

The following signed Operating Agreement dated March 30, 2017

is between the

Religious Hospitallers of St. Joseph of the Hotel Dieu of Kingston

Kingston General Hospital, and

Kingston Health Sciences Centre

Further distribution and release of this Agreement to other parties must be coordinated through the Head Office of the Kingston Health Sciences Centre

Phone: 613-548-2341

76 Stuart Street, Watkins 2, Room 4-209-0, Kingston

KINGSTON HEALTH SCIENCES CENTRE
OPERATING AGREEMENT
(the "Operating Agreement")

This Operating Agreement is entered into on the 30th day of March, 2017.

B E T W E E N:

RELIGIOUS HOSPITALLERS OF SAINT JOSEPH OF THE HOTEL DIEU OF KINGSTON, a non-share capital corporation incorporated under the laws of the Province of Ontario ("HDH")

- and -

KINGSTON GENERAL HOSPITAL, a non-share capital corporation incorporated under the laws of the Province of Ontario ("KGH")

- and -

KINGSTON HEALTH SCIENCES CENTRE, a non-share capital corporation incorporated under the laws of the Province of Ontario ("KHSC" and, together with HDH and KGH, the "Parties")

WHEREAS:

- A. HDH and KGH are public hospitals in close proximity to one another and provide complementary care to the same population base in the City of Kingston and surrounding area.
- B. HDH and KGH have agreed to combine certain of their assets, undertakings and liabilities into a single corporate structure (with one Board and one senior management team) by transferring same on the Effective Date to a unified health sciences centre known as KHSC (the "Integration").
- C. HDH and KGH wish to retain legal oversight over certain fundamental decisions of KHSC as more particularly set forth in this Operating Agreement.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1
TERM**

- 1.01 Effective Date. This Operating Agreement shall take effect on completion of the Integration, expected to be April 1, 2017 (the "Effective Date") and shall continue until terminated in accordance with Article 9.

**ARTICLE 2
OBJECTIVES**

2.01 Objectives of Integration. The Parties agree and confirm that the objectives of the Integration (collectively the “**Integration Goals**”) are as follows:

- (i) to build on the continuing work of both HDH and KGH to improve patient care within the City of Kingston and the region;
- (ii) to facilitate decision-making that eliminates unnecessary duplication and overlap and supports the best clinical care;
- (iii) to support voluntary collaboration and integration initiatives supported by the South East Local Health Integration Network (the “**LHIN**”) and regional hospitals; and
- (iv) to identify and implement measures that will enable KHSC to absorb existing and future financial pressures.

2.02 Objectives of Operating Agreement. The Parties agree and confirm that the objectives of this Operating Agreement (collectively the “**Operating Agreement Goals**”) are as follows:

- (a) to ensure the overall mission, vision and values of KHSC are at all times consistent with the missions and values of both HDH and KGH, recognizing that the mission, vision and values of KHSC may evolve over time so long as such evolution is consistent with the Operating Agreement. Copies of the missions and values of each of HDH and KGH in effect as at the Effective Date are set out in Schedule “A”;
- (b) subject to subsection 2.03(b), to ensure the continued operation of both the KGH and the HDH campuses (as described below) of KHSC;
- (c) to protect and maintain campus-specific mission statements that recognize and respect the unique histories, traditions, missions and values of HDH and KGH;
- (d) subject to subsections 2.03(a) and 2.03(b), to preserve and guarantee a continued Catholic mission and approach to health care at the HDH site located at 166 Brock Street, together with the following satellite sites, at which health care programs are (or may in the future) be provided:

- (i) Detox Centre located at 240 Brock Street, Kingston, Ontario K7L 1S4 (the “**Detox Centre Property**”);
- (ii) Ininew Patient Services (formerly Weeneebayko Patient Services) located at 176 Johnson Street, Kingston, Ontario K7L 1Y1 (the “**Ininew Patient Services Property**”);
- (iii) the vacant parking lot located at the corner of Brock Street and Montreal Street, having as its municipal address 10 Montreal Street, Kingston, Ontario K7L 3G6 (the “**Parking Lot Property**”); and
- (iv) Youth Shelter located at 234 Brock Street, Kingston, Ontario K7L 1S4 (the “**Youth Shelter Property**”),

(collectively, the HDH Site at 166 Brock Street and the satellites sites identified in this subsection (d) are the “**HDH Campus**”);

- (e) subject to subsections 2.03(a) and 2.03(b), to document that the HDH Campus will continue to be owned by HDH, but leased in its entirety to KHSC pursuant to ground leases, the form of which is attached as Schedule “B” (each a “**Ground Lease**”, collectively the “**Ground Leases**”).
- (f) to preserve and guarantee a continued secular (non-faith-based) mission and approach to health care at the KGH site located at 76 Stuart Street and all other programs and facilities outside the HDH Campus (collectively, the “**KGH Campus**”);
- (g) to establish a Partnership Council (defined in Article 5) as a mechanism to hold the KHSC Board of Directors (the “**KHSC Board**”) accountable for KHSC’s compliance with this Operating Agreement;
- (h) to provide a framework to manage and minimize disputes that may arise between the Parties from time to time; and
- (i) to provide a methodology to resolve disputes and, if necessary, unwind the Integration on an orderly basis, if required by either Party in accordance with the terms of this Operating Agreement.

