

PROJECT AGREEMENT

TO BUILD AND FINANCE

HAMILTON HEALTH SCIENCES CORPORATION

HAMILTON GENERAL HOSPITAL REDEVELOPMENT PROJECT

CONFIDENTIAL

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Schedule 5	-	[REDACTED]

PROJECT AGREEMENT

THIS PROJECT AGREEMENT is made as of the 26th day of September, 2007

BETWEEN:

HAMILTON HEALTH SCIENCES CORPORATION, a non-share capital corporation amalgamated under the laws of the Province of Ontario

(“Hospital”)

AND:

ELLISDON CORPORATION, a corporation incorporated under the laws of the Province of Ontario

(“Contractor”)

AND:

ELLISDON-LPF HAMILTON GENERAL LP, a limited partnership existing under the laws of the Province of Ontario

(“Project Co”).

WHEREAS:

- A. Hospital, with the assistance of Infrastructure Ontario, wishes to procure the financing and construction of the Hamilton General Hospital Redevelopment Project in Hamilton, Ontario in order to improve access to healthcare facilities and the quality and efficiency of the services provided to patients of the Hamilton Health Sciences Corporation.
- B. Hospital together with Infrastructure Ontario issued the Request for Proposals for the financing and construction of the Hamilton General Hospital Redevelopment Project in Hamilton, Ontario, and Contractor submitted its proposal (the “RFP Submission”) on or before the closing date for submission under the Request for Proposals (the “Submission Date”).
- C. Contractor and Project Co were selected as the successful Preferred Proponent under and as defined in the Request for Proposals and Hospital, Contractor and Project Co wish to enter into this Project Agreement, which sets out the terms and conditions upon which Contractor and Project Co shall deliver the Project.
- D. Contractor and Project Co recognize and understand that Hospital is a public hospital under the *Public Hospitals Act* (Ontario) and is therefore subject to a highly regulated legal and operational environment.

- E. Hospital has been authorized to execute the Project Agreement by the MOHLTC (it being acknowledged by the parties to this Project Agreement that such authorization in no way obligates the Government of Ontario or the Province under the Project Agreement or otherwise in respect of the Project).
- F. The overriding priorities of Hospital in entering into and implementing this Project Agreement are the health and safety of its patients, their healthcare needs and interests and the provision of first-rate healthcare services.
- G. The Project will proceed as an alternative financing and procurement project under PIR's *ReNew Ontario* infrastructure investment plan, and complies with the principles set out in PIR's *Building a Better Tomorrow: An Infrastructure Planning, Financing and Procurement Framework for Ontario's Public Sector* (the "IPFP Framework").
- H. The IPFP Framework establishes 5 fundamental principles which guide the financing and procurement of public infrastructure projects in Ontario:
 - 1. The public interest is paramount.
 - 2. Value for money must be demonstrable.
 - 3. Appropriate public control/ownership must be preserved.
 - 4. Accountability must be maintained.
 - 5. All processes must be fair, transparent and efficient.
- I. The IPFP Framework states that, consistent with the principle of appropriate public ownership/control, public ownership of public assets will be preserved in the hospital sector.

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:

ARTICLE 1 - DEFINITIONS AND INTERPRETATION

1.1 Definitions

The terms defined in this Section shall have, for all purposes of this Project Agreement the following meanings, unless the context expressly or by necessary implication otherwise requires:

- (a) "**Affiliate**" means an "affiliate" as that term is used in the *Business Corporations Act* (Ontario).
- (b) "**Agent**" has the meaning given to it in the Limited Assignment of Construction Contract.

- (c) “**Applicable Law**” means:
- (i) any statute or proclamation or any delegated or subordinate legislation including regulations and by-laws;
 - (ii) any Authority Requirement; and
 - (iii) any judgment of a relevant court of law, board, arbitrator or administrative agency,
- in each case in force in the Province of Ontario, or otherwise binding on the Contracting Parties or Hospital and, in particular, shall include the *Public Hospitals Act* (Ontario).
- (d) “**Article**” and “**Section**” mean and refer to the specified article and section or subsection of this Project Agreement.
- (e) “**Authority Requirement**” means any order, direction, directive, request for information, policy, administrative interpretation, guideline or rule of or by any Governmental Authority to the extent that same have the force of law.
- (f) “**Bid Security**” means the bid bond delivered by Contractor, on behalf of Project Co, with the RFP Submission in response to the Request for Proposals.
- (g) “**Business Day**” has the meaning given to it in the Construction Contract.
- (h) “**Confidant**” has the meaning given to it in Section 5.5(i).
- (i) “**Confidential Information**” means all confidential and proprietary information which is supplied by or on behalf of a Party, whether before or after the date of this Project Agreement, which is clearly marked as confidential or proprietary when first disclosed, including information disclosed orally if it is identified as confidential at the time of disclosure and further confirmed in writing as confidential within fourteen (14) days of disclosure.
- (j) “**Construction Contract**” means the Guaranteed Price Contract to be entered into by Project Co and Contractor pursuant to the terms of this Project Agreement, the form of which is attached as Schedule 1 – Construction Contract.
- (k) “**Consultant**” has the meaning given to it in the Construction Contract.
- (l) “**Contract Documents**” has the meaning given to it in the Construction Contract.
- (m) “**Contracting Parties**” means collectively Contractor and Project Co.
- (n) “**Contracting Parties Conditions**” has the meaning given to it in Section 2.6.
- (o) “**Cost of the Financing**” has the meaning given to it in the Construction Contract.

- (p) “**Cost of the Work**” has the meaning given to it in the Construction Contract.
- (q) “**Disclosing Parties**” has the meaning given to it in Section 5.2(c) and “**Disclosing Party**” means any one of them.
- (r) “**Financial Close**” means the date of execution and delivery of the Implementing Agreements and the Lending Agreements.
- (s) “**Financial Close Target Date**” means October 26, 2007, as such date may be extended in accordance with the provisions of this Project Agreement.
- (t) “**Financial Model**” means the financial model attached as Schedule 5 – Financial Model.
- (u) “**Financing**” has the meaning given to it in the Construction Contract.
- (v) “**Financing Plan**” has the meaning given to it in the Request for Proposals.
- (w) “**FIPPA**” means the *Freedom of Information and Protection of Privacy Act* (Ontario).
- (x) “**Funding Letter**” means the funding letter from MOHLTC to Hospital dated September 7, 2007 evidencing the commitment of MOHLTC to fund a portion of Hospital’s financial obligations under this Project Agreement and the other Implementing Agreements as amended, supplemented, restated or replaced, from time to time, in accordance with this Project Agreement.
- (y) “**Governmental Authority**” means MOHLTC and any other federal, provincial, territorial, regional, municipal or local governmental authority, quasi-governmental authority, court, government or self-regulatory organization, commission, board, tribunal, organization, or any regulatory, administrative or other agency, or any political or other subdivision, agent, department, or branch of any of the foregoing, having legal jurisdiction in any way over the Project or any aspect of the performance of this Project Agreement or any of the Implementing Agreements, in each case to the extent it has or performs legislative, judicial, regulatory, administrative or other functions within its jurisdiction.
- (z) “**Guaranteed Price**” has the meaning given to it in the Construction Contract.
- (aa) “**Hospital Conditions**” has the meaning given to it in Section 2.5.
- (bb) “**Implementing Agreements**” means the Construction Contract, the Limited Assignment of Construction Contract, the Lender’s Direct Agreement, the Insurance Trust Agreement and all other documents and agreements delivered by the Parties at Financial Close under Section 4.1, excluding the Lending Agreements.
- (cc) “**Infrastructure Ontario**” means the Ontario Infrastructure Projects Corporation.

- (bb.1) “**Insurance Trust Agreement**” means an agreement between the Parties, the Agent and a trustee acceptable to the Parties governing the receipt and distribution of certain insurance proceeds and performance security proceeds.
- (dd) “**Interest Reference Rate**” means the reference benchmark rate of interest identified in the Financial Model and used in the calculation of the Project Debt Interest Cost, and, for greater clarity, is the base rate of interest exclusive of any stated or imbedded spread including, without limitation, credit, swap or otherwise, or fees.
- (ee) “**IPFP Framework**” has the meaning given to it in Recital G.
- (ff) “**Lender**” has the meaning given to it in the Lender’s Direct Agreement.
- (gg) “**Lender Condition**” has the meaning given to it in Section 2.4(b).
- (hh) “**Lender’s Direct Agreement**” means the agreement to be entered into by Hospital, Lender and the Contracting Parties pursuant to the terms of this Project Agreement, the form of which is attached as Schedule 3 – Lender’s Direct Agreement.
- (ii) “**Lending Agreements**” has the meaning given to it in the Lender’s Direct Agreement.
- (jj) “**Limited Assignment of Construction Contract**” means the limited assignment to Hospital of the Construction Contract by Project Co to be entered into pursuant to the terms of this Project Agreement, the form of which is attached as Schedule 2 – Limited Assignment of Construction Contract.
- (kk) “**MOHLTC**” means Her Majesty the Queen in Right of Ontario as represented by the Minister of Health and Long-Term Care, and includes any agent thereof or any successors thereto or Persons exercising delegated power under the Minister’s authority.
- (ll) “**Notice**” has the meaning given to it in Section 7.1.
- (mm) “**Party**” means any of Hospital, Contractor or Project Co, and “**Parties**” means all of them, but, for greater certainty, such definitions do not include Infrastructure Ontario or the Province, including 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.
- (nn) “**Person**” means any individual, corporation, limited or unlimited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, unincorporated organization or Governmental Authority.

- (oo) “**PIR**” means Her Majesty the Queen in Right of Ontario as represented by the Minister of Public Infrastructure Renewal, and includes any successors thereto or Persons exercising delegated power under the Minister’s authority.
- (pp) “**Project**” has the meaning given to it in the Construction Contract.
- (qq) “**Project Agreement**” means this project agreement and all schedules hereto.
- (rr) “**Project Debt**” means the principal amount issued under and secured by the Lending Agreements.
- (ss) “**Project Debt Interest Cost**” means the budgeted amount of aggregate interest charges in respect of the Project Debt used to calculate the Cost of the Financing portion of the Guaranteed Price.
- (tt) “**Project Lands**” means the lands located in the City of Hamilton, Ontario as described in the Contract Documents as the Place of the Work.
- (uu) “**Proprietor**” has the meaning given to it in Section 5.5.
- (vv) “**Province**” means Her Majesty the Queen in Right of Ontario.
- (ww) “**Request for Proposals**” means the Request for Proposals jointly issued by Infrastructure Ontario and Hospital for the delivery of the Project dated March 8, 2007.
- (xx) “**RFP Submission**” has the meaning given to it in Recital B.
- (yy) “**Schedule**” means a schedule to this Project Agreement.
- (zz) “**Submission Date**” has the meaning given to it in Recital B.
- (aaa) “**Total Completion**” has the meaning given to it in the Construction Contract.

1.2 Schedules

This Project Agreement comprises this executed agreement and the following Schedules, all of which are hereby incorporated by reference into and form part of this Project Agreement:

- Schedule 1 Form of Construction Contract
- Schedule 2 Form of Limited Assignment of Construction Contract
- Schedule 3 Form of Lender’s Direct Agreement
- Schedule 4 Form of Multiple Obligee Rider for Performance Bond
- Schedule 5 [REDACTED]

1.3 Interpretation

This Project Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

- (a) The tables of contents, headings, marginal notes and references to them in this Project Agreement are for convenience of reference only, shall not constitute a part of this Project Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Project Agreement.
- (b) The Schedules to this Project Agreement are an integral part of this Project Agreement and a reference to this Project Agreement includes a reference to the Schedules.
- (c) All references in this Project Agreement to a Schedule shall be to a Schedule of this Project Agreement.
- (d) All capitalized terms used in a Schedule shall have the meanings given to such terms in the Schedule or, if not defined therein, in this Project Agreement.
- (e) Words importing Persons or parties are to be broadly interpreted and include an individual, corporation, firm, partnership, joint venture, trust, unincorporated organization, Governmental Authority, unincorporated body of Persons or association and any other entity having legal capacity, and the heirs, beneficiaries, executors, administrators or other legal representatives of a Person in such capacity.
- (f) Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine and neuter genders include all other genders.
- (g) References to any standard, principle, agreement (including this Project Agreement) or document include (subject to all relevant approvals and any other provisions of this Project Agreement concerning amendments) a reference to that standard, principle, agreement or document as amended, supplemented, restated, substituted, replaced, novated or assigned.
- (h) References to any Applicable Law, including any statutes or other Applicable Law specifically referred to herein, whether or not amendments or successors to such Applicable Law are referred to herein, are to be construed as references to that Applicable Law as from time to time amended or to any Applicable Law covering the same or similar subject matter from time to time replacing, extending, consolidating or amending the same.
- (i) References to a statute shall include all regulations, by-laws, decrees, ordinances and orders made under or pursuant to the statute.

- (j) References to Persons shall include their successors and assigns. References to a public organization shall include its successors and assigns, and if a public organization ceases to exist or ceases to perform its functions without a successor or assign, references to such public organization shall be deemed to include a reference to any public organization or any organization or entity which has taken over either or both the functions and responsibilities of such public organization.
- (k) A reference in this Project Agreement or in any Implementing Agreement to any right, power, obligation or responsibility of any Governmental Authority shall be deemed to be a reference to the Governmental Authority that, pursuant to Applicable Laws has such right, power, obligation or responsibility at the relevant time.
- (l) The words in this Project Agreement or in any Implementing Agreement shall bear their natural meaning.
- (m) Each Party's respective obligations shall be construed as separate obligations owed to the other Party or Parties as the case may be.
- (n) References containing terms such as:
 - (i) "hereof", "herein", "hereto", "hereinafter", and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Project Agreement taken as a whole; and
 - (ii) "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation".
- (o) In construing this Project Agreement or any Implementing Agreement, the rule known as the *ejusdem generis* rule shall not apply nor shall any similar rule or approach apply to the construction of this Project Agreement or any Implementing Agreement and, accordingly, general words introduced or followed by the word "other" or "including" or "in particular" shall not be given a restrictive meaning because they are followed or preceded (as the case may be) by particular examples intended to fall within the meaning of the general words.
- (p) Where this Project Agreement or any Implementing Agreement states that an obligation shall be performed "no later than" or "within" or "by" a stipulated date or event which is a prescribed number of days after a stipulated date or event the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.

