, and shown on Schedule A hereto.

“Business Day” means any day, other than a Saturday, Sunday or statutory or civic holiday in Toronto, Ontario.

“Commencement of Construction” means the issuance of the first building permit by the applicable Governmental Authority in respect of the Construction Works.

“Commercially Reasonable Efforts” means the efforts that a prudent Party desirous of achieving a result would make in similar circumstances to attempt to achieve such result expeditiously, provided always that Commercially Reasonable Efforts (i) do not require a Party to make a material expenditure of funds in excess of those contemplated in this Project Agreement; and (ii) are subject to the legal authority of the Party to influence the behaviour of other third parties.

“Community Liaison Committee” shall mean the committee of local residents, institutions and the University that has been established to provide a forum for the reporting, monitoring, discussion and resolution of issues and concerns related to University matters.

“Construction” shall mean the period of time commencing at Commencement of Construction and concluding at Project Completion.

“Construction Costs Variance” means an amount, positive or negative, expressed in dollars, calculated by subtracting the amount of the Project Budget from the Actual Construction Costs.

“Construction Management Plan” shall mean a plan for the construction of the Project prepared pursuant to the terms of Section 6.06 hereof, which plan will be subject to University Approval and will require that (a) access to the rest of the Lands from Washington Street will be maintained, in all material respects, during the Construction Works, and (b) there will be no material interference with the reasonable enjoyment of

the properties and tenants fronting along Washington Avenue, being Lots 9 to 16 of the Survey.

“Construction Milestones” means, collectively, the Project milestones described in Section 7.02 hereof, and such additional Project milestones as will be set out in the Construction Phasing Plan.

“Construction Phasing Plan” shall mean a plan which provides for phasing of the Project, prepared pursuant to Section 6.06 hereof.

“Construction Plans” means, collectively, the Construction Management Plan together with the Construction Phasing Plan.

“Construction Works” shall mean the work set out at Section 7.01 of this Project Agreement.

“Constructor” shall mean the general contractor procured by UTS in accordance with Section 7.03 of this Project Agreement to complete the Construction Works.

“Constructor’s Contract” means the contract pursuant to which the Constructor will complete the Construction Works, which contract will be assignable by UTS to the University without cost.

“Demolition Costs” means the estimated costs of demolition of the Project and restoration of the UTS Site to the satisfaction of the University based on evidence received from a contractor with demonstrated experience in undertaking similar work. Restoration of the UTS Site to the satisfaction of the University shall be based upon ensuring the UTS Site is left in a safe and hazard free state in compliance with all Applicable Law and suitable for redevelopment.

“Design Team” shall mean the design team in respect of the Project procured by UTS in accordance with Section 6.03 of this Project Agreement.

“Design Review Committee” shall mean the University’s Design Review Committee.

“Dispute” has the meaning ascribed thereto in Section 10.01.

“Encumbrance” means any encumbrance, lien, charge, hypothec, privilege, pledge, mortgage, title, retention, agreement, security interest, reservation of title, easement, servitude, right of occupation or any claim of whatsoever nature.

“Environmental Law” shall mean all laws, regulations and by-laws relating to the protection of the environment relevant to the Project, including, without limitation, the *Environmental Protection Act* (Ontario).

“Existing Parking Spaces” means, collectively, the existing parking spaces adjacent to the UTS Site as of the date hereof which the University or its agents charge fees for the use of.

“Final Approval” means the receipt of all planning and development approvals from any applicable Governmental Authority in a final form so as to permit the issuance of a building permit for the Construction Works.

“Force Majeure” means any act, occurrence, condition, or event beyond the control of a Party (other than as a result of financial incapacity of such Party or of a person

controlled by such Party) and not caused by an act or omission of such Party or a person controlled by such Party) that materially affects the performance of that Party's obligations under this Project Agreement that could not reasonably have been foreseen or provided against, including riots, insurrections, wars, acts of terrorism, military or national emergencies, acts of Governmental Authority, natural disasters, abnormally adverse weather conditions (but only if substantially beyond the ten (10) year historical average for the relevant time of year at the Lands), power outages and interruptions, brownouts, and fire, but does not include general economic or other conditions affecting financial markets generally.

"Governmental Authority" means:

- a) the government of Canada or any other nation, or any geographical or political unit or subdivision of either of them (whether federal, provincial, state, municipal, local, or otherwise), and
- b) any body, agency, tribunal, arbitrator, court, authority, or other entity that exercises executive, legislative, judicial, taxing, regulatory, or administrative powers or functions of, or pertaining to, government.

"Gross Floor Area" means the sum of the total area of the Licensed Premises, above and below the ground, measured from the exterior of the main wall of each floor level.

"Heritage Restoration" has the meaning ascribed thereto in Section 3.02a)(xxii).

"Lands" means the lands known municipally as 371 Bloor Street West, Toronto, Ontario and legally described as all of PIN 21211-0047(LT): Lots 10-12, 14-17, 24-28 Plan 449, Toronto; Block A, Plan 449 Toronto; Reserve Plan 449, Toronto; Lots 9-10 Plan 461 City East; Lots 1-4 Plan 641 City East; Part Lot 13 Plan 449 Toronto as in EP61615 & EP154180; Lots 1-9 Plan 449 Toronto Except OP89545; S/T & T/W EP154180; S/T & T/W EP61615; S/T & T/W EP60400; T/W OP26508; City of Toronto.

"Licensed Premises" has the meaning ascribed thereto in the 2015 Real Property Licence Agreement.

"Lost Parking Income" means a reasonable estimate from time to time during the Construction by the University of net income which would have been earned but was not earned because (a) the Construction Works limit access to one or more of the Existing Parking Spaces, and/or (b) the Construction Works occupy one or more of the Construction Works.

"Major Decisions" shall mean decisions respecting the Project which require the prior written approval of the University, as more particularly set out in Section 2.05 of this agreement.

"Municipal Approval" means issuance of Notice of Approval Conditions by the City of Toronto.

"New Building" means the building constructed and/or renovated pursuant to this Project Agreement.

"Notice" shall mean any notice, request, direction, or other document that a Party can or must make or give under this Project Agreement, which, in each case, shall be given in accordance with Section 18.10.

“Occupancy Date” means the date upon which an occupancy permit for all or part of the Project is issued by the applicable Governmental Authority to allow the use of the New Building for the New School.

“Permits, Licences, Approvals and Agreements” shall mean, collectively, all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorizations required by Applicable Law, and all necessary consents and agreements from any third parties (including all development approvals and the approval of the Fire Marshal of Ontario), which are required to complete the Project.

“Pre-Construction” shall mean the period of time commencing at the date of this Project Agreement and concluding at Final Approval.

“Pre-Construction Project Milestones” means the Project milestones described in Section 6.02 hereof.

“Pre-Construction Works” shall include the works set out at Section 6.01 of this Project Agreement.

“Project” shall mean the construction and renovation of the New Building by UTS for a new school located at the UTS Site (**“New School”**) in accordance with the Project Requirements and otherwise in accordance with the terms of this Project Agreement.

“Project Account” has the meaning ascribed thereto in Section 5.02 hereof.

“Project Agreement” means this project agreement, including all schedules hereto, as amended from time to time.

“Project Budget” means the budgeted costs to complete the Construction Works as set out in the Constructor’s Contract.

“Project Completion” shall mean the completion of the Project in accordance with this Project Agreement which shall include completion of the Pre-Construction Works and the Construction Works as determined pursuant to the process described at Sections 6.01 and 7.01 of this Project Agreement.

“Project Design Work” shall mean the work listed at Section 6.04a) of this Project Agreement.

“Project Management Fee” shall mean the fee payable in accordance with Section 9.01a) of this Project Agreement equal to 1.00% of the Actual Project Costs.

“Project Management Committee” shall mean the committee further described at Section 9.03 below.

“Project Manager” shall mean a qualified construction project manager engaged and/or employed by the University to coordinate: (a) the University’s oversight of the Project as set forth in this Project Agreement, and (b) the University’s obligations under this Project Agreement.

“Project Milestones” means, collectively, the Pre-Construction Project Milestones and the Construction Project Milestones.

“Project Requirements” shall mean, collectively, the requirements described at

- i. Schedule B, Project Requirements – Heritage
- ii. Schedule C, Project Requirements – Room Data Sheet Auditorium
- iii. Schedule D, Project Requirements – Room Data Sheet Gymnasium

“Project Works” shall mean the Pre-Construction Works together with the Construction Works.

“Remediation” shall mean any response, remedial, removal, or corrective action; any activity to clean up, detoxify, decontaminate, contain or otherwise remediate any contaminant; any action to prevent, cure or mitigate any release of any contaminant; any action to comply with any Environmental Law or with any permits issued pursuant thereto; any inspection, investigation, study, monitoring, assessment, audit, sampling and testing or laboratory or other analysis or evaluation relating to any contaminants, in accordance with Environmental Law.

“Repurposing Costs” means the estimated costs of repurposing the Project for use by the University based on evidence received from a contractor with demonstrated experience in undertaking similar works.

“Security” shall have the meaning given to it at Section 5.04 below.

“Scheduled Project Completion Date” shall mean August 2021.

“Technical Dispute” has the meaning ascribed thereto in Section 10.02.

“Total Project Budget” means the Project Budget plus the budget of any additional costs to complete the Project Works, including but not limited to consultant fees, application and permit fees and charges related to the Project.

“University” has the meaning set forth on the first page of this Project Agreement, and includes the University’s successors and assigns.

“University Approval” means the approval of a matter or thing by the University hereunder, in accordance with Section 2.06 hereof.

“University Breach Termination Notice” has the meaning ascribed thereto in Section 16.01(b) hereof.

“University Caused Changes” has the meaning ascribed thereto in Section 14.01.

“University Caused Delay” means any material delay to the agreed upon Project Milestones within the critical path of the Project (including the Pre-Construction Works and/or the Construction Works) caused solely and exclusively by the University’s failure to comply with its obligations under this Project Agreement, including, without limitation, the University’s obligations under Section 2.06.

“University Design Standards” means the University’s design standards which are available on the University’s website, as they may be modified or amended during the Term.

“University Key Personnel” shall mean the individual approved by the University referred to at Section 9.02a) below.

“University Policies” means all policies of the University applicable to the procurement, design, construction and accessibility of the Project, which are available on the University’s website, as they may be modified or amended during the Term.

“University Redevelopment” has the meaning ascribed thereto in Section 2.03.

“UTS” has the meaning set forth on the first page of this Agreement, and includes UTS’s successors and assigns.

“UTS Construction Document Completion” shall mean 100% completion of all construction documents, including drawings for all aspects of the Construction Works.

