

This Agreement is dated January 27, 2017 and becomes effective on the Effective Date below

B E T W E E N:

KINGSTON GENERAL HOSPITAL (KGH)
and
RELIGIOUS HOSPITALLERS OF ST. JOSEPH OF THE HOTEL DIEU OF KINGSTON o/a
Hotel Dieu Hospital (HDH)
(Herein referred to collectively as the "Founders")

on behalf of

Kingston Health Sciences Centre
(Herein referred to as the "Hospital")

-and-

STEVE MILLER
(Herein referred to as the "Corporate Development and Transition Lead")

WHEREAS the Corporate Development and Transition Lead is currently the Chief Operating Officer / Chief Financial Officer of the HDH; AND

WHEREAS KGH has undertaken with HDH to create a new entity through a voluntary integration of KGH and HDH to form the Hospital; AND

WHEREAS this Agreement is conditional upon the creation of the Hospital, which has been undertaken to create, and which will require approvals, including that of the South East LHIN (the "LHIN") and the Minister of Health and Long Term Care ("MOHLTC"), and the completion of actions to create the legal entity of the Hospital; AND

THEREFORE this Agreement will take effect once the Hospital provides notice to the Executive that (1) the Hospital Board has assumed the rights and obligations of the Hospital under this Agreement and the Operating Agreement referenced in Section 1.3 and Schedule "B" respectively; and (2) the Hospital is fully constituted and operational (the date of delivery of such notice to the Executive being the "**Effective Date**").

FURTHERMORE

WHEREAS the Hospital is a corporation without share capital duly incorporated under the laws of the Province of Ontario, having its head office, in the City of Kingston, in the Province of Ontario;

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NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and mutual covenants and agreements hereinafter contained, and for other good and valuable consideration the sufficiency of which is hereby acknowledged by the parties hereto, it is agreed by and between the parties as follows:

1.0 Position and Duties

- 1.1 On the Effective Date, the Corporate Development and Transition Lead shall provide the Hospital with the services as set forth in the draft Position Profile, a copy of which is attached as Schedule "A" to this Agreement.
- 1.2 The Corporate Development and Transition Lead acknowledges that his duties may be unilaterally revised by the President and CEO of the Hospital.
- 1.3 The Corporate Development and Transition Lead while performing his duties will abide by the missions, values, guiding principles, policies, practices, procedures, rules and regulations of the Hospital, its sites, and by the applicable legislation, statutes and regulations, and guidelines and directions from the President and CEO of the Hospital as may be amended from time to time.

2.0 Professional Responsibilities

- 2.1 The Corporate Development and Transition Lead is accountable to the President and CEO of the Hospital for all contractual and employment obligations. The performance of these obligations will be reviewed by the President and CEO on an annual basis, in accordance with the applicable policies.
- 2.2 The Corporate Development and Transition Lead will devote his full working time and attention to the business and affairs of the Hospital.
- 2.3 The Corporate Development and Transition Lead will not accept any appointment, employment, or other duties during the term of this Agreement and any renewal hereof, without the prior written consent of the President and CEO.
- 2.4 The Corporate Development and Transition Lead agrees to avoid any external commitments that may interfere with his obligations to the Hospital or that constitute a potential, perceived or real conflict of interest, in accordance with the Hospital's policies.

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3.0 Representations and Warranties

- 3.1 The Corporate Development and Transition Lead warrants that he will and can carry out all contractual obligations pursuant to this Agreement and his employment in a diligent fashion and with a high degree of professional competence.
- 3.2 All representations, warranties, covenants and limitations of liability in this Agreement that are intended, by their terms, to survive termination of this Agreement shall continue in force after the termination of this Agreement.

4.0 Term of the Agreement

- 4.1 Effective Date: This Agreement comes into effect on the Effective Date defined above.
- 4.2 Term: This Agreement, unless terminated earlier as provided below, shall be in effect for a two (2) year period from the Effective Date (the "Term"). The Agreement may be renewed, extended, or terminated only as set out below.
- 4.3 Renewal of Agreement: The Hospital may advise the Corporate Development and Transition Lead in writing at least two (2) months prior to the end of the Term (under Section 4.2) whether or not it wishes to renew this Agreement.
 - (a) If the Hospital does not notify the Corporate Development and Transition Lead that it wishes to renew the Agreement or alternately, if the Hospital provides written notification to the Corporate Development and Transition Lead that it does not wish to renew the Agreement, the Agreement shall terminate in accordance with Section 5.1 below.
 - (b) If the Hospital notifies the Corporate Development and Transition Lead that it does wish to renew the Agreement, the Corporate Development and Transition Lead must advise the Hospital in writing within two (2) weeks of receiving written notification of whether or not he wishes to renew the Agreement.
 - (c) If the Corporate Development and Transition Lead:
 - a. does not provide written notice within the two (2) week period referred to in Section 4.3(b) above, the Corporate Development and Transition Lead shall be deemed not to want to renew this Agreement, or
 - b. provides written notification to the Hospital within the two (2) week period referred to in Section 4.3(b) above that he does not wish to renew the Agreement, then
 - c. the Agreement will terminate at the end of the Term as provided for in Section 5.1.

