

**RESOLUTION APPROVING THE COMPREHENSIVE AGREEMENT FOR THE
CONSTRUCT VT CARILION RESEARCH INSTITUTE BIOSCIENCES ADDITION IN
ROANOKE, VIRGINIA IN ACCORDANCE WITH THE PUBLIC-PRIVATE EDUCATION
FACILITIES AND INFRASTRUCTURE ACT (PPEA) OF 2002**

WHEREAS, the Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA) grants responsible public entities the authority to create public-private partnerships for the development of a wide range of projects for public use if the public entity determines there is a need for the project and that the private involvement may provide the project to the public in a timely or cost-effective fashion; and

WHEREAS, for the purposes of the PPEA, the Commonwealth of Virginia, its agencies and institutions taken together, including Virginia Polytechnic Institute and State University (Virginia Tech), is a “responsible public entity” that has the power to develop or operate the applicable qualifying project; and

WHEREAS, the Virginia Tech Board of Visitors has adopted “Guidelines for Projects Under the Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA)”; and

WHEREAS, Virginia Tech desires to construct a state-of-the-art research center in Roanoke, Virginia; and

WHEREAS, a high-priority capital project was appropriated by the General Assembly Chapter 759/2016 under item 1.B with the title “Construct VT Carilion Research Institute Biosciences Addition”, commonly known as the “Health Sciences and Technology Expansion” project, and

WHEREAS, Virginia Tech received and accepted an unsolicited proposal for consideration and advertised and considered competing proposals; and

WHEREAS, Virginia Tech has determined that proceeding under the procurement procedures of the PPEA is advantageous both to it and the public; and

WHEREAS, in accordance with the PPEA process, Virginia Tech has selected Carilion Clinic as the private entity the university wishes to enter into a Comprehensive Agreement with to construct the VT Carilion Research Institute Biosciences Addition at the Riverside Center in Roanoke, Virginia which will house the Comparative Oncology Research Center; and

WHEREAS, Carilion Clinic has submitted to Virginia Tech all information required by the Code of Virginia; and

WHEREAS, there is a public need for the new project, the estimated cost of the new project is reasonable in relation to similar facilities, and Carilion Clinic plans will result in the timely development and operation of the resulting building;

NOW, THEREFORE, BE IT RESOLVED, that the Virginia Tech Board of Visitors approves the Comprehensive Agreement with Carilion Clinic to construct the VT Carilion Research Institute Biosciences Addition at the Riverside Center in Roanoke, Virginia as provided by the PPEA; authorizes the Vice President for Operations, his successors and/or assigns, to execute the Comprehensive Agreement forthwith; and directs the Vice President for Finance and Chief Financial Officer, his successors and/or assigns, to make the Comprehensive Agreement and the procurement file available for public inspection to the extent required by law.

RECOMMENDATION:

That the above resolution to approve the Comprehensive Agreement with Carilion Clinic to construct the VT Carilion Research Institute Biosciences Addition at the Riverside Center in Roanoke, Virginia as provided by the PPEA; authorize the Vice President for Operations, his successors and/or assigns, to execute the Comprehensive Agreement forthwith; and direct the Vice President for Finance and Chief Financial Officer, his successors and/or assigns, to make the Comprehensive Agreement and the procurement file available for public inspection to the extent required by law be approved.

September 11, 2017

COMPREHENSIVE AGREEMENT

between

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

and

CARILION CLINIC

For

Virginia Tech Carilion Clinic Research Institute Biosciences Addition Project

Roanoke, VA

Date

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COMPREHENSIVE AGREEMENT

THIS COMPREHENSIVE AGREEMENT (“Agreement”) in accordance with the Virginia Public-Private Education Facilities and Infrastructure Act of 2002 (“PPEA”) and the enabling legislation in the Code of Virginia (Va. Code Ann. §56-575.1, et seq.) is entered into as of the day of , 2017 (the “Effective Date”), by and between Virginia Polytechnic Institute and State University, an agency of the Commonwealth of Virginia, (“Virginia Tech” or “University”), and Carilion Clinic (“Carilion” or the “Developer”), a nonprofit corporation incorporated in and authorized to do business in Virginia.

Recitals

R-1. On or about April 28, 2017, Virginia Tech received an unsolicited proposal pursuant to Virginia Tech’s PPEA Guidelines (attached as **Exhibit F**) to design and construct the Virginia Tech Carilion Clinic Research Institute Biosciences Addition Project, to contain approximately 139,300 square feet, on property owned by Carilion (or its subsidiary or affiliate holding title) in the Riverside Center Research Education and Medical Park at #4 Riverside Circle S.W., in the City of Roanoke, Virginia (the “Project”).

R-2. Pursuant to the PPEA and its implementing procedures, Virginia Tech subsequently gave notice on May 3, 2017, that it had decided to consider the unsolicited proposal and invited any competing proposals submitted to it by a specified deadline for consideration in order to determine whether it should advance to the detail phase for proposals and thereafter enter into a Comprehensive Agreement pursuant to the PPEA with any offeror(s) for the design and construction of the Project. Virginia Tech also declared its intent to use the competitive negotiation method, as defined in the Code of Virginia § 2.2-4301, to consider the unsolicited proposal and any competing proposals.

R-3. Virginia Tech subsequently selected Carilion to be advanced to the conceptual phase in accordance with the PPEA.

R-4. On April 28, 2017, Carilion submitted a conceptual-phase proposal to Virginia Tech. A copy of Carilion's conceptual-phase proposal is attached hereto as **Exhibit A**. Carilion named Skanska USA Building Inc. and AECOM Technical Services, Inc., the Project Contractor and Project Design Professional, respectively. Carilion submitted a detailed proposal dated July 12, 2017, a copy of which is attached hereto as **Exhibit B**.

R-5. Virginia Tech subsequently selected Developer for negotiation of a comprehensive agreement under the PPEA for the contemplated project based upon Developer's conceptual and detailed phase proposals and its oral representations made in and during combined meetings with Virginia Tech and Virginia Tech's evaluations of those proposals and representations.

R-6. By an act of the 2008 Virginia General Assembly, Virginia Tech is granted approval pursuant to the Public-Private Educational Facilities and Infrastructure Act of 2002 (Va. Code Ann. §56-575.1, et seq.) to enter into this Agreement for the design and construction of the Virginia Tech Carilion Clinic Research Institute Biosciences Addition Project.

R-7. A portion of the Project is intended to serve Carilion on a part-time or full-time basis, and the parties will cooperate to develop a long-term lease agreement as appropriate to Carilion's use of this portion of the Project developed for Carilion's benefit and as more particularly described in Section 37 below.

R-8. The parties have now negotiated a comprehensive agreement consistent with the PPEA, Carilion's proposals, and Virginia Tech's implementing procedures and instructions, the terms and conditions of which are set out in this Agreement.

NOW THEREFORE, for and in consideration of the mutual promises, conditions and covenants herein set forth, the parties agree as follows:

1. Incorporation of Recitals.

The foregoing recitals are true and correct and are incorporated herein by reference. The powers and duties of a private entity acting as "Developer" as applicable to the contracted services under the PPEA are hereby incorporated into this Agreement and imposed upon Developer, but such powers and duties will cease upon transfer of legal title to the Project

property to Owner as the responsible public entity, except insofar as any remaining powers and duties of the Developer to be included in the Facility Use and Operation Agreement.

2. Definitions. The following definitions apply to this Agreement:

(a) “A&E Contract” means Carilion’s contract with the Project Design Professional for the Project.

(b) “Allowances” are a portion of the scope of the Work. Allowances and contingencies are contemplated and will be included in the Firm Fixed Contract Price (“FFCP”) as defined in subsection (p) below below, to be set forth with particularity in the Construction Contract. In the event that the cost incurred by Carilion for Allowance items is less than the amount included for Allowances in the FFCP, the cost savings will be retained by or returned to Virginia Tech or applied back to the Project. At Project Final Completion, all of the Developer’s records related to costs incurred in the Project shall be audited by Virginia Tech and cumulative savings from the FFCP, if any, will be refunded to or retained by Virginia Tech or applied back to the Project. No Allowance overages will be permitted except by Change Order, and any Allowance overages must be approved in writing by the affected party.

(c) “Beneficial Occupancy” means the condition after Substantial Completion but prior to Final Completion of the Project at which time the Project, or portion thereof, is sufficiently complete and systems operational such that Virginia Tech could, after obtaining the permission of Carilion (which shall not be unreasonably withheld) occupy and utilize the space for its intended use, which occupancy shall expressly include full rights of ingress and egress on all Carilion private streets, roadways, and alleyways so designated for vehicular and/or pedestrian traffic, and parking. Carilion shall also obtain all necessary approvals and certificates for completion and occupancy. In the event of Beneficial Occupancy by Virginia Tech prior to Final Completion and conveyance of the Project property to Virginia Tech, Virginia Tech shall do so at its own risk.

Once Skanska and AECOM certify that the facility is Substantially Complete and ready for occupancy, Virginia Tech will submit an Application for Certificate of Occupancy, along with copies of the State Fire Marshal’s Final Inspection and other required operations permits to the Building Official. The Building Official, when satisfied that the Project and/or portion of the Project is, in fact, Substantially Complete will issue a Certificate of Occupancy to occupy the

Project, or applicable portion thereof, subject to any conditions or stipulations stated. Virginia Tech shall not occupy the facility until the certification from the State Fire Marshal that the Project complies with the fire safety requirements and applicable codes and the Certificate of Use and Occupancy issued by the Building Official are received.

(d) “Building Official” or “UBO” means the Virginia Tech University Building Official.

(e) “Carilion’s Share” means the agreed fair market value of Carilion’s contribution of the Land to the Project in the amount of \$2,000,000, plus Carilion’s contribution of cash towards the part of the TPC identified in Section 2 (x) as “Design, Construction & Other Costs” of the Project, in the amount of \$10,900,000, resulting in a total value of Carilion’s Share in the amount of \$12,900,000. In no event shall Carilion’s Share be increased without a Change Order to this Comprehensive Agreement executed by Carilion. Carilion is making no contribution to the cost of the portions of the TPC identified as Owner Contingency or Furnishings, Fixtures and Moveable Equipment (FF&E).