“UTS Event of Default” means (a) any material breach by UTS of its covenants in this Project Agreement where UTS fails to remedy such material breach in all material respects within 60 days after the University gives UTS written notice of such breach with reasonably sufficient particulars, or in view of the nature of such default, such longer period of time as may be reasonably necessary to remedy such default, and/or (b) any termination of the 2015 Affiliation Agreement.

“UTS Key Personnel” shall mean, collectively, those individuals approved by UTS and referred to at Section 9.02b) below.

“UTS Project Termination Notice” has the meaning ascribed thereto in Section 16.01a) hereof.

“UTS Site” shall mean that portion of the Lands and Building, as generally shown in colour on the Survey attached hereto as Schedule A, or as may be revised only with the consent of the University, which consent may be withheld in the University’s sole discretion.

“Variation” means a change order or other variation in the Project Design Work, the Construction Plan, and/or the Construction Works which could reasonably be expected to be material to either Party.

1.02 Interpretation

In this agreement, unless the context requires otherwise, words in the singular include the plural and vice versa.

1.03 Schedules

The following Schedules and Exhibit attached to this agreement are integral to and form part of this agreement.

- Schedule A - Survey
- Schedule B - Project Requirements – Heritage
- Schedule C - Project Requirements – Room Data Sheet Auditorium
- Schedule D - Project Requirements – Room Data Sheet Gymnasium
- Exhibit 1 - Insurance Requirements

ARTICLE 2 FUNDAMENTAL PROJECT PRINCIPLES

2.01 Overarching Principles

The Parties agree to cooperate in good faith in all matters necessary to enable the Parties to meet the goals and objectives of this Project Agreement. The Parties will endeavour to minimize sources of disagreement and to take timely action before they become matters of Dispute. Without limiting the generality of the foregoing, in respect of the performance of their roles and responsibilities under this agreement, the Parties agree that they shall:

- a) act in a cooperative and collaborative manner in carrying out their respective roles with respect to the Project and to facilitate the effective and efficient delivery of the Project pursuant to the Project Milestones; and
- b) throughout the delivery of the Project, regardless of the nature of a Party's role, the Parties shall make Commercially Reasonable Efforts that are not limited to financial matters to:
 - i. consider any input that a Party receives from the other Party in carrying out its roles and responsibilities under this Project Agreement;
 - ii. keep the other Party informed with respect to the status of the Project, as reasonably necessary and appropriate;
 - iii. provide such information and documents related to the Lands, the Building, the UTS Site, or otherwise, as may be reasonably required by the other Party to efficiently and effectively complete the Project.

2.02 General Description of the Project

A portion of the Lands is currently used as the location of the School, pursuant to the 2006 Real Property Licence Agreement operated in affiliation with the University in accordance with the 2006 Affiliation Agreement.

The Project shall consist of two separate phases, as follows:

- a) Pre-construction, during which the Pre-Construction Works are completed and Final Approval is achieved; and
- b) Construction, during which the Construction Works are completed and Project Completion is achieved.

2.03 University Redevelopment

UTS acknowledges that the University will be pursuing, at its sole election and discretion, the redevelopment of the portion of the Lands not comprising the UTS Site at the sole cost of the University (the "**University Redevelopment**"). The Parties agree that it is a fundamental principle of this Project Agreement that the Project will not negatively impact on the University Redevelopment and the University may, acting reasonably, require that UTS modify the Project, at UTS' sole cost, to prevent possible negative impact on the University Redevelopment. Any modification to the Construction Plans or the Project requested by the University subsequent to Municipal Approval shall be at the sole cost of the University. For additional certainty, any changes to the University Design Standards and/or University Policies which would necessitate

modifications to the Construction Plans and/or Project after Municipal Approval shall be at the sole cost of the University.

The University acknowledges that, notwithstanding the foregoing or anything else contained in this Agreement, timing of the University's plans in respect of the University Redevelopment shall not be a basis for delaying any University Approval hereunder; in particular, the Parties acknowledge that UTS shall be entitled to pursue site plan approval and other approvals of applicable Governmental Authorities in connection with the Project, subject to University Approval, without regard to the timing of the University Redevelopment.

UTS will, if requested, assist and support the University in the University Redevelopment at the sole cost of the University. UTS agrees that it will not object to or oppose the redevelopment of the University's adjacent lands in any forum. The University hereby agrees to keep UTS reasonably informed with respect to the University Redevelopment from time to time.

2.04 Project Implementation

The Parties acknowledge and agree that, subject to the terms of this Project Agreement, UTS shall be responsible for implementing the Project.

2.05 Major Decisions

The Parties acknowledge and agree that, notwithstanding the respective allocation of responsibility herein, all decisions or approvals from time to time respecting the following matters are major decisions for which University Approval is required:

- a) Project Budget;
- b) Total Project Budget;
- c) Security;
- d) Project Design Work and the other matters described in Section 3.03a)i);
- e) Procurement of the Design Team and the Constructor;
- f) The Construction Plans;
- g) The Construction Contract;
- h) Permits, Licences, Approvals and Agreements, including the Project site plan agreement and any other material agreement that may be required as a condition of any permit, licence, approval or material agreement for the development of the Project;
- i) Any Variation
- j) The approval of changes to the Project Milestones pursuant to Section 2.07b);
- k) The approval of the evidence that UTS is financially capable to complete the Construction Works in accordance with the Total Project Budget pursuant to Section 5.01;
- l) The approval of material contracts respecting the Construction Works pursuant to Section 5.03a);
- m) The approval of the independent cost consultant pursuant to Section 5.05c);

- n) The approval of amendments to the Project Design Work in accordance with City of Toronto or community concerns pursuant to Section 6.05c);
- o) The Insurance Requirements pursuant to Section 15.01; and
- p) Any other action or decision that could reasonably be expected to have a material impact on the Project.

For additional certainty, except for the major decisions described in this Section 2.05, and except for any other matter for which University Approval is expressly required hereunder, the consent of the University to UTS entering into such agreements or otherwise taking steps to complete the Project shall not be required.

2.06 University Approval

Without limiting the generality of this Article 2, Parties hereby agree to work cooperatively in an attempt to obtain University Approval for all matters which require University Approval, recognizing the Parties' mutual desire to meet the Project Milestones and to complete the Project in accordance with this Project Agreement. In accordance with the foregoing, the University hereby agrees that, in respect of any matter or thing hereunder which is deemed to require "**University Approval**" hereunder, in each case, such University Approval:

- a) shall be considered in good faith, and shall not be unreasonably withheld or delayed; and
- b) if withheld, shall include a response in writing confirming such approval has been withheld, and setting out reasonable particulars of why such approval was withheld and/or the basis on which the University would provide University Approval in respect of such matter or thing. Once University Approval is obtained in connection with any matter or thing hereunder, UTS shall be entitled to proceed with such matter or thing in accordance with the terms of this Agreement.

For certainty, nothing in this Section 2.06 shall limit the University's discretion to provide or withhold University Approval under this Project Agreement where, in its reasonable opinion, its reasonable interests are affected, including, without limitation, in connection with the requirements of the University Redevelopment.

2.07 Fundraising

UTS agrees, on and subject to the other terms of this Project Agreement, to use Commercially Reasonable Efforts to pursue the completion of the Project efficiently and to the extent reasonable possible, in accordance with the Project Milestones. Notwithstanding the foregoing, however, the Parties acknowledge and agree that:

- a) a portion of the Construction Budget will be funded through a public fundraising campaign, which campaign will be the sole responsibility of UTS; and
- b) the ability of UTS to proceed with the Project and meet the Project Milestones may be impacted by the progress of such fundraising campaign, and UTS shall be entitled, without penalty under this Project Agreement, to seek University Approval to modify the Project Milestones to reflect such progress.

2.08 Termination/Extension of 2006 Real Estate Licence

The Parties acknowledge and agree that the 2006 Real Property Licence shall terminate effective upon the Occupancy Date. In the event that the Project Agreement is terminated in advance of the Occupancy Date, the 2006 Real Property Licence shall terminate the later of June 30, 2021 or ten (10) months after the delivery of the UTS Project Termination Notice, the University Breach Termination Notice or the UTS Breach Termination Notice, as applicable.

Notwithstanding the foregoing, in the event that the University, in its sole discretion, elects to terminate the Project Agreement in accordance with Section 16.03(d)(i) and complete the Construction of the Project on behalf of UTS, then the 2006 Real Property Licence will not expire until occupancy of the New Building by UTS.

ARTICLE 3 PROJECT DELIVERY

3.01 Applicable Laws; University Policies

In connection with the Project, UTS shall at all times comply with (a) all Applicable Laws, and (b) the University's Policies.

3.02 UTS Obligations

- a) On and subject to the terms and conditions of this Project Agreement, in respect of the Project, UTS covenants and agrees to:
 - i. undertake any Remediation of the UTS Site required to obtain Municipal Approval at its sole cost and expense (for certainty, the University shall be responsible for any Remediation required in respect of any lands not included in the UTS Site);
 - ii. prepare the Construction Plans, in accordance with Section 6.06 of this Project Agreement;
 - iii. implement and complete the Project in accordance with the Construction Plans, the Project Design Work and Project Requirements;
 - iv. provide the Security to the University in accordance with Article 5 of this Project Agreement;
 - v. use Commercially Reasonable Efforts to, subject to University Caused Delay and/or Force Majeure, complete or cause to complete the Project Works by the Scheduled Project Completion Date;
 - vi. procure and select the Design Team, subject to University Approval, in accordance with Section 6.03 of this Project Agreement;
 - vii. complete or cause to complete Project Design Work in compliance with the Project Requirements and University Policies;
 - viii. ensure the Project meets the University's Policies and the requirements of the *Accessibility for Ontarians with Disabilities Act*;
 - ix. procure the Constructor in accordance with Section 7.03 of this Project Agreement;