- (q) Where this Project Agreement or any Implementing Agreement states that an obligation shall be performed “no later than” or “by” a prescribed number of days before a stipulated date or event or “by” a date which is a prescribed number of days before a stipulated date or event, the latest time for performance shall be 5:00 p.m. on the last day for performance of the obligation concerned, or if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (r) Where this Project Agreement states that an obligation shall be performed “on” a stipulated date, the latest time for performance shall be 5:00 p.m. on that day, or, if that day is not a Business Day, 5:00 p.m. on the next Business Day.
- (s) Any reference to time of day or date means the local time or date in Toronto, Ontario.
- (t) Unless otherwise indicated, time periods will be strictly construed.
- (u) Whenever the terms “will” or “shall” are used in this Project Agreement or any Implementing Agreement in relation to the Contracting Parties or Hospital they shall be construed and interpreted as synonymous and to read “the Contracting Parties shall” or “Hospital shall” as the case may be.
- (v) Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.
- (w) Terms not defined herein and used in this Project Agreement or any Implementing Agreement which have a technical meaning commonly understood by the construction sector in Ontario will be construed as having that meaning unless the context otherwise requires.
- (x) Any term defined in Section 1.1 Definitions herein as having the meaning given to it in the Construction Contract, the Limited Assignment of Construction Contract or the Lender’s Direct Agreement shall have the meaning given to it in the form of such agreement appended hereto as Schedules 1, 2 and 3 respectively; and upon the execution of any such agreement, the defined term in Section 1.1 Definitions herein will have the meaning given to it in the executed version of such agreement whether or not such definition has changed in the executed version.

ARTICLE 2 - FINANCIAL CLOSE

2.1 Effective Date

The provisions of this Project Agreement other than the covenant to complete the Project in Article 4 come into effect on the date of this Project Agreement. Such covenant to complete the Project and all Implementing Agreements will come into effect only on Financial Close.

2.2 Bid Security

Hospital and the Contracting Parties acknowledge that the Bid Security has been delivered to Hospital and is now held by Hospital pursuant to the provisions of this Article 2.

2.3 Financial Close

Subject to Sections 2.4 and 2.5, Hospital agrees to execute and deliver all of the Implementing Agreements on or before the Financial Close Target Date. Subject to Sections 2.4 and 2.6, each of Project Co and Contractor agrees to execute and deliver all of the Implementing Agreements to which it is a party and Project Co agrees to complete the Financing and to enter into the Lending Agreements on or before the Financial Close Target Date.

2.4 Forfeiture of Bid Security

- (a) Subject to Section 2.4(b), if the Contracting Parties fail to achieve, through no default of Hospital, Financial Close by the Financial Close Target Date (as such date may be extended by Hospital in its sole and absolute discretion upon the request of Project Co) other than as a result of:
- (i) the failure of any of the Hospital Conditions in Sections 2.5(a)(i)(A), (vi) and (vii) of this Agreement;
 - (ii) the failure of any of the Contracting Parties Conditions; or
 - (iii) circumstances beyond the reasonable control of the Contracting Parties, but not including either lack of funds or, subject to Section 2.4(b), the failure to complete the Financing,

Hospital will be entitled at any time thereafter to terminate this Project Agreement and to draw from the Bid Security and to retain the lesser of: (a) the full amount of the Bid Security, and (b) the difference between the Guaranteed Price and the price that Hospital is able to obtain from another proponent, together with all costs reasonably incurred by Hospital to enter into binding agreements with such other proponent. The Parties agree that the amounts so drawn constitute liquidated damages and not a penalty. Such liquidated damages represent a genuine and reasonable pre-estimate of the damages that Hospital will suffer as a result of the happening of the specified event. Such payment shall constitute full and final settlement of any and all damages that may be claimed by Hospital as a result of the Contracting Parties not achieving Financial Close. For greater certainty, Hospital will promptly return the Bid Security to Project Co if Financial Close is not achieved on or before the Financial Close Target Date (as such date may be extended by Hospital in its sole and absolute discretion upon the request of Project Co) as a result of circumstances other than those which entitle Hospital to draw on the Bid Security in accordance with the provisions of this Section 2.4(a).

- (b) The Parties acknowledge that arrangements with respect to the Financing may be expressly conditional on Lender being satisfied, acting reasonably, with new information or new reports that arise or are prepared after the Submission Date but before Financial Close relating to the Work, including design, environmental or technical matters (the “**Lender Condition**”), but for greater certainty the Lender Condition does not include satisfaction with the attached forms of Implementing Agreements, and such other conditions as are customary in securing the financing for projects similar to the Project. Project Co will use diligent efforts to cause the Lender Condition to be satisfied, and shall keep Hospital advised of the status of such efforts. Upon request, and in any event at least fifteen (15) days prior to the Financial Close Target Date, Project Co shall provide a written report to Hospital detailing the status of the progress in satisfying the Lender Condition. If Project Co or Lender notifies Hospital that the Lender Condition will not be satisfied or waived and, so long as the Lender Condition has not been satisfied, and that, as a direct result thereof, the Financing will not be completed, either Hospital or Project Co may terminate this Project Agreement and Hospital will promptly return the Bid Security to Project Co. If Hospital believes on reasonable grounds that the Lender Condition will not be satisfied or waived and that as a result thereof the Financing will not be completed, Hospital may terminate this Project Agreement whereupon Hospital will promptly return the Bid Security to Project Co.

2.5 Hospital Conditions

- (a) The execution and delivery of the Implementing Agreements by Hospital on the Financial Close Target Date is conditional upon the following:
- (i) (A) Hospital is satisfied, acting reasonably, with the forms of any Implementing Agreements other than those attached as Schedules to this Project Agreement, and
 - (B) Hospital is satisfied, acting reasonably, with any changes to the attached forms of the Implementing Agreements and with the forms of any other Implementing Agreements and the Implementing Agreements are executed and delivered to Hospital by Project Co, Contractor and Lender, as applicable;
 - (ii) Hospital has received from each of the Contracting Parties a bring-down certificate confirming that their respective representations and warranties in Section 3.1 and Section 3.2 continue to be true and correct in all material respects;
 - (iii) Hospital has been given a reasonable opportunity, which in no event shall be less than a period of five (5) Business Days prior to the Financial Close Target Date, to review the Lending Agreements, and is satisfied, acting reasonably, (A) that it has been given a reasonable opportunity to review the Lending Agreements, and (B) that the Lending Agreements substantially implement the Financing Plan and are consistent with the Financial Model;

- (iv) Hospital has received delivery of the bonds required under the Construction Contract with Hospital as one of the obligees under the performance bond, and the performance bond shall include an obligee rider substantially in the form of Schedule 4;
- (v) Hospital has received evidence of the insurance to be provided under the Construction Contract in form and substance satisfactory to Hospital, acting reasonably;
- (vi) Hospital is satisfied that all conditions and requirements of any Governmental Authority required to allow construction of the Project to proceed (other than those the Contractor is required to obtain under the Construction Contract), have been or, in Hospital's reasonable determination, can be obtained without any material delay to the initiation of and the progress of construction of the Project by Contractor;
- (vii) Hospital has received the final approval from MOHLTC to proceed with the Project and to enter into the Implementing Agreements in form and in substance satisfactory to Hospital, in its sole and absolute discretion; and
- (viii) Hospital has received an opinion, in form satisfactory to Hospital, acting reasonably, from counsel to each of Project Co and Contractor that this Project Agreement and each of the Implementing Agreements to which Project Co or Contractor is a party was duly authorized, executed and delivered by Project Co or Contractor as may be party thereto,

(collectively, the "**Hospital Conditions**").

The Hospital Conditions are for the sole benefit of Hospital and may be waived in whole or in part by Hospital by written notice to the Contracting Parties on or before the Financial Close Target Date.

- (b) Subject to Section 2.4(a), if the Hospital Conditions have not been satisfied or waived on or before the Financial Close Target Date, then Hospital may terminate this Project Agreement and promptly return the Bid Security to Project Co and neither Hospital nor the Contracting Parties shall be liable to the other for any other damages, costs or losses resulting from the termination of this Project Agreement or for any expenses or costs incurred prior to or after the date of termination of this Project Agreement or related, directly or indirectly, to the Request for Proposals.

2.6 Contracting Parties Conditions

- (a) The execution and delivery of the Implementing Agreements by the Contracting Parties on the Financial Close Target Date is conditional upon:
 - (i) each of the Contracting Parties, acting reasonably, and Lender, are satisfied with the forms of any Implementing Agreements other than those attached as Schedules to this Project Agreement and the Implementing Agreements are

executed and delivered by Hospital to Project Co, Contractor and Lender, as applicable;

- (ii) each of the Contracting Parties, acting reasonably, and Lender are satisfied that the Funding Letter remains in full force and effect;
- (iii) the Lender Condition has been satisfied or waived by Lender;
- (iv) the Contracting Parties have received from Hospital a bring-down certificate confirming that its representations and warranties in Section 3.3 continue to be true and correct in all material respects;
- (v) the Contracting Parties are satisfied that all conditions and requirements of any Governmental Authority required to allow construction of the Project to proceed including all building permits (other than those the Contractor is required to obtain under the Construction Contract), have been or, in the Contracting Parties reasonable determination, can be obtained without any material delay to the initiation of and the progress of construction of the Project by Contractor;
- (vi) the Contracting Parties are satisfied, acting reasonably, that Hospital has received the final approval from MOHLTC to proceed with the Project and to enter into this Project Agreement and the Implementing Agreements in form and substance satisfactory to the Contracting Parties; and
- (vii) the Contracting Parties and the Agent have received an opinion, in form satisfactory to the Contracting Parties and Agent, acting reasonably, from Hospital's counsel that this Project Agreement and each of the Implementing Agreements to which Hospital is a party was duly authorized by Hospital's board of directors, executed and delivered by Hospital, in which opinion Hospital's counsel may assume that: (i) the approval letter issued under Section 4(3) of the Public Hospitals Act is the approval required by the Hospital under Section 4(3) of the Public Hospitals Act and (ii) the Funding Letter is the authorization by MOHLTC to the Hospital under the Public Hospitals Act to enter into the Project Agreement and the Implementing Agreements and the approval by MOHLTC of the capital grants for the Project,

(collectively the "**Contracting Parties Conditions**").

The Contracting Parties Conditions are for the sole benefit of the Contracting Parties and may be waived in whole or in part by the Contracting Parties by written notice to Hospital on or before the Financial Close Target Date.

- (b) Subject to Section 2.4(a), if the Contracting Parties Conditions have not been satisfied or waived on or before the Financial Close Target Date, then Project Co may terminate this Project Agreement and Hospital shall promptly return the Bid Security to Project Co and neither Hospital nor the Contracting Parties shall be liable to the other for any other damages, costs or losses resulting from the termination of this Project Agreement or for

any expenses or costs incurred prior to or after the date of termination of this Project Agreement or related, directly or indirectly, to the Request for Proposals.

2.7 Project Debt Interest Cost Adjustment

Project Co represents and warrants that the Project Debt Interest Cost as set out in the RFP Submission is based upon the Interest Reference Rate. The Project Debt Interest Cost will be adjusted on the second Business Day prior to the date of Financial Close on the basis of the actual cost increase or decrease in the Project Debt Interest Cost resulting directly from any change upward or downward of the Interest Reference Rate as at the second Business Day prior to the date of Financial Close compared to the Interest Reference Rate as at the Submission Date.

2.8 Adjustment to Guaranteed Price

Project Co represents and warrants that at the date hereof the Guaranteed Price is [REDACTED] exclusive of Value Added Tax (as defined in the Construction Contract) and that the Cost of the Financing and the Cost of the Work are as set out in the Financial Model. Each of Project Co and Hospital acknowledges that the Project Debt Interest Cost is a component of the Cost of the Financing and that the Project Debt Interest Cost is subject to adjustment under Section 2.7. Each of the Project Co and Hospital further acknowledges that the Cost of the Work is subject to adjustment, where provided for, under any future post-award addenda issued to the Contracting Parties. Each of the Project Co and Hospital acknowledges and agrees that, subject to adjustments made in accordance with the provisions of the Construction Contract, the final Guaranteed Price shall be determined on the basis of such final adjusted Cost of the Financing and final adjusted Cost of the Work as of the date of Financial Close.

2.9 Ownership of Project Lands

The Contracting Parties acknowledge that, subject to the provisions of the *Construction Lien Act* (Ontario), neither the Contracting Parties nor Lender shall, under this Project Agreement or any of the Implementing Agreements, acquire any interest in the Project Lands or the Project notwithstanding any provision therein to the contrary. The Contracting Parties and Lender shall have access to the Project Lands and the Project under and subject to the licenses granted under the Construction Contract and the Lender's Direct Agreement, respectively, and Hospital represents and warrants to Project Co and Contractor that it has the authority to grant such access.

2.10 Acknowledgement of Hospital Authority

Nothing in this Project Agreement or any of the Implementing Agreements (including the Construction Contract) shall in any way fetter the right, authority and discretion of Hospital in fulfilling its statutory or other functions under Applicable Law, and the Contracting Parties acknowledge and agree that nothing in this Project Agreement or any of the Implementing Agreements (including the Construction Contract) shall preclude Hospital's board of directors from performing, discharging or exercising its duties, responsibilities and powers under Applicable Law. Subject to the provisions of

the Construction Contract, including, Section 11.8 of Article A-11 thereof, the Contracting Parties further agree that they shall comply with all written directions issued by or on behalf of Hospital's board of directors in furtherance of the board of directors fulfilling its duties, responsibilities and powers under Applicable Law in a manner consistent with the rights of the Hospital under this Project Agreement and the Implementing Agreements.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

3.1 Contractor Representations and Warranties

- (a) Contractor represents and warrants to Hospital that as of the date of this Project Agreement:
 - (i) Contractor is a corporation incorporated and validly existing under the laws of the Province of Ontario, is in good standing with the Ministry of Government Services of Ontario with respect to the filing of annual returns, and has all the requisite corporate power and authority to own, lease and operate its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and any Implementing Agreements to which it is a party and to perform its obligations hereunder and thereunder;
 - (ii) no steps or proceedings have been taken or are pending to supersede, repeal, or amend its constating documents, articles, by-laws or any shareholders agreement in a manner that would materially impair or limit its ability to perform its obligations under this Project Agreement or any of the Implementing Agreements to which it is a party and they are in full force and effect as of the date hereof;
 - (iii) this Project Agreement and the Implementing Agreements (when executed and delivered) to which it is a party have been duly authorized, executed, and delivered by Contractor and constitute legal, valid, and binding obligations of Contractor, enforceable against Contractor in accordance with their terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
 - (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
 - (iv) the authorization, execution, delivery, and performance by Contractor of this Project Agreement and the Implementing Agreements to which it is a party does not violate or conflict with, or constitute a default under:

- (A) its constating or organizational documents or any unanimous shareholders agreement or similar rights agreement binding on Contractor;
 - (B) any Applicable Law; or
 - (C) any covenant, contract, instrument or agreement to which it is a party or by which it or any of its properties or assets is bound or affected;
- (v) there are no actions, suits, proceedings, or investigations pending or, to the knowledge of its senior management, threatened against Contractor at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Contractor or in any impairment of its ability to perform its obligations under this Project Agreement or any of the Implementing Agreements to which it is a party, and Contractor has no knowledge of any violation or default with respect to any order, writ, decision, injunction, or decree of any Governmental Authority or arbitral body that would result in any such material adverse effect or impairment;
- (vi) Contractor is able to meet its obligations as they generally become due; and
- (vii) Contractor is registered under Division V of Part IX of the *Excise Tax Act* (Canada).