(f) “Change Order” means a document that is issued on or after the Effective Date of the Comprehensive Agreement which is agreed to in writing by Carilion and approved in writing by Virginia Tech and which modifies this Comprehensive Agreement and authorizes an addition, deletion or revision in the Project, including any change in the FF&E, Carilion’s Share, and/or adjustment of the Project Substantial Completion Date.

(g) “Construction and Professional Services Manual (CPSM)” or “CPSM” means the Commonwealth of Virginia Construction and Professional Services Manual, 2016 edition. Virginia Tech and Developer agree that the CPSM is applicable insofar as those provisions of the CPSM that Virginia Tech and Carilion identify in good faith as applicable to the Project and Developer’s performance hereunder, in a writing, mutually prepared by the parties, subsequent to the Effective Date and to be incorporated into the Construction Contract with Skanska once the guaranteed maximum price for the Work has been approved by Virginia Tech and Carilion, such that Carilion may identify the portions of the CPSM applicable to the Project in the A&E Contract and the Construction Contract. Without limiting the generality of the foregoing, the parties specifically acknowledge that the building efficiency provisions of the

CPSM, Section 6.1.2 (inclusive of subsections 6.1.2.1 through 6.1.2.4) are excluded from the definition of CPSM in this Agreement.

(h) “Construction Contract” means Carilion’s contract with the Project Contractor for the Project, where the basis of payment is the cost of the Work plus a fee with a guaranteed maximum price. The Construction Contract may contemplate performance of the Work in multiple phases.

(i) “Construction Work” or “the Work” means the pre-construction services, construction-related services and construction required by this Agreement to be provided by Developer, including, but not limited to, furnishing labor and furnishing and incorporating materials and equipment into the construction, and has the same meaning as the “Work” as defined in the Construction Contract.

(j) “Contract Documents” are the drawings, specifications, and all contract agreements (including without limitation the A&E Contract and the Construction Contract and change orders thereunder), Change Orders under this Agreement, and written modifications and amendments of any kind associated with this Agreement and the construction of the Project.

(k) “Developer” means Carilion, which has contracted with Skanska as the “Project Contractor” and AECOM as the “Project Architect and Engineer of Record”, pursuant to Virginia Tech’s PPEA Guidelines, as provided in this Agreement.

(l) “Design Professionals” means any of those architects, engineers, and consultants providing any services relating to the Project and any of the firms that employ any of them.

(m) “Equipment” means a tangible resource, such as machinery, articles or apparatus, of a permanent or long-term nature, used in an operation or activity. The Equipment Responsibility Matrix, which may be changed only by written agreement of the parties, is attached as **Exhibit C**.

(n) “Final Completion” means, when the Work is finally complete, including the final resolution of all defects to the satisfaction of Virginia Tech, the Work shall be finally accepted by Virginia Tech and final payment shall be made. Virginia Tech shall not unreasonably withhold its approval of the resolution of defects.

(o) “Final Completion Date” means the date when Carilion delivers to Virginia Tech DGS forms CO-13.1 signed by the Project Design Professional and CO-13.2 signed by the Project Contractor, and an affidavit of payment of claims, pursuant to which the Project Contractor certifies to the Developer and Owner that all subcontractors and suppliers to the Project have been paid.

(p) “Firm Fixed Contract Price” or “FFCP” means that portion of Total Project Costs that Virginia Tech is obligated to pay Carilion under this Agreement. The FFCP as of the Effective Date is equal to \$70,843,000, which is the sum of (i) Virginia Tech’s contribution toward the Design, Construction and Other Costs of the Project in the amount of \$69,500,000 and (ii) \$1,343,000, being the amount of the Owner Contingency as set forth in Section 2 (x); provided, however, that any use of the Owner Contingency shall be reasonably agreed by Owner and Developer and unused Owner Contingency shall be credited from the FFCP. Except as hereinafter provided, Virginia Tech will procure, pay 100% of the cost of, deliver to the Project site, and install all of the Furnishings and Moveable Equipment (FF&E), estimated as of the Effective Date to equal the amount set forth in Section 2 (x), all of which costs are outside of the FFCP. Therefore, Carilion has no obligation with respect to the procurement, payment of the cost of, delivery or installation of such FF&E under this Comprehensive Agreement, except to the extent the Work expressly includes the same. As of the Effective Date, as provided in the Equipment Responsibility Matrix (**Exhibit C**) and in Section 8(c) below, the Work includes rough-in of the facility for the installation of items of FF&E as specified in **Exhibit C** and also the installation of the security system. The FFCP is subject to revision, as documented by Change Order. All prices agreed to by the Developer and Skanska and AECOM, including total Project pricing and any pricing of early release packages, shall be subject to Virginia Tech audit and subsequent Virginia Tech and Carilion approval. Under no circumstances will Virginia Tech make payments to Carilion in excess of the FFCP, as adjusted pursuant to this Agreement. In the event that the costs of the portion of the Project covered by the FFCP are less than the FFCP, the cost savings will be retained by or returned to Virginia Tech or applied to the Project, as provided by this Agreement.

(q) “Project” is defined in recital R-1 above.

(r) “Project Agreements” means this Comprehensive Agreement, supplements and addendum specifically identified herein, including without limitation those set forth in Section 44 (f) of this Agreement.

(s) “Project Contractor” or “Skanska” means Skanska USA Building, Inc., which entity will be the “Contractor” under and as defined in the Construction Contract.

(t) “Project Design Professional” means AECOM Technical Services, Inc. (“AECOM”), which is the “Architect” under and as defined in the A&E Contract.

(u) “Punchlist Items” means details of construction and mechanical and electrical adjustments which are minor in character and do not materially interfere with Virginia Tech’s use or enjoyment of the Project or designated portion thereof for its business operations, and may also include landscaping and other items which do not materially affect Virginia Tech’s use of the Project, but which cannot be immediately completed because of weather or other events or circumstances for which one or more of the Project Contractor or Project Design Professional is entitled to an extension of time.

(v) “Substantial Completion” means the condition when Virginia Tech agrees in its reasonable discretion that the Work, or a specific portion thereof, is sufficiently complete, in accordance with the Contract Documents, so that it can be utilized by Virginia Tech for the purposes for which it was intended.

(w) “Substantial Completion Date” means the date on which the Project Design Professionals deliver to Virginia Tech: (i) the DGS Form CO-13.2a, Certificate of Substantial Completion by Contractor; (ii) the Punchlist associated with the Certificate of Substantial Completion; (iii) the DGS Form CO-13.1a, Certificate of Substantial Completion by Architect/Engineer, certifying that the Work has been Substantially Completed within the definition of “Substantial Completion” set forth herein; and (iv) assisted Virginia Tech in obtaining the Certificate of Occupancy issued by the Building Official.

(x) “Total Project Costs” or “TPC” means all costs incurred by the Project including design, construction, project management, construction inspections, auditing expenses, furnishings and equipment, and land acquisition. The amount of the Total Project Cost is estimated to equal the sum of the following:

Design, Construction & Other Costs	\$ 80,400,000
Furnishings, Fixtures and Moveable Equipment (FF&E)	\$ 6,122,000
Owner Contingency	\$ 1,343,000
<u>Land Acquisition</u>	<u>\$ 2,000,000</u>
Total Project Costs	\$ 89,865,000

The TPC will be reviewed and modified as necessary (consistent with the requirements of Section 7(c)) at the following design stages and will be subject to Virginia Tech's written approval:

- Schematic Design
- Preliminary Design (Design Development)
- Working Drawings

Because the Project is subject to the Commonwealth of Virginia Pool funding process, the Total Project Costs will also be reviewed and approved by the Commonwealth of Virginia Bureau of Capital Outlay Management (BCOM) at the completion of Preliminary Design.

Should the Total Project Costs be revised as a result of Virginia Tech's or BCOM's foregoing reviews, the FF&E and the scope of the Project shall be modified accordingly by Change Order as further described in Section 8(b) below.

If the parties mutually agree to reduce the scope of the Project, pursuant to Section 8(b) below, in a manner that reduces the quality or quantity, or both, of the Carilion Premises (as defined in Section 37), then the parties agree to amend this Agreement to equitably reduce the cash portion of Carilion's Share.

Of the Total Project Cost, Virginia Tech shall be responsible under this Agreement to pay Carilion the FF&E, as defined above. Virginia Tech will also pay for the above-referenced FF&E outside of the FF&E.

Carilion shall be responsible, without reimbursement from Virginia Tech, for Carilion's Share, as defined above, the cash portion thereof to be applied to the portion of the TPC identified as

“Design, Construction and Other Costs” of the Project and the remainder of Carilion’s Share in the form of its in-kind contribution of the Land to the Project.

3. General Scope.

(a) Under this Agreement, Developer will be providing to Virginia Tech, site design and development services, design services, and construction to locate, design, and build the Project. Except for the limited purpose with respect to the description of staffing in **Exhibit A**, as set forth in Section 20 hereof, Virginia Tech and Carilion acknowledge and agree that the conceptual stage proposal in **Exhibit A** and and detailed stage proposal in **Exhibit B** have been replaced and superceded in their entirety by the terms and conditions of this Agreement, and **Exhibits A** and **B** are attached merely as background with respect to compliance with the PPEA procedures until execution of this Agreement as of the Effective Date, and as of the Effective Date the Project is described solely by reference to this Agreement and the other Project Agreements and **Exhibits A** and **B** have no bearing thereon. Developer will generally be providing services for Virginia Tech consisting of Site Design and Development, Design of Project, and Construction. As more specifically set forth in this Agreement and subject to the terms of this Agreement, the Developer will complete the Project for the amount of the FFCP, plus the amount of Carilion’s Share, which Carilion will contribute in part in cash and in part in-kind, as provided in this Agreement.

(b) Virginia Tech has determined that the Project serves the public purpose of the PPEA because:

(1) There is a public need for and a benefit derived from this Project; and

(2) The Total Project Cost is a reasonable cost for the type of facility; and

(3) Carilion’s plans will result in the timely design, construction, improvement, equipping, and installation of the Project.

4. Changes to the Work

Virginia Tech may request additions, deletions or revisions to the Project. Such changes will be accomplished by Change Order in accordance with the procedures described herein.

