

LENDER'S DIRECT AGREEMENT

THIS LENDER'S DIRECT AGREEMENT is made as of the 10th day of July, 2008

BETWEEN:

THE BOARD OF GOVERNORS OF THE KINGSTON HOSPITAL, COMMONLY REFERRED TO AS KINGSTON GENERAL HOSPITAL, a non-share capital corporation incorporated under the laws of the Province of Ontario

("Owner")

AND:

THE TORONTO-DOMINION BANK, acting as administrative agent for and on behalf of Lender

("Agent")

AND:

HEALTH PARTNERS KINGSTON LTD., an entity incorporated under the laws of the Province of Alberta

("Project Co")

WHEREAS:

- A. Owner and Project Co have entered into the Project Agreement.
- B. Under the Lending Agreements, the Financing is to be provided to Project Co by Lender to finance the payment of the Base Progress Payments to Project Co under the Project Agreement, conditional, among other things, on Project Co executing and delivering the Lending Agreements.
- C. Agent has agreed to enter into this Lender's Direct Agreement with Owner and Project Co in relation to the Lending Agreements, the exercise of its rights under the Lending Agreements and the remedying of breaches by Project Co under the Project Agreement.
- D. Project Co and Agent recognize and understand that Owner is a public hospital under the *Public Hospitals Act* (Ontario) and is therefore subject to a highly regulated legal and operational environment.
- E. Owner has been authorized to execute this Lender's Direct Agreement by the Authority (it being acknowledged by the parties to this Lender's Direct Agreement that such authorization or any approvals by the Authority of the Project in accordance with the *Public Hospitals Act* (Ontario) or Authority polices, in no way obligates the Authority or the Province under this Lender's Direct Agreement or otherwise in respect of the Project).

- F. The Parties hereto agree that in relation to any defaults under the Lending Agreements and/or the Project Agreement and any enforcement action which either wishes to take under any security document entered into in support of the obligations of Project Co thereunder, their joint efforts and cooperation will be needed, together with such statutory approvals and consents as may then be required, given the nature of the Owner as a public hospital.

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

1. DEFINITIONS AND INTERPRETATION

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

- (a) **"Appointed Representative"** means any of the following to the extent so identified in an Appointed Representative Notice:
 - (i) Agent, Lender or any Affiliate of either of them;
 - (ii) a receiver or receiver and manager or any permutation thereof of Project Co appointed under the Lending Agreements;
 - (iii) a Person directly or indirectly owned or controlled by Agent or Lender; or
 - (iv) any other Person approved by Owner (such approval not to be unreasonably withheld or delayed).
- (b) **"Appointed Representative Notice"** has the meaning given to it in Section 7.2.
- (c) **"Article"** and **"Section"** mean and refer to the specified article and section or subsection of this Project Agreement.
- (d) **"Enforcement Action"** means any acceleration of amounts due and owing under any of the Lending Agreements and/or any enforcement proceeding or enforcement action commenced or taken under any of the Lending Agreements.
- (e) **"Enforcement Event"** means an event of default under the Lending Agreements or any event which permits an Enforcement Action.
- (f) **"Enforcement Rights"** means the rights as against Project Co to enforce or terminate the Project Agreement under Article 25 therein.
- (g) **"Lender"** means, collectively, The Toronto-Dominion Bank, The Manufacturers Life Insurance Company, Bank of Montreal, National Bank of Canada and Canadian Imperial Bank of Commerce, and each of them.