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- (d) If the Corporate Development and Transition Lead provides written notice to the Hospital within the two (2) week period referred to in Section 4.3(b) above that he does wish to renew this Agreement, the parties shall enter into negotiations with respect to the renewal of the Agreement, it being understood that, subject to any requirements of the LHIN, MOHLTC or legislation that affect the Corporate Development and Transition Lead's compensation. If the parties, acting in good faith, cannot come to a mutual agreement prior to the end of the Term, the Agreement will terminate in accordance with Section 5.1 below.

5.0 Termination

5.1 Termination at the end of the Term:

In the event of termination of the Agreement pursuant to Sections 4.3(a) (c) or (d) above, the Corporate Development and Transition Lead shall work to the end of the Term. The Hospital shall provide the Corporate Development and Transition Lead with a twelve (12) month severance payment at his base salary in lieu of notice, or entitlement of Notice of Termination (including benefits) and Severance Pay pursuant to the Ontario Employment Standards Act, 2000, or any rights under common law. Payment of base salary shall be by way of lump sum payment, with an option to pay out two (2) lump sum payments over two (2) calendar years, unless salary continuance is required to ensure continued coverage in any benefit plan for the twelve (12) months' severance. The Hospital will provide the Corporate Development and Transition Lead with the option to continue his Extended Health and Dental benefits during the twelve (12) months' severance. The Hospital will also provide the Corporate Development and Transition Lead with benefit coverage for the minimum period of notice required under the Ontario Employment Standards Act, 2000. For the sake of clarity, the Corporate Development and Transition Lead shall not be entitled to any common law notice or the entitlements upon early termination as set out below in Section 5.3.

5.2 Termination by the Hospital for cause prior to the end of the Term:

The Hospital may terminate the Corporate Development and Transition Lead's employment for cause, without provision of notice or pay in lieu of notice.

5.3 Termination by the Hospital without cause prior to the end of the term:

The Hospital may terminate this Agreement at any time prior to the end of the Term and without cause upon payment to the Corporate Development and Transition Lead of a sum equivalent to earnings remaining under this contract to the end of the initial 2 year term plus Twelve (12) months' at his base salary at the time of his termination.

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The Hospital shall continue to provide the Corporate Development and Transition Lead's benefits, subject to the eligibility requirements of the insurer, until the end of the term of this initial contract following termination. The Hospital will provide the Corporate Development and Transition Lead with the option to continue his Extended Health and Dental benefits during the additional twelve (12) months' severance. In the event the insurer will not continue benefits following termination, the Hospital shall pay the Corporate Development and Transition Lead the equivalent of the monthly benefits premiums (as paid by the Hospital at the time of termination) for each month of benefit discontinuation by the insurer to the end of the two (2) year Term plus up to twelve (12) months' severance.

Payment shall be by way of lump sum payment, with an option to pay out two (2) lump sum payments over two (2) calendar years, unless salary continuance is required to ensure continued coverage in any benefit plan to the end of the initial 2 year term plus twelve (12) months' severance. The Hospital will provide the Corporate Development and Transition Lead with benefit coverage for the minimum period of notice required under the Ontario Employment Standards Act, 2000.

This provision is inclusive of and satisfies all entitlements to notice, benefits and severance (if applicable) under the Ontario *Employment Standards Act, 2000*.

5.4 Early termination by the Corporate Development and Transition Lead:

The Corporate Development and Transition Lead may terminate this Agreement at any time upon sixty (60) calendar days' written notice to the Hospital; provided, however, the Hospital shall be entitled to waive all or part of such notice. Where the Hospital waives the notice, the Corporate Development and Transition Lead shall continue to be eligible for salary and performance pay to the end of this notice period. Benefits will also be continued to the end of this notice period. In the event the insurer will not continue benefits to the end of this notice period, the Hospital shall pay the Corporate Development and Transition Lead the equivalent of the monthly benefits premiums (as paid by the Hospital at the time of termination) for each month of benefit discontinuation by the insurer to the end of this notice period. For clarity, if the Corporate Development and Transition Lead elects early termination, no payments are required under this Agreement after the end of the sixty (60) calendar days' notice period by the Hospital.

