

# EMPLOYMENT AGREEMENT

BETWEEN

**QUEENSWAY CARLETON HOSPITAL**

(the "Hospital")

– and –

**ANDREW FALCONER**

(the "Executive")

**WHEREAS** the Hospital wishes to employ the Executive as President and Chief Executive Officer;

**AND WHEREAS** the Executive wishes to accept employment with the Hospital, on and subject to the terms set out herein;

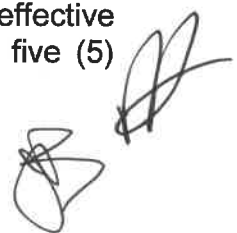
**NOW THEREFORE** in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

## 1. Employment

- (a) The Hospital confirms the appointment of the Executive to undertake the duties of, and exercise the powers as, President and Chief Executive Officer of the Hospital, and the Executive indicates their acceptance of this appointment.
- (b) The Executive shall perform those duties as set out in the position description developed by the Hospital's Board of Directors (the "**Board**") and as may be amended by the Board from time to time, together with such other duties or amended duties as may reasonably be requested from time to time by the Board. In carrying out their duties, the Executive will comply with all lawful instructions and directions given to them by the Board and shall carry out those duties in accordance with the *Public Hospitals Act* (Ontario), other applicable laws, and the by-laws, policies, rules and regulations of the Hospital.
- (c) The Executive shall be accountable to and subject to the direction and control of the Board. It is understood that in the normal course all communications, reports and actions between the Executive and the Board will be through the Board Chair.

## 2. Term

- (a) The Executive's appointment under this Agreement shall commence effective September 9, 2019 (the "Start Date") and shall continue for a term of five (5)



years and seven (7) months until March 31, 2025 (the "End Date"), unless terminated earlier in accordance with the provisions of this Agreement.

- (b) The Parties may agree in writing prior to the End Date to renew the Executive's employment for a further term of five (5) years, or for a further term of such other length as may be agreed between the Parties. If the Parties do not so agree, then the Executive's employment will end on the End Date, without further notice or pay in lieu thereof whatsoever. If the Parties do agree to renew the Executive's employment, then the terms and conditions set out herein shall apply to the Executive's employment during any such renewal term, save and except as they may be modified by agreement in writing between the Parties.
- (c) During the period of employment, in the event of a change in legislation, policy or significant change in the Executive Compensation Framework, and upon the request of the Executive, the parties will review the terms of this Agreement and negotiate such alternate terms and conditions as the parties may agree and as are permitted by the change of legislation, policy or the Executive Compensation Framework.

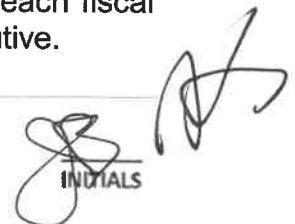
### 3. Compensation

- (a) Total Annual Compensation for the Executive is comprised of a Salary Component and a Pay for Performance Component, described herein as "Pay for Performance".

Subject to constraints imposed by applicable law, including but not limited to the *Broader Public Sector Executive Compensation Act, 2014*, and all Regulations and Directives thereunder, the Board will periodically, at least annually, review the Hospital's Executive Compensation Framework, and where permitted by law and determined by the Board to be warranted, the Board will make increases to the permissible Total Annual Compensation payable to designated executives thereunder. Where permitted by law and consistent with the Hospital's Executive Compensation Framework and this Agreement, the Board may from time to time in its discretion provide the Executive with increases in one or both components of their Total Annual Compensation.

All payments set out herein shall be subject to all usual and necessary deductions and withholdings.

- (b) Effective the Start Date, the Salary Component of the Executive's Total Annual Compensation shall be \$352,879 per annum. The Salary Component shall be payable biweekly through direct deposit, or in such other regular pay schedule as may be mutually agreed upon between the parties.
- (c) The Hospital and the Executive agree that a percentage of the Executive's Total Annual Compensation, hereinafter called the Pay for Performance component, shall be linked to the achievement of assigned performance goals and objectives in accordance with the Hospital's Executive Compensation Framework, all of which shall be reviewed and revised prior to the commencement of each fiscal year by the Board, acting reasonably, after consultation with the Executive.