- (h) **[INTENTIONALLY DELETED]**.
- (i) **“Lender’s Direct Agreement”** means this lender’s direct agreement.
- (j) **“Lending Agreements”** means any or all of the agreements or instruments to be entered into by Project Co or any of its Affiliates relating to the financing of the Project by Lender and includes but is not limited to:
 - (i) **[Redacted]**.
- (k) **“Lien”** means the lien provided for under Section 14(1) of the *Construction Lien Act* (Ontario).
- (l) **“Notice Period”** means the period starting on the date of delivery of a Project Co Default Notice and ending 120 days later.
- (m) **“Party”** means any of Owner, Project Co or Agent, and **“Parties”** means all of Owner, Project Co and Agent, but, for greater certainty, such definitions do not include Infrastructure Ontario or Her Majesty the Queen in Right of Ontario, as represented by either the Minister of Health and Long-Term Care or the Minister of Public Infrastructure Renewal.
- (n) **“Pre-Qualified Proponent”** means an entity listed in Appendix A to this Lender’s Direct Agreement.
- (o) **“Project Agreement Assignment”** means an assignment of the Project Agreement by an Appointed Representative to a Replacement Project Co as contemplated in Section 7.3.
- (p) **“Project Co Default Notice”** has the meaning given to it in Section 6.1.
- (q) **“Project Co Event of Default”** means the occurrence of an event under the Project Agreement that upon the expiry of any cure periods provided for therein would entitle Owner to terminate the Project Agreement.
- (r) **“Rectification Obligations”** has the meaning given in Section 7.3.
- (s) **“Replacement Construction Contract”** has the meaning given to it in Section 7.3.
- (t) **“Replacement Contractor”** means a replacement contractor under a Construction Contract Assignment or a Replacement Construction Contract entered into pursuant to Section 7.3 who must either be a contractor that is a Pre-Qualified Proponent or that is acceptable to Owner, Infrastructure Ontario and the Authority, acting reasonably.
- (u) **“Replacement Project Agreement”** has the meaning given to it in Section 7.3.

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

1.2 Interpretation

- (a) The provisions of Sections 2.1 – 2.27, inclusive, of Schedule 1 of the Project Agreement are hereby incorporated in their entirety and all references in same to “Project Agreement” shall be read as “Lender’s Direct Agreement”.
- (b) This Lender’s Direct Agreement is comprised of this executed Agreement and the following documents, all of which are hereby incorporated by reference into and form part of this Lender’s Direct Agreement.

Appendix No.	Description
Appendix A	Pre-qualified Proponents

2. CONFLICT IN DOCUMENTS

- 2.1 In the event of ambiguities, conflicts or inconsistencies between or among this Lender’s Direct Agreement and the Project Agreement, this Lender’s Direct Agreement shall prevail. Notwithstanding the foregoing, if there is any right or remedy in favour of Owner set out in this Lender’s Direct Agreement or any part thereof which is not set out or provided for in the

Project Agreement, such additional right or remedy shall not constitute an ambiguity, conflict or inconsistency. Notwithstanding any provision of any other Implementing Agreement, including Section 2.5(a)(iv) of the Project Agreement, no review by Owner of the Lending Agreements shall constitute an acceptance of or acquiescence to any of the Lending Agreements or any term or condition thereof by Owner, and this Lender's Direct Agreement and the Project Agreement shall not be subject to any of the terms and conditions of the Lending Agreements.

3. TERM

- 3.1** This Lender's Direct Agreement shall terminate automatically on the date on which all obligations that may be or become owing by Project Co to Agent or Lender under the Lending Agreements have been satisfied in full.
- 3.2** Promptly, and in no event more than 30 days following its occurrence, Agent shall provide notice to Owner of the date referred to in Section 3.1.
- 3.3** Owner hereby provides to Lender, Agent and Project Co and agrees to provide to Replacement Project Co, a non-exclusive license to have access to and to use the Site on the same terms and conditions as set out in Section 9.1 of the Project Agreement.

4. AGREEMENTS AND SECURITY

- 4.1** (a) Project Co and Agent shall not amend or modify any Lending Agreements other than as expressly provided for under the terms of those agreements and so long as such amendment:
- (i) is consistent in all material respects with the Financial Model;
 - (ii) does not increase the Cost of the Financing; and
 - (iii) does not increase the amount of any Compensation Payment, if and when payable, or costs of prepayment that were contained in the financing term sheet in the Proposal Submission and shall provide prompt notice to Owner of any amendments or modifications accompanied by a copy thereof.
- (b) Project Co and Owner shall not amend or modify the Project Agreement or any Implementing Agreements to which Project Co or Owner are parties, without the prior written consent of Agent, not to be unreasonably withheld or delayed, which consent (subject to Section 6.4 of this Lender's Direct Agreement) shall not be withheld if the relevant amendment or modification does not:
- (i) adversely affect the ability of Agent or Lender to exercise its rights under the Lending Agreements;
 - (ii) adversely affect the security of the Lender under the Lending Agreements; or