2.03 Conveyance of HDH Campus Sites. The Parties agree and confirm that, following the Effective Date, HDH may convey:

- (a) the following satellite sites comprising part of the HDH Campus from HDH to KHSC (pursuant to the terms of the applicable Ground Lease) for nominal consideration:
 - (i) the Detox Centre Property;
 - (ii) the Ininew Patient Services Property; and

- (iii) the Parking Lot Property, and
- (b) the Youth Shelter Property to a *bona fide* third party purchaser, provided that HDH transfers all net proceeds from such conveyance to KHSC pursuant to the terms of the Ground Lease. For the avoidance of doubt, the Parties agree that following the sale of the Youth Shelter Property to a *bona fide* third party purchaser, the Youth Shelter Property shall no longer be considered part of the HDH Campus.

ARTICLE 3 KHSC GOVERNANCE

- 3.01 KHSC Board Autonomy. The Parties agree KHSC is an autonomous legal entity, and the KHSC Board must at all times act in the best interest of KHSC only, provided KHSC at all times strictly abides by the rights of HDH and KGH as set out in this Operating Agreement.
- 3.02 KHSC Members. The only members of the KHSC corporation will be the KHSC voting Board members.
- 3.03 KHSC CEO Accountability. Without limiting the generality of the foregoing, and subject to Section 4.03(b), 4.03(d), the KHSC CEO shall at all times be accountable only to the KHSC Board. The KHSC Board and the KHSC CEO are responsible, amongst other things, for ensuring KHSC complies with its obligations under this Operating Agreement.

ARTICLE 4 SEPARATE CAMPUS SPECIFIC MISSIONS

- 4.01 Recognition of Campus Specific Missions. KHSC shall at all times recognize and respect the unique histories and traditions of HDH and KGH by ensuring the HDH Campus and the KGH Campus continue to operate in a manner consistent with their respective histories, traditions, missions and values, by adopting separate campus-specific mission statements.
- 4.02 Guarantee of Catholic Mission at HDH Campus. KHSC shall at all times operate the HDH Campus in a manner that respects, protects, maintains, promotes and where necessary enhances the Catholic healthcare mission and tradition at the HDH Campus, to ensure the Catholic healthcare mission remains vibrant and relevant to patients and the community. The Parties agree that the hallmarks of Catholic healthcare include: a deep respect for the dignity of every person; just and appropriate treatment offered to everyone without distinction; spiritual and religious care; ongoing reflection on ethical issues of the day; compassionate end-of-life care; and a readiness to reach out to the vulnerable and sick in the community. The Parties agree the chain of mission concept is one of the most important principles of Catholic health care as it demonstrates a direct and legitimate relationship between the Catholic Church and a health care organization (the “**Chain of Mission**”).
- 4.03 Catholic Chain of Mission. The Parties agree the Chain of Mission is satisfied and maintained in this Integration through the roles and responsibilities of the Parties as set out

under this Operating Agreement including, without limitation, the following specific roles and responsibilities:

- (a) The KHSC CEO shall ensure all staff (employees, volunteers and professionals) engaged or sited at the HDH Campus understand, respect and further the Catholic healthcare mission.
- (b) The KHSC Board and KHSC CEO shall ensure the promotion of a culture at the HDH Campus that supports Catholic ethical values and beliefs, the promotion of spiritual/religious care and a deep and uncompromising respect for human life and dignity at all stages of life.
- (c) The KHSC CEO, KHSC senior leadership team and senior administrative personnel responsible for the HDH Campus shall abide by the HDH mission, vision and values and philosophy in their leadership of the HDH Campus.
- (d) The Partnership Council and the board of directors of HDH, in its role as a member of the Partnership Council, shall hold the KHSC Board and the KHSC CEO, accountable for ensuring the HDH mission, vision and core values are “lived and breathed” and continue to be the foundation for leadership and policy decisions that apply to or affect the HDH Campus and programs. The manner in which the KHSC Board and KHSC CEO are accountable is set out in Section 5.12, Section 5.13 and Section 5.17 of this Operating Agreement.

4.04 Guarantee of Secular Mission at KGH Campus. KHSC shall at all times operate the KGH Campus in a manner that respects its secular (non-faith-based) mission and approach to health care. The KHSC CEO shall ensure all staff (employees, volunteers and professionals) engaged or sited at the KGH Campus understand, respect and further the secular healthcare mission. The Parties agree that the foundation of KGH includes: an emphasis on transforming the patient experience through an ongoing commitment to patient and family centred care, the aim of outstanding care always, and the KGH principles of respect, engagement, accountability, transparency and value for money.

4.05 Regulatory Powers of Minister of Health and Long-Term Care and LHIN. The Parties acknowledge that the Minister of Health and Long-Term Care (the “**Minister**”) and the LHIN, and their successors, have statutory powers that allow them to effect changes, including without limitation integrations and closures, that may prevent KHSC from carrying out its obligations under this Operating Agreement. Any such exercise by the Minister or the LHIN, or either of their successors, of their respective statutory powers shall not place KHSC in default of its obligations under this Operating Agreement.

ARTICLE 5 PARTNERSHIP COUNCIL

5.01 Purpose. The Parties hereby establish a governance body known as the partnership council to oversee ongoing compliance with this Operating Agreement (the “**Partnership Council**”).