  
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The Board (or a committee of the Board) shall conduct a performance evaluation of the Executive in the 1st quarter of each fiscal year, to determine the extent to which the Executive has been successful in achieving the goals and objectives set for the preceding fiscal year. Upon completion of each such evaluation, the Board will determine the amount that the Executive is eligible to receive pursuant to the Executive Compensation Framework in an annual lump sum payment as an incentive payment in consideration of achievements relative to the goals and objectives set. Such lump sum will be payable to the Executive, less deductions and withholdings, according to the Hospital's policies and procedures and in the same timeframe as other designated executives.

Any Pay for Performance payment in respect of a fiscal year is conditional on the Executive remaining actively at work as of March 31 of that year, at which time the Executive's entitlement to a Pay for Performance payment, if any, will vest (the "Vesting Date"). For the purposes of this Agreement "actively at work" shall be defined as the active performance of the Executive's work-related duties and responsibilities. For clarity, other than during the Ontario *Employment Standards Act*, 2000 (as amended from time to time) minimum termination notice period, no payment in lieu of notice or severance period will qualify as the Executive being actively at work. Additionally, and for further clarity, if the Executive is actively at work as of March 31 of the applicable year, they will receive the Pay for Performance payment which is determined by the Hospital to be payable regardless of whether they are actively at work on the date that the payment is made.

The maximum amount of the lump sum payable under the Pay for Performance component shall be \$10,000.

Any lump sum payable under the Pay for Performance component will be payable in accordance with the Hospital's policies and procedures and will be pensionable earnings for the purposes of the Healthcare of Ontario Pension Plan (HOOPP) as a regularly occurring bonus that represents a fundamental and recurring component of an Employer's long-term compensation program.

#### 4. **Benefits**

- (a) The Executive will be entitled to the package of benefits which is made available to Hospital executives from time to time, as set out in the Hospital's Benefit Policy. Benefits will be provided in accordance with formal plan documents or policies, and any issues with respect to entitlement or payment of benefits will be governed by the terms of such documents or policies.
- (b) The Executive shall participate in the Healthcare of Ontario Pension Plan (HOOPP), the contributions for which shall be divided between the Executive and the Hospital in accordance with the usual terms and conditions of the Plan.
- (c) The Executive shall be entitled to seven (7) weeks of paid vacation in each year of employment and must use accumulated vacation time within six (6) months after the year in which they became entitled to the vacation time or the balance

  
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remaining shall be paid out. Notwithstanding the foregoing, the Executive and the Board Chair may agree to the carry forward of unused vacation in excess of the Executive's entitlement under the *Employment Standards Act, 2000*, as amended from time to time, in any given year. Vacation so carried forward must be used in the following vacation year. Vacation shall be taken at such time as the Board Chair and Executive may mutually agree upon, having regard to the operations of the Hospital.

5. **Expenses**

- (a) The Executive shall be reimbursed for all authorized travelling and other out-of-pocket expenses actually and reasonably incurred in connection with their duties hereunder. "Authorized" expenses include expenses that are either (i) incurred in accordance with established Hospital policy or (ii) approved in advance by the Chair of the Board. For all such expenses, the Executive shall furnish to the Hospital statements and receipts as and when required by the Hospital.
- (b) The Executive shall also be reimbursed the cost of professional memberships as are agreed to by the Chair of the Board. The expenses so incurred by the Executive are subject to the approval of the Chair of the Board. The parties agree that ongoing professional development benefits both the Hospital and the Executive. The Hospital agrees to annually review and set a budget for professional development commensurate with their commitment to professional development. The Executive shall be required to provide the Hospital with a proposal regarding any professional development expenditures which shall be subject to Hospital approval based on consideration of the nature of the professional development opportunity, the budget and the cost of the opportunity.
- (c) The Hospital acknowledges that the Executive will be required to relocate to Ottawa, Ontario to fulfill the obligations under the terms of this Agreement. The Executive shall be eligible for reimbursement of reasonable relocation expenses in accordance with the Guidelines put forward by the Canadian Revenue Agency regarding moving expenses (non-taxable benefits), as amended from time to time, to a maximum of \$25,000. Reimbursement is conditional on the Executive continuing in their employment with the Hospital for a minimum of twelve (12) months from the Start Date, save and except if the Executive's employment is terminated without just cause during the first twelve (12) months of employment, in which case the Executive will be entitled to receive reimbursement of relocation expenses pursuant to this provision and will not be required to repay such relocation expenses. Reimbursement is further conditional on submission by the Executive to the Hospital of receipts in respect of the expenses which are claimed for reimbursement on or before December 31, 2019. Claims for reimbursement will be reviewed and reimbursement of eligible expenses will be provided by the Hospital on an ongoing basis during this period.