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

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

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

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

- 4.2 Project Co acknowledges and consents to the arrangements set out in this Lender's Direct Agreement, and agrees not to do or omit to do anything that may prevent any other Party from enforcing its rights under this Lender's Direct Agreement.
- 4.3 Agent acknowledges having received a copy of each of the Implementing Agreements.
- 4.4 Owner acknowledges having received a copy of each of the Lending Agreements and consents to the granting of security by Project Co over the Project Agreement and Implementing Agreements contained in the Lending Agreements.
- 4.5 Project Co and Agent acknowledge that, subject to the provisions of the *Construction Lien Act* (Ontario) none of Project Co, Agent or Lender shall, under the Project Agreement or any of the Implementing Agreements, acquire any interest in the Site or the Project (other than

the licence to access the Site or the Facility provided in Section 3.3 of this Lender's Direct Agreement or in Section 9.1(a) of the Project Agreement) notwithstanding any provision therein to the contrary and that Owner shall at all times retain the fee simple interest in and freehold title to the Site and the Project to be constructed on the Site under the Project Agreement.

4.6 Without limitation of any of their respective rights and remedies under the Implementing Agreements, Project Co and Agent acknowledge that Owner is a public hospital and nothing in this Lender's Direct Agreement or any of the Implementing Agreements, including the Construction Contract, shall limit or shall be construed as limiting any authority and responsibility of Owner under the *Public Hospitals Act* (Ontario) or, subject to Section 10.1(b) of the Project Agreement, any directions to Owner or to the board of directors of Owner made by a Governmental Authority under Applicable Law, or from being in compliance with all Applicable Law.

4.7 The Parties agree that they will enter into the Insurance and Bonding Trust Agreement contemporaneously with the execution of this Lender's Direct Agreement.

5. ENFORCEMENT OF SECURITY BY AGENT

5.1 Agent shall concurrently with notice to Project Co notify Owner and the Surety of any Enforcement Event, any notice of default delivered pursuant to the Lending Agreements, any Enforcement Action, any notice from Agent to Project Co to accelerate the maturity of any amounts owing by Project Co to Agent or Lender under the Lending Agreements or any notice from Agent to Project Co to demand repayment thereof.

5.2 Agent shall appoint Lender's Consultant to perform the Lender's Consultant responsibilities in accordance with the Project Agreement, including Sections 1.3 and 2.1 of Appendix 1 to Schedule 6 – Form of Construction Contract. At all times that a Legislative Holdback is to be maintained pursuant to the *Construction Lien Act* (Ontario), Project Co agrees that it shall hold a Legislative Holdback LC in an amount equal to the Legislative Holdback to be maintained in respect of all Base Progress Payments made up to such date. Agent shall cause the Lender's Consultant to provide to Project Co, and Project Co agrees to provide to Owner and Infrastructure Ontario, a copy of any written assessment or report prepared by the Lender's Consultant in relation to the status or progress of the Work under the Construction Contract, including but not limited to, any certificate of payment, concurrently with its delivery to the Agent. The Agent acknowledges and agrees that this Section 5.2 shall constitute sufficient authority for the Lender's Consultant to provide, without delay, a copy of any and all of its written assessments and reports to Project Co. Project Co shall provide the Owner and the Agent with monthly confirmation that Project Co is holding a Legislative Holdback LC which complies with the requirements of this Section 5.2.

5.3 Owner may conduct a subsearch of the Site at any time and from time to time and notify Agent and Project Co if any Lien has been registered against the Site arising from performance of the Work (save and except for any Liens in respect of work done by contractors directly engaged by Owner for which Project Co has not assumed responsibility pursuant to an assignment under Section 11.8(c) of the Project Agreement, and provided in

such case that Project Co has not assumed responsibility for payment of such contractors), and if such a Lien has been registered, Project Co shall immediately take such steps, at its sole cost and expense, as are required to have the Lien vacated or discharged. Agent acknowledges and agrees with Owner that neither Agent nor Lender shall be entitled to rely on Owner to conduct a subsearch or on any subsearch result of Owner and that the result of any such subsearch provided by Owner is, subject to the obligations of Project Co and Agent hereunder, for information only.