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5.5 Termination due to Frustration of Contract:

This Agreement shall be terminated on the basis of frustration and considered at an end in the following circumstances:

- (i) after the Executive has been incapable of performing the essential duties and responsibilities under this Agreement for a period of six (6) months due to illness or injury; and
- (ii) a report has been obtained from the Executive's medical practitioner certifying that the Executive is unlikely, in the subsequent six (6) months, to be able to resume his duties notwithstanding reasonable efforts to accommodate up the point of undue hardship,
- (iii) if the Executive's medical practitioner certifies that the Executive is unlikely, in the subsequent twelve (12) months to be able to perform the essential duties and responsibilities under this Agreement, notwithstanding reasonable efforts to accommodate up the point of undue hardship.

Entitlements upon Termination for Frustration

In the event the Agreement comes to an end due to Frustration as set out above, the Executive shall be entitled to fifteen (15) weeks' notice of termination.

Salary and benefits shall continue during the 15 week notice period and for the period of the Executive's severance entitlement under the Ontario *Employment Standards Act, 2000* subject to the following:

- a. Extended Health and Dental benefits will continue during the 15 week notice period and for the period of the Executive's severance entitlement under the Ontario *Employment Standards Act, 2000*, if permissible under the provisions of the insurance plan.
- b. All other benefits will continue during the 15 week notice period and for the period of the Executive's severance entitlement under the Ontario *Employment Standards Act, 2000* unless prohibited by any plan or policy in which case the subject benefit(s) will continue for the Executive's minimum period of notice under the Ontario *Employment Standards Act, 2000*.

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The 15 week notice period shall be inclusive of and not in addition to the Executive's notice entitlement under the Ontario *Employment Standards Act, 2000*.

The Executive shall also be provided with his minimum severance entitlements, if applicable, under the Ontario *Employment Standards Act, 2000*.

All payments are subject to required statutory deductions.

Pursuant to the terms of HOODIP (the Hospital's current disability benefits plan), if the Executive meets HOODIP's eligibility criteria for long term disability benefits on the date the Executive's participation in HOODIP terminates, the Executive will be entitled to long term disability benefits under HOODIP, subject to the terms and conditions of HOODIP. For the sake of clarity, the Hospital does not guarantee the provision of benefits under HOODIP and any benefit claim is subject to the provision of HOODIP. Any dispute about benefits under HOODIP is a dispute exclusively between the Executive and HOODIP.

The Executive agrees to cooperate with the Hospital in obtaining the report from his medical practitioner upon request of the Hospital.

6.0 Remuneration, Vacation and Benefits

- 6.1 The Corporate Development and Transition Lead shall receive an annual salary base of \$166,999.95 and a maximum annual performance pay of 15% of annual base salary, less applicable deductions. The salary shall be payable in equal payments on a bi-weekly basis.
- 6.2 The Annual Performance Pay is contingent on the President and CEO's assessment and evaluation of the Corporate Development and Transition Lead's performance and whether the performance agreement objectives as established in Section 6.4 have been successfully met. This assessment and evaluation shall be conducted consistent with any applicable policy or procedure which may be established or amended from time to time. Performance Pay is not paid or accrued for periods of breaks of service such as Leaves of Absence.
- 6.3 The base salary of the Corporate Development and Transition Lead will be adjusted consistent with applicable policies and legislation for non-union leadership positions in the Hospital.
- 6.4 The President and CEO and the Corporate Development and Transition Lead shall jointly develop an annual performance agreement which includes goals, milestones and targets for the fiscal year by which the Corporate Development and Transition Lead will be measured when evaluated. Performance pay is

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allocated according to policy and the actual results achieved against pre-established targets, at the end of the fiscal year once all the year-end financial, clinical and business performance data is available. For greater certainty, this is not a performance agreement for the purposes of the *Commitment to the Future of Medicare Act, 2004*.