- x. use Commercially Reasonable Efforts to, subject to University Caused Delay, obtain all Permits, Licences, Approvals and Agreements in accordance with Section 6.05 of this Project Agreement;
- xi. be solely responsible for the satisfaction of any requirements or conditions, financial or otherwise, imposed by any Governmental Authority respecting the Project, but not, for certainty, for the satisfaction of any requirements or conditions, financial or otherwise, imposed by any Governmental Authority solely respecting the University Redevelopment or other University project. (By way of example only and without limiting the generality of the foregoing: if, in connection with the Project, the City of Toronto requires UTS to construct certain works to serve the UTS Site, which works also, as a consequence of having to be delivered in connection with the Project, benefit the rest of the Lands, UTS shall nonetheless be responsible for the entire cost thereof. However, if in connection with the Project, to the extent those works required by the City of Toronto are all or partly required specifically to be of a scale, size or scope to service the rest of the Lands, beyond just the UTS Site, then the University agrees to pay for the incremental cost of such works (relative to the cost which would have been payable had such works not been required to be constructed to service the rest of the Lands.))
- xii. be solely responsible for any cost or schedule overruns in the construction of the Project, unless caused by University Caused Delay and/or University Caused Changes.
- xiii. obtain and maintain insurance as required pursuant to this Project Agreement;
- xiv. participate in the establishment of the Project Management Committee as more particularly described at Section 9.03 of this Project Agreement;
- xv. ensure the UTS Key Personnel and other UTS members of the Project Management Committee participate in the Project Management Committee meetings;
- xvi. Hold bi-weekly design meetings with the Design Team and provide monthly design reports to the Project Manager in advance of the monthly Project Management Committee meetings;
- xvii. hold bi-weekly construction meetings with the Constructor and provide monthly construction reports to the Project Manager and University in advance of the monthly Project Management Committee meetings;
- xviii. pay to the University the Project Management Fee in accordance with Section 9.01a) of this Project Agreement;
- xix. be solely responsible for all costs, including any and all reasonable out-of-pocket legal costs of the University, for the University to acquire that portion of the public lane shown in Schedule A attached to this Project Agreement, as may be required for the Project in accordance with the Project Requirements;

- xx. complete and be solely responsible for all costs required to complete the restoration of the Huron Washington Parkette resulting from UTS construction for the Project, as detailed in the Project Requirements;
 - xxi. repair and restore, at its sole cost, the north heritage facade of the Building including and limited to those constructed in 1910, 1924 and 1931 to the reasonable satisfaction of the University and to the satisfaction of the City of Toronto Heritage Preservation Services and as further described in Schedule B attached hereto (collectively, the “**Heritage Restoration**”);
 - xxii. not take any action which results in any Encumbrance registered on title to the Lands;
 - xxiii. ensure any contractors and subcontractors engaged by or under UTS do not contravene or cause the University to contravene any provision of all applicable construction collective agreements to which the University is a party or which the University is contractually required to apply in accordance with Article 12 below; and
 - xxiv. ensure that the Construction Works do not damage or materially obstruct the remainder of the Lands and Building outside the UTS Site. UTS further covenants and agrees that Lost Parking Income will be payable by UTS to the University periodically, in arrears during the Construction, following request by the University in writing therefor, provided that each such request shall be accompanied by reasonable evidence of such Lost Parking Income.
- b) UTS further agrees:
- i. that it is responsible for the Design Team and the Constructor and ensuring each complies with the applicable terms of this Project Agreement; and
 - ii. that the University shall not be responsible for satisfying any requirements or conditions, financial or otherwise, imposed by any Governmental Authority for the Project. For certainty, the University shall be solely responsible for satisfying any requirements or conditions, financial or otherwise, imposed by any Governmental Authority which relate solely to the University Redevelopment. (By way of example only and without limiting the generality of the foregoing: if, in connection with the Project, the City of Toronto requires UTS to construct certain works to serve the UTS Site, which works also, as a consequence of having to be delivered in connection with the Project, benefit the rest of the Lands, UTS shall nonetheless be responsible for the entire cost thereof. However, if in connection with the Project, to the extent those works required by the City of Toronto are all or partly required specifically to be of a scale, size or scope to service the rest of the Lands, beyond just the UTS Site, then the University agrees to pay for the incremental cost of such works (relative to the cost which would have been payable had such works not been required to be constructed to service the rest of the Lands).

3.03 University Obligations

- a) The University covenants and agrees to:
 - i. review in a timely manner and in accordance with Section 2.06 above, approve, acting reasonably:
 - i. the procurement method and selection of the Design Team (including any sub-consultant) and including any sole source procurement;
 - ii. the selection of the Constructor;
 - iii. all Permits, Licences, Approvals and Agreement applications prior to submission of same to the Governmental Authority;
 - iv. the Project Design Work;
 - v. the Construction Plans; and
 - vi. the plans for the repair and restoration of the north heritage facades of the Building by UTS in accordance with the requirements set out in Schedule B attached hereto.
 - ii. Assign a Project Manager in accordance with Section 9.01 and pay such Project Manager's salary and all other compensation due to such Project Manager from time to time;
 - iii. pay all costs and expenses described in Section 14.01;
 - iv. as owner of the Lands and Building, execute any application or agreement required to facilitate approval of the Project in accordance with Section 6.05 of this Project Agreement;
 - v. participate in the establishment of the Project Management Committee as more particularly described at Section 9.03 of this Project Agreement; and
 - vi. ensure the University Key Personnel and other University members of the Project Management Committee participate in Project Management Committee meetings.

ARTICLE 4 FEES

4.01 Fees

The University shall obtain a minimum of \$10,000,000.00 in equivalent value in return for the rights granted by the University in the 2015 Real Property Licence Agreement. As part of the minimum \$10,000,000.00 equivalent value to the University, UTS shall be responsible for the following:

- a) all costs relating to the Heritage Restoration, which shall be paid by UTS as they become due;
- b) contribution by UTS of \$1,500,000.00 in funding to the University for its redevelopment of the Robert Street Playing Field as an open air athletic field, which shall be paid by UTS to the University as follows: (i) 50% upon the

- commencement of the construction of such redevelopment; and (ii) the remaining 50% on the opening of the redeveloped Robert Street Playing Field;
- c) costs of construction of a new caisson wall for the University tower base between the UTS Site and the University Redevelopment, which shall be paid by UTS as they become due;
 - d) contribution by UTS of \$2,500,000.00 to the University for the demolition by the University of the existing mechanical room and auditorium, which shall be paid by UTS to the University as follows:
 - i. \$1,250,000 within five business days of the Commencement of Construction; and
 - ii. \$1,250,000 within five business days of receipt of notice in writing from the University that such demolition works have commenced (which demolition works, for certainty, shall not commence prior to the Commencement of Construction).
 - e) costs of construction of a new basement parking entrance and exit ramp to Huron Street, which shall be paid by UTS as they become due, or, in the event that the City of Toronto does not approve an exit ramp onto Huron Street and requires an exit ramp to be built from the Lands to another street, the sum of \$410,000 will be paid by UTS to the University within five business days of receipt of notice in writing from the University of the University's commencement of construction of the University Redevelopment. UTS agrees that it will not, and will cause its agents retained in connection with the Project to not, as part of process of obtaining City of Toronto approval for the Project, lobby or otherwise attempt to influence the City of Toronto against an exit ramp onto Huron Street as part of the Project; and
 - f) the value associated with the use by the University of the new auditorium to be constructed as part of the Project during 20% of its regular business hours.

The University expressly acknowledges and agrees that UTS's obligations in this Article 4 shall be satisfied by the performance of the matters described in paragraphs a) through f) inclusive above.

4.02 Other Fees

For certainty, except as set forth in Section 4.01, and except for the Project Management Fee, UTS shall not be required to pay any other fees to the University in connection with the Project.

ARTICLE 5 FINANCIAL CAPABILITY & SECURITY

5.01 Financial Capability

Prior to Commencement of Construction UTS shall be required to provide reasonable evidence, subject to University Approval, that it has the financial capability to complete the Construction Works in accordance with the Total Project Budget.

5.02 Project Account

All funds required to complete the Project will be maintained in a segregated bank account held at a Canadian chartered bank (the “**Project Account**”), and UTS shall provide reasonable evidence of same to the University upon request by the University from time to time following Final Approval and prior to Project Completion.

5.03 Project and Donor Agreements

UTS agrees that:

- a) all material contracts respecting the Construction Works are subject to University Approval and each such contract shall contain a clause allowing for the unconditional assignment of such contract to the University on notice but without consent or payment; and
- b) any and all donor agreements for funds to complete the Project shall acknowledge that upon delivery by the University of a UTS Breach Termination Notice following the Commencement of Construction, the Project Account will be transferred to the exclusive control of the University.

5.04 Security

As security for the due payment and performance of UTS’ obligations hereunder to the University (the “**Obligations**”), the following security shall be granted to the University in a form satisfactory to the University (the “**Security**”), and executed by UTS prior to the Commencement of Construction:

- a) a security agreement from UTS in favour of the University constituting a first priority security interest in the Project Account; and
- b) an account control agreement between UTS, the University and UTS’ depository institution where the Project Account is held providing the University with, among other things, (i) joint control with UTS over the Project Account at all times, and (ii) a waiver from the depository bank of any lien it holds and its right to set off against amounts in the Project Account, subject to typical chargebacks.

UTS shall take such actions as are necessary or as the University may reasonably request from time to time to ensure that the Obligations are secured by a first priority security interest in favour of the University over the Project Account.

UTS shall, at its expense, cause to be registered, filed or recorded the Security in all offices in each relevant jurisdiction where such registration, filing or recording is necessary to the creation, perfection and preserving of the Security applicable to it. UTS shall renew such registrations, filings and recordings from time to time as and when required to keep them in full force and effect.

5.05 Release of Funds From Project Account

Subject to the University complying with its obligations under this Project Agreement, no funds will be released from the Project Account without the prior consent of the University. The University shall consent to a release of funds from the Project Account where:

- a) No UTS Breach Termination Notice has been delivered to UTS;

- b) UTS has presented a budget to the University for the next fiscal quarter no later than ten days in advance of the commencement of such fiscal quarter (a “**Quarterly Budget**”); and
- c) UTS has retained an independent cost consultant, subject to University Approval, that has:
 - i. reviewed the Quarterly Budget in comparison to the Project Budget; and
 - ii. certified to the University that
 - i. the Quarterly Budget presented is fair and reasonable relative to the overall Project Budget;
 - ii. the amount requested to be released from the Project Account is reasonably expected to be required to fund the costs described in the Quarterly Budget for the following fiscal quarter;
 - iii. the cost to complete the Project are not expected to exceed the costs contemplated by the Project Budget, or funds otherwise available in the Project Account; and
 - iv. all Construction Works completed to the date of such certificate are substantially in accordance with the Construction Plans.

5.06 UTS Event of Default

In the event of a UTS Event of Default occurring after the Commencement of Construction, the University may access and draw upon the Project Account as specifically contemplated in this Project Agreement.

5.07 Delivery of UTS Breach Termination Notice

Upon delivery by the University of a UTS Breach Termination Notice delivered after the Commencement of Construction, UTS shall:

- a) assign the Constructor’s Contract to the University without cost to the University;
- b) agree that the Project Account will be under the exclusive control of the University for the University to draw upon for the specific purposes set forth in this Project Agreement; and
- c) assign such other contracts and take such other steps as are reasonably required to allow the University to complete the Project;

in each case, at the sole cost and expense of UTS.