- 5.02 Composition of Partnership Council. The Partnership Council shall be composed of HDH and KGH.
- 5.03 Voting. HDH and KGH shall each have one (1) vote on Partnership Council matters. For certainty, KHSC is not entitled to vote on Partnership Council matters. Decisions of the Partnership Council require the unanimous support of HDH and KGH.
- 5.04 Consequence of No Unanimity of Partnership Council. If the decision of the Partnership Council is not unanimous, and:
- (a) if it is a matter described in Sections 5.16(c) or 5.16(d), KHSC shall not proceed with the matter, and
 - (b) for all other matters requiring Partnership Council decision, KHSC may proceed notwithstanding the failure of the Partnership Council to unanimously support the matter, recognizing either HDH or KGH shall be entitled to trigger the dispute resolution mechanism set forth herein, potentially culminating in an unwinding of the Integration pursuant to Article 8.

For certainty, KHSC shall be absolutely prohibited from undertaking the matters described in Section 6.01 and Section 6.02 and there is no requirement or ability to seek Partnership Council approval in connection with the intent of the Parties to limit the procedures described in Section 6.01 and Section 6.02.

- 5.05 Authority to Bind HDH or KGH. The chair of the board of directors of HDH or KGH, as the case may be, shall be deemed to have authority at first instance to exercise the right to vote on Partnership Council matters on behalf of HDH or KGH, as the case may be, unless written notice of another representative is delivered to each other Party, and absent evidence to the contrary, all Parties may rely on the vote of an individual with apparent authority to bind the Party to a Partnership Council decision without the need for any further inquiry.
- 5.06 Partnership Council Decisions. All Partnership Council decisions shall be evidenced by one of the following methods:
- (a) a written resolution signed by a duly authorized representative of each of HDH and KGH; or
 - (b) minutes of the Partnership Council meeting approved by the Partnership Council at its next meeting.

KHSC shall be notified of and promptly provided with a copy of all Partnership Council decisions at all times. KHSC shall keep a record of all Partnership Council decisions, which shall be retained for the lifetime of the KHSC corporation.

- 5.07 Process for Written Resolutions. Any Party (including KHSC) may request a decision of the Partnership Council by written resolution by providing written notice to the other Parties of the requested resolution. Each Party shall have a period of twenty (20) days

following receipt of a request in which to make written representations regarding the request to the other Parties. Within thirty (30) days of receipt of the request for a written resolution, each member of the Partnership Council shall make a decision on the requested written resolution and communicate that decision to the other Parties. It is acknowledged that a failure to reach a unanimous decision may entitle a Party to trigger the dispute resolution mechanism in Article 8. A failure to respond by either HDH or KGH shall be considered to be a failure to reach a unanimous decision on the resolution.

- 5.08 Meetings. The Partnership Council shall meet at least semi-annually, and more frequently at the call of either HDH or KGH.
- 5.09 Partnership Council Representatives. Each of HDH and KGH shall appoint three (3) representatives to attend meetings (as representatives of HDH and/or KGH) of the Partnership Council from time to time. Each of HDH and KGH shall include its respective board chair as one of its appointed representatives. The HDH representatives on the Partnership Council are expected to hold KHSC accountable for ensuring the Catholic mission is maintained at the HDH Campus and that the Catholic mission continues to be the foundation for leadership and policy decisions affecting that Campus.
- 5.10 Meeting Chair. The role of chairperson of Partnership Council meetings will rotate on a meeting by meeting basis between HDH and KGH representatives, such selection to be made by the Party entitled to chair a specific meeting.
- 5.11 Meetings in Person or Other Means. Meetings of the Partnership Council shall ordinarily be held in person but may be held by alternative means that provide for instantaneous and simultaneous communication if both Parties consent.
- 5.12 Meeting – Organization. KHSC shall coordinate regular meetings of the Partnership Council, and the chief executive officer of KHSC (the “KHSC CEO”) shall work with the chair of the board of directors of each of HDH and KGH or their respective delegates to formulate an appropriate agenda for each meeting, which agenda will be approved by the Partnership Council as its first order of business each meeting.
- 5.13 KHSC Participation in Partnership Council Meetings. The KHSC CEO and chair of the KHSC Board (the “KHSC Chair”) (or their respective delegates) shall each be required to attend Partnership Council meetings as a resource, but shall leave the meeting upon request of either HDH or KGH. The Parties acknowledge information provided during Partnership Council meetings may be subject to the confidentiality and non-disclosure requirements set forth in Section 5.17(d) below.
- 5.14 Quorum. Quorum for any meeting of the Partnership Council shall require one representative from each of HDH and KGH entitled to vote on behalf of HDH and KGH, respectively.
- 5.15 Notice. A meeting of the Partnership Council shall be called by giving written notice to each of the representatives of HDH and KGH and to KHSC. Any such notice must be sent to the representatives and to KHSC at least ten (10) days prior to the meeting unless all representatives of HDH and KGH waive notice or consent to a shorter notice period.

Notices may be sent by prepaid mail, by facsimile transmission or by electronic mail based on the most recent contact information of the representatives provided by HDH and KGH, respectively.