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## 6. Duties and Authority

- (a) Subject always to the general or specific legal instructions and directions of the Chair of the Board and the Board of Directors, the Executive shall have full authority to manage and direct the business and affairs of the Hospital within their operational mandate.
- (b) Throughout the term of this Agreement, the Executive shall devote their full time and attention to the business and affairs of the Hospital and shall well and faithfully serve the Hospital and use best efforts to promote the interests thereof.
- (c) The Executive will be subject to the Hospital's policies in the performance of their duties, as contained in the Hospital's Corporate Policy and Procedure Manual, as approved and reviewed by the Board from time to time. Where the provisions of this Agreement conflict with the Hospital's policies, the provisions of this Agreement shall govern.
- (d) The Hospital agrees that during the Term of this Agreement it shall maintain in force for the Executive's benefit Directors and Officers' liability insurance, and that it shall defend, hold harmless and indemnify the Executive during the period of employment and indefinitely following the termination of employment howsoever arising from any and all demands, claims, suits, actions and legal proceedings brought against the Executive in their capacity as agent and employee of the Hospital, including payment of legal costs, charges and expenses of a civil or administrative action or proceeding, to the extent permitted by law, where the subject incident arose while the Executive was acting in the scope of their employment, honestly and in good faith, subject to any limitations on indemnification imposed by applicable law.
- (e) The Executive may perform clinical services in the Hospital upon the prior written approval of the Chair of the Board.

## 7. Confidentiality

- (a) All confidential information of the Hospital, whether it is developed by the Executive during the period of employment or by others employed or engaged by or associated with the Hospital, is the exclusive property of the Hospital and shall at all times be regarded, treated and protected as such. "**Confidential information**" includes, without limitation, information and facts relating to the operation and affairs of the Hospital or any of its related or associated entities, including without limitation, the Queensway Carleton Hospital Foundation, or acquired in the course of carrying out its operations.
- (b) The Executive shall not disclose confidential information to any person or use any confidential information (other than as necessary in carrying out the Executive's duties on behalf of the Hospital) at any time during or subsequent to their period of employment without first obtaining the consent of the Chair of the Board, and the Executive shall take all reasonable precautions to prevent inadvertent disclosure of any such confidential information.

- (c) Within thirty (30) days after the termination of the Executive's employment by the Hospital for any reason, or of receipt by the Executive of the Hospital's written request, the Executive shall promptly deliver to the Hospital all property belonging to the Hospital, including without limitation all confidential information of the Hospital (in whatever form) that is in the Executive's possession or under the Executive's control.
- (d) Nothing in this Section precludes the Executive from disclosing or using confidential information of the Hospital at any time if:
- (i) Such confidential information is available to the public or in the public domain at the time of such disclosure or use, without breach of this Agreement;
  - (ii) disclosure of such confidential information is required to be made by any law, regulation, governmental body, or authority or by court order, provided that before disclosure is made, notice of the requirement is provided to the Hospital, and to the extent possible in the circumstances, the Hospital is afforded an opportunity to dispute the requirement; or
  - (iii) such confidential information becomes available to the Executive on a non-confidential basis from a source other than the Hospital without breach of this or any other Agreement.
- (e) The Executive acknowledges that notwithstanding anything in this section, they will at all times comply with their obligation to protect the confidentiality of personal health information relating to patients of the Hospital which may come into their possession in the course of carrying out their duties under this Agreement. The Executive specifically agrees to comply with the provisions of the *Personal Health Information Protection Act*, as amended, and with all Hospital policies and procedures developed and implemented pursuant to that Act.

## **8. Non-Solicitation**

- (a) The Executive agrees that while they are employed under this Agreement and, for a period of two (2) years from the date of termination of employment (whether such termination is occasioned by the Executive or by the Hospital with or without cause, or by mutual agreement), the Executive will not solicit or attempt to solicit any employee of the Hospital to leave the employment of the Hospital.
- (b) The Executive acknowledges that violation of the covenants contained in this paragraph and/or in paragraph 7, above could result in irreparable harm to the Hospital, such that an award of damages would be inadequate to remedy the harm. Accordingly, the Executive agrees that the Hospital shall be entitled to an injunction restraining any breach of the covenants in this paragraph and in paragraph 7, above. This right to an injunction shall be in addition to and not in lieu of any right of the Hospital to damages in respect of any such breach by the Executive.

  
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- (c) The Executive agrees and warrants that the covenants contained herein are reasonable, that valid consideration has been and will be received therefor and that the Agreement set forth herein is the result of arm's length negotiations between the parties hereto.