ARTICLE 6 PRE-CONSTRUCTION

6.01 Pre-Construction Works

Pre-Construction Works shall include:

- a) provision of the Security in accordance with Article 5;

- b) procurement of the Design Team in accordance with Section 6.03;
- c) completion of Project Design Work;
- d) UTS Construction Document Completion;
- e) completion and receipt of all Permits, Licences, Approvals and Agreements; and
- f) completion of the Construction Budget.

6.02 Pre-Construction Milestones

The Pre-Construction Project Milestones are as follows:

Requirement	Project Milestone
Procurement of Design Team (s. 6.03)	January 2016
Completion of Project Budget (s. 6.01)	April 2016
Submission of Rezoning Application (if needed)	July 2016
Completion of Project Design Work (s. 6.04)	July 2016
Application for Site Plan Approval	July 2016
Building Permit Submission (s. 6.05)	July 2017
Obtaining additional Permits, Licences, Approvals and Agreements (s. 6.05)	August 2017
Provision of Security (Article 5)	August 2017

6.03 Procurement of Design Team

The procurement and selection of the Design Team will be in accordance with the following:

- a) Design Team, including sub-consultant selection, shall be in accordance with University Policies and subject to University Approval.
- b) Before proceeding with any sole source procurement of the Design Team for the Project, UTS shall obtain University Approval.

6.04 Project Design Work

- a) The Project Design Work shall consist of the following:
 - i. The design of the Project in accordance with the Project Requirements, the University Design Standards, Applicable Law and University Policies;
- b) UTS shall cause the Design Team to amend the Project Design Work in accordance with any City of Toronto or community concerns raised during the development approval process, subject to University Approval, at the sole cost of UTS.

- c) The Project Design Work shall be subject to University Approval. UTS shall cause the Design Team to amend the Project Design Work in accordance with the University's recommendations and in any case the Project Design Work shall not be considered complete unless it has received written University Approval.

6.05 Permits, Licences, Approvals and Agreements

The Parties acknowledge and agree as follows:

- a) UTS is solely responsible for obtaining and complying with all Permits, Licences, Approvals and Agreements.
- b) UTS shall submit all Permits, Licences, Approvals and Agreements applications to the University for review and University Approval prior to submission of same to the applicable Governmental Authority. All reasonable, out-of-pocket costs incurred by the University in reviewing same shall be paid by UTS to the extent such Permits, Licences, Approvals and Agreements relate to the Project.
- c) The University shall execute any Permits, Licences, Approvals and Agreements required to facilitate approval of Project Works, such Permits, Licences, Approvals and Agreements which have been given University Approval. The University shall not be responsible for the performance of any obligations of the Permits, Licences, Approval and Agreements for the Project, save and except for (1) such obligations which, by law, can only be performed by the land owner, which shall be at UTS' cost, and (2) such obligations which relate solely to the University Development or other University projects. (By way of example only and without limiting the generality of the foregoing: if, in connection with the Project, the City of Toronto requires UTS to construct certain works to serve the UTS Site, which works also, as a consequence of having to be delivered in connection with the Project, benefit the rest of the Lands, UTS shall nonetheless be responsible for the entire cost thereof. However, if in connection with the Project, to the extent those works required by the City of Toronto are all or partly required specifically to be of a scale, size or scope to service the rest of the Lands, beyond just the UTS Site, then the University agrees to pay for the incremental cost of such works relative to the cost which would have been payable had such works not been required to be constructed to service the rest of the Lands).

6.06 Construction Plans

UTS acknowledges and agrees that the Construction Plans will be developed in accordance with the following principles:

- a) The Construction Plans will incorporate all Project Requirements, including the construction, at UTS' sole expense, of certain facilities to be developed at the UTS Site, including:
 - i. A gymnasium and in accordance with Schedule D;
 - ii. An auditorium with 700 seats (with separate exterior entrances), in accordance with Schedule C;
 - iii. An auditorium pre-function area; and

- iv. University access to the UTS Site lobby through the Bloor Street entrance.

The parties agree that shared facilities shall be accessible from the exterior of the Building by separate entrance to permit University access outside of UTS operating hours.

- b) The UTS Site shall be a maximum site area of 4508m² and a maximum Gross Floor Area of 150,000 ft².
- c) The Construction Plans will also include separate metering of services to the UTS Site.
- d) During Construction the University will work with UTS to accommodate UTS program space needs in the Building. In the event that UTS is delayed in implementation of the Project beyond the Scheduled Project Completion Date, and such delay is not caused by University Caused Delay, and the University proceeds with the University Redevelopment prior to the Project, UTS will not have use of any portion of the Lands outside the UTS Site.
- e) During Construction, UTS will ensure that the Construction Works do not damage or interfere in any material respect with the reasonable enjoyment of the properties and tenants of the properties fronting on Washington Avenue, being Lots 9 to 16 of the Survey, including maintaining adequate access in all material respects to the rear of said properties.
- f) The Construction Plans will provide for parking, loading, access and site circulation designed to accommodate the University Redevelopment subject to University Approval. In particular, and without limiting the foregoing, UTS will maintain vehicular access to the Lands from both Spadina Avenue and Huron Street, subject to the approval of applicable Governmental Authorities.
- g) The Construction Phasing Plan will allow UTS to remain operational as a teaching facility during Construction. The Construction Phasing Plan shall be co-ordinated with OISE/UT and be subject to University Approval.
- h) The Construction Phasing Plan shall also provide for simultaneous construction by the University on the remainder of the Lands, should the University Redevelopment plans be advanced.
- i) UTS will ensure that its contract with the Constructor requires the Constructor to submit updated as-built drawings to UTS for viewing from time to time during the Project, which UTS in turn will make available to the University at the University's request, and a final set of as-built drawings in both hard copy (with as-constructed revisions marked in red) and in electronic format to the satisfaction of the University, upon substantial performance of the Constructor's Contract.

6.07 Environmental Matters

UTS shall ensure that the Construction complies with Environmental Law, and UTS further agrees that it shall complete any Remediation of the UTS Site which is specifically required by a Governmental Authority for the Project, to the extent UTS proceeds with the Project, at the sole cost of UTS. For certainty, the costs of any Remediation required in respect of lands not

forming part of the UTS Site, including the balance of the Lands, shall be the sole obligation of the University.

ARTICLE 7 CONSTRUCTION

7.01 Construction Works

Construction Works shall consist of:

- a) Procurement of the Constructor in accordance with Section 7.03; and
- b) Construction of the Project in accordance with the Project Requirements.

7.02 Construction Milestones

The Construction Project Milestones as of the date hereof are as follows:

Requirement	Project Milestone
Construction Commencement	August 2017
Scheduled Project Completion Date	August 2021

7.03 Procurement of Constructor

The procurement and selection of the Constructor will be subject to the following:

- a) UTS will provide a list of general contractors, to serve as the prospective Constructor, for University Approval; and
- b) The Constructor's Contract shall be in the form of a CCDC2-2008 stipulated price contract that may be modified by supplementary conditions or other form of stipulated price contract, subject to University Approval.

7.04 Constructor Responsibilities

UTS shall ensure the Constructor is required by the Constructor's Contract to:

- a) Hold and attend bi-weekly construction meetings with the Project Management Committee.
- b) Provide a construction schedule to the Project Management Committee every month, with changes to such schedule highlighted.
- c) Provide a construction report to the Project Management Committee every month, which includes, but is not limited to:
 - i. a copy of the monthly contractor application for payment;
 - ii. description of major sub-trade monthly construction progress;
 - iii. sub-trades awarded;
 - iv. change order summary;
 - v. consultant's monthly field review reports, if applicable;

- vi. progress photographs; and
 - vii. a summary of major risk issues.
- d) complete the Construction Works in accordance with the Construction Plans and Project Requirements.
- e) submit, prior to the commencement of the Construction Works:
- i. a current certificate or other document, satisfactory to UTS, evidencing the Constructor's good standing under the applicable Workplace Safety and Insurance Board requirements and legislation;
 - ii. copies of the Constructor's insurance policies having application to the Project;
 - iii. documentation of the Contractor's in-house safety-related programs; and
 - iv. a copy of the such requisite notice(s) for the Project to be posted or provided pursuant to the applicable Health and Safety legislation, and confirmation that the Constructor has assumed the responsibilities of the "constructor" for the Project as required by applicable Health and Safety legislation.
- f) indemnify and save harmless the University, UTS, and their agents, officers, directors, employees, consultants, the Project Manager, and their successors and assigns from and against the consequences of any and all safety infractions committed by the Constructor and/or for which the Constructor bears responsibility, under applicable Health and Safety legislation, including for the payment of legal fees and disbursements on a solicitor and client basis.
- g) Comply with the parties communications protocol as provided in Article 11.

ARTICLE 8 PROJECT COMPLETION

8.01 Project Completion

Project Completion shall be deemed achieved when the Constructor's Contract for the Project is deemed complete pursuant to Section 2(3) of the *Construction Lien Act*, RSO 1990, c.30.

ARTICLE 9 PROJECT MANAGEMENT, KEY PERSONNEL, AND PROJECT MANAGEMENT COMMITTEE

9.01 Project Manager

- a) The University shall appoint and assign a Project Manager for the Project who will report to the University and represent the University's interests within 15 days following execution of this Project Agreement. UTS will pay the University the Project Management Fee in accordance with the following:
- i. First payment: 10% based on the approved Project Budget, payable within 10 business days of University Approval of the Project Budget;

- ii. Second payment: 25% based on the approved Project Budget. payable within 10 business days of the letter of award for the Constructor's Contract;
 - iii. Third payment: 50% based on the approved Project Budget, payable within 10 business days of substantial completion of the New Building;
 - iv. Fourth payment: 15% based on the approved Project Budget, plus 1.00% of the Construction Costs Variance, upon occupancy of the New Building by UTS.
- b) The University shall cause the Project Manager to, on behalf of and to the benefit of the University, without limitation:
- i. review the Construction Plans, any construction documentation and any Design Work;
 - ii. review UTS documentation in relation to the effects of the Project's construction on the remainder of the Lands;
 - iii. attend UTS Site reviews and walkthroughs; and
 - iv. attend Project Management Committee meetings.