5. Comprehensive Project Schedule

Carilion shall, within thirty (30) days after execution of this Agreement, cause the Project Contractor to develop a comprehensive Project schedule to include the site design and development tasks, the design services, and the construction services as well as any additional related services that are requested by Virginia Tech. This schedule, in the form of a critical path method (“CPM”) schedule, shall show all milestone dates, such as delivery dates of tasks and phases, completion of contemplated reviews by different agencies, response and resubmittal time for additional reviews as may be required, key meetings with Virginia Tech and others. The CPM schedule shall be in the time sealed precedence format and will identify total float and free float. The CPM will be aligned with the cost of each activity as indicated in the schedule of values. The parties agree that the Construction Contract will require the Project Contractor to achieve Substantial Completion by November 30, 2019 and to achieve Final Completion by December 31, 2019, which dates are subject to adjustment in accordance with this Agreement and which are subject to Virginia Tech giving Carilion a Notice to Proceed with the Project on or before October 20, 2017.

6. Site Design and Development.

(a) Services: Developer will cause the Project Design Professional to provide the following site design and development services to Virginia Tech within the scope of this Agreement:

(1) Task 1--Review any existing reports regarding the sites, including, without limitation, subsurface tests, soil tests, borings, water surveys, wetlands studies, topographical surveys, sewage disposal surveys and drainage determinations. Determine what additional services and reports are required to be done for the site, which are necessary in order to provide for the development of the site contemplated in this Agreement within the scope of Carilion’s Work required hereunder. Any additional services beyond the scope of Carilion’s Work required hereunder shall be subject to written change order approved by Virginia Tech and

Carilion. Provide, as part of Carilion's scope of work hereunder, an Environmental Impact Report, which Virginia Tech will submit to the Virginia Department of Environmental Quality.

(2) Task 2--Manage the site design and site development for the Project and have all site work done necessary to prepare the site for the Project, including without limitation, preparing site plan and obtaining the approval thereof, clearing, grubbing, and grading, doing storm water management, utilities, curb and gutter, landscaping, and doing on-site road improvements, including the submission and approval of an Erosion and Sediment Control Plan and narrative to the Virginia Department of Conservation and Recreation, Division of Erosion and Sediment Control.

(3) Task 3--Provide all permitting and obtain all approvals for Project that are required for site work, construction, and occupancy, including but not limited to a flood plain waiver, approval by the Roanoke Redevelopment and Housing Authority, proof of all applicable existing and vacated easements, documentation regarding Brownfield development, and required subdivision; Virginia Tech will assist in expediting such approvals and provide University signatures when required.

7. Design Services.

(a) Carilion has entered into the A&E Contract with the Project Design Professional (which is subject to further modification or restatement for consistency with this Agreement) and will enter into the Construction Contract with the Project Contractor for the Project promptly upon approval of the amount allocated to the Project by BCOM and the parties approval of the guaranteed maximum price for the Construction Contract.

(b) Virginia Tech does not provide to Developer any warranty, express or implied, regarding any services or design performed by its consultants, agents or employees for the Project, except that Virginia Tech warrants and represents to Carilion that the person it designates as the Building Official is qualified and competent to provide the services of the Building Official under this Agreement.

(c) The design process will proceed generally as follows:

(1) Carilion, Virginia Tech, and the Design Professionals shall meet routinely to develop and refine the drawings, and the Design Professionals will next develop the specifications for the Project, which shall be submitted to Virginia Tech by **XXX**, 2017 and

reviewed and approved by Virginia Tech within thirty (30) consecutive calendar days from receipt by Virginia Tech and become a part of the Contract Documents.

(2) Carilion will cause the Project Design Professional to prepare Schematic Design Phase Drawings and Basis of Design for the Project and intends to submit them to Virginia Tech by XXX, 2017 for review, comment and approval within thirty (30) consecutive calendar days from receipt by Virginia Tech.

(3) After Virginia Tech has approved the Schematic Design Phase Drawings and Basis of Design for the Project, Carilion shall cause the Project Design Professional to prepare Preliminary Design Phase Drawings and Specifications for the Project and submit to Virginia Tech for review, comment and approval within thirty (30) consecutive calendar days from receipt by Virginia Tech.

(4) Concurrently with the Design Development Phase, Carilion shall cause the Project Design Professional to develop and submit a Site Design package, which shall include erosion and sediment control and storm water management plans to be submitted to the Virginia Department of Conservation and Recreation and the appropriate office(s) of the City of Roanoke having jurisdiction over the site design for the Project for review and approval. Upon approval of the Site Design package, Carilion shall cause the Project Design Professional to prepare and issue a Site Preparation package and a Foundation Preparation package as well as any other early design packages so as to allow the applicable construction work to commence in accordance with the Project schedule.

(5) Developer shall then cause the Project Design Professional to produce a Skin/Roof/Structure Package and a 100% Construction Drawings and Specifications Package (Working Drawings and Specifications) and submit the same to Virginia Tech for review, comment and approval. Virginia Tech shall approve such documents within thirty (30) consecutive calendar days from receipt by Virginia Tech.

Carilion and Virginia Tech agree to develop a mutually agreed-upon design, and to develop and mutually agree upon scope and cost reduction ideas to the extent necessary to assist Carilion in designing and constructing the Project for the sum of the FFCP and the cash portion of Carilion's Share, provided that the FF&E will be procured directly by Virginia Tech, outside of the FFCP and Carilion's Share, so Carilion will have no responsibility for budgeting or

acquiring the same, other than Carilion’s rough-in and installation obligations for certain FF&E to the extent provided in Section 2 (p) and **Exhibit C**. Virginia Tech’s approval of all of the above plans, drawings, specifications and schedules (“Scope Documents”) shall not be unreasonably withheld, conditioned or delayed, and Virginia Tech shall not be entitled to condition its approval of such Scope Documents upon the inclusion of any design specifications that are materially inconsistent with the agreed upon scope or budget of the Project.

(d) So that Virginia Tech will have reasonable knowledge and understanding of the concepts and design components, Virginia Tech will be invited to participate in weekly design and construction team meetings where up-to-date descriptions of concepts, materials, equipment and systems which are being considered for each aspect of the Project will be discussed. Progress drawings, cut sheets, verbal descriptions, etc., regarding the advantages and/or disadvantages, the economic considerations, and the justifications as to why certain materials, equipment, and systems are being considered or used will be discussed.

(e) The design of the Project shall reflect the following standards:

- Virginia Uniform State Building Code
- Virginia Tech Design Standards (2006)
- Virginia Tech Signage Standards
- Virginia Tech Gender Neutral Bathroom Standards
- Virginia Tech Annual Standards and Specifications for Erosion and Sediment Control and Stormwater Management
- VT Network Infrastructure & Services Design and Construction Standards
- Commonwealth of Virginia Construction and Professional Services Manual, subject, however, to the modifications and exclusions from the CPSM as agreed by the parties or to be agreed by the parties as provided herein.

8. Construction Services.

(a) A “preconstruction” meeting shall be held prior to the scheduled start of construction on the Project.

(b) The Design, Construction and Other Costs components of the TPC, and application of Owner Contingency, together with corresponding changes to the FFCP, may be changed pursuant to Change Order by reason of (i) agreement of the parties during the design and/or construction processes to reflect scope changes and/or to reflect the available level of Commonwealth of Virginia funding, which will be finalized by BCOM subsequent to their review and at completion of the Preliminary Design, recognizing that the scope of the Work may be increased or decreased by mutual agreement of the parties, (ii) a Force Majeure event, (iii) change order due to Virginia Tech Delay, (iv) Weather Delay, (v) as provided in Section 2 (x), or (vi) the results of VT audits.

(c) Virginia Tech reserves the right to coordinate certain work in connection with its providing Equipment for the Project. Carilion will reasonably ensure that the design and construction of the Project provides for conduit, rough-in, mechanical, electrical and other features to accommodate any Equipment to be furnished by Virginia Tech and will coordinate reasonably with Virginia Tech and any of its contractors to ensure that the design and construction of the Project accommodate such Equipment. Carilion may rely on information furnished by Virginia Tech. Virginia Tech's contractors shall be allowed reasonable access to the Project to install such Equipment as Virginia Tech desires prior to completion of the Construction Work.

(d) Unless otherwise provided in **Exhibit C**, Virginia Tech will install the Equipment under its own direction and at its own expense and risk, and will not unreasonably interfere with the progress of construction by Carilion. Carilion is responsible for taking reasonable precautions to protect Virginia Tech's furnished items of Equipment from damage during storage and handling by Carilion or its contractors, including damage from exposure to the elements; provided, however, Virginia Tech must cooperate with Carilion and the Project Contractor to time the delivery thereof, and Virginia Tech or its carriers or contractors will be responsible for any storage, transportation, delivery and installation of such items of Equipment performed by Virginia Tech, its carriers or contractors, until such time as such Carilion or the Project Contractor has taken control of such items of Equipment. If Virginia Tech's furnished items of Equipment are damaged as a result solely of Carilion's negligence and not the result of Virginia Tech's failure to take reasonable precautions for such items of Equipment, Carilion

shall repair or replace them to the extent of funds received by Carilion in the nature of insurance proceeds or from claims paid under the Contract Documents. If damage to Virginia Tech's furnished items of Equipment is caused solely by Carilion's willful misconduct, Carilion shall be responsible to repair or replace such items of Equipment, if, as and to the extent the cost of such repairs or replacements are not paid by the proceeds of any insurance policy.

(e) Carilion shall use its commercially reasonable and diligent efforts to achieve Final Completion within thirty (30) days after the Substantial Completion Date provided that if any Punchlist Items cannot reasonably be completed within such 30-day period due to weather, longer lead times for ordering replacements or other similar reasons, Carilion shall be afforded additional time to achieve Final Completion for such Punchlist Item so long as Carilion diligently pursues such Final Completion.

(f) In addition to its inspection rights, Virginia Tech also has the right to retain and pay for (outside of the TPC) Virginia Tech's staff and consultants to inspect from time to time the progress of the Construction Work on behalf of Virginia Tech. Certain of Virginia Tech's out-of-pocket project management expenses, audit costs, and the costs of UBO reviews and inspections may be paid through the FFCP from available Owner Contingency. Virginia Tech's staff, its consultants and other designees of Virginia Tech shall be afforded access to the Project construction site.

(g) Carilion's out-of-pocket expenses, in the form of special inspections, commissioning, cleaning at project close-out, software expenses for G.C. pay, utility hook-ups, permits, and premiums for surety bonds and premiums for any insurance coverage required to be maintained by Carilion under this Agreement and in excess of those that Carilion would have incurred but for the Project, will be reimbursable to Carilion from Carilion's Share or the FFCP.