- 5.4 Agent agrees to conduct a subsearch of the Site prior to the advance of any Financing and if a Lien has been registered against the Site arising from the performance of the Work (save and except for any Liens in respect of work done by contractors directly engaged by Owner for which Project Co has not assumed responsibility pursuant to an assignment under Section 11.8(c) of the Project Agreement, and provided in such case that Project Co has not assumed responsibility for payment of such contractors), Agent shall direct Project Co to proceed to immediately take such steps, at its sole cost and expense, as are required to have the Lien vacated or discharged or to make alternative arrangements to bond or otherwise secure the amount of the Lien and costs associated therewith satisfactory to Agent, acting reasonably, and doing so shall be a condition precedent to the making of any advance of the Financing.

6. PROJECT CO EVENT OF DEFAULT

- 6.1 Subject only to the rights expressly afforded to Agent in this Article 6, Owner shall serve notice to Agent, with a copy to Project Co, of a Project Co Event of Default (the “**Project Co Default Notice**”) contemporaneously with any notice delivered by Owner to Project Co under the Project Agreement. Without limiting the rights and remedies of Agent hereunder and without prejudice to Agent’s right to enforce the Lending Agreements against Project Co, upon the occurrence of a Project Co Event of Default, Agent shall forthwith serve notice of default on the Surety and make demand on the Surety under the Performance Bond if the Project Co Event of Default is also a default by the Contractor of its obligations under the Construction Contract (a “**Construction Event of Default**”).
- 6.2 At any time other than during the Step-In Period (with the restriction on termination during the Step-In Period set out in Section 6.3), Owner shall not exercise any right it may have to terminate the Project Agreement or, except to the extent required to protect legal rights, comply with Applicable Law or preserve its right to make a claim or recover under the Performance Bond, exercise any other rights or remedies for a Project Co Event of Default unless:
- (a) Owner delivers to Agent a Project Co Default Notice setting out the nature of the alleged default in reasonable detail; and
 - (b) in the case of a Project Co Event of Default which is capable of being cured, the Project Co Event of Default has not been cured by or on behalf of Appointed Representative within 30 days of the time periods set forth in the Project Agreement, or Appointed Representative (either itself or by others on its behalf) is not diligently proceeding to cure the breach in accordance with Section 25.1(a) of the Project

Agreement within the time periods set forth in the Project Agreement, including for greater certainty, prior to the Longstop Date; or

- (c) in the case of a Project Co Event of Default which is incapable of being cured, the Notice Period has expired and Agent has not delivered a Step-In Notice.

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

- (a) if, in the case of a Project Co Event of Default which is capable of being cured, the Project Co Event of Default has been cured by or on behalf of Appointed Representative within 30 days of the time periods set forth in the Project Agreement, or Appointed Representative (either itself or by others on its behalf) is diligently proceeding to cure the breach in accordance with Section 25.1(a) of the Project Agreement within the time periods set forth in the Project Agreement, including for greater certainty, prior to the Longstop Date;
- (b) if, in the case of a Project Co Event of Default which is either:
 - (i) not capable of being cured (which, by way of example, would include an event described in Section 25.1(a)(i) of the Project Agreement), or
 - (ii) can only be cured in the determination of Agent (acting reasonably) by assigning the Project Agreement to a Replacement Project Co or entering into a Replacement Project Agreement as provided under Section 7.3, a Project Agreement Assignment with a Replacement Project Co or a Replacement Project Agreement with a Replacement Project Co has been entered into in accordance with Section 7.3 within 120 days of the delivery of the Project Co Default Notice. Owner and Appointed Representative may agree to extend such time period where Appointed Representative is proceeding diligently. In the case of either a Project Agreement Assignment or a Replacement Project Agreement having been entered into, the Work thereunder is to be completed on or before the date falling 180 days after the Longstop Date.