9.02 Key Personnel

Each Party acknowledges and agrees that timely access to each Party's key decision-makers is required in order to facilitate the successful implementation of the Project. Accordingly, each Party agrees to assign key personnel as follows:

- a) The University hereby assigns an individual responsible for the Project and a project lead who together will have authority to speak for the University in respect of all matters arising from or related to the Project and this Project Agreement and who will be responsible for the development and implementation of the Project in accordance with this Project Agreement as follows:
- Malcolm Lawrie, Assistant Vice-President, Planning, Design & Construction
- b) UTS hereby assigns the following individuals responsible for the Project who together will have authority to speak for UTS in respect of matters arising from or related to the Project and this Project Agreement and who will be responsible for the development and implementation of the Project in accordance with this Project Agreement, as follows:
- James Fleck, Chairman of the Board
Rosemary Evans, Principal
- c) Each Party agrees that it will cause its respective key personnel, as set out above, to dedicate sufficient attention to the Project, including facilitating regular communication between the other Party's key personnel as set forth above, so as to expedite the efficient and cost-effective completion of the Project.

9.03 Project Management Committee

- a) The Parties shall, within 30 days following execution of this Project Agreement, establish the Project Management Committee, the members of which shall

include the Project Manager, the University Key Personnel, the UTS Key Personnel and other key staff members as determined by the respective key.

- b) Quorum for the transaction of any business, if one or more parties expressly authorizes any decision to be made by the Project Management Committee, at any meeting of the Project Management Committee shall be 50% or more of the members of the Project Management Committee and must include at least one representative from each Party.
- c) Each Party shall ensure that the members of the Project Management Committee appointed by it are appropriately qualified to enable such Party to competently and efficiently fulfill its obligations under this Project Agreement.
- d) The Parties shall endeavour to minimize any replacements to members of the Project Management Committee.
- e) The Project Management Committee shall be responsible for:
 - i. assisting the Parties by promoting cooperative and effective communication with respect to matters related to this Project Agreement;
 - ii. be responsible for receiving and reviewing all matters related to the Project Works, including: (i) any design, construction and commissioning issues; (ii) the Construction Plans; (iii) any quality assurance and safety issues; and (iv) any other issues pertaining to the Project; and
 - iii. holding meetings not less often than monthly from the date of this Project Agreement until Project Completion.
- f) The Project Management Committee shall establish, on a consensual basis, its own procedures and policies to carry out its mandate. UTS shall be responsible for keeping and circulating minutes of Project Management Committee meetings. For certainty, however the Project Management Committee shall not have any authority to make decisions in connection with the Project or this Project Agreement except where specifically authorized to do so by the Parties.

ARTICLE 10 DISPUTE RESOLUTION

10.01 Notice of Dispute

Any disputes between the Parties arising out of this Project Agreement which the Parties are unable to resolve themselves (each, a “**Dispute**”) shall be submitted to mediation as herein provided. In the case of any such Dispute, either Party may give to the other Party notice of such dispute, including reasonable details thereof, and may request mediation. If either Party provides such notice to the other, such dispute shall be submitted to mediation as herein described.

10.02 Selection of Mediator

The mediator shall be chosen by agreement between the Vice President, Operations of the University and the Chair of UTS’s board of directors. If the Parties cannot reach agreement on the mediator to be selected to mediate the dispute within 10 Business Days of the date notice of such dispute is given by one Party to the other, then the Parties shall apply to a judge of the Superior Court of Justice (Ontario) or successor court of competent jurisdiction to appoint such

mediator from a list of four (4) candidates nominated by the Parties, two (2) of whom shall be nominated by the University and two (2) of whom shall be nominated by UTS. The Parties acknowledge and agree that in respect of any Dispute which involves a technical matter requiring specific expertise in construction, architecture, and/or engineering (each, a “**Technical Dispute**”), only mediators with appropriate technical expertise shall be nominated and appointed.

10.03 Mediation Terms

- (a) The Parties agree to co-operate and participate in good faith in consultations with the mediator and to attempt to resolve the dispute on the basis of the advice given by the mediator. Notwithstanding the foregoing, the Parties agree that they will attempt, and they intend that they and the mediator will use their commercially reasonable efforts in that attempt, to conclude the mediation and have a final decision by the Parties within 10 Business Days from the date of selection of the mediator in accordance with Section 10.02 and no later than 20 Business Days from such date.
- (b) Without limiting the foregoing, the mediation shall be conducted in accordance with the following terms of reference for the mediator:
 - (i) the mediation proceedings and any statements or admissions made by any of the Parties during the course thereof shall be entirely without prejudice to the rights and obligations of the Parties;
 - (ii) the task of the mediator and the objective of the mediation shall be to seek agreement between the Parties on an appropriate resolution of the dispute of which notice has been given;
 - (iii) no report shall be made or record kept by the mediator and he or she shall have no decision-making power (subject to sub-paragraph (vii) below);
 - (iv) all statements or admissions made in the process of mediation shall be held by the Parties and the mediator in confidence during such process unless both Parties agree otherwise. In addition, during such process, neither Party shall make any public statement or announcement of the fact that the Parties are in mediation nor discuss the mediation with government officials or outside Parties;
 - (v) the mediator shall determine his or her own procedures and shall proceed by way of separate, private meetings with each side, and it shall be at such mediator’s discretion whether to call a meeting or meetings at which both sides shall be present with him or her;
 - (vi) the Parties shall be entitled to legal counsel at the meetings; and
 - (vii) mediation shall commence at the earliest convenience and shall continue expeditiously until a resolution is reached, or the mediator declares that the mediation has been unsuccessful, or the expiration of 20 Business Days from the date of selection of the mediator, whichever is the earlier. If no resolution is reached, each of the Parties shall be entitled to seek such

remedies as it sees fit in its sole and absolute discretion, including, without limitation, commencing proceedings in a court of competent jurisdiction. Notwithstanding the foregoing, in respect of any Technical Dispute, the mediator appointed shall, in the event that mediation is not successful, be engaged to arbitrate such Technical Dispute and any determination by such mediator shall be deemed final and binding on the Parties.

- (c) Each Party shall bear its own costs of the mediation and one-half of the fees and expenses of the mediator, unless the agreed otherwise as part of a mediated resolution.

ARTICLE 11 PARTIES COMMUNICATIONS PROTOCOL

11.01 General

In respect of the Project, the Parties acknowledge and agree that:

- a) each shall make best efforts to act jointly and in concert and to communicate with any Governmental Authority using a single voice;
- b) the timely exchange of information and clear lines of communication are essential to support the implementation of the Project, to ensure consistency of messaging, and to support the Parties in accounting to the public and students at large;
- c) no Party shall issue any press release or other public announcement regarding the subject matter of this Project Agreement without the prior written consent of each other Party, which consent will not be unreasonably withheld or delayed;
- d) If UTS intends to meet with the Ward Councillor, Community Liaison Committee or other community groups with respect to the Project, it shall ensure that the University is notified in advance, and that a University representative can be present at such a meeting if the University so chooses;
- e) UTS acknowledges that, subject to the approval of each of the Parties from time to time, public communications in respect of the Project as it relates to the City of Toronto, and/or local residents residing in the vicinity of the UTS Site, shall generally be led by the University, and accordingly, without limiting the generality of part c) above, UTS agrees to refer inquiries related to the Project from the City of Toronto or such residents to the University; and
- f) the University acknowledges the importance of the fundraising campaign described in Section 2.07 above to the successful completion of the Project, and accordingly agrees to approve, acting reasonably, requests by UTS to make public announcements in connection with such campaign.

ARTICLE 12 LABOUR RELATIONS

12.01 Labour Relations

- a) During the course of the Project UTS shall not and UTS shall ensure that any contractors or subcontractors engaged by or under UTS do not, in any way whatsoever, contravene or cause the University to contravene any provision of any construction collective agreement to which the University is a party or which the University is contractually required to apply to the Project, as set out in Section 12.01(b) below.
- b) Without limiting the generality of Sections 12.01(a) above UTS acknowledges and agrees that it is a requirement of certain of construction collective agreements contemplated in this Section 12.01(b) that certain parts of the Project be performed by employees covered by the applicable construction collective agreements, UTS agrees to comply with, and to ensure that any contractors and subcontractors engaged by or under UTS comply with, such construction collective agreements including, where applicable:
 - i. The current provincial agreement covering construction work in the industrial commercial and institutional sector of the construction industry in the Province of Ontario between the Electrical Trade Bargaining Agency of the Electrical Contractors' Association of Ontario and the International Brotherhood of Electrical Workers and the IBEW Construction Council of Ontario;
 - ii. The current provincial agreement covering construction work in the industrial commercial and institutional sector of the construction industry in the Province of Ontario between the Mechanical Contractors' Association of Ontario and the Ontario Pipe Trades Council;
 - iii. The current provincial agreement covering construction work in the industrial commercial and institutional sector of the construction industry in the Province of Ontario between the Canadian Automatic Sprinkler Association and the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 853;
 - iv. The current provincial agreement covering construction work in the industrial commercial and institutional sector of the construction industry in the Province of Ontario between a council of employers' associations consisting of the Ontario Painting Contractors Association, the Acoustical Association of Ontario and the Interior Systems Contractors Association of Ontario and the International Union of Painters and Allied Trades and the Ontario Council of the International Union of Painters and Allied Trades;
 - v. The current provincial agreement covering construction work in the industrial commercial and institutional sector of the construction industry in the Province of Ontario between the Carpenters' Employer Bargaining Agency and the Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America;

- vi. The current provincial agreement covering construction work in the industrial commercial and institutional sector of the construction industry in the Province of Ontario between the Masonry Industry Employers Council of Ontario and International Union of Bricklayers and Allied Craftsmen and the Ontario Provincial Conference of the International Union of Bricklayers and Allied Craftsmen;
- vii. The current provincial agreement covering construction work in the industrial commercial and institutional sector of the construction industry in the Province of Ontario between the Master Insulators' Association of Ontario Inc. and the International Association of Heat and Frost Insulators and Asbestos Workers and the International Association of Heat and Frost Insulators and Asbestos Workers, Local 95;
- viii. The current provincial agreement covering construction work in the industrial commercial and institutional sector of the construction industry in the Province of Ontario between the Architectural Glass and Metal Contractors Association and the International Brotherhood of Painters and Allied Trades and the Ontario Council of the International Brotherhood of Painters and Allied Trades;
- ix. The current provincial agreement covering construction work in the industrial commercial and institutional sector of the construction industry in the Province of Ontario between the Ontario Sheet Metal Contractors Association and the Sheet Metal Workers' International Association and the Ontario Sheet Metal Workers' Conference; and
- x. The current provincial agreement covering construction work in the industrial commercial and institutional sector of the construction industry in the Province of Ontario between the Ontario Erectors Association, Incorporated and the International Association of Bridge, Structural and Ornamental Iron Workers and the Ironworkers District Council of Ontario.