## 9. Termination

The parties understand and agree that this Agreement and the Executive's employment may be terminated in the following manner in the specified circumstances:

- (a) Immediately upon the death of the Executive, subject to the requirement to pay any monies accrued and owing at the time of the Executive's death to the Executive's estate.
- (b) Immediately at end of day on the End Date, with no further notice or pay in lieu thereof, unless the parties have agreed in writing to renew this Agreement prior to the End Date, as set out above.
- (c) By the Executive, at any time, for any reason, on the giving of four (4) months of written notice. Upon completion of this notice period, the Executive's employment shall be fully and finally terminated without further entitlement to notice, pay in lieu of notice, or any other payment in respect of the termination, save and except salary and vacation pay accrued and payable up to the date of termination, Performance Pay for which they have been determined to be eligible (provided that they have continued to be actively at work through the Vesting Date, as set out in para. 3(c), above), and reimbursement of any outstanding expenses incurred up to the termination date and payable pursuant to this Agreement. The Hospital may waive this notice by providing the Executive with the compensation to which the Executive would have been entitled during the period of notice so waived.
- (d) By the Hospital, in its absolute discretion, for just cause, without notice or pay in lieu thereof. For purposes of defining "just cause" in this Agreement, "just cause" includes, without limitation:
- (i) any material breach of the provisions of this Agreement;
  - (ii) wilful failure to carry out the Executive's duties as set out in this Agreement or as prescribed by the Board from time to time;
  - (iii) wilful failure to comply with the applicable legislation governing the Hospital, including the *Public Hospitals Act*, or with the Hospital's by-laws, policies, rules or regulations;
  - (iv) any conduct of the Executive that, in the opinion of a two-thirds (2/3) majority of the Board, tends to bring the President and Chief Executive Officer or the Hospital into disrepute; or
  - (v) conviction of the Executive of a criminal offence punishable by indictment.

For greater certainty, if the "just cause" relied on by the Hospital in terminating the Executive's employment pursuant to this section does not amount to "wilful

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misconduct or wilful neglect of duty” pursuant to the *Employment Standards Act, 2000*, as amended from time to time, the Executive will be provided with their entitlements upon termination of employment pursuant to that Act notwithstanding that employment with the Hospital has been terminated for just cause.

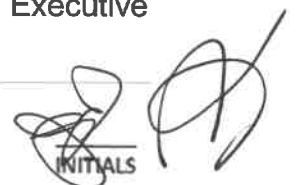
- (e) By the Hospital prior to the End Date in its absolute discretion and for any reason without just cause, upon providing to the Executive notice of termination or at the Hospital’s sole discretion pay in lieu thereof, for a period in accordance with the following (the “Notice Period”):
1. If the Executive’s employment is terminated within the first year of employment, six (6) months’ notice or payment in lieu of notice.
  2. If the Executive’s employment is terminated after the first year of employment but on or before the last day of the second year of employment, nine (9) months’ notice or payment in lieu of notice.
  3. If the Executive’s employment is terminated at any time after the last day of the second year of employment and prior to the End Date, twelve (12) months’ notice or payment in lieu of notice.

If the Hospital elects to provide pay in lieu of notice of termination, such pay in lieu of notice will be calculated on the basis of the Executive’s Total Annual Compensation (with Pay for Performance calculated at 75% achievement) effective the date on which notice of termination is provided, and shall be less all usual and necessary deductions and withholdings.

At the sole discretion of the Hospital, the pay in lieu of notice set out above may be paid to the Executive in monthly installments corresponding to the number of months of entitlement. For greater certainty, if the Executive finds employment within the Notice Period, the Hospital shall not be entitled to set off against the payments owing by the Hospital under this paragraph any amounts received by the Executive from such employment, save and except where the new employment is as a full-time employee with a Department, Ministry, Agency, or crown corporation of the Government of Ontario, or another Designated Employer as defined in the *Broader Public Sector Executive Compensation Act, 2014*, as amended, or with a Department, Ministry, Agency, or Crown Corporation of the Government of Canada (all hereinafter referred to as an “Ontario or Federal Public Sector Employer”). Payments under this paragraph shall be reduced by the full amount of compensation which the Executive earns during the applicable Notice Period through full-time employment with such an Ontario or Federal Public Sector Employer.