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

7. LENDER'S STEP-IN RIGHTS

- 7.1 Subject to Sections 6.2(b) and 7.2 and without prejudice to Agent's rights to enforce the Lending Agreements against Project Co, Agent may give Owner a Step-In Notice at any time:
- (a) during which a Project Co Event of Default is subsisting (whether or not a Project Co Default Notice has been served);
 - (b) during the Notice Period; or
 - (c) during which an Enforcement Event is subsisting.
- 7.2 At the time Agent delivers a Step-In Notice, Agent shall deliver written notice (an "**Appointed Representative Notice**") to Owner of the identity of its proposed Appointed Representative.
- 7.3 Subject to Section 6.3(a), upon issuance of a Step-In Notice, Appointed Representative shall have the benefit of and shall be entitled to exercise the rights and entitlements of Project Co under the Project Agreement and the Implementing Agreements (to the extent that Appointed Representative has or has a right to receive such rights under the Lending Agreements) and shall perform or cause to be performed all of Project Co's obligations under the Project Agreement and the Implementing Agreements pursuant to the Enforcement Rights and cause Project Co to remedy the Project Co Event of Default and shall have the right, subject to the prior approval of Owner, acting reasonably, and subject to the terms and conditions of the Bonds to:
- (a) assign Project Co's interest in the Project Agreement and the other Implementing Agreements (excluding the Bonds) to a Replacement Project Co (the "**Project Agreement Assignment**"), subject to the agreement by the Replacement Project Co to assume the terms and conditions of the Project Agreement and the other Implementing Agreements; or
 - (b) terminate the Project Agreement pursuant to the Enforcement Rights, and cause a replacement project agreement to be entered into with a Replacement Project Co (the "**Replacement Project Agreement**") on terms substantially similar to the Project Agreement; and
 - (c) subject to the terms and conditions of the Bonds (i) assign the Contractor's interest in the Construction Contract to a Replacement Contractor (the "**Construction Contract Assignment**") subject to the agreement by the Replacement Contractor to assume the terms and conditions of the Construction Contract; or (ii) terminate the Construction Contract and to enter into a replacement construction contract with a Replacement Contractor (the "**Replacement Construction Contract**") on terms substantially similar to the Construction Contract;

provided that in either case, the Replacement Project Co covenants in the Project Agreement Assignment or the Replacement Project Agreement, as applicable, to:

- (i) remedy any curable breach of Project Co under the Project Agreement, whether in respect of payment or performance and whether arising prior to or during the Step-In Period,
- (ii) vacate any Liens from the Site arising from the performance of the Work, whether arising prior to or during the Step-In Period (other than in the circumstances set out in Section 6.3(b)(ii)), and
- (iii) provide replacement or ensure continued maintenance of the Security under the Project Agreement;

(items (i), (ii) and (iii) of this Section 7.3 are collectively referred to as the “**Rectification Obligations**”) and in the case of items (i) and (ii) subject to and within the time period for curing Project Co Events of Default as set out in Section 6.3(a); provided however, for the purposes of clauses (i) and (ii) above, the time period as set out in Section 6.3(a) shall be deemed to be extended by 30 days upon the date of the entering into of a Project Agreement Assignment or Replacement Project Agreement, as the case may be.

Upon any Project Agreement Assignment or the entering into of a Replacement Project Agreement, as the case may be, the Project Agreement shall be deemed to be terminated on the date of such Project Agreement Assignment or the entering into of a Replacement Project Agreement, as the case may be, with respect to Project Co, and the provisions of Section 4.6 of Schedule 12 to the Project Agreement - Compensation on Termination, shall apply without any compensation payment having been made by Owner pursuant to Section 2.1 of Schedule 12 to the Project Agreement, and the Replacement Project Co shall have no liability for the non-performance of Project Co arising prior to the date of such Project Agreement Assignment or the entering into of a Replacement Project Agreement, as the case may be, unless same is encompassed in the Rectification Obligations, provided the foregoing shall not limit the rights of Owner to subsequently deduct from payments owing by Owner under the Project Agreement those amounts which it would otherwise be entitled to deduct under the Project Agreement.