3.2 Project Co Representations and Warranties

- (a) Project Co represents and warrants to Hospital that as at the date of this Project Agreement:
- (i) Project Co is a limited partnership formed and validly existing under the laws of the Province of Ontario, and has all the requisite power and authority to own, lease and operate its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and any Implementing Agreements to which it is a party and to perform its obligations hereunder and thereunder;
 - (ii) EllisDon-LPF (Hamilton General) GP Inc. is a corporation incorporated and validly existing under the laws of the Province of Ontario, is in good standing with the Ministry of Government Services of Ontario with respect to the filing of annual returns, and has all the requisite corporate power and authority to own, lease and operate its properties and assets, to carry on its business as it is currently being conducted;
 - (iii) no steps or proceedings have been taken or are pending to supersede, repeal or amend its constating documents, articles, by-laws or any shareholders agreement in a manner that would materially impair or limit its ability to perform its

obligations under this Project Agreement or any of the Implementing Agreements to which it is a party and they are in full force and effect as of the date hereof;

- (iv) this Project Agreement and any Implementing Agreements (when executed and delivered) to which it is a party have been duly authorized, executed, and delivered by Project Co and constitute legal, valid, and binding obligations of Project Co, enforceable against Project Co in accordance with their terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
 - (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (v) the authorization, execution, delivery, and performance by Project Co of this Project Agreement and any Implementing Agreements to which it is a party does not and will not violate or conflict with, or constitute a default under:
 - (A) its constating or organizational documents or any unanimous shareholders agreement or similar rights agreement binding on Project Co;
 - (B) any Applicable Law; or
 - (C) any covenant, contract, instrument or agreement to which it is a party or by which it or any of its properties or assets is bound or affected;
- (vi) there are no actions, suits, proceedings, or investigations pending or, to the knowledge of its senior management, threatened against Project Co at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Project Co or in any impairment of its ability to perform its obligations under this Project Agreement or any of the Implementing Agreements to which it is a party, and Project Co has no knowledge of any violation or default with respect to any order, writ, decision, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment;
- (vii) Project Co is able to meet its obligations as they generally become due;
- (viii) Project Co is registered under Division V of Part IX of the *Excise Tax Act* (Canada); and

- (ix) Project Co is in a position to implement the Financing on or before the Financial Close Target Date subject to the satisfaction of the Lender Condition and other reasonable conditions that are customary in closing the financing for projects similar to the Project.

3.3 Hospital Representations and Warranties

Hospital represents and warrants to the Contracting Parties that as of the date of this Project Agreement:

- (i) Hospital is a non-share capital corporation amalgamated and validly existing under the laws of the Province of Ontario, is in good standing with the Ministry of Government Services of Ontario with respect to the filing of annual returns, and has all the requisite corporate power and authority to own, lease and operate its properties and assets, to carry on its business as it is currently being conducted, and to enter into this Project Agreement and any Implementing Agreement to which it is a party and to perform its obligations hereunder and thereunder;
- (ii) no steps or proceedings have been taken or are pending to supersede, repeal, or amend its constating documents, letters patent, by-laws or any shareholders agreement in a manner that would impair or limit its ability to perform its obligations under this Project Agreement or any of the Implementing Agreements to which it is a party and they are in full force and effect as of the date hereof;
- (iii) this Project Agreement and the Implementing Agreements (when executed and delivered) to which it is a party have been duly authorized, executed, and delivered by Hospital and constitute legal, valid, and binding obligations of Hospital, enforceable against Hospital in accordance with their terms, subject only to:
 - (A) limitations with respect to the enforcement of remedies by bankruptcy, insolvency, moratorium, winding-up, arrangement, reorganization, fraudulent preference and conveyance and other laws of general application affecting the enforcement of creditors' rights generally; and
 - (B) general equitable principles and the fact that the availability of equitable remedies is in the discretion of a court and that a court may stay proceedings or the execution of judgments;
- (iv) the authorization, execution, delivery, and performance by Hospital of this Project Agreement and the Implementing Agreements to which it is a Party does not and will not violate or conflict with, or constitute a default under:
 - (A) its constating or organizational documents;
 - (B) any Applicable Law; or

- (C) any covenant, contract, instrument or agreement to which it is a party or by which it or any of its properties or assets is bound or affected; and
- (v) there are no actions, suits, proceedings, or investigations pending or, to the knowledge of its senior management, threatened against Hospital at law or in equity before any Governmental Authority or arbitral body (whether or not covered by insurance) that individually or in the aggregate could result in any material adverse effect on the business, properties or assets, or the condition, financial or otherwise, of Hospital or in any impairment of its ability to perform its obligations under this Project Agreement or any of the Implementing Agreements to which it is a party, and Hospital has no knowledge of any violation or default with respect to any order, writ, decision, injunction, or decree of any Governmental Authority or arbitral body that could result in any such material adverse effect or impairment.

ARTICLE 4- CONSTRUCTION AND FINANCING OBLIGATIONS

4.1 Construction Obligations

- (a) Subject to the satisfaction or waiver of the Contracting Parties Conditions, Project Co agrees to complete the Project and in furtherance thereof to enter into, and cause Contractor to enter into, the following agreements and otherwise complete the following on Financial Close:
 - (i) the execution and delivery of the Construction Contract between Project Co in the capacity of “Owner” thereunder and Contractor;
 - (ii) the execution and delivery of the Limited Assignment of Construction Contract between Project Co, Contractor and Hospital;
 - (iii) the execution and delivery of certificates confirming the representations and warranties in Section 3.1 and Section 3.2; and
 - (iv) the execution and delivery of such other related and ancillary instruments, agreements and documents as are customary and are necessary to give effect to this transaction.

4.2 Financing Obligations

Subject to the satisfaction or waiver of the Contracting Parties Conditions, Project Co agrees to complete the Financing in accordance with and subject to the provisions of the Lending Agreements and in furtherance of such agreement to enter into, and, in the case of the Lender’s Direct Agreement and the Insurance Trust Agreement, cause Contractor to enter into, the following agreements and otherwise complete the following on Financial Close:

- (i) the execution and delivery of all Lending Agreements and the completion of all arrangements to implement the Financing;

- (ii) the execution and delivery of the Lender's Direct Agreement between Hospital, Project Co, Contractor and Agent; and
- (iii) the execution and delivery of such other related and ancillary instruments, agreements and documents as are customary and are necessary to give effect to this transaction.

4.3 No Opinions

Notwithstanding anything else in this Project Agreement to the contrary, but subject to Sections 2.5(a)(viii) and 2.6(a)(vii), the Parties acknowledge and agree that neither Hospital nor the Contracting Parties shall be required to deliver any opinion in relation to the Project, this Project Agreement or any of the Implementing Agreements, including any opinion of their respective legal counsel; provided that this Section 4.3 shall not preclude the Contracting Parties from delivering opinions as they may agree with the Agent.

ARTICLE 5 - COMMUNICATIONS PROTOCOL AND CONFIDENTIALITY

5.1 Communications Protocol

- (a) The Contracting Parties shall not issue or disseminate any media release, public announcement or public disclosure (whether for publication in the press, on the radio, television, internet or any other medium) relating to the Project, this Project Agreement or any matters related thereto, without the prior written consent of Hospital, in its sole and absolute discretion, provided that if a Contracting Party is a public company it shall be entitled to make such disclosure as is required by Applicable Law subject to reasonable consultation with Hospital prior to such disclosure.
- (b) The Contracting Parties shall, and shall ensure that their subcontractors, agents, Affiliates, employees, officers and directors, in each case, comply, at all times, with Hospital's and Infrastructure Ontario's media release and publicity protocols or guidelines, as such protocols and/or guidelines are updated by Hospital and Infrastructure Ontario from time to time, provided that if any such Person is a public company it shall be entitled to make such disclosure as is required by Applicable Law subject to reasonable consultation with Hospital prior to such disclosure.
- (c) Hospital, either on its own or together with Infrastructure Ontario, proposes to establish a public information repository for the Project which may be website based as well as a hard copy document repository for purposes of communicating to the public information respecting the Project and the progress of the construction work. It is not intended that this information repository would include any information which falls within one of the exemptions under FIPPA although the information repository may also contain the redacted versions of this Project Agreement or any of the Implementing Agreements pursuant to Section 5.3 below. Other than in respect to such redacted publications, Hospital on its own or together with Infrastructure Ontario will establish a communications protocol in consultation with the Contracting Parties for the development and management of the information repository.

5.2 FIPPA

- (a) Hospital and the Contracting Parties acknowledge and agree that, subject only to removal of information that falls within one of the exemptions under FIPPA unless consented to by the Contracting Parties under Section 17(3) of FIPPA, this Project Agreement and the Implementing Agreements are public documents that may be disclosed or published (including on websites) by Hospital.
- (b) The Contracting Parties further acknowledge and agree that Hospital will be free to disclose any information, including this Project Agreement and the Implementing Agreements and any Confidential Information, to PIR, Infrastructure Ontario, MOHLTC and/or the Province and, subject to compliance with FIPPA, PIR, Infrastructure Ontario, MOHLTC and/or the Province will be free to use, disclose or publish (including on websites) the information on such terms and in such manner as PIR, Infrastructure Ontario, MOHLTC and/or the Province see fit.
- (c) For greater certainty, the Contracting Parties acknowledge and agree that, subject only to the removal of any information pursuant to one of the exemptions under FIPPA, this Project Agreement or any of the Implementing Agreements, any contractual submissions or other records kept in accordance with this Project Agreement or any of the Implementing Agreements, any information related to the performance of the Contracting Parties or any information derived from this Project Agreement or any of the Implementing Agreements, including Confidential Information are public documents and information and, as such, may be disclosed by Hospital, PIR, Infrastructure Ontario, MOHLTC and/or the Province (the “**Disclosing Parties**”).

5.3 Redaction Publication

Prior to disclosing or publishing this Project Agreement, any of the Implementing Agreements or any other Confidential Information of Project Co or Contractor, the Disclosing Party shall provide notice to the Contracting Parties (and Lender in respect to the Lender’s Direct Agreement) and the Contracting Parties (and Lender in respect to the Lender’s Direct Agreement) shall have a period of thirty (30) days from receipt of such notice to identify any information contained in or relating to this Project Agreement, any of the Implementing Agreements and/or the Confidential Information which in the view of the Contracting Parties (and Lender in respect to the Lender’s Direct Agreement) may be refused disclosure pursuant to one of the exemptions under FIPPA together with the reasons why such information may be refused disclosure and FIPPA shall govern any disclosure. Any dispute with respect to whether such information is exempt from disclosure under FIPPA shall be referred for resolution in accordance with the provisions of Schedule C to the Limited Assignment of Construction Contract, which shall apply, *mutatis mutandis*, to disputes arising under this Section 5.3. Notwithstanding anything else in this Project Agreement to the contrary, the Contracting Parties expressly acknowledge and agree that the amount of the Guaranteed Price may be disclosed or published by any of the Disclosing Parties.

5.4 Use and Disclosure of Confidential Information

- (a) Except as authorized hereunder, each Party shall hold in confidence, not disclose and not permit any Person any manner of access to, whether directly or indirectly, any Confidential Information of any other Party, provided that this Section 5.4 shall not restrict any Party from disclosing such Confidential Information to its professional advisors, to the extent necessary, to enable that Party to perform, to cause to be performed, or to enforce, its rights or obligations under this Project Agreement or any of the Implementing Agreements.
- (b) The Contracting Parties may:
 - (i) disclose in confidence to Lender and prospective lenders and their professional advisors such Confidential Information as is reasonably required by Lender or any such prospective lender in connection with the raising of finance for the construction of the Project or which the Contracting Parties are obliged to supply by the terms of the Lending Agreements; and
 - (ii) disclose in confidence to the Contracting Parties and their professional advisors, such Confidential Information as is necessary for the performance by the Contracting Parties of the Contracting Parties' obligations under this Project Agreement or any of the Implementing Agreements.
- (c) The Contracting Parties acknowledge that PIR, Infrastructure Ontario, MOHLTC and/or the Province may use the Confidential Information of the Contracting Parties for purposes not specific to the Project, but for other general governmental purposes, such as, among other things, development of the Province's alternate financing and procurement policies and framework.
- (d) Subject to the foregoing, neither the Contracting Parties nor Hospital shall use, or directly or indirectly cause, authorize or permit any other Person to use, any Confidential Information of the other except for the purposes of this Project Agreement or any Implementing Agreement, as permitted by this Project Agreement or any Implementing Agreement or as authorized by such other Party in writing.
- (e) Each Party shall protect all Confidential Information of the other Parties with the same degree of care as it uses to prevent the unauthorized use, disclosure, publication, or dissemination of its own confidential information of a similar nature or character, but in no event less than a reasonable degree of care.

5.5 Exceptions

Information of a Party (the "**Proprietor**") will not be considered to be Confidential Information in the following circumstances:

- (i) the Proprietor advises the other Party to whom the information has been disclosed (the "**Confidant**"), in writing, that the information is not required to be treated as Confidential Information;

- (ii) the information is as of the date of this Project Agreement, or becomes at any time thereafter, generally available to or accessible by the public through no fault or wrongdoing of the Confidant;
- (iii) the information is a matter of public record or in the public domain;
- (iv) the information was in the possession of the Confidant prior to its disclosure;
- (v) the information is received by the Confidant on a non-confidential basis from a source other than the Proprietor, provided that to the best of the Confidant's knowledge such source is not bound by a confidentiality agreement with the Proprietor or otherwise prohibited from disclosing the information to the Confidant by a contractual, legal or fiduciary obligation;
- (vi) the information was independently developed by the Confidant without access to the Confidential Information, as evidenced by written records;
- (vii) the information is required to be disclosed pursuant to Applicable Law, provided that the Confidant provides where the circumstances reasonably permit the Proprietor with reasonable notification and an opportunity to contest such requirement prior to disclosure;
- (viii) the information is reasonably required by Hospital in connection with the construction of the Project, subject to payment by Hospital of any royalties or patent licence fees that were payable by Contractor in respect of such information (if any) and to any related confidentiality obligations disclosed to Hospital to which such information is subject; or
- (ix) the information would not be exempt from disclosure under FIPPA.