(h) Except as set forth in subsections (f) and (g), each of Carilion and Virginia Tech, as applicable, will bear its own expenses for in-house personnel or staff for project management and project oversight, and other self-performed services, which amounts shall not be part of the TPC, but the foregoing shall not limit Carilion's right to be reimbursed by Virginia Tech as part of the FFCP or Carilion's Share for any such services performed or provided by the Design Professionals, consultants of the Design Professionals, the Project Contractor, or subcontractors of the Project Contractor.

9. Plan of Finance.

Virginia Tech intends to finance the costs of the Project in a manner acceptable to Virginia Tech in its sole discretion that results in the availability of funds pursuant to Carilion's projected revenue needs. Subject to the provisions of Section 41 of this Agreement and the FFCP, Virginia Tech will include in its budget amounts reasonably necessary to finance the Project, including a reasonable contingency to address adjustments reasonably required, budgeted in the amount of the Owner Contingency shown in Section 2 (x) above.

10. Delays/Force Majeure.

(a) A Virginia Tech Delay shall mean delays or hindrances in the Work caused by (i) the acts of Virginia Tech, its employees, invitees, contractors, subcontractors or agents, (ii) the acts or omissions of Virginia Tech in its performance of its obligations under the Project Agreements (other than Virginia Tech's obligation to provide approvals or disapprovals of submittals), to the extent such delays or hindrances are not cured within ten (10) days of Virginia Tech's receipt of written notice of such delays or hindrances from any of (1) Carilion, (2) the Project Contractor, or (3) Project Design Professional or other Project Designers; (iii) Virginia Tech's failure to respond and give approvals or disapprovals within ten (10) days after Virginia Tech has received the submittal; or (iv) failure of the UBO to act promptly, including in conducting its inspections or otherwise providing reviews, approvals, and feedback called for under this Agreement.

(b) A Force Majeure Event shall mean "a cause outside of Carilion's control", such as a terrorist act, action or decrees of government bodies having jurisdiction (other than by Virginia Tech acting in either its sovereign or contractual capacity), material supply shortages, labor shortages, or any natural disaster or other events commonly known as "acts of God", which affects completion of the Project (each a "Force Majeure Event").

(c) In the event of a Virginia Tech Delay, Weather Delay (pursuant to the General Conditions), or Force Majeure Event, Carilion shall seek to minimize the period of delay or hindrance by (i) if applicable, providing Virginia Tech (directly from Carilion or from the Project Contractor or Project Design Professional or other Project Designers) with ten (10) days' written notice that a Virginia Tech Delay, Weather Delay, or Force Majeure Event has occurred and is ongoing, and (ii) all other reasonable means, including but not limited to, seeking alternate

sources of labor or materials. If Carilion wishes to make a claim for an extension of the delivery date or increase in the Firm Fixed Contract Price by reason of a Virginia Tech Delay, Weather Delay or Force Majeure Event, including by reason of any request by Virginia Tech to accelerate the Work, Carilion shall give reasonably prompt notice (directly from Carilion or from the Project Contractor or Project Design Professional or other Project Designers) to Virginia Tech of such claim so that Virginia Tech is not unfairly disadvantaged by any delay in receiving notice of any such claim. If the cost of completing the Work is increased as a result of a Virginia Tech Delay, Weather Delay or Force Majeure Event, Carilion shall be entitled to either a Change Order increasing the FFCP or a reduction in the scope of the Work, to cover such increased costs caused by such Virginia Tech Delay, Weather Delay or Force Majeure Event, and Carilion and Virginia Tech agree to cooperate to evaluate and to select among these options.

11. Records, Record Copies and Plans.

Developer shall maintain in good order two (2) record copies of the plans, change orders and any other related documents, marked to record changes made during construction, one copy for Virginia Tech and one copy for Carilion. During the design and construction period, Virginia Tech shall have the right to review all Plans, change orders and other related documents during regular business hours. To ensure compliance, Developer will provide a Schedule of Value line item for "Record Documents." Virginia Tech may withhold funds for non-compliance, in the amount indicated in such Schedule of Values, until such Record Documents have been provided. Upon completion of the design and construction of the Project, Developer shall cause the Project Design Professional or Project Contractor, as applicable, to deliver to Virginia Tech the following:

- (1) a complete set of Record Drawings for the Project in electronic media, the latest copy of Autocad;
- (2) all written specifications as amended;
- (3) complete copies of all operations and maintenance manuals for all equipment installed in the facility; and
- (4) all warranties required pursuant to this Agreement and all warranties required by the Construction Contract.

12. Warranties.

All the warranties indicated in the A&E Contract and the Construction Contract shall apply to the Project, it being the parties' intent that these warranties are to be construed to give Virginia Tech and Carilion the maximum protection consistent with their terms. Such warranties, including the warranties defined within each specification section of the Contract Documents, shall be assigned to Virginia Tech at Project Final Completion. All warranties set forth in the Contract Documents shall commence upon Substantial Completion of the Project and delivery of the book of warranties will occur on the Substantial Completion Date. Carilion makes no warranties, express or implied, with respect to the Work or its performance hereunder, and Virginia Tech and Carilion will rely exclusively on the representations and warranties made to them by the Project Design Professional (or other Design Professionals) and the Project Contractor in the A&E Contract, the Construction Contract and other Contract Documents.

13. Subcontractors.

Carilion will require the Project Contractor to select its subcontractors from a competitive bidding process when reasonably practical, subject to any Small Business Procurement Plan as may be set forth, or referred to, in the Project Agreements and, further, subject to the exercise of Carilion's reasonable good faith business judgment, in considering factors such as past performance and local knowledge and experience, in selecting subcontractors. Carilion understands that any collusion by Carilion with subcontractors and others in bidding to raise bid prices will be a material breach of this Agreement and will also expose Carilion to statutory penalties under Virginia law.

14. Payments.

(a) In connection with this Agreement, Carilion has provided an estimated cash draw down schedule of payments to assist Virginia Tech in determining financing needs. These projections are tentative and subject to change. Carilion shall notify Virginia Tech of changes in these projections in sufficient time so that Virginia Tech can adjust its financing to meet increases in requirements without incurring unnecessary additional financing costs. Updates to the schedule will be provided to Virginia Tech on a monthly basis. The parties will mutually agree in writing to develop an equitable process on which to base the payment schedule for Carilion's contribution of the cash portion of Carilion's Share towards costs incurred by

Carilion in the Project that are to be shared by the parties (namely, the part of the TPC identified in Section 2(x) as “Design, Construction & Other Costs”).

(b) Regular progress payments shall be paid by Virginia Tech to Carilion less retainage. Retainage will be held on construction “hard” costs only in the amount of 5% of the Firm Fixed Contract Price relative to construction “hard” costs. Moreover, 5% of the portion of the Firm Fixed Contract Price covering the total A/E fee to AECOM under the A&E Contract shall be withheld for the preparation of As-Built Documents at the end of the construction of the Project and paid when such As-Built Documents are delivered to and reasonably approved by Virginia Tech. Virginia Tech shall pay to Carilion the FFCP, subject to withholding of the 5% retainage for construction “hard” costs, in monthly progress payments on a percentage of completion basis, based on the percentage of the Project completed to date and the Project Schedule of Values to be provided by Carilion and reviewed/approved by Virginia Tech; however, no payments for construction “hard” costs will be made until the Environmental Impact Report has been submitted and approved by the Commonwealth of Virginia (“Environmental Impact Report Approval”). Virginia Tech will make final payment to Carilion of the balance remaining on the FFCP upon Project Final Completion, which will be contingent upon delivery and submission of approved Record Documents. Virginia Tech shall pay to Carilion the portion of the FFCP applicable to design costs (less retainage) in monthly progress payments via pay applications in the software program known as GC Pay (“GC Pay”) according to the AECOM schedule for payment entered into GC Pay for payment to AECOM based on the percentage of completion for each category of their services completed, under and as provided in the A&E Contract. In no event shall total retainage under this Agreement exceed 5% of the FFCP.

(c) Upon Substantial Completion of the Project, any retainage shall be paid to Developer, less a holdback for any uncompleted Punchlist Items in an amount equal to the estimated cost to complete such Punchlist Items, payable upon completion of such items.

(d) If actual costs for Work covered by the FFCP are less than the FFCP, cost savings (after crediting any unused Owner Contingency from the FFCP) will accrue to Virginia Tech and such savings shall not be paid to Carilion but rather shall be returned to or retained by Virginia Tech.

(e) If Virginia Tech disputes in good faith any payment application by Carilion under this Agreement, Virginia Tech will identify with particularity the basis for its payment dispute and give Carilion notice thereof by the due date for such payment, in which event Carilion and Virginia Tech will cooperate and share information relevant to their effort to resolve the payment dispute during the 30 days subsequent to Virginia Tech's notice of the payment dispute, and, further, in such event Virginia Tech's cure period under Section 23 (h) of this Agreement for nonpayment of the amount disputed in good faith shall be 30 days and shall begin to run when the amount owed has been finally determined by mutual agreement of the parties or through the dispute resolution process applicable under the Project Agreements. In such event, Carilion may not exercise its termination right under Section 23 (h) for nonpayment of an amount disputed in good faith by Virginia Tech.

15. Payment Bonds, Performance Bonds, and Other Security.

To secure its performance of the portion of the Project to be covered by the Construction Contract, (1) Carilion has executed and delivered a Corporate Guarantee of Performance, in the form attached as **Exhibit G**, which guaranties to Virginia Tech completion of pre-construction services up to a maximum amount covered by Carilion's existing Pre-construction Services Agreement between Carilion and Skanska and any subsequent interim or preliminary construction contract(s) with Skanska related to the Project, which guaranty shall terminate at such time as Skanska obtains a payment and performance bond from a surety authorized to do business in the Commonwealth of Virginia, and in an amount equal to the guaranteed maximum price for the Work or the portion of the Work under the Construction Contract (in the event that the Construction Contract calls for the Work to be performed in two or more phases).

16. Insurance.

(a) At all times during the performance of the Work under this Agreement, Carilion shall be responsible for obtaining, providing and/or maintaining, which obligation Carilion may fulfill either directly by Carilion or by imposing such obligation on the Project Design Professional or Project Contractor in their respective A&E Contract and Construction Contract with Carilion (as applicable, the “Responsible Party”):

(1) Form Accord 25 as a Certificate of Coverage verifying Workers’ Compensation.