- 7.4 At the time of a Project Agreement Assignment or the entering into of a Replacement Project Agreement under Section 7.3, if the Replacement Project Co is not, itself, a Pre-Qualified Proponent, then the Agent shall be required to cause the Replacement Project Co to enter into a construction contract, on terms substantially similar to the Construction Contract and the Pre-Qualified Proponent shall be required to enter into an assignable subcontract agreement, on terms substantially similar to the form of the Assignable Subcontract Agreement for Construction Contract, or make such other arrangements satisfactory to Owner under which the Replacement Project Co and the Pre-Qualified Proponent stand in the place of Project Co and the Contractor under the Lending Agreements, the Project Agreement and the Implementing Agreements.
- 7.5 During the Step-In Period, Owner shall deal with Appointed Representative instead of Project Co in connection with all matters related to the Project Agreement. Project Co agrees to be bound by all such dealings between Owner and Appointed Representative to the same extent as if they had been between Owner and Project Co.

7.6 For greater certainty, Agent acknowledges and agrees that its rights as Obligee under the Performance Bond shall be limited to the enforcement of the obligations of the Surety, as more particularly described in the Performance Bond, and shall be subject to Agent's obligation as an Obligee to pay the Balance of the Contract Price. If Agent receives any benefit from the Surety under the Performance Bond and fails to complete or cause to have completed the obligations of the Contractor under the Construction Contract, Agent shall pay to Owner an amount equal to the amount of the proceeds received by Agent from the Surety and not applied toward obtaining the completion of the unperformed obligations of the Contractor under the Construction Contract. For the purposes of this Section 7.6, the terms "Obligee", "Surety", and "Balance of the Contract Price" have the meanings given to them under the Performance Bonds.

8. STEP-OUT RIGHTS

8.1 Appointed Representative may, at any time during the Step-In Period, deliver written notice (a "**Step-Out Notice**") to Owner to terminate the Step-In Period on the Step-Out Date.

8.2 On termination of the Step-In Period, where the Project Agreement has been assigned to the Replacement Project Co or a Replacement Project Agreement has been entered into as contemplated in Section 7.3, Owner and Appointed Representative shall be released from any obligations to the other arising during the Step-In Period, except as may arise under Section 6.4, Section 7.6 or Section 8.6(iii).

8.3 On termination of the Step-In Period, if (i) the Project Co Event of Default has not been cured, or (ii) the Project Agreement has not been assigned to a Replacement Project Co or a Replacement Project Agreement has not been entered into and any outstanding Project Co Event of Default has not been cured, then Owner shall confirm that, as consideration for the rights and benefits assigned to Owner pursuant to Section 8.3(c) below, it shall pay to Project Co or as Project Co may direct, an amount equal to the amount that would have been paid by Owner upon termination of the Project Agreement pursuant to the provisions of Section 2.1 of Schedule 12 to the Project Agreement – Compensation on Termination (and calculated and payable in accordance therewith) as if the date of such confirmation were the Termination Date (the "**Step-Out Amount**") and upon such confirmation:

- (a) any rights and obligations between Appointed Representative on the one hand and Owner on the other hand, arising during the Step-In Period, shall be mutually released, except as may arise under Section 6.4, Section 7.6 or Section 8.6(iii);
- (b) subject to payment of the Step-Out Amount by Owner, Owner shall have no further obligation to Appointed Representative or Project Co to pay the Owner Reimbursement Payment to Agent, Lender, Appointed Representative or Project Co on the achievement of Substantial Completion of the Work;
- (c) Agent shall permit Owner thereupon to have the full benefit and entitlement to the Bonds, the Assignable Subcontract Agreement for Construction Contract and the Assignable Subcontract Agreements without regard to any interest therein of Agent, Lender or Project Co, and Agent agrees that Owner may thereafter proceed to

enforce all of its rights under the Bonds, the Assignable Subcontract Agreement for Construction Contract and/or the Assignable Subcontract Agreements without regard to any rights in favour of Agent, Lender or Project Co and Agent shall notify the Surety under the Performance Bond that Owner is entitled to exercise all rights and take all benefits of the Obligee;

- (d) the provisions of Section 4.6(a) of Schedule 12 to the Project Agreement – Compensation on Termination shall, subject to payment of the Step-Out Amount by Owner, be, subject to Section 8.5, deemed to apply as between Project Co and Owner, *mutatis mutandis*, and the obligation to make Base Progress Payments shall devolve to and thereafter be assumed by Owner; and
- (e) the provisions of Sections 4.3 to 4.8, inclusive, of the Project Agreement shall no longer apply.