5.16 Powers of KHSC Reserved to Partnership Council. The following KHSC matters shall require the prior approval of the Partnership Council (as a contractual right of approval in addition to any applicable corporate rights or obligations, with which it is acknowledged KHSC must also comply):

(a) *KHSC Director Election and Removal:*

- (i) In the three (3) years following the Effective Date, the Partnership Council shall, in its discretion, have a right to approve the appointment and/or removal of each individual serving as a KHSC director, excluding the *ex officio* directors mandated by the *Public Hospitals Act* (Ontario) and/or its regulations.
- (ii) From and after the third anniversary of the Effective Date, the Partnership Council shall have a right to approve the slate of KHSC directors that is recommended by the KHSC Board (excluding the *ex officio* directors mandated by the *Public Hospitals Act* (Ontario) and/or its regulations); provided, however, that such approval shall not be unreasonably withheld, conditioned, denied or delayed by the Partnership Council and shall only be withheld, conditioned, denied or delayed if KHSC fails to follow the processes set out in the KHSC by-laws and policies respecting director recruitment. The KHSC by-laws shall at all times include processes that will reflect best governance practices regarding the selection of candidates who are independent, skilled and competent and who are committed to ensuring the separate campus-specific missions are maintained in accordance with this Operating Agreement (but for certainty the role of the Partnership Council is not to critique the KHSC evaluation of recommended candidates themselves).
- (iii) KHSC shall consult with the Partnership Council during the KHSC Board selection process before the KHSC Board recommends candidates for election, to minimize the likelihood the Partnership Council will not approve the candidates recommended by the KHSC Board (in the first 3 years following the Effective Date only), or the slate of candidates thereafter. If the Partnership Council does not approve candidates and/or the slate as the case may be (for the permitted reasons set out in clause (ii) above), the KHSC Board may put forward new candidates or a new slate of candidates, as the case may be. If KHSC submits the same slate of candidates to the Partnership Council because the KHSC Board believes the requirements of this Operating Agreement have been satisfied, the sole remedy available to the Partnership Council shall be the dispute resolution process under Article 8.

- (b) *KHSC Chief Executive Officer:* KHSC shall consult with the Partnership Council prior to commencing any KHSC CEO selection process. The Partnership Council shall have a right to be consulted in respect of the KHSC CEO selection process, and shall be required to confirm in writing it is satisfied the selection process has been followed in all material respects prior to any change in KHSC CEO being effective. Without limiting the foregoing but for certainty, the role of the Partnership Council is not to critique the KHSC evaluation of recommended candidates themselves, but only to evaluate the process and compliance with the process. If the Partnership Council does not confirm it is satisfied the KHSC CEO selection process has been followed in all material respects, KHSC shall not proceed with the selection of the new CEO identified in said process and shall again consult with the Partnership Council on formulating and following an appropriate selection process. If KHSC believes the process requirements have been satisfied, the sole remedy available to the Partnership Council shall be the dispute resolution process under Article 8. The Parties acknowledge the first CEO of KHSC shall be Dr. Pichora.
- (c) *KHSC Fundamental Corporate and Governance Decisions:* The Partnership Council shall have a right to approve any of the following matters:
- (i) any amendment to the letters patent of KHSC;
 - (ii) any amendment to the by-laws of KHSC (but only to the extent such amendment to the by-laws is inconsistent with a matter dealt with in this Operating Agreement);
 - (iii) any decision to dissolve KHSC;
 - (iv) any decision to cease carrying on operations as a public hospital at 166 Brock Street;
 - (v) any decision to sell or lease or otherwise dispose of all or substantially all of KHSC's assets;
 - (vi) any changes in the membership of the Partnership Council;
 - (vii) any material change to the mission, vision and values of KHSC that is inconsistent with this Operating Agreement; or
 - (viii) any material change in the campus-specific mission and values of either the KGH or HDH campuses.
- (d) *Integration and Re-Organizations:* The Partnership Council shall have a right to approve transactions or arrangements between KHSC and third parties, including without limitation, the acquisition of additional premises and provision of new or expanded services, if, and only if:

- (i) the rights of the Parties under this Operating Agreement, including the role of the Partnership Council are adversely impacted by the proposed transaction or arrangement;
- (ii) such transaction or arrangement involves a proposed modification of the Partnership Council composition;
- (iii) the organization referenced in Section 6.02 as the organization responsible for governance of elective abortions is proposed to integrate with KHSC, but only to the extent required to ensure such organization's responsibility for governance of elective abortions shall be transferred to a new third party prior to the completion of said transaction or arrangement such that KHSC shall at no time be directly responsible for governance of elective abortions and the intention of Section 6.02 is preserved.

Except for the foregoing, the Parties acknowledge and agree that the Partnership Council shall have no authority to intervene directly in the conduct of the activities and affairs of KHSC.

5.17 KHSC Reporting, Confidentiality and Non-Disclosure

- (a) The KHSC shall be responsible for providing HDH and KGH sufficient information and resources to allow the Partnership Council to function effectively and to allow the Parties to make informed decisions in their respective roles as set out in this Operating Agreement.
- (b) The KHSC Board, following consultation with the Partnership Council, shall adopt measurable indicators for determining if the HDH mission, vision and core values are being maintained by KHSC, including, without limitation, participating in the Values Integration Appraisal Process (VIAP) for Catholic health care organizations.
- (c) KHSC shall report to the Partnership Council annually or more frequently as reasonably requested, in respect of KHSC's performance as it relates to the Operating Agreement. Reports shall include information from persons holding responsibility for pastoral care, mission and Catholic ethics at the HDH Campus and programs, as well as information in respect of the status and quality of Catholic education programs and other requirements of the Operating Agreement. Reports shall include sufficient detail to enable the Partnership Council to determine whether the KHSC Board has carried out its obligations under the Operating Agreement, including without limitation: (a) adequate information to assess whether personnel and volunteers at the HDH Campus have agreed to abide by the HDH mission statement, (b) determining whether education and other mission programs have been satisfactorily implemented, (c) recommendations from KHSC in respect of ensuring the obligations set out in this section are met on an ongoing basis. The Partnership Council and board of directors of HDH will review the reports and may make recommendations to KHSC from time to time.