(2) Commercial general liability insurance to include Premises/ Operations Liability, Products and Completed Operations Coverage, and Personal Injury Liability.

(3) Business Automobile liability insurance which shall insure it against claims of personal injury, including death, as well as against claims for property damage.

(4) The Project Design Professional or Project Contractor, as applicable, or Carilion if neither the Project Design Professional nor the Project Contractor is obligated by its A&E Contract or Construction Contract to carry the same, as part of the TPC, shall obtain and maintain in the names of Virginia Tech, the Commonwealth of Virginia and Carilion (including its affiliates) special form builder’s risk insurance upon the entire Construction Work of this Agreement and upon all material in or adjacent thereto which is intended to be incorporated in the Work, to one hundred percent (100%) of the insurable value thereof. Such insurance may include up to a \$25,000 deductible, in which case the Responsible Party will be liable for such deductible amounts, whenever a claim arises. The loss, if any, is to be made adjustable with and payable to Carilion and Virginia Tech, in accordance with their interests, as they may appear. The Commonwealth of Virginia, Virginia Tech and their officers, employees and agents, shall be named as additional insureds in any policy of insurance issued to Carilion, and the Commonwealth of Virginia, Virginia Tech, and Carilion (including its affiliates) and their officers, employees and agents, shall be named as additional insureds in any policy of insurance issued to AECOM or Skanska and required by this Agreement to be maintained. Written evidence of the insurance shall be filed by the Responsible Party with Virginia Tech prior to the start of construction. A copy of any such policy of insurance shall be given to Virginia Tech

upon demand. The value of the builder's risk insurance shall exclude the costs of Virginia Tech's FF&E, demolitions, excavations, backfills, foundations, underground utilities and sitework.

(b) Prior to the start of Work, Virginia Tech reserves the right, but not the obligation, to review and revise any insurance requirement, including but not limited to limits, sub-limits, deductibles, self-insured retentions, coverages and endorsements based upon insurance market conditions affecting the availability or affordability of coverage, or changes in the scope of work/specifications affecting the applicability of coverage, provided Virginia Tech compensates the Responsible Party for any additional costs incurred to obtain insurance criteria different from that specified herein.

(c) Carilion agrees that the Responsible Party must provide Virginia Tech Certificates of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and are in full force and effect. The Certificates of Insurance shall clearly indicate the Project name and Project number. Said Certificates of Insurance shall include a minimum thirty (30) day notice to Virginia Tech due to cancellation or non-renewal of coverage. The Certificate Holder address shall read:

Virginia Polytechnic Institute and State University
Director of Contracts
90 Sterrett Facilities Complex (0129)
Blacksburg, VA 24061

17. Design Professionals.

Developer represents and warrants that the Design Professionals for the Project shall, without limitation, comply with the following:

(a) The Project Design Professional responsible for the design portion of the Construction Work shall obtain and maintain in force during the contract period and for a period of 5 years after the final completion of the Construction Work professional liability and errors and omission insurance in the amount of **\$2,000,000** per claim occurrence and **\$6,000,000** aggregate combined claims limit. All such Design Professionals shall be required to indemnify Virginia Tech and Carilion against any errors or omissions, including without limitation, patent and copyright infringement, and Developer also agrees that its A&E Contract with the Project

Design Professional will require the Project Design Professional to directly indemnify Virginia Tech and Carilion for any errors or omissions by any of the Design Professionals as provided in Section 24 (a) hereof.

(b) Carilion shall deliver to Virginia Tech copies, including reproducible copies, of the Plans and other related documents for information and reference in connection with Virginia Tech's use and occupancy of the Project. In the event of the termination of this Agreement by Virginia Tech for any reason, Carilion shall immediately deliver to Virginia Tech a full set of copies of the plans and other related documents then in the possession or control of Carilion or the Design Professionals retained by Carilion; and

(c) Carilion shall ensure that the requirements of this Section 17 are incorporated into its contract with the Project Design Professional and that the Project Design Professional incorporates such requirements in its contracts with its Design Professionals and that they incorporate these same requirements into their subcontracts with other Design Professionals so that Virginia Tech and Carilion are able to enjoy the full benefits of this Section 17.

18. Virginia Tech's Representations and Warranties.

Virginia Tech hereby represents and warrants to Carilion as follows:

(a) Virginia Tech is an Agency of the Commonwealth of Virginia and has full power, right and authority to execute, deliver and perform its obligations under, in accordance with and subject to the terms and conditions of this Agreement.

(b) Virginia Tech has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement and the other related documents to which Virginia Tech is a party.

(c) Each person executing this Agreement on behalf of Virginia Tech is duly authorized to execute each such document on behalf of Virginia Tech.

(d) Neither the execution and delivery by Virginia Tech of this Agreement and any other documents executed concurrently herewith to which Virginia Tech is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or violation of any other agreements or instruments to which it is a party or by which it is bound.

(e) There is no action, suit, proceeding, investigation or litigation pending and served on Virginia Tech which challenges Virginia Tech's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement and the other related documents to which Virginia Tech is a party, or which challenges the authority of the Virginia Tech official executing this Agreement or the other related documents, and Virginia Tech has disclosed to Carilion any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Virginia Tech is aware.

(f) Virginia Tech certifies that all representations, information and data it provided in support of, or in connection with, the proposal for the Project are true and correct to the best of its knowledge.

(g) The representations and warranties of Virginia Tech contained herein shall survive expiration or termination of this Agreement.

19. Carilion's Representations and Warranties.

Carilion hereby represents and warrants to Virginia Tech as follows:

(a) Carilion is a duly organized and validly existing entity created under the laws of the Commonwealth of Virginia, has the requisite power and has or will obtain all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver this Agreement and the other related documents to which Carilion is a party and to perform each and all of the obligations of Carilion provided for herein and therein.

(b) Carilion has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement and the other related documents to which Carilion is a party.

(c) Each person executing this Agreement or any other related document on behalf of Carilion has been or will at such time be duly authorized to execute each such document on behalf of Carilion.

(d) Neither the execution and delivery by Carilion of this Agreement and the other related documents to which Carilion is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or a violation

of the governing instruments of Carilion or any other agreements or instruments to which it is a party or by which it is bound.

(e) There is no action, suit, proceedings, investigation or litigation pending and served on Carilion which challenges Carilion's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement and the other related documents to which Carilion is a party, or which challenges the authority of the Carilion official executing this Agreement or the other related documents; and Carilion has disclosed to Virginia Tech any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Carilion is aware.

(f) To the best of its knowledge, Carilion is in material compliance with all Laws, regulations and ordinances applicable to Carilion insofar as its activities in connection with this Agreement and the other related documents.

(g) Carilion certifies that all representations, information and data provided in support of, or in connection with, the proposal for the Project are true and correct to the best of its knowledge.

(h) The representations and warranties of Carilion contained herein shall survive expiration or termination of this Agreement.

20. Staffing.

Carilion shall use the Project Team as indicated in the Conceptual Proposal (**Exhibit A**). No subsequent changes to management shall be made to which Virginia Tech reasonably objects, except for changes that are outside the control of Carilion (such as a person leaving its employ for any reason).

21. Periodic Reporting.

Carilion or the Project Contractor shall file with Virginia Tech, upon request of Virginia Tech, periodic status reports that incorporate a description of the impact of the Project on the Commonwealth. Such reports shall be filed in accordance with the procedures provided in the request from Virginia Tech, and quarterly reports of expenditures with Small, Women, and Minority Contractors sufficient to enable Virginia Tech to comply with Executive Order 29, dated July 2, 2002, and the subsequent requirements. In addition, Carilion shall prepare and submit as soon as practicable a plan outlining Carilion's goals and expectations for utilization of Small, Women, and Minority Contractors in the Project, as defined/certified by the Virginia

Department of Minority Business Enterprises, provided that such information shall be provided within thirty (30) days after the commencement of construction.

22. Inspections.

Virginia Tech retains the right to inspect the Project at any time to ensure that Carilion's activities are acceptable to Virginia Tech and in accordance with this Agreement.

23. Termination of Agreement.

(a) If Carilion defaults or fails or neglects to carry out its obligations in accordance with this Agreement, Virginia Tech may give written notice that Virginia Tech intends to terminate this Agreement, which notice shall contain a reasonably detailed explanation of the reasons for the proposed termination. Carilion shall correct the default, failure or neglect within thirty (30) days after being given such notice; provided, however, if (i) the nature of such default, failure or neglect is such that they are not reasonably capable of being corrected within such 30-day period and (ii) Carilion notifies Virginia Tech of a reasonable alternative period reasonably acceptable to Virginia Tech within fifteen (15) days of receipt of such notice, Carilion shall be allowed such reasonable alternative period to correct the default, failure or neglect so long as Carilion promptly commences and diligently pursues such corrections to completion. If Carilion fails to make such corrections within the 30-day period or fails to commence and diligently pursue to completion such corrections within the alternative period, then Virginia Tech may, at its sole discretion and without prejudice to any other remedy, terminate this Agreement and take possession of the Project and of all materials, equipment, tools and construction equipment and machinery thereon owned by Carilion, and, if Virginia Tech so chooses, finish construction of the Project by whatever method Virginia Tech may deem expedient. Upon termination hereunder, (i) those contracts for the design and construction of the Project designated by Virginia Tech shall be assigned to Virginia Tech for Virginia Tech to use at Virginia Tech's option to complete the Construction Work, and (ii) Carilion will promptly provide Virginia Tech all plans, specifications and other documents relevant to the Construction of the Project that have been done to date, regardless of whether they are complete. Carilion shall cause to be included in its contracts and in the subcontracts of those with whom it and its subcontractors contract, provisions that ensure smooth continuity of services and the ability to assign contracts to carry out this Section's requirements in the event of such termination and

shall use its good faith efforts to ensure that the design and construction of the Project continues smoothly without interruption if a termination occurs before Final Completion of Construction Work for Project.

(b) Virginia Tech may terminate this Agreement for material breach without any need for providing Carilion notice and an opportunity to cure (i) for any collusive bidding, (ii) for commission by Carilion or its agents of actual fraud or a crime that is a felony, or (iii) if Carilion declares bankruptcy or is involuntarily placed into bankruptcy.