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

- 8.4** There will not be more than one Step-In Period following the issuance by Owner of any one Project Co Default Notice.
- 8.5** Owner acknowledges and agrees that if Owner proceeds to exercise its rights as Obligee under the Performance Bond, unless Owner has arranged for a replacement Financing through Project Co, a Replacement Project Co or a substitute project co, then Owner shall be obligated to make the Base Progress Payments and to pay the applicable Value Added Tax subject to and in accordance with the requirements of the Construction Contract.
- 8.6** Owner hereby undertakes that it will not exercise any rights it may have under or arising out of any of the Assignable Subcontract Agreements except following a termination of the Project Agreement in accordance with its terms. For greater certainty, and subject to (i) the consent of Owner, acting reasonably, (ii) the terms and conditions of or the ensured continuation of the Bonds and (iii) the undertaking of Agent and/or the Appointed Representative that, upon the exercise of any Step-Out Rights pursuant to Section 8, Agent and/or the Appointed Representative shall cause to be assigned to Owner, or as Owner may direct, all subcontracts which are assigned to or at the direction of Agent and/or the Appointed Representative as hereinafter provided, to the extent required in connection with the exercise by the Appointed Representative of the rights and remedies set forth in Section 7.3, Owner covenants and agrees with Agent that it shall, upon written request of Agent and as Agent and/or the Appointed Representative may direct, in respect of each subcontract which is the subject of any Assignable Subcontractor Agreement (as “ASA”), issue (i) an Assignment Notice (in accordance with and as defined in Section 3(c) of the ASA), to the subcontractor party thereto indicating therein as Assignee (as defined in the Section 3(c)),

Agent, the Appointed Representative or as Agent or the Appointed Representative may otherwise direct, or (ii) a Direct Assignment Notice (in accordance with and as defined in Section 3(e) of the ASA) to the subcontractor party thereto indicating therein as GC Assignee (as defined in Section 3(d) of the ASA) any Replacement Contractor.

9. PAYMENT DIRECTION OF OWNER REIMBURSEMENT PAYMENT AND COMPENSATION PAYMENT

9.1 Owner acknowledges the assignment by Project Co of the Owner Reimbursement Payment and any Compensation Payment to Agent under the security granted to Agent by Project Co under the Lending Agreements. Project Co hereby irrevocably directs Owner to pay the Owner Reimbursement Payment and any Compensation Payment which becomes payable to Project Co in accordance with the Project Agreement, to Agent or as Agent may direct. Owner acknowledges such direction and agrees to pay the Owner Reimbursement Payment and any Compensation Payment to Agent in accordance with such direction. Project Co acknowledges and agrees that payment by Owner of the Owner Reimbursement Payment or any Compensation Payment in accordance with this Section 9.1 to Agent or as Agent may direct, constitutes payment by Owner to Project Co in satisfaction of Owner's obligation to make the Owner Reimbursement Payment or any Compensation Payment, as the case may be. For greater certainty, no Compensation Payment shall be payable on a termination of the Project Agreement by Appointed Representative as a result of Appointed Representative exercising its rights under Section 7.3(b) of this Lender's Direct Agreement; provided however, nothing herein is intended to restrict or relieve the Owner of the obligation to make a Compensation Payment (without duplication) to the extent contemplated or required under any Replacement Project Agreement.

