

This Agreement is dated March 14, 2019

B E T W E E N:

KINGSTON HEALTH SCIENCES CENTRE (KHSC)
(Herein referred to as the "Hospital")

-and-

BRENDA CARTER
(Chief of Quality & Clinical Transformation, herein referred to as the "Executive")

It is agreed by and between the parties as follows:

1.0 Position and Duties

- 1.1 Effective April 1, 2019, the Executive will be employed in the position of Chief of Quality & Clinical Transformation and shall provide 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 Executive acknowledges that her duties may be unilaterally revised by the President and CEO of the Hospital.
- 1.3 The Executive, while performing her 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 Executive 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 Executive will devote her full working time and attention to the business and affairs of the Hospital.
- 2.3 The Executive 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.

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2.4 The Executive agrees to avoid any external commitments that may interfere with her obligations to the Hospital or that constitute a potential, perceived or real conflict of interest, in accordance with the Hospital's policies.

3.0 Representations and Warranties

3.1 The Executive warrants that she will and can carry out all contractual obligations pursuant to this Agreement and her 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 April 1, 2019.

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.

If the Hospital does not notify the Executive that it wishes to renew the Agreement or alternately, if the Hospital provides written notification to the Executive that it does not wish to renew the Agreement, the Agreement shall terminate in accordance with Section 5.1 below.

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 she wishes to renew the Agreement.

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, or 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 the Agreement will terminate at the end of the Term as provided for in Section 5.1.

If the Executive provides written notice to the Hospital within the two (2) week period referred to in Section 4.3 (b) above that she 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. If the parties, acting in good

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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 Executive shall work to the end of the Term. The Hospital shall provide the Executive with an eighteen (18) month severance payment at her 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. The Hospital will also provide the Executive with benefit coverage for the minimum period of notice required under the *Ontario Employment Standards Act, 2000*. For the sake of clarity, 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.

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 eighteen (18) months' at her base salary. Performance pay percentage in effect at the time of her 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 her 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 benefits 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.

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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. 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 Executive 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 Executive elects early termination, no payments are required under this Agreement after the end of the sixty (60) calendar days' notice period by the Hospital.

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 her 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.

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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*.

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 her 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 her medical practitioner upon request of the Hospital.

6.0 Remuneration, Vacation and Benefits

- 6.1 The Executive shall receive annual salary base of \$277,150, and a maximum annual performance pay of 10% of annual base salary, less applicable

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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 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 base salary of the Executive 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 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 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 Executive with vacation in accordance with the Hospital's policies and practices. The Executive's current annual vacation entitlement will be subject to red-circling should the Hospital's vacation policy entitle the Executive to a lesser allotment than she currently earns. Vacation days shall be taken as agreed by the Executive and the President and CEO of the Hospital. 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 Executive is entitled to payout of any accrued, but untaken, vacation entitlement.
- 6.8 The Hospital shall provide the Executive 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.

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- 6.9 The Hospital shall reimburse the Executive for kilometers driven in the course of actively carrying out her 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 expenses incurred in carrying out her duties in accordance with Hospital policy
- 6.10 The Hospital and Executive shall pay the applicable premium cost of the benefits as outlined in the attached Schedule "B". 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 Executive of the change(s). The Executive 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 for the Executive as other non-union management of the Hospital. Any dispute under the terms of the plans is a dispute solely between the Executive and the insurer.
- 6.11 The parties understand that the *Broader Public Sector Accountability Act, 2010* (BPSAA), the *Broader Public Sector Executive Compensation Act, 2014* (BPSECA), the *Excellent Care for All Act, 2010* (ECFAA), and regulations thereunder establish requirements for hospitals in their management of executive compensation and that this Agreement must comply with the provisions of such existing provisions or any such successor legislation and/or regulations thereunder.

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 she 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, notebooks, reports, sketches, formula, records, files, computer

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programs, data, inventions, patents and other property relating to the Hospital made or conceived by her during the term hereof which may come into her possession in her 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.

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; she 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 Executive shall not, during the term of the Agreement, under any circumstances, either directly or indirectly, engage in any other occupation, business or entity, nor 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 Executive acknowledges that she 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 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 her responsibilities under this Agreement.

10.0 Assignment of the Agreement

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

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 her apart from the obligations of the Hospital expressly set out in this Agreement.

14.0 Legal Authority

14.1 The Hospital represents and warrants that:

it has the authority to enter into this Agreement; AND
this Agreement shall be a legal, valid and binding Agreement, enforceable against the Hospital in accordance with the terms.

14.2 The parties agree that any other agreements between the Hospital and the Executive having effect prior to the Effective Date will terminate without any further action required between the parties on the Effective Date.

15.0 General

15.1 The Executive and her 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:

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- (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 her, for or in respect of any act, deed, matter or thing whatsoever, made, done or permitted by her, in or about the execution of the duties of her office; and
- (b) all other costs, charges and expenses which she 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 her own willful neglect or default.

The indemnity provided for in the preceding paragraph:

- (i) 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 her conduct was lawful.



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

15.3 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.

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 with respect to this Agreement and its terms, prior to executing same.

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



 Per: _____
 David Pichora, President and CEO, Kingston Health
 Sciences Centre

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

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SIGNED, SEALED AND DELIVERED in the
Presence of:

[Redacted Signature]

Witness

[Redacted Signature]

Brenda Carter

Name of Witness

Initial: [Redacted]

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SCHEDULE A
POSITION PROFILE