(c) If not sooner terminated pursuant to subsection (a) or (b) above, or by mutual agreement, the Agreement shall terminate when all terms and conditions of all the Contract Documents have been satisfied.

(d) Upon termination of this Agreement by Virginia Tech, regardless of the reason for termination, and so long as Virginia Tech has made payment as provided in subsection (e), Carilion shall transfer all ownership interest in the Project (in both real and personal property) held by Carilion (or its affiliates holding title) to Virginia Tech if and as provided in subsection (f), in which event the deed of conveyance for the Land or other instrument of transfer shall be delivered to Virginia Tech at no cost to Virginia Tech. However, the parties agree that the Land will be valued at the fair market value of the Land prior to construction and improvement, which the parties agree equals \$2,000,000, which amount shall be credited against Carilion's Share. Carilion agrees to execute all documents reasonably requested by Virginia Tech to effect or formalize such transfers.

(e) Upon termination of this Agreement, Virginia Tech will make payment to Carilion for all amounts reasonably due.

(f) Notwithstanding anything to the contrary in this Agreement, (1) in the event of termination of this Agreement before commencement of construction of the Project, for any reason, Carilion (or its affiliate holding title) shall have no obligation to convey the Project property to Virginia Tech, and Virginia Tech will pay to Carilion Virginia Tech's reasonably allocated share of all design and pre-construction expenses incurred by Carilion and payable to any of the Project Designers and/or the Project Contractor, and (2) in the event of termination of this Agreement by Virginia Tech after commencement of construction of the Project, for any reason, Carilion (or its affiliate holding title), as grantor, will convey the Project property to

Virginia Tech subject to a covenant in the deed of conveyance that Virginia Tech must finish construction of the Project and achieve Substantial Completion on or before the date that is reasonably achievable by a competent construction firm under the circumstances for a project of the same type, scope and location as the Project in its state of completion existing as of termination and so long as Virginia Tech (through its designated construction firm, being the Project Contractor or a replacement contractor) is diligently prosecuting the Work to completion, and failing such timely completion by Virginia Tech, as documented by a writing executed by Carilion (the “Reversion Notice”) and recorded in the land records where the Land is located, at Carilion’s option but not obligation, title to the Project property will revert to the grantor on the date that the Reversion Notice is so recorded.

(g) Virginia Tech acknowledges that Carilion’s rights of joint use or lease of space in the Project property will continue in accordance with the separate agreements governing the same notwithstanding the termination of this Agreement for any reason except that in the event of Carilion’s breach, default or nonperformance Virginia Tech may condition commencement of such lease on the payment of all damages caused by Carilion and reasonably due and payable to Virginia Tech arising under this Agreement, and the parties’ obligations to enter into such agreements shall survive termination of this Agreement.

(h) Virginia Tech acknowledges that Carilion’s performance under this Agreement is conditioned on Virginia Tech’s payment and performance as required by this Agreement. If Virginia Tech defaults in payment or otherwise fails to perform under this Agreement, after fifteen (15) days’ notice to Virginia Tech and opportunity to cure (“Default Notice”), Carilion may suspend performance under this Agreement until Virginia Tech cures such default or nonperformance and, further, Carilion may terminate this Agreement on written notice to Virginia Tech if Virginia Tech does not cure such default or nonperformance (including payment default) after an additional period of thirty (30) days from Carilion’s Default Notice; provided, however, if (i) the nature of such default or nonperformance (other than payment default) is such that it is not reasonably capable of being corrected within such additional thirty (30)-day period and (ii) Virginia Tech notifies Carilion of a reasonable alternative period reasonably acceptable to Carilion within fifteen (15) days of receipt of such Default Notice, Virginia Tech shall be allowed such reasonable alternative period to correct the default or

nonperformance (other than payment default) so long as Virginia Tech promptly commences and diligently pursues such corrections to completion. Notwithstanding the foregoing, this Agreement shall be automatically reinstated after termination by Carilion for Virginia Tech's payment default if Virginia Tech cures its payment default within an additional fifteen (15)-day cure period commencing on the date of Virginia Tech's receipt of Carilion's termination letter.

24. Indemnification; Limitation of Liability; Protections of the Commonwealth .

(a) *Provisions to be Included in Design and Construction Contracts.* Carilion agrees to include in each of the A&E Contract and the Construction Contract a provision pursuant to which the Project Design Professional and the Project Contractor each agrees to indemnify and hold harmless Virginia Tech and Carilion from claims arising out of the Project, on commercially reasonable terms and having a scope of coverage no less than that which AECOM and Skanska have agreed to in prior arrangements for Carilion's development of projects for Virginia Tech, and such contracts will provide that Virginia Tech shall be a third party beneficiary of such indemnification provisions, permitting Virginia Tech to make a claim directly against the Project Design Professional and the Project Contractor under any such provisions. Virginia Tech agrees to exhaust all of its legal and equitable remedies as against the Project Design Professional and Project Contractor under the Contract Documents before pursuing any claim against Carilion other than a claim alleging willful misconduct against Carilion, as set forth in subsection (b).

(b) *Carilion's Indemnification of Virginia Tech.* Carilion (the "Indemnifying Party") will indemnify and hold Virginia Tech (the "Indemnified Party") harmless from any and all claims, actions, liability and expense including costs of judgments, settlements, court costs and attorney's fees (the "Claim") brought by a third party, caused by or resulting from, the willful misconduct of any member, employee or agent of the Indemnifying Party, but only if the Claim is not caused by or resulting from, negligent or intentional acts or omissions or willful misconduct of any member, employee or agent of the Indemnified Party, the Project Design Professional or any of the other Design Professionals, the Project Contractor, or any of their consultants or subcontractors (of any tier). The Indemnified Party agrees to promptly notify the Indemnifying Party in writing of any claim asserted against the Indemnified Party to which the Indemnified Party is entitled to indemnification hereunder. The Indemnified Party shall submit to

the Indemnifying Party any appropriate court document or other document relative to or in relation to such claim. The Indemnifying Party shall control the investigation, trial and defense of such lawsuit or action (including all negotiations to effect a settlement) and any appeal arising therefrom and shall employ or engage attorneys of its own choice. The Indemnified Party may, at its own cost, participate in such investigation, trial and defense of such lawsuit or action and any appeal arising therefrom. The Indemnified Party shall provide full reasonable cooperation to the Indemnifying Party at all times during the pendency of the claim including, without limitation, providing the Indemnifying Party with all available information concerning the claim. The Indemnified Party may not effect a settlement of or enter into any other agreement involving the claim for which it is seeking indemnification hereunder without the written consent of the Indemnifying Party.

(c) *Limitation of Carilion's Liability.* Notwithstanding anything to the contrary in this Agreement or in any other Project Agreements, to the fullest extent allowed under Virginia law, Carilion shall have no liability to Virginia Tech hereunder or under any of the Project Agreements, arising in contract, tort, or otherwise, except (A) for damages arising from Carilion's failure to contribute in-kind the Land (as called for by this Agreement) or to convey the Project property to Carilion as required by this Agreement or (B) for damages as follows: (i) for sums owed arising from Carilion's failure to pay Carilion's Share, (ii) for indemnification claims under subsection (b) above which arise from the willful misconduct of the Indemnifying Party, (iii) in an amount equal to Virginia Tech's proportionate share of damage to the Project property or 100% share of damage to property owned solely by Virginia Tech if, as and only to the extent covered and paid as proceeds of insurance collected by Carilion from any insurance policy required to be maintained by a Responsible Party pursuant to the provisions of Section 16 above, (iv) for amounts in payment of claims arising out of Carilion's participation in collusion in bidding, (v) for sums owed to third parties arising out of Carilion's failure to make any payment due under the A&E Contract or Construction Contract if, as and only to the extent that Virginia Tech has made payment to Carilion as provided in this Agreement, (vi) the deductible on builder's risk insurance under Section 16(a)(4), or (vii) in an amount equal to (x) Virginia Tech's proportionate share of any amounts that Carilion collects, directly from the Project Design Professional or Project Contractor or indirectly (through any surety or lower tier

consultant or contractor of either of them) arising from the uncured breach, default or nonperformance under the Contract Documents by the Project Design Professional and Project Contractor, or either of them, or those for whose performance either of them is responsible, less (y) Carilion's actual costs of collection, including without limitation reasonable attorneys' fees, court costs, alternative dispute resolution fees, witness fees and expenses for all levels of proceedings, including at all levels of trials and appeals. As used herein, "Virginia Tech's proportionate share" means a fraction, the numerator of which is the amount of the FFCP (excluding unused contingency), and the denominator of which is an amount equal to the sum of the FFCP (excluding unused contingency) plus the cash portion of Carilion's Share.

(d) *Sovereign Immunity of the Commonwealth of Virginia.* No person performing Work pursuant to this Agreement shall be deemed an employee of the Commonwealth of Virginia. Nothing contained herein shall be deemed an expressed or implied waiver of the sovereign immunity of the Commonwealth of Virginia.

(e) *No Third Party Beneficiaries.* The provisions of this Agreement are solely for the benefit of Virginia Tech, including the Commonwealth of Virginia, and Carilion (including its affiliates), and are not enforceable by any third party to this Agreement.

25. Resolution of Disputes, Claims and Other Matters.

Disputes, claims and other matters in question between the parties shall be resolved in compliance with Virginia Code § 2.2-4363.

26. Department's Right to Inspect Records.

(a) Carilion's, Skanska's and AECOM's records relevant to the Project, which shall include but not be limited to accounting records, written policies and procedures, change order files (including documentation covering negotiated settlements), (all the foregoing hereinafter referred to as "records") shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by Virginia Tech's agents or authorized representatives to the extent necessary to adequately permit evaluation and verification of any requests for change orders submitted by Carilion, Skanska or AECOM. In addition, the Carilion FFCP proposal, and Carilion's incurred costs at the Project's mid-point and at completion shall be subject to audit by Virginia Tech or its agents. Such records subject to examination shall also include, but not be limited to those records necessary to evaluate and verify direct and indirect

costs (including overhead allocations) as they may apply to costs associated with requests for Change Orders and total incurred costs under this Agreement.

