

EMPLOYMENT AGREEMENT

BETWEEN

QUEENSWAY CARLETON HOSPITAL

(the “Hospital”)

– and –

TIM PEMBERTON

(the “Executive”)

WHEREAS the Executive has worked for the Hospital since October 29, 2018 (the “**Initial Start Date**”);

AND WHEREAS the Hospital has undergone a reorganization of executive duties and responsibilities resulting in some changes to the terms and conditions of the Executive’s employment with the Hospital;

AND WHEREAS the Hospital wishes to continue to employ the Executive as Vice President, Mental Health, Diagnostic Services, Chief Information Officer and Chief Privacy Officer;

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

NOW THEREFORE in consideration of the mutual promises and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, 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, Vice President, Mental Health, Diagnostic Services, Chief Information Officer and Chief Privacy Officer; and the Executive indicates their acceptance of this appointment.
- (b) The Executive shall perform those duties as set out in the position description(s) developed by the President and Chief Executive Officer (the “CEO”) and as may be amended by the Hospital from time to time, together with such other duties or amended duties as may reasonably be requested from time to time by the CEO. In carrying out their duties, the Executive will comply with all lawful instructions and directions given to them by the CEO 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 CEO.

2. Term

- (a) This Agreement will commence on July 18, 2022, (the "Start Date") and shall continue indefinitely thereafter, unless terminated earlier in accordance with the provisions of this Agreement. The Hospital will recognize the Initial Start Date for the purposes of calculating the Executive's years of service with the Hospital.

3. Compensation

- (a) Following the acceptance of this Agreement, the Executive shall be entitled to a salary of \$227,262 per annum, less all usual and necessary deductions and withholdings, effective April 1, 2022.
- (b) The salary payable to the Executive will be reviewed annually in accordance with the Hospital's compensation framework and all applicable statutes and regulations.
- (c) The Executive shall be eligible to receive a target performance-related pay of five percent (5%) of the Executive's salary in each calendar year to a maximum allowable payment of \$10,000 in each year (the "**Performance Pay**"). The value of the Performance Pay in any given year, if any, will be based upon the Executive's individual performance, including in relation to any individuated targets that may be communicated to the Executive by the Hospital, from time-to-time, and the restrictions imposed by all applicable statutes and regulations. All Performance Pay entitlements for the current fiscal year will be pro-rated, based on the Start Date.

The Executive understands and agrees that the payment of any Performance Pay in one year, or series of consecutive years, is in no way a guarantee, implicitly or otherwise, that the Executive will receive the Performance Pay in any subsequent year. The Executive further understands and agrees that the Hospital may decrease the maximum Performance Pay payment described above, or eliminate the Performance Pay altogether in perpetuity, and that any such decrease or elimination will not result in the Executive's constructive dismissal.

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 remaining shall be paid out. Notwithstanding the foregoing, the Executive and the CEO 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 CEO 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 Hospital, and in accordance with established Hospital policy. 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 Hospital, up to maximum of \$2,000 per year. The expenses so incurred by the Executive are subject to the approval of the Hospital.
- (c) The parties agree that ongoing professional development benefits both the Hospital and the Executive. The Executive shall be granted leave of up to two (2) weeks in each year to attend industry conferences and meetings relating to professional organizations (the "**Professional Events**"), provided that, in the opinion of the Hospital, such Professional Events shall relate directly to the responsibilities of the Executive under this agreement. Remuneration of the Executive shall continue as set out herein during the period of absence in attending continuing education programs. Reasonable and approved travel, food, and other expenses incurred for such programs shall be paid to the Executive, conditional upon approval of the Hospital and upon the Executive filing of supporting expense reports and receipts, in compliance with Hospital policies.

6. Duties and Authority

- (a) Throughout the term of this Agreement, the Executive shall devote their full time and attention to the business and affairs of the Hospital in their capacity as Vice-President, Mental Health, Diagnostic Services, Chief Information Officer and Chief

Privacy Officer, and shall well and faithfully serve the Hospital and use best efforts to promote the interests thereof.

- (b) The Executive will be subject to the Hospital's policies in the performance of their duties, as approved and reviewed by the Hospital from time to time. Where the provisions of this Agreement conflict with the Hospital's policies, the provisions of this Agreement shall govern.
- (c) 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.
- (d) The Executive shall not engage in the undertaking or carrying on of any other business, undertaking or activity which is or may be against the interest of the Hospital, during their employment with the Hospital, without the prior written consent of the CEO. The Executive agrees that they will not hold an administrative leadership position at another Hospital during their employment without the prior written consent of the CEO.

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 CEO, 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.
- (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.


INITIALS

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) 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, and reimbursement of any outstanding expenses incurred up to the termination date and payable pursuant to this Agreement. The Hospital may waive the Executive's obligation to attend work during such notice period, in whole or in part, by providing the Executive with the compensation to which the Executive would have been entitled to, including continued participation in any benefit plan the Executive is ordinarily entitled to, during the period in which the obligation to attend work is waived.
- (c) The Employer may terminate the Executive's employment for cause without notice or payment in lieu of notice, or severance pay, except as may be required by and limited to the minimum requirements of the *Ontario Employment Standards Act, 2000*, as amended from time to time. The Employer shall also provide the Executive with any other applicable statutory entitlements that are required by and limited to the minimum requirements of the *Ontario Employment Standards Act, 2000*, as amended from time to time.
- (d) By the Hospital 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 calculated as follows (hereinafter referred to as the "Notice Period"):
 - (i) Three (3) months if the notice is given during the first six (6) months of the Executive's employment with the Hospital;
 - (ii) Six (6) months if the notice is given during the second six (6) months of the Executive's employment with the Hospital;
 - (ii) Nine (9) months if the notice is given on or after the first anniversary of the Executive's employment with the Hospital but before the second anniversary; or
 - (iii) Twelve (12) months if the notice is given on or after the second anniversary of the Executive's employment with the Hospital.

The Hospital may provide the amounts set out above as working notice or pay in lieu of notice in its sole discretion, save and except where the Executive is entitled to severance pay pursuant to the *Employment Standards Act, 2000*, as amended, in which case the Hospital will provide as pay in lieu of notice an amount at least

equal to the Executive's entitlement to severance pay under the *Employment Standards Act, 2000*, as amended, and the balance of the Notice Period as working notice or pay in lieu of notice in its sole discretion.

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 set off in accordance with this provision of amounts which the Executive earns through new employment would result in the Executive receiving less than those entitlements, they shall instead receive those statutory entitlements in full.

- (e) Where the Hospital terminates the employment of the Executive under paragraph 9(d) 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 accrual of vacation pay and continuation of their benefits for the period required pursuant to the *Employment Standards Act, 2000*, as amended from time to time.
- (f) 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 CEO.

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.

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.

19. **Consideration**

The Executive acknowledges and agrees that the Executive has received good, sufficient, and valuable consideration for this Agreement, including but not limited to the entitlement to performance pay set out above.

20. **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 14 day of July, 2022 in the City of Ottawa, the Province of Ontario.

SIGNED, SEALED & DELIVERED
In the presence of:

**QUEENSWAY CARLETON
HOSPITAL**

Per: _____



Witness



TIM PEMBERTON