5.6 Survival of Confidentiality

Except for Confidential Information that the Contracting Parties have identified in writing to Hospital as being commercially sensitive, in which case the obligations of Section 5.1 to Section 5.5 inclusive shall continue, the obligations in Section 5.1 to Section 5.5, inclusive, will cease on the date that is three (3) years after the Total Completion of the Project.

ARTICLE 6 - ASSIGNMENT, SUBCONTRACTING AND CHANGES IN CONTROL

6.1 Contracting Parties Assignment

- (a) The Contracting Parties shall not sell, assign, transfer, charge, mortgage, encumber, dispose of or otherwise alienate all or any part of any interest, whether legal or beneficial, in this Project Agreement, the Construction Contract or any other Implementing Agreement without the prior written consent of Hospital, which consent may be unreasonably withheld or delayed.

- (b) Section 6.1 (a) shall not apply to:
- (i) the grant of security or any other interest to Lender under any of the Lending Agreements or any agreement collateral thereto between Lender and Contractor; or
 - (ii) any subcontract or any sub-subcontract entered into by Project Co or the Contractor or their subcontractors in connection with the Project.

6.2 Hospital Assignment

- (a) Hospital shall not charge, mortgage, or encumber, or, except in accordance with Section 6.2(b), sell, assign, transfer, dispose of or otherwise alienate, all or any part of its interest in this Project Agreement or any Implementing Agreement.
- (b) Hospital may sell, assign, transfer, dispose of or otherwise alienate all (but not less than all) of its interest in this Project Agreement and the Implementing Agreements:
 - (i) to the Province of Ontario;
 - (ii) to the Local Health Integration Network (as defined pursuant to the *Local Health System Integration Act* (Ontario));
 - (iii) to any public hospital under the *Public Hospitals Act* (Ontario) to whom MOHLTC, exercising its statutory rights, would be entitled to transfer same;
 - (iv) to any successor of Hospital, where such successor arises as a result of a direction or approval under the *Public Hospitals Act* (Ontario) and/or the *Local Health System Integration Act* (Ontario) or a reorganization of the delivery of health services initiated by the Province of Ontario;
 - (v) to any Person that is regulated and funded by the Province of Ontario as a healthcare institution and is approved by MOHLTC as a transferee of same; or
 - (vi) in circumstances other than those described in Sections 6.2(b)(i) to 6.2(b)(v), inclusive, with the prior written consent of Project Co, Contractor and Lender, not to be unreasonably withheld or delayed,

provided that (A) the Person to whom any such sale, assignment, transfer, disposition or other alienation is made has the capacity to assume and perform, and agrees in writing with the Contracting Parties and Lender to assume and perform, all the obligations of Hospital hereunder and under all of the Implementing Agreements; and (B) MOHLTC confirms to the assignee or transferee its commitment to fund the assignee or transferee on terms and conditions no less favourable than those set out in the Funding Letter and a copy of such confirmation is provided to Project Co, Contractor and Lender.

- (c) Upon any sale, assignment, transfer, disposition or other alienation in accordance with Section 6.2(b), Hospital shall be released of all of its obligations hereunder to the extent assumed by the assignee or transferee.

ARTICLE 7 - NOTICES

7.1 Notices to Parties

All notices, requests, demands, instructions, certificates, consents and other communications (each being a “**Notice**”) required or permitted under this Project Agreement shall be served by sending the same by facsimile or by hand, as follows:

If to Contractor: 89 Queensway Avenue West
Suite 800
Mississauga, Ontario L5B 2V2
Fax No.: [REDACTED]
Attn.: [REDACTED]

If to Project Co: c/o ELLISDON-LPF (HAMILTON GENERAL) GP INC.
5000 Yonge Street
Suite 1502
Toronto, Ontario M2N 7E9
Fax No.: [REDACTED]
Attn.: [REDACTED]

If to Hospital: Hamilton Health Sciences Corporation
1200 Main Street West - 3A
Hamilton, Ontario L8N 3Z5

Fax No.: [REDACTED]
Attn: [REDACTED]

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

Fax No.: [REDACTED]
Attn.: [REDACTED]

7.2 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 7.2.

7.3 Change of Address

Any Party to this Project Agreement may, from time to time, change any of its contact information set forth in Section 7.1 by prior Notice to the other Parties, and such change shall be effective on the Business Day that next follows each recipient Party's receipt of such Notice unless a later effective date is given in such Notice.

7.4 Deemed Receipt of Notices

Subject to Section 7.4(a), a Notice given by hand delivery shall be deemed to have been received on the day it is delivered. Subject to Sections 7.4(a) and 7.4(b), a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.

- (a) 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.
- (b) 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.

ARTICLE 8 - GENERAL

8.1 Amendments

This Project Agreement may not be amended, restated or 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 Project Agreement.

8.2 Waiver

- (a) No waiver made or given by a Party under or in connection with this Project 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 Parties. 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.

8.3 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 Project Agreement is not intended to and does not create or establish between the Parties, or between any of Hospital, Contracting 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 Hospital, the Province, including Infrastructure Ontario, and any Affiliate, representative or employee of a Contracting Party.

8.4 Entire Agreement

Except where provided otherwise in this Project Agreement, this Project Agreement and the Implementing Agreements constitute the entire agreement between the Parties in connection with its subject matter and supersede all prior representations, communications, negotiations and understandings, whether oral, written, express or implied, concerning the subject matter of this Project Agreement.

8.5 No Reliance

Each of the Parties acknowledges that:

- (i) it has not entered into this Project 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 Project Agreement or not, except those expressly made, given or repeated in this Project Agreement and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be those expressly provided for in this Project Agreement; and
- (ii) this Section 8.5 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Project Agreement which was induced by fraud, for which the remedies available shall be all those available under Applicable Law.

8.6 Severability

If any provision of this Project 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 Project Agreement. If any such provision of

this Project 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 Project Agreement as near as possible to its original intent and effect.

8.7 Enurement

This Project Agreement and any of the Implementing Agreements to which both Hospital and either or both of the Contracting Parties are parties shall enure to the benefit of, and be binding on, such Parties and each of their respective successors and permitted transferees and assigns.

8.8 Governing Law and Jurisdiction

- (a) This Project Agreement, and each of the Implementing Agreements 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.

8.9 Cumulative Remedies

Except as otherwise set forth in this Project Agreement, the rights, powers and remedies of each Party set forth in this Project 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 Project Agreement or at law or in equity.

8.10 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 Project Agreement.

8.11 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 Project Agreement and the Implementing Agreements.

8.12 Proof of Authority

Each Party shall provide proof to each other Party, in a form acceptable to such other Party, that any Person executing this Project Agreement or any of the Implementing Agreements on its behalf has the requisite authority to execute this Project Agreement or such Implementing Agreement on its behalf.

8.13 Counterparts

This Project 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 each other Party an original signed copy of this Project Agreement which was so transmitted.

8.14 Time is of the Essence

Time is of the essence of this Project Agreement.

8.15 Language of Agreement

Each Party acknowledges having requested and being satisfied that this Project 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.*

SIGNATURE PAGES IMMEDIATELY FOLLOW

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

HAMILTON HEALTH SCIENCES CORPORATION

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

ELLISDON CORPORATION

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

ELLISDON-LPF HAMILTON GENERAL LP, by its general partner, ELLISDON-LPF (HAMILTON GENERAL) GP INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

SCHEDULE 1

FORM OF CONSTRUCTION CONTRACT

SCHEDULE 2

FORM OF LIMITED ASSIGNMENT OF CONSTRUCTION CONTRACT

THIS LIMITED ASSIGNMENT OF CONSTRUCTION CONTRACT is made as of the [•] day of [•], 2007

BETWEEN:

ELLISDON-LPF HAMILTON GENERAL LP, a limited partnership existing under the laws of the Province of Ontario

(“**Project Co**”)

AND:

HAMILTON HEALTH SCIENCES CORPORATION, a non-share capital corporation amalgamated under the laws of the Province of Ontario

(“**Hospital**”)

AND:

ELLISDON CORPORATION, a corporation incorporated under the laws of the Province of Ontario

(“**Contractor**”).

WHEREAS:

- A. Project Co, Hospital, and Contractor have entered into a Project Agreement dated the 26th day of September, 2007 (the “**Project Agreement**”) in respect to the finance and construction of the Hamilton General Hospital Redevelopment Project in Hamilton, Ontario.
- B. In furtherance of the provisions of Section 4.1 of the Project Agreement, Project Co and Contractor entered into the Guaranteed Price Contract dated the [•] day of [•], 2007 (the “**Construction Contract**”) with respect to the Project, an executed copy of which is attached as Schedule A.
- C. Project Co has entered into the Financing with Lender for the purpose of financing, among other things, the Base Progress Payments under the Construction Contract during the period from the commencement of construction to and including the Substantial Performance Date.

- D. Contractor has agreed to be a party to this Limited Assignment of Construction Contract to acknowledge the terms of the assignment of the Construction Contract by Project Co to Hospital, and the assumption of the Construction Contract by 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:

ARTICLE 1 - DEFINITIONS AND INTERPRETATION

1.1 Definitions

All capitalized terms not otherwise defined in this Limited Assignment of Construction Contract including the Schedules hereto shall have the meanings given to them in the Project Agreement and unless the context otherwise requires:

- (a) “**Additional Owner Payments**” has the meaning given to it in the Construction Contract.
- (b) “**Agent**” means Canadian Imperial Bank of Commerce, acting in its capacity as agent for and on behalf of Lender.
- (c) “**Assumed Rights and Obligations**” has the meaning given to it in Section 3.3.
- (d) “**Base Progress Payments**” has the meaning given to it in the Construction Contract.
- (e) “**Certified Cost to Complete**” means the value of the Work remaining to be performed under the Construction Contract following the last day of the agreed monthly payment period ending immediately prior to the Reimbursement Payment Date as certified to Hospital by the Consultant (after having consulted with Project Co and Contractor and acting in the manner described in, and subject to, GC 2.2.6 of the Construction Contract), provided that for greater certainty, the Certified Cost to Complete shall not include any amount in respect of Minor Deficiencies (as provided in GC 5.5.8 of the Construction Contract) to the extent that such amount is included in the Hospital Holdback.
- (f) “**Change Directive**” has the meaning given to it in the Construction Contract.
- (g) “**Change in the Scope of the Work**” has the meaning given to it in the Construction Contract.
- (h) “**Change Order**” has the meaning given to it in the Construction Contract.
- (i) “**Compensation Payment**” means either the Default Termination Payment or the Non-Default Termination Sum as defined in Schedule B.
- (j) “**Construction Contract**” has the meaning given to it in Recital B.

- (k) “**Construction Event of Default**” has the meaning given to it in the Lender’s Direct Agreement.
- (l) “**Enforcement Rights**” means the rights as against Contractor to enforce or terminate the Construction Contract under PART 7 – DEFAULT NOTICE therein.
- (m) “**Hospital Holdback**” means any amount which Hospital may withhold from payment under the Construction Contract, provided for greater certainty that where this Limited Assignment of Construction Contract provides for a deduction in respect of any Hospital Holdback, such deduction shall apply to any payments to be made by Hospital hereunder (whether to the Project Co, the Contractor or the Agent), notwithstanding that the Construction Contract expressly provides for deductions from payments to be made to the Contractor.
- (n) “**Hospital Reimbursement Payment**” means the amount determined by subtracting from the amount of the Guaranteed Price, as adjusted in accordance with the terms of the Construction Contract as at the end of the last day of the agreed monthly payment period ending immediately prior to the Reimbursement Payment Date, the following amounts (without duplication):
 - (i) all Additional Owner Payments (including any payments pursuant to Section 8.5 of the Lender’s Direct Agreement) paid, payable, or which will become payable, by Hospital in respect of Work performed in accordance with the Construction Contract on or before the last day of the agreed monthly payment period ending immediately prior to the Reimbursement Payment Date;
 - (ii) the Certified Cost to Complete;
 - (iii) the Hospital Holdback as at the Reimbursement Payment Date;
 - (iv) any Legislative Holdback required to be maintained by Hospital as at the Reimbursement Payment Date;
- (o) “**Legislative Holdback**” means the holdback to be maintained under Part IV of the *Construction Lien Act* (Ontario).
- (p) “**Limited Assignment of Construction Contract**” means this limited assignment of construction contract and the schedules hereto.
- (q) “**Notice**” has the meaning given to it in Section 4.1.
- (r) “**Reimbursement Payment Date**” has the meaning given to it in the Construction Contract.
- (s) “**Retained Payment Obligation**” has the meaning given to it in Section 3.1.

- (t) **“Substantial Performance Date”** has the meaning given to it in the Construction Contract.
- (u) **“Substantial Performance Holdback”** means the holdback payable pursuant to GC 5.6 - PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK of the Construction Contract.
- (v) **“Substantial Performance Holdback Payment Date”** means the date for payment of the Substantial Performance Holdback pursuant to GC 5.6 - PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK of the Construction Contract.
- (w) **"Trust Account"** means the trust account establish pursuant to the Trust Account Agreement.
- (x) **"Trust Account Agreement"** means the agreement respecting the Trust Account between Project Co, Hospital, Agent and [•].
- (y) **“Value Added Tax”** has the meaning given to it in the Construction Contract.
- (z) **“Work”** has the meaning given to it in the Construction Contract.

1.2 Schedules

This Limited Assignment of Construction Contract comprises this executed agreement and the following Schedules, which are hereby incorporated by reference into and form part of this Limited Assignment of Construction Contract:

Schedule A – Executed Copy of Construction Contract

Schedule B – Compensation on Termination

Schedule C – Dispute Resolution Procedure.

1.3 Interpretation

The provisions of Section 1.3(a) and (e) – (x), inclusive, of the Project Agreement are hereby incorporated in their entirety and all references in same to “Project Agreement” shall be read as “Limited Assignment of Construction Contract”.