- (d) KHSC may identify certain information provided to the Partnership Council from time to time as confidential. Confidential information may only be shared amongst directors and officers of KGH and HDH, and shall not be disclosed by KGH or HDH to any third parties without the prior consent of KHSC, acting reasonably and in a manner consistent with KHSC's own confidentiality practices.

ARTICLE 6

KHSC COVENANTS REGARDING THE HDH CAMPUS

- 6.01 Restrictions on Procedures on the HDH Campus Generally. KHSC shall not permit any procedures to be carried out at the HDH Campus which are inconsistent with the Catholic Health Alliance of Canada's *Health Ethics Guide* as amended from time to time, or any similar guide issued by any successor organization to the Catholic Health Alliance of Canada.
- 6.02 Elective Abortion Procedures. Without limiting the generality of Section 6.01 but for certainty, the Parties acknowledge and agree that as of the Effective Date KGH took steps to transfer the governance oversight of elective abortion procedures to Lennox and Addington County General Hospital, however KHSC is acknowledged to be permitted to provide elective abortions at the KGH Campus. For clarity, governance responsibility for elective abortions shall at no time be a KHSC Board or KHSC CEO responsibility.
- 6.03 Catholic Identity at HDH Campus. KHSC shall ensure the HDH Campus continues to display the name "Hotel Dieu Hospital" and all other outward manifestations of a Catholic hospital (for instance, crosses, statues, and chapel), and shall continue to operate as a Catholic facility unless otherwise agreed to by the Partnership Council.
- 6.04 Branding at KGH Campus. KHSC shall ensure the KGH Campus continues to display the name "Kingston General Hospital", unless otherwise agreed to by the Partnership Council.
- 6.05 Spiritual and Religious Care. The Parties agree that personnel and resources will continue to be made available by KHSC to provide spiritual, pastoral and religious care, Catholic ethics, and educational programs to staff and volunteers on the HDH Campus, in a manner and to a degree consistent with the practice of HDH in place on the Effective Date. KHSC Board shall allocate the resources necessary to attain the objectives set out in this Article 6.
- 6.06 Catholic Healthcare Leadership Program. The KHSC, senior executive team and other senior administrative personnel with responsibility for operations at the HDH Campus shall be required to participate in the Catholic Healthcare Leadership Program offered by Catholic Health International or its successors ("CHI") or a program of similar quality approved by CHI, within two years of commencing with KHSC, or succeeding to said leadership role. The KHSC Board and the senior leadership team and senior administrative personnel with responsibility for operations at the HDH Campus shall also participate in ongoing Catholic healthcare education for health care leaders offered by CHI or similar service providers acceptable to the Partnership Council.

- 6.07 Membership in Catholic Organizations. HDH shall continue to be a member of Catholic Health Association of Ontario and other Catholic health organizations of which HDH is now a member (or their successor organizations as applicable). If HDH is required to fund a financial commitment to, or sponsorship in favour of Catholic Health International or other Catholic organizations, those financial commitments or sponsorships will be paid for by KHSC through the process described in Section 7.01.

**ARTICLE 7
FUNDING OF HDH AND KGH**

- 7.01 Funding of Compliance and Professional Costs. The Parties acknowledge the integration resulted in all funding and assets of HDH (other than the HDH owned real property) and KGH being transferred to KHSC. This provision is intended to provide a limited funding mechanism to each of HDH and KGH to ensure their respective boards of directors are satisfied sufficient resources shall at all times be available to allow each of them to satisfy fiduciary duties, meet all legal and regulatory requirements, and to efficiently fulfill their obligations at law and under this Operating Agreement. Each of HDH and KGH shall submit to KHSC, on an annual basis, a proposed budget for its next fiscal year, which shall be subject to KHSC's review and approval, such approval not to be unreasonably withheld. KHSC shall reimburse HDH and KGH, forthwith on written request, for all reasonable costs within their approved budgets incurred by each of them at all times while this Operating Agreement remains in effect.
- 7.02 Licence to Use Space. KHSC hereby licences to HDH reasonable meeting and office space at 166 Brock Street to enable HDH to carry out its mandate, rights and obligations under this Operating Agreement. KHSC hereby licences to KGH reasonable meeting and office space at 76 Stuart Street to enable KGH to carry out its mandate, rights and obligations under this Operating Agreement. The space licenced pursuant to this Section 7.02 shall be free of charge to HDH and KGH.

**ARTICLE 8
DISPUTE RESOLUTION**

- 8.01 Exclusivity. Any dispute which may arise between the Parties related to this Operating Agreement, including, without limitation, disputes between HDH and KGH with respect to Partnership Council decisions, disputes related to KHSC compliance with this Operating Agreement, or disputes related to a Ground Lease, shall be resolved exclusively through the process set forth in this Article 8. For certainty, the dispute resolution process requires mandatory mediation before HDH or KGH is permitted to terminate the Operating Agreement in accordance with Article 9. For greater certainty, any dispute involving a Ground Lease shall be first referred to the Partnership Council for resolution and only if an amicable voluntary resolution is not achieved amongst all Parties through a Partnership Council meeting process may the dispute resolution process set out in this Article 8 apply.