For greater certainty, the parties do not intend the Executive to receive less on termination of employment without cause than the entitlements upon termination under the *Employment Standards Act, 2000*, as amended from time to time. If in any case the application of this Agreement would result in the Executive

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receiving less than those entitlements, they shall instead receive those statutory entitlements in full.

- (f) Where the Hospital terminates the employment of the Executive under paragraph 9(e) above, the Hospital shall pay to the Executive any vacation entitlement accrued up to the date of termination and shall also provide the Executive with continuation of their benefits for the period required pursuant to the *Employment Standards Act, 2000*, as amended from time to time. The Hospital shall, subject to the approval of the insurer, further arrange for continuation of the Executive's benefits, save and except long term disability benefits, life insurance, and accidental death and disability benefits, for a period corresponding to the number of months of termination pay calculated under paragraph 9(e) or until such time as the Executive commences alternative employment with benefits, whichever occurs first.
- (g) The Executive acknowledges that the payments contemplated herein are reasonable and that they are paid in full and final satisfaction of all claims, whether at common law or under the *Employment Standards Act, 2000*, as amended from time to time, which the Executive may have for wrongful dismissal, severance pay, termination pay or other damages arising from the termination of employment. The Executive waives any claim to any other payment or benefits from the Hospital.

#### 10. **Assignment of Rights**

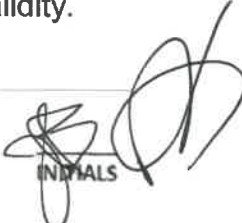
The rights, which accrue to the Hospital under this Agreement, shall pass to its successors or assignee. ~~The rights of the Executive under this Agreement will not be assignable or transferable in any manner.~~

#### 11. **Notices**

Any notice required or permitted to be given to the Executive shall be sufficiently given if delivered to the Executive personally or mailed by registered mail to their address last known to the Hospital. Any notice required or permitted to be given to the Hospital shall be sufficiently given if mailed by registered mail to the Hospital to the attention of the Chair of the Board.

#### 12. **Severability**

In event that any provision or part thereof of this Agreement is determined by a court of competent jurisdiction to be void or invalid, such provision or part thereof shall be severed from the balance of this Agreement to the extent of the inconsistency, and the remaining provisions or parts thereof shall continue in full force and effect. Should this occur, the parties agree to meet and negotiate in good faith as to whether or not changes to the Agreement are required as a result of such a declaration of invalidity.

  
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13. **Waiver**

No waiver by either party of any breach of any provisions herein shall constitute a waiver of the provision except with respect to the particular breach giving rise to the waiver.

14. **Entire Agreement**

This Agreement constitutes the entire agreement between the parties with respect to the employment of the Executive and any and all provisions in any prior written agreements are terminated and cancelled and each of the parties release and forever discharge the other of and from all manner of actions, causes of action, claims and demands under or in respect of any such agreement. The Parties further agree that in entering into this Agreement, they are not relying on any warranty, representation or inducement except as specifically set out herein. The Executive specifically agrees and acknowledges that they have not been induced to enter into this Agreement by the Hospital, and that they voluntarily enter into this Agreement of their own free will.

15. **Modification**

Any modification of this Agreement must be in writing and signed by the parties.

16. **Headings**

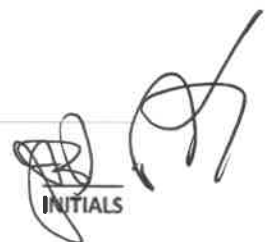
The headings used in this Agreement are for convenience only and are not to be construed in any way as additions to or limitations of the covenants and agreements contained in it.

17. **Time**

Time shall be of the essence in this Agreement.

18. **Governing Law**

This Agreement shall be construed in accordance with the laws of Ontario.

  
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19. **Independent Legal Advice**

The Executive confirms that, prior to the execution of this Agreement, they had a full and complete opportunity to obtain independent legal advice and representation and that they have either done so or have freely chosen not to obtain such advice.

**IN WITNESS WHEREOF** this Agreement has been executed by the parties to it, this 6<sup>th</sup> day of May, 2019 in the Province of Ontario.

**SIGNED, SEALED & DELIVERED**

In the presence of:

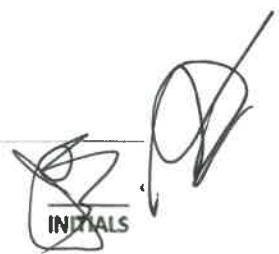
**QUEENSWAY CARLETON  
HOSPITAL**



Per: Judie Leach Bennett  
Chair of the Board

  
Witness

**ANDREW FALCONER**

  
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