

This Agreement is dated June 8, 2016 and becomes effective on the Effective Date below

B E T W E E N:

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

on behalf of

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

-and-

DR. DAVID PICHORA

(President and Chief Executive Officer, herein referred to as the "CEO")

WHEREAS the CEO is currently the Chief Executive Officer of the Religious Hospitallers of St. Joseph of the Hotel Dieu of Kingston o/a Hotel Dieu Hospital ("Hotel Dieu Hospital");

WHEREAS the Founders wish to recruit the CEO as the President and Chief Executive Officer 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 CEO 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 CEO being the "**Effective Date**").

FURTHERMORE

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 to the within Agreement are committed to protecting the interests of taxpayers and strengthening the accountability of the Hospital as an organization in receipt of public funds;

WHEREAS the parties understand and accept the requirements under the *Broader Public Sector Accountability Act, 2010* and in particular to ensure that public funds are used prudently and responsibly;

WHEREAS the parties understand that a compensation framework may be imposed pursuant to the *Broader Public Sector Executive Compensation Act, 2014* and that this Agreement will have to comply with the provisions of that Act and any regulations issued thereunder;

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

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 CEO will be employed in the position of President and Chief Executive Officer and shall provide the services as set forth in the Hospital's Draft By-Law Article 6, setting out the duties of the CEO, a copy of which is attached as Schedule "A" to this Agreement. These duties are further articulated in the Position Profile attached as Schedule "B" to this Agreement that was created by the Founders.
- 1.2 The CEO acknowledges that the CEO's duties may be unilaterally revised by the Hospital's Board of Directors, 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 President and Chief Executive Officer of a public hospital.
- 1.3 In addition to the By-Law, the CEO 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 mission, 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.

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2. Professional Responsibilities

- 2.1 The CEO is accountable to the Hospital's Board of Directors for all contractual and employment obligations. The performance of these obligations will be reviewed by the Board of Directors on an annual basis, in accordance with the applicable By-Law and policies.
- 2.2 The CEO will devote his full working time and attention to the business and affairs of the Hospital.
- 2.3 The CEO 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 chair of Hospital's Board of Directors.
- 2.4 The CEO agrees to avoid any external commitments that may interfere with the CEO'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 CEO warrants that he will and can carry out all contractual obligations pursuant to this Agreement and his employment in a diligent fashion and with a high degree of professional competence.
- 3.2 All representations, warranties, covenants and limitations of liability in this Agreement that are intended, by their terms, to survive termination of this Agreement shall continue in force after the termination of this Agreement.

4.0 Term of the Agreement

- 4.1 **Effective Date:** This Agreement comes into effect on the Effective Date defined above.
- 4.2 **Term:** This Agreement, unless terminated earlier as provided below, shall be in effect for a 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 CEO 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 CEO that it does not wish to renew the Agreement, the Agreement shall terminate in accordance with Section 5.1 below.
- (b) If the Hospital notifies the CEO that it does wish to renew the Agreement, the CEO must advise the Hospital in writing within two (2)

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weeks of receiving written notification of whether or not he wishes to renew the Agreement.

- (c) If the CEO does not provide written notice within the two (2) week period referred to in Section 4.3(b) above, the CEO 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 CEO 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 CEO 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 Hospital CEO's compensation, the renewed provisions shall not result in the CEO's compensation being reduced below the compensation in place as of the end of the Term without the CEO'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 CEO with his minimum entitlement to Notice of Termination (including benefits) 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 CEO's length of service with the Hotel Dieu Hospital shall be considered as service with the Hospital, being his start date of July 1, 2004; and (ii) the CEO 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 CEO's employment for cause, without provision of notice or pay in lieu of notice.

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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 CEO of a sum equivalent to eighteen (18) months' at his base salary plus performance pay percentage in effect at the time of his termination. 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 CEO his benefits, subject to the eligibility requirements of the insurer, for eighteen (18) months following termination. In the event the insurer will not continue benefits for all or part of the eighteen (18) months following termination, the Hospital shall pay the CEO 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 eighteen (18) 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 during the required period. At the CEO's option, the lump sum payment may be made payable as salary continuance over 18 months.

In the event the employment of the CEO is terminated due to the dissolution of the Hospital, the Hospital shall pay the CEO a sum equivalent to twenty-one (21) months' at his base salary plus performance pay percentage in effect at the time of his termination and shall continue to provide benefits or pay 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 (21) 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 CEO:

The CEO 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 CEO 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 CEO 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.