- 6.5 The Hospital shall provide the Corporate Development and Transition Lead with 5 weeks of vacation. Vacation days shall be taken as agreed by the Corporate Development and Transition Lead and the President and CEO. Vacation does not accrue during any unpaid leaves of absence, except as required by the minimum *Employment Standards Act, 2000* provisions.
- 6.6 Carry-over of vacation entitlements from year to year will be done in accordance with Hospital policy, unless prior authorization in writing has been obtained from the President and CEO.
- 6.7 Upon termination of the employment relationship for any reason, the Corporate Development and Transition Lead is entitled to payout of any accrued, but untaken, vacation entitlement.
- 6.8 The Hospital shall provide the Corporate Development and Transition Lead with a corporate portable tablet or computer and a phone in accordance with Hospital standards. The corporate portable tablet or computer and phone shall remain the property of the Hospital and shall be returned to the Hospital upon the expiration or termination of the employment relationship.
- 6.9 The Hospital shall reimburse the Corporate Development and Transition Lead for kilometers driven outside of the Kingston regional area while actively carrying out his job duties, pursuant to the Hospital's travel policy and at the applicable per kilometer rate established by the Hospital from time to time and shall reimburse the Corporate Development and Transition Lead for all other reasonable expenses incurred in carrying out his duties in accordance with Hospital policy.
- 6.10 The Hospital and Corporate Development and Transition Lead shall pay the applicable premium cost of the benefits as outlined in the attached Schedule "C". Participation in these benefits will be subject to the terms of the applicable benefit plan or policy in effect from time to time for non-union management positions. The Hospital may change these benefits and benefit terms from time to time, in which case the President and CEO will advise the Corporate Development and Transition Lead of the change(s). The Corporate Development and Transition Lead will be subject to the general conditions and limitations in any benefit plan or program and may be changed without advance notice by providing written particulars of such changes. For insured benefits, the Hospital is only required to pay their portion of the premiums and have no further obligations. Termination of benefits will be in accordance with the termination provisions of this Agreement. Method of payment is the same

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for the Corporate Development and Transition Lead as other non-union management of the Hospital. Any dispute under the terms of the plans is a dispute solely between the Corporate Development and Transition Lead and the insurer.

6.11 The parties understand the Regulation 304/16 "Executive Compensation Framework" under the *Broader Public Sector Executive Compensation Act, 2014*, requires hospitals, through the Board, to develop a compensation framework for executives, and that this Agreement will have to comply with the provisions of the Act or any similar successor legislation and any regulations issued thereunder;

6.12 The parties further understand and accept the requirements under the *Excellent Care for All Act, 2010* and in particular to ensure that an annual quality improvement plan is established and that a portion of the executive pay is linked to the plan.

7.0 Hospital's Property

7.1 The Corporate Development and Transition Lead acknowledges that all items of any and every nature or kind created or used by the Corporate Development and Transition Lead pursuant to the Corporate Development and Transition Lead's engagement under this Agreement or furnished by the Hospital to the Corporate Development and Transition Lead, and all equipment, books, records, reports, files, manuals, literature, confidential information or other materials shall remain and be considered the exclusive property of the Hospital at all times and shall be surrendered to the Hospital in good condition, promptly on the date he ceases for any reason to be an employee of the Hospital irrespective of the time, manner or cause of the release from employment.

7.2 Without limiting the generality of the foregoing, the Corporate Development and Transition Lead further covenants and agrees with the Hospital that all documents, including, without limitation, instructions, drawings, notes, memoranda, blueprints, manuals, letters, notebooks, reports, sketches, formula, records, files, computer programs, data, inventions, patents and other property relating to the Hospital made or conceived by him during the term hereof which may come into his possession in his capacity as an employee hereunder are the sole and exclusive property of the Hospital and will not without the prior written consent of the Hospital be removed from the offices of the Hospital (except to the extent necessary in carrying out the Corporate Development and Transition Lead's duties hereunder) and shall, in any event, be returned to the Hospital upon the Corporate Development and Transition Lead ceasing for any reason to be an employee of the Hospital.

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8.0 Conflict of Interest

- 8.1 It is understood and agreed that a conflict of interest or the perception of one does not necessarily involve monetary gain, but may arise in a variety of ways. The Corporate Development and Transition Lead shall avoid all circumstances that may give rise to actual or perceived conflict of interest situations. The parties agree that in addition to the Corporate Development and Transition Lead being responsible for avoiding all circumstances that may give rise to actual or perceived conflict of interest situations; he shall disclose any such actual or perceived conflicts of interest to the President and Chief Executive Officer at the earliest possible opportunity upon discovering same.
- 8.2 The Corporate Development and Transition Lead shall not, during the term of the Agreement, under any circumstances, either directly or indirectly, engage in any other occupation, business or entity, or have any interest in same, without the prior written consent of the President and Chief Executive Officer in accordance with Hospital policy for such matters. Once approved, any significant change in these activities must be reported to the President and Chief Executive Officer.