- 8.02 Best Efforts. The Parties will use their best efforts to avoid disputes by clearly articulating expectations, establishing clear lines of communication, acting in good faith, and respecting the interests of the other Parties involved in the dispute.
- 8.03 Informal Negotiations. The Parties shall exchange written issue statements identifying their respective concerns related to the dispute, and representatives of the Parties of appropriate seniority (including without limitation members of the Parties' respective boards of directors) shall forthwith meet to attempt to achieve a negotiated amicable resolution to the issue in dispute.
- 8.04 Selection of Mediator. If, and only if, a dispute is not resolved voluntarily through the informal negotiation process described in Section 8.03 within six (6) months of the first meeting described in Section 8.03, a Party may elect to engage a mediator, in which case a mediation will occur and the following process shall apply to select the mediator:
- (a) the Parties shall appoint a neutral, third party mediator of appropriate skill and experience to assist in resolving the dispute; or
 - (b) if the Parties are unable or unwilling to select a mediator within thirty (30) days of the election to engage a mediator, a mediator shall be selected by lot from the roster of mediators last approved by the Partnership Council, and each Party shall accept the mediator selected from this roster.
- 8.05 Mediation. The mediator shall assist the Parties in resolving the dispute on such terms and timeline as established by the mediator; provided, however, that the mediation shall be concluded within ninety (90) days from the date the mediator is selected, unless the Partnership Council agrees to a longer duration. All costs of mediation shall be KHSC costs.
- 8.06 Binding Arbitration where Partnership Council Disagrees with KHSC. In the event the matter in dispute is a matter where the members of the Partnership Council unanimously disagree with an action or omission of KHSC because it is inconsistent with this Operating Agreement, and such dispute is not resolved by mediation, the Partnership Council may elect to refer the matter to binding arbitration as an alternative to the wind-up and dissolution of KHSC described in Section 8.08. Without limiting the foregoing but for certainty the result of any such arbitration shall be binding on the Parties, but shall not preclude either KGH or HDH from exercising its right to terminate the Operating Agreement in accordance with Section 8.08.
- 8.07 Binding Arbitration where Dispute relates to a Ground Lease (other than 166 Brock Street). In the event of a dispute in respect of a Ground Lease (other than 166 Brock Street) that is not resolved through negotiation or mediation in accordance with this Article 8, such dispute shall be referred to binding arbitration pursuant to Section 8.08 below but not the wind-up and dissolution remedy contemplated in Section 8.09.
- 8.08 Arbitration Procedure. Any arbitration referred to in this Operating Agreement shall be final, binding on the Parties, not subject to appeal or review, and shall be conducted in accordance with the following requirements:

- (a) the arbitration tribunal shall consist of one (1) arbitrator (the "Arbitrator") who shall be jointly selected by the Parties within ten (10) business days of delivery by the Partnership Council of notice of arbitration, provided that if the Parties cannot agree on the identity of the Arbitrator, any Party may apply to a court of competent jurisdiction to appoint the Arbitrator on notice to the other Parties;
- (b) the arbitration shall remain confidential to the extent permitted by law;
- (c) the arbitration shall be conducted in English;
- (d) the Arbitrator shall determine and communicate the rules governing the arbitration prior to its commencement to each Party;
- (e) all hearings shall take place in Kingston Ontario, unless otherwise determined by the Arbitrator;
- (f) the Arbitrator shall be bound by the provisions of the Operating Agreement; and
- (g) the Arbitrator may take any interim measures the Arbitrator determines necessary in respect of the dispute, including measures for the preservation of assets.

8.09 Triggered Dissolution. If the mediation does not achieve an outcome acceptable to the disputing Parties within the time period noted in Section 8.05, and/or if the result of the binding arbitration conducted pursuant to Section 8.06 is not favourable to the Partnership Council, either KGH or HDH may unilaterally terminate the Operating Agreement and trigger the wind-up and dissolution of KHSC, provided: (A) at least twelve (12) months' notice of intention to dissolve is given by the Party intending to unwind the Integration (being twelve (12) months from the date of the notice of intent to dissolve, not twelve (12) months from the date of initial dispute); and (B) notice of the intention to dissolve KHSC is concurrently delivered to the Minister and the LHIN, or their successors, together with information about the dispute and the failed attempts to resolve same amicably and through mediation. The Parties acknowledge that the decision to trigger the wind-up and dissolution of KHSC may be subject to regulatory oversight and approvals. Despite any other provision in this Operating Agreement, HDH may not unilaterally terminate the Operating Agreement and trigger a wind-up and dissolution of KHSC because of an unresolved dispute related solely to a Ground Lease other than the Ground Lease in respect of 166 Brock Street, rather any such dispute unresolved pursuant to Sections 8.03 to 8.05 shall be resolved exclusively by arbitration pursuant to Section 8.07 and Section 8.08 with no recourse to this Section 8.09. HDH shall at all times have the right to terminate the Operating Agreement and trigger a wind-up and dissolution of KHSC if a dispute in respect of the 166 Brock Street Ground Lease remains unresolved, provided the dispute resolution process set forth in Article 8 has been followed prior to triggering any wind-up and dissolution of KHSC.

8.10 Interim Relief. Nothing in this Operating Agreement prohibits a Party from seeking interim or interlocutory relief from any Arbitrator or court of competent jurisdiction, but such relief shall only be available in connection with matters that expressly require the

approval of the Partnership Council. A request for interim relief shall not be considered to be incompatible with or a waiver of the dispute resolution process set out in this Article 8.

ARTICLE 9 TERMINATION

9.01 Termination. This Operating Agreement may only be terminated:

- (a) with the mutual written consent of HDH and KGH in the circumstances that they decide that this Operating Agreement or the oversight of the Partnership Council is no longer required; or
- (b) with the mutual written consent of HDH and KGH, in the circumstances that KGH and HDH agree to unwind and dissolve KHSC, provided at least ninety (90) days' prior written notice of such mutual termination is provided to the LHIN and the Parties agree to a process to unwind and dissolve KHSC including a process to resolve any disputes that arise during such process and failing such agreement the provisions of Section 10.04 shall apply; or
- (c) unilaterally by one of KGH or HDH following the requirements of Article 8; or
- (d) unilaterally by KGH or HDH if KHSC commits an act of bankruptcy, becomes bankrupt or insolvent or if a receiver or similar person is lawfully appointed in respect of all or a portion of KHSC's assets, provided that in the event the circumstances described in this Section 9.01(d) occur and either KGH or HDH elects to terminate this Operating Agreement, such termination shall be deemed to have occurred one day prior to the occurrence of any such circumstance and all Ground Leases shall be deemed concurrently terminated one day prior to the occurrence of such circumstance and of no further force or effect. For certainty, a supervisor appointed under the *Public Hospitals Act* shall not be considered a 'similar person' for the purpose of this Section 9.01(d).

ARTICLE 10 CONSEQUENCES OF TERMINATION

10.01 Return of Assets to HDH and KGH. In the event this Operating Agreement is terminated in accordance with Section 9.01(b), Section 9.01(c) or Section 9.01(d), subject to Section 11.01 and applicable legal and regulatory approvals, KHSC shall transfer to each of KGH and HDH, respectively, all but not less than all of KHSC's assets and undertakings, such that all assets and liabilities directly attributable to the respective HDH and KGH Campuses will be returned to HDH and KGH respectively, and assets and liabilities that are not directly attributable to the respective HDH and KGH Campuses (i.e. assets or liabilities with corporation-wide application) will be allocated as follows:

- (a) all indebtedness directly attributable to assets located at the respective KGH and HDH Campuses will be assumed by the corporation that receives such assets.
- (b) all deferred capital grants directly attributable to assets located at the respective KGH and HDH Campuses will be assumed by the corporation that receives such assets.
- (c) all cash related to approved but incomplete capital purchases will be assumed by the corporation that will take ownership over the campus at which the capital assets are intended to be located.
- (d) the Parties shall take steps to cause donations, which are held by the University Hospitals Kingston Foundation, or its successors or permitted assigns for the benefit of KHSC at the time of transfer and are unrestricted with respect to the campus for which the donation may be used, to be redirected to HDH and KGH in the following proportions: KGH eighty-five percent (85%) and HDH fifteen percent (15%).

Any remaining assets of KHSC shall be allocated in proportions equal in the aggregate to the proportionate contribution made by each of HDH and KGH on the Effective Date, being one percent (1%) to HDH and ninety-nine percent (99%) to KGH. Without limiting the foregoing but for certainty, as consideration for such transfer of the remaining assets, HDH and KGH shall mutually negotiate the proportionate share of any remaining liabilities of KHSC. Despite any other provision in this Agreement, the Parties agree the intention is that on a wind-up both HDH and KGH will be restored to the position they are in prior to the Effective Date as operating public hospitals, and each of HDH and KGH shall take such further steps as are necessary or desirable, including, without limitation, entering into reasonable transitional services agreements with one another and with appropriate third parties, to ensure any transfer pursuant to this Section 10.01 is completed in a manner that results in continuous care for patients.

- 10.02 Termination of Ground Leases. The termination of this Operating Agreement will be deemed to automatically terminate all Ground Leases.
- 10.03 Costs. All costs incurred in connection with the resolution of disputes under this Operating Agreement and the transfer of assets and assumption of liabilities following termination described at Section 10.01 shall be borne by KHSC.
- 10.04 Disputes Related to Process to Unwind. In the event that this Operating Agreement is terminated pursuant to Section 9.01(b) or (c), any disputes that arise in connection with the process described in this Article 10 shall first be resolved by the Parties (including KHSC) by the process described in Sections 8.02 to 8.05. If the mediation is not favourably concluded within the time period noted in Section 8.05, then the Parties shall proceed to arbitration in accordance with Section 8.07.

**ARTICLE 11
DISTRIBUTION OF CHARITABLE PROPERTY**

- 11.01 Distribution of Charitable Property. In the event KHSC ceases operations for any reason, whether on a voluntary basis, as compelled to do so under this Operating Agreement, or otherwise, the KHSC Board shall distribute all but not less than all of its remaining property to HDH and KGH in accordance with Section 10.01; provided that each of HDH and KGH are at the time of distribution 'qualified donees' as such term is defined in the *Income Tax Act* (Canada) (each a "**Qualified Donee**"). If either HDH or KGH is not a Qualified Donee at the date of distribution, HDH and/or KGH may, as the case may be, direct KHSC in writing to transfer the net property due to either HDH or KGH, as the case may be, to an alternative Qualified Donee selected by HDH or KGH, and the selection of an alternative Qualified Donee shall be in the absolute discretion of HDH or KGH as the case may be, so long as such Qualified Donee provides and/or supports health care in Ontario. KHSC shall ensure that its letters patent and by-laws are at all times consistent with the provisions of this Section 11.01.

**ARTICLE 12
GENERAL**

- 12.01 Notices. All notices, requests, or other communications by the terms hereof required or permitted to be given by one Party to another shall be given in writing by personal delivery or registered mail (postage prepaid) to the other Party as follows:

- (a) if to HDH to:

166 Brock Street
Kingston, ON K7L 5G2

Attention: Board Chair

- (b) if to KGH to:

76 Stuart Street
Kingston, ON K7L 2V7

Attention: Board Chair

- (c) if to KHSC to:

166 Brock Street
Kingston, ON K7L 5G2

Attention: Board Chair

or at such other address as may be given by any Party to the other in writing from time to time, and such notices, requests, demands, acceptances and other communications shall be deemed to have been received one (1) business day following delivery thereof; unless it is

delivered to such Party personally in which case notice shall be received the date of actual delivery.

- 12.02 Entire Agreement. This Operating Agreement constitutes the entire agreement between the Parties on this subject matter and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, among the parties with respect thereto.
- 12.03 Interpretation. The division of this Operating Agreement into articles and sections are for convenience only and are not to affect the construction or interpretation of this Operating Agreement.
- 12.04 Applicable Law. This Operating Agreement shall be governed by the laws of the Province of Ontario and the federal laws of Canada therein.
- 12.05 Severability. If any provision of this Operating Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Operating Agreement shall not in any way be affected or impaired thereby and such invalid, illegal or unenforceable provision shall be severable from the remainder of this Operating Agreement.
- 12.06 Waiver. Any waiver of, or consent to depart from, the requirements of any provision of this Operating Agreement is effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Operating Agreement operates as a waiver of that right. No single or partial exercise of any such right precludes any other or further exercise of that right or the exercise of any other right.
- 12.07 Amendments. This Operating Agreement may only be supplemented, amended, restated or replaced by written agreement of the Parties.
- 12.08 Assignment. No Party may assign or transfer all or any part of its rights or obligations under this Operating Agreement to any person without the prior written consent of each other Party.
- 12.09 Successors. This Operating Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.
- 12.10 Survival. The provisions intending to survive termination of this Operating Agreement shall so survive for a period of five (5) years.
- 12.11 Conflict. Each Party agrees that in the event of conflict between this Operating Agreement and any other legal document to which a Party is bound from time to time, the provisions of this agreement shall prevail.

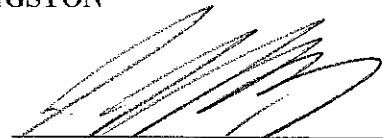
12.12 Counterparts. This Operating Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

[Signature Page Follows]


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IN WITNESS WHEREOF this Operating Agreement has been executed and delivered by the Parties as of the date first written above.

**RELIGIOUS HOSPITALLERS OF SAINT
JOSEPH OF THE HOTEL DIEU OF
KINGSTON**

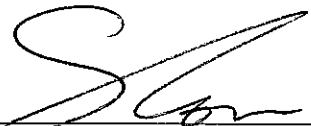
Per: 

J. Michael Hickey
Board Chair

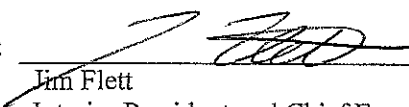
Per: 

Dr. David Ralston Pichora
Chief Executive Officer
(I/We have authority to bind the corporation)

KINGSTON GENERAL HOSPITAL

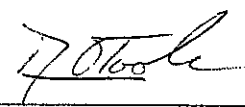
Per: 

George Thomson
Board Chair

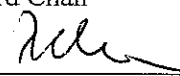
Per: 

Jim Flett
Interim President and Chief Executive Officer
(I/We have authority to bind the corporation)

KINGSTON HEALTH SCIENCES CENTRE

Per: 

David Lawrence O'Toole
Board Chair

Per: 

Dr. David Ralston Pichora
President and Chief Executive Officer
(I/We have authority to bind the corporation)

Schedule "A"

(HDH and KGH Missions and Values)

Kingston Health Sciences Centre ("KHSC") is committed to preserving and living the missions of its founding Hospitals, Religious Hospitallers of Saint Joseph of the Hotel Dieu of Kingston ("HDH") and Kingston General Hospital ("KGH") on the respective sites, as well as, its own mission.

HDH will continue to be rooted in the Gospel of Jesus Christ and to make visible the compassionate healing process of God to all persons. HDH will share in this mission by being a caring and just community through expressed pursuit of excellence in health service, education, and research.

KGH commits to being a community of people dedicated to transforming the experience of its patients and families through innovative and collaborative approaches to care, knowledge and leadership.

KHSC will provide patient and family centred care, while advancing health services, education, and research to improve the health of the communities it serves.

Schedule "B"

(Form of Ground Lease)

[To Be Attached]