ARTICLE 2 - REPRESENTATIONS AND WARRANTIES

2.1 Project Co Representations and Warranties

Project Co represents and warrants to Hospital that as at the date of this Limited Assignment of Construction Contract:

- (a) the Construction Contract is in full force and effect, unamended and neither it nor, to the best of its knowledge and belief, Contractor is in material default of any of their respective obligations thereunder;

- (b) an executed, true and complete copy of the Construction Contract is attached hereto as Schedule A; and
- (c) Project Co has done no act and has not consented to any proceedings that could create any security interest, lien or encumbrance on its interest in the Construction Contract other than the lien or encumbrance in favour of Agent, for itself and for the benefit of Lender, pursuant to the Lending Agreements.

2.2 Contractor Representations and Warranties

Contractor represents and warrants to Hospital that as at the date of this Limited Assignment of Construction Contract:

- (a) the Construction Contract is in full force and effect, unamended and neither it nor, to the best of its knowledge and belief, Project Co is in material default of any of their respective obligations thereunder;
- (b) an executed, true and complete copy of the Construction Contract is attached hereto as Schedule A;
- (c) Contractor has done no act and has not consented to any proceedings that could create any security interest, lien or encumbrance on its interest in the Construction Contract other than the lien or encumbrance in favour of Agent, for itself and for the benefit of the Lender, pursuant to the Lending Agreements.

2.3 Project Co Representation and Warranty

Project Co hereby represents and warrants to Hospital that Project Co is registered under Subdivision d of Division V of Part IX of the Excise Tax Act (Canada) and has been assigned GST/HST Number [REDACTED].

2.4 Contractor Representation and Warranty

The Contractor hereby represents and warrants to Hospital that the Contractor is registered under Subdivision d of Division V of Part IX of the Excise Tax Act (Canada) and has been assigned GST/HST Number _____ • _____ RT.

2.5 Hospital Representation and Warranty

Hospital represents and warrants to the Contracting Parties that as of the date of this Project Agreement the Hospital is a public hospital under the *Public Hospitals Act* (Ontario), and such representation and warranty shall be deemed to be included in the Construction Contract as a representation and warranty made by Hospital therein.

ARTICLE 3 - ASSIGNMENT

3.1 Assignment by Project Co

Subject to the prior assignment as security pursuant to the Financing, Project Co hereby assigns all of its right, title and interest in the Construction Contract to Hospital save and except the obligation to pay the Base Progress Payments, (the “**Retained Payment Obligation**”) which obligation Project Co specifically retains and Project Co agrees with Hospital and Contractor to pay the Base Progress Payments in accordance with and subject to the applicable provisions of the Construction Contract, including, without limitation, the provisions of Article A-7 - PAYMENT and PART 5 – PAYMENT therein, including any provision of the Construction Contract pursuant to which a Retained Payment Obligation may be subject to holdback.

3.2 Rights to Enforce

Project Co may assign its interest in the Construction Contract to Agent as security for the Financing. Such assignment as security includes all of Project Co’s Enforcement Rights in order that Agent may enforce the provisions of the Construction Contract as against Contractor in the event of any default under the Construction Contract subject to and in accordance with the provisions of the Lender’s Direct Agreement. Project Co and Contractor acknowledge and agree that Hospital shall, subject to Lender’s prior security interest therein and subject to and in accordance with the terms of the Lender’s Direct Agreement, be entitled to exercise all of Project Co’s rights and enforce all of Contractor’s covenants and obligations in accordance with the terms of the Construction Contract.

3.3 Assumption by Hospital

Hospital hereby accepts the assignment of the Construction Contract from Project Co and, subject to the prior rights of Agent, assumes all of the rights, benefits and obligations of Project Co thereunder, save and except the Retained Payment Obligation (the “**Assumed Rights and Obligations**”) and covenants and agrees with Project Co and with Contractor to observe and perform all of the Assumed Rights and Obligations including, for greater clarity, the payment of all Additional Owner Payments, the Certified Cost to Complete and the Hospital Holdback as same become due and payable to Contractor in accordance with the terms of the Construction Contract.

3.4 Hospital Reimbursement Payment

Subject to Sections 3.5 and 3.11, Hospital covenants and agrees with Project Co to pay to Project Co the Hospital Reimbursement Payment and the applicable Value Added Tax on the Reimbursement Payment Date.

3.5 Direction of Hospital Reimbursement Payment

Project Co hereby irrevocably directs Hospital to make the Hospital Reimbursement Payment to Agent or as Agent may direct as security for the Financing. Hospital shall pay the Hospital Reimbursement Payment as directed by Project Co and shall not accept any re-direction without the consent of Agent. Hospital and Project Co acknowledge that any monies contributed by MOHLTC for the Hospital Reimbursement Payment shall be deposited by MOHLTC directly into the Trust Account. Hospital acknowledges that

Project Co's interest in the Trust Account has been assigned to the Agent as part of the security under the Lending Agreements, and agrees that any monies payable to Project Co under this Limited Assignment of Construction Contract that are funded by monies deposited in the Trust Account shall be paid directly to Agent or as Agent may direct out of the Trust Account all in accordance with and pursuant to the Trust Account Agreement. Hospital and Project Co further agree that any monies payable to the Contractor under this Limited Assignment of Construction Contract or the Construction Contract that are funded by monies deposited in the Trust Account shall be paid directly to the Contractor out of the Trust Account. Hospital will pay the amounts that Project Co and Contractor are entitled to under this Limited Assignment of Construction Contract once the conditions for payment set out in the Construction Contract, if any, have been satisfied.

3.6 Payment of Substantial Performance Holdback and Balance of Guaranteed Price

Subject to Section 3.11, Hospital covenants and agrees with Contractor to pay to Contractor the Substantial Performance Holdback on the Substantial Performance Holdback Payment Date and to pay to Contractor the unpaid balance of the Guaranteed Price (as defined in the Construction Contract) on the date provided in GC 5.8.4 of the Construction Contract.

3.7 Hospital Holdback

The Hospital Holdback shall be reduced from time to time as a result of such actions by Contractor as confirmed by the Consultant in accordance with the terms and conditions of the Construction Contract. To the extent the Hospital Holdback is reduced from time to time, Hospital shall pay the amount of the Hospital Holdback reductions to Contractor or as otherwise directed by Contractor and shall not accept any re-direction without the consent of the Person to whom payment is directed. Hospital acknowledges such direction and agrees to pay the Hospital Holdback reductions as Contractor may direct in accordance with any such direction. Contractor acknowledges and agrees that payment by Hospital of the Hospital Holdback reductions in accordance with this Section 3.7 as the Contractor may direct constitutes payment by the Hospital to Contractor in satisfaction of the Hospital's obligation to pay the Hospital Holdback reductions to Contractor under the Construction Contract and in satisfaction of any trust obligation of the Hospital in respect to such payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

3.8 Additional Owner Payments

Unless otherwise provided in the relevant Change Order or Change Directive or in the Construction Contract, Hospital will pay all Additional Owner Payments to Contractor on a progress payment basis in the manner and at the times contemplated by the Construction Contract.

3.9 Certified Cost to Complete

After Hospital has paid the Hospital Reimbursement Payment, it shall thereafter continue to be responsible for payment to the Contractor of the Certified Cost to Complete on a progress payment basis in the manner and at the times contemplated by the Construction Contract. Hospital shall pay the Certified Cost to Complete to the Contractor or as otherwise directed by Contractor and shall not accept any re-direction without the consent of the Person to whom payment is directed. Hospital acknowledges such direction and agrees to pay the Certified Cost to Complete as Contractor may direct in accordance with such direction. Contractor acknowledges and agrees that payment by Hospital of the Certified Cost to Complete in accordance with this Section 3.9 as the Contractor may direct constitutes payment by the Hospital to Contractor in satisfaction of the Hospital's obligation to pay the Certified Cost to Complete to Contractor under the Construction Contract and in satisfaction of any trust obligation of the Hospital in respect to such payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

3.10 Assumption Acknowledgement by Contractor

Contractor hereby consents to the assignment of the Construction Contract by Project Co to Hospital on the terms and conditions of this Limited Assignment of Construction Contract including, without limitation, all of the provisions of this Article 3 and agrees to the assumption of the Construction Contract on such terms and conditions by Hospital and further agrees that, subject to the prior assignment of the Construction Contract as security pursuant to the Lending Agreements and except as set out in Sections 3.1 and 3.2, Hospital is entitled to the benefit of and to enforce all of the covenants and obligations of the "Owner" under the terms of the Construction Contract as if Hospital were an original party to the Construction Contract with Contractor. Contractor further acknowledges and agrees with Hospital that, subject to the provisions of Section 8.3 of the Lender's Direct Agreement, Hospital is not responsible for the payment to Contractor of any Base Progress Payment nor any Legislative Holdbacks in respect thereof except to the extent deducted from the Hospital Reimbursement Payment and further that the failure of Project Co to make any Base Progress Payment or to release any Legislative Holdbacks in respect thereof except to the extent deducted from any Hospital Reimbursement Payment when due shall not constitute a default under the Construction Contract and shall not give rise to any remedy or right of action on the part of Contractor under the Construction Contract provided nothing in this sentence shall relieve Project Co from its obligation to pay the Base Progress Payments to Contractor or prejudice any claim, right or remedy Contractor may have against Project Co for failure to pay same.

3.11 Compensation on Termination

If the Construction Contract is terminated pursuant to GC 7.1.1, GC 7.1.4, GC 7.1.8, GC 7.2.1, GC 7.2.2 or GC 7.2.3 then:

- (a) Hospital shall pay the Compensation Payment to Project Co, calculated and payable in accordance with Schedule B; and
- (b) the provisions of Section 3.4 through to 3.9 inclusive shall no longer apply.

Project Co hereby irrevocably directs Hospital to make any Compensation Payment to Agent, or as Agent may direct as security for the Financing. Hospital shall pay the Compensation Payment as directed by Agent and shall not accept any re-direction without the consent of Agent. Any portion of a Compensation Payment funded by monies deposited to the Trust Account shall be paid directly to Agent or as Agent may direct from the Trust Account. Hospital will pay the Compensation Payment in accordance with Schedule B.

ARTICLE 4 - NOTICES

4.1 Notices to Parties

All notices, requests, demands, instructions, certificates, consents and other communications (each being a “**Notice**”) required or permitted under this Limited Assignment of Construction Contract and/or the Construction Contract shall be served by sending the same by facsimile or by hand, as follows:

If to Contractor: 89 Queensway Avenue West
Suite 800
Mississauga, Ontario L5B 2V2
Fax No.: [REDACTED]
Attn.: [REDACTED]

If to Project Co: c/o ELLISDON-LPF (HAMILTON GENERAL) GP INC.
5000 Yonge Street
Suite 1502
Toronto, Ontario M2N 7E9
Fax No.: [REDACTED]
Attn.: [REDACTED]

If to Hospital: Hamilton Health Sciences Corporation
1200 Main Street West - 3A

Hamilton, Ontario L8N 3Z5

Fax No.: [REDACTED]
Attn: [REDACTED]

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

Fax No.: [REDACTED]

Attn.: [REDACTED]

4.2 Facsimile

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

4.3 Change of Address

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

4.4 Deemed Receipt of Notices

Subject to Section 4.4(a), a Notice given by hand delivery shall be deemed to have been received on the day it is delivered. Subject to Sections 4.4(a) and 4.4(b), a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.

- (a) 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.
- (b) 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.

ARTICLE 5 - GENERAL

5.1 Amendments

This Limited Assignment of Construction Contract 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 Limited Assignment of Construction Contract.

5.2 Waiver

- (a) No waiver made or given by a Party under or in connection with this Limited Assignment of Construction Contract 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 Parties. 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.

5.3 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 Limited Assignment of Construction Contract is not intended to and does not create or establish between Hospital, Contracting Parties, 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 Hospital, the Province, including Infrastructure Ontario, and any Affiliate, representative or employee of a Contracting Party.

5.4 Entire Agreement

Except where provided otherwise in this Limited Assignment of Construction Contract, this Limited Assignment of Construction Contract 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 Limited Assignment of Construction Contract.

5.5 No Reliance

Each of the Parties acknowledges that:

- (i) it has not entered into this Limited Assignment of Construction Contract 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 Limited Assignment of Construction Contract or not, except those expressly made, given or repeated in the Project Agreement, this Limited Assignment of Construction Contract and the other Implementing Agreements and the only remedy or remedies available in respect of any misrepresentation or untrue statement made to it shall be those expressly provided for in this Limited Assignment of Construction Contract; and
- (ii) this Section 5.5 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Limited Assignment of Construction Contract which was induced by fraud, for which the remedies available shall be all those available under the law governing this Limited Assignment of Construction Contract.

5.6 Severability

If any provision of this Limited Assignment of Construction Contract 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 Limited Assignment of Construction Contract. If any such provision of this Limited Assignment of Construction Contract 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 Limited Assignment of Construction Contract as near as possible to its original intent and effect.

5.7 Enurement

This Limited Assignment of Construction Contract shall enure to the benefit of, and be binding on, Hospital and the Contracting Parties and each of their respective successors and permitted transferees and assigns.

5.8 Governing Law and Jurisdiction

- (a) This Limited Assignment of Construction Contract 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.

5.9 Cumulative Remedies

Except as otherwise set forth in this Limited Assignment of Construction Contract, the rights, powers and remedies of each Party set forth in this Limited Assignment of Construction Contract 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 Limited Assignment of Construction Contract or at law or in equity.

5.10 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 Limited Assignment of Construction Contract.

5.11 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 Limited Assignment of Construction Contract. All costs and expenses associated with the establishment and operation of the Trust Account shall be borne and paid by Project Co.

5.12 Proof of Authority

Each Party shall provide proof to each other Party, in a form acceptable to such other Party, that any Person executing this Limited Assignment of Construction Contract or any of the Implementing Agreements on its behalf has the requisite authority to execute this Limited Assignment of Construction Contract or such Implementing Agreement on its behalf.

5.13 Counterparts

This Limited Assignment of Construction Contract 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 each other Party an original signed copy of this Limited Assignment of Construction Contract which was so transmitted.

5.14 Language of Agreement

Each Party acknowledges having requested and being satisfied that this Limited Assignment of Construction Contract 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.*

SIGNATURE PAGES IMMEDIATELY FOLLOW

IN WITNESS WHEREOF the Parties hereto have executed this Limited Assignment of Construction Contract as of the date first above written.

ELLISDON-LPF HAMILTON GENERAL LP, by its general partner, **ELLISDON-LPF (HAMILTON GENERAL) GP INC.**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

We have authority to bind the corporation.