ARTICLE 13 REPRESENTATIONS AND WARRANTIES

13.01 UTS Representations and Warranties

UTS represents and warrants to the University as set out in this Section 13.01 and acknowledges that the University is relying on such representations and warranties in connection with the arrangements contemplated in this Project Agreement.

- a) UTS is a not-for-profit corporation incorporated and validly existing under the laws of the Province of Ontario, is in good standing, and has all the requisite corporate power and authority to own its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and perform its obligations hereunder.
- b) UTS has the requisite power, authority and capacity to execute and deliver this Agreement, and to do all acts and things, and enter into, execute, deliver and perform its obligations under all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be entered into, executed, delivered and performed.

- c) No steps or proceedings have been taken or are pending to supersede or amend the governing documents of UTS in a manner that would impair or limit its ability to perform the obligations of UTS under this Project Agreement.
- d) This Agreement has been duly authorized, executed, and delivered by UTS and constitutes a legal, valid, and binding obligation of UTS, enforceable against UTS in accordance with its terms.
- e) The execution, delivery, and performance by UTS of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
 - i. its governing, formation or organizational documents, including any by-laws;
 - ii. any applicable law; or
 - iii. any covenant, contract, agreement, or understanding to which it is a Party or by which it or any of its properties or assets is bound or affected.
- f) There are no actions, suits, proceedings, or investigations pending or threatened against UTS at law or in equity before any governmental authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of UTS or in any impairment of its ability to perform its obligations under this Project Agreement, and UTS has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any governmental authority or arbitral body that could result in any such material adverse effect or impairment.

13.02 University Representations and Warranties

The University represents and warrants to UTS as set out in this Section 13.02 and acknowledges that UTS is relying on such representations and warranties in connection with the arrangements contemplated in this Project Agreement.

- a) The University is a university validly existing under the laws of the Province of Ontario, is in good standing, and has all the requisite power and authority to own its properties and assets, to carry on its authority as it is currently being conducted, and to enter into this Project Agreement and perform its obligations hereunder.
- b) The University has the requisite power, authority and capacity to execute and deliver this Agreement, and to do all acts and things, and enter into, execute, deliver and perform its obligations under all other agreements, instruments, undertakings and documents as are required by this Project Agreement to be entered into, executed, delivered and performed.
- c) No steps or proceedings have been taken or are pending to supersede or amend the governing documents of the University in a manner that would impair or limit its ability to perform the obligations of the University under this Project Agreement.

- d) This Project Agreement has been duly authorized, executed, and delivered by the University and constitutes a legal, valid, and binding obligation of the University, enforceable against the University in accordance with its terms.
- e) The execution, delivery, and performance by the University of this Project Agreement does not and will not violate or conflict with, or constitute a default under:
 - i. its governing, formation or organizational documents, including any by-laws;
 - ii. any applicable law; or
 - iii. any covenant, contract, agreement, or understanding to which it is a Party or by which it or any of its properties or assets is bound or affected.
- f) There are no actions, suits, proceedings, or investigations pending or threatened against the University at law or in equity before any governmental authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of the University or in any impairment of its ability to perform its obligations under this Project Agreement, and the University has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any governmental authority or arbitral body that could result in any such material adverse effect or impairment.

ARTICLE 14 AMENDMENTS AND VARIATIONS

14.01 Amendments and Variations

The Parties acknowledge and agree that any amendments to the Construction Plans or the Project, prior to Municipal Approval, whether requested by the University or otherwise, are at the sole cost and expense of UTS. All costs and expenses incurred in connection with any modification to the Construction Plans or otherwise in connection with the Project requested by the University subsequent to Municipal Approval (collectively, the “**University Caused Changes**”), shall be the sole responsibility of the University.

UTS acknowledges and agrees that notwithstanding the foregoing, all Variations not requested by the University shall be subject to University Approval. The University acknowledges and agrees that it will be responsible for any costs or expenses incurred in connection with the Project as a result of University Caused Delay.

ARTICLE 15 INSURANCE AND INDEMNITIES

15.01 Insurance

[NTD: Notwithstanding draft language below, all aspects of insurance to be settled between the parties prior to placement on Governing Council agenda.]

- a) UTS shall take out and at all times prior to the Occupancy Date keep in force, in the name of the University at UTS expense, such insurance as is reasonable and customary for construction projects similar to the Project. For certainty, additional insurance costs caused by the Construction in respect of the part of the existing

building which is not subject to the Construction shall be at the sole cost of UTS. The particular requirements of such insurance shall be reasonably agreed upon by UTS and be subject to University Approval prior to commencement of the Construction (the “**Insurance Requirements**”).

- b) Once jointly approved by the University and UTS, the Insurance Requirements shall be attached to this Licence as Exhibit 1 and form part of this Project Agreement, and may only thereafter be amended by written agreement of UTS and the University. If the parties have not jointly approved the Insurance Requirements within 30 days after UTS Construction Document Completion, the matter shall be settled in accordance with Article 10 of this Project Agreement.

15.02 Indemnities

- a) UTS Indemnity.

UTS shall indemnify and save harmless the University from and against any and all losses, costs and expenses (including reasonable legal fees and disbursements) actually suffered or incurred by the University, as the case may be, as a result of:

- i. UTS' non performance or breach of any obligation of UTS under this Project Agreement;
- ii. any bodily injury, sickness, or death of any person caused by the negligent acts of UTS in connection with the Project;
- iii. any physical loss or damage, beyond reasonable wear and tear, to all or part of the Building, except in connection with the Construction Works, or to any University equipment, assets or other property related thereto, directly arising from the Project;
- iv. any construction liens, notices of lien, certificates of action or any other Encumbrance given or registered against the Project or the Lands by the Constructor, any subcontractor, or any member of the Design Team or their subconsultants;
- v. all third party claims related to any actions or non-performance of UTS which would otherwise constitute a breach by UTS of this Project Agreement; or
- vi. any negligent act of the Constructor which causes damages or loss to the University;

provided that UTS shall not be obligated to indemnify in respect of losses, costs or expenses caused directly by the University, its employees, agents or those for whom it is in law responsible.

- b) University Indemnity.

The University shall indemnify and save harmless UTS from and against any and all losses, costs and expenses (including reasonable legal fees and disbursements) actually suffered or incurred by UTS as the case may be, as a result of the University's breach and/or non-performance of any obligation of the University under this Project

Agreement, provided that the University shall not be obligated to indemnify in respect of losses, costs or expenses caused directly by UTS, the Design Team, the Constructor or its subcontractors.

- c) The indemnities herein shall survive the termination of this Project Agreement.

ARTICLE 16 TERMINATION

16.01 Termination by UTS

UTS shall have the right to elect not to proceed with the Project and terminate this Project Agreement:

- a) at any time in its sole discretion by delivering Notice to the University (such notice, the “**UTS Project Termination Notice**”), and
- b) at any time in its sole discretion by delivering Notice to the University (such notice, the “**University Breach Termination Notice**”) if the University is in material breach of any obligation of the University hereunder and UTS has given the University 30 days’ notice in writing of such material breach, with reasonably sufficient details thereof, and the University fails to remedy such material breach in all material respects within 30 days after the UTS written notice of such breach.

16.02 Termination by University

The University shall have the right to terminate this Project Agreement at any time in its sole discretion by delivering Notice to UTS upon a UTS Event of Default (such notice, a “**UTS Breach Termination Notice**”).

16.03 Obligations Upon Termination

- a) If this Project Agreement is terminated pursuant to Section 16.01a) above:
 - i. UTS shall pay to the University any unpaid portion of the Project Management Fee earned by the University up to and including the effective date of such termination;
 - ii. UTS shall reimburse the University for all costs, including any and all reasonable legal costs, incurred by the University pursuant to Section 3.02a)xix;
 - iii. in the event any Project Works have occurred, UTS shall undertake at its sole cost and expense any work necessary to restore the Lands and the Building to a condition equal or better than the condition of the Lands and the Building as of the date of this Project Agreement; and
 - iv. UTS shall be responsible for all other payment obligations owing to the University in connection with this Project Agreement as of the date of such termination.
- b) If this Project Agreement is terminated pursuant to Section 16.01b) above, the University shall pay to UTS all amounts paid in connection with the Project Management Fee, and amounts actually incurred by UTS pursuant to Article 4 above, and all other losses, costs and expenses suffered or incurred by UTS in

connection with the applicable breach of this Project Agreement by the University.

- c) If this Project Agreement is terminated pursuant to Section 16.02 above, and such termination occurs prior to the Commencement of Construction:
 - i. UTS shall pay to the University any unpaid portion of the Project Management Fee earned by the University up to and including the effective date of such termination; and
 - ii. UTS shall reimburse the University for all costs, including any and all reasonable legal costs, incurred by the University pursuant to Section 3.02a)xix.
- d) If this Project Agreement is terminated pursuant to Section 16.02 above, and such termination occurs following the Commencement of Construction, the University may, at its sole discretion,
 - i. Use the funds from the Project Account to:
 - A. Complete the Construction; and
 - B. Pay any losses, costs and expenses suffered or incurred by the University in connection with the breach of this Project Agreement by UTS which led to such termination, provided that to the extent the University uses its own funds for such purposes, such funds shall be repaid by UTS, plus interest at the prime rate of interest published by The Bank of Nova Scotia from time to time in Toronto, plus five percent; or
 - ii. Revise the plans for the Project and undertake such works as are required by the University (in its discretion) in order to use the UTS Site for other purposes, using the funds from the Project Account to:
 - A. Pay any amounts owed to the Constructor under the Constructor's Contract;
 - B. Pay any losses, costs and expenses suffered or incurred by the University in connection with the breach of this Project Agreement by UTS which led to such termination; and
 - C. Pay the Demolition Costs or the Repurposing Costs. In the event that the Repurposing Costs are greater than the Demolition Costs, the University shall be entitled to use funds from the Project Account to repurpose the Project up to a maximum of the Demolition Costs.

For certainty, any shortfall in the Project Account and losses, costs and expenses suffered or incurred by the University in connection with any breach of the Project Agreement by UTS shall be the responsibility and obligation of UTS.

16.04 Additional Terms Following Termination

For certainty, nothing in this Article 16 shall be deemed to limit the liability of each of the Parties for any obligation under this Project Agreement at the time of any applicable termination of this

Agreement, including in connection with any breach of this Project Agreement which led to such termination.