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5.5 Termination due to Frustration of Contract:

In the event this Agreement has become impossible to perform or has been frustrated because of an illness or injury suffered by the CEO, the Hospital may terminate this Agreement in writing, and upon such written notice shall provide the CEO with his minimum entitlements under the *Ontario Employment Standards Act, 2000* and performance pay accrued to his last day of work, less statutory deductions. In addition, subject to the long term disability carrier's normal adjudication, such termination does not negate the CEO's right for disability coverage where the date of disability occurred during the term of his employment. For the purposes of this section, frustration due to illness or injury shall occur only upon the occurrence of the following events:

- (i) after the CEO has been substantially unable to perform his duties and responsibilities pursuant to this Agreement for a period of six (6) months due to illness or injury; and
- (ii) A report has been obtained from the CEO's medical practitioner certifying that the CEO is unlikely, in the subsequent six (6) months, to be able to resume his duties, after due consideration has been given to the Hospital's duty to accommodate pursuant to the *Human Rights Code*.
- (iii) Or at any time, if the CEO's medical practitioner certifies that the CEO is unlikely, in the subsequent twelve (12) months to be able to resume his duties, after due consideration has been given to the Hospital's duty to accommodate pursuant to the *Human Rights Code*.

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

No payments will be owing to the CEO for impossibility or frustration for any other reason.

6.0 Remuneration, Vacation and Benefits

- 6.1 The CEO shall receive annual salary base of \$448,000.00 and a maximum annual performance pay of 25% 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' assessment and evaluation of the CEO'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.

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- 6.3 The Hospital will review the base salary of the CEO 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 the CEO shall jointly develop an annual performance agreement which includes goals, milestones and targets for the fiscal year by which the CEO 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 The Hospital shall provide the CEO with six (6) weeks annually paid vacation. Vacation days shall be taken as agreed by the CEO and the chair of the Board of Directors. Vacation does not accrue during any unpaid leaves of absence.
- 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 chair of the Board of Directors.
- 6.7 Upon termination of the employment relationship for any reason, the CEO is entitled to payout of any accrued, but untaken, vacation entitlement.
- 6.8 The Hospital shall provide the CEO with a corporate portable tablet or computer and a phone in accordance with Hospital standards. The corporate portable tablet or computer and phone shall remain the property of the Hospital and shall be returned to the Hospital upon the expiration or termination of the employment relationship.
- 6.9 The Hospital shall reimburse the CEO for kilometers driven outside of the Kingston regional area while actively carrying out his job duties, pursuant to the Hospital's travel policy and at the applicable per kilometer rate established by the Hospital from time to time and shall reimburse the CEO for all other reasonable expenses incurred in carrying out his duties in accordance with Hospital policy.
- 6.10 The Hospital and CEO shall pay the applicable premium cost of the benefits as outlined in the attached Schedule "D". 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 Board will advise the CEO of the change(s). The CEO 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

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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 CEO as other non-union management of the Hospital.

7.0 Hospital's Property

- 7.1 The CEO acknowledges that all items of any and every nature or kind created or used by the CEO pursuant to the CEO's engagement under this Agreement or furnished by the Hospital to the CEO, 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 CEO further covenants and agrees with the Hospital that all documents, including, without limitation, instructions, drawings, notes, memoranda, drawings, 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 during hereof 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 CEO's duties hereunder) and shall, in any event, be returned to the Hospital upon the CEO 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 CEO shall avoid all circumstances that may give rise to actual or perceived conflict of interest situations. The parties agree that in addition to the CEO 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 at the earliest possible opportunity upon discovering same.
- 8.2 The CEO 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.

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9.0 Confidentiality

9.1 The CEO 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 CEO. The CEO acknowledges that the disclosure of confidential information other than as necessary in the fulfillment of the CEO'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 CEO undertakes and agrees that no such confidential information shall be divulged in any form, nor used directly or indirectly for the CEO'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 Succession of the Agreement

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

11.0 Severability

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

12.0 Entire Agreement

12.1 This Agreement constitutes the entire agreement between the CEO and the Hospital concerning the CEO'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 CEO 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.

13.0 Legal Authority

13.1 Each Founder represents and warrants that:

- (a) it has the authority to enter into this Agreement;

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- (b) all necessary steps have been taken by the Founder to properly authorize the execution and performance of the terms of this Agreement;
- (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.

13.2 The Founders do not have any legal liability to the CEO 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 Founders and the CEO having effect prior to the Effective Date will terminate without any further action required between the parties on the Effective Date.

14.0 General

14.1 The CEO 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 CEO 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 wilful neglect or default.

The indemnity provided for in the preceding paragraph:

- (i) shall not apply to any liability which the CEO 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 CEO acted honestly and in good faith with a view to the best interests of the Hospital and in the case of criminal or administrative action or proceeding that is enforceable by a monetary penalty, had reasonable grounds for believing that his conduct was lawful.

14.2 This Agreement 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.

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- 14.3 This Agreement may be amended at any time by mutual agreement of the parties in writing.
- 14.4 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.
- 15.0 Independent Legal Advice
 - 15.1 The CEO 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.

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


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

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

Name of Witness



Dr. David Pichora