9.0 Confidentiality

- 9.1 The Corporate Development and Transition Lead acknowledges that he is in a fiduciary relationship and position of trust with the Hospital. In the performance of this Agreement, confidential information relating to the Hospital, its patients and the services they provide may be disclosed or become known to the Corporate Development and Transition Lead. The Corporate Development and Transition Lead acknowledges that the disclosure of confidential information other than as necessary in the fulfillment of the Corporate Development and Transition Lead's employment duties on behalf of the Hospital, or compliance with any applicable statute or regulation or as compelled by a court of law or other judicial or administrative body, would be detrimental to the legitimate interests of the Hospital. The Corporate Development and Transition Lead undertakes and agrees that no such

confidential information shall be divulged in any form, nor used directly or indirectly for the Corporate Development and Transition Lead's own purposes or for the purposes of any person, corporation, firm, association or thing other than the Hospital, without the Hospital's prior consent, except as may be necessary in the proper discharge of his responsibilities under this Agreement.

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10.0 Succession of the Agreement

10.1 This Agreement is binding on the Hospital and any successor to it whatsoever.

11.0 Severability

11.1 The Hospital and the Corporate Development and Transition Lead agree that if any of the provisions or a part of a provision of this Agreement are deemed illegal and unenforceable, such provisions shall be considered separate and severable from this Agreement, and the remaining provisions or part of a provision of the Agreement shall continue in force, and be binding upon the parties as though such provision or part of a provision had never been included.

12.0 Entire Agreement

12.1 This Agreement constitutes the entire agreement between the Corporate Development and Transition Lead and the Hospital concerning the Corporate Development and Transition Lead's employment relationship with the Hospital. As of the Effective Date, it supersedes any and all other agreements or contracts, whether verbal or written, between the parties. The Corporate Development and Transition Lead further acknowledges that there are no other agreements, understandings, representations, promises or warranties, either collateral, oral or otherwise made to his apart from the obligations of the Hospital expressly set out in this Agreement.

13.0 Legal Authority

13.1 The Hospital represents and warrants that:

- (a) it has the authority to enter into this Agreement; AND
- (b) this Agreement shall be a legal, valid and binding Agreement, enforceable against the Hospital in accordance with the terms, only on and after the Effective Date and successful formation of KHSC.

13.2 The parties agree that any other agreements between the Hospital and the Founders and the Corporate Development and Transition Lead having effect prior to the Effective Date will terminate without any further action required between the parties on the Effective Date.

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14.0 General

14.1 The Corporate Development and Transition Lead and his heirs, executors, administrators and estates and effects shall from time to time and at all times, be indemnified and saved harmless out of the funds of the Hospital from and against:

- (a) all costs, charges and expenses whatsoever which the Corporate Development and Transition Lead sustains or incurs in or about any action, suit or proceedings which is brought, commenced or prosecuted against him, for or in respect of any act, deed, matter or thing whatsoever, made, done or permitted by him, in or about the execution of the duties of his office; and
- (b) all other costs, charges and expenses which he sustains or incurs in or about or in relation to the affairs of the Hospital, except such costs, charges or expenses as are occasioned by his own willful neglect or default.

The indemnity provided for in the preceding paragraph:

- (i) shall be applicable only if the Corporate Development and Transition Lead acted honestly and in good faith with a view to the best interests of the Hospital and in the case of criminal or administrative action or proceeding that is enforceable by a monetary penalty, had reasonable grounds for believing that his conduct was lawful.

14.2 This Agreement may be amended at any time by mutual agreement of the parties in writing.

14.3 Any disputes as to the validity, interpretation, performance of this Agreement shall be determined in accordance with the law and by the Courts of the Province of Ontario.

15.0 Independent Legal Advice

15.1 The Corporate Development and Transition Lead acknowledges and agrees that this Agreement was negotiated freely and voluntarily and that the opportunity to seek independent legal advice was offered with respect to this Agreement and its terms, prior to executing same.

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IN WITNESS WHEREOF the parties hereto have cause this Agreement to be executed:

KINGSTON GENERAL HOSPITAL on behalf of
KINGSTON HEALTH SCIENCES CENTRE



Per: 
Jim Flett, President and CEO of Kingston General Hospital


RELIGIOUS HOSPITALLERS OF ST. JOSEPH OF THE HOTEL DIEU
OF KINGSTON o/a Hotel Dieu Hospital on behalf of
KINGSTON HEALTH SCIENCES CENTRE

Per: 
David Pichora, Chief Executive Officer, Hotel Dieu Hospital

I have read, understand and accept the terms and conditions of this Agreement dated the effective date that the Hospital commences business.

SIGNED, SEALED AND DELIVERED in the
Presence of:

)
Witness )
Steve Miller


Name of Witness

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