For additional certainty, if the Project Agreement is terminated pursuant to any Section 16.03 a), b), c), or d)ii above, the 2015 Real Property Licence shall not be entered into, and Section 2.08 of this Project Agreement shall govern. In each such case, any balance left in the Project Account, following payments of all amounts described in each of Section 16.03 a), b) c) or d)ii, as applicable, shall be returned to UTS without deduction or set-off.

If the Project Agreement is terminated pursuant to Section 16.03 d)i above, the 2015 Real Property Licence will be entered into on occupancy of the New Building by UTS.

ARTICLE 17 CONFIDENTIALITY

17.01 Confidentiality

- a) Each of UTS and the University acknowledges that, in the course of performing its duties under this Project Agreement, it may receive non-public information relating to the obligations and/or rights of the Parties under this Project Agreement and from the other Party which is clearly marked "Confidential" (all such information, collectively the "**Confidential Information**"). Confidential Information shall include all Personal Information delivered from one Party to the other Party in connection with this Project Agreement, provided Confidential Information shall not include information that (a) was in the public domain at the time it was communicated to the receiving Party, (b) entered the public domain subsequent to the time it was communicated to the receiving Party through no fault of the receiving Party, (c) was in the receiving Party's possession free of any obligation of confidence at the time it was communicated to the receiving Party, (d) was rightfully communicated to the receiving Party free of any obligation of confidence subsequent to the time it was communicated, (e) was developed by representatives of the receiving Party independently of and without reference to any information communicated to the receiving Party by the disclosing Party, (f) was communicated to the receiving Party by an unaffiliated third party free of any obligation of confidence, or (g) subject to Section 17.02, required to be disclosed by the receiving Party by law, court order or governmental order.
- b) Except as the disclosing Party may expressly agree to in writing or as contemplated under the terms of Section 17.02 the receiving Party: (i) shall at all times keep and hold Confidential Information of the disclosing Party in the strictest confidence; (ii) shall not disclose any of the Confidential Information of the disclosing Party to any person or entity, other than to those of its representatives who have agreed in writing to be bound by the terms of this Section 17.01; (iii) shall not use such Confidential Information for any purpose other than for purposes for which the disclosing Party is authorized to use such information or a consistent purpose; and (iv) use the same standard of care that it uses with its own confidential information when dealing with Confidential Information of the disclosing Party.
- c) Notwithstanding anything in this Section 17.01, any Party shall be entitled to use Confidential Information in connection with making any claim under this Project Agreement (including, without limitation, in connection with any mediation undertaken hereunder) against the other Party, provided that reasonable steps

are taken to preserve the confidentiality of such information where it is reasonably possible to do so.

17.02 Disclosures Required by Law

Where disclosure of any Confidential Information is required by law, court order or governmental order, the receiving Party will immediately notify the disclosing Party thereof (including the manner of disclosure) so that the disclosing Party may take such action as it deems necessary to intervene, limit the scope of disclosure or otherwise seek assurances of confidentiality. Further, the receiving Party agrees to cooperate fully with the disclosing Party in taking action to protect the disclosing Party's Confidential Information or otherwise limit the scope of required disclosure.

17.03 FIPPA

- a) UTS acknowledges that the University is governed by the Freedom of Information and Protection of Privacy Act ("**FIPPA**") and that records submitted to and in the possession of the University, including this Project Agreement, are governed by such legislation and may be subject to disclosure in accordance with its requirements.
- b) Unless provided by UTS to the University and held by the University, the University does not have custody or control of any UTS records, such being generated by, used by, and held by UTS as an independent entity.
- c) If, for any purpose under this Project Agreement, either Party provides to the other personal information that would be subject to FIPPA if in the custody or control of the University, the other Party agrees that it shall keep such information confidentially, treating it in accordance with FIPPA or in a manner consistent with the protection of privacy enshrined in FIPPA, as the case may be.
- d) Notwithstanding any other term of this Project Agreement, prior to disclosing or publishing this Project Agreement or any of its terms, including any contractual submissions or other records kept in accordance with the Project Agreement, or any information derived from this Project Agreement, or any information related to the performance thereof by the University or UTS, the disclosing Party shall give notice to the other Party, including notice regarding any redactions that it proposes to make pursuant to FIPPA or otherwise if it intends to make disclosure. If the records proposed to be released are within the University's custody or control and if UTS objects, UTS may utilize its rights, if any, under FIPPA to object to such release. If the records proposed to be released are within UTS' custody or control, and if the University objects, the University may refer its objection to resolution in accordance with the terms of this Project Agreement and in any mediation proceedings FIPPA principles shall be utilized to the extent reasonable under the circumstances.

17.04 Return of Confidential Information

- a) UTS shall, upon request in writing by the University, following termination of this Project Agreement, return to the University or destroy, in the University's discretion as per the University's written requirements, all Confidential Information disclosed by the University pursuant to this Project Agreement and all copies, summaries, extracts and other materials associated with this Project Agreement within 10 Business Days of the University's request to UTS.

Notwithstanding the foregoing, UTS shall not be required to delete information which may be stored in its electronic back-up and data archival systems, provided that such information is not used by UTS for any purpose. Furthermore, UTS shall not be required to return or destroy information which, in its reasonable opinion, it is required to maintain under applicable law, or that it is advisable to maintain in connection with a possible claim under or in connection with this Project Agreement.

- b) The University shall, upon request in writing by UTS, following termination of this Project Agreement, return to UTS or destroy, in UTS's discretion as per UTS's written requirements, all Confidential Information disclosed by UTS pursuant to this Project Agreement and all copies, summaries, extracts and other materials associated with this Project Agreement within 10 Business Days of UTS's request to the University. Notwithstanding the foregoing, the University shall not be required to delete information which may be stored in its electronic back-up and data archival systems, provided that such information is not used by the University for any purpose. Furthermore, the University shall not be required to return or destroy information which, in its reasonable opinion, it is required to maintain under applicable law, or that it is advisable to maintain in connection with a possible claim under or in connection with this Project Agreement.

ARTICLE 18 GENERAL PROVISIONS

18.01 Survival of Obligations

The rights and obligations of the Parties specified in any provision of this Project Agreement which by their nature would reasonably be interpreted as intended by the Parties to survive the termination of this Project Agreement shall survive such termination.

18.02 Severability

The invalidity or unenforceability of any particular term of this Project Agreement will not affect or limit the validity or enforceability of the remaining terms.

18.03 Force Majeure

- a) *Responsibility for damages.* Neither Party is responsible for damages caused by the delay or failure to perform any of its obligations under this Project Agreement when the delay or failure is the result of Force Majeure.
- b) *Notice of suspension.* If the invoking Party contends that any of its obligations are suspended by reason of Force Majeure, it shall promptly give Notice to the other Party, providing reasonable details of same.
- c) *Extension.* Subject to paragraph d) of this section 18.03, the obligations of the invoking Party under this Project Agreement will be extended for the duration of Force Majeure.
- d) *Notice of restoration.* Upon becoming aware of the cessation of a Force Majeure event, the invoking Party shall
- i. immediately give Notice to the other Party, advising of its cessation, and

- ii. commence performance of its obligations under this Project Agreement as promptly as reasonably practicable.

18.04 Independence of Parties

Nothing in this Project Agreement shall be deemed to create any partnership, agency or joint venture relationship between the Parties hereto.

18.05 Entire agreement

This Project Agreement constitutes the entire agreement between the Parties relating to the matters contained herein; there are no representations, covenants, or other terms other than those set out in this Project Agreement, and this Project Agreement supersedes any previous discussions, understandings, or agreements, between the Parties relating to its subject matter.

18.06 Further assurances

Each Party, upon receipt of Notice by another Party, shall sign (or cause to be signed) all further documents, do (or cause to be done) all further acts, and provide all reasonable assurances as may reasonably be necessary or desirable to give effect to this Project Agreement.

18.07 Amendment

This Project Agreement may only be amended by a written document signed by each of the Parties.

18.08 Binding effect

This Project Agreement enures to the benefit of and binds the Parties and their respective heirs, trustees, executors, administrators, and other legally appointed representatives, successors, and permitted assigns.

18.09 Assignment

- a) *Consent.* This Project Agreement may not be assigned by UTS without the prior written consent of the University. This Project Agreement may not be assigned by the University without the prior written consent of UTS. Without limiting the foregoing, the University agrees that, prior to the transfer of the Lands to any person, including, without limitation, any corporation wholly or partly owned by the University, the University will obtain a covenant in writing from such transferee agreeing to be bound by the obligations and covenants of the University hereunder.
- b) *Continued liability.* The assignor will remain liable for its obligations under this Project Agreement despite an assignment, in whole or in part, of its rights or obligations or both under this Project Agreement.

18.10 Notice

- a) Any notice, request, demand, consent, advice, approval or other communication provided for or permitted under this Project Agreement shall be in writing and may be given by personal delivery or electronic mail, addressed to the Party for which it is intended at its address as follows:
 - i. the University:

University of Toronto
Simcoe Hall 27 King's College Circle
Toronto, Ontario M5S 1A1

Attention: Vice President, University Operations
scott.mabury@utoronto.ca

- and to -

University of Toronto
Simcoe Hall 27 King's College Circle
Toronto, Ontario M5S 1A1

Attention: General Counsel
steve.moate@utoronto.ca

ii. UTS:

University of Toronto Schools
371 Bloor Street West
Toronto, Ontario M5S 2R8

Attention: Chair, Board of Directors
jimfleck@me.com

- and to -

University of Toronto Schools
371 Bloor Street West
Toronto, Ontario M5S 2R8

Attention: Principal
revans@utschools.ca

provided, however, that any Party may change its address for purposes of receipt of any such communication to another address in Canada by giving 10 days' prior written notice of such change to the other Party in the manner above prescribed. Any notice delivered as aforesaid shall be deemed to have been received on the day of delivery if received on or before 5:00 p.m. on any Business Day, or if not, on the next Business Day following the day of delivery.

18.11 Governing law

The laws of Ontario and the laws of Canada applicable in that province, excluding any rule or principle of conflicts of law that may provide otherwise, govern this Project Agreement.

18.12 Counterparts

This Project Agreement may be signed in any number of counterparts, each of which is an original, and all of which taken together constitute one single document.

18.13 Time is of the essence

Time is of the essence of this Project Agreement and of every part of this Project Agreement. No extension of time or other variation of this Project Agreement will operate as a waiver of this provision.

18.14 Effective date

This Project Agreement is effective as of the date shown at the top of the first page, even if any signatures are made after that date.