10. ASSIGNMENT

10.1 Owner may assign or otherwise dispose of the benefit of the whole (but not part) of its interest in this Lender's Direct Agreement to any person to whom Owner assigns or otherwise disposes of its interest in the Project Agreement and the other Implementing Agreements pursuant to Section 38.2 of the Project Agreement, and shall provide written notice to Project Co and Agent of such assignment or disposition. Such assignee shall assume the obligations and acquire the rights of Owner under this Lender's Direct Agreement. Upon any such assignment or disposition, Owner shall be released from all of its obligations hereunder to the extent such obligations are assumed by the assignee. Project Co and Agent shall, at Owner's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

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

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

11. NOTICES

11.1 Notices to Parties

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

If to Owner: **Kingston General Hospital**
Joint Planning Office
24 Barrie Street
Kingston, Ontario K7L 3J6

Attention.: **[Redacted]**
Fax No.: **[Redacted]**

With a copy to
Infrastructure Ontario: 777 Bay Street, 9th Floor
Toronto, Ontario M5G 2C8

Attention: **[Redacted]**
Fax No.: **[Redacted]**

If to Agent: **The Toronto-Dominion Bank**
Loan Syndications-Agency
Royal Trust Tower, 18th floor
77 King Street West
Toronto, Ontario M5K 1A2

Attention: **[Redacted]**
Fax No: **[Redacted]**

If to Project Co: **Health Partners Kingston Ltd.**
#2, 5410 – 99 Street
Edmonton, Alberta T6E 3P4

Attention: **[Redacted]**
Fax No: **[Redacted]**

11.2 Facsimile

Where any Notice is provided or submitted to a Party via facsimile, an original of the Notice sent via facsimile shall promptly be sent by regular mail. For greater certainty, a notice

given via facsimile shall not be invalid by reason only of a Party's failure to comply with this Section 11.2.

11.3 Change of Address

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

11.4 Deemed Receipt of Notices

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

12. GENERAL

12.1 Amendments

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

12.2 Waiver

- (a) No waiver made or given by a Party under or in connection with this Lender's Direct Agreement shall be binding or effective unless the waiver is in writing, signed by an authorized representative of the Party giving such waiver, and delivered by such Party to the other Party. No waiver made with respect to any such right, power or remedy, in one instance will be deemed to be a waiver with respect to any other

instance involving the exercise of the right, power, or remedy or with respect to any other such right, power, or remedy.

- (b) Failure by any Party to exercise any of its rights, powers or remedies hereunder or its delay to do so shall not constitute a waiver of those rights, powers or remedies. The single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

12.3 Relationship Between the Parties

Each of the Parties acknowledges that it is contracting on its own behalf and not as agent for any other person. This Lender's Direct Agreement is not intended to and does not create or establish between the Parties or between any of the Parties and the Province, including Infrastructure Ontario, any relationship as partners, joint venturers, employer and employee, master and servant, or of principal and agent, and does not create or establish any relationship whatsoever between Owner, the Province, including Infrastructure Ontario, and any Affiliate, representative or employee of Project Co or Agent.

12.4 Entire Agreement

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

12.5 No Reliance

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

12.6 Severability

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

12.7 Enurement

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

12.8 Governing Law and Jurisdiction

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

12.9 Cumulative Remedies

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

12.10 Further Assurance

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

12.11 Costs

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

12.12 Counterparts

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

faxed or other electronic form shall promptly forward to such Party an original signed copy of this Lender's Direct Agreement which was so transmitted.

12.13 Language of Agreement

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

12.14 Confidentiality

Agent shall comply with the obligations on the part of Project Co contained in Article 37 of the Project Agreement and this obligation shall survive the termination of this Lender's Direct Agreement.

12.15 Tombstone Marketing

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

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

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

THE BOARD OF GOVERNORS OF THE KINGSTON HOSPITAL, COMMONLY REFERRED TO AS KINGSTON GENERAL HOSPITAL

Per: _____
Name: [Redacted]
Title: [Redacted]

Per: _____
Name: [Redacted]
Title: [Redacted]

I/We have authority to bind the corporation

THE TORONTO-DOMINION BANK, acting in its capacity as administrative agent for and on behalf of Lender

Per: _____
Name: [Redacted]
Title: [Redacted]

I/We have authority to bind the corporation

HEALTH PARTNERS KINGSTON LTD.

Per: _____
Name: [Redacted]
Title: [Redacted]

Per: _____
Name: [Redacted]
Title: [Redacted]

I/We have authority to bind the corporation

APPENDIX A
PRE-QUALIFIED PROPONENTS

[Redacted]