HAMILTON HEALTH SCIENCES CORPORATION

Per: _____
Name:
Title:

Per: _____
Name:
Title:

We have authority to bind the corporation.

ELLISDON CORPORATION

Per: _____
Name:
Title:

Per: _____
Name:
Title:

We have authority to bind the corporation.

SCHEDULE A
EXECUTED COPY OF CONSTRUCTION CONTRACT

SCHEDULE B
COMPENSATION ON TERMINATION

ARTICLE 1 - DEFINITIONS

1.1 Definitions

All capitalized terms not otherwise defined in the Limited Assignment of Construction Contract, including this Schedule, shall have the meanings given to them in the Project Agreement and unless the context otherwise requires:

- (a) **“Debt Amount”** means all accrued and unpaid interest and any “make whole” payments or breakage fees (less any breakage benefits) which Project Co is obligated to pay to Agent pursuant to the Lending Agreements, together with the outstanding principal amount of debt funded under the Lending Agreements.
- (b) **“Default Termination Payment”** has the meaning given in Section 2.1(b) of this Schedule B.
- (c) **“Demobilization Costs”** means all reasonable costs of Contractor associated with the demobilization of the Work as a result of the termination of the Construction Contract.
- (d) **“Direct Losses”** means all damages, losses, liabilities, penalties, fines, assessments, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on a substantial indemnity basis), proceedings, demands and charges whether arising under statute, contract or at common law, except Indirect Losses.
- (e) **“Non-Default Termination Sum”** has the meaning given in Section 3.1(b) of this Schedule B.
- (f) **“Indirect Losses”** means any losses claimed that are (a) for punitive, exemplary or aggravated damages, (b) for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity, or (c) for a claim for consequential loss or for indirect loss of any nature.
- (g) **“Invoice Date”** means the date that is the later of:
 - (i) the date on which Hospital receives an invoice from Project Co for the Non-Default Termination Sum; and
 - (ii) the date on which Hospital receives the supporting evidence required pursuant to Section 4.1(a) of this Schedule B.
- (h) **“Project Co Amount”** means any amount payable to Project Co as a return to and/or profit to Project Co shown in the Financial Model for the period to and including the Termination Date pro-rated for any partial month at the end of such period.

- (i) “**Termination Date**” means the date the Construction Contract is terminated pursuant to GC 7.1.1, GC 7.1.4, GC 7.1.8, GC 7.2.1, GC 7.2.2 or GC 7.2.3.
- (j) “**Work**” has the meaning given in the Construction Contract.

**ARTICLE 2 - COMPENSATION ON TERMINATION
FOR CONTRACTOR DEFAULT**

2.1 Compensation

- (a) If Hospital terminates the Construction Contract pursuant to GC 7.1.1 or GC 7.1.4 of the Construction Contract, Hospital shall pay to Project Co the Default Termination Payment.
- (b) The “Default Termination Payment” shall be an amount equal to the Guaranteed Price, as adjusted in accordance with the terms of the Construction Contract as of the Termination Date, less the aggregate, without duplication, of each of the following:
 - (i) all Additional Owner Payments paid or payable on or before the Termination Date;
 - (ii) Hospital’s estimate of the cost to complete the Work (net of any insurance or performance security proceeds that Hospital is entitled to receive under the Insurance Trust Agreement to complete the Work) including the cost to remedy any defective or deficient Work determined on a reasonable basis in consultation with Consultant and other consultants;
 - (iii) Hospital’s estimate of the aggregate of all Direct Losses suffered, sustained or incurred by Hospital as a result of, in respect of, or arising out of the event or events which resulted in the termination of the Construction Contract and out of the termination together with all costs of entering into a new construction contract to complete the Work on substantially the same terms and conditions as the Construction Contract;
 - (iv) Legislative Holdback required to be maintained by the Hospital as at the time the Default Termination Payment is required to be made which amount will be paid by Hospital in accordance with the *Construction Lien Act* (Ontario).
- (c) To the extent that any amounts that Hospital has estimated or determined pursuant to Section 2.1(b)(ii), (iii) or (iv) above are in excess of what is required by Hospital to complete the Work, compensate for Direct Losses or maintain as Legislative Holdback, as applicable, Hospital shall promptly pay such excess amounts to Project Co.
- (d) Hospital shall pay the Default Termination Payment in accordance with Article 4 of this Schedule B.

ARTICLE 3 - COMPENSATION ON NON-DEFAULT TERMINATION

3.1 Compensation

- (a) If Contractor terminates the Construction Contract pursuant to GC 7.2.1, 7.2.2 or 7.2.3 or if Hospital terminates the Construction Contract pursuant to GC 7.1.8, Hospital shall pay to Project Co the Non-Default Termination Sum.
- (b) The “Non-Default Termination Sum” shall be an amount equal to the aggregate, without duplication, of:
 - (i) all Base Progress Payments and Additional Owner Payments properly due and payable, under the Construction Contract to and including the Termination Date and any Cost of the Financing directly related to such Base Progress Payments to the extent not funded under the Lending Agreements as part of the Debt Amount;
 - (ii) all Demobilization Costs;
 - (iii) the Debt Amount;
 - (iv) the Project Co Amount calculated as at the date of payment of the Non-Default Termination Sum to Project Co; and
 - (v) all other Direct Losses suffered, sustained or incurred by Contractor and Project Co as a result of, or arising out of, the event or events which have resulted in the termination of the Construction Contract and out of the termination;

less the aggregate of (A) and (B) of this Section 3.1(b):

- (A) the Hospital Holdback as at the time the Non-Default Termination Sum is required to be made; and
- (B) any Legislative Holdback required to be maintained by the Hospital at the time the Non-Default Termination Sum is required to be made, which amount shall be paid subject to the *Construction Lien Act* (Ontario);

provided that with respect to the Hospital Holdback, Hospital shall give notice to Contractor of the defect or other cause which gave rise to the Hospital Holdback (except to the extent Contractor is or should already be aware of same) and a reasonable period of time to correct such defect or remove such cause; and provided further that Hospital shall release the Hospital Holdback to the extent such defect is corrected or other cause removed before the end of such period.

- (c) To the extent that any amounts that Hospital has determined pursuant to Section 3.1(b)(A) or (B) above are in excess of what is required by Hospital to holdback under the Construction Contract or maintain as Legislative Holdback, as applicable, Hospital shall promptly return such excess amounts to Project Co.

- (d) Hospital shall pay the Non-Default Termination Sum in accordance with Article 4 of this Schedule B.

ARTICLE 4 - GENERAL

4.1 Payment

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

4.2 Costs

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

4.3 Undisputed Amounts

Either Hospital or Project Co may dispute the calculation of any Compensation Payment and in the event of a dispute then any undisputed amount shall be paid in accordance with this Schedule B and the disputed amount shall be dealt with in accordance with Schedule C - Dispute Resolution Procedure to the Limited Assignment of Construction Contract. Notwithstanding the foregoing, in the event any disputed amount exceeds [REDACTED] then either party may proceed to court for the resolution of such dispute.

4.4 Outstanding Debt Amount

- (a) Subject to Section 4.3 of this Schedule B, Hospital shall be entitled to rely on a certificate of Agent as to the Debt Amount outstanding at any relevant time.
- (b) If a receipt or other acknowledgement is given by Agent acknowledging or otherwise confirming receipt of payment or payments in respect of the Debt Amount, such receipt or other acknowledgement shall discharge Hospital's obligation to pay such portion of compensation due to Project Co that is equal to the amount acknowledged or confirmed.

4.5 Set-off

Hospital shall be entitled to set off against the Non-Default Termination Sum or the Default Termination Payment, such amounts not already taken into account in calculating the relevant Compensation Payment that Hospital is entitled to set off or withhold pursuant to the Project Agreement or the Construction Contract provided that the Non-Default Termination Sum shall never be less than the Debt Amount.

4.6 Full and Final Settlement

- (a) Except as otherwise provided in Section 4.6(b) of this Schedule B, any compensation paid pursuant to Section 2.1 or Section 3.1 of this Schedule B in the total amount owing thereunder shall be in full and final settlement of any claims, demands and proceedings of Project Co and Hospital as between themselves and of Contractor and Hospital as between themselves and each shall be released from all liability to the other in relation to any breaches or other events leading to the termination of the Construction Contract and the circumstances leading to such breach or termination and Project Co and Hospital as between themselves and Contractor and Hospital as between themselves shall be excluded from all other rights and remedies in respect of any such breach or termination whether in contract, tort, restitution, statute, at common-law or otherwise.
- (b) Section 4.6(a) of this Schedule B shall be without prejudice to any liability, whether arising before, on or after the Termination Date, of either Party to the other including under the indemnities contained in the Construction Contract that arose with respect to acts or omissions on or prior to the Termination Date (but not from termination itself or the events leading to such termination) to the extent such liability has not already been taken into account in calculating the relevant Compensation Payment or set off pursuant to Section 4.5 of this Schedule B. For greater certainty, Section 4.6(a) of this Schedule B shall be without prejudice to any liability of the Owner to pay any outstanding Additional Owner Payments to the extent a deduction for any such amounts has been made under Section 2.1(b)(i) of this Schedule B.
- (c) Contractor acknowledges that under the provisions of Section 3.11 of the Limited Assignment of Construction Contract Hospital shall pay the Compensation Payment to Project Co and which Compensation Payment Project Co has irrevocably directed Hospital to make to Agent or as Agent may direct as security for the Financing. Hospital acknowledges such direction and agrees to pay the Compensation Payment to Agent or as Agent may direct in accordance with such direction. Project Co and Contractor acknowledge and agree that payment by the Hospital of the Compensation Payment in

accordance with this Section 4.6(c) to the Agent or as the Agent may direct constitutes payment by the Hospital to Project Co or Contractor, as applicable, in satisfaction of the Hospital's obligation to make (i) the Compensation Payment under the Limited Assignment of Construction Contract, or (ii) any payment to Contractor under the Construction Contract, to the extent made in relation to the Guaranteed Price, as the case may be and in satisfaction of any trust obligation of the Hospital in respect to such payments under Section 7 of the *Construction Lien Act* (Ontario) pursuant to Section 10 of the *Construction Lien Act* (Ontario).

SCHEDULE C
DISPUTE RESOLUTION PROCEDURE

ARTICLE 1 - GENERAL

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

ARTICLE 2 - REFERRAL OF DISPUTES TO ARBITRATION

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

ARTICLE 3 - RESOLUTION BY ARBITRATION

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

3.4 If the arbitration tribunal is comprised of three (3) arbitrators:

- (a) the arbitrators shall be appointed as follows:
 - (i) each Party shall appoint one arbitrator no later than five (5) Business Days after delivery of the notice requiring a three (3) person arbitration panel pursuant to Section 3.2 of this Schedule C;
 - (ii) if a Party fails to appoint an arbitrator within five (5) Business Days after delivery of the notice requiring a three (3) person arbitration panel, the other Party is entitled to apply to the Ontario Superior Court of Justice to appoint that arbitrator, in which case the court shall appoint that arbitrator at the earliest opportunity using a comparable process to that described in Section 3.3(b) of this Schedule C;
 - (iii) the arbitrators appointed in accordance with the foregoing shall, within five (5) Business Days after their appointment, jointly appoint a third arbitrator who shall also act as the chair of the arbitration tribunal and who, in addition to all other required qualifications, shall have experience in arbitration or judicial processes and procedures; and
 - (iv) if the two (2) arbitrators appointed by the Parties fail to appoint a third arbitrator within the required time, either of the other two (2) arbitrators may apply to the Ontario Superior Court of Justice for appointment of the third arbitrator, in which case the court shall appoint the third arbitrator at the earliest opportunity using a comparable process to that described in Section 3.3(b) of this Schedule C; and
- (b) the arbitrators appointed by the Parties shall at all times be neutral and act impartially and shall not act as advocates for the interests of the Party who appointed them.

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

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

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

- (a) amend or vary any and all rules under the *Arbitration Act, 1991* (Ontario), including rules relating to time limits, either by express agreement of the Parties or, failing such agreement, as the arbitrator(s) consider appropriate and necessary in the circumstances to resolve the Dispute and render an award;
- (b) require some or all of the evidence to be provided by affidavit;
- (c) hold a hearing at which evidence and submissions are presented by the Parties;

- (d) direct either or both Parties to prepare and provide the arbitrator(s) with such documents or other things as the arbitrator(s) may require to assist them in the resolution of the Dispute and rendering of an award; and
 - (e) require either Party to supply or prepare for examination by the arbitrator(s) and the other Party, any document or information the arbitrator(s) considers necessary.
- 3.8** The place of arbitration shall at the option of Hospital be the municipality in which Hospital is located or Toronto, Ontario. The language of the arbitration shall be English.
- 3.9** The costs of an arbitration are in the discretion of the arbitrator(s) who, in addition to any jurisdiction and authority under applicable law to award costs, has the jurisdiction and authority to make an order for costs on such basis as the arbitrator(s) considers appropriate in the circumstances, including to award actual legal fees and disbursements and expert witness fees, and to specify or order any or all of the following:
- (a) the Party entitled to costs;
 - (b) the Party who must pay the costs;
 - (c) the amount of the costs or how that amount is to be determined; and
 - (d) how all or part of the costs must be paid.
- 3.10** In exercising discretion to award costs, however, the arbitrator(s) will take into account the desire of the Parties that costs should generally be awarded to each Party in proportion to the relative success that each Party has in the arbitration.
- 3.11** The award of the arbitrator(s) shall be final and binding upon both Parties, and both Parties expressly waive all rights of appeal in connection with the award of the arbitrator(s). Judgment may be entered upon the award in accordance with Applicable Law in any court having jurisdiction.
- 3.12** The Parties agree to and shall co-operate fully with the arbitrator(s) and proceed with the arbitration expeditiously, including in respect of any hearing, in order that an award may be rendered as soon as practicable by the arbitrator(s), given the nature of the Dispute. The arbitrator(s) shall render a decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than forty-five (45) days after the date of the hearing, or such longer period of time as agreed to in writing by the Parties. If the arbitration tribunal is comprised of three (3) arbitrators, the decision of a majority of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal, and where there is no majority decision, the decision of the chair of the arbitration tribunal shall be deemed to be the decision of the arbitration tribunal.
- 3.13** This Schedule C constitutes an agreement to arbitrate that shall be specifically enforceable.

SCHEDULE 3

FORM OF LENDER'S DIRECT AGREEMENT

THIS LENDER'S DIRECT AGREEMENT is made as of the [•] day of [•], 200•

BETWEEN:

HAMILTON HEALTH SCIENCES CORPORATION, a non-share capital corporation amalgamated under the laws of the Province of Ontario

("Hospital")

AND:

CANADIAN IMPERIAL BANK OF COMMERCE, acting as agent for and on behalf of Lender

("Agent")

AND:

ELLISDON-LPF HAMILTON GENERAL LP, a limited partnership existing under the laws of the Province of Ontario

("Project Co")

AND:

ELLISDON CORPORATION, a corporation incorporated under the laws of the Province of Ontario

("Contractor").

WHEREAS:

- A. Hospital, Project Co and Contractor have entered into the Project Agreement.
- B. Project Co has entered into the Construction Contract in the capacity of "Owner" with Contractor with respect to the Project.
- C. Project Co has under the Limited Assignment of Construction Contract assigned its rights and obligations as "Owner" under the Construction Contract to Hospital, save and except in respect to the obligation to pay the Base Progress Payments (the "Retained Payment Obligation").

- D. Under the Limited Assignment of Construction Contract, Hospital has acknowledged the assignment by way of security granted to Agent in connection with the Financing over all of the rights of Project Co under the Construction Contract, including the rights to enforce or to terminate the Construction Contract under PART 7 - DEFAULT NOTICE (the "Enforcement Rights").
- E. 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 Contractor under the Construction Contract, conditional, among other things, on Project Co executing and delivering the Lending Agreements.
- F. Agent has agreed to enter into this Lender's Direct Agreement with Hospital, Project Co and Contractor 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 and by Contractor under the Construction Contract.
- G. Contractor, Project Co and Agent recognize and understand that Hospital is a public hospital under the *Public Hospitals Act* (Ontario) and is therefore subject to a highly regulated legal and operational environment.
- H. Hospital has been authorized to execute this Lender's Direct Agreement by the MOHLTC (it being acknowledged by the parties to this Lender's Direct Agreement that such authorization in no way obligates the Government of Ontario or the Province under this Lender's Direct Agreement or otherwise in respect of the Project).

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:

ARTICLE 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 given to them in the Limited Assignment of Construction Contract or in the Project Agreement and unless the context otherwise requires:

"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 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 Hospital (such approval not to be unreasonably withheld or delayed).

“**Appointed Representative Notice**” has the meaning given to it in Section 7.2.

“**Article**” and “**Section**” mean and refer to the specified article and section or subsection of this Lender’s Direct Agreement.

“**Base Progress Payments**” has the meaning given to it in the Construction Contract.

“**Compensation Payment**” has the meaning given to it in the Limited Assignment of Construction Contract.

“**Construction Contract**” means the Guaranteed Price Contract entered into between Project Co in the capacity of “Owner” and Contractor with respect to the Project as assigned to Hospital in accordance with the Limited Assignment of Construction Contract.

“**Construction Contract Assignment**” means an assignment of the Construction Contract by an Appointed Representative to a Replacement Contractor as contemplated in Section 7.3.

“**Construction Default Notice**” has the meaning given to it in Section 6.1.

“**Construction Event of Default**” means the occurrence of an event under the Construction Contract that upon the expiry of any cure periods provided for therein would entitle Hospital to terminate the Construction Contract.

“**Construction Insurance**” means the insurance contemplated under GC 11.1 - INSURANCE of the Construction Contract.

“**Construction Security**” means the performance bond and labour and material payment bond as contemplated in GC 11.2 – BONDS of the Construction Contract.

“**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.

“**Enforcement Event**” means an event of default under the Lending Agreements or any other event which permits an Enforcement Action.

“**Enforcement Rights**” means the rights as against Contractor to enforce or terminate the Construction Contract under PART 7 – DEFAULT NOTICE therein.

“**Hospital Reimbursement Payment**” has the meaning given to it in the Limited Assignment of Construction Contract.

“**Insurance Trust Agreement**” means the agreement dated as of the date hereof between Hospital, Agent, Project Co, Contractor and • governing the receipt and distribution of certain insurance proceeds and performance security proceeds as therein set forth.

“**Legislative Holdback**” means the holdback to be maintained under the Construction Contract pursuant to Part IV of the *Construction Lien Act* (Ontario).

“**Lender**” means, collectively, Canadian Imperial Bank of Commerce, Pacific & Western Bank of Canada, such parties as may become parties to the Lending Agreements in the capacity of lenders thereunder from time to time, and all such parties’ respective successors and assigns.

“**Lender Decision Period**” has the meaning given to it in Section 7.1.

“**Lender’s Consultant**” has the meaning given to it in the Construction Contract.

“**Lender’s Direct Agreement**” means this lender’s direct agreement.

“**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 the Lender and includes but is not limited to:

- (i) Loan Agreement between Lender, Project Co and Agent;
- (ii) General Security Agreement between Agent and Project Co;
- (iii) Limited Recourse Guarantee and Pledge Agreements between the owners of Project Co, Project Co and Agent; and
- (iv) Contractor Direct Agreement between Agent, Contractor and Project Co.

“**Lien**” means the lien provided for under Section 14(1) of the *Construction Lien Act* (Ontario).

“**Limited Assignment of Construction Contract**” means the Limited Assignment of Construction Contract between Project Co, Hospital and Contractor [made as of even date herewith].

“**Longstop Date**” has the meaning given to it in the Construction Contract.

“**Notice Period**” means the period starting on the date of delivery of a Construction Default Notice and ending one hundred and twenty (120) days later.

“**Party**” means any of Hospital, Project Co, Contractor or Agent, and “**Parties**” means all of Hospital, Project Co, Contractor 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.

“**Reimbursement Payment Date**” has the meaning given to it in the Construction Contract.

“**Replacement Construction Contract**” has the meaning given to it in Section 7.3.

“**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 under the Request for Qualifications (RFQ No. OIPC-06-00-M016) or that is acceptable to Hospital and Infrastructure Ontario, acting reasonably.

“**Response Period**” has the meaning given to it in Section 4.1(c).

“**Step-In Date**” means the date on which Hospital receives a Step-In Notice from Agent.

“**Step-In Notice**” means the notice given by Agent to Hospital pursuant to Section 7.1 stating that Agent is exercising its step-in rights under Article 7 of this Lender’s Direct Agreement.

“**Step-In Period**” means the period from the Step-In Date up to and including the Step-Out Date.

“**Step-Out Date**” means the earlier to occur of (i) the expiry of the periods provided for in Sections 6.3(a) or 6.3(b), as the case may be and (ii) the date on which Hospital receives a Step-Out Notice.

“**Step-Out Notice**” has the meaning given to it in Section 8.1.

“**Substantial Performance Date**” has the meaning given to it in the Construction Contract.

“**Substantial Performance of the Work**” has the meaning given to it in the Construction Contract.

1.2 Interpretation

The provisions of Section 1.3(a) and (e)-(x), inclusive, 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”.

ARTICLE 2 - CONFLICT IN DOCUMENTS

- 2.1 In the event of ambiguities, conflicts or inconsistencies between or among this Lender’s Direct Agreement, the Project Agreement the Construction Contract and the Limited Assignment of Construction Contract, this Lender’s Direct Agreement shall prevail. Notwithstanding the foregoing, if there is any right or remedy in favour of Hospital set out in this Lender’s Direct Agreement or any part thereof which is not set out or provided for in the Construction Contract, 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)(iii) of the Project Agreement, no review by Hospital of the Lending Agreements shall constitute an acceptance in or acquiescence to any of the Lending Agreements or any term or condition thereof by Hospital and this Lender’s Direct Agreement, the Project Agreement and the

Construction Contract shall not be subject to any of the terms and conditions of the Lending Agreements.

ARTICLE 3 - TERM

- 3.1** This Lender's Direct Agreement and the license granted in Section 3.3 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 thirty (30) days following its occurrence, Agent shall provide notice to Hospital of the date referred to in Section 3.1.
- 3.3** Hospital hereby provides to Lender, Agent and Project Co, and agrees to provide to Replacement Contractor, permission, authority and a non-exclusive license to have access to and to use the Place of the Work on the same terms and conditions as set out in GC 3.17.1 of the Construction Contract and Hospital represents and warrants to Lender, Agent and Project Co that it has the authority to grant such access. Such permission, authority, and license shall be unconditional other than as specified in this Section 3.3 and shall be irrevocable.

ARTICLE 4 - AGREEMENTS AND SECURITY

- 4.1** (a) Project Co and Agent may amend or modify any Lending Agreements in accordance with the terms of those agreements; provided that if any such amendment or modification is inconsistent in any material respect with the Financial Model included as a Schedule to the Project Agreement (and/or if its effect is to increase the Cost of the Financing, or increase the amount of any Compensation Payment, if and when payable, or the costs of prepayment that were contained in the financing term sheet in the RFP Submission), such amendments and modifications shall have no effect on any of Hospital's obligations (including payment obligations) under the Project Agreement or any of the Implementing Agreements unless the Parties agree otherwise pursuant to an amendment to the Project Agreement or the Implementing Agreements made in accordance therewith; and provided further that Hospital may refuse to enter into any such amendment to the Project Agreement or any Implementing Agreement in its sole and absolute discretion.
- (b) Contractor, Project Co and Hospital shall not amend or modify the Project Agreement or any Implementing Agreements without the prior written consent of Agent, not to be unreasonably withheld or delayed, which consent 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 Lending Agreements, or (iii) increase the liability of Agent, Lender, Contractor or Project Co under the relevant agreement. Agent shall respond to any request for consent under this Section 4.1(b) within fifteen (15) days of receipt thereof, failing which Agent shall be deemed to have consented to the relevant amendment or modification.

- (c) Contractor, Project Co and Hospital acknowledge and agree that they will not, without the consent of the Lender, proceed to execute or implement any Change Order and Hospital acknowledges and agrees that it will not issue any Change Directive, which, in either case, is in respect to a discretionary expansion of the construction scope of the Work initiated by Hospital and would (i) materially alter the scope of the Work, or (ii) materially impact the 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 a Change Order or Change Directive, when aggregated with all other such Change Orders and Change Directives previously implemented, costs more than [REDACTED], such Change Order or Change Directive shall be deemed 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 the Lender's approval in respect of a Change Order or Change Directive in accordance with this Section 4.1 is required, the Lender will respond to a written request within ten (10) Business Days (the "Response Period") of receiving such request for its approval. If the Lender intends not to approve the Change Order or the Change Directive, the Lender will notify the Hospital within the Response Period and will set out its concerns in such notification. If the Lender's concerns can be addressed on a basis acceptable to the Hospital and the Lender, then the Hospital 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 and Contractor acknowledge and consent to the arrangements set out in this Lender's Direct Agreement, and agree 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** The Hospital 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 the Implementing Agreements contained in the Lending Agreements.
- 4.5** Contractor, Project Co and Agent acknowledge that, subject to the provisions of the *Construction Lien Act* (Ontario), none of Contractor, Project Co, Agent or Lender shall, under the Project Agreement or any of the Implementing Agreements acquire any interest in the Project Lands or the Project (other than the licence to access the Project Lands or the Project provided in Section 3.3 or GC 3.17.1 of the Construction Contract) notwithstanding any provision therein to the contrary. Contracting Parties shall have access to the Project Lands and the Project under and subject to the limited license created in Section 3.3 of the Lenders' Direct Agreement and the Construction Contract.
- 4.6** Without limitation of any of their respective rights and remedies under the Implementing Agreements, Contractor, Project Co and Agent acknowledge that Hospital is a public hospital under the *Public Hospitals Act* (Ontario) 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 Hospital under the *Public Hospitals Act* (Ontario) or, subject to Section 11.8 of Article A-11 of the Construction Contract, any directions to Hospital or to the board of directors of Hospital made by a Governmental Authority under Applicable Law or in compliance with all Applicable Law.

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

ARTICLE 5 - ENFORCEMENT OF SECURITY BY AGENT; LEGISLATIVE HOLDBACK

- 5.1 Agent shall concurrently with notice to Project Co notify Hospital of any Enforcement Event, any notice of default delivered pursuant to the Lending Agreements, any Enforcement Action, any notice from Agent to Project Co to accelerate the maturity of any amounts owing by Project Co to Agent or Lender under the Lending Agreements or any notice from Agent to Project Co to demand repayment thereof.
- 5.2 Agent shall appoint Lender's Consultant who shall be responsible to advise Agent and Lender with respect to the amount of any Legislative Holdback in respect to all Base Progress Payments.
- 5.3 Hospital may conduct a subsearch of title for the Project Lands at any time and from time to time and if Hospital discovers that any Lien has been registered against the Project Lands arising from the performance of the Work it may notify Agent, Project Co and Contractor of any such Lien by providing a copy thereof and if such a Lien has been registered Contractor shall immediately take such steps, at its sole cost and expense, as are required to have the Lien vacated, released or discharged. Agent acknowledges and agrees with Hospital that neither Agent nor Lender shall be entitled to rely on Hospital to conduct a subsearch or on any subsearch result of Hospital and that the result of any such subsearch provided by Hospital is, subject to the obligations of Contractor, Project Co and Agent hereunder, for information only.
- 5.4 Agent agrees to conduct a subsearch of the Project Lands prior to the advance of any Financing and if a Lien has been registered against the Project Lands arising from the performance of the Work, 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, released and/or discharged, and doing so shall be a condition precedent to the making of any advance of the Financing.

ARTICLE 6 - CONSTRUCTION EVENT OF DEFAULT

- 6.1 Subject only to the rights expressly afforded to Agent in this Article 6, Hospital shall serve notice to Agent, with a copy to Project Co, of a Construction Event of Default (the "**Construction Default Notice**") contemporaneously with any notice delivered by Hospital to Contractor under the Construction Contract.

- 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), Hospital shall not exercise any right it may have to terminate the Construction Contract or exercise any other rights or remedies for a Construction Event of Default unless:
- (a) Hospital delivers to Agent a Construction Default Notice setting out the nature of the alleged default in reasonable detail; and
 - (b) the Notice Period has expired and Agent has not delivered a Step-In Notice.
- 6.3** During the Step-In Period, Hospital shall not exercise any right it may have to terminate the Construction Contract or, except to the extent required to protect legal rights or comply with Applicable Law, exercise any other rights or remedies for a Construction Event of Default:
- (a) if, in the case of a Construction Event of Default which is capable of being cured, the Construction Event of Default has been cured by or on behalf of Appointed Representative within 30 days of the applicable time periods set forth in the Construction Contract or the Appointed Representative is diligently proceeding to cure the breach in accordance with GC 7.1 of the Construction Contract within the applicable time periods set forth in the Construction Contract including for greater certainty prior to the Longstop Date; or
 - (b) if, in the case of a Construction Event of Default which is either (i) not capable of being cured (which, by way of example, would include an event described in GC 7.1.1 of the Construction Contract) or (ii) can only be cured in the determination of Agent (acting reasonably) by assigning the Construction Contract to a Replacement Contractor or entering into a Replacement Construction Contract as provided under Section 7.3, a Construction Contract Assignment or a Replacement Construction Contract with a Replacement Contractor has been entered into in accordance with Section 7.3 within one hundred and twenty (120) days of the delivery of the Construction Default Notice. Hospital and Appointed Representative may agree to extend such time period where Appointed Representative is proceeding diligently. In the case of either a Construction Contract Assignment or a Replacement Construction Contract 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** The Lender shall not take any action that would compromise the enforceability of the Construction Insurance or the Construction Security.

ARTICLE 7 - LENDER'S STEP-IN RIGHTS

- 7.1** Subject to Section 7.2 and without prejudice to Agent's rights to enforce the Lending Agreements against Project Co and Contractor, Agent may give Hospital a Step-In Notice at any time:

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

(which periods are jointly referred to herein as “Lender Decision Period”).

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

7.3 Upon issuance of a Step-In Notice, Appointed Representative shall perform or cause to be performed, all of Project Co’s rights and obligations to enforce the covenants and obligations of Contractor under the Construction Contract pursuant to the Enforcement Rights and cause Contractor to remedy the Construction Event of Default and shall have the right, if it is entitled to terminate the Construction Contract under the Enforcement Rights, and if it is permitted to do so under the Lending Agreements: (a) to access the Construction Security and, subject to the prior approval of Hospital, acting reasonably, and subject to the terms and conditions of the Construction Security, assign Contractor’s interest in the Construction Contract and the other Implementing Agreements 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 (b) subject to the prior approval of Hospital, acting reasonably, to terminate the Construction Contract pursuant to the Enforcement Rights and enter into a replacement construction contract with a Replacement Contractor (the “**Replacement Construction Contract**”) on terms substantially similar to the Construction Contract provided in either case the Replacement Contractor covenants in the Construction Contract Assignment or the Replacement Construction Contract, as applicable, to: (i) remedy any curable breach of Contractor under the Construction Contract whether in respect to payment or performance and whether arising prior to or during the Step-In Period, (ii) vacate, discharge and/or release any Liens from the Project Lands arising from the performance of the Work in all cases whether arising prior to or during the Step-In Period, and (iii) provide replacement or otherwise ensure continued maintenance of the Construction Insurance and the Construction Security under the Construction Contract (items (i), (ii) and (iii) of this Section 7.3 are collectively referred to as the “Rectification Obligations”). Upon any Construction Contract Assignment, the Construction Contract shall be deemed to be terminated on the date of such Construction Contract Assignment with respect to the Contractor and the provisions of Section 4.6 of Schedule B to the Limited Assignment of Construction Contract shall be deemed to apply as if compensation had been paid by Hospital pursuant to Section 2.1 of Schedule B to the Limited Assignment of Construction Contract, and the Replacement Contractor shall have no liability for the non-performance of the Contractor arising prior to the date of such Construction Contract Assignment unless same is encompassed in the Rectification Obligations, provided the foregoing shall not limit the rights of Hospital to subsequently

deduct from payments owing by Hospital under the Construction Contract those amounts which it would otherwise be entitled to deduct under the Construction Contract.

- 7.4** At the time of a Construction Contract Assignment or the entering into of a Replacement Construction Contract under Section 7.3, unless Agent transfers the shares of, and other ownership interests in, Project Co to the Replacement Contractor pursuant to its rights under the Lending Agreements, the Replacement Contractor shall be required to form a substitute Project Co (the “**Substitute Project Co**”). If a Substitute Project Co is formed, then Agent shall assign the interests of Project Co under the Lending Agreements and the Implementing Agreements to Substitute Project Co or make such other arrangements under which Substitute Project Co stands in the place of Project Co under the Lending Agreements and the Implementing Agreements.
- 7.5** During the Step-In Period, Hospital shall deal with Appointed Representative instead of Project Co in connection with all matters related to the Construction Contract. Project Co agrees to be bound by all such dealings between Hospital and Appointed Representative to the same extent as if they had been between Hospital and Project Co.
- 7.6** For greater certainty, Agent acknowledges and agrees that its rights as Obligee under the performance bond (being a component of the Construction Security) shall be limited to the enforcement (for the purpose of completing or arranging for the completion of the unperformed obligations of the Contractor under the Construction Contract) of the obligations of the Surety as more particularly described in the performance bond and are subject to the Agent’s obligation as an Obligee to pay the balance of the Contract price (“Obligee”, “Surety”, “Principal” and “balance of the Contract price” having the meanings given to them under the performance bond). If the Agent receives any benefit from the Surety under the performance bond that is not applied to the Work and fails to complete or cause to have completed the obligations of the Contractor under the Construction Contract the Agent shall pay to the Hospital an amount equal to the lesser of (a) the amount of the benefit obtained by the Agent from the Surety and not applied to the Work and (b) the Hospital’s costs of obtaining the completion of the unperformed obligations of the Contractor under the Construction Contract.

ARTICLE 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 Hospital to terminate the Step-In Period on the Step-Out Date.
- 8.2** On termination of the Step-In Period, where the Construction Contract has been assigned to the Replacement Contractor or a Replacement Construction Contract has been entered into as contemplated in Section 7.3, Hospital and Appointed Representative shall be released of any obligations to the other arising during the Step-In Period.
- 8.3** On termination of the Step-In Period, if the Construction Contract has not been assigned to a Replacement Contractor and a Replacement Construction Contract has not been entered into and any outstanding Construction Event of Default has not been cured, then

Hospital shall confirm that, as consideration for the rights and benefits assigned to Hospital pursuant to paragraph (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 Hospital upon termination of the Construction Contract pursuant to the provisions of Section 2.1 of Schedule B to the Limited Assignment of Construction Contract 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 Hospital on the other hand, arising during the Step-In Period, shall be mutually released;
- (b) subject to payment of the Step-Out Amount by Hospital, Hospital shall have no further obligation to Appointed Representative or Project Co to pay the Hospital Reimbursement Payment to Agent, Lender, Appointed Representative, or Project Co on the achievement of Substantial Performance of the Work;
- (c) Agent shall permit Hospital to thereupon have the full benefit and entitlement to the Construction Security and the Assignable Subcontract Agreements without regard to any interest therein of Agent, Lender or Project Co and Agent agrees that Hospital may thereafter proceed to enforce all of its rights under the Construction Security and/or the Assignable Subcontract Agreements without regard to any rights in favour of Agent, Lender or Project Co and the Agent shall notify the surety under the performance bond that the Hospital is entitled to exercise all rights and to take all benefits of the Obligee;
- (d) the provisions of Section 4.6(a) of Schedule B to the Limited Assignment of Construction Contract shall, subject to payment of the Step-Out Amount by Hospital, be deemed to apply as between Project Co and Hospital, *mutatis mutandis*, and, subject to Section 8.5, the Retained Payment Obligations (as defined in the Limited Assignment of Construction Contract) shall devolve to and thereafter be assumed by Hospital; and
- (e) the provisions of Section 3.4 through to 3.9 inclusive of the Limited Assignment of Construction Contract shall no longer apply.

If an Enforcement Event has not been cured on termination of the Step-In Period as aforesaid, then the Hospital may confirm that, as consideration for the rights and benefits assigned to Hospital pursuant to paragraph (c) above, it shall pay to Project Co or as Project Co may direct the Step-Out Amount and the provisions of paragraphs (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 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 Hospital of any one Construction Default Notice.

- 8.5** Hospital acknowledges and agrees that if Hospital proceeds to exercise its rights as Obligee under the performance bond (being a component of the Construction Security), unless Hospital has arranged for a replacement Financing through the Replacement Contractor and/or Project Co or a Substitute Project Co then Hospital 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 and such payments shall be deemed to be Additional Owner Payments.
- 8.6** Hospital 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 Construction Contract in accordance with its terms.

ARTICLE 9 - PAYMENT DIRECTION OF HOSPITAL REIMBURSEMENT PAYMENT AND COMPENSATION PAYMENT

- 9.1** Hospital acknowledges the assignment by Project Co of the Hospital Reimbursement Payment and any Compensation Payment to Agent under the security granted to Agent by Project Co under the Lending Agreements. Project Co hereby unconditionally, absolutely and irrevocably authorizes and directs Hospital to pay the Hospital Reimbursement Payment and any Compensation Payment which becomes payable to Project Co in accordance with the Limited Assignment of Construction Contract to Agent or as Agent may direct. Hospital acknowledges such direction and agrees to pay the Hospital Reimbursement Payment and any Compensation Payment to Agent or as Agent may direct in accordance with such direction. Project Co acknowledges and agrees that payment by the Hospital of the Hospital Reimbursement Payment or any Compensation Payment in accordance with this Section 9.1 to the Agent or as the Agent may direct constitutes payment by the Hospital to Project Co in satisfaction of the Hospital's obligation to make the Hospital Reimbursement Payment or any Compensation Payment as the case may be.

ARTICLE 10 - ASSIGNMENT

- 10.1** Hospital 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 Hospital assigns or otherwise disposes of its interest in the Project Agreement and the other Implementing Agreements pursuant to Section 6.2 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 Hospital under this Lender's Direct Agreement. Upon any such assignment or disposition, Hospital shall be released of all its obligations hereunder to the extent such obligations are assumed by the assignee. Project Co and Agent shall, at Hospital'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 Hospital, 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 Hospital with Project Co, Contractor and Hospital. Project Co, Contractor and Hospital shall, at Agent's cost and expense, do all things and execute all further documents as may be necessary in connection therewith.

ARTICLE 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 served by sending the same by facsimile or by hand, as follows:

If to Contractor: 89 Queensway Avenue West
Suite 800
Mississauga, Ontario L5B 2V2
Fax No.: [REDACTED]
Attn.: [REDACTED]

If to Project Co: c/o ELLISDON-LPF (HAMILTON GENERAL) GP INC.
5000 Yonge Street
Suite 1502
Toronto, Ontario M2N 7E9

Fax No.: [REDACTED]
Attn.: [REDACTED]

If to Hospital: Hamilton Health Sciences Corporation
1200 Main Street West – 3A
Hamilton, Ontario L8N 3Z5

Fax No.: [REDACTED]
Attn.: [REDACTED]

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

Fax No.: [REDACTED]
Attn.: [REDACTED]

If to Agent: [Address]

Fax No.: [•]
Attn.: [•]

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

Subject to Section 11.4(a), a Notice given by hand delivery shall be deemed to have been received on the day it is delivered. Subject to Sections 11.4(a) and 11.4(b), a Notice given by facsimile shall be deemed to have been received on the day it is transmitted by facsimile.

- (a) 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.
- (b) 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.

ARTICLE 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 Hospital, the Province, including Infrastructure Ontario, and any Affiliate, representative or employee of Contracting Parties 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

Each of the Parties acknowledges that:

- (a) 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 made to it shall be those expressly provided for in this Lender's Direct Agreement; and
- (b) 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 the law governing this Lender's Direct Agreement.

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 the Contracting Parties contained in Article 5 of the Project Agreement and this obligation shall survive the termination of this Lender's Direct Agreement.

SIGNATURE PAGES IMMEDIATELY FOLLOW

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

HAMILTON HEALTH SCIENCES CORPORATION

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

CANADIAN IMPERIAL BANK OF COMMERCE

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

ELLISDON-LPF HAMILTON GENERAL LP, by its general partner, ELLISDON-LPF (HAMILTON GENERAL) GP INC.

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

ELLISDON CORPORATION

Per: _____
Name:
Title:

Per: _____
Name:
Title:

I/We have authority to bind the corporation.

SCHEDULE 4

MULTIPLE OBLIGEE RIDER

TO BE ATTACHED TO AND FORM PART OF THE PERFORMANCE BOND NO. • (the “**Bond**”) dated concurrently with the execution of this Rider, issued by •, as Surety (hereinafter called the Surety, on behalf of EllisDon Corporation, as Principal, and in favour of EllisDon-LPF Hamilton General LP (the “**Project Co**”), Canadian Imperial Bank of Commerce (the “**Agent**”) and Hamilton Health Sciences Corporation (the “**Hospital**”), as Obligees.

IT IS HEREBY UNDERSTOOD AND AGREED that the Bond is hereby amended to include the following paragraphs:

1. Notwithstanding anything contained herein to the contrary, there shall be no liability on the part of the Principal or Surety under this Bond to the Obligees, or any of them, unless the Obligees, or any of them, shall make payments to the Principal, or to the Surety in case it arranges for completion of the Contract upon the default and termination of the Principal, strictly in accordance with the terms of the said Contract as to payments and shall perform all the other obligations required to be performed under said Contract at the time and in the manner therein set forth.
2. The Surety is hereby irrevocably directed by each of the Obligees to make any payment under or pursuant to the terms of the Bond to •.
3. If the Agent notifies the Surety in writing (the "Agent Default Notice") at [**address of Surety**] that the Agent is entitled to the full benefits and entitlement to this Bond, then thereafter, subject to paragraph 4 below, the Agent shall be entitled to exercise all rights and to take all benefits of the Obligee under this Bond to and in the name of the Agent alone and to the exclusion of Project Co and Hospital.
4. If the Agent notifies the Surety that all obligations of Project Co and Hospital to the Agent have been satisfied in full or that Hospital is entitled to exercise all rights to this Bond (the “Agent Satisfaction Notice”), then the Agent shall have no further interest as Obligee under this Bond and all references hereunder to the Agent shall be of no further force or effect and Hospital shall thereafter be entitled to exercise all rights and to take all benefits of the Obligee under this Bond to and in the name of Hospital alone and to the exclusion of Project Co and Agent.
5. The aggregate liability of the Surety to the Obligees under Bond No. • is limited to the specified penalty of the Bond. The rights of additional obliges are subject to the same defences Principal and/or Surety have against the primary obligee.
6. Except as modified herein, the Bond shall be and remain in full force and effect.

SIGNED, SEALED AND DATED THIS • day of •, 2007.

[SURETY]

By: _____
Name:
Title:

[PROJECT CO]

By: _____
Name:
Title:

[AGENT]

By: _____
Name:
Title:

[CONTRACTOR]

By: _____
Name:
Title:

[HOSPITAL]

By: _____
Name:
Title:

SCHEDULE 5

[REDACTED]