[The remainder of this page has been intentionally left blank]

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

**THE GOVERNING COUNCIL OF THE
UNIVERSITY OF TORONTO**

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have the authority to bind the Corporation

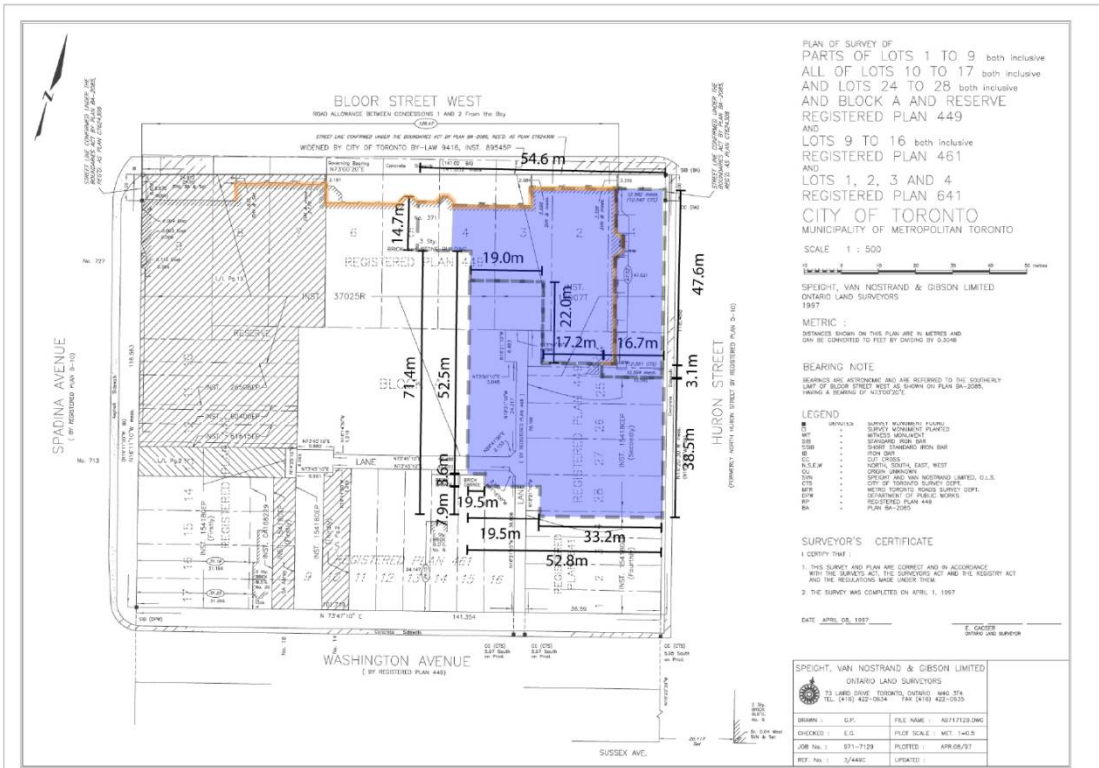
UNIVERSITY OF TORONTO SCHOOLS

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have the authority to bind the Corporation

SCHEDULE A SURVEY



Diamond Schmitt Architects

CONTEXT SURVEY (ALL DIMENSIONS OF LOTS PREMISES ARE APPROXIMATE)

UNIVERSITY OF TORONTO SCHOOLS
371 BLOOR ST. WEST TORONTO, ON
1:500 SEPTEMBER 28, 2015

SCHEDULE B PROJECT REQUIREMENTS – HERITAGE

The premises known as 371 Bloor Street West were constructed for UTS and the Faculty of Education (University of Toronto) in 1910. This first phase consisted of the centre block on Bloor including the principal entry and the wing extending east along Bloor Street to the entry and stairs at Huron Street. The architects were Darling and Pearson. Subsequently in 1924 a second wing was added extending from the east end of the first phase south along Huron Street, also designed by Darling and Pearson. They also designed the third wing in 1931 which extended west along Bloor from the centre block. In 1949 and 1955 a fourth wing and addition was constructed on the west side of the block along Spadina extending to the Bloor Street W corner.

The property, in particular the 1910, 1924 and 1931 wings are listed in the City of Toronto Inventory of Heritage Properties. Under the Ontario Heritage Act, Heritage Preservation Services (HPS) reviews Development and Building Applications which will impact the property.

It is the intention to retain and renovate the entirety of the 1910 and 1924 wings as part of the UTS facility. The exception is the auditorium and mechanical space below. The current main lobby on Bloor Street is to be retained for University control and use and UTS may access their entrance through the lobby. UTS will relocate their historical exhibition and artifacts presently in this entrance area to a space inside the UTS Site.

UTS undertakes to repair and restore the north and east heritage facades of 371 Bloor St. West, on Bloor St and Huron St including those constituted in 1910, 1924 and 1931. This includes the repair of deteriorated masonry, repainting mortar joints as required, repairing flashing and downspouts as required and the replacement of window and door units within existing windows. These new doors and windows will be selected for their thermal and performance qualities as well as their appropriate fit to the heritage character of the facades. UTS will restore related interior areas to the back side of the main corridor of the above noted heritage facades or provide cash in lieu to the University. UTS will also coordinate with Heritage Preservation Services of the City of Toronto to review the window replacement and masonry repair work and other heritage work required by HPS. UTS will restore interior related areas in the main entrance lobby and UTS occupied areas for the 1910, 1924 and 1931 wings as required by HPS and University design standards and the University DRC.

It is expected that the University may renovate the heritage wing west of the 371 Bloor St W entry at some point after the UTS work proceeds. As the University proceeds with construction work on their lands, the University will protect heritage work completed by UTS west of the main entrance.

SCHEDULE C
PROJECT REQUIREMENTS – ROOM DATA SHEET AUDITORIUM

See attached.

**SCHEDULE D
PROJECT REQUIREMENTS – ROOM DATA SHEET GYMNASIUM**

See attached.

**EXHIBIT 1
INSURANCE REQUIREMENTS**

TO BE AGREED BY THE PARTIES PURSUANT TO SECTION 15.01.

University of Toronto School

Room Data Sheet

Auditorium/Lecture Theatre

- 700 seats
- two levels (single balcony)
- raked for optimum sightlines
- approximate 20" seat width, upholstered seat, tub backrest
- option for flexible seating configuration with flat floor auditorium will be explored

Flooring: • sealed concrete with wearing surface tba

Base: • rubber

Ceilings: • block, all selected as appropriate
• acoustic absorption as appropriate for optimal acoustics

Stage: • approx. 11 m index x 5 in depth
9 m wide at proscenium (if appropriate)

Structure: • to be determined

GLAZING REQUIREMENTS

Fixed/Operable: No
Double/Single: No

Comments:

COMMUNICATION REQUIREMENTS

Telephone: Yes
Paging: Yes
Program Sound: Yes
Perform. Intercom: Yes
CATV/CCTV: Yes
TV Monitor(s): Yes
Mic. Line(s): Yes
Data Line(s): Yes
Media Feed: Yes
Program/Paging: Yes

Comments:

SECURITY REQUIREMENTS

Alarm:	Yes	Door monitoring system:	Yes
Motion Detectors:	Yes	Keypad:	Yes

Card Reader Yes Duress button: Yes
Camera: Yes

Comments:

POWER REQUIREMENTS

Type General Power: Amps Volt
Outlets: *Wall Only*

Room Data Sheet-3

LIGHTING REQUIREMENTS

Lighting Incandescent LED Silent Fixtures Occupancy sensors
Switching Central Multiple Level Switching
Recessed Remote Ballast

Req. Foot Candle Level: TBA, performance lighting

Comments:

HEATING/VENTILATION REQUIREMENTS

Noise Criteria:

Natural Ventilation Mechanical Ventilation Air Conditioning Heating

Summer
Normal Temperature: TBA Fahrenheit Humidity Range:

Winter
Normal Temperature: TBA Fahrenheit Humidity Range:

Special
Special Temperature: TBA Fahrenheit Humidity Range:

Anticipated No. of air changes per hour: TBA

PLUMBING REQUIREMENTS

Required Fixtures: None

Comments:

FURNITURE/EQUIPMENT

Equipment: Extent of Stage Rigging to be Determined

Millwork:

University of Toronto School

Room Data Sheet

Double Gymnasium

- Collegiate type (15.25 m x 25.6 m) x 2
- 2 m runoff all around
- 7.7 m minimum height to underside of structure

Flooring: Wood Spring Floor with painted lines

Base: Rubber or metal angle (aluminum)

Walls: Stained Concrete Block/
Stained Acoustic Block

Structure: Flush with walls

Columns: Exposed Architectural concrete

Ceiling: Exposed Steel Structure
Exposed Steel Structure with Wood Decking
Exposed Wood Structure and Wood Decking

Doors: 3 Double Doors, Hollow Metal frames and doors
Glazing - Tempered/Laminated

Glazing Fixed, Tempered

GLAZING REQUIREMENTS

GLAZING REQUIREMENTS

Fixed/Operable:

Double/Single:

Comments:

COMMUNICATION REQUIREMENTS

Telephone: Yes

Paging: Yes

Program Sound: Yes

Perform. Intercom: Yes

CATV/CCTV: Yes

TV Monitor(s):

Mic. Line(s):
 Data Line(s): Yes
 Media Feed: Yes
 Program/Paging: Yes

Comments:

SECURITY REQUIREMENTS

Alarm:	Yes	Door monitoring system:	Yes
Motion Detectors:	Yes	Keypad:	Yes
Card Reader	Yes	Duress button:	Yes
Camera:	Yes		

Comments:

POWER REQUIREMENTS

Type General Power:		Amps	Volt
Outlets:	Wall Only		

Room Data Sheet-3

LIGHTING REQUIREMENTS

<i>Lighting Incandescent</i>	<i>Lighting Fluorescent LED</i>	<i>Silent Fixtures</i>	<i>Occupancy sensors</i>
	<i>Switching Central</i>	<i>Multiple Level Switching</i>	
	<i>Recessed</i>	<i>Remote Ballast</i>	

Req. Foot Candle Level: TBA

Comments:

HEATING/VENTILATION REQUIREMENTS

Noise Criteria:

<i>Natural Ventilation</i>	<i>Mechanical Ventilation</i>	<i>Air Conditioning</i>	<i>Heating</i>
Summer Normal Temperature:		Fahrenheit	Humidity Range: %
Winter Normal Temperature:	TBA	Fahrenheit	Humidity Range: %
Special Special Temperature:		Fahrenheit	Humidity Range: %

Anticipated No. of air changes per hour: TBA

PLUMBING REQUIREMENTS

Required Fixtures: None

Comments:

FURNITURE/EQUIPMENT

Equipment: Basketball Nets (x4)

Millwork: Wood Benches with Storage below

Comment: