

This Agreement is dated February 14, 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-

**Dr. Michael Fitzpatrick**

(Chief of Staff, Vice President Medical Affairs herein also referred to as the "Executive")

**WHEREAS** the Executive is currently the Chief of Medical & Academic Affairs/Chief of Staff of HDH;

**WHEREAS** the Founders wish to recruit the Executive as the Chief of Staff/Vice President Medical Affairs of the Hospital;

**WHEREAS** this Agreement is conditional upon the creation of the Hospital, which the Founders have 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

**WHEREAS** the Hospital will be formed as the result of the integration of the operations of Kingston General Hospital and Hotel Dieu Hospital; AND

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

**WHEREAS** the Hospital shall be 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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**WHEREAS** the parties understand and accept the requirements under the *Broader Public Sector Accountability Act, 2010*; the *Broader Public Sector Executive Compensation Act, 2014*; and understand and accept the requirements under the *Excellent Care for All Act, 2010*; and that this Agreement will have to comply with the provisions of these Acts and any regulations issued thereunder;

**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 The Executive will be employed in the position of Chief of Staff reporting to the Board of Directors and as the Vice President Medical Affairs reporting to the President and Chief Executive Officer (President and CEO). The Executive shall provide the services as set forth in the Hospital's Draft By-Law Article 23, setting out the Chief of Staff duties, a copy of which is attached as Schedule "A" to this Agreement. The Executive's Vice President Medical Affairs duties are articulated in the Position Profile attached as Schedule "B" to this Agreement that has been created by the Founders.
- 1.2 The Executive acknowledges that the duties of the Chief of Staff may be unilaterally revised by the Hospital's Board of Directors or by the President and CEO for the Vice President Medical Affairs duties. Changes shall be in writing, from time to time, provided that the revisions are consistent with the remaining sections of this Agreement and with the role of a Chief of Staff and Vice President Medical Affairs of a public hospital.
- 1.3 In addition to the By-Law, the Executive will abide by the Operating Agreement agreed to by the Founders (or their assigns) and assumed by the Hospital's Board, to be attached hereto as Schedule "C" on or before the Effective Date, the Hospital's missions, values, guiding principles, policies, practices, procedures, rules and regulations, applicable legislation, statutes and regulations, and guidelines and directions from the Board as may be amended from time to time.

#### 2. Professional Responsibilities

- 2.1 The Executive is accountable to the Hospital's Board of Directors and the President and CEO for all contractual and employment obligations. The performance of these obligations will be reviewed by the Board of Directors and President and CEO on an annual basis, in accordance with the applicable By-Law and policies.

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- 2.2 The Executive will devote the equivalent of 2.5 working days a week of working time and attention to his duties. The Hospital acknowledges and supports that the Executive shall be entitled to practice medicine consistent with the discharge of his duties pursuant to the Agreement. It is understood that any material changes outside of these parameters would be discussed by all parties signatory to this Agreement and documented in writing.
- 2.3 The Executive will not accept any appointment, employment, or other duties during the term of this Agreement, or any renewal hereof, that may interfere with his obligations to the Hospital without the prior written consent of the chair of Hospital's Board of Directors and the President and CEO.
- 2.4 The Executive agrees to avoid any external commitments that may interfere with the Executive's obligations to the Hospital or that constitute a potential, perceived or real conflict of interest, in accordance with Hospital policy.

### 3.0 Representations and Warranties

- 3.1 The Executive 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. There is a dual accountability for all contractual and employment obligations with this position. For the Chief of Staff component of the position, the Executive is accountable directly to the Board of Directors, and for the Vice President Medical Affairs, the Executive is accountable to the President and CEO.
- 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 five (5) 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 will advise the Executive in writing at least five (5) 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 notifies the Executive that it does not wish to renew the Agreement, the Agreement shall terminate in accordance with Section 5.1 below.

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- (b) If the Hospital notifies the Executive that it does wish to renew the Agreement, the Executive 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 Executive does not provide written notice within the two (2) week period referred to in Section 4.3(b) above, the Executive shall be deemed not to want to renew this Agreement and the Agreement will terminate at the end of the Term without any notice or pay in lieu of notice or severance pay under the *Ontario Employment Standards Act, 2000*.
- (d) If the Executive 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, the Agreement will terminate at the end of the Term without any further notice or pay in lieu of notice or severance pay under the *Ontario Employment Standards Act, 2000*.
- (e) If the Executive 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 Executive's compensation, the renewed provisions shall not result in the Executive's compensation being reduced below the compensation in place as of the end of the Term without the Executive's consent. 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) or (e) above, the Hospital shall provide the Executive with his minimum entitlement to Notice of Termination and Severance Pay pursuant to the *Ontario Employment Standards Act, 2000*. The Hospital's written notice of non-renewal shall constitute written notice of termination at the end of the Term. For the sake of clarity, (i) in determining his entitlements hereunder, the Executive's length of service shall be considered as service with the Hospital, being his start date September 1, 2014; and (ii) the Executive shall not be entitled to any common law notice or the entitlements upon early termination as set out below in Section 5.3.

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

The Hospital may terminate the Executive'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 Executive of a sum equivalent to twelve (12) months' at his base salary if terminated prior to the end of three (3) years from the Effective Date, or to eighteen (18) months' at his base salary if terminated post three (3) years from the Effective Date. Performance pay percentage in effect at the time of his termination will be paid up to a maximum of twelve (12) months but not extended past the end of the Term of this contract. Performance pay will be paid in accordance with Hospital practice and process in effect at the time of termination.

The Hospital shall continue to provide the Executive his HOOPP benefits, subject to the eligibility requirements of the insurer, for twelve (12) months following termination, but not extended past the end of the Term of this contract following termination. In the event the insurer will not continue benefits, the Hospital shall pay the Executive the equivalent of the monthly benefit premiums (as paid by the Hospital at the time of termination) for each month of benefit discontinuation by the insurer to a maximum of twelve (12) months.

Payment of base salary shall be by way of lump sum payment unless salary continuance is required to ensure continued coverage in any benefit plan to a maximum of twelve (12) months.

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 Executive:

The Executive 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 Executive shall continue to be eligible for salary and performance pay percentage to the end of this notice period.

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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 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*.

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.

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

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## 6.0 Remuneration, Vacation and Benefits

- 6.1 The Executive shall receive annual salary base of \$185,500 and a maximum annual performance pay of 10% 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 Hospital's Board of Directors' and the President and CEO's assessment and evaluation of the Executive'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 Hospital will review the base salary of the Executive in April in each year. This will be conducted and adjustments made consistent with applicable policies and legislation. Review of total compensation, including performance pay, will be conducted every three years and in accordance with applicable policy or legislation.
- 6.4 The Hospital's Board of Directors and President and CEO with the Executive shall jointly develop an annual performance agreement which includes goals, milestones and targets for the fiscal year by which the Executive will be measured when evaluated. Performance pay is allocated according to Board 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 It is understood by the parties that the Executive receives benefits, including vacation through his Clinical Department and therefore the Hospital, has no obligations to the Executive for vacation or benefits. Should the situation change, the Hospital agrees to re-evaluate the provision of benefits.
- 6.6 It is agreed that the Executive will participate in the Hospitals' of Ontario Pension Plan (HOOPP) and pay applicable deductions and other programs as outlined in Schedule "D".

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- 6.7 The Hospital shall provide the Executive with a corporate portable tablet or office 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.
- 6.8 The Hospital shall reimburse the Executive for kilometers driven in the course of 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 Executive for all other reasonable business expenses incurred in carrying out his duties in accordance with Hospital policy.

#### 7.0 Hospital's Property

- 7.1 The Executive acknowledges that all items of any and every nature or kind created or used by the Executive pursuant to the Executive's engagement under this Agreement or furnished by the Hospital to the Executive, 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 Executive further covenants and agrees with the Hospital that all documents, including, without limitation, instructions, drawings, notes, memoranda, blueprints, manuals, letters, notes, 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 of 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 Executive's duties hereunder) and shall, in any event, be returned to the Hospital upon the Executive 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 Executive shall avoid all circumstances that may give rise to actual or perceived conflict of interest situations. The parties agree that in addition to the Executive 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 chair of the Hospital's Board of Directors and the President and CEO at the earliest possible opportunity upon discovering same.
- 8.2 The Executive 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 Hospital's Board of Directors in accordance with Hospital policy for such matters. Once approved by the Board, any significant change in these activities must be reported to the Board of Directors.

## 9.0 Confidentiality

- 9.1 The Executive 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 it provides may be disclosed or become known to the Executive. The Executive acknowledges that the disclosure of confidential information other than as necessary in the fulfillment of the Executive'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 Executive undertakes and agrees that no such confidential information shall be divulged in any form, nor used directly or indirectly for the Executive'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.

## 10.0 Assignment of the Agreement

- 10.1 Neither party may assign this Agreement without the express written consent of the other party.

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#### 11.0 Succession of the Agreement

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

#### 12.0 Severability

12.1 The Hospital and the Executive 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.

#### 13.0 Entire Agreement

13.1 This Agreement constitutes the entire agreement between the Executive and the Hospital concerning the Executive'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 Executive further acknowledges that there are no other agreements, understandings, representations, promises or warranties, either collateral, oral or otherwise made to him apart from the obligations of the Hospital expressly set out in this Agreement.

#### 14.0 Legal Authority

14.1 Each Founder represents and warrants that:

- (a) it has the authority to enter into this Agreement; and
- (b) all necessary steps have been taken by the Founder to properly authorize the execution and performance of the terms of this Agreement; and
- (c) it shall take all reasonable steps within its authority to require the Hospital to assume the rights and obligations of this Agreement when the Hospital is constituted and operational; and
- (d) 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.

14.2 The Founders do not have any legal liability to the Executive under the terms and conditions of this Agreement except as set out in Section 13.1(c). The parties agree that any other agreements between the Hospital and the Founders and the Executive 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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## 15.0 General

15.1 The Executive 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 Executive 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 not apply to any liability which the Executive may sustain or incur as the result of any act or omission as a member of the Professional Staff of the Hospital; and
- (ii) shall be applicable only if the Executive 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.

15.2 This Agreement will be reviewed on an annual basis to identify revisions required as part of legislative or other changes and any agreement will have to be agreed to by both parties.

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

15.4 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.

## 16.0 Independent Legal Advice


16.1 The Executive acknowledges and agrees that this Agreement was negotiated freely and voluntarily and that the opportunity to seek independent legal advice was offered by the Founders 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 ACADEMIC HEALTH SCIENCES CENTRE

Per:   
Chair, Board of Directors of Kingston General Hospital

Per:   
President and CEO, Kingston General Hospital

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

Per:   
Chair, Board of Directors of Hotel Dieu Hospital

Per:   
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

  
Dr. Michael Fitzpatrick

  
Name of Witness

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