(b) For the purpose of such audits, inspections, examinations and evaluations, Virginia Tech's agent or authorized representative shall have access to said records at the location of the records from the effective date of this Agreement, for the duration of the Agreement, and until two (2) years after the termination of this Agreement.

(c) Virginia Tech's agents or its authorized representatives shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this Section 26. Virginia Tech's agents or its authorized representatives shall give Carilion reasonable advance notice of intended audits.

(d) Carilion shall require the Project Contractor to mandate that all subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this Section 26 by insertion of the requirements hereof in a written contract agreement between the Project Contractor and each such payee. If there are actual damages to Virginia Tech, failure by the Project Contractor to obtain such written contracts that include such provisions shall be reason to exclude some or all of the related payees' costs from amounts payable to Carilion pursuant to this Agreement. If an audit, inspection, or examination in accordance with this Section 26 discloses overcharges of any nature by Carilion to Virginia Tech in excess of five percent (5%) of the total billings by Carilion to Virginia Tech, the actual cost of Virginia Tech's audit shall be paid by Carilion.

27. Nondiscrimination.

Carilion covenants and agrees that during the performance of this Agreement:

(a) Carilion shall conduct its activities in connection with the Project in compliance with all requirements imposed pursuant to Title 2.2, Chapter 42, Sections 4200 *et seq.* of the *Code of Virginia*; Sections 2.2-4310 and 2.2-4311 of the *Code of Virginia*; Titles VI and VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act of 1990, as amended; and all applicable rules and regulations. Carilion agrees that during the performance of this Agreement:

(b) Carilion will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis

prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Carilion. Carilion agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(c) Carilion, in all solicitations or advertisements for employees placed by or on behalf of Carilion, will state that it is an equal opportunity employer.

(d) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section 27.

(e) Carilion will require the Project Contractor to include the provisions of the foregoing Sections (a), (b), (c), and (d) in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

28. Drug-Free Workplace.

(a) During the performance of this Agreement, Carilion agrees to the following and further agrees to require Skanska and AECOM to agree to (i) provide a drug-free workplace for their employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Developer's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Carilion, AECOM, or Skanska that they maintain a drug-free Project workplace as shall Virginia Tech; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this Section 28, "drug-free workplace" means "a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract."

(b) Carilion shall also establish, maintain and enforce policies which prohibit the following acts by all contractor, subcontractor and supplier personnel at the Project:

(1) the manufacture, distribution, dispensation, possession, or use of alcohol, marijuana or other drugs, except possession and medically prescribed use of prescription drugs; and

(2) the impairment of judgment or physical abilities due to the use of alcohol, marijuana or other drugs, including impairment from prescription drugs.

29. Notices.

All notices and demands by any party to any other shall be given in writing and sent by a nationally recognized overnight courier or by United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To Virginia Tech: Sherwood G. Wilson, Vice President for Operations
Virginia Polytechnic Institute and State University
Burruss Hall, Suite 201
Blacksburg, Virginia 24061
Facsimile No.: (540) 231-1401
Telephone No.: (540) 231-4416

With a copy to: Kay Heidbreder, Esq.
University Counsel
Virginia Polytechnic Institute and State University
Burruss Hall, Suite 236
Blacksburg, Virginia 24061
Facsimile No.: (540) 231-6474
Telephone No.: (540) 231-6293

To Carilion: Curtis Mills
Sr. Vice President
Carilion Clinic
2017 South Jefferson
Roanoke, Virginia 24014
Facsimile No.: (540) 985-6910
Telephone No.: (540) 981-7240

With a copy to: Nicholas Conte
General Counsel
Carilion Clinic
213 South Jefferson, Suite 1600
Roanoke, Virginia 24011
Facsimile No.: (540) 224-5792
Telephone No.: (540) 224-5063

Any party may, upon prior written notice to the others, specify a different address for the giving of notice. Notices shall be effective one day after sending if sent by overnight courier or three days after sending if sent by certified mail, return receipt requested.

30. Successors and Assigns.

(a) Carilion may not voluntarily or involuntarily assign, convey, transfer, pledge, mortgage or otherwise encumber its rights or interests under this Agreement or the other Project Agreements, other than to a successor entity or subsidiary, without the prior written consent of Virginia Tech.

(b) Virginia Tech may transfer and assign its interests in the Project, or any portion thereof, this Agreement and any other agreement involving the Project to any other public entity as permitted by law, provided that the successor or assignee has assumed all of Virginia Tech's obligations, duties and liabilities under this Agreement and has provided Carilion with reasonable assurance of its legal authority and financial ability to honor and perform the same.

(c) If either party changes its name, such party agrees to promptly furnish the other party with written notice of change of name and appropriate supporting documentation.

(d) Except as expressly otherwise provided, this Agreement may not be assigned without the prior written consent of the parties to this Agreement.

(e) All of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

31. Time of the Essence.

The time within which Carilion agrees to complete construction of the Project is of the essence of this Agreement. Carilion shall proceed expeditiously with adequate forces and

make diligent efforts to keep the Project on schedule, and Carilion shall achieve Substantial Completion of the entire project by November 30, 2019 if Virginia Tech gives its notice to proceed no later than October 20, 2017, which date scheduled for Substantial Completion is subject to adjustment as provided in this Agreement. However, Virginia Tech may not give a notice to proceed any sooner than the later of (i) October 2, 2017 and (ii) the date of Environmental Impact Report Approval. The Project schedule shall be automatically extended to account for any delay arising from receipt of the Environmental Impact Report Approval. Virginia Tech will do all within its power to expedite any review or other decision making process that could result in any delay to the critical path schedule of the Project. Virginia Tech is obligated to comply with the Virginia Prompt Pay Act, Virginia Code Section 2.2-4350, with respect to its payment obligations under this Agreement.

32. Independent Contractor.

It is expressly understood and agreed by the parties hereto that Carilion, in performing its obligations under this Agreement, shall be deemed an independent contractor and not an agent, employee or partner of Virginia Tech.

33. No Waiver.

(a) The failure of a party to insist upon the strict performance of any provisions of this Agreement, the failure of a party to exercise any right, option or remedy hereby reserved, or the existence of any course of performance hereunder shall not be construed as a waiver of any provision hereof or of any such right, option or remedy or as a waiver for the future of any such provision, right, option or remedy or as a waiver of a subsequent breach thereof. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

(b) No act, delay or omission done, suffered or permitted by one party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such party under this Agreement, or to relieve the other party from the full performance of its obligations under this Agreement.

(c) No waiver of any term, covenant or condition of this Agreement shall be valid unless in writing and signed by the obligee party.

(d) The acceptance of any payment or reimbursement by a party shall not: (i) waive any preceding or then-existing breach or default by the other party of any term, covenant or condition of this Agreement, other than the other party's prior failure to pay the particular amount or part thereof so accepted, regardless of the paid party's knowledge of such preceding or then-existing breach or default at the time of acceptance of such payment or reimbursement; or (ii) continue, extend or affect (A) the service of any notice, any suit, arbitration or other legal proceeding or final judgment, (B) any time within which the other party is required to perform any obligation or (C) any other notice or demand.

34. Cooperation.

The parties agree to cooperate to achieve the objectives of this Agreement and to use reasonable and good faith efforts to resolve all disputes and disagreements that may arise hereunder. Each party agrees to designate representatives with the authority to make decisions binding upon such party (subject to those matters requiring an appropriate vote of the party's board of visitors or board of directors, as applicable) so as to not unduly delay the Project schedule.

35. Facility Use, Operation, and Maintenance Agreement.

The parties agree to develop and execute a Facility Use, Maintenance, and Operation Agreement not later than at the completion of the Working Drawing Design Phase that establishes the rights, and obligations of the parties with regard to use, operation, payments, and maintenance of the facility subsequent to the Substantial Completion Date. The Facility Use, Maintenance, and Operation Agreement will address issues such as but not limited to:

Phone Service

Data Service

Taxes

Insurance

Utilities

Maintenance

Custodial Service

Security Service

Landscaping Service

36. Land Acquisition

As part of the Project, Carilion will be providing the land commonly known as #4 Riverside Circle S.W., City of Roanoke, Virginia, designated by the City of Roanoke, Virginia as Tax Number 1032214 (the “Land”). The Land and all improvements thereon (the “Project property”) shall be conveyed to Virginia Tech at Final Completion or sooner arising from termination of this Agreement, if required in Section 23. For purposes of the Total Project Costs, the value of the Land has been established at its agreed fair market value, as specified in the TPC as provided in Section 2 (x), which amount shall be credited against Carilion’s Share.

37. Carilion’s Leasehold Interest

Upon Final Completion and conveyance of the Project property to Virginia Tech, Carilion shall have a long-term leasehold interest (such term to be agreed by the parties, based on the value of Carilion’s Share) in the portion of the Project improvements designed for Carilion’s use, presently estimated at ±8,000 square feet (“Carilion Premises”), rent-free, and otherwise in accordance with the terms of a deed of lease on commercially reasonable terms to be established by the parties and the terms of the Facility Use, Operation, and Maintenance Agreement governing each party’s use of the Project upon Final Completion. Further, the parties agree to negotiate a joint use agreement for any portion of the Carilion Premises or other portions of the Project that will be subject to periodic time-sharing with Virginia Tech. The forms of these agreements will be agreed upon by the parties when the form of the Facility Use, Operation, and Maintenance Agreement is agreed upon by the parties, as set forth in Section 35.

38. Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but both of such counterparts together shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for the other counterpart.

39. Entire Agreement.

(a) THIS AGREEMENT (INCLUDING THE EXHIBITS AND DOCUMENTS INCORPORATED BY REFERENCE HERETO) CONSTITUTES THE ENTIRE AND EXCLUSIVE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SPECIFIC MATTERS COVERED HEREIN. ALL PRIOR OR CONTEMPORANEOUS ORAL OR WRITTEN AGREEMENTS, UNDERSTANDINGS, REPRESENTATIONS AND/OR PRACTICES RELATIVE TO THE FOREGOING ARE HEREBY SUPERSEDED, REVOKED AND RENDERED INEFFECTIVE FOR ANY PURPOSE. THIS AGREEMENT MAY BE ALTERED, AMENDED OR REVOKED ONLY BY AN INSTRUMENT IN WRITING SIGNED BY EACH PARTY HERETO, OR ITS PERMITTED SUCCESSOR OR ASSIGNEE. NO ORAL AGREEMENT OR IMPLIED COVENANT SHALL BE HELD TO VARY THE TERMS HEREOF, ANY STATUTE, LAW OR CUSTOM TO THE CONTRARY NOTWITHSTANDING.

(b) If any provisions of this Agreement are rendered obsolete or ineffective in serving their purpose by change in law, passage of time, financing requirements or other future events or circumstances, the parties agree to negotiate in good faith appropriate amendments to or replacements of such provisions in order to restore and carry out the original purposes thereof to the extent practicable; provided, however, that neither party is obligated to agree to any amendment or replacement which would reduce its rights or enlarge its responsibilities under this Agreement in any material respect.

40. Limitation on Carilion's Contracting Powers.

Other than Project Agreements and Contract Documents authorized by this Agreement, Carilion shall have no right or authority to enter into, deliver or perform any contracts or agreements pertaining to the Project which purport to bind Virginia Tech or the

Commonwealth of Virginia or which are contrary to the terms of the Project Agreement without the express prior written consent of Virginia Tech. Virginia Tech may withhold or condition its consent in its sole and absolute discretion.

41. Disclosures; Non-Waiver; Limitations.

(a) Carilion understands and acknowledges that Virginia Tech is an agency of the Commonwealth of Virginia and with respect to tort liability for acts or occurrences involving the Project, including product liability, the Commonwealth and Virginia Tech are either (i) constitutionally immune (or partially immune) from suit, judgment or liability, (ii) insured, or (iii) covered by a financial plan of risk management that is in the nature of self-insurance, all as determined by applicable laws, government policies and practices.

(b) Carilion understands and acknowledges that Virginia Tech has not agreed to provide any indemnification or save harmless agreements running to Carilion. No provision, covenant or agreement contained in this Agreement shall be deemed to be a waiver of the sovereign immunity of the Commonwealth of Virginia, or of Virginia Tech, from tort or other liability.

(c) This Agreement shall be governed by, and construed according to, the laws of the Commonwealth of Virginia. The parties choose the City of Roanoke, Virginia, as the venue for any action instituted pursuant to the terms of this Agreement.

(d) Notwithstanding any provisions contained herein, the FFCP shall not exceed the funding limitations stipulated by the 2008 Acts of the Assembly, without additional and prior authorization by the Governor and/or the General Assembly; provided, however, if Carilion is otherwise entitled under this Agreement to an increase in the Firm Fixed Contract Price in excess of such funding limitations, Carilion shall not be obligated to incur any such additional cost unless and until such funding authorization is obtained.

42. Financial Statements.

Carilion agrees to provide Virginia Tech with copies of its complete and current financial statements on an annual basis.

43. Public Records.

Any work product Virginia Tech owns pursuant to the Comprehensive Agreement or otherwise, and any document of which Virginia Tech obtains a copy, may be considered public records under the Virginia Public Records Act, Va. Code § 42.1-76 through § 42.1-91, or official records under the Virginia Freedom of Information Act, Va. Code § 2.2-3700 through § 2.2-3714, and as such may be subject to public disclosure. Virginia Tech recognizes that certain work product Virginia Tech owns pursuant to this Agreement and certain documents of which Virginia Tech obtains a copy may contain information exempt from disclosure under Va. Code § 2.2-3705, may constitute trade secrets as defined in Va. Code § 59.1-336, and may include confidential information which is otherwise subject to protection from misappropriation or disclosure. Should such records become the subject of a request for public disclosure, Virginia Tech shall respond as follows:

(a) Virginia Tech shall use reasonable efforts to immediately notify Carilion of such request and the date by which it anticipates responding.

(b) Carilion must then assert in writing to Virginia Tech any claim that such records contain proprietary information that is exempt from disclosure under Va. Code § 2.2-3705, or is subject to protection pursuant to Va. Code § 59.1-339, or other State law so that Virginia Tech may consider such assertion in responding to the requester.

(c) If Carilion fails to make such assertion within ten consecutive calendar days after the date Virginia Tech notifies Carilion of its intended response, Virginia Tech shall have the right to make such disclosure.

(d) If Carilion makes a timely assertion that the requested records contain proprietary information, trade secrets or confidential information, and thus are exempt from disclosure or otherwise protected under state law, upon consultation with Carilion to agree upon a reasonable effort and legal cost, at Carilion's expense, Virginia Tech and Carilion shall seek judicial declaration of the rights of the parties. Until such declaration is made, Virginia Tech will maintain the confidentiality of such records.

(e) In no event shall Virginia Tech be liable to Carilion as a result of any disclosure of such records by Virginia Tech.

(f) If Virginia Tech's denial of a request for disclosure of records is challenged in court and Virginia Tech agrees to a request by Carilion to defend its position, Carilion shall assist Virginia Tech in its defense and shall indemnify Virginia Tech for any and all damages assessed and costs (including the fees and costs of Virginia Tech's attorneys) Virginia Tech incurs in such defense, including any attorneys' fees lawfully assessed against Virginia Tech.

(g) If Carilion believes that any work product or any document subject to transmittal to or review by Virginia Tech under the terms of this Agreement or any other Project Agreement contains proprietary or confidential information or trade secrets that are exempt or protected from disclosure pursuant to the Code of Virginia, Carilion shall use its best efforts to identify such information prior to such transmittal or review and it and Virginia Tech shall confer on appropriate means of ensuring compliance with applicable laws prior to transmittal or review. Carilion shall comply with the requirements of Va. Code § 2.2-3705.6(11) with regard to any such information. Upon the written request of either party, Carilion and Virginia Tech shall mutually develop a protocol for the transmittal, review and disclosure of work product or other documents produced or obtained by Carilion so as to avoid violations of any applicable law.

44. Construction and Interpretation of Agreement

(a) The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it.

(b) If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by either party hereunder, shall be held by

a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties to this Agreement, and the parties hereto agree, that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, the parties in good faith shall supply as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

(c) The captions of the articles, sections and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.

(d) References in this instrument to this “Agreement” mean, refer to and include this instrument as well as any riders, exhibits (subject to the exclusion of **Exhibits A** and **B** to the extent provided in Section 3(a) above), addenda and attachments hereto (which are hereby incorporated herein by reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation and/or undertaking “herein,” “hereunder” or “pursuant hereto” (or language of like import) mean, refer to and include the covenants, conditions, obligations and undertakings existing pursuant to this instrument and any riders, exhibits (subject to the exclusion of **Exhibits A** and **B** to the extent provided in Section 3(a) above), addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument. All terms defined in this instrument shall be deemed to have the same meanings in all riders, exhibits (subject to the exclusion of **Exhibits A** and **B** to the extent provided in Section 3(a) above), addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument unless the context thereof clearly requires the contrary. Unless expressly provided otherwise, all references to Sections refer to the Sections set forth in this Agreement. Unless otherwise stated in this Agreement (including documents incorporated by reference), words which have well-known technical or construction industry meanings are used in this Agreement in accordance with such recognized meaning.

(e) As used in this Agreement and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

(f) The Project Agreements, as set forth below, are intended to be complementary and consistent with each other and shall, to the maximum extent possible, be construed according to such intent. In the event of any conflict among the Project Agreements, the provisions of the document having higher priority as set forth below shall control:

Comprehensive Agreement

Construction Contract (initially the Preconstruction Services Agreement between Carilion and Skanska, to be replaced by a form of Contract between Owner and Construction Manager “At Risk” – Construction Phase Services (DGS CO-9CM), to be entered into by Owner and Project Contractor as the design and GMP for early work packages or separate phases of the Project are finalized and approved)

General Conditions of the Construction Manager “At Risk” Construction Contract (DGS CO-7CM) version dated 5/15, in the form attached hereto but modified by mutual agreement of Carilion and Virginia Tech after the Effective Date, with edits necessary to reflect that Carilion will be the Owner party under the Construction Contract and to accomplish the intent and purpose of this Comprehensive Agreement (“General Conditions”)

Supplemental General Conditions in the form attached hereto but modified after the Effective Date as mutually agreed agreement by of Carilion and Virginia Tech (“Supplementary Conditions”)

Terms and Conditions of the A/E Contract (DGS C0-3a) version dated 5/15 Carilion’s Plan for Compliance with Small, Women, and Minority-Owned Business Efforts

The Plans and Specifications prepared by the Project Designers, as developed and approved under the Comprehensive Agreement

The Authority to Initiate Capital Outlay Project form (HECO-2) attached as **Exhibit H** to the Comprehensive Agreement

45. Financing.

Virginia Tech hereby confirms to Carilion that it has authority to issue evidence of indebtedness (the “Obligations”) by and through the Virginia General Assembly’s 2008 Acts of Assembly and the in amounts sufficient for Virginia Tech to meet its obligations hereunder. Carilion recognizes and agrees that the sole source of payment by Virginia Tech and/or the Commonwealth hereunder shall be from the proceeds of such Obligations transferred to Virginia

Tech from time to time as stated in the drawdown schedule for payment of costs associated with the Project and updated as requested and/or required under financing arrangements for the Project by Virginia Tech.

46. Exhibits.

Subject to limitations on the applicability of **Exhibits A** and **B** to this Agreement as set forth in Section 3(a), the following exhibits are hereby deemed to be part of this Agreement:

Exhibit A – Carilion conceptual proposal dated 4/28/17

Exhibit B – Carilion detailed proposal dated 7/14/17

Exhibit C – Equipment Responsibility Matrix

Exhibit D – Carilion Projected Partial Payment Schedule

Exhibit E – Public Notice of Negotiation of Comprehensive Agreement

Exhibit F – Virginia Tech PPEA Guidelines, December 2007

Exhibit G – Corporate Guarantee by Carilion, to be replaced by the required Payment and Performance Bond when issued by the Project Contractor

Exhibit H – HECO-2, Authority to Initiate Capital Outlay Project form

Exhibit I – General Conditions of the Construction Manager “At Risk” Contract (as defined above in Section 44(f))

Exhibit J – Supplemental Conditions to the Construction Contract (as defined above in Section 44(f))

Exhibit K – Terms and Conditions of the A/E Contract (as defined above in Section 44(f))

[SIGNATURES AND EXHIBITS FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Comprehensive Agreement as of the day and year first above written.

Virginia Polytechnic Institute and State University

By: _____
Name: _____
Title: _____

Carilion Clinic

By: _____
Name: